

NOTICE OF MEETING

MEETING	STANDARDS COMMITTEE
DATE:	MONDAY 17 JANUARY 2011
TIME:	9.30 am
VENUE:	FORLI ROOM - TOWN HALL
CONTACT:	<i>Alana Diffey</i> Telephone: 01733 452276 e-mail address <i>alana.diffey@peterborough.gov.uk</i>
Despatch date:	<i>7 January 2011</i>

AGENDA

PAGE NO

1. **Apologies**
2. **Declaration of Interests (if any)**

At this point Members must declare whether they have an interest, whether personal or prejudicial, in any of the items on the agenda. Members must also declare if they are subject to their party group whip in relation to any items under consideration.

3. **Exclusion of Press and Public**

In accordance with standing orders, Members are asked to determine whether agenda item 4, Adjudication on a complaint received against a Council Member, which contains exempt information presented to a Standards Committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under s58(1) (c) of the Local Government Act 2000 should be exempt and the press and public excluded from the meeting when it is discussed, or whether the public interest in disclosing this information outweighs the public interest in maintaining the exemption.



There is an induction hearing loop system available in all meeting rooms. Some of the systems are infra-red operated, if you wish to use this system then please contact Alana Diffey on 01733 452276.

4. Adjudication on a complaint received against a Council Member

1-88

The sub committee to adjudicate and decide upon the outcome of a complaint made against Councillor Darren Fower. The Monitoring Officer's report will be published as soon as it becomes available.

MEMBERS OF STANDARDS COMMITTEE

David Whiles (Chairman), Brenda Fearon, Councillors N Khan and G Murphy.

Emergency Evacuation Procedure – Outside Normal Office Hours

In the event of the fire alarm sounding all persons should vacate the building by way of the nearest escape route and proceed directly to the assembly point in front of the Cathedral. The duty Beadle will assume overall control during any evacuation, however in the unlikely event the Beadle is unavailable, this responsibility will be assumed by the Committee Chair.

STANDARDS COMMITTEE ADJUDICATION SUB-COMMITTEE	AGENDA ITEM No. 4
17 January 2011	PUBLIC REPORT

Contact Officer(s):	Kim Sawyer, Deputy Monitoring Officer	Tel. 452527
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MONITORING OFFICER'S REPORT FOR HEARING

Complaint against Councillor Darren Fower for breach of the Code of Conduct

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to
- Summarise the progress of the matter to date
 - Identify the issues for consideration at the hearing
- 1.2 This report is prepared in accordance with the Standards Committee Determinations Guidance issued by Standards for England. Under the Standards Committee (England) Regulations 2008, Standards Committees must take this Guidance into account and therefore a copy of the Guidance is included as appendix D (pages 54-88).
- 1.3 This report and its appendices are not considered to be exempt information. Councillor Fower has been consulted and advised the Deputy Monitoring Officer that he wished this matter to be heard in public.
- 1.4 It should be noted that this report is prepared by the Deputy Monitoring Officer who is also a witness in the original complaint. The Deputy Monitoring Officer however considers that there is no conflict in preparing this report as she does not seek to give any advice in this report. The report is a factual summary of the case. The Sub-Committee will be advised by an independent legal advisor at the hearing.

2. DOCUMENTATION ATTACHED

- 2.1 This report contains the following appendices to be considered by the Sub-Committee
- Investigation report attaching 8 documents (appendix A pages 3-37);
 - Letter dated 10 December 2010 enclosing forms A – E, hearing summary and extract from Guidance (known as the pre-hearing process) (appendix B pages 38-51); and
 - Councillor Fower's email dated 9 January 2011 responding to letter of 10 December (appendix C pages 52-53).

3. MATTERS FOR CONSIDERATION

The pre-hearing process

- 3.1 The pre-hearing process is used to identify what matters are in dispute between the parties and to deal with any practical issues regarding the hearing. Information on the pre-hearing process can be found at pages 7 and 24 of the Guidance.
- 3.2 The pre-hearing process has identified that:
- Councillor Fower agrees to this matter being heard in public

- There is no information which Councillor Fower considers is exempt
- Councillor Fower will be advised by Councillor Sandford on constitutional issues
- Councillor Sandford will also be called as a witnesses
- Councillor Fower takes issue with paragraphs 1.2, 3.2 and 4.2 of the report

Matters in dispute

- 3.3 In accordance with the Guidance a copy of Councillor Fower's response has been sent to the investigating officer. Ordinarily the investigating officer would comment upon the response prior to the hearing. However there has been insufficient time to undertake this process prior to the hearing. The investigator has received a copy of this report containing the response.
- 3.4 It is also customary for the subject member to produce a witness statement for any witness attending the hearing. Councillor Fower has not been asked to produce a witness statement given the proximity of the hearing date to receipt of his response.
- 3.5 Councillor Fower has not raised any new issues in his response and therefore the matters in dispute remain those outlined above.
- 3.6 Consequently all other matters within the report do not appear to be in dispute.

4. PROCESS AT THE HEARING

- 4.1 The hearing will follow the procedure set out in the Procedure for Local Standards Hearings, a copy of which is attached to this report
- 4.2 Should Councillor Fower fail to attend the hearing the matter may be heard in his absence although the Sub-Committee may exercise their discretion to adjourn the matter.
- 4.3 Unless the Sub-Committee consider it necessary to adjourn for any reason, it has to announce its findings and provide a short written decision at the end of the hearing. A full written decision must be issued within 2 weeks of the hearing date.
- 4.3 If the Sub-Committee conclude that there has been a breach of the Code the Guidance sets out information regarding the sanctions available to the Sub-Committee at pages 11 - 14

5. BACKGROUND INFORMATION

None.

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	Name of Member: Councillor Darren Fower
	Date of Report : 19 th October 2010
	<p><u>Glossary</u></p> <p>Councillor Darren Fower - City Councillor Werrington South Ward (Subject Member) Helen Edwards - Solicitor to the Council and Monitoring Officer (Complainant) Councillor Stephen Goldspink - City Councillor East Ward Diane Baker - Compliance and Ethical Standards Manager Steve Boast - Independent Member Standards Committee Orlando Menendez - Independent Member Standards Committee Kim Sawyer - Head of Legal Commercial Alex Daynes - Senior Governance Officer Simon Lovell - Investigation Officer</p> <p><u>Documents</u></p> <ol style="list-style-type: none"> 1. Complaint Investigation Report of Diane Baker dated 15th April 2010 2. Members' Code of Conduct - Peterborough City Council 3. Standards Referrals Sub-Committee Decision Notice dated 29th August 2010 4. Statement of Alex Daynes 5. Statement of Steve Boast 6. Statement of Orlando Menendez 7. Statement of Kim Sawyer 8. Statement of Councillor Fower (received 14th March 2010)
NO.	CONTENT
1.	Introduction
1.1	This is a report of an investigation under Section 59 of the Local Government Act 2000 by Simon Lovell, appointed by the Monitoring Officer for Peterborough City Council, to investigate an allegation concerning Councillor Darren Fower.
1.2	<p>On 9th December 2009 a Standards Committee Sub-Committee meeting took place to consider a complaint against Councillor Goldspink. The Sub-Committee concluded there was no case to answer. A decision notice was delayed; it was eventually issued on 29th December 2009. On 12th December 2009 an item was published in the 'gossip' section of the Peterborough Liberal Democrat website as follows:</p> <p><i>(12/12/09) Insiders at the Town Hall have claimed that the City Councils Standards Committee recently decided NOT to take any further action against Cllr Goldspink, following</i></p>

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	<i>an allegation by a City Council employee, who is said to have claimed that he spoken to her as if she were something to be found on his shoe!</i>
1.3	On 30 th December 2009 Councillor Goldspink became aware of the entry above. On 31 st December 2009 he formally recorded a complaint to Helen Edwards, Solicitor to the Council, that confidential information concerning him had been leaked into the public domain.
1.4	<p>Diane Baker, Compliance and Ethical Standards Manager conducted a preliminary investigation into the complaint made by Councillor Goldspink. She interviewed the five persons who were present at the Sub-Committee meeting, those being:</p> <ul style="list-style-type: none"> • Steve Boast - Independent Member • Orlando Menendez - Independent Member • Councillor Fower - Elected Member • Kim Sawyer - Head of Legal (Commercial) • Alex Daynes - Senior Governance Officer <p>Diane Baker's conclusion, based on the 'balance of probabilities' burden of proof, was that the evidence supported the likelihood that Councillor Fower disclosed details of the outcome to the administrators of the Liberal Democrat website, if indeed he did not upload the information personally.</p> <p>Document 1 refers</p>
2.	Background
2.1	<p>Relevant Sections of the Members' Code of Conduct:</p> <ul style="list-style-type: none"> • 4 (a) - disclosing information given to you in confidence or acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature. • 5 - conducting yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute • 6 (a) - using your position as a member improperly to confer or secure an advantage or disadvantage <p>Document 2 refers</p>
2.2	<p>Diane Baker's report was considered at a meeting of the Standards Committee (Assessment Sub-Committee) on 12th August 2010. A decision notice dated 29th August 2010 was issued referring the matter to the Monitoring Officer for investigation.</p> <p>Document 3 refers</p>
2.3	<p>Simon Lovell, Corporate Compliance Manager was appointed on 14th September 2010 by the Monitoring Officer to conduct an investigation.</p>
3	Investigation
3.1	<p>Diane Baker's report details fully the accounts provided to her by the parties present at the</p>

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	<p>Sub-Committee meeting on 9th December 2009. Individual witness accounts were made by all parties.</p> <p>Documents 4 - 8 refer</p>
3.2	<p>Councillor Fower was interviewed on 30th September 2010. With his consent the interview was tape recorded and he was provided with a copy of the tape.</p> <p>In summary:</p> <ul style="list-style-type: none">• Councillor Fower indicated he had been a City Councillor for South Werrington since 2004. He had previously been a Councillor for Walton for a year between 1999 and 2000.• Councillor Fower confirmed he held positions as a member of the Standards Committee and Health Scrutiny. He is Leader of the Liberal Democrat Group on the City Council.• Councillor Fower explained his role on the Standards Committee was to listen to complaints made, to decide if further action was needed, to ensure Members upheld the Code of Conduct and followed procedures correctly.• Councillor Fower was unsure of the training he had received on the Members' Code of Conduct. He had been provided with a DVD on the subject. He was aware of the Code. The Liberal Democrat Group had recently put forward a motion calling for the abolition of the Standards Committee in Peterborough. He pointed out that nationally abolition of the Standards Board for England was under consideration. He agreed there was a need for accountability, believing this to be covered under the Constitution. The Code had a role to play but sometimes needed looking at.• Councillor Fower agreed he attended a Standards Sub-Committee meeting on 9th December 2009 when the complaint against Councillor Goldspink was considered. The decision was that no further action was needed. He was aware of the complaint by Councillor Goldspink of that outcome being leaked. He had been interviewed by Diane Baker and confirmed the content of a statement signed by him on/about 14th March 2010.• Councillor Fower maintained his stance that he had nothing to do with either the leaking of the Standards Sub-Committee decision or entering the item on the 'gossip' section of the Liberal Democrat website.• Councillor Fower agreed he was involved with the Liberal Democrat website. He did not consider himself to be the 'owner' of the site although acknowledged it may be registered in his name - he did not recall this being the case but the company who set up the site (Todd Media) may have registered his name as the contact. As Leader of the Liberal Democrat Group he was concerned that the site should not contain any information that may result in action against the Group - he did have the facility to remove items from the site. He believed the remark about Councillor Goldspink had been removed when the

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complaint had been made.

