

TYNE AND WEAR FIRE AND RESCUE AUTHORITY

GOVERNANCE COMMITTEE

MEETING: 30 MARCH 2009

SUBJECT: COMPLAINTS AGAINST COUNCILLORS

REPORT BY THE DEPUTY CLERK

1. Introduction

This report seeks the Committee's approval to the contents of the protocols dealing with Complaints against Councillors, which will then be included as part of the Authority's Constitution.

2. Background

2.1 The Standards Committee (England) Regulations 2008 ("the Regulations") came into force on 8 May 2008. The Committee has previously received reports on the local assessment of complaints. In particular, it agreed a procedure for local assessment, assessment criteria and a complaint form at its meeting on 30 June 2008.

2.2 As the Committee is aware, the Standards Board ("the Board") published its Guidance on Local Assessment. Further Guidance on Local Investigations and Other Action has now been issued by the Board, as well as updated Guidance on Local Determinations.

2.3 The Authority's procedures for dealing with Complaints against Councillors therefore need to be reviewed in the light of the Regulations, and the further guidance which has been issued.

3. Governance Committee Protocols

3.1 The protocols reflect the local assessment procedure agreed by the Committee on 30 June 2008 and this has been inserted as Part 2.

3.2 The protocols comprise the following parts:

Part 1 – Introduction and overview

This contains a short introduction.

Part 2 – Procedure for Local Assessment of Complaints.

This contains the Procedure (and complaint form) as agreed by the Committee on 30 June 2008. It does not require revision.

Part 3 – Procedure for Local Investigation by the Monitoring Officer

This Part has been amended to reflect that, generally, it is now the Governance Committee (rather than an ESO) who will refer a complaint to the Monitoring Officer for investigation.

Subject to that change, the procedure is very similar to the existing one.

The procedure for local assessment sets out the circumstances when the Monitoring Officer may, during an investigation, refer the matter back to the Committee.

Part 4 – Procedure if the Standards Board refers an allegation to an Ethical Standards Officer for investigation

This is a new section. It is based on information from the Standards Board website and gives information about an investigation by an Ethical Standards Officer.

Part 5 – Procedure for Local Determination

This has been amended to reflect the fact that local determinations will now follow either an investigation by the Monitoring Officer or, more rarely, an investigation by an ESO.

However, the procedure is very much the same as before: a pre-hearing process, followed by the hearing, and then notice of the Sub-Committee's findings.

As before, the Sub-Committee for a hearing will comprise a minimum of 3 members of the Committee, including at least 1 independent member who will chair the Sub-Committee. In addition, it has now been updated to reflect the Regulations by providing that the Sub-Committee must always include at least 1 elected member.

The penalties in Schedule 2 of Part 5 have been updated.

Part 6 – Legal Costs - Representation

This sets out the position for Members.

Part 7 – Media Protocol

This Part has been prepared to guide media activity following receipt of a complaint.

The Code of Conduct as approved by the Authority is of course already included in the Constitution.

4. **Recommendation**

The Committee is requested to approve the attached procedures for dealing with Complaints against Councillors and their inclusion in the Authority's Constitution.

5. **Background Papers**

List of Background Papers:- held by the Deputy Clerk

1. The Governance Committee (England) Regulations 2008.
2. Report to Governance Committee – 30 June 2008 – “Local Assessment Procedure”.
3. Standards Board for England – “Governance Committee Determinations”.
4. Standards Board for England – “Local Investigations and Other Action”.



TYNE AND WEAR FIRE AND RESCUE AUTHORITY
GOVERNANCE COMMITTEE
DEALING WITH COMPLAINTS AGAINST COUNCILLORS

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PART 1

GOVERNANCE COMMITTEE

COMPLAINTS AGAINST MEMBERS

INTRODUCTION AND OVERVIEW

1. **The Code of Conduct for Members**

- 1.1 The Code of Conduct for Members (set out in part 5 of the Constitution) defines the standards of conduct which will be required of a Member of Tyne and Wear Fire and Rescue Authority (“the Authority”) when carrying out his/her duties, and in his/her relationships with the Authority and its officers. The Code represents the standards against which the public, fellow Members, the Standards Board for England (“the Standards Board”) and the Authority’s Governance Committee (“the Authority’s Governance Committee”) will judge the Member’s conduct.

2. **Complaints about breaches of the Code**

- 2.1 Any person may make a written complaint to the Governance Committee that a Member has acted in breach of the Code.
- 2.2 The Governance Committee will assess any complaint it receives and will decide either:
- (a) to refer the complaint to the Monitoring Officer;
 - (b) to refer it to the Standards Board; or
 - (c) that no action should be taken in respect of it.

The procedure for this initial local assessment of complaints is set out in Part 2 of this Protocol.

- 2.3 If the complaint is referred to the Authority’s Monitoring Officer to investigate and then report on the result to the Governance Committee, **the procedure for such a local investigation is set out in Part 3 of this Protocol.**
- 2.4 If the complaint is referred to the Standards Board, the Board may ask one of its Ethical Standards Officers (“ESO”) to investigate the complaint. If so, his/her completed investigation report will be referred to the Authority’s Monitoring Officer for its Governance Committee to determine whether the Member has failed to follow the Code of Conduct. **Information about the procedure followed by an ESO is set out in Part 4 of this Protocol.**
- 2.5 **The procedure for local determination by the Governance Committee (following an investigation by either the Monitoring Officer or an ESO) is set out in Part 5 of this Protocol.**

2.6 A Member faced with an allegation of a breach of the Code of Conduct can seek an **indemnity** for the costs of defending the allegation. **Part 6 gives more information about this.**

3. **Media Guidance for Complaints against Members**

3.1 Members of the Authority may have dealings with the media in respect of complaints against members and their investigations considered by the Governance Committee. To ensure fair and consistent treatment in all cases, **guidance on dealing with media for all Members of the Authority is provided in part 7 of this Protocol.**

PART 2

TYNE AND WEAR FIRE AND RESCUE AUTHORITY

PROCEDURE FOR THE LOCAL ASSESSMENT OF COMPLAINTS

1. Introduction

- 1.1 Under changes made to the Local Government Act 2000 by the Local Government and Public Involvement in Health Act 2007, any person may make a written complaint to the Authority's Governance Committee that a member or co-opted member of the Authority has acted in breach of the Code of Conduct for Members.
- 1.2 Any such complaint should be sent (using the Form attached as Appendix 1) to the Chair of the Assessment Sub-Committee, The Governance Committee, c/o The Monitoring Officer, Tyne and Wear Fire and Rescue Authority, PO Box 100, Civic Centre, Sunderland, SR2 7DN.
- 1.3 The following is the procedure which will normally be followed on receipt of such a complaint. Much of this procedure is either required by regulations made by Central Government or is in line with statutory Guidance issued by the Standards Board for England.
- 1.4 No member or officer will participate in the assessment process if they have a personal conflict of interest in the matter.

2. Initial Notification of Complaint

- 2.1 The member who is the subject of the complaint will normally as soon as practicable after the complaint is received be sent a letter by the Monitoring Officer telling him/her that a complaint has been made, which paragraphs of the Code of Conduct have been allegedly breached and stating the name of the complainant (unless the complainant has requested confidentiality and the Governance Committee has not yet considered whether or not to grant it).

(At that stage, a summary of the allegation will not be provided to the member because the Regulations do not allow this until the matter has been to the Assessment Sub-Committee).

- 2.2 In certain circumstances, the Monitoring Officer may decide not to give any notification at all to the member who is the subject of the complaint. This will happen if it is considered by the Monitoring Officer that to do so would be against the public interest or might prejudice any future investigation, or where non-disclosure has been specifically requested by the complainant for what the Monitoring Officer considers may be good reasons. Any such decision by the Monitoring Officer will only apply pending consideration of the matter by the Assessment Sub-Committee as referred to in paragraph 3.1 below.

3. **Initial Assessment**

- 3.1 A sub-committee of the Governance Committee (known as “the Assessment Sub-Committee”) will meet as soon as reasonable, and normally within 20 working days of receipt of the complaint, to consider it and decide if any action should be taken on it.

The Sub-Committee must comprise, for the duration of the meeting, at least three members of the Governance Committee, including at least one elected City Council member and one Independent Member. It must be chaired by an Independent Member.

The Sub-Committee will normally comprise three members of the Governance Committee, being one Independent Member and two members of the Authority, from different Political Groups. These members will be selected on a rotation basis by the Deputy Clerk but wherever possible the Independent Member will be the Chair of the Governance Committee who will also act as the Chair of the Sub-Committee. All members must be present for the duration of the meeting.

