

## Sevenoaks District Council

### **Procedure for local determination of allegations about the personal conduct of Council Members.**

#### Introduction

(1) The local determination of complaints by the Standards Committee of Sevenoaks District Council, where the investigation has been completed by an Ethical Standards Officer (ESO) of the Standards Board for England, will be governed by this procedure.

(2) The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member.

#### Appointment of Reporting Officer

(3) Upon receipt of the ESO's report, the Monitoring Officer will appoint a Reporting Officer to take conduct of the matter and to arrange for the Standards Committee to consider the report to determine the matter. The Reporting Officer may be the Monitoring Officer, or any other appropriate officer from the Authority or from a neighbouring Authority.

(4) Where the Monitoring Officer takes on the role of the Reporting Officer, she must arrange for a separate Legal Advisor (the Legal Advisor) to the Standards Committee in respect of the allegation.

#### Notifying the Member and Complainant

(5) Within five working days of the receipt of the ESO's report by the Monitoring Officer, the Monitoring Officer shall send a copy of the report to the Member.

(6) At the same time the officer providing administrative support to the Committee, in consultation with the Chair of the Committee, shall write to the Member concerned to propose a date for the hearing, outline the hearing procedure and the Member's rights and ask for a written response from the Member, within fifteen working days, stating whether or not he/she: -

- ~ disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;
- ~ wants to be represented, at their own expense, at the hearing by a solicitor, barrister or any other person;
- ~ 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 ESO's report or other relevant documents to be withheld from the public; and
- ~ can come to the hearing.

(7) The Member should be informed that if, at the meeting of the Hearing Panel, he/she seeks to dispute any matter contained in the ESO's report, without having previously notified their intention to do so, the Hearing Panel may either adjourn the meeting to enable the Reporting Officer to provide a response, or refuse to allow the disputed matter to be raised, unless there are good reasons for hearing the disputed matter such as new evidence becoming available. The Member shall be made aware of matters set out in Appendix 1.

(8) Upon receipt, the Member's response shall be forwarded to the Reporting Officer, who shall invite the relevant ESO to comment, within fifteen working days, on the Member's response, to say whether or not he/she: -

- ~ wants to be represented at the hearing;
- ~ wants to call relevant witnesses to give evidence to the Hearing Panel;
- ~ wants any part of the hearing to be held in private;
- ~ wants any part of the ESO's report or other relevant documents to be withheld from the public.

(9) Upon receipt of the ESO's response, the Reporting Officer will forward the responses of the Member and the ESO to the Chair of the Hearing Panel.

(10) The Member, the ESO and the Reporting Officer are entitled to request that any witnesses they want should be called. However, the Chair of the Hearing Panel may limit the number of witnesses, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Hearing Panel to reach its decision.

(11) Nothing in this procedure shall limit the Chair of the Hearing Panel from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Hearing Panel to reach its decision.

(12) The Chair of the Hearing Panel, in consultation with the Legal Advisor will then:-

- ~ confirm a date, time and place for the hearing, which must be within three months from the date that the ESO's report was received;
- ~ confirm the main facts of the case that are agreed
- ~ confirm the main facts that are not agreed
- ~ confirm which witnesses will give evidence

- ~ outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private; and
- ~ provide this information, with the Agenda, to everyone involved in the hearing at least two weeks before the proposed date of the hearing.

#### The Hearing Panel

(13) All Members of the Standards Committee may take part in the hearing, if they so choose. However, the Standards Board recommend that a small number of Members take part in the determination (the Hearing Panel).

(14) The Hearing Panel shall be chaired by an independent Member selected by the Chair of the Standards Committee.

(15) The Hearing Panel shall be composed of members of the Standards Committee chosen by the Chair of the Hearing Panel.

(16) The Hearing Panel will be composed of five members in total with a minimum of one independent member and three elected members from different political parties and one Parish Councillor.

(17) Where a member of the Hearing Panel is unable to attend a meeting of the Panel the chair of the Standards Committee shall arrange for a substitute member of the Standards Committee to attend the meeting.

(18) The Hearing Panel shall decide, on the balance of probability, whether the grounds of the complaint are upheld. It shall do so by considering the ESO's report and, where appropriate, written or oral representations made by the Member or the Complainant.