- Councillor Fower indicated he did not administer the website. This was done by several volunteers, about half a dozen. Councillor Fower did not feel obliged to divulge the identities of the volunteers, not all of who resided in the Peterborough area. As a password holder Councillor Fower advised it was theoretically possible for him to put information on the website. However he was not familiar with the 'gossip' section of the website. Councillor Fower suggested that the method to enquire as to whom may have been responsible for uploading the relevant item relating to Councillor Goldspink would be to use the 'contact us' section of the main website.
- Councillor Fower was unaware that he (as registrant) would be regarded by the Information Commissioner as the point of contact for the website.
- Simon Lovell summarised that on 12th December 2009 when the comment was posted Councillor Fower was one of only five people who would have been aware of the Sub-Committee decision (including the wording of the complaint), the others being Steve Boast and Orlando Menendez (Independent Members of the Standards Committee) plus Kim Sawyer and Alex Daynes (Council Officers). To the layman it may appear that Councillor Fower as a Liberal Democrat, the 'owner' of the Liberal Democrat website, would be the only one with an interest in the Sub-Committee decision being published in the form that it was. If Councillor Fower had not actually uploaded the information it was likely he was the person to have supplied that information.
- Councillor Fower acknowledged the circumstances as detailed were a good argument and made sense. However he had not forwarded any emails on and to the best of his knowledge he had not discussed the matter with anyone. He, as per human nature does discuss topics with colleagues but he had no recollection of mentioning this case over the three day period between the decision being made and the item being published on the website.
- Councillor Fower felt it unfair to discount other people as being responsible. Information was received by the Liberal Democrats from a variety of people including a number within the Town Hall. It was the way of the world. He could see the 'layman' argument and did not discount it but to the best of his knowledge he himself had had no involvement in the matter. It was not as clear cut as it may appear. Councillor Fower emphasised he was not suggesting anything adverse towards any other of the persons present at the Sub-Committee meeting. He considered them all to be good at the roles they fulfilled.
- Councillor Fower agreed that if he had revealed the information himself it would have been a breach of confidence. Others may have perceived the information not to be

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	<p>confidential - he couldn't say. He reiterated the Liberal Democrats were reactive and once the complaint was made the item was removed from the website. Councillor Fower had no involvement in that matter.</p> <ul style="list-style-type: none"> In conclusion Councillor Fower read a quote: 'everyone has the right to seek, receive and impart information and ideas through any media and regardless of frontiers' - taken from the United Nations Universal Declaration of Human Rights 1948. He requested those considering the allegations against him bear this in mind.
3.3	<p>On 30th September 2010 a request was logged <i>via</i> the 'contact us' section of the Peterborough Liberal Democrat website for information relating to the identity of the person providing and/or the person responsible for uploading the 'gossip' entry in respect of Councillor Goldspink on 12th December 2009. To date no response has been received</p>
3.4	<p>On 5th October 2010 a draft report was circulated to Councillor Fower inviting him to comment on matters of fact. On 21st October 2010 Councillor Fower responded 'report seems to be fine to the best of my understanding.'</p>
4	Findings of Fact
4.1	<p>This investigation sought to establish if Councillor Fower had breached the following Sections of the Members' Code of Conduct:</p> <ul style="list-style-type: none"> 4 (a) - disclosing information given to you in confidence or acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature. 5 - conducting yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute 6 (a) - using your position as a member improperly to confer or secure an advantage or disadvantage <p>The burden of proof in such matters is based on 'the balance of probabilities'</p>
4.2	<p>Code of Conduct 4 (a) disclosing information given to you in confidence or acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature.</p> <ul style="list-style-type: none"> A meeting of the Standards Sub-Committee took place on 9th December 2009 to consider a complaint against Councillor Goldspink at which it was decided there was no case to answer. A formal decision notice was not issued until 29th December 2009. Documents in respect of this meeting were clearly marked restricted and therefore by definition regarded as confidential. There were five persons present at the Sub-Committee Meeting, two Independent Members Steve Boast and Orlando Menendez, two Officers of the Council, Alex Daynes and Kim Sawyer plus Councillor Fower, a Liberal Democrat Councillor. On 12th December 2009 an entry relating to the decision was published in the 'gossip'

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	<p>section of the Peterborough Liberal Democrats website.</p> <ul style="list-style-type: none"> • During a complaint investigation early in 2010 all five parties denied knowledge of or responsibility for divulging the decision of the Sub-Committee. • The Liberal Democrat website (www.peterboroughlibdems.org.uk) is owned by Councillor Fower. He is the named registrant and deemed responsible for the content and operation of the site. • Councillor Fower in interview maintains he was neither responsible for placing the entry on the website nor divulging the outcome to others. He acknowledges that in the circumstances it could appear to the layman that that he was the more likely of those present to have the means and an interest in the Sub-Committee decision being published. • Councillor Fower indicates he does discuss matters with colleagues. He has however no recollection of discussing this subject during the three day period between decision and publication. He does not refer to restrictions placed upon him as the recipient of confidential information in certain circumstances. • Enquiries through the website to try and indentify the source of the information have been unsuccessful. <p>It is clear that one of the persons present at the Standards Sub-Committee meeting on 9th December 2009 provided information that resulted in the entry on the 'gossip' section of the Liberal Democrat website on 12th December 2009. Whilst acknowledging Councillor Fower's assertion that information is received from a variety of sources, including some within the Council, there is no obvious reason for either the Officers or Independent Members to have divulged the outcome. Councillor Fower has a personal interest in the website and has declined to personally assist in providing administrator detail which may identify a source. Councillor Fower's membership of the Liberal Democrats and his ownership of the website in question support the likelihood that he disclosed the outcome to administrators of the site if he himself did not actually upload that information. Based on 'the balance of probabilities' the conclusion is there is a case to answer in respect of this alleged breach of the Members' Code of Conduct.</p>
4.3	<p>Code of Conduct Section 5 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute:</p> <p>The detail outlined in paragraph 4.2 above is relevant to this alleged breach of the Members' Code of Conduct. Confidential information has been disclosed, which resulted in a complaint being made by Councillor Goldspink, who also reported the matter to the Information Commissioner. The conduct of Councillors is subject to scrutiny and a finding that a Councillor</p>

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	had divulged confidential information for apparent political purposes could result in adverse publicity for the Council. Should it be concluded by the Standards Committee that Councillor Fower has breached Code 4 (a) it should be regarded as bringing his office or authority into disrepute. As such the conclusion is there is a case to answer in respect of this alleged breach of the Members' Code of Conduct.
4.4	Code of Conduct 6 (a) - using your position as a member improperly to confer or secure an advantage or disadvantage Based on the presumption that the information was divulged by Councillor Fower it is necessary to establish if an advantage or disadvantage resulted. Other than provision of material for the 'gossip' section of the Liberal Democrat website there is no apparent advantage to Councillor Fower. In respect of Councillor Goldspink the entry was published on the Liberal Democrat website between 12 th December and 31 st December 2009. Councillor Fower indicates the entry was withdrawn when Councillor Goldspink raised the matter (the actual date of removal is not known). Whilst not detracting from the personal concern of Councillor Goldspink to publish what was deemed an unfounded complaint against him, there is no evidence at this stage of any tangible disadvantage to Councillor Goldspink or advantage to Councillor Fower. As such the conclusion is there is no case to answer in respect of this alleged breach of the Members' Code of Conduct.
5.	Conclusion
5.1	It is recommended that the Determination Sub-Committee of the Standards Committee give due consideration to this matter having regard to all relevant guidance and decide to accept the findings of this report.

Simon Lovell
19th October 2010

Diane Baker
19th October 2010
Quality assurance

Disclosure of Confidential Information Investigation



To:	Helen Edwards, Solicitor to the Council
Name/Job Title of Complainant:	Councillor Stephen Goldspink
Service Area:	Standards Committee, Peterborough City Council

IN CONFIDENCE

Details of Complaint:

Councillor Stephen Goldspink emailed Helen Edwards, Solicitor to the Council and Diane Baker, Compliance and Ethical Standards Manager on 31st December 2009 to raise concerns about an alleged leak of confidential information into the public domain.

The content of Councillor Goldspink's email is included below; the specific issue to be investigated has been separated into a bordered paragraph.

Helen / Diane

Shortly after 1 December 2009, I received a letter from Kim Sawyer, Deputy Monitoring Officer, saying that a complaint (reference KS/4083) had been made against me under the Code of Conduct, and that it would be considered at a meeting of the Standard's Committee assessment sub-committee on 9 December. I was totally bemused by this complaint as I could not imagine how I had breached the sections of the code mentioned in the letter.

By yesterday, I had heard nothing, but I happened (sadly) to be looking on the "gossip" section of the Peterborough Lib Dems Website where I found the following item (see also attached web page snapshot, taken this morning) against the date of 12/12/09:

"(12/12/09) Insiders at the Town Hall have claimed that the City Councils Standards Committee recently decided NOT to take any further action against Cllr Goldspink, following an allegation by a City Council employee, who is said to have claimed that he spoken to her as if she were something to be found on his shoe!"

Helen, I would like to make a formal complaint against the leaking of this confidential information to a public domain and request a full explanation as how information which has not yet even been communicated to me came to be displayed in this public place. I would also like the information removing forthwith. Finally, I would like to know how many times in the last three years the Council has had to ask the Lib Dems to remove information from their website because it should not be there, or was inaccurate.

Diane, I would like an investigation to be carried out into how this confidential information was leaked; I will be looking to report the responsible party under the Code of Conduct for Members, Part 1, Paragraph 4. I would also like to know how many previous such investigations have had to be carried out in the last three years and a count of where the information was published; so the answer I am looking for would be quite broad, along the lines of "four investigations, one leaked on the Lib Dem website, two in the ET, and one to the BBC".

Finally, Helen, I would like to know how I can get further information on the complaint itself, so I can understand how the complaint came to be made and if there is anything I can / should do to prevent a similar problem happening in the future; to be honest, I can't imagine how such impressions of me were formed and must assume for now the complaint was malicious and false.

Regards and happy new year

Stephen Goldspink
Councillor, East Ward

Investigator:

Diane Baker

Report Date

15th April 2010

SECTION 1

1.1 Context

Peterborough City Council's Standards Committee was established as a result of the Local Government Act 2000 Part III, Chapter I, section 53. The general functions of a Standards Committee are outlined at section 54 of the Act. They include promoting and maintaining high standards of conduct by the members and co-opted members of an Authority and assisting members and co-opted members of the Authority to observe the Authority's Code of Conduct.

Section 51 of the Act refers to the duty of a relevant Authority to adopt Codes of Conduct (for members).

Section 52 of the Act refers to a person, who is a member or co-opted member of a relevant Authority. It states they must observe the Authority's Code of Conduct.

Investigations into member breaches of their Code of Conduct were originally undertaken by the Standards Board for England. New legislation, which was introduced in May 2008, created a Local Standards Framework, which meant that Local Authorities received greater powers to investigate those members whose behaviour falls short of the standards expected of them.

At Peterborough City Council, any complaint against a member is referred to the Council's Monitoring Officer in the first instance. The complaint is then referred to the Standards Committee for initial assessment. A sub-committee is convened for this purpose.

On 26th November 2009, Peterborough City Council received a complaint from a member of staff concerning the alleged conduct of Councillor Stephen Goldspink.

The matter was referred for consideration by a Standards Committee sub-committee and a meeting was convened for 9th December 2009. Members of the Standards Committee are invited to sit on a sub-committee by Alex Daynes, Senior Governance Officer with responsibility for supporting the Standards Committee. Kim Sawyer, Head of Legal Commercial, was also in attendance on this date.

The complaint against Councillor Goldspink was considered and the decision was 'no case to answer'. A letter, which contained the decision, was issued to Councillor Goldspink and the complainant on 29th December 2009.

1.2 The Complaint

Councillor Goldspink complains:

- He received a letter from Kim Sawyer shortly after 1st December 2009 advising that a complaint had been made against him. Councillor Goldspink was advised that this matter would be considered at a meeting of the Standards Committee sub-committee on 9th December.
- By 30th December 2009 he had heard nothing. He happened to be looking at the 'gossip' section of the Peterborough Liberal Democrats website where he found the following item:
 - ***(12/12/09) insiders at the Town Hall have claimed that the City Councils Standards Committee recently decided NOT to take any further action against Cllr Goldspink, following an allegation by a City Council employee, who is said to have claimed that he spoken (sic) to her as if she were something to be found on his shoe!***
- Councillor Goldspink has made a formal complaint to Helen Edwards regarding the leaking of this information, which had not yet been communicated to him yet had been displayed in a public place.

- Councillor Goldspink has requested that a full investigation be carried out into how this confidential information was leaked.

SECTION 2

2.1. The Investigation

In carrying out this investigation, I have consulted with the following people, who were all present at the Standards Committee sub-committee on 9th December 2009:

- Alex Daynes, Senior Governance Officer
- Steve Boast, Independent Chair
- Orlando Menendez, independent member
- Kim Sawyer, Head of Legal Commercial
- Councillor Darren Fower, member

I have also had sight of the complaint against Councillor Goldspink; a report into an earlier alleged breach of confidential information from the Standards Committee and the Liberal Democrats' website 'gossip' section.