- 3.2 The Assessment Sub-Committee will receive a report from the Monitoring Officer which will indicate if the complaint is within the jurisdiction of the Sub-Committee and give a summary of the complaint and explain any relevant parts of the Code, as well as attaching a copy of the complaint form and any supporting documents which came with it. It may also include any other documents the Monitoring Officer considers might help the Sub-Committee in its assessment e.g. a copy of any relevant minutes or entry on the Register of Interests.
- 3.3 The meeting and papers will not be open to the public. Neither the complainant nor the member who is the subject of the complainant will be invited to attend.

The Sub-Committee will not be subject to the usual rules which apply to council committees or sub-committees concerning notice of meetings, circulation of agendas and documents and public access.

- 3.4 The Assessment Sub-Committee will first consider whether the complaint meets the following tests:
- The complaint is against one or more named members of the Authority or a Co-opted Member to whom the Code of Conduct applies
 - The subject member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
 - The complaint, if proven, would be a breach of the Code under which the subject member was operating at the time of the alleged misconduct;

If the complaint fails one or more of these tests, then the decision of the Assessment Sub-Committee must be that no further action will be taken.

- 3.5 Where the above tests are satisfied the Assessment Sub-Committee will decide either:
- (a) to refer the complaint to the Authority's Monitoring Officer; or
 - (b) to refer it to the Standards Board for England; or
 - (c) that no action should be taken in respect of it.
- 3.6 Where the complaint is against a person who is no longer a Member of the Authority, but is a member of another relevant authority, the Sub-Committee may instead refer the complaint to the monitoring officer of that other relevant authority if it thinks it more appropriate to do so.
- 3.7 After making its decision, the Sub-Committee will produce a written summary of its decision which will include the main points considered, its conclusion and the reasons for that conclusion. The summary may give the name of the member who was the subject of the complaint, unless the Sub-Committee believes such disclosure is not in the public interest or would prejudice any investigation.

That summary will be sent as soon as possible to the complainant and to the member who is the subject of the complaint.

That summary will also be made available for inspection at the offices of the Authority for 6 years beginning with the date of the meeting.

The summary will not be made available for inspection, until the member who was the subject of the complaint has been given a written summary of the decision.

- 3.8 In addition, a written summary of the allegation will be sent at this stage to the member who is the subject of the complaint unless exceptionally the Sub-Committee considers that to do so would be contrary to the public interest or would prejudice a person's ability to investigate the allegation. In considering this the Sub-Committee will consider the risk of intimidation and whether early disclosure of the complaint may lead to evidence being compromised or destroyed. Even in those circumstances, the Sub-Committee may disclose some details of the allegation to the member if it is satisfied this would not be contrary to the public interest or prejudice any investigation. In any event, the member who is the subject of the complaint will be sent a summary of it whenever the Monitoring Officer advises these concerns no longer apply or before the result of any investigation is reported to Governance Committee, whichever is the earlier.

4. **Allegation referred to the Monitoring Officer**

If the Assessment Sub-Committee refers the complaint to the Monitoring Officer, it may direct the Monitoring Officer either (i) to carry out an investigation or (ii) to take steps other than an investigation ("other steps").

4.1 **Referral to Monitoring Officer for other steps**

- 4.1.1 The Sub-Committee may refer the complaint to the Monitoring Officer to take other steps only after first consulting the Monitoring Officer.
- 4.1.2 The other steps which the Sub-Committee can direct the Monitoring Officer to take are:
- (a) arranging for the Member who is the subject of the complaint to attend a training course;
 - (b) arranging for that Member and the complainant to engage in a process of conciliation;
 - (c) such other steps (not including an investigation), as appear appropriate to the Sub-Committee.

If the Sub-Committee is minded to direct other steps it may before making a formal decision to do so decide to seek assurances from the parties involved that they will co-operate with such other steps.

- 4.1.3 Where a matter is referred to the Monitoring Officer to take other steps, the Monitoring Officer:
- (a) shall act in accordance with the direction; and
 - (b) shall give written notice that the matter has been so referred to:
 - (i) the member who is the subject of the allegation,
 - (ii) the complainant,
 - (iii) the Standards Committee of any other authority concerned, and
 - (c) within 3 months after the day on which the direction was received, or as soon as is reasonably practicable thereafter, the Monitoring Officer shall submit a written report back to the Assessment Sub-Committee giving details of the action taken, or proposed, to comply with the direction.
- 4.1.4 If the Sub-Committee is not satisfied with the action specified in that report, it shall give a further direction to the Monitoring Officer.
- 4.1.5 If the Assessment Sub-Committee is satisfied with the action specified in the Monitoring Officer's report, it shall give written notice to that effect to:
- (a) the member who is the subject of the report;
 - (b) the complainant;
 - (c) the Standards Committee of any other authority concerned.

4.2 **Referral to the Monitoring Officer for investigation**

4.2.1 Where the Assessment Sub-Committee refers the complaint to the Monitoring Officer for investigation, the relevant procedures will be followed.

4.2.2 The Monitoring Officer may at any time refer the matter back to the Assessment Sub-Committee if:

- (a) as a result of new evidence or information, s/he is of the opinion (i) the matter is materially more or less serious than may have seemed apparent when the Sub-Committee initially referred it to the Monitoring Officer for investigation and (ii) the Sub-Committee would have made a different decision had it been aware of that new evidence or information; or
- (b) the person who is the subject of the complaint has died; or is seriously ill; or has resigned from the Authority, and the Monitoring Officer considers that in the circumstances it is no longer appropriate to continue with an investigation;

If a matter is referred back to the Sub-Committee, it will reconsider and make one of the decisions set out in paragraph 3.5 above.

4.2.3 In forming an opinion for the purposes of paragraph 4.2.2(a) above, the Monitoring Officer may take account of:

- (a) the failure of any person to co-operate with an investigation; or
- (b) an allegation that the Member concerned has engaged in a further breach of the Authority's Code of Conduct or that of another relevant authority; or
- (c) an allegation that another member has engaged in a related breach of the Authority's Code of Conduct or that of another relevant authority.

4.2.4 Where the Sub-Committee considers a matter referred back to it, it may direct that the matter should not be referred back to it again.

5. **Allegation referred to the Standards Board**

5.1 Where the Assessment Sub-Committee decides to refer the complaint to the Standards Board, the Standards Board will either:

- (a) refer it to one of its Ethical Standards Officers for investigation; or
- (b) decide no action should be taken in respect of the complaint; or
- (c) refer it back to the Governance Committee.

- 5.2 If the Standards Board decides no action should be taken, it must take reasonable steps to give written notice of the decision and the reasons for it to:
- (a) the complainant; and
 - (b) the person who was the subject of the complaint;
- 5.3 If the Standards Board refers the allegation back to the Governance Committee, an Assessment Sub-Committee will be convened. This may, but need not, comprise the same members as formed the original Assessment Sub-Committee for that complaint. It must then decide either:
- (a) to refer the complaint to the Monitoring Officer for investigation or other steps; or
 - (b) that no further action should be taken in respect of the complaint.

The complaint cannot be referred back again to the Standards Board.

- 5.4 If the Standards Board refers the allegation to one of its Ethical Standards Officers, it will be dealt with in accordance with the approved procedures.

6. **Decision to take no action in respect of allegation**

- 6.1 If the Assessment Sub-Committee decides that no action should be taken in respect of the complaint, it must take reasonable steps to give written notice of the decision and the reasons for it to:
- (a) the complainant; and
 - (b) the person who was the subject of the complaint.

It shall endeavour to send this notice within 5 working days of the Sub-Committee meeting.

6.2 **Right to request review of decision to take no action**

- 6.2.1 The complainant may request the Governance Committee to review the decision not to take any action.

Any such request must be in writing, addressed c/o the Monitoring Officer, and made within 30 days of the date of the notice referred to in paragraph 6.1.

- 6.2.2 On receipt of such a request, the Monitoring Officer will give written notice of that fact to the person who is the subject of the complaint.

- 6.2.3 Another sub-committee of the Governance Committee (“the Review Sub-Committee”) will be appointed to review the decision not to take any action.

That Sub-Committee must also comprise, for the duration of the meeting, at least three members of the Governance Committee, including at least two elected members and one Independent Member. It must be chaired by an Independent Member. Its members however must not include members who sat on the Assessment Sub-Committee whose decision is being reviewed.