(19) Each Hearing Panel member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. Abstentions shall not be permitted.

(20) The meeting of the Hearing Panel will be open to the public and press unless confidential information or exempt information under Schedule 12A of the Local Government Act 1972 and regulations is likely to be disclosed. See Appendix 2 and 3.

Procedure at Hearing

(21) The initial order of business at the meeting shall be as follows:-

- ~ Quorum for the Hearing Panel shall be three with at least one independent member and one Parish Council member;
- ~ declarations of interest;
- ~ consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present;
- ~ introductions;
- ~ any representation from the Reporting Officer and/or the Member as to reasons why the Hearing Panel should exclude the press and public.

(22) The purpose of the hearing is to test the robustness of the report of the investigation produced by the ESO, by examining the reasoning contained within the report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Hearing Panel based on seeking information in order to identify potential flaws in the report and to clarify issues. The Hearing Panel will control the procedure and evidence presented at the hearing, including the questioning of witnesses.

(23) The Hearing Panel may at any time seek legal advice from its Legal Advisor. Such advice will on all occasions be given in the presence of the Reporting Officer and the Member.

(24) The procedure at the hearing will be as follows, subject to the Chair of the Panel being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting.

- ~ Examination of report and written representations - The Panel will consider the ESO's report together with any written response from the Member to the report. The Panel may require the Reporting Officer to answer questions put to him or her by members of the Panel regarding the contents of the report.
- ~ Oral evidence - If there is any disagreement as to the facts of the case, the Reporting Officer will be invited to make any necessary representations to support the relevant findings of fact in the report, calling supporting witnesses as agreed by the Chair of the Panel.

Questions may be asked by the Panel at any time. Neither the Member, the Complainant nor any representative of either party will be permitted to directly question the Reporting Officer or the witnesses he/she calls. If the Member, the Complainant or any representative of either party wishes to challenge any oral evidence being presented, then these questions shall be directed through the Chair.

The Member will then be invited to make any necessary representations to support his or her version of the facts, calling supporting witnesses as agreed by the Chair of the Panel.

Questions may be asked by the Panel at any point. Neither the Reporting Officer, the Complainant nor any representative of either party will be permitted to directly question the Member or the witnesses he/she calls. If the Reporting Officer, the Complainant or any representative of either party wishes to challenge any oral evidence being presented, then these questions shall be directed through the Chair.

(25) Where the Members seeks to dispute any matter in the ESO's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Reporting Officer shall draw this to the attention of the Hearing Panel. The Hearing Panel may then decide:

- ~ not to admit such dispute but to proceed to a decision;
- ~ to admit the dispute, but to invite the Reporting Officer to respond;
- ~ to adjourn the meeting to enable the Reporting Officer to investigate and report on the dispute

(26) Where appropriate the Reporting Officer will make representations on behalf of the Complainant to the Hearing Panel.

(27) The Member should be invited to make any final relevant points.

#### Decision by the Hearing Panel

(28) The Hearing Panel will consider in private session which of the following findings to adopt:

- ~ That there is no evidence of any failure to comply with the Code of Conduct
- ~ That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken
- ~ That the Member has failed to comply with the Code of Conduct and should be:-
  - censured, or
  - restricted access to the premises and resources of the authority for a maximum period of three months (but ensuring that such restrictions will not unnecessarily restrict the Member's ability to carry out his/her responsibilities as an elected or co-opted member
  - suspended or partially suspended for a maximum period of three months; or

- suspended or partially suspended for a maximum period of three months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Hearing Panel

(29) The Hearing Panel will then return and the Chair will announce the decision of the Panel and the reasons for that decision.

(30) If the matter is a complicated one, where the complaint has a number of aspects, the Hearing Panel can decide to consider the evidence and reach a finding on each aspect separately.

#### Appeal

(31) Where the Hearing Panel determines that the Member has failed to comply with the Code of Conduct, the Member shall be informed of his or her right to appeal against the determination to an appeal tribunal drawn from the Adjudication Panel.

#### Notice of findings

(31) The Legal Advisor in consultation with the officer providing administrative support to the Standards Committee will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared by the following day.