I have attached the following documents:

- Document 1 - statement of Alex Daynes
- Document 2 – email from Councillor Fower to Alex Daynes dated 9th December 2009.
- Document 3 – statement from Steve Boast
- Document 4 – statement from Orlando Menendez
- Document 5 – statement from Kim Sawyer
- Document 6 – statement from Councillor Darren Fower
- Document 7 – details of the complaint against Councillor Goldspink
- Document 8 – details of a previous investigation into a breach of information, which was undertaken by Helen Edwards.
- Document 9 – a print of the Liberal Democrats' website.
- Document 10 – evidence of registrant details in respect of [www. Peterboroughlibdems.org.uk](http://www.Peterboroughlibdems.org.uk)

Alex Daynes account is summarised below:

- Alex's role is to support the Standards Committee function. He arranges meetings, distributes documents and takes notes of proceedings.
- Membership of the sub-committee on this occasion was Steve Boast, Orlando Menendez and Councillor Darren Fower. Kim Sawyer was also present as the legal advisor to the Committee.
- The public agenda was circulated to members of the sub-committee and the press and public by email on 1st December 2009 but details of the actual complaint were not publicised as this item was exempt, which means that the matter should be considered in private.
- Alex arranged the papers for the 9th December meeting, which were sent to all members of the sub-committee by post at least five clear working days before the meeting. The details were printed on green paper as a clear indication of their status and only sent to members of the sub-committee
- Each bundle of papers is allocated a unique reference number so that they can be tracked.
- At the end of each session, the papers are handed back to Alex so that he can confirm all original documents have been returned.
- This process was followed on 9th December 2009.
- Alex recalls Councillor Fower asking for a second copy of the papers as he hadn't received the earlier copy. Alex provided another copy at the meeting. He believes Councillor Fower returned the duplicate copy at the end of the meeting and the original papers a day or two later.

- The decision of the sub-committee was 'there was no case to answer'.
- The letter, which informed the complaint and Councillor Goldspink of the outcome, was delayed and did not actually go out until 29th December 2009.

Alex subsequently produced a copy of an email, which had been sent to him by Councillor Fower on 9th December 2009. The email confirms that Councillor Fower asked for a copy of the meeting papers to be dropped into his Group room as he seemed to have misplaced his previous ones.

Steve Boast's account is summarised below:

- Steve is the Chair of the Standards Committee, part of his role is to chair sub-committees.
- He was invited to perform this function by Alex Daynes on 9th December 2009, where a complaint against Councillor Goldspink was due to be considered.
- Steve believes he received the papers for the meeting by post, to his home address prior to the meeting.
- Due to a previous leak of information, it had been decided that all documentation would be given a unique reference number and posted, rather than emailed, to avoid unauthorised sharing of confidential information.
- The details of the complaint were printed on green paper to indicate an exempt status.
- During the meeting, Steve encouraged all members of the sub-committee to hand their documents back to Alex Daynes at the end of the meeting as this forms part of the process to protect confidential information.
- Steve recalls Councillor Fower explaining that he had left his paperwork at home on one occasion but cannot be sure it was the 9th December meeting.

Orlando Menendez's account is summarised below:

- Orlando is an independent member of the Standards Committee.
- He was invited by Alex Daynes to attend a meeting of the sub-committee on 9th December to consider a complaint against Councillor Goldspink.
- Orlando is very aware of the need for confidentiality; he was attending a private meeting immediately before the sub-committee therefore did not take his paperwork with him. On this basis, Orlando was unable to offer his paperwork for collection by Alex at the end of the meeting.
- He agreed that he would present them the following day. He did so, handing them to a member of the Democratic Services team, in a sealed envelope.
- The outcome of the meeting on 9th December was 'no further action to be taken'.
- Orlando did not share this information with anyone outside the meeting. He is particularly concerned about this alleged breach of confidential information as he has been assigned by the Standards Committee to review the protection of confidential information procedures with Kim Sawyer.

Kim Sawyer's account is summarised below:

- Kim is the Head of Legal Services Commercial and Deputy Monitoring Officer for the Council. Part of her role is to advise the Standards Committee on legal matters.
- In law, the Standards Committee and associated sub committee meetings are deemed to be closed meetings. This means that the public and press are not allowed to attend.
- The Local Government Act 2000 places restrictions on the Monitoring Officer (and deputies) in that they cannot disclose confidential information. Disclosure can carry a penalty of conviction. Therefore a Monitoring Officer is extremely careful when dealing with a complaint against an elected member.
- No statutory restrictions are placed on members of the Committee or the complainant.
- Kim is in the process of setting up a more robust reporting mechanism and security around retention of documents within the legal environment.
- As a result of a previous investigation by Helen Edwards, a number of recommendations were made (around tighter security of information). The recommendations were agreed at

Standards Committee but not fully implemented until 2010. This means that in December 2009, the recommendations were not fully in place.

- At the meeting on 9th December, I recall Councillor Fower remarking that he did not have his original paperwork with him. Alex and I had exchanged emails earlier in the day regarding this. Steve Boast, as Chair, had endorsed the issue of a duplicate pack and Alex arranged this.
- I cannot recall whether Councillor Fower disappeared from the room and returning with the original pack or whether this was handed into Alex the following day.
- It is Kim's responsibility to prepare a decision note of the outcome of the meeting. Alex helps to prepare a draft which Kim will check and finalise. Alex then sends the decision notice to the complainant the Councillor involved.
- This is not deemed to be public information although the complainant or Councillor can make it so.
- The decision notice in this case was delayed and eventually went out on 29th December 2009 therefore the outcome was not disclosed to anyone outside the meeting until this date.
- Kim has noted that the Liberal Democrat website includes reference to the outcome of the meeting; on this basis she believes that information has not been leaked prior to the meeting. The information was posted on the Liberal Democrat website on 12th December, which is before the complainant and Councillor Goldspink received notification of the outcome.

Councillor Darren Fower's account is summarised below:

- Darren is a Councillor of Peterborough City Council. Part of his role is to sit on the Standards Committee as a representative of the Liberal Democrat Party.
- On 9th December 2009 he attended a sub committee meeting to consider a complaint against Councillor Goldspink.
- Prior to the meeting, he received relevant documentation from Alex Daynes. The paperwork was left in a sealed envelope in the Group room within the Town Hall. Darren has asked for the mail to be left at the Town Hall rather than posted to his home address as it is easier to retrieve it this way.
- On 9th December, Darren emailed Alex to check the time of the meeting. He also advised Alex that he had misplaced his original documents and asked if he could have a duplicate copy left in the Group room. Alex duly complied and left a second set of papers in a sealed envelope.
- Darren later found the originals and was able to leave both sets with Alex at the end of the meeting.
- Darren has been advised that the outcome of the meeting was posted on the Liberal Democrat's website on 12th December 2009. The only people who knew of the outcome were those present at the meeting.
- Darren stated that he has had not involvement in the disclosure or publication of the outcome of the meeting of 9th December.
- The Liberal Democrat site is staffed by volunteers who source information as they see fit. Darren was not prepared to disclose the names of the administrators; they can be reached through the 'contact us' section on the website.
- Darren confirmed that he is aware of his duty to protect confidential information and not to disclose to anyone who does not have a right to access the information.

On 4th November 2009, Helen Edwards submitted a report to the Standards Committee entitled 'Report into the leak of Standards Committee Information'. The report addressed a leak, which had occurred in June 2009 following a meeting of a sub-committee on 3rd June 2009. Lite FM, a local radio station, reported that they had 'had sight' of a report to the Standards Committee.

Helen did not undertake a formal investigation; she spoke to all those who had copies of the papers and found no evidence of who was responsible for the leak. She did, however make recommendations regarding future handling of confidential information.

Checks were made regarding the status of the Peterborough Liberal Democrat website and it was discovered that the registrant of the site is Darren Fower. The site was registered on 13th October 2003. Further checks in relation to the postcode details held against the registrant has revealed that the PO Box address used by the registrant is also linked to ESP Magazine. The PO Box is held at the main Royal Mail sorting office in Peterborough.

Councillor Fower was contacted for comment by email regarding his status as registrant and therefore the 'owner' of the site. He responded as follows:

'My comment would be that while I am associated to the site it is the responsibility of the Peterborough Lib Dem Executive, any association I have is by name alone. If there are any concerns or comments to be made by visitors to the site, then a service is provided. Our website has on numerous occasions removed articles, comments, statements following concerns raised. If there has ever been a falsehood on the site then it is a shame that any one involved or mentioned, has not simply requested a removal instead of a costly investigation. I am of course happy to assist and respond to any further queries or questions'.

A call was made to the Information Commissioner's Office helpline in order to clarify the status of a registrant and their legal responsibilities in relation to the operation of a site. The Information Commissioner's representative confirmed that the domain name registrant is the person/or company they would contact if they were taking formal action. They also confirmed that they use the same source of reference (as the investigator) to establish who the registrant is as there is a legal registration process to follow when setting up a domain name.

2.2. The Findings/Conclusion

- It has been established that the complaint against Councillor Goldspink was received on 26th November 2009.
- A meeting of the Standards Committee sub-committee was convened on 9th December 2009 to discuss this matter.
- Alex Daynes invited attendees and issued the paperwork to each member by post. He left Councillor Fower's paperwork in a sealed envelope in the Group room per an arrangement with Councillor Fower.
- The paperwork was printed on green paper with a 'restricted' watermark running through the background. This indicates 'exempt' status.
- The meeting of 9th December, comprising of Steve Boast, Orlando Menendez, Councillor Darren Fower, Kim Sawyer and Alex Daynes, determined that there was no case to answer in respect of this complaint.
- All attendees handed their paperwork in to Alex Daynes at the end of the meeting with the exception of Orlando Menendez. He handed his in a sealed envelope to a member of the Democratic Services team the following day.
- The letter, which informed Councillor Goldspink and the complainant of the outcome, was issued on 29th December 2009.
- The posting on the Liberal Democrats' site was dated 12th December 2009. This was three days after the sub-committee. Only the sub-committee attendees knew the outcome of the meeting at this stage.
- Councillor Fower, who is a Liberal Democrat representative, denies any involvement in the leaking of the sub-committee decision.
- It has been established that the Liberal Democrat website www.peterboroughlibdems.org.uk is owned by Councillor Fower. He is the named registrant and therefore responsible for the content and operation of the site.

The burden of proof in this matter is 'the balance of probabilities'.

Consideration has been given to the accounts provided by those present at the sub-committee and it is found that Councillor Fower's ownership of the Liberal Democrat website and his membership of the Liberal Democrat party supports the likelihood that Councillor Fower disclosed details of the

outcome to the administrators of the Liberal Democratic website (if indeed he did not upload the information personally as the owner of the website). Despite Councillor Fower's assertion that he is only associated with the website in name only; it is probable that Councillor Fower's personal interest in the website would support a desire to disclose information and his access to confidential Standards information would enable him to actively do so.

2.3. Recommendations

1. It is recommended that Helen Edwards, as Monitoring Officer for Peterborough City Council, refers the matter to the Standards Committee for due consideration on the basis that it is probable that Councillor Darren Fower has breached the Members' Code of Conduct section 4, which states 'you must not 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....'
2. Consideration should also be given to whether Councillor Fower, through his actions, has brought Peterborough City Council into disrepute by disclosing confidential information, which has now resulted in Councillor Goldspink reporting the breach to the Information Commissioner. This could result in adverse publicity for the Council as the subject of regulator scrutiny.

IN CONFIDENTIAL

Peterborough City Council Members' Code of Conduct

This is the National Model Code of Conduct for Members

The Ten General Principles of Public Life

Selflessness – members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

Objectivity – members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal judgement – members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others – members should promote equality by not discriminating against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

Leadership – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

(Relevant Authorities (General Principles) Order 2001 (S.I. 2001/1401)

Code of Conduct for Elected, Co-opted and Appointed Members of Peterborough City Council

PART 1

GENERAL PROVISIONS

1. Introduction and interpretation

- (1) This Code applies to **you** as a member of this authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State and attached as a preamble to this Code.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code:

“meeting” means any meeting of:

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees or area committees;

“member” includes a co-opted member and an appointed member.