The Review Sub-Committee will normally comprise three members of the Governance Committee, being an Independent Member and two members of the Authority, from different Political Groups (if practicable). These members will be selected on a rotation basis by the Deputy Clerk taking account of availability and any potential conflicts of interest. The Independent Member will act as the Chair of the Sub-Committee.

- 6.2.4 The meeting and papers will not be open to the public. Neither the complainant nor the member who is the subject of the complainant will be invited to attend.

The Sub-Committee will not be subject to the usual rules which apply to council committees or sub-committees concerning notice of meetings, circulation of agendas and documents and public access.

- 6.2.5 The Review Sub-Committee will consider the matter afresh and must either:

- (a) refer the complaint to the Monitoring Officer for investigation or other steps;
- (b) refer it to the Standards Board;
- (c) decide no action should be taken.

The Review Sub-Committee must make such a reference/decision within 3 months from receipt of the request for review, but it will seek to do so within an average time of 20 working days.

- 6.2.6 If the Review Sub-Committee decides that no action should be taken, there is no further right of review.

The Sub-Committee, through the Monitoring Officer, will normally notify both the complainant and the member who is the subject of the complaint of that decision within 5 working days.

- 6.2.7 If the Sub-Committee decides to refer the complaint to the Monitoring Officer or the Standards Board, then paragraphs 4.1, 4.2 or 5 shall apply as appropriate.

- 6.2.8 After making its decision, the Sub-Committee will produce a written summary of its consideration which will include the main points considered, its conclusion and the reasons for that conclusion. The summary may give the name of the member who was the subject of the complaint, unless such disclosure is not in the public interest or would prejudice any investigation.

That summary will be sent as soon as possible to the complainant and to the member who is the subject of the complaint.

That summary will also be made available for inspection at the offices of the Authority for 6 years beginning with the date of the meeting.

The summary will not be made available for inspection, until the member who was the subject of the complaint has been given a written summary of the decision.

7. Withdrawing Complaints

7.1 If a complainant requests to withdraw his/her complaint before the Assessment Sub-Committee has made a decision on it, then the Sub-Committee will decide whether to grant that request.

In making that decision it will take into account the following considerations:

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- Is the complaint such that action can be taken on it, for example, an investigation without the complainant's participation?
- Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the member who is the subject of the complaint, or an associate of theirs, to withdraw the complaint?

8. Confidentiality

If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Sub-Committee at the same time as it considers the complaint.

As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Sub-Committee may grant confidentiality if it is satisfied that the Complainant has reasonable grounds for believing that they will be at risk of physical harm, or their employment will be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

The Assessment Sub-Committee will also take into account whether it would be possible to refer the complaint without making the Complainant's identity known, and in particular whether the Complainant's participation would be required if the complaint were referred.

If the Assessment Sub-Committee decides to refuse a request from a Complainant for confidentiality, it may offer the Complainant the option to withdraw, rather than proceed with their identity being disclosed. The

Assessment Sub-Committee will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have their identity withheld from the subject member

9. Complaints about Members of more than one Authority

Where a complaint is received about a Councillor who is known to be a member of another authority, the Monitoring Officer will before the meeting of the Assessment Sub-Committee establish whether a similar allegation has been made to the other authority. In the light of information from and in co-operation with the other authority, the Assessment Sub-Committee will consider which authority should deal with the complaint.

Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take:

- 1. Has the complainant submitted enough information to satisfy the Assessment Sub-Committee that the complaint should be referred for investigation or other action?**

If not:

The information provided is insufficient to make a decision. So unless, or until, further information is received, the Assessment Sub-Committee will take no further action on the complaint.

- 2. Is the complaint about someone who is no longer a member of the Authority, but is a member of another authority? If so, does the Assessment Sub-Committee wish to refer the complaint to the monitoring office of that other authority?**

If yes:

The complaint will be referred to the Standards Committee of that other authority to consider.

- 3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If yes:

There may be nothing more to be gained by further action being taken.

- 4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**

If yes:

Further action may not be warranted.

- 5. Does the complaint appear too trivial to justify the cost or inconvenience of further action?**

If yes:

Further action will not be warranted.

- 6. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?**

If yes:

Further action will not normally be warranted.

7. Is the complaint anonymous?

If yes:

No action will normally be taken unless there are compelling reasons to suggest otherwise, e.g. if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

6. Is it appropriate to refer the matter to the Standards Board?

- Does the Committee believe that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for it to deal with the complaint?

e.g. is the member a group leader or a member of the Governance Committee?

- Does the Committee believe that the status of the complainant or complainants would make it difficult for the committee to deal with the complaint?

e.g. is the complainant a group leader or a member of Governance Committee, the Chief Fire Officer, the Monitoring Officer or other senior officer?

- Does the Committee believe that there is a potential conflict of interest of so many members of the Governance Committee that it could not properly monitor the investigation?
- Does the Committee believe that there is a potential conflict of interest of the Monitoring Officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict?
- Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
- Will the complaint require substantial amounts of evidence beyond that available from the Authority's documents, its members or officers?
- Is there substantial "governance dysfunction" in the Authority or its Governance Committee?
- Does the complaint relate to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the Authority?
- Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?

- Might the public perceive the Authority to have an interest in the outcome of a case?

e.g. if the Authority could be liable to be judicially reviewed if the complaint is upheld.

- Are there exceptional circumstances which would prevent the Authority or its Governance Committee investigating the complaint competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for an investigation?



TYNE AND WEAR FIRE AND RESCUE AUTHORITY

LOCAL CODE OF CONDUCT COMPLAINTS PROCESS

Changes to the complaints procedure

From 8 May 2008 the responsibility for considering complaints that a member may have breached the Code of Conduct is moving to the Governance Committees of local authorities.

What this means to you

After 8 May 2008 if you want to complain about the conduct of a member of Sunderland City you must submit your complaint to:

Chair of the Assessment Sub-Committee
The Governance Committee
Tyne and Wear Fire and Rescue Authority
c/o the Deputy Clerk to the Authority
PO Box 100
Civic Centre
Sunderland
SR2 7DN

The Assessment Sub-Committee can only deal with complaints about the behaviour of a member. It will not deal with complaints about things that are not covered by the members' Code of Conduct. If you make a complaint to the assessment sub-committee it must be about why you think a member has not followed the Code of Conduct.

A complaint form is attached for your further guidance and completion.



TYNE AND WEAR FIRE AND RESCUE AUTHORITY

COMPLAINT FORM

Your details

1. Please provide us with your name and contact details

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the member(s) you are complaining about
- the monitoring officer of the authority

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 6 of this form.

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the Governance Committee
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee
- Other ()

Making your complaint

When we receive your complaint, we will write to you to let you know that we have received it. We will then assess your complaint. We may decide that it will not be investigated for one or more of a number of reasons for example:

- Complaints where a member is not named.
- Complaints that are not in writing
- Incidents or actions that are not covered by the Code of Conduct
- Incidents that are about a fault in the way the authority has or has not done something. This is known as maladministration and may be a matter for the Local Government Ombudsman
- Complaints about people employed by local authorities
- Incidents that happened before a member was elected.

If we decide not to refer your complaint for investigation, we will write to you explaining why.

If we decide to refer your complaint for investigation, we will write to you to let you know when the investigation has started and, when it is over, we will write to you to tell you the outcome.

3. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or Authority name

4. Please explain in this section (or on separate sheets) what the member has done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

Only complete this next section if you are requesting that your identity is kept confidential

5. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that you will be at risk of physical harm, or your employment will be jeopardised if your identity is disclosed, or there are medical risks (supported by medical evidence) associated with your identity being disclosed.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The assessment sub-committee will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Additional Help

6. Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

You should contact Mrs M Douglas, Customer Services Manager (0191) 553 1065, email: Margaret.douglas@sunderland.gov.uk.

Equality Monitoring Form

Tyne and Wear Fire and Rescue Authority operates an Equality Policy. To help us make sure that everybody is treated fairly and equally we need to know who is making complaints. This information will help us to develop and change our policies and practices to ensure that no one is discriminated against.

To help us to do this we request that you complete the questions below. You do not have to do so but this information would be helpful to us. All of the information you give will be treated with the strictest of confidence and will be used for monitoring purposes only.

Are you:

Male

Female

What is your age group?

15 and under 16-24 25-39 40-59 60-64

65-74 75+

Do you have any long standing illness or disability?

(Long standing means anything that has troubled you over a period of time or that is likely to affect you over a period of time)

Yes

No

If yes, does this illness or disability limit your activities in any way?