(32) Within two weeks of the end of the hearing the officer providing administrative support to the Standards Committee will circulate the full written decision, in the format recommended by the Standards Board, to the Member, the Complainant, the ESO concerned, the Standards Committee of Sevenoaks District Council and any other authority concerned.

(33) At the same time the officer providing administrative support to the Standards Committee shall arrange for a summary of the findings to be published in two newspapers circulating in the area of the Authority and on the Council's web site.

(34) Where the Hearing Panel determines that there has not been a breach of the Code of Conduct, the notice specified in paragraph 32 shall:-

- ~ state that the Hearing Panel found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
- ~ not be published in local newspapers if the Member so requests.

(35) Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice specified in paragraph 32 shall:-

- ~ state that the Hearing Panel found that the Member has failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
- ~ specify the details of the failure;
- ~ give reasons for the decision reached; and

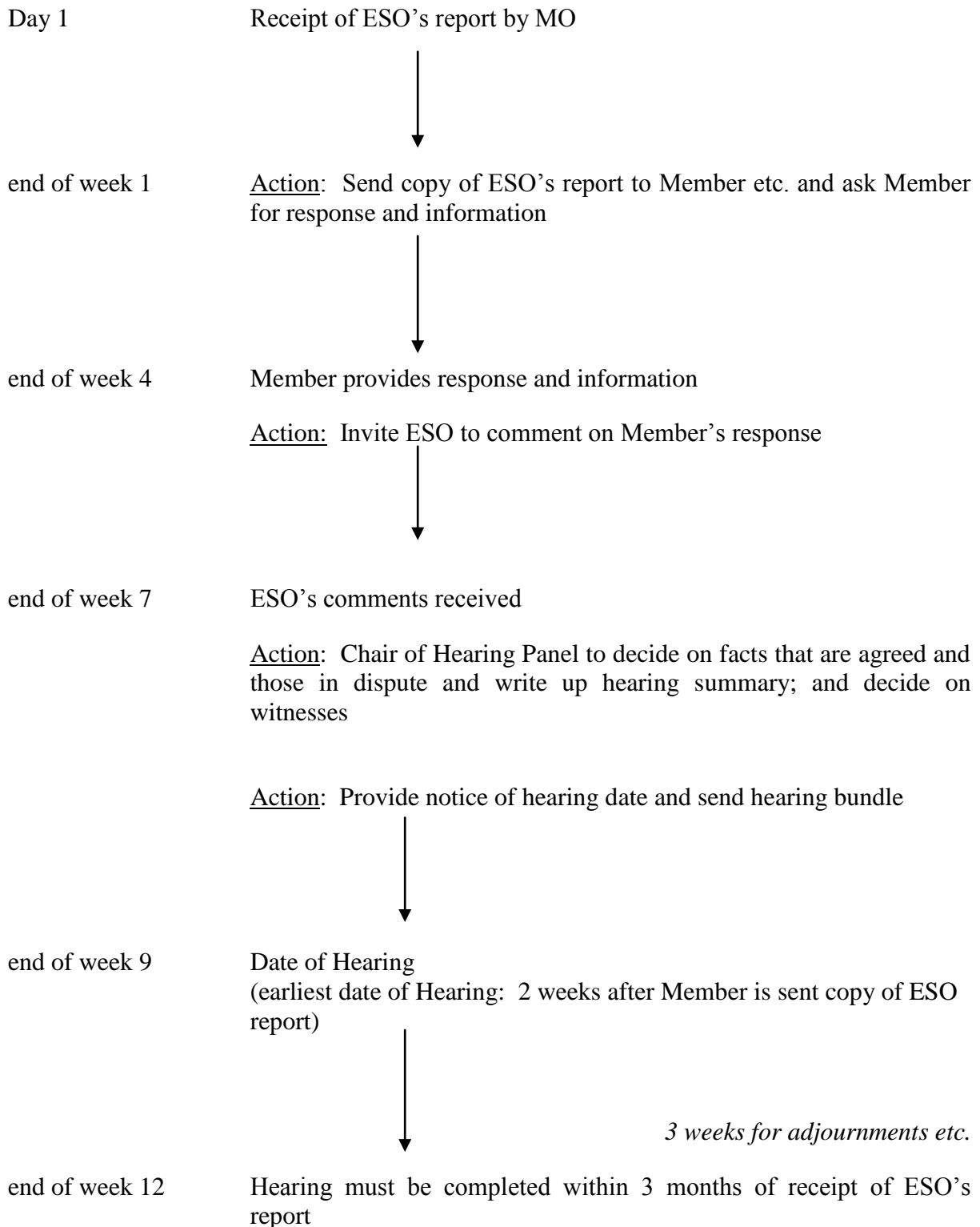
- ~ state that Member concerned may apply for permission to appeal against the determination.

