Public business

**Guidance on preliminary investigation and provisional suspension of Council members**

**Purpose**
To consider the guidance on conducting preliminary investigations and provisional suspension of Council members whose conduct has been called into question.

**Recommendation**
The Council is asked to agree the draft guidance at Appendix 1.

**1.0 Introduction**

1.1 In February 2010, the Council designate agreed paper 02.10/C/10 on carrying out preliminary investigations on Council members prior to consideration of provisional suspension (decision ratified by the Council in April 2010). It was agreed that the remit and procedures of the Appointments Commission to act as agent for the Privy Council would be checked. It was also agreed that it would be appropriate to draft appropriate guidance on this subject for subsequent approval by the Council.

**2.0 Key Considerations**

2.1 The Appointments Commission has confirmed it does have a remit and procedures to act as agent for the Privy Council should it be necessary to consider suspending or removing a Council member but has not so far been called on to exercise this remit for any regulatory body. Any referrals to the Privy Council would therefore be made through the Appointments Commission for the time being.
2.2 Draft guidance on preliminary investigation and provisional suspension is at Appendix 1. The thrust of the guidance is to provide a practical framework to help the person carrying out the investigation, usually the Chair of Council, to reach a fair outcome as quickly as possible in the interests of natural justice.

3.0 **Equality and diversity implications**

3.1 Equality and diversity are promoted by having guidance on preliminary investigation and provisional suspension of Council members. Such guidance should help to minimise variations in process.

4.0 **Communications implications**

4.1 This guidance should be communicated whenever appropriate. Other than that there are no specific communications implications.

5.0 **Resource implications**

5.1 Having guidance within which to carry out preliminary investigations will conserve financial and human resources in that the subject will not have to be considered afresh if it occurs more than once.

6.0 **Risk implications**

6.1 Having guidance on the subject of preliminary investigation and provisional suspension of Council members should reduce the risks associated with the use of inappropriate procedures.

**Recommendation**

The Council is asked to agree the draft guidance at Appendix 1.

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Appendix 1

Guidance on carrying out preliminary investigation and provisional suspension of Council members

Scope of guidance

1.0 This guidance applies when a concern has been raised about a Council member’s behaviour. The guidance is intended to provide a practical framework to help the person carrying out the investigation, usually the Chair of Council. The Council has also agreed a paper on Raising Concerns (02.10/C/11). This contains a routing for concerns about Council members that encourages complainants to resolve complaints informally whenever possible and appropriate. This guidance is based on that process.

2.0 Any Council member who has a concern about a Council member should raise the matter with the Chair of Council unless the concern relates to the Chair or the Chair is absent or incapacitated. In this case the concern should be raised with the Chair of the Audit & Risk Committee.

Preliminary investigation

3.0 The Chair shall attempt informal resolution if appropriate eg. if a concern relates to the way in which two people are working together rather than a more serious allegation of improper conduct. At the Chair’s discretion, the Chair may investigate the allegation or appoint another person to investigate. The preliminary investigation would not be to make findings of fact: it would be to establish if there was an issue for the Privy Council to consider and, if so, whether provisional suspension might be appropriate. The Council member against whom the complaint has been made shall have the opportunity to hear the allegation against him or her and to make representations about it. The process should be concluded as soon as possible and it is expected that this will be within two weeks of the allegation being made unless, in the view of the Chair, further delay can be justified.

4.0 If the investigation indicates that there is a case for the Privy Council to consider regarding suspension or removal of the member, the Chair shall refer the matter to the Privy Council.

5.0 If it appears to the Chair that the concern raised does not warrant referral to the Privy Council but there has been other behaviour that it is appropriate to address to enable the proper functioning of the Council, and which has not been resolved by early informal action, the Chair may wish to discuss this further with the Council member concerned.

Provisional suspension

6.0 Paragraph 20 of the Council’s standing orders permits the Council to suspend a member provisionally if circumstances arise which may result in a member being suspended or removed from office by the Privy Council. This provision therefore applies if it has not been possible to resolve a concern informally, using the

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1 For ease of reference the word ‘Chair’ from now onwards in this document will refer to the Chair of the Audit & Risk Committee if he or she is the person conducting the investigation.
process set out in the paper Raising Concerns, and the matter has been referred to the Privy Council. Provisional suspension is a neutral, interim act taken when it is not considered appropriate for the Council member to exercise his or her role as a Council member and remains in place until the Privy Council has reached a decision on whether to suspend or remove the member concerned. Alternatively, the Council member may decide of their own accord not to take part in any Council activities until the Privy Council has reached a decision.

7.0 If at any time the Chair is of the view that it may be appropriate for the Council member to be suspended under paragraph 20 of the standing orders, the Chair shall refer the matter to the Council for a decision to be made. Para 5.3 of the standing orders allows Council meetings to be called at shorter notice than the usual seven clear days’ notice if required.

8.0 The Council member will be notified of the proposal to suspend and the grounds for it and be given an opportunity to state his or her case why suspension is not appropriate.

9.0 The Privy Council must also be notified of the provisional suspension as soon as reasonably practicable to enable the Privy Council to consider whether to suspend or remove the member. If the Privy Council decides not to suspend or remove the member, the Council must terminate its provisional suspension.

10.0 A Council member subject to provisional suspension from office under the Council's standing orders will continue to receive remuneration during the period of suspension. Similarly, a Council member who decides voluntarily to take no part in Council activities while the Privy Council is considering whether to suspend or remove him or her shall continue to receive remuneration while the Privy Council reaches its decision.