Yes

No

Please state the impairment type(s) which applies to you:

Mobility

Visual impairment

Hearing Impairment/Deaf

Mental Health diagnosis

Other

Prefer not to say

What is your ethnic group?

A. White

- British
- Irish
- Other Please state

B. Mixed

- White and Black Caribbean
- White and Asian
- White and Black African
- Any other mixed background Please state

C. Asian or Asian British

- Indian
- Bangladeshi
- Pakistani
- Any other Asian background Please state

D. Black or Black British

- Caribbean
- African
- Any other Black background Please state

E. Chinese

F. Any other ethnic group Please state

What is your sexual orientation?

- Bisexual
- Gay Man
- Gay women/lesbian
- Heterosexual/straight
- Other
- Prefer not to say

What is your religion? (Tick one box only)

- None
- Christian
- Buddhist
- Hindu
- Jewish
- Muslim
- Sikh
- Any other religion Please state.
- Prefer not to say

PART 3

PROCEDURE FOR LOCAL INVESTIGATION BY THE MONITORING OFFICER

Introduction

The Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007, provides that the Governance Committee can refer a complaint of a breach of the Code to the Authority's Monitoring Officer for investigation.

The Monitoring Officer must then arrange for an Investigating Officer to investigate and report to the Authority's Governance Committee (or to a Sub-Committee appointed by it for the purpose). Where the Investigating Officer finds the Member has not acted in breach of the Code, the Committee must decide whether to accept that finding or nevertheless proceed to a formal hearing. Where the Investigating Officer finds there has been a failure to comply with the Code, or where the Committee decides to hold a full hearing, there will then be a formal hearing to determine the breach of the Code has occurred and whether any action should be taken in consequence.

The following is the procedure which will normally be followed in such local investigations, although the Monitoring Officer may vary the procedure in any particular case if s/he considers this desirable in the interests of justice or fairness or the effective conduct of the investigation.

1. Interpretation

- (a) "Member" means the member of Tyne and Wear Fire and Rescue Authority who is the subject of the complaint.
- (b) "Investigating Officer" means the person appointed by the Monitoring Officer to undertake the local investigation (which may include the Monitoring Officer, and his or her representative).
- (c) "Complainant" means the person who has made the complaint against the Member.
- (d) "Committee" means the Governance Committee.

2. Notification of Reference of Allegation to the Monitoring Officer

(a) Appointment of Investigating Officer

Within 3 working days of receipt of the allegation from the Committee, the Monitoring Officer will appoint an Investigating Officer and instruct him/her to investigate the allegation and report on it to the Committee. The Investigating Officer may be

an officer of the authority (including the Monitoring Officer), an officer of another local authority, or an external person.

The Investigating Officer may appoint persons to assist him/her and may obtain such professional advice as may be necessary for the conduct of the investigation.

(b) Notification to the Member and Complainant

The Monitoring Officer will immediately after appointing the Investigating Officer (unless directed otherwise by the Committee) notify in writing the Member the Complainant and the Standards Committee of any other authority concerned of:

- (i) the fact that the allegation has been referred to him or her for investigation;
- (ii) the identify of the Complainant (unless such identification might prejudice the investigation or put the Complainant at risk);
- (iii) the conduct which is the subject of the allegation;
- (iv) the section(s) of the Code of Conduct which appear to be relevant to the allegation;
- (v) the procedure which will be followed in respect of the allegation; and
- (vi) the identity of the Investigating Officer.

(c) Initial response of the Member

In notifying the Member of receipt of the allegation, the Monitoring Officer shall also request the Member to notify the Investigating Officer in writing within 10 working days of the following:

- (i) whether the Member admits or denies the alleged breach of the Code;
- (ii) any initial comment, explanation or representations which the Member wishes to make in relation to the allegation;
- (iii) any documents the Member would wish the Investigating Officer to take into account in the investigation, where possible providing copies of these documents, and advising where the originals can be inspected;

- (iv) the name, address and telephone number (or other contact details) of any person whom the Member would wish the Investigating Officer to interview in the course of the investigation, and the relevance of that person;
 - (v) any information the Member would wish the Investigating Officer to seek from any person or organisation;
 - (vi) any other information which the Member considers might be relevant to or assist the investigation.
- (d) Supporting information from the Complainant

When acknowledging receipt of the allegation to the Complainant, the Monitoring Officer will also request that person to notify the Investigating Officer in writing within 10 working days of:

- (i) any documents which s/he would wish the Investigating Officer to take into account in the investigation, where possible providing copies of these documents, and advising where the original documents may be inspected;
- (ii) the name, address and telephone number (or other contact details) of any person whom the Complainant would wish the Investigating Officer to interview in the course of the investigation and the relevance of that person;
- (iii) any information which the Complainant would wish the Investigating Officer to seek from any person or organisation;
- (iv) any additional information which the Complainant has and which might be relevant to, or assist, the investigation.

3. **Conduct of Investigation**

(a) Purpose of the Investigation

The purpose of the investigation is to enable the Investigating Officer to prepare and present to the Committee a report which will provide the Committee with sufficient information to determine whether the Member has acted in breach of the Code of Conduct and, where there has been a breach, whether any action should be taken, and if so, what action.

(b) Investigation Process

The investigating Officer will conduct the investigation in such manner as s/he considers best able to ascertain all relevant facts and to achieve the purpose of the investigation, having regard to the rules of natural justice, the need for fairness and any general guidance issued by the Standards Board. The Investigating Officer shall comply with any relevant direction given by the Standards Board. In particular:

- (i) the Investigating Officer will be entitled to seek all relevant information (including documents) that appears necessary or expedient to the conduct of the investigation and can make enquiries of any person believed to have such information, including the Member, the Complainant, other members or officers of the Authority and third parties. All such persons will be expected to fully co-operate with the Investigating Officer and properly respond to such enquiries and provide such information as they can and to attend for interview by the Investigating Officer if requested.
- (ii) The Investigating Officer will be able to seek information in such manner as s/he thinks appropriate, which may include in writing, by telephone or email, or in person. S/he will attempt to arrange any interviews at a time and place convenient to those concerned.
- (iii) any person who appears before the Investigating Officer for interview may be accompanied at their own expense by a legal representative or friend, provided such a person is not a potential witness in the investigation. An interview or telephone conversation may be tape recorded to save time and ensure accuracy, but only with the consent of both the Investigating Officer and the interviewee.

(c) Costs

The Investigating Officer, may where s/he considers it appropriate to facilitate the investigation, reimburse any person who provides a document, information or advice their reasonable costs incurred in doing so.

(d) Other Breaches

If during the investigation, the Investigating Officer becomes aware of any other apparent breach of the Code by the Member (apart from the breach which s/he is currently investigating), the Investigating Officer shall (where the new matter relates to an apparent breach of the Code of Conduct by a Member) report the matter to the Monitoring Officer who will tell the person from whom the information was obtained that s/he cannot investigate the possible breach as part of the existing investigation but that that person may make a separate complaint to the Governance Committee. Alternatively, the Monitoring Officer may decide to refer the matter to the Governance Committee as a new complaint him/herself.

(e) Reference back to the Governance Committee

In certain circumstances, the Monitoring Officer may during an investigation refer the matter back to the Committee.

Those circumstances are set out in paragraph 4.2.2. in Part 2 of this Protocol.

When the Monitoring Officer does so, he/she shall notify the member and the Complainant, and provide timescales within which the matter will be dealt with.

(f) Length of Investigation

The Investigation Officer will complete his/her investigation as expeditiously as possible and in any event will endeavour to ensure that a draft report is prepared by no later than 40 working days from the original receipt of the complaint by the Committee.

(g) Deferring an Investigation

The Monitoring Officer may in certain circumstance defer an investigation if s/he considers it appropriate, for example because it might prejudice some other investigation or court proceedings into this matter.

