



Code of Conduct Complaints

Assessment, Investigations and Hearings Procedure Note

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Introduction

Section 28, Localism Act 2011

(6) A relevant authority other than a parish council must have in place—

- (a) arrangements under which allegations can be investigated, and
- (b) arrangements under which decisions on allegations can be made.

(7) Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
- (b) whose views may be sought—
 - (i) by the authority in relation to an allegation in circumstances not within paragraph (a),
 - (ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation ...

As required by the Localism Act, the Council must have in place arrangements under which allegations that an elected member or co-opted member of the Council has failed to comply with the Council's adopted Code of Conduct can be considered and decisions made on such allegations. It is for the Council to decide the details of those arrangements, but they must appoint at least one Independent Person whose views are to be taken into account before making a decision on a complaint that they have decided to investigate.

This procedure guide sets out the arrangements which the Council has adopted.

For the purposes of this procedure note, the word "councillor" is used to encompass the elected Mayor, an elected councillor or a co-opted member of the council who has voting rights.

Making a complaint

Complaints should be submitted to the Council's Monitoring Officer using the [Code of Conduct complaint form](#). This form ensures that the Monitoring Officer is provided with all the information they need to process the complaint and that your consent to share information has been obtained.

If the complainant requires assistance to complete the form, this can be obtained from [TO BE INSERTED].

The Monitoring Officer will not consider a complaint other than via the complaint form unless there are extenuating circumstances. If the complainant considers that there are extenuating circumstances then they can discuss this with [TBI].

If the complaint is being made on behalf of a number of individuals, one person should be nominated as the single point of contact to whom all correspondence will be addressed.

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days'

Disclosing the complainants identity

Requests from complainants to withhold their identity, so that they remain anonymous to the subject of the complaint, are only granted in exceptional circumstances. This is because the Monitoring Officer has to balance the right of the councillor to properly understand the complaint against them and respond to it.

Jurisdictional Assessment

Upon receipt of a complaint the Monitoring Officer will first establish whether the complaint passes the jurisdictional test.

Complaints will not pass the jurisdictional test if:

- The subject of the complaint is no longer a councillor or was not a councillor at the time of the alleged conduct;
- The complaint is made anonymously, unless there is a clear public interest in doing so and the Monitoring Officer considers that a fair investigation can be carried out;
- The same, or substantially the same, alleged conduct has been the subject of a previous Code of Conduct allegation and there is nothing further to be gained;
- The complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual councillor;
- The complaint does not relate to the conduct as a councillor;
- The complaint is a service complaint;
- The complaint is about conduct which is the subject of legal proceedings against the Council involving the complainant (for the avoidance of doubt in

this context legal proceedings means actual or contemplated legal proceedings or matters subject to mediation in which the Council is involved either as a claimant, defendant or interested party).

- The complaint is about an officer of the Council.

Where a complaint identifies potential criminal conduct (including a failure to register disclosable pecuniary interests) or regulatory breach by a councillor, the Monitoring Officer will refer the complaint to the police or such other regulatory agencies as may be appropriate. The Monitoring Officer will take no further action until any related criminal / regulatory investigation, proceedings or processes have been concluded.

If the complaint does not pass the jurisdictional test then no further action will be taken and the complainant will be informed accordingly along with the reason.

Threshold Assessment

Once the complaint has passed the jurisdictional assessment, the complaint will then move to the threshold assessment phase.

If the Monitoring Officer believes that clarification of the complaint is required at this stage, then they will contact the complainant accordingly and invite them to provide that clarification within 10 working days of receipt of the request. Where there are exceptional or mitigating circumstances, this timeframe may be extended. In the absence of that clarification being provided, the complaint will be closed.

The Monitoring Officer will usually notify the councillor that a complaint has been received either on receipt or when any necessary clarification has been provided. The Monitoring Officer will invite the councillor to submit any comments on the complaint. Any comments should usually be submitted within 10 working days from the date of notification unless there are exceptional or mitigating circumstances. In doing so, the Monitoring Officer will make clear that no judgment one way or the other has been made about whether the allegation is in fact true. In deciding whether to notify the councillor, the Monitoring Officer will also take into consideration whether there are any risks in so doing; for example, if the Monitoring Officer considers that telling the councillor would lead to a risk of evidence being destroyed or a risk of the complainant being intimidated. Where the Monitoring Officer concludes that the identity of the complainant should be afforded anonymity, the councillor will still be provided with full details of the complaint save for any specific information that might lead to the identity of the complainant being disclosed.