2. Scope

- (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you -
 - (a) conduct the business of your authority (which in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority;and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to you conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

- (5) Where you act as a representative of your authority -
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General Obligations

- (1) You must treat others with respect.
- (2) You must not -
 - (a) do anything which may cause your authority to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2006);
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or likely to be –
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4. 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.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You:
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority –
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by -
- (a) your authority's chief finance officer; or
 - (b) your authority's monitoring officer,
- where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

PART 2

INTERESTS

8. Personal Interests

- (1) You have a personal interest in any business of your authority where either -
- (a) it relates to or is likely to affect -
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body –
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who had made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

- (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.
- (2) In sub-paragraph (1)(b), a relevant person is -
- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

9. Disclosure of Personal Interests

- (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under Section 22 of the Local Government Act 2000.

10. Prejudicial Interest Generally

- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business -
 - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of –
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

11. Prejudicial interests arising in relation to overview and scrutiny committees

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where -

- (a) that business relates to a decision (whether implemented or not) or action taken by your authority’s executive or another of your authority’s committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

12. Effect of prejudicial interests on participation

- (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority -

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held:
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

- (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee or such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

PART 3

REGISTRATION OF MEMBERS' INTERESTS

13. Registration of Members' Interests

- (1) Subject to paragraph 14, you must, within 28 days of -
 - (a) this Code being adopted by or applied to your authority; or
 - (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by providing written notification to your authority's monitoring officer.

- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

14. Sensitive Information

- (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

- (3) In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

STANDARDS COMMITTEE NOTICE OF DECISION: REFERRAL FOR INVESTIGATION]

The information contained in this notice is confidential. **You should take care with this information, and should not pass on anything contained within it, or about it, without the express approval of the Monitoring Officer.** Failure to follow this advice could result in you being in breach of the Data Protection Act.

Complaint

On 12 August 2010, the Standards Committee (Assessment Sub Committee) of this authority considered a complaint from the Monitoring Officer concerning the alleged conduct of Councillor Darren Fower, a member of Peterborough City Council.

A general summary of the complaint is set out below:

The complaint relates to the release of confidential information from a Standards Assessment Sub Committee meeting on 9 December 2009, details of which subsequently appeared on the Peterborough Liberal Democrat's website.

The Monitoring Officer was advised that there had been a leak of confidential information - however as the complainant did not make a complaint about the conduct of any particular Councillor, it was considered inappropriate to refer the matter to the Standards Assessment Sub Committee at that stage and the Council's Compliance and Ethical Standards Manager, Mrs Diane Baker, was asked to carry out an investigation into the apparent leak.

It should be noted that a complaint was also made to the Information Commissioner about the same matter, as the complainant believed the matter to constitute a breach of the Data Protection Act. The Information Commissioner's Office (ICO) response confirmed that the release of personal information in these circumstances should be dealt with by the Council.

The Monitoring Officer has reviewed Mrs Baker's report, which concluded that, on the 'balance of probabilities', Councillor Fower had breached the Members' Code of Conduct. His ownership of the Liberal Democrat website and his membership of the Liberal Democrat party supported the likelihood that he disclosed details of the outcome to the administrators of the website (or indeed uploaded the information personally as the owner of the site). The Monitoring Officer therefore decided that the matter should be referred to the Standards Assessment Sub Committee for consideration.

The Standards Assessment Sub Committee met on 12 August 2010 to consider:

- (i) whether the leak in confidential information arising from a previous meeting of the Standards Assessment Sub Committee constituted a breach of the Code of Conduct; and
- (ii) If so, whether the case was still to be proven in respect of Councillor Fower.

Decision

In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the assessment sub-committee of the Standards Committee decided to refer the allegation to the Monitoring Officer for further investigation.

Potential breaches of the Code of Conduct identified

We have identified below the paragraphs of the Code of Conduct which may apply to the alleged conduct:

Paragraph 4 - disclosing confidential information;

Paragraph 5 - bringing your office or authority into disrepute

Paragraph 6 - using your position as a member improperly to confer or secure an advantage or disadvantage

This decision notice is sent to the person or persons making the allegation, and the member against whom the allegation was made.

What happens now?

Investigation

Terms of reference

The Local Government and Public Involvement in Health Act 2007 amends the Local Government Act 2000, which now provides for the local assessment of new complaints that members of relevant authorities may have breached the Code of Conduct. The Standards Committee (England) Regulations 2008 relate to the conduct of authority members and the requirements for dealing with this.

The regulations set out the framework for the operation of a locally based system for the assessment, referral and investigation of complaints of misconduct by members of authorities. They amend and re-enact existing provisions in both the Relevant Authorities (Standards Committee) Regulations 2001, as amended, and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, as amended.

Additional Help

If you need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000. [Disability Discrimination Act](#)

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

Signed*Steve Boast*..... Date*29 August 2010*.....

Chair of the Standards Committee (Assessment Sub Committee)

Peterborough City Council
WITNESS STATEMENT

Statement of: Alex Daynes

Age if under 18: Over 18 (if over 18 insert 'over 18') Occupation: Local Government Officer

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that it may be is tendered in evidence.

Signature: Alex Daynes

Date: 22 February 2010

My name is Alex Daynes and I am a Senior Governance Officer in the Democratic Services department. Part of my role is to support the Council's Standards Committee, for example, arranging meetings, distributing documents and taking notes of proceedings. I have been asked to provide my account of the meeting held by the Standards Sub Committee on 9th December 2009 when a complaint against Councillor Stephen Goldspink was considered by members of the Sub Committee. I arranged the papers for this meeting, which in line with agreed procedures, were sent to all members by email at least five clear working days prior to the 9th December. The members on this occasion were Steve Boast, Orlando Menendez and Councillor Darren Fower. Kim Sawyer, Head of Legal (Commercial) was also present as the legal advisor to the Committee and received papers accordingly. On this occasion, the public agenda was circulated to members of the sub committee and press and public by email on Tuesday 1st December 2009 but details of the actual complaint were not publicised as this item was marked 'exempt' which means it should be considered in private. When an item is exempt, the details will be printed on green paper as a clear indication of their status and only sent to members of the Sub Committee. Each bundle of papers is allocated a unique reference number so that all documents can be tracked. At the end of a session, the papers will be handed back to me so that I can confirm all original documents have been returned. I can confirm that this process was followed for the meeting on 9th December 2009. However, I recall Councillor Fower did ask for a second copy of the papers for the meeting as he advised me that he hadn't received the copy that I had sent earlier. I provided another copy at the meeting and he

Signature: Alex Daynes

Signature witnessed by:

Continuation of Statement of: Alex Daynes

returned this copy at the end of the meeting and the original documents, which were sent previously, a day or two later. The result of the Sub Committee hearing was that there was no case to answer. The letter, which informed the complainant and Councillor Goldspink of the outcome, was delayed as it was awaiting Kim Sawyer's approval. This meant that the letter did not actually go out until 29th December 2009.

Signature: Alex Daynes

Signature witnessed by:

Peterborough City Council
WITNESS STATEMENT

Statement of: Steve Boast

Age if under 18: Over 18 (if over 18 insert 'over 18') Occupation: Not Applicable

This statement (consisting of page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that it may be is tendered in evidence.

Signature:

Date:

My name is Steve Boast and I am the Chair of the Council's Standards Committee. Part of my role is to chair Standards Sub Committees, which are convened to consider complaints about elected members. I was invited by Alex Daynes to chair a Sub Committee on 9th December 2009, where a complaint against Councillor Goldspink was to be considered. Alex Daynes is responsible for pulling together the membership of each Committee and is also responsible for the distribution of all documentation prior to the meeting. I believe I received the paperwork for this meeting by post to my home address. Due to a previous leak of confidential information, it had been decided that all documentation would be given a unique reference number and posted, rather than emailed, to avoid unauthorised sharing of confidential information. I can confirm that complaints against elected members are considered to be exempt at this stage and are deliberated in private. On this basis, the details of a complaint are printed on green paper to indicate exempt status. During the meeting of 9th December, which included Councillor Darren Fower, Orlando Menendez, Kim Sawyer and Alex Daynes, I encouraged everyone to hand their papers back to Alex as this also forms part of the process to protect confidential information. I do recall Councillor Fower explaining that he had left his paperwork at home on one occasion but I cannot be sure that it was the 9th December meeting. I can confirm that I have not discussed this matter with anyone outside the meeting.

Signature:

Signature witnessed by:

Peterborough City Council
WITNESS STATEMENT

Statement of: Orlando Menendez

Age if under 18: Over 18 (if over 18 insert 'over 18') Occupation: Consultant

This statement (consisting of 1 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that it may be is tendered in evidence.

Signature: By email

Date: 24 February 2010

My name is Orlando Menendez and I am an independent member of the Council's Standards Committee. I was invited by Alex Daynes, an officer within the Council's Democratic Services, to attend a meeting of the Standards Sub Committee on 9th December 2009. The meeting was convened to consider a complaint against Councillor Goldspink. The papers for the meeting were sent to me by post at my home address prior to the 9th December. I am very aware of the need for confidentiality around these issues and, as I was attending a private meeting immediately prior to the Standards Sub Committee, I did not take my paperwork with me. Alex Daynes always collects the paperwork at the end of a meeting but on this occasion, I was unable to offer mine for collection. I agreed that I would present them the following day and I did so, handing them to a member of the Democratic Services team, in a sealed envelope, in the Town Hall foyer. (Alex was unavailable when I called). The outcome of the meeting on 9th December was that there was no further action to be taken in respect of this complaint. I did not share this information with anyone outside the meeting. I am particularly concerned about this alleged breach of confidential information and as I have been assigned by the Standards Committee a review of the actual procedures with Kim Sawyer, I will ensure that we review the procedures regarding the protection of confidential information, when we meet to carry out the said review.

Signature:

Signature witnessed by:

Peterborough City Council
WITNESS STATEMENT

Statement of: Kim Sawyer

Age if under 18: Over 18 (if over 18 insert 'over 18') Occupation: Local Government Officer

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that it may be is tendered in evidence.

Signature:

Date:

My name is Kim Sawyer and I am the Head of Legal Commercial and deputy Monitoring Officer for the Council. Part of my role is to advise the Standards Committee on legal matters. In law, the Standards Committees and associated Standards Sub Committees are deemed to be closed meetings. This means that the public and press are not allowed to attend. The Local Government Act 2000 places restrictions on the Monitoring Officer (and deputies) in that they are not allowed to disclose any confidential information. Disclosure can carry a penalty of conviction therefore the Monitoring Officer (and deputies) is extremely careful about how they deal with a complaint against an elected member and any documentation associated with such. No statutory restrictions are placed on members of the Committee or the complainant and on this basis; confidential information can be disclosed prior to any Committee meeting although all parties are aware of the need to retain confidentiality at all times. I am in the process of setting up a more robust reporting mechanism and security around retention of documents within the legal environment. I have been employed by Peterborough City Council since July 2009; when I arrived, I was aware that a breach of confidential information from the Standards Committee had occurred and was being investigated by Helen Edwards, the Monitoring Officer. As a result of Helen's investigation, a number of recommendations were made. The recommendations were agreed by Standards Committee but not implemented until recently, this means that in December 2009, when the second breach allegedly occurred, the recommendations around tighter security of information were not fully in place. Alex Daynes is based in Democratic Services and is the officer responsible for the administrative support of the

Signature:

Signature witnessed by:

Continuation of Statement of: Alex Daynes

Standards Committee. Prior to the Standards Sub Committee hearing on 9th December 2009, where a complaint into the alleged behaviour of Councillor Goldspink was to be discussed, the papers were emailed to me and the other members of the Standards Sub Committee by Alex. Membership of the Committee on this occasion comprised of Steve Boast, Orlando Menendez and Councillor Darren Fower. The papers therefore were not printed on green paper (to indicate an exempt status) but were watermarked with the word 'restricted' running across each page. Under the new arrangements, papers are not emailed but are instead handed to Committee members ten minutes prior to any meeting; they are individually numbered and collected at the end of each meeting. At the Standards Sub Committee meeting of 9th December 2009, I recall Councillor Fower remarking that he did not have his original paperwork with him. Alex and I had exchanged emails earlier in the day regarding this. Steve Boast, as Chair of the Committee, had endorsed the issue of a duplicate pack therefore Alex arranged this. I believe Councillor Fower subsequently handed the pack in at the end of the meeting. I cannot recall whether he then disappeared from the room and returned with the original pack or whether this was handed into Alex the following day. It is my responsibility to prepare a decision note, which outlines the Committees findings. Alex usually helps to prepare a draft which I will check and then finalise. Alex then sends the decision notice to the complainant and the Councillor involved. This is not deemed to public information although the Councillor or complainant can make it so. The complainant also has the right to request a review of the decision although this did not take place in respect of the outcome of the meeting of 9th December. The decision notice in this case was delayed and eventually went out on 29th December 2009 therefore the outcome was not disclosed to anyone outside the Standards Sub Committee meeting until this date. I note the Liberal Democratic website includes reference to the outcome of the meeting; on this basis I believe it has not been leaked prior to the meeting as the outcome had not been decided at this point. The information was posted on 12th December 2009, which is also before the Councillor and complainant received any notification of the outcome.