4. **The Draft Report**

(a) On completion of his/her investigation, the Investigating Officer shall prepare a draft report marked confidential setting out:

- (i) details of the allegation;
- (ii) the relevant provisions of statute and of the Code of Conduct;

- (iii) the Member's initial response to notification of the allegation (if any);
 - (iv) any relevant information, advice and explanations obtained during the investigation;
 - (v) a list of any relevant documents;
 - (vi) a list of persons interviewed or from whom information has been sought;
 - (vii) a note of any person or organisation who has failed to co-operate with the investigation and the manner of such failure;
 - (viii) a statement of the Investigating Officer's draft findings of act, with reasons;
 - (ix) the Investigating Officer's provisional conclusion as to whether the Member has failed to comply with the Code of Conduct, with reasons; and
 - (x) any recommendations which the Investigating Officer is minded to make to (i) review or reconsider any decision which was the subject of the breach in question, or (ii) to rectify any deficiency in the Authority's decision-making procedures or (iii) to prevent or deter any future breach of the Code of Conduct or (iv) to remedy the position of any person who may have suffered detriment or injustice as a result of the breach.
- (b) The draft report will also state that it does not necessarily represent the Investigating Officer's final finding, and that s/he will present a final report to the Committee once s/he has considered any comments received on the draft report.
- (c) The Investigating Officer shall send a copy of the draft report in confidence to the Member and the Complainant, and request that they send any comments on it to him/her in writing within 10 working days.
- (d) Before issuing the draft report, the Investigating Officer may also send relevant extracts from it in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her in writing within 10 days.

5. **The Final Report**

- (a) After the expiry of the period referred to in paragraph 4 (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and if appropriate amend his/her draft report in the light of any comments received and expeditiously produce a final report, which will be given to the Monitoring Officer as soon as it is completed. The report will state that it represents the Investigating Officer's final findings and will be presented to the Committee. The report will include

copies of any significant documents which the Investigating Officer has relied on in reach his/her conclusions, such as background documents of telephone conversations, letters, and notes of interviews and witnesses;

- (b) The Monitoring Officer shall within 2 working days of receiving the final report send a copy of it to the Member, the Complainant and the Governance Committee of any other authority of which the Member is a member advising that:
 - (i) where it concludes that there has not been a failure to comply with the Code of Conduct, the report will be referred to the Committee for their consideration; and
 - (ii) where it concludes that there has been a failure by the Member to comply with the Code it will be referred to the Committee for a formal hearing.

6. **A Finding of No Failure - Procedure**

- (a) If the Investigating Officer concludes there has not been a breach of the Code, the Monitoring Officer will submit the final report to the next meeting of the Committee together with a note explaining the circumstances under which the Committee may still decide to conduct a hearing into the allegation.
- (b) The Committee will then consider the report and make one of the following findings:
 - (i) that it accepts the Investigating Officer's finding that the Member has not failed to comply with the Code of Conduct; or
 - (ii) That despite the Investigating Officer's finding, it believes there is a case to answer and the matter should be considered at a hearing of the Committee; or
 - (iii) That the matter should be referred to the Adjudication Panel for England for determination.
- (c) The Committee may only make a finding under sub paragraph 6(b) (iii) if:
 - (i) it has decided that the action it could take against the Member would be insufficient were a finding of failure to be made; and
 - (ii) the President or Deputy President of the Adjudication Panel has agreed to accepted the referral.
- (d) Where the Committee accepts the Investigating Officer's finding, the Monitoring Officer shall, as soon as reasonably practicable thereafter,

so advise the Member, the Complainant and (if applicable) the Governance Committee of any other authority concerned.

S/he shall also ask the Member whether s/he objects to the publication of a notice of the finding in at least one local newspaper, and if considered appropriate by the Committee, on the webpage of any authority concerned and in any other publication, and arrange for the publication of such a notice unless the Member so objects.

- (e) Where the Committee do not accept the Investigating Officer's finding and decide a hearing is appropriate, the procedure for a local determination will then be followed immediately as set out in Part 5 of this Protocol. However, for the purpose of calculating the timetable under Part 5, the Monitoring Officer will be treated as having received the Investigating Officer's report on the date the Committee made that decision.

7. A Finding of Failure – Procedure

If the Investigating Officer finds there has been a failure to comply with the Code, the Monitoring Officer will arrange for a hearing by immediately following the procedure for local determination as set out in Part 5 of this Protocol.

NOTE 1: Ethical Standards Officers appointed by the Standards Board may very exceptionally refer a complaint to the Monitoring Officer for investigation. If so, a similar procedure will be followed as above, subject to the following variations:

- (a) When the Monitoring Officer receives a complaint from an ESO, s/he will notify the members of the Assessment Sub-Committee who decided to refer the complaint to the Standards Board that it is to be investigated by the Monitoring Officer.
- (b) If at any time during the course of an investigation referred to the Monitoring Officer by an ESO, the Investigating Officer believes it would be more appropriate for the ESO to undertake the investigation (for instance because the matter is more serious than first thought or because of obstruction to his/her investigation), s/he shall so advise the Monitoring Officer. If the Monitoring Officer agrees, the investigation shall be suspended and the Monitoring Officer shall then request the ESO to investigate the matter.

Where the ESO does so, the Monitoring Officer shall ensure the Member, Complainant and the members of the Committee are so informed. Where the ESO declines to do so, the Monitoring Officer shall instruct the Investigating Officer to resume his/her investigation and the Monitoring Officer may not make a further request to the ESO in respect of that matter.

NOTE 2: This Part takes into account guidance issued by the Standards Board: "Local Investigations and Other Action" published August 2008.

PART 4

PROCEDURE IF THE STANDARDS BOARD REFERS AN ALLEGATION TO AN ETHICAL STANDARDS OFFICER FOR INVESTIGATION

1. An Ethical Standards Officer (“ESO”) is someone empowered by the Local Government Act 2000 (“the 2000 Act”) to investigate allegations referred to the Standards Board by a Governance Committee that a member or co-opted member of a relevant authority in England has failed to comply with their authority’s Code of Conduct.

In certain circumstances, an ESO may decide to issue a direction to the Monitoring Officer to take certain other action.

2. The way in which an ESO investigates an allegation will depend on the circumstances of each case.
3. The ESO will specifically investigate the allegations referred to him/her by the Standards Board. In addition, the 2000 Act gives the ESO the power to investigate other matters, which may amount to a breach of the Code of Conduct, and that come to their attention during the course of an investigation.
4. The time taken to complete an investigation will vary depending on the facts of each case. However, the Standards Board aims to carry out investigations as swiftly as possible.
5. During all investigations, the ESO will put the allegations in detail to the Member concerned and provide him/her with the opportunity to respond to them.
6. The ESO has the right to demand information. He/she has a right of access to all relevant information that is necessary to conduct the investigation. The ESO may make enquiries of any person believed to have information relevant to the investigation. This may include:
 - The Member alleged to have breached the Code of Conduct.
 - The person who made the allegation
 - Other members of the authority
 - Any relevant third parties, such as witnesses

Such persons can be required to provide information and attend an interview.

A member can be accompanied or supported by a legal adviser upon request. (Members are personally responsible for any legal costs incurred during the process). The ESO may also allow someone who is not a lawyer to accompany the Member, but it is not appropriate that if that person is a potential witness in the investigation.

Some interviews will be recorded. However, they are not recorded without the consent of the person being interviewed. Notes of the interview will be taken in any event.

7. It is a criminal offence to fail to comply with the ESO's requests without a reasonable excuse. If a Member refuses to provide information or attend an interview, the ESO may conclude the investigation based upon other information he/she has obtained, and without the benefit of the Member's comments. The Member will still be provided with a copy of the ESO's draft report.
8. The Member being investigated will be given a draft report containing the ESO's findings and will be given the opportunity to comment on it.
9. If the draft report finds the matter should be referred to the Adjudication Panel for England ("The Adjudication Panel") or the Governance Committee, the Member will also be sent copies of the evidence relied upon by the ESO in reaching his/her decision.
10. The person who made the allegation and the Monitoring Officer will also receive the draft report and have the chance to comment on it. The ESO will take comments into account when producing the final report.
11. The ESO may also give other relevant people the opportunity to comment on the draft report, or extracts from it, if he/she thinks it will help in the investigation or in circumstances where their conduct may be directly referred to in the report.
12. The purpose of an ESO's investigation is to determine which of the following findings is appropriate.
 - (a) there has been no evidence of failure to comply with the Code of Conduct.
 - (b) there has been a failure to comply with the Code of Conduct but no action needs to be taken.
 - (c) the matter should be referred to the Monitoring Officer for determination by the Governance Committee.
 - (d) the matter should be referred to the Adjudication Panel for England for its determination.

The ESO will set out his/her decision on the finding in a report or letter. However, only a hearing of the Adjudication Panel, or the Governance Committee to which the case is referred, can reach a determination as to whether there has been a breach of the Code, and impose a sanction if appropriate.

13. Where the finding of the ESO is either that there is no evidence of a failure to comply with the Code or no action is required, the ESO will send a copy of the final report to:

- the Member being investigated;
- the person who made the allegation;
- the Monitoring Officer;
- the Governance Committee if it would assist them in carrying out their functions.