(36) Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice specified in paragraph 32 shall:

- ~ state that the Hearing Panel found that the Member had failed to comply with the Code of Conduct;
- ~ specify the details of the failure;
- ~ give reasons for the decision reached;
- ~ specify the sanction imposed; and
- ~ state that the Member concerned may appeal for permission to appeal against the determination.

(37) Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for six years after the hearing.

Time Line for Local Adjudication Procedure





### Checklist for Members

The Officer providing administrative support to the Committee, in consultation with the Chair of the Committee, should make sure that the Member who the allegation has been made about is aware of the following points.

### **Pre-Hearing Process**

The Member concerned has the right to:-

- go to the hearing and present his or her case;
- call a reasonable number of witnesses to give relevant evidence to the Standards Committee; and
- be represented at the hearing by a solicitor, barrister or any other person, noting that 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 findings of fact in the ESO's report must be raised during the pre-hearing process. The Standards Committee will not consider new disagreements about the report's finding of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.

The Member does not have to go to the hearing or be represented. If the Member chooses not to go to the hearing, the Committee may make a determination in his or her 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 good reason to exclude the public, 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 or not the Member has failed to follow the Code of Conduct and whether or not the penalty should be set. 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 of Conduct and that the Member should be penalised, it may do any one or a combination of the following:-

- censure the Member. This is the only form of penalty 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 three months, which could include limiting his or her access to the premises of the relevant Authority;
- suspend or partly suspend the Member for up to three months; or
- suspend or partly suspend the Member for up to three 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 try to reach an agreement on the matter set out by the Standards Committee.

Penalties 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, reasons for its findings and any penalty set 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 Adjudication Panel for England for permission to appeal against that finding.

### **Pre-Hearing Process Forms**

Form A provides a table to help the Member identify any disagreements about the findings of fact in the ESO's report.

Form B helps the Member set out any other evidence that is relevant to the allegation.

Form C helps the Member set out any representations the Standards Committee should take account of if the 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.

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

**FORM A**

**Member's response to the evidence set out in the ESO's report**

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

Please attach separate sheets if necessary



**FORM B**

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

**Other evidence relevant to the allegation**

Paragraph number	Details of the evidence
1	
2	
3	
4	
5	

Please attach separate sheets if necessary

**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 or not to order any censure, restriction of resources or allowances, suspension or partial suspension.
1	
2	
3	
4	
5	

Please attach separate sheets if necessary

**Form D**

**Arrangements for the Standards Committee hearing**

Please tick the relevant boxes

1. The proposed date for the Standards Committee hearing is given in the accompanying letter. Are you planning to go to the hearing? If "No", please explain why.	Yes	Reason:
	<input type="checkbox"/>	
	No	
	<input type="checkbox"/>	
2. Are you going to present your own case	Yes	
	<input type="checkbox"/>	
	No	
	<input type="checkbox"/>	
3. If you are not presenting your own case, will a representative present it for you? If "Yes", please state the name of your representative	Yes	Name:
	<input type="checkbox"/>	
	No	
	<input type="checkbox"/>	
4. Is your representative a practising solicitor or barrister? If "Yes", please give his or her legal qualifications. Then go to question 6. If "No", please go to question 5.	Yes	Qualifications:
	<input type="checkbox"/>	
	No	
	<input type="checkbox"/>	
5. Does your representative have any connection with the case? If "Yes", please give details.	Yes	Details:
	<input type="checkbox"/>	
	No	
	<input type="checkbox"/>	
6. Are you going to call any witnesses? If "Yes", please fill in Form E.	Yes	
	<input type="checkbox"/>	
	No	
	<input type="checkbox"/>	

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

Please attach separate sheets if necessary.