It is the responsibility of the Monitoring Officer to conduct the threshold assessment. However, they have the absolute discretion to refer the complaint to the Assessment Sub-Committee of the Standards Committee.

In deciding whether the complaint reaches the threshold assessment, the Monitoring Officer (or Assessment Sub-Committee) will consult with the Independent Person and take into account their opinion. The Monitoring Officer (or Assessment Sub-Committee) will take into account the following factors:

<p>Potential breach</p>	<p>Does the complaint contain sufficient evidence to demonstrate a potential breach of the code?</p> <p>To assist in coming to a decision, the Monitoring Officer may refer to other information which is readily available; for example, copies of agendas, reports and minutes of meetings, recordings of Council meetings, copies of the Members' entry in the Register of Members' Interests.</p>
<p>Official capacity</p>	<p>Was the councillor acting in their capacity as a councillor at the time of the alleged conduct?</p>
<p>Date of the conduct complained of</p>	<p>How long ago did the conduct complained of take place?</p> <p>If the conduct complained of took place more than six months ago, then consideration will be given as to any reasons for the complainant's delay in making their complaint along with whether there is a risk that it would not be possible to properly investigate the complaint due to the passage of time; for example if people's recollections have faded.</p>
<p>Type of complaint</p>	<p>Does the complaint appear to be trivial, malicious, vexatious, politically motivated or tit-for-tat?</p> <p>Where the complaint appears to relate to the 'rough and tumble' of political debate and pertains to conduct between councillors rather than between councillors and the public or officers, in most instances no further action will be taken.</p>

<p>Public interest</p>	<p>Is an investigation in the public interest?</p> <p>The public interest covers a wide range of values and principles relating to the public good, or what is in the interests of society. Thus, for example, there is a public interest in transparency and accountability, to promote public undertaking and in upholding standards of integrity and in ensuring justice and fair treatment for all.</p>
<p>Remedies</p>	<p>Are there alternative, more appropriate remedies that should be explored?</p> <p>Depending upon the circumstances, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation.</p> <p>Similarly, If the councillor makes a reasonable offer to settle the complaint informally, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.</p>
<p>Multiple complaints</p>	<p>Have multiple complaints been submitted about the same conduct / course of conduct?</p> <p>In the interests of the efficient use of resources, the Monitoring Officer may decide that only one complaint should go forward for investigation, with the other complainants being treated as potential witnesses in that investigation</p>

The threshold assessment will normally be concluded within 25 working days of receipt of the complaint. However, in some instances this may take longer, for example where the Monitoring Officer decides to seek clarification or if they decide to refer the matter to an Assessment Sub-Committee. The Monitoring Officer will advise the complainant of any delays to concluding the assessment.

The potential outcomes of the threshold assessment are as follows:

- No further action should be taken because the complaint does not reach the required threshold;
- To refer the complaint for local resolution (which might involve an apology or training or some other form of mediation)
- To refer the complaint for formal investigation

The complainant and councillor will be advised of the outcome of the threshold assessment, including the reasons for the decision.

Assessment Sub-Committee

Where the Monitoring Officer decides to refer the threshold assessment to the Assessment Sub-Committee, that Sub-Committee will be drawn from the main body of the Standards Committee. If the Assessment Sub-Committee includes co-opted representatives, then they will not have voting rights by law.

Any member of the Standards Committee, against whom a Code of Conduct complaint has been made, shall not be selected as a member of the Assessment Sub-Committee until consideration of their complaint has been concluded.

The Assessment Sub-Committee is like any other committee or sub-committee of the Council and must follow the rules that apply to committees. The rules around access to information also apply as they do to other committees – that is the hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters.

The sole purpose of the Assessment Sub-Committee is to determine whether or not the complaint reaches the threshold for an investigation; it does not determine whether or not the councillor has breached the code of conduct.

The potential outcomes of the Assessment Sub-Committee are those referred to earlier in this document.