If the finding is that the matter should be referred for determination by the Governance Committee, the ESO will send the final report only to the Monitoring Officer. The ESO will then advise the Member being investigated and the person who made the allegation that this has been done.

The Monitoring Officer will send the final report to the Member being investigated and the Governance Committee members selected for the hearing panel. *See Part 5 for further information on local determinations.*

If the finding is that the matter should be referred to the Adjudication Panel, the ESO will send the final report to the president of the Adjudication Panel. A copy will also be sent to the Monitoring Officer. The ESO will then advise the Member being investigated and the person who made the allegation that this has been done.

The Adjudication Panel will send the final report to the Member being investigated in accordance with their process. Details of the process it follows can be found on: www.adjudicationpanel.co.uk

14. Where the finding is either that there is no evidence of a failure to comply with the Code or no action is required, a summary of the case will be published on the Standards Board's website as soon as possible after the final report has been sent to the relevant parties. This is usually within a month. In addition, the ESO may, depending on the circumstances, publish a summary of the report in the Authority's local newspaper.

If the finding is that the matter should be referred to determination by the Adjudication Panel or Governance Committee, the ESO's decision will be published on the Standards Board's website shortly after the relevant parties have been notified. Summaries of these cases will be published as soon as possible after the Standards Board has received the full written decisions of the relevant hearing panel.

Where the ESO has decided that there is no breach of the Code or no action should be taken, the report may be made available to the Governance Committee for information to assist them in carrying out their functions.

15. When an ESO refers a matter to the Monitoring Officer for local determination, the Monitoring Officer will arrange a Governance Committee hearing.

See the Procedure in Part 5 of this Protocol.

16. When a matter is referred to the Adjudication Panel, a hearing is held to consider the alleged breach of the Code. The Adjudication Panel is independent of the Standards Board. It will determine whether there has been a failure to comply with the Code of Conduct and has a range of sanctions available to it. This includes suspension of a member from office for up to one year, and disqualification from standing or acting as a member for up to five years.

If the Adjudication Panel rules against the Member, they have the right to appeal against the finding to the High Court.

The Adjudication Panel will publish its findings on its website and may place a notice of its decision in a local paper. A summary of the case will also appear on the Standards Board's website shortly after it receives the Adjudication Panel's full written decision.

NOTE: Further information about investigations carried out by ESO's can be found at www.standardsboard.gov.uk

PART 5

PROCEDURE FOR LOCAL DETERMINATIONS

1. Introduction

Under the Standards Committee (England) Regulations 2008, the Monitoring Officer must refer a completed investigation report to the Governance Committee to consider and determine whether a Member has failed to follow the Code of Conduct for Members and, if so, what sanction (if any) should be applied.

In addition, an Ethical Standards Officer (“ESO”) may refer a completed investigation report to the Monitoring Officer who must then arrange for the Governance Committee to consider the report.

The following is the procedure which will be normally followed by Tyne and Wear Fire and Rescue Authority’s Governance Committee in the local determination of allegations of misconduct by Members where an investigation has been completed either locally or by an ESO.

NOTE: In this procedure, references to “the Investigation Report” means the final report of the Investigating Officer or the ESO. References to “the Member” mean the Member who is the subject of the complaint. References to “the Complainant” mean the person who made the allegation.

Pre-hearing process

2. Purpose of Pre-hearing Process

- (1) When the Monitoring Officer receives the Investigation Report, s/he will send a copy of that report to the Member within 2 working days.
- (2) the pre-hearing process will deal with procedural issues only and will be completed within 31 working days of the Monitoring Officer receiving the Investigation Report.
- (3) The pre-hearing process will usually be carried out in writing:
- (4) The purpose of the pre-hearing process is to:
 - identify whether the Member disagrees with any of the findings of fact in the Investigation Report.
 - identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide.
 - identify whether evidence about those disagreements will need to be heard during the hearing.

- decide whether there are any parts of the hearing that are likely to be held in private.
- decide whether any parts of the Investigation Report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain “exempt” material.

3. Appointment of Reporting Officer

Within 2 working days of receipt of the Investigation Report, the Monitoring Officer will appoint a Reporting Officer in respect of the allegation and instruct him/her to report on it to the Governance Committee. The Reporting Officer may be the Investigating Officer, an officer of Tyne and Wear Fire and Rescue Authority (including the Monitoring Officer unless s/he is conflicted out from acting as a Reporting Officer), an officer or another local authority, or an external consultant. The Reporting Officer will normally be legally qualified or will have access to legal advice.

4. Notification to the Member and to the Governance Committee

4.1 Within 5 working days of receipt of the Investigation Report the Reporting Officer will then notify in writing the Member:

- (i) of the procedure which will be followed in respect of the allegation;
- (ii) of the identify of the Reporting Officer;
- (iii) of a proposed date for the hearing;
- (iv) of the Member's rights and responsibilities;
- (v) that if he/she seeks at the hearing to dispute any matter contained in the Investigation Report without having previously advised the Reporting Officer of such disagreement during the pre-hearing process, the Governance Committee may either adjourn the meeting so that the Reporting Officer can arrange the attendance of any necessary witnesses or refuse to allow the Member to dispute the matter and take their decision on the basis of the matter as set out in the Investigation Report.

4.2 At the same time as notifying the Member of the matters set out in 4.1, the Reporting Officer will ask for a written response from the Member within 5 working days indicating whether he or she:

- (i) disagrees with any of the findings of fact in the Investigation Report, including reasons for any of these disagreements;

- (ii) wants to be represented at the hearing by a solicitor, barrister or any other person. (If the Member wants to have a non-legal representative, the Member must obtain the Committee's consent);
- (iii) wants to give evidence to the Governance Committee, either verbally or in writing;
- (iv) wants to call relevant witnesses to give evidence to the Governance Committee;
- (v) can attend the hearing on the proposed date;
- (vi) wants any part of the hearing to be held in private;
- (vii) wants any part of the Investigation Report or other relevant documents to be withheld from the public.

NOTE: Forms to help the Member identify any disagreements about the findings of fact, and to set out other evidence relevant to the allegation, together with forms dealing with arrangements for the hearing and proposed witnesses are set out in the Standards Committee determinations toolkit issued by the Standards Board for England.

5. Investigating Officer's/ESO's response

Within 2 working days of receiving the Member's written response referred to in paragraph 4.2, the Reporting Officer will send a copy of the Member's written response to the Investigating Officer or the relevant ESO and invite the Investigating Officer or that ESO to comment on the Member's response within 5 working days and to say whether he or she:

- (i) wants to be represented at the hearing (although the Investigating Officer will be expected to attend the hearing in any event).
- (ii) wants to call relevant witnesses to give evidence to the Governance Committee.
- (iii) wants any part of the hearing to be held in private
- (iv) wants any part of the Investigation Report or other relevant documents to be withheld from the public.

6. Appointment of Sub-Committee

Within 24 working days of the date on which the Investigating Officer's final report is completed or the Monitoring Officer receiving the ESO's

report, the Monitoring Officer will convene a sub-committee to determine the matter (“the Sub-Committee). The Sub-Committee shall comprise a minimum of 3 members of the Governance Committee to include at least one independent member. An independent member will chair the Sub-Committee. The sub-committee must always include at least one elected Authority member.

7. Pre-hearing process summary

7.1 When the Reporting Officer has received the Member’s written response referred to in paragraph 4.2 and the Investigating Officer / ESO’s comments on the Member’s written response referred to in paragraph 5, the Reporting Officer and the officer responsible for providing legal advice to the Sub-Committee will prepare a summary (“the pre-hearing process summary”) of the main aspects of the case and send the summary to all parties involved in the hearing at least two weeks before the hearing.

7.2 The pre-hearing process summary will include:

- the name of the Authority;
- the name of the Member;
- the name of the Complainant (unless there are good reasons to keep his or her identity confidential);
- case reference numbers of the authority or the Standards Board for England;
- the name of the Governance Committee Member who will chair the Sub-Committee;
- the name of the Monitoring Officer;
- the name of the Investigating Officer;
- the name of the ESO who referred the matter (if applicable);
- the name of the Democratic Services Officer supporting the Sub-Committee;
- the name of the Officer providing legal advice to the Sub-Committee;
- the name of the Reporting Officer;
- the date the pre-hearing process summary was produced;
- the date, time and place of the hearing;
- a summary of the allegation;
- the relevant section or sections of the Code of Conduct;
- the findings of fact in the Investigation Report that are agreed;
- the findings of fact in the Investigation Report that are not agreed;
- whether the Member of the Investigating Officer/the ESO will attend or be represented;
- the names of any witnesses who will be asked to give evidence, subject to the power of the Governance Committee to make a ruling on this at the hearing; and
- an outline of the proposed procedure for the hearing.