**Form E**

**Details of proposed witnesses to be called**

<b>Name of witness or witnesses</b>	<b>1</b>	
	<b>2</b>	
	<b>3</b>	
<b>WITNESS 1</b> <b>A.</b> Will the witness give evidence about the allegation?  If "Yes", please provide an outline of the evidence the witness will give.	Yes	<b>Outline of evidence:</b>
	No	
<b>B.</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	<b>Outline of evidence:</b>
	No	
<b>WITNESS 2</b> <b>A.</b> Will the witness give evidence about the allegation?  If "Yes", please provide an outline of the evidence the witness will give.	Yes	<b>Outline of evidence:</b>
	No	
<b>B.</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	<b>Outline of evidence:</b>
	No	

<b>WITNESS 3</b> <b>A.</b> Will the witness give evidence about the allegation?  If “Yes”, please provide an outline of the evidence the witness will give.	Yes	<b>Outline of evidence:</b>
	No	
<b>B.</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	<b>Outline of evidence:</b>

Please attach separate sheets if necessary.

(2)

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

1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority.
2. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office holding or application to become an office-holder appointed by:
  - a. a magistrates' court committee;
  - b. a probation committee within the meaning of the *Probation Service Act 1993*; or
  - c. a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
- 2A. Information relating to a particular Chief Officer, former Chief Officer or applicant to become a Chief Officer of a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
3. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
4. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
5. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
6. Information relating to the adoption, care, fostering or education of any particular child.
7. Information relating to the financial or business affairs of any particular person (other than the authority).
8. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.
9. Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
10. The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.

**ITEM NO. 4 Appendix 1**

11. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.
12. Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:-
  - a. any legal proceedings by or against the authority; or
  - b. the determination of any matters, affecting the authority.

(whether in either case, proceedings have been commenced or are in contemplation).
13. Information which, if disclosed to the public, would reveal that the authority proposes:-
  - a. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - b. to make an order or direction under any enactment.
14. Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
15. The identity of a protected informant.
16. Information relating to the personal circumstances of any person.
17. Information which is subject to any obligation of confidentiality.
18. Information which relates in any way to matters concerning national security.
19. The deliberations of a Standards Committee or a sub-committee of a Standards Committee established under the provisions of Part III of the *Local Government Act 2000* in reaching any finding on a matter referred to under the provisions of section 64(2) or 71(2) of the *Local Government Act 2000*.

Excluding the public from hearings

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private.

1. At the hearing, the Committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the *Local Government Act 1972* (as modified in relation to local determinations by Standards Committees). If the Committee considers that “confidential information” is likely to be revealed during the hearing, the Committee must exclude the public by law. “Confidential information” is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
2. The Committee also has the power to exclude the public if it considers that “exempt information” is likely to be revealed during the hearing. The categories of “exempt information” are listed in Appendix 2. The Committee should act in line with Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The Committee also has a duty to act fairly and in line with the rules of natural justice.
3. Article 6 says that the public may be excluded from all or part of the hearing if it is in the interests of:-
  - a. morals;
  - b. public order;
  - c. justice;
  - d. national security in a democratic society; or
  - e. protecting young people under 18 and the private lives of anyone involved.
4. There should be a public hearing unless the Committee decides that there is good reason, which falls within one of the five categories above (3a to e), for the public to be excluded.
5. The Committee must also act in line with Article 10 of the *European Convention on Human Rights*, which sets out the right for people to “receive and impart information and ideas without interference by public authority”. Any restrictions on this right must be “prescribed by law and ... necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

**ITEM NO. 4 Appendix 1**

6. Conflicting rights often have to be balanced against each other. The Committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Committee) may interfere with this right unless it is:-
  - a. in line with the law; and
  - b. necessary in a democratic society in the interests of:-
    - i. national security;
    - ii. public safety;
    - iii. the economic well being of the country;
    - iv. preventing crime and disorder;
    - v. protecting people's health and morals (which would include protecting standards of behaviour in public life); or
    - vi. protecting people's rights and freedoms.

There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons the hearing should be held in public unless the Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

7. In relation to people's rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be "necessary in a democratic society". A measure will only be "necessary" if it meets "a pressing social need", and any restriction on people's rights must be "proportionate".
8. The Standards Board for England recommends that a Standards Committee should move to a private room when considering its decisions. We do not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.