Signature:

Signature witnessed by:

Peterborough City Council
WITNESS STATEMENT

Statement of: Councillor Darren Fower

Age if under 18: Over 18 (if over 18 insert 'over 18') Occupation: Not Applicable

This statement (consisting of page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that it may be is tendered in evidence.

Signature:

Date:

My name is Darren Fower and I am an elected Councillor of Peterborough City Council. Part of my role is to sit on the Standards Committee as a representative of the Liberal Democrat party. I also participate in Standards Sub Committees when invited by Alex Daynes. These particular meetings are convened to consider complaints against Members. On 9th December 2009, I attended a Standards Sub Committee to consider a complaint against Councillor Goldspink. Prior to the meeting, I received the relevant documentation from Alex Daynes – it was left in a sealed envelope in the Group Room within the Town Hall. I have asked for mail to be left at the Town Hall rather than posted to my home address as it's easier for me to retrieve it. Earlier on the 9th December, I emailed Alex to check the time of the meeting, I also advised him that I had misplaced my original documents and asked if I could have a duplicate copy left in our Group Room. Alex duly complied and left a second set of papers in a sealed envelope. I later found the originals and was able to leave both sets with Alex at the end of the meeting. I am not sure whether I left the original package unopened in the Group Room. This room can be accessed by Councillors Nick Sandford, William Trueman and Member Services officers. I have been advised that the outcome of the meeting was published on the Peterborough Lib Dems website under the 'Council Gossip' section on 12th December 2009. I have also been advised that the only people who knew of the outcome of the meeting were those present i.e. Steve Boast, Orlando Mendendez, Kim Sawyer, Alex Daynes and me. I can state that I have had no involvement in the disclosure or publication of the outcome of the meeting of 9th December. The Lib Dem website is staffed by volunteers who source information as

Signature:

Continuation of Statement of:

they see fit. I am not prepared to disclose the names of the Lib Dem site administrators; they can be reached through the 'contact us' section of the website. I am aware of my duty to protect confidential information and not to disclose to anyone who does not have a right to access the information.

A handwritten signature in black ink, appearing to be 'D. H.', written in a cursive style.

Signature:

Telephone: 01733 452361
Facsimile: 01733 452220
E-mail: Kim.sawyer@peterborough.gov.uk
Please ask for: Kim Sawyer
Our Ref: KS/
Your Ref:

Councillor D Fower
 c/o Members' Services
 Room 15, Town Hall
 Peterborough
 PE2 1HG

Legal Services
Chief Executive's Department
Town Hall
Peterborough
PE1 1HG
DX 12310 Peterborough 1

10 December 2010

Dear Councillor Fower

Re: Standards Board Complaint SBE

The Investigating Officer has now concluded the investigation into the complaint that you breached the Code of Conduct. I understand that a copy of that report has been sent to you by the Investigating Officer.

The report concludes that the complaint is justified and I have therefore to arrange a meeting of the Standards Committee to make a determination about this matter. The hearing is proposed to be held on **Monday, 17 January 2011**, commencing at 9.30am in the Forli Room, Town Hall, Bridge Street, Peterborough. Please advise whether you will be attending this hearing.

A copy of the Council's 'Procedure for Local Standards Hearings' is enclosed.

I have also enclosed a number of forms for you to complete and return within 14 days of this letter. If you fail to notify the Standards Committee of your intention to attend or be represented, it may decide to hear this matter in your absence.

Form A: Your response to the evidence

This form enables you to outline if you disagree with any findings of fact in the Investigating Officer's report. You must state the reason why you disagree with the findings of fact. This will allow the Standards Committee to decide what witnesses will be needed.

The Standards Committee will not allow you to raise new disagreements over findings of fact in the Investigator's report at the hearing unless, for example new evidence has become available.

Form B: Other evidence relevant to the complaint

This form allows you to set out any *new* evidence about the complaint which the Investigating Officer has not considered. Guidance from the Standards Board for England states that the Standards Committee cannot re-open the investigation but if new evidence becomes available after completion of the investigation the Standards Committee *may* consider that evidence during the hearing. (*Standards Committee Determinations: Guidance for Monitoring Officers and Standards Committees*)

Form C: Representations to be taken into account on a finding of breach of the Code of Conduct

This form allows you to put forward any representations to the Standards Committee if you are found to have broken the Code of Conduct. It is important to note that no such finding has yet been



Chief Executive Gillian Beasley

Please note we do not accept correspondence or service by email

made and that these representations will only be taken into account if the Standards Committee make such a finding.

Form D: Arrangements for the Standards Committee hearing

The purpose of this form is to set out the administrative arrangements for the hearing. You are allowed to make representations to the Standards Committee either in person or in writing. You may choose to be represented by Counsel or a Solicitor. If you want to have a non-legal representative you must tell the Standards Committee in advance who may refuse permission for that representative to appear if they are directly involved in the matter.

Form E: Witnesses

This form enables you to give details of witnesses you want to call in support of your representations.

Although you are entitled to call any witnesses you wish, the Standards Committee may limit the number of witnesses at the hearing if it believes the number called is unreasonable. It may also choose not to hear from certain witnesses if it believes that they will simply be repeating evidence of earlier witnesses or if that witness will not be providing evidence that will assist the Standards Committee to reach its decision.

The Standards Committee will be entitled to question witnesses directly and it can allow you to question any other witness appearing at the hearing, however please note that the Standards Committee has no power to compel a witness to attend the hearing.

The Investigating Officer may be invited to comment upon your response for the purpose of assisting the Standards Committee to decide whether to call witnesses.

I enclose further information sheets which are extracts from the Standards Board Guidance. These concern your rights and public access to information.

Yours sincerely

Kim Sawyer
Deputy Monitoring Officer

Enc:

- Procedure for Local Standards Hearings
- Form A: Your response to the evidence
- Form B: Other evidence relevant to the complaint
- Form C: Representations to be taken into account on a finding of breach of the Code of Conduct
- Form D: Arrangements for the Standards Committee hearing
- Form E: Witnesses
- Extract from Standards Board Guidance on Standards Committee Determinations



Chief Executive Gillian Beasley

Please note we do not accept correspondence or service by email

PROCEDURE FOR LOCAL STANDARDS HEARINGS

1. Chairman introduces the hearing

2. Findings of Fact

To determine the facts of the case

- (i) Investigation Officer presents the case including any witnesses
- (ii) Subject Member/Representative may question the Investigation Officer and any witnesses
- (iii) The panel may question the Investigation Officer and any witness
- (iv) Subject Member /Representative presents his response and any witnesses
- (v) Monitoring Officer/presenting officer may question Subject Member
- (vi) Panel may question Subject Member
- (vii) Investigation Officer sums up case
- (viii) Subject Member sums up case
- (ix) Panel adjourn to determine the facts of the case
- (x) Panel reconvenes to deliver its decision on the facts.

3. Breach of the Code of Conduct

To determine whether there has been a Breach of the Code of Conduct

- (i) Presenting Officer advises why the findings of fact constitute a breach of the Code of Conduct
- (ii) Subject Member presents his response (argument against)
- (iii) The Panel may ask questions of Subject Member and the Presenting officer
- (iv) Panel adjourn to determine whether either of the complaints represents a breach of the code of conduct.
- (v) Panel reconvenes to deliver its decision on whether the complaints constitute a breach of the code

4. Sanction

To determine the appropriate sanction if a breach of the Code is found

- (i) Subject Member may address the panel with his representations in respect of the appropriate level of sanction
- (ii) The Panel adjourn to determine any relevant sanction
- (iii) The Panel announce their decision

FORM A



Subject member's response to the evidence set out in the investigation report

Please enter the number of any paragraph in the investigation where you disagree with the findings of fact and give your reasons and your suggested alternative.

Paragraph number from the investigation report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

FORM B

Other evidence relevant to the complaint

Please set out below, using the numbered paragraphs, any evidence you feel is relevant to the complaint made about you.

Paragraph number	Details of the evidence
1	
2	
3	

FORM C



Representations to be taken into account if a member is found to have failed to follow the Code of Conduct

Please set out below, using the numbered paragraphs, any factors that the Standards Committee should take into account if it finds that a member has failed to follow the Code of Conduct. Please note that no such finding has been made yet.

Paragraph number	Factors for the Standards Committee to take into account when deciding whether to sanction any censure, restriction of resources or allowances, suspension or partial suspension
1	
2	
3	

FORM D

Arrangements for the Standards Committee Hearing

Please tick the relevant boxes.

<p>1</p>	<p>Are you planning to attend the Standards Committee Hearing on the proposed date in the accompanying letter?</p> <p>If 'No', please explain why.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reason:</p>
<p>2</p>	<p>Are you going to present your own case?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	
<p>3</p>	<p>If you are not presenting your own case, will a representative present it for you?</p> <p>If 'Yes', please state the name of your representative.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Name:</p>

<p>4</p>	<p>Is your representative a practising solicitor or barrister?</p> <p>If 'Yes', please give their legal qualifications. Then go to Question 6.</p> <p>If 'No' please go to Question 5.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Qualifications:</p>
<p>5</p>	<p>Does your representative have any connection with your case?</p> <p>If 'Yes', please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p>6</p>	<p>Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	
<p>7</p>	<p>Do you, your representative or your witnesses have any access difficulties? For example, is wheelchair access needed?</p> <p>If 'Yes', please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>

<p>8</p>	<p>Do you, your representative or witnesses have any special needs?</p> <p>For example, is an interpreter needed?</p> <p>If 'Yes', please give details.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	<p>Details:</p>
<p>9</p>	<p>Do you want any part of the hearing to be held in private?</p> <p>If 'Yes', please give reasons.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	<p>Reasons:</p>
<p>10</p>	<p>Do you want any part of the relevant documents to be withheld from public inspection?</p> <p>If 'Yes', please give reasons.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	<p>Reasons:</p>

FORM E

Details of proposed witnesses to be called

Name of witness or witnesses	1	
	2	
	3	

Witness 1

<p>a Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p>
<p>b Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p>

Witness 2

a	Will the witness give evidence about the allegation?	Yes	Outline of evidence:
		<input type="checkbox"/>	
	If 'Yes', please provide an outline of the evidence the witness will give.	No	
		<input type="checkbox"/>	
b	Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed?	Yes	Outline of evidence:
		<input type="checkbox"/>	
	If 'Yes', please provide an outline of the evidence the witness will give.	No	
		<input type="checkbox"/>	

Witness 3

a	Will the witness give evidence about the allegation? If 'Yes', please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Outline of evidence:
b	Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed? If 'Yes', please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Outline of evidence:

EXTRACT FROM THE STANDARDS BOARD GUIDANCE ON STANDARDS COMMITTEE DETERMINATIONS

Pre-hearing process

The subject member has the right to:

- go to the hearing and present their case
- call a reasonable number of witnesses to give relevant evidence to the standards committee
- be represented at the hearing by a solicitor, barrister or any other person.
Note – the committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined.

Any disagreements with the finding of facts in the investigation report must be raised during the pre-hearing process. The standards committee will not consider any new disagreements about the report's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.

The subject member does not have to go to the hearing or be represented. If the subject member chooses not to go to the hearing, the committee may make a determination in their absence.

The hearing will be held in public and the relevant papers will be available for public inspection unless the standards committee is persuaded that there is a good reason to exclude the public. This is in line with the relevant access to information and human rights legislation.

Hearing process

After considering the written and verbal presentations, the standards committee will reach and announce its findings of fact, whether the subject member has failed to follow the Code of Conduct and whether a sanction should be applied.

As well as announcing its decision at the hearing and providing a short written decision on the day of the hearing, the standards committee will give the member concerned its full written decision within two weeks of the end of the hearing.

If the standards committee decides that the member has failed to follow the Code and that the member should be sanctioned, it may do any one or a combination of the following:

- Censure the member. This is the only sanction available when dealing with a person who is no longer a member of the authority.
- Restrict the member's access to the resources of the relevant authority for up to six months, which could include limiting their access to the premises of the relevant authority.
- Suspend or partly suspend the member for up to six months.
- Suspend or partly suspend the member for up to six months on the condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the standards committee orders them to. Conciliation involves an independent person helping the relevant people to try to reach an agreement on the matter set out by the standards committee.