8. **Hearing**

8.1 General

8.1.1 The Hearing will be held within 43 working days of the date on which the Investigating Officer's final report is completed or the date the Monitoring Officer received the ESO's report.

8.1.2 The Sub-Committee will endeavour to complete the Hearing in one sitting.

8.1.3 There will be a presumption that the Hearing will be held in public where possible to make sure that the hearing process is open and fair. However, background papers relating to complaints will remain confidential where they contain exempt or confidential information.

8.1.4 The Sub-Committee will conduct the hearing having regard to guidance issued by the Standards Board for England.

8.2 Hearing Procedure

The hearing procedure is set out in Schedule 1.

9. **Notice of the Sub-Committee's findings**

Within two weeks after the hearing:

9.1 The Sub-Committee will give a copy of its full written decision ("decision notice") to

- (a) the Member
- (b) the Standards Board
- (c) the Standards Committee of any other authority concerned, and
- (d) the complainant.

9.2.1 Subject to 9.2.2, the Sub Committee will arrange for a summary of the decision and reasons for that decision to be published in at least one newspaper circulating in the area of the Authority (and of any other authorities concerned) and, if considered appropriate by the Sub-Committee, on the website of any authority concerned, and in any other publication.

9.2.2 If the Sub-Committee finds the Member did not fail to follow the Authority's Code of Conduct, the decision notice must state that, and give reasons for the finding. In these cases, the Member is entitled to ask that no summary of the decision should be published in local newspapers.

9.2.3 If the Sub-Committee finds that the Member failed to follow the Authority's Code of Conduct, but that no action is needed, the decision notice must state that, outline what happened, give reasons for the decision, and state that the Member may apply for permission to appeal.

9.2.4 If the Sub-Committee find that the Member failed to follow the Authority's Code of Conduct and sets a sanction, the decision notice must state that, outline what happened, give reasons for the decisions, state the sanction that has been specified and state that the Member may apply for permission to appeal.

10. Appeals

Under the Regulations, the Member who is the subject of a Sub-Committee finding that the Member failed to follow the Code of Conduct may apply in writing to the President of the Adjudication Panel for England ("the President") for permission to appeal against that finding and, if appropriate, apply for the suspension of any sanction imposed under B2 to B11 of Schedule 2 until such time as any appeal is determined.

The President must receive the Member's written application within 21 days of the Member receiving the decision notice. The Member must set out:

- the finding against which the Member seeks permission to appeal;
- (in the case of a finding that the Member has failed to comply with the Code of Conduct and that a sanction should be imposed), whether the appeal is against the finding that the Member has failed to comply with the Code of Conduct, or if it is against the sanction which has been imposed, or both;
- the reasons for the appeal;
- whether any application for suspension of any sanction is made; and
- whether or not the Member consents to the appeal being carried out in writing or in person.

If the permission is granted, the President will arrange for a tribunal to deal with the appeal.

Permission to appeal or to suspend a sanction may be given in relation to the whole or any specified part of the finding or sanction.

NOTE: This Part takes into account guidance issued by the Standards Board for England: "Governance Committee Determinations" July 2008.

SCHEDULE 1 TO PART 5

HEARING PROCEDURE

Interpretation

1. 'Member' means the Member of Tyne and Wear Fire and Rescue Authority ("the Authority") who is the subject of the allegation being considered by the Governance Committee, unless stated otherwise. It also includes the Member's nominated representative.
2. 'Investigating Officer' means the Monitoring Officer or Ethical Standards Officer (ESO), and includes their nominated representative. In the case of matters investigated locally under Part 3 of this Protocol, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer) and his or her nominated representative.
3. 'Committee' also refers to a sub-committee.
4. 'Legal adviser' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.
5. 'Code of Conduct' means the Code of Conduct for Members in the Authority's Constitution.
6. 'Reporting Officer' means the officer appointed by the Monitoring Officer to report on the allegation.

Representation

7. The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

Legal advice

8. The Committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Member the Reporting Officer and the Investigating Officer if they are present.

Non attendance by the Member

9. If the Member does not attend the hearing, the Committee may consider the Investigating Officer's report in the Member's absence. If the Committee is satisfied with the Member's reason for not being able

to attend the hearing, it may arrange for the hearing to be held on another date. Where the Committee proceeds in the Member's absence, this procedure shall be adapted as necessary, giving any representative of the Member who is present such rights as would have been given to the Member.

Setting the scene

10. After everyone involved in the hearing have been formally introduced, the Chair should make introductions and explain how the Committee is going to conduct the hearing.

Preliminary procedural issues

11. The Committee should then resolve any issues or disagreements about how the hearing should continue which have not been resolved during the pre-hearing process. The Chairman of the Sub-committee may at their discretion make changes to the procedure as he or she thinks fit in order to ensure a fair and efficient hearing.

Making findings of fact

12. After dealing with any preliminary issues, the Committee should then move on to consider whether there are any significant disagreements about the facts contained in the Investigating Officer's report.
13. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.
14. If there is a disagreement, the Reporting Officer and/or the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Reporting Officer and/or the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Reporting Officer and/or the Investigating Officer by the cross-examination of the witness either directly by the Member (or his/her representative) or through the Chair.
15. The Member should then have the opportunity to make representations to support their version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.
16. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Reporting Officer and/or the Investigating Officer to challenge any evidence put forward by witnesses called by the Member.

17. If the Member disagrees with most of the facts, it may be appropriate for the Reporting Officer and/or the Investigating Officer to start by making representations on all the relevant facts, instead of discussing each fact individually.
18. If the Member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Committee will consider whether it would be in the public interest to continue in their absence.

After considering the Member's explanation for not raising the issue at an earlier stage and any comments of the Reporting Officer, the Committee may then:

- (a) continue with the hearing, relying on the information in the Investigating Officer's report;
 - (b) allow the Member to make representations about the issue, and invite the Reporting Officer and/or the Investigating Officer to respond and call any witnesses, as necessary;
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if they are not already.
19. The Committee will usually move to another room to consider the representations and evidence in private.
 20. On their return, the Chair will announce the Committee's findings of fact.

Did the Member fail to follow the Code of Conduct?

21. The Committee then needs to consider whether, based on the facts it has found, the Member has failed to follow the Code of Conduct.
22. The Member should be invited to give relevant reasons why the Committee should decide that they have not failed to follow the Code of Conduct.
23. The Committee should then consider any verbal or written representations from the Reporting Officer and/or the Investigating Officer.
24. The Committee may, at any time, question anyone involved on any point they raise on their representations.
25. The Member should be invited to make any final relevant points.

26. The Committee will then move to another room to consider the representations.
27. On their return, the Chair will announce the Committee's decision as to whether the Member has failed to follow the Code of Conduct.

If the Member has not failed to follow the Code of Conduct

28. If the Committee decides that the Member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the Authority.

If the Member has failed to follow the Code of Conduct

29. If the Committee decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Reporting Officer and/or the Investigating Officer and the Member as to:
 - (a) whether the Committee should apply a sanction;
 - (b) what form any sanction should take.
30. The Committee may question the Reporting Officer and/or the Investigating Officer and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
31. The Committee will then deliberate in private to consider whether to impose a sanction on the Member and, if so, what the sanction should be.
32. The sanctions available to the Committee are set out in Schedule 2.
33. On their return, the Chair will announce the Committee's decision.

Recommendations to the Authority

34. After considering any verbal or written representations from the Reporting Officer and/or the Investigating Officer, the Committee will consider whether it should make any recommendations to the Authority, with a view to promoting high standards of conduct among Members.

The written decision

35. The Committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. The Committee

will aim to prepare the full written decision in draft on the day of the hearing.

Further information

36. At any stage prior to the conclusion of the hearing, the Committee may adjourn the hearing (on one occasion only) to require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee.

Reference back to ESO

37. Where the report has been referred to the Monitoring Officer by an ESO, at any stage prior to the conclusion of the hearing, the Committee may adjourn the hearing (on one occasion only) and make a written request to the ESO that the matter be referred back to the ESO for further investigation and the reasons for that request. If the ESO directs the Committee to continue to deal with the matter, the Committee shall reconvene within three months of that direction.

SCHEDULE 2 OF PART 5

(PROCEDURE FOR LOCAL DETERMINATION)

Penalties available to the Committee

A. Penalties available in respect of a Member who has ceased to be a Member of the Authority

Censure of the Member.