Investigation

While investigations are not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights as the outcome of any hearing will not impact upon the rights of the person to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice.

The investigation will therefore be undertaken with some key principles in mind:

- **Proportionality.** That is, the investigation should strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or relatively simple, the investigator may choose not to follow all of the steps in this guidance if the matter can be resolved more proportionately.
- **Fairness.** The investigation should make sure that the subject member knows what they are accused of, has an opportunity to make comments on the investigation, including on a draft report, and where appropriate, all sides feel they have had the chance to put their side of the issue. Again this would need to bear in mind the nature of the complaint – for example, an alleged failure to register an interest may be largely a factual matter rather than one that needs to hear from other parties. A councillor quickly admitting to an error may not need further detail to be probed.
- **Transparency.** As far as is practical and having regard to an individual’s right to confidentiality, investigations should be carried out as transparently as possible – all parties should be kept up to date with progress in the case
- **Impartiality.** An investigator should not approach an investigation with preconceived ideas and should avoid being involved where they have a conflict of interest.

The Monitoring Officer may carry out the investigation in person, subject to any conflict of interest; for example, if they had advised the councillor on the matter regardless of whether the councillor followed the advice or not. Alternatively, the Monitoring Officer may delegate the investigation to the Deputy Monitoring Officer or any other named individual (including someone who is not an officer of the Council). Where the investigation is delegated, the Monitoring Officer will oversee the conduct of the investigation, save where a conflict exists in which case they will make arrangements for another suitable person to oversee the investigation, and will ensure that the scope of the delegation is recorded in writing.

For the purposes of this procedure note, the word ‘investigator’ will be used to refer to the person conducting the investigation, no matter their identity.

Disclosure of information

Any information received by the investigator is confidential to the investigative process until the investigation is completed. The only exception to this is if there is a statutory requirement to disclose it.

Scope of the investigation

The investigator will first establish the scope of the investigation. If the initial complaint had made several different allegations the investigator must be clear whether they are investigating them all or only part of the allegations. The investigator should also be clear which parts of the Code they are investigating the conduct against, although this may change to include other or different provisions during the investigation as it develops.

Having established the scope of the investigation, the investigator will contact:

- The complainant
- The councillor
- The Independent Person

The investigator will explain what it is they are investigating and what will happen next. They will inform the councillor that they have the right to seek the views of the Independent Person and be represented at any interviews with the investigator.

Evidence of new breaches

During the course of an investigation, the investigator may uncover evidence of conduct by councillors that breaches the Code of Conduct, but extends beyond the scope of the investigation. The powers of the investigator relate only to the allegation that is under consideration therefore if this happens the investigator will tell the person they obtained the information from that they cannot investigate the possible breach as part of the existing investigation. They should tell them that they may wish to make a separate complaint to the Council and if the council considers it needs further action it could be subsequently added to the investigation. Alternatively, the investigator may refer the matter to the Council as a new complaint.

Deferring the investigation

If the investigator becomes aware of any circumstances that might require the investigation to be deferred, they will, if they are not the Monitoring Officer, notify the Monitoring Officer of the relevant facts and reason why a deferral may become necessary.

The Monitoring Officer will consult with the Independent Person and subsequently make a decision whether to defer the investigation.

Purpose of the investigator's report

The report is an explanation of all the essential elements of the case and a justification for the investigator's conclusion as to whether there has been a breach of the Code or not. The report should cover:

- agreed facts;
- any disputed facts together with your view, if appropriate, as to which version is more likely;
- whether those facts amount to a breach of the code or not; and
- your reasons for reaching that conclusion.

Draft reports

The investigator will produce a draft report of the conclusion of their investigation. Where the investigator is not the Monitoring Officer, the draft report will be shared with the Monitoring Officer so that they can satisfy themselves that the investigation is of an acceptable standard.

The draft report will then be sent to the relevant parties with a deadline for providing comments thereon. Where appropriate relevant extracts may be sent to particular parties; for example, witnesses

The investigator is under no obligations to accept any comments made, but where comments are not accepted, the investigator will make a note explaining why this is the case.