Sanctions may start immediately or up to six months after the hearing, if the standards committee wishes.

The standards committee will also arrange to publish a summary of its findings and any sanction applied in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities. If the standards committee finds that the member has not broken the Code, the member can ask the standards committee not to have this information published.

For further information, please contact:

Kim Sawyer
Head of Legal & Deputy Monitoring Officer
Tel: 01733 452361
Email: kim.sawyer@peterborough.gov.uk

From: Cllr Fower Darren
Sent: 09 January 2011 15:30
To: Diffey Alana; Sawyer Kim; Cllr Sandford Nick
Subject: FW: Agenda - Standards Committee adjudication hearing

Follow Up Flag: Follow up
Flag Status: Red

Attachments: Final Report DF.doc
Hi

I have responded to the attached report. Hopefully this is the same one as you sent me as my PC laptop has been playing up all weekend i.e. closing down and losing connection regularly.

As per my conversation on Friday of last week, please find my electronic responses to the complaint made against me. Please note that I have ask Cllr Nick Sandford to attend as a witness and/or constitutional adviser.

Also, I will be attending the meeting and reiterate my desire that the meeting should be held in public.

FORM A

1.2 – The report states:

On 12th December 2009 an item was published in the 'gossip' section of the Peterborough Liberal Democrat website as follows:

(12/12/09) Insiders at the Town Hall have claimed that the City Councils Standards Committee recently decided NOT to take any further action against Cllr Goldspink, following an allegation by a City Council employee, who is said to have claimed that he spoken to her as if she were something to be found on his shoe!

MY RESPONSE:

If I had uploaded the information I would have used the exact terminology of the report. However, as requested I returned my copy accordingly.

3.2 - I once again, ask that the committee members are reminded of this fact:

'everyone has the right to seek, receive and impart information and ideas through any media and regardless of frontiers' - taken from the United Nations Universal Declaration of Human Rights 1948. Article 19.

3.2 – States: Councillor Fower agreed he was involved with the Liberal Democrat website.

MY RESPONSE:

In so much that I am a paid up member of the local Liberal Democrats and articles have been published relating to the work I do or on thoughts and opinions I have made on matters relating to the Council and Peterborough.

4.2 – There is no evidence for this and therefore I do not believe the committee should be considering this. You cannot you if buts and maybes as formal acusations!

FORM B

Other Evidence relevant to the complaint

1. Only through this investigation have I discovered that I am presently held as the websites “owner”. I have now asked for this to be changed an attributed to the local executive, as it is them that makes use of it, who pay for it and in all senses “own” it.
2. It is my understanding that once a complaint was made via the website, the entry was removed?
3. Having spoken with the website manager, I have discovered that the Gossip section of the website and the entrants on the aforementioned page, are not fixed by dates, therefore, it is perfectly feasible for the entry in question to have inadvertently been attributed the wrong date during upload, i.e. we could put a piece of gossip on today and put a date of 9th December 2009 next to it. Given that the complaint came after the formal public publication of the decision etc I believe therefore that the committee should be made aware of these factors.

Cllr Darren Fower

Website: <http://darrenfower.mycouncillor.org.uk/>

Leader of the Liberal Democrat Council Group

Ward: South Werrington and North Gunthorpe

Ward Website: www.facebook.com/SWNG.FOCUS.Team

Mob: 07961 849 110

Tel: 01733 705637

Work: 01733 421 314

Party Website: www.peterboroughlibdems.org.uk

STANDARDS COMMITTEE DETERMINATIONS

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introduction

This guidance is designed to help members and officers in relevant authorities who are involved in the determination of complaints that a member may have breached the Code of Conduct. It reflects the Standards Committee (England) Regulations 2008 (the regulations). These regulations are mandatory and this guidance must be taken into account by your authority.

It details each stage of the determination of complaints process and offers suggestions for effective practice. In addition, it provides a toolkit of useful document templates that may be used or adapted by authorities as required.

The guide is aimed primarily at members of standards committees and monitoring officers, but will also provide a useful reference tool for all members and officers involved in the determination of complaints.

It applies to:

- district, unitary, metropolitan, county and London borough councils
- English police authorities
- fire and rescue authorities (including fire and civil defence authorities)
- the London Fire and Emergency Planning Authority
- passenger transport authorities
- the Broads Authority
- national park authorities
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

Each authority must develop effective procedures to fulfil its legislative requirements. Members and officers involved in the determination of complaints must take this guidance into account when doing so.

Any reference in this guidance to a standards committee includes a reference to sub-committees established to consider a monitoring officer's investigation report and to consider determination hearings. Any reference to the "subject member" is a reference to the member who is the subject of the complaint that the Code of Conduct may have been breached.

introduction

You can contact the Standards Board for England on **0845 078 8181** or email **enquiries@standardsboard.gov.uk**
Regulations

The Standards Board for England has issued this guidance to reflect the Standards Committee (England) Regulations 2008 (the regulations) in respect of holding determination hearings. These regulations derive from the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007.

The regulations set out the framework for the operation of a locally based system for the assessment, referral, investigation and hearing of complaints of member misconduct. Under the regulations, standards committees must take this guidance into account.

The regulations do not cover joint working between authorities. The government plans to issue further regulations to provide a framework for authorities to work jointly on the assessment, referral, investigation and hearing of complaints of misconduct by their members.

Background

The main purpose of the standards committee's determination hearing is to decide whether a member has breached the Code of Conduct and, if so, to decide if a sanction should be applied and what form the sanction should take. All complaints that a member may have breached the Code are assessed by the relevant authority's standards committee.

The standards committee must establish a sub-committee (the assessment sub-committee) which is responsible for assessing complaints that a member may have breached the Code. A complainant may make a request for a review of the standards committee's decision where it decides to take no further action on a complaint. The standards committee must establish a review sub-committee which is responsible for carrying out these reviews.

The standards committee should appoint a sub-committee (the consideration and hearing sub-committee) to consider a monitoring officer's investigation report and to hold determination hearings. This sub-committee must be chaired by an independent member of the standards committee.

On completion of an investigation the monitoring officer must make one of the following findings:

- There has been a failure to comply with the Code.
- There has not been a failure to comply with the Code.

They must write an investigation report and send a copy of it to the subject member. Alternatively, where a Standards Board ethical standards officer has completed an investigation and decided that a complaint should be determined by the standards committee, they will refer their report to the monitoring officer.

The monitoring officer must refer the report to the standards committee. A consideration and hearing sub-committee

consideration meetings

should be appointed to receive and consider such reports.

If the investigator, in their report, finds no failure to comply with the Code of Conduct, the standards committee must decide whether to accept that recommendation. The standards committee must also decide whether it or the First-tier Tribunal should hear the case. This preliminary decision must be formally made and recorded.

A meeting of the standards committee to consider the monitoring officer's investigation report must be convened under Regulation 17 of the regulations. Regulation 8(6) allows the consideration of any information presented for that purpose to be considered as exempt information.

As with all exempt information decisions, the standards committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. When advising on this matter the monitoring officer should consider the effect of Regulation 17(4). This regulation allows the subject member to prohibit the publication of a notice, stating that the standards committee has found that there has been no failure to comply with the Code.

Despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a meeting. It also does not always have to result in excluding details of the complaint

from the report sent out in advance of the meeting. In most cases, the public interest in transparent decision-making by the standards committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has not yet been determined.

A member of the standards committee who considers and overturns a monitoring officer's finding that there has been no failure to comply with the Code may participate in a subsequent hearing.

This meeting to consider the monitoring officer's investigation report provides a useful opportunity for the standards committee to consider the potential issues which might arise during the pre-hearing process.

This consideration meeting is separate to the meeting at which the hearing is conducted. If the investigation report finds that there has been a failure to comply with the Code a hearing must take place – unless the standards committee decides that the matter should be referred to the First-tier Tribunal for determination.

hearings

Timing of the standards committee hearing

Under Regulation 18 of the regulations, a standards committee must hear a complaint within three months of the date on which the monitoring officer's report was completed. If the investigation was carried out by an ethical standards officer, the standards committee must hear the complaint within three months of the date that the monitoring officer received the ethical standards officer's report.

As with a meeting to consider a monitoring officer or ethical standards officer's report, when the standards committee is convened for a hearing under Regulation 18 it is also subject to Regulation 8(6).

When assessing whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information, monitoring officers similarly need to consider the effect of Regulation 20(2). This allows the subject member to prohibit normal publication of the committee's notice of the finding of no failure to comply with the Code of Conduct.

As before, despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a hearing. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the hearing. In most cases, the public interest in transparent decision-making by the standards committee will outweigh the subject member's interest in

limiting publication of an unproven allegation that has not yet been determined.

In most cases all parties will agree that the hearing should take place in public. It is sensible to seek the views of the relevant parties as early as possible to allow for legal advice to be sought if required.

If the standards committee decides that a hearing is appropriate they should give a copy of the report to:

- the subject member
- the clerk of any relevant town or parish council
- the standards committees of any other authorities concerned

The hearing must take place at least 14 days after the subject member receives a copy of the report from the monitoring officer. However, the hearing can be held sooner than 14 days after the member receives a copy of the report if the subject member agrees.

The standards committee may consider the report in the subject member's absence if the subject member does not go to the hearing. If the standards committee is satisfied with the subject member's reasons for not being able to come to the hearing, it should arrange for the hearing to be held on another date.

If the standards committee does not hear the matter within three months of receiving the completed report, it must ensure that the matter is heard as soon as possible after that.

hearings

Scheduling a hearing

Except in the most complicated cases, standards committees should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

When scheduling hearings, standards committees should bear in mind that late-night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to important matters being forgotten.

The pre-hearing process

The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself.

Other than in very straightforward cases, authorities should use a pre-hearing process to:

- identify whether the subject 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

The pre-hearing process should usually be carried out in writing. However, occasionally a meeting between the standards committee, the relevant parties and their representatives may be necessary. It is important for the monitoring officer advising the standards committee to consider pre-hearing matters carefully.

Some matters in the pre-hearing process may be decided only by the standards committee or consideration and hearing sub-committee (if one is appointed). Therefore, if it is necessary for the standards committee to meet, they will have to do so formally as with any other council committee meeting. However, it is usually more appropriate for the majority of the pre-hearing process to be dealt with by the monitoring officer or other suitable officer.

Key points for the pre-hearing process

The officer providing administrative support to the standards committee should write to the subject member proposing a date for the hearing, and they should do this in consultation with the chair of the standards committee.

hearings

They should also outline the hearing procedure, the member's rights and they should additionally ask for a written response from the subject member within a set time. This is to find out whether the subject member:

- wants to be represented at the hearing by a solicitor, barrister or any other person
- disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements
- wants to give evidence to the standards committee, either verbally or in writing
- wants to call relevant witnesses to give evidence to the standards committee
- wants any part of the hearing to be held in private
- wants any part of the investigation report or other relevant documents to be withheld from the public
- can attend the hearing

It is important for standards committee members involved in the pre-hearing process to bear in mind the distinction between the essential facts of the case and any inferences based on those facts. A critical part of the pre-hearing process should be an attempt to focus the relevant parties' attention on isolating all relevant disputes of facts between them.

This is because attention to the factual issues will save valuable time later on in the determination process.

The standards committee should start this process by requesting that the subject member makes clear precisely what findings of fact in the report it disagrees with and why.

It should invite the monitoring officer or ethical standards officer to comment on the subject member's response within a set time period. This is to ensure that all parties are clear about the remaining factual disputes and can prepare to deal with those issues on the appointed day.

The standards committee should also ask the relevant parties to provide outlines or statements of the evidence their witnesses intend to give. This will allow the standards committee to decide how many witnesses may reasonably be needed and to identify the issues they will be dealing with at the hearing.

It should only allow the relevant parties to raise new disagreements over factual matters in the investigation report at the hearing in exceptional circumstances, such as new evidence becoming available that the parties could not have produced before. The standards committee should make clear to the subject member that unless they comply with the above procedure, it may rule that it will not allow the new evidence to be presented at the hearing.

hearings

Members of the standards committee should consider the evidence provided to them before the hearing to identify any potential conflicts of interest.

In addition they should consider the evidence to identify any connection with the people involved or any other doubts they have over the integrity of the hearing. If they have such concerns, they should seek advice from the monitoring officer as soon as possible. For example, they may know a witness who will be giving controversial evidence or they may have an interest in an important element of the case.