B. Penalties available in respect of a Member who remains a Member of the Authority

Any one, or a combination, of the following:

1. Censure of the Member.
2. Restriction of the Member's access to the premises of the Authority or the Member's use of the resources of the Authority for a maximum of six months provided that any such restrictions:
 - (a) are reasonable and proportionate to the breach; and
 - (b) do not unduly restrict the Member's ability to perform his/her functions and duties.
3. Partial suspension of the Member for a maximum of six months.
4. Suspension of the Member for a maximum of six months.
5. A requirement that the Member submits a written apology in a form specified by the Committee.
6. A requirement that the Member undertake any training specified by the Committee.
7. A requirement that the Member participate in such conciliation specified by the Committee.
8. Partial suspension of the Member for a maximum of six months or until such time as he/she submits a written apology in a form specified by the Committee.
9. Partial suspension of the Member for a maximum of six months or until such time as he/she undertakes any training or participates in conciliation specified by the Committee.

10. Suspension of the Member for a maximum of six months or until such time as he/she submits a written apology in a form specified by the Committee.
11. Suspension of the Member for a maximum of six months or until such time as he/she undertakes any training or participates in conciliation specified by the Committee.

Note 1: See Section 83 Local Government Act 2000 for the interpretation of "partial suspension" and "suspension".

Note 2: Any sanction that is imposed shall normally start immediately after the Committee has made its decision. However, the Committee may direct that the sanctions in B2 to B11 or, where a combination of such sanctions is imposed, such one or more of them as the Committee specifies, will start at any time up to six months following its decision.

PART 6

LEGAL COSTS - REPRESENTATION

1. The Local Authorities (Indemnities for Members and Officers) Order 2004 sets out the extent to which local authorities can indemnify their Members and Officers for any personal liability arising from actions or decisions taken by them in the course of their duties.
2. The Order enables the Authority to assist its Members with the costs of defending any alleged breach of the Members' Code of Conduct. This might cover, for instance, the costs of legal representation during an investigation into an alleged breach of the Code and/or at a final hearing before either the Governance Committee or a Case Tribunal.
3. However, the Order imposes one important condition upon any indemnity given for these purposes. It requires the Member to reimburse the Authority any contribution which it had made to the Member's costs if (a) the Member admits s/he has failed to comply with the Code or (b) there is a finding (which is not overturned on appeal) that the Member has failed to comply with it.
4. If a Member wishes to request financial assistance in relation to any alleged breach, it should be made to the Deputy Clerk in the first instance.

PART 7

MEDIA PROTOCOL

- 1.1 This Protocol provides guidance for all Members of the Authority on the appropriate procedures for dealing with the media in respect of complaints against Members and their investigations whether dealt with by the Standards Board for England, the Monitoring Officer or the Governance Committee ("Committee").

Individual Members should not initiate press comment on complaints and investigations. The only exceptions are:-

- (a) the Member against whom the complaint has been made; and
- (b) a Member who is a complainant.

- 1.2 The aim of the Protocol is to ensure a consistent approach.

Note: These provisions do not replace the statutory obligations to publish notice of findings of Governance Committee in accordance with regulations.

2. Key Principles for dealing with the media

All press releases about Committee business should only be issued through the Authority's Press Officer ("Press Office") in accordance with the procedure set out below.

All press releases must be authorised by the Monitoring Officer in consultation with the Committee Chair.

The appropriate spokesperson to be quoted in any press release will normally be the Committee Chair (who will comment on behalf of all Members of the Committee) or the Monitoring Officer.

Each situation should be treated according to the particular circumstances, for example, potential criminal proceedings or a potential appeal could influence the statements or releases issued by the Authority. In this context, the Press Office should liaise with the Monitoring Officer to ensure that statements issued could not be seen as prejudicing potential criminal proceedings and in the event of an appeal, those officers are confident that the statement issued by the Authority was fair and accurate.

3. Nature of media activity

- 3.1 To ensure fair and consistent treatment in all cases and a properly controlled release of information, the Committee shall follow the practice set out below:-

(a) Initial Referral

Where a complaint has been received, the Press Office will not confirm to the media that a complaint has been received until the Member who is the subject of the complaint has been notified. The Press Office will then limit their response to any media enquiry to confirming the following details:

- The name of the subject Member;
- The date the Committee received the complaint and the date it decided what action to take and the nature of that decision;
- The type of person who complained but not their name;
- The potential breach of which parts of the Code gave rise to the complaint being referred for investigation.

(b) Complaint upheld

Where a complaint is upheld and action taken, a proactive press release should be issued as a matter of course. This should be issued to the local media as appropriate. Any press release will also be recorded on the Authority's Intranet/Internet in accordance with normal procedures. The press release should include the following information:

- The nature of the complaint;
- The outcome;
- The Committee's reasons for reaching its decision;
- The nature of the action taken (e.g. the nature of the sanction).

(c) Complaint not upheld

Where the Committee determines that there is no case to answer and no action is taken, no proactive action shall be taken – unless the Member concerned or the Committee specifically requests otherwise. This may happen, for example, where there has already been press coverage or speculation on a particular investigation and there is a need to clarify the position. If such request is supported by the Committee, a proactive press release outlining the result will be prepared and distributed. Where a proactive press release is not issued it is

possible that media enquiries could still be received and such enquiries should be responded to on a reactive basis.

(d) Ongoing investigations

The Committee should avoid responding to media enquiries relating to any ongoing enquiry. During the period of investigation, they should refer all media calls to the Press Office. The Press Office will limit their response to media enquiries to confirming only the following details:

- That a complaint has been received;
- The nature of the complaint;
- That an investigation is underway;
- The likely timetable to be followed.

At this stage, the name of the individual subject to the investigation should not be released. However the Member who is the subject of the complaint and the Monitoring Officer and the Committee Chair should be informed, by the Press Office, of the media interest shown and the response given.

4. **Procedure**

4.1 The procedure for issuing a press release about Committee business is as follows:

- (i) On receiving a complaint the Committee, through the Monitoring Officer, will alert the Press Office, so that the Press Office is aware of the background and is able to offer advice throughout the proceedings. The Monitoring Officer will contact the Press Office lead on this matter.
- (ii) It may be necessary to prepare a "holding" statement for issue in the event of a media inquiry regarding the ongoing investigation – see paragraph 3.1(c) above.
- (iii) This "holding" statement should be prepared by the Press Office, in consultation with the Monitoring Officer and approved by the Committee Chair. Once agreed the release will be used in response to media enquiries on this matter. The response should confirm only the details set out in 3.1(c) above.
- (iv) Where a complaint is upheld and action taken the Committee shall, as soon as reasonably practical after the complaint hearing, consider the outline of the press release. The Member

who is the subject of the investigation should be informed that a press release will be issued in respect of the decision taken.

- (v) As soon as reasonably practical after a complaint hearing the attending legal officer should notify the Press Office who will work with the Monitoring Officer and Committee Chair to prepare a press release or statement on the lines agreed by the Committee.
- (vi) Any press release should be issued to the relevant media as soon as reasonably practical after the conclusion of the hearing.
- (vii) Any reactive statement should be released as soon as reasonably practical on receipt of a media enquiry.
- (viii) Releases and statements should be sent by the Monitoring Officer to all Members of the Committee for information and, where appropriate, to the Member who is the subject of the investigation.
- (ix) Any subsequent ad hoc press enquiries received will be responded to by the Press Office in consultation with the Monitoring Officer and/or the Committee Chair as appropriate.
- (x) Should any Members of the Committee be approached directly by the media with enquiries relating to Committee business, they should be referred to the Press Office to ensure a consistent response. The Committee Member should endeavour to forewarn the Press Office that they have received such an approach so that the enquiry can be anticipated.

5. **Monitoring of this Protocol**

- 5.1 The workings of this protocol will be regularly monitored by the Committee, the Monitoring Officer and the Chief Fire Officer.
- 5.2 Members of the Committee are reminded of paragraph 4 of the Code of Conduct for Members which states:

"You must not -

- (a) *disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where -*
 - (i) *you have the consent of a person authorised to give it;*
 - (ii) *you are required by law to do so;*

- (iii) *the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or*
- (iv) *the disclosure is –*
 - (aa) *reasonable and in the public interest; and*
 - (bb) *made in good faith and in compliance with the reasonable requirements of the authority; or*
- (b) *prevent another person from gaining access to information to which that person is entitled by law".*