Final report

The final report will be issued by the Monitoring Officer and will be sent to:

- the subject member
- the complainant
- the Independent Person

The report must make one of the following findings, on the balance of probabilities:

- that there have been one or more failures to comply with the Code of Conduct
- that there has not been a failure to comply with the Code

If it is concluded that there has been no failure to comply with the Code, the Monitoring Officer will advise the complainant and councillor accordingly that this is the case and no further action will be taken.

If it is concluded that there has been a breach of the Code, then the Monitoring Officer will determine:

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- Whether to refer the matter to the Hearing Sub-Committee for consideration;
- Whether to seek a local resolution of the complaint.

Local resolution

If the Monitoring Officer thinks that the complaint can reasonably be resolved locally, they will consult with the Independent Person, the councillor and the complainant as to a resolution of the complaint. Possible local resolutions may include the councillor accepting that their conduct was unacceptable and offering an apology.

Hearing Sub-Committee

For reasons of fairness and proportionality, the Hearing Sub-Committee should ordinarily take place within three months of the date on which the investigator's report was completed. Where that is not possible, for example because the matter is awaiting the outcome of other matters being dealt with by outside bodies or other investigations into the subject member, the Monitoring Officer should notify the relevant parties of the reason for the delay and an estimated timescale.

The timing of the Hearing Sub-Committee should, however, provide sufficient time for all parties involved to prepare their case and to consider whether there are any witnesses that they would wish to call.

Once a date has been set for a Hearing the monitoring officer should notify:

- The councillor
- The investigator
- The Independent Person
- The complainant

The Monitoring Officer will ask for a written response from the councillor to ascertain whether the councillor:

- Wants to be represented at the hearing
- 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 hearing, 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

The investigator will be asked if they wish to call any witnesses.

Composition of the Hearing Sub-Committee

The Hearing Sub-Committee will be drawn from the main body of the Standards Committee. If the Hearing Sub-Committee includes co-opted representatives, then they will not have voting rights by law.

Any member of the Standards Committee, against whom a Code of Conduct complaint has been made, shall not be selected as a member of the Hearing Sub-Committee until consideration of their complaint has been concluded.

Representatives

The councillor and investigator may choose to be represented by counsel, a solicitor, or by any other person they wish. The Hearing Sub-Committee may withdraw its permission to allow a representative if that representative disrupts the hearing.

Non-availability of councillor / witnesses

If the councillor is unable to make the specified date, the Hearing Sub-Committee may arrange for the hearing to be held on a different date, provided that they are satisfied that the subject member has given an acceptable reason. Where the councillor does not give an acceptable reason or does not reply within a specified time, the Hearing Sub-Committee should proceed with the date and may consider the report in the subject member's absence. The councillor should not be able to evade having the case heard simply by refusing to cooperate and the Code of Conduct makes the failure to cooperate a potential breach.

If one or more witnesses are unavailable on the given date the Monitoring Officer will decide how material they would be to the hearing and whether another date needs to be looked for. Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect.

The hearing

The Hearing Sub-Committee is like any other committee or sub-committee of the Council and must follow the rules that apply to committees. The rules around access to information also apply as they do to other committees – that is the hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters.

Members of the Hearing Sub-Committee are required to bear in mind that the Hearing Sub-Committee 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 Hearing Sub-Committee will 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. 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 councillor, the Council and the public.

Evidence

The Hearing Sub-Committee, through its chair, controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the Hearing Sub-Committee may not need to consider any evidence other than the investigation report and any other supporting documents. However, the Hearing Sub-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 Hearing Sub-Committee can allow witnesses to be questioned and cross-examined by the councillor, the investigator or their representatives. Alternatively, the Hearing Sub-Committee can ask that these questions be directed through the chair. The Hearing Sub-Committee can also question witnesses directly and the Independent Person should also be asked if they wish to ask any questions.

If the Hearing Sub-Committee believes, however, that questions are irrelevant or oppressive then the Chair should stop that particular line of questioning.

Generally, the councillor 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. However, the Hearing Sub-Committee has the right to govern its own procedures as long as it acts fairly. For this reason, the Hearing Sub-Committee may limit the number of witnesses if the number is unreasonable.

Making a finding

Once the Hearing Sub-Committee has heard all the relevant evidence it should suspend the hearing and retire to consider its findings in private.