The determinations toolkit features model forms that can help the member respond to the standards committee. It includes a form to identify any findings of fact that the member disagrees with – **Form A**. It also includes a form to outline any further evidence for the standards committee – **Form B**.

The standards committee may also arrange for any other witnesses to be present who they feel may help in determining the case. This may include the complainant. However, the standards committee cannot order witnesses to appear or give evidence.

Pre-hearing process summary

The standards committee's clerk should consult with the committee's legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks before the hearing. This

should be done after the standards committee has received responses from the subject member and from the investigating officer. The pre-hearing process summary should:

- set the date, time and place for the hearing
- summarise the allegation
- outline the main facts of the case that are agreed
- outline the main facts which are not agreed
- note whether the subject member or investigating officer will go to the hearing or be represented at the hearing
- list those witnesses, if any, who will be asked to give evidence, subject to the power of the standards committee to make a ruling on this at the hearing
- outline the proposed procedure for the hearing

You can find a checklist for this pre-hearing process summary document in the toolkit – **Form F**.

hearings

The hearing

Members should bear in mind that a standards committee hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The standards committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings.

The standards committee should bear in mind the need to maintain public confidence in the council's ethical standards. This requires that the standards committee's decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the council and the public. For the subject member, an adverse decision by the committee can result in censure or in suspension for up to six months.

Representatives

The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. If the subject member concerned wants to have a non-legal representative, the subject member must obtain the consent of the standards committee.

The standards committee may choose to

withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Evidence

The standards committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the standards committee may not need to consider any evidence other than the investigation report or the ethical standards officer's report, and any other supporting documents.

However, the standards committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The standards committee can allow witnesses to be questioned and cross-examined by the subject member, the monitoring officer, the ethical standards officer or their representative. Alternatively, the standards committee can ask that these questions be directed through the chair. The standards committee can also question witnesses directly.

hearings

Witnesses

Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. The subject member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing.

The standards committee has the right to govern its own procedures as long as it acts fairly. For this reason, the standards committee may limit the number of witnesses if the number is unreasonable.

The standards committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be cross-examined. Witnesses as to the character of the subject member, if required, regularly present their evidence in writing and may or may not actually attend the hearing.

Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect. Authorities may wish to consider developing a witness care scheme. At the very least, witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

Standards committees should recognise that subject members also need to be kept fully apprised of the process and any changes to it. Some authorities appoint an officer as a point of contact with the subject member for the duration of the process.

Sanctions

If the standards committee finds that a subject member has failed to follow the Code of Conduct and that they should be sanctioned, it may impose any one or a combination of the following:

- censure of that member
- restriction for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions meet **both** the following requirements:
 - i) They are reasonable and proportionate to the nature of the breach.
 - ii) They do not unduly restrict the person's ability to perform the functions of a member.
- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)
- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)

hearings

- that the member submits a written apology in a form specified by the standards committee
- that the member undertakes such training as the standards committee specifies
- that the member participates in such conciliation as the standards committee specifies
- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met **either** of the following restrictions:
 - i) They have submitted a written apology in a form specified by the standards committee.
 - ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.
- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met **either** of the following restrictions:
 - i) They have submitted a written apology in a form specified by the standards committee.
 - ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.

Suspension or partial suspension will

normally start immediately after the standards committee has made its decision. However, if the standards committee chooses, the sanction may start at any time up to six months following its decision. This may be appropriate if the sanction would otherwise have little effect on the subject member. For example, in the case of a suspension or partial suspension where there are no authority or committee meetings which the subject member would normally go to in the period after the hearing has finished. The standards committee should also confirm the consequences, if any, for any allowances the subject member may be receiving.

Periods of suspension or partial suspension set by a standards committee do not count towards the six-month limit for absences from authority meetings, after which a member would normally be removed from office under section 85 of the Local Government Act 1972.

Considering the sanction

When deciding on a sanction, the standards committee should ensure that it is reasonable and proportionate to the subject member's behaviour. Before deciding what sanction to issue, the standards committee should consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention? Did the subject member know that they were failing to follow the Code of Conduct?

hearings

- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the subject member accept they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct?
- Has the subject member failed to follow the Code of Conduct before?
- Is the subject member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a subject

member has repeatedly or blatantly misused the authority's information technology resources, the standards committee may consider withdrawing those resources from the subject member.

Suspension may be appropriate for more serious cases, such as those involving:

- trying to gain an advantage or disadvantage for themselves or others
- dishonesty or breaches of trust
- bullying

Sanctions involving restricting access to an authority's premises or equipment should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

The following is an extract from useful guidance published by the First-tier Tribunal on aggravating and mitigating factors they take into account when assessing an appropriate sanction:



Examples, but not an exhaustive list, of mitigating factors are:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.

hearings

- A member's previous record of good service.
- Substantiated evidence that the member's actions have been affected by ill-health.
- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

“ **Examples, but again not an exhaustive list, of aggravating factors are:**

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

The First-tier Tribunal also advises the following:

“ In deciding what action to take, the Case Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Case Tribunal should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.

Case Tribunals should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. Any such tariff would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.

”

findings

Notice of the standards committee's findings

The standards committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people's memories fade. The officer providing administrative support to the standards committee will normally also draft minutes of the meeting.

The standards committee must give its full written decision to the relevant parties as soon as possible after the hearing. In most cases this should be within two weeks of the hearing.

The relevant parties are:

- the subject member
- the complainant
- the standards committees of any other authorities concerned
- any parish or town councils concerned
- the Standards Board for England

Making the findings public

The standards committee must arrange for a summary of the decision and reasons for it to be published in at least one newspaper that is independent of the authorities concerned. The newspapers where the decision and reasons are published should be circulated in the area of the authorities involved. A summary of the decision may also be published on the website of any authorities concerned, and

in any other publication if the standards committee considers it appropriate.

If the standards committee finds that the subject member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding. In such cases, the subject member is also entitled to decide that no summary of the decision should be passed to local newspapers.

If the standards committee finds that the subject member failed to follow the Code but that no action is needed, the public summary must:

- say that the member failed to follow the Code, but that no action needs to be taken
- outline what happened
- give reasons for the standards committee's decision not to take any action
- state that the member may appeal against that finding

If the standards committee finds that a member failed to follow the Code and it imposed a sanction, the public summary must:

- say that the member failed to follow the Code
- outline what happened

findings

- explain what sanction has been imposed
- give reasons for the decision made by the standards committee
- state that the member may appeal against that finding

The standards committee's reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

Written decision format

For consistency and thoroughness, standards committees should use the following format for their full written decisions.

The front cover of the standards committee's full written decision should include the name of the:

- authority
- subject member
- complainant
- standards committee member who chaired the hearing
- standards committee members who took part in the hearing
- monitoring officer
- ethical standards officer who referred the matter (if applicable)
- local investigator who investigated the matter (if applicable)
- clerk of the hearing or other administrative officer

It should also include:

- case reference numbers from the principal authority and from the Standards Board for England, (if applicable)
- the date of the hearing
- the date of the report

The standards committee's full written decision should include:

- a summary of the complaint
- the relevant section or sections of the Code of Conduct
- a summary of the evidence considered and representations made
- the findings of fact, including the reasons for them
- the finding as to whether the member failed to follow the Code, including the reasons for that finding
- the sanctions imposed, if any, including the reasons for any sanctions
- the right to appeal.

suspensions

The Local Government Act 2000 enables the First-tier Tribunal and standards committees to suspend and partially suspend members found to be in breach of the Code of Conduct. But, it does not specify exactly what members can and cannot do in their official capacity during the term of suspension.

This has led to confusion in some authorities as to what representative roles, if any, a suspended member can perform. It has also led to confusion over what council facilities they are allowed to use and what entitlements they can continue to receive as a suspended member. This section clarifies what representative roles, if any, a suspended member can perform.

Full suspensions

Members under full suspension should not:

1) Take part in any formal business of the authority

A member who is fully suspended may not exercise any of the functions or responsibilities of membership of the authority. Section 83(9) of the Local Government Act 2000 further provides that a suspended member should not participate in any committee or sub-committee of the authority.

2) Have access to council facilities

Suspended members should not use or have access to council facilities. As the member is under suspension and

unable to conduct council business, it follows that any use of council facilities by a suspended member would not be conducive to the discharge of the functions of the authority. This is because the member would not be performing council business while suspended.

3) Receive their council allowance

Under Regulation 4(3) of the Local Authorities (Members Allowances) Regulations 2003, councils may specify in their member allowance schemes that:

“Where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with part III of the Local Government Act 2000 or regulations made under that Part, the part of basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority.”

It is recommended that members should not receive their allowance while under suspension because they are not performing their role as a member. But, the decision to withhold a member's allowance is ultimately at the discretion of the individual authority.

suspensions

Members under suspension, should:

1) **Make their suspended status clear**

While suspended members remain councillors, they should put 'suspended' after their name when referring to themselves in writing as members. They should also notify constituents of this when contacted by them on constituency business. This is to ensure that all concerned are aware that the member is under suspension and unable to perform council duties.

2) **Make arrangements for another member to handle their constituency work**

With help from their council officers, suspended members can arrange for other ward members to handle their constituency work. Or, in the case of a single-member ward, suspended members can arrange for neighbouring ward members to take over their constituency work for the duration of the suspension. This ensures that constituents continue to be democratically represented.

What responsibilities remain for suspended members?

The Code of Conduct does not apply to a person who has been suspended in respect of a relevant function of office for a relevant period of time, so long as the member makes it clear that they have been suspended and does not purport to act as a representative of their authority.

However, when amendments to section 52 of the Local Government Act 2000 come into effect, three paragraphs under the Code of Conduct will apply, "at any other time, where that conduct constitutes a criminal offence". As such, these paragraphs will still apply to members who are suspended. These paragraphs will be:

- paragraph 3(2)(c) – intimidation of certain persons in relation to an allegation under the Code of Conduct
- paragraph 5 – disrepute
- paragraph 6(a) – improperly conferring or securing an advantage or disadvantage

Partial suspensions

Members can be partially suspended under sections 83(9) and (10) of the Local Government Act 2000. While members who are fully suspended cannot take part in any formal business of the authority during the period of suspension, members who are partially suspended are restricted only from certain activities or business.

The terms of a partial suspension must be set by the standards committee during sentencing. It will often involve suspension from certain committees, or restricted access to certain areas or individuals.

A partial suspension enables the committee to tailor a sanction to the particular breach, while still allowing the member to carry out other functions. For instance, a member who failed to uphold

suspensions

the Code of Conduct at a planning committee could be suspended from taking part in planning committee meetings for a certain period. Or a member who bullied licensing officers about an application might be barred from contact with officers of the licensing department for a certain period. Again we recommend that members should not receive allowances relating to areas in which they are suspended from for the duration of their suspension.

Officers and members of the authority should be informed of a member's suspension and advised of the suspended member's rights and obligations, as detailed earlier. The council should also help the member make arrangements for another member, either from their ward or a neighbouring ward, to take over constituency work.

It may also notify the public in the authority's area that the member is suspended and unable to perform official council duties until the end of the suspension. Once the suspension has ended, the member is free to resume their duties in full as a member of the authority.

appeals

Appeal to the First-tier Tribunal

Where a standards committee decides that a member has failed to comply with the Code of Conduct, the member may within 28 days of being notified of that decision, seek permission to appeal to the First Tier Tribunal and if appropriate, apply to the First-tier Tribunal for the suspension of any sanction imposed until such time as any appeal is determined.

In deciding whether to give permission to appeal, the First-tier Tribunal will consider whether, in its opinion, there is a reasonable prospect of the appeal being successful (either in whole or in part).

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.

References to the First-tier Tribunal for action in respect of misconduct

An Ethical Standards Officer may refer the matters which are subject to the investigation to the First-tier Tribunal for adjudication.

A standards committee may refer a case to the First-Tier Tribunal for determination where it considers that the action it could take against a member is insufficient and the First-tier Tribunal agrees to accept the referral.

Appeals to the Upper Tribunal

Member appeal - Where the First-tier Tribunal decides that a member has failed to comply with the Code of Conduct, the member may, within 28 days of being notified of that decision seek permission to appeal against that decision to the Upper Tribunal (Administrative Appeals Chamber). The member must first apply to the First-tier Tribunal for permission to appeal.

Appeal by Others- Either party can seek to appeal the decision of the First-tier Tribunal to the Upper Tribunal (Administrative Appeals Chamber) if they can show there was an error of law made in that decision. The party wishing to appeal must first apply to the First-tier Tribunal for permission to appeal. This must be made in writing within 28 days after the First-tier Tribunal has sent written reasons for its decision.

On receiving an application for permission to appeal the First-tier Tribunal may decide to review its decision, if it is satisfied there was an error of law. If the First-tier Tribunal decides not to review its decision, it will then consider whether to give permission to appeal the decision to the Upper Tribunal.

appeals

If the First-tier Tribunal refuses permission to appeal to the Upper Tribunal the party has a right to make an application directly to the Upper Tribunal for permission to appeal no later than a month after receiving that refusal decision.

Additionally, where the First-tier Tribunal decides that a member has failed to comply with the Code of Conduct, the member may also within 28 days of being notified of that decision seek permission to appeal against the finding of failure to comply with a code of conduct or the imposition of any sanction. Again the member must first apply to the First-tier Tribunal for permission to appeal.

costs

Members are responsible for meeting the cost of any representation at a standards committee hearing or tribunal. Local authorities are able to take out insurance to cover this.

However, most insurance schemes will only cover the costs incurred by members who are found not to be in breach of the Code. Therefore members are advised to refer to the terms of their own insurance scheme.

The First-tier Tribunal has the power to make an order for costs if the Tribunal considers that a **party** has acted unreasonably in bringing, defending or conducting the proceedings. It may make an order for costs following an application or on its own initiative.

The First-tier Tribunal may also order any **legal or other representative** to meet any wasted costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of that legal or other representative in bringing, defending or conducting proceedings.

role of the monitoring officer

Monitoring officers need to be aware of the potential conflicts involved in advising the standards committee and advising members.

It is important that standards committees receive high quality, independent advice. For this reason a monitoring officer should be the main adviser to the standards committee, unless they have an interest in the matter that would prevent them from performing this role independently. If this situation arises, a monitoring officer should arrange for another appropriately qualified officer to advise the standards committee.

The monitoring officer or other legal adviser's role in advising the standards committee is to:

- make sure that members of the standards committee understand their powers and procedures
- make sure that the determination procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible
- make sure that the subject member understands the procedures the standards committee will follow
- provide advice to the standards committee during the hearing and their deliberations
- help the standards committee produce a written decision and a summary of that decision

Monitoring officers play an important role in advising their members on a day-to-day basis. When performing this role, monitoring officers need to be aware of the potential conflicts of interest that can arise, as these conflicts could prevent them from advising the standards committee at a later stage.

However, conflicts of interest are not likely to arise simply from informal discussions between members and monitoring officers. Monitoring officers consider options for reducing the likelihood of such conflicts, including:

- arranging for another officer to advise members
- continuing to advise members, while identifying possible scenarios that may lead to future conflicts. They should also ensure that if their advice could be relevant to an investigation, they have another appropriately experienced officer who is prepared to support the standards committee in its hearings and deliberations.

Smaller authorities in particular may find it useful to make arrangements with neighbouring authorities to make sure that when a conflict arises, an appropriately experienced officer is available to advise the standards committee.

appendix 1

Model documentation for the pre-hearing process

Authorities should use a pre-hearing process to:

- Identify whether the subject member disagrees with any findings of fact in the investigation report.
- Decide whether those disagreements are significant to the hearing.
- Decide whether to hear evidence about those disagreements during the hearing.
- Decide whether there are any parts of the hearings that should 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.

Below is a checklist for authorities to use before the hearing. At the end of Appendix 1 is model documentation to support it. The documentation is intended to give authorities a consistent approach to help them decide what the relevant issues are before the hearing itself. It is not compulsory.

Pre-hearing process checklist for authorities

The monitoring officer must give a copy of the investigation report to the subject member.

The officer providing administrative support to the committee, in consultation with the chair of the committee, should:

- provide a copy of the standards committee's pre-hearing and hearing procedures to the subject member
- outline the subject member's rights and responsibilities
- propose a date for the hearing
- ask for a written response from the subject member by a set time to find out whether they:
 - i) disagree with any of the findings of fact in the investigation report, including the reasons for disagreement
 - ii) want to be represented at the hearing by a solicitor, barrister or any other person. This should be done while noting that the standards committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined

appendix 1

- iii) want to give evidence to the standards committee, either verbally or in writing
 - iv) want to call relevant witnesses to give evidence to the standards committee
 - v) can attend the hearing on the proposed date
 - vi) want any part of the hearing to be held in private
 - vii) want any part of the investigation report or other relevant documents to be withheld from the public
- send a copy of the subject member's response to the monitoring officer or ethical standards officer and invite the monitoring officer or ethical standards officer to say by a set time whether they want:
 - i) to be represented at the hearing
 - ii) to call relevant witnesses to give evidence to the standards committee
 - iii) any part of the hearing to be held in private
 - iv) any part of the investigation report or other relevant documents to be withheld from the public
 - v) to invite any other witnesses the committee feels are appropriate
- The chair of the committee, in consultation with the legal adviser to the committee, should then:
- confirm a date, time and place for the hearing
 - confirm the main facts of the case that are agreed
 - confirm the main facts which are not agreed
 - confirm which witnesses will give evidence
 - outline the proposed procedure for the hearing
 - provide this information to everyone involved in the hearing at least two weeks before the proposed date of the hearing

appendix 1

Checklist for members

The officer providing administrative support to the committee, in consultation with the chair of the committee, should make sure that the subject member is aware of the following points.

Pre-hearing process

The subject member has the right to:

- go to the hearing and present their case
- call a reasonable number of witnesses to give relevant evidence to the standards committee
- be represented at the hearing by a solicitor, barrister or any other person.
Note – the committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined

Any disagreements with the finding of facts in the investigation report must be raised during the pre-hearing process. The standards committee will not consider any new disagreements about the report's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.

The subject member does not have to go to the hearing or be represented. If the subject member chooses not to go to the hearing, the committee may make a determination in their absence.

The hearing will be held in public and the relevant papers will be available for public inspection unless the standards committee is persuaded that there is a good reason to exclude the public. This is in line with the relevant access to information and human rights legislation.

Hearing process

After considering the written and verbal presentations, the standards committee will reach and announce its findings of fact, whether the subject member has failed to follow the Code of Conduct and whether a sanction should be applied. As well as announcing its decision at the hearing and providing a short written decision on the day of the hearing, the standards committee will give the member concerned its full written decision within two weeks of the end of the hearing.

If the standards committee decides that the member has failed to follow the Code and that the member should be sanctioned, it may do any one or a combination of the following:

- Censure the member. This is the only sanction available when dealing with a person who is no longer a member of the authority.
- Restrict the member's access to the resources of the relevant authority for up to six months, which could include limiting their access to the premises of the relevant authority.

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- Suspend or partly suspend the member for up to six months.
- Suspend or partly suspend the member for up to six months on the condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the standards committee orders them to. Conciliation involves an independent person helping the relevant people to try to reach an agreement on the matter set out by the standards committee.

Sanctions may start immediately or up to six months after the hearing, if the standards committee wishes.

The standards committee will also arrange to publish a summary of its findings and any sanction applied in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities. If the standards committee finds that the member has not broken the Code, the member can ask the standards committee not to have this information published.

The member who is the subject of a standards committee finding has the right to apply in writing to the President of the First-tier Tribunal for permission to appeal against that finding.

Checklist for the pre-hearing process summary

After the standards committee has received responses from the subject member and the monitoring officer or ethical standards officer, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:

- the name of the authority
- the name of the subject member
- the name of the complainant (unless there are good reasons to keep their identity confidential)
- case reference numbers of the principal authority or the Standards Board for England
- the name of the standards committee member who will chair the hearing
- the name of the monitoring officer
- the name of the ethical standards officer who referred the matter (if applicable)
- the name of the clerk of the hearing or other administrative officer
- the date the pre-hearing process summary was produced
- the date, time and place of the hearing

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- a summary of the complaint
- 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 subject member or the monitoring officer or ethical standards officer will attend or be represented
- the names of any witnesses who will be asked to give evidence
- an outline of the proposed procedure for the hearing

Pre-hearing process forms

These forms are a guide only and can be found in the **Standards committee determinations toolkit**. Authorities should prepare their own forms as appropriate.

Form A provides an example table to help the subject member identify any disagreements about the findings of fact in the investigation report.

Form B helps the subject member set out any other evidence that is relevant to the complaint made about them.

Form C helps the subject member set out any representations the standards committee should take account of if the subject member is found to have broken the Code of Conduct.

Forms D and E cover details of the hearing and the witnesses who will give evidence.

Also included is **Form F** which is a checklist of details for the pre-hearing process summary.

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Model hearing procedures for the standards committee

The model hearing procedures below aim to give standards committees a consistent approach to determining matters locally. These procedures are not compulsory, but authorities should make sure that any procedures they do use are consistent with the principles in this guidance.

Standards committees need to have an efficient and effective hearing process. This will help committees deal with all the issues that need to be resolved in a way that is fair to the member. It will also reduce the prospects of any successful appeal.

The model procedure below is intended to give standards committees a consistent approach to determining matters locally.

The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

Interpretation

- 1) 'Subject member' means the member of the authority who is the subject of the allegation being considered by the standards committee, unless stated otherwise. It also includes the member's nominated representative.
- 2) 'Investigator' means the monitoring officer or ethical standards officer and includes their nominated representative.

- 3) 'Committee' also refers to a sub-committee.
- 4) 'Legal adviser' means the officer responsible for providing legal advice to the standards committee. This may be the monitoring officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

- 5) The subject member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

Legal advice

- 6) 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 subject member and the investigator if they are present.

Setting the scene

- 7) After all the members and everyone involved have been formally introduced, the chair should explain how the committee is going to run the hearing.

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Preliminary procedural issues

- 8) 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.

Making findings of fact

- 9) 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 investigator's report.
- 10) If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.
- 11) If there is a disagreement, the investigator, 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 investigator may call any necessary supporting witnesses to give evidence. The committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.
- 12) The subject 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.

- 13) At any time, the committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.

- 14) If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

- 15) If the subject member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator 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, the committee may then:

- continue with the hearing, relying on the information in the investigator's report
- allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary

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- postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already

- 16) The committee will usually move to another room to consider the representations and evidence in private.
- 17) On their return, the chair will announce the committee's findings of fact.

Did the subject member fail to follow the Code of Conduct?

- 18) The committee then needs to consider whether, based on the facts it has found, the subject member has failed to follow the Code.
- 19) The subject member should be invited to give relevant reasons why the committee should decide that they have not failed to follow the Code.
- 20) The committee should then consider any verbal or written representations from the investigator.
- 21) The committee may, at any time, question anyone involved on any point they raise on their representations.
- 22) The subject member should be invited to make any final relevant points.
- 23) The committee will then move to another room to consider the representations.

- 24) On their return, the chair will announce the committee's decision as to whether the subject member has failed to follow the Code.

If the subject member has not failed to follow the Code of Conduct

- 25) If the committee decides that the subject member has not failed to follow the Code, the committee can move on to consider whether it should make any recommendations to the authority.

If the subject member has failed to follow the Code of Conduct

- 26) If the committee decides that the subject member has failed to follow the Code, it will consider any verbal or written representations from the investigator and the subject member as to:
- whether the committee should apply a sanction
 - what form any sanction should take
- 27) The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 28) The committee will then deliberate in private to consider whether to impose a sanction on the subject member and, if so, what sanction it should be.

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- 29) On their return, the chair will announce the committee's decision.

Recommendations to the authority

- 30) After considering any verbal or written representations from the investigator, 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

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. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

appendix 3

Categories of exempt information under Schedule 12A of the Local Government Act 1972 (as modified in relation to local determinations by standards committees) are:

- 1) Information relating to any individual.
- 2) Information which is likely to reveal the identity of an individual.
- 3) Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4) Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a minister of the Crown and employees of, or office holders under, the authority.
- 5) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6) Information which reveals that the authority proposes:
 - to give under any enactment a notice under or by virtue of which requirements are imposed on a person
 - to make an order or direction under any enactment
- 7) Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
 - 7A) Information which is subject to any obligation of confidentiality.
 - 7B) Information which relates in any way to matters concerning national security.
 - 7C) Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.

Source: Appendix 3 is an extract from the Local Government Act 1972 (as modified in relation to local determination by standards committee).

notes