Before retiring, the chair should invite the Independent Person to give their views to the Hearing Sub-Committee to which regard must be had in reaching a decision. These views will be given in open session so that all sides can have a chance to challenge them as necessary. The Independent Person should not retire with the Hearing Sub-Committee as they are not part of the formal decision-making process.

Any officer who retires with the Hearing Sub-Committee is there to advise on matters of procedure and law.

If the Hearing Sub-Committee, after retiring, decides that it needs to reconsider certain matters it is able to reconvene to ask further questions.

Once the Hearing Sub-Committee has reached its decision it should reconvene to inform the subject member. Where a breach has been found, it should then invite representations as to any aggravating or mitigating factors before retiring again to consider an appropriate sanction.

It is good practice to ensure that a short written decision is available on the day of the hearing, and while matters and reasons for the decision are fresh in mind, to prepare the full written decision in draft on that day. The officer providing administrative support to the Panel will normally also draft minutes of the meeting.

The Hearing Sub-Committee should give its full written decision to the relevant parties as soon as possible after the hearing. In most cases this should be within one week of the hearing.

The relevant parties are:

- The subject member
- The complainant
- The relevant Independent Person

Sanctions

There is no definitive list of possible sanctions. If the Hearing Sub-Committee finds that a subject member has failed to follow the Code of Conduct and that they should be sanctioned, it needs to be clear which sanctions it has the power to impose and which matters are reserved to Council or need to be referred to a relevant political group.

Typical sanction may include one or a combination of the following:

- Report its findings in respect of the councillors's conduct to Council;

- issue a formal censure;
- recommend to the councillor's Group Leader (or in the case of un-grouped members, recommend to Council) that they be removed from any or all Committees or Sub-Committees of the Council;
- recommend to the Elected Mayor that the councillor be removed from positions of responsibility;
- instruct the Monitoring Officer to arrange training for the councillor;
- recommend to Council that the councillor be removed from all outside appointments to which they have been appointed or nominated by the Council;
- recommend to Council that it withdraws facilities provided to the councillor by the Council for a specified period, such as a computer, website and/or email and internet access; or
- recommend to Council that it excludes the councillor from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings and/or restricts contact with officers to named officers only;
- if relevant, recommend to the Secretary or appropriate official of a political Group that the councillor be removed as Group Leader or other position of responsibility.

Under the Code of Conduct, a failure to comply with any sanction imposed may, of itself, be a breach of the Code.

When deciding on a sanction, the Hearing Sub-Committee should ensure that it is reasonable and proportionate to the councillor's behaviour. Before deciding what sanction to issue, the Hearing Sub-Committee should consider the following questions, along with any other relevant circumstances:

- What was the councillor's intention?
- Did the councillor know that they were failing to follow the Code of Conduct?
- Did the councillor get advice from officers before the incident? Was that advice acted on or ignored?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result or potential result of failing to follow the Code of Conduct?
- How serious was the incident?
- Does the councillor accept they were at fault?
- Did the councillor apologise to the relevant people?

- Has the councillor previously been warned or reprimanded for similar misconduct or failed to follow the Code of Conduct before?
- Is the councillor likely to do the same thing again?
- How will the sanction impact on the councillor's ability to carry out their role?

Factors which may make a case more serious may include:

- 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 or contact with officers should not unnecessarily restrict the councillor's ability to carry out their responsibilities as an elected representative or co-opted member.

Mitigating factors may include:

- 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.
- The councillor's previous record of good service.
- Substantiated evidence that the councillor's actions have been affected by ill-health.
- Recognition that there has been a failure to follow the Code; co-operation and any steps to address or rectify the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the councillor
- Compliance with the Code since the events giving rise to the complaint.

Aggravating factors may include:

- 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

Publicising the outcome

The Monitoring Officer will arrange for a summary of the decision and reasons for it to be published on the Council's website.

If the Hearing Sub-Committee finds that the councillor 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 councillor is entitled to decide that no summary of the decision should be made publicly available.

If the Hearing Sub-Committee finds that the councillor failed to follow the Code but that no action is needed, the public summary should:

- say that the councillor failed to follow the Code, but that no action needs to be taken
- outline what happened
- give reasons for the Hearing Sub-Committee's decision not to take any action

If the Hearing Sub-Committee finds that a councillor failed to follow the Code and it imposed a sanction, the public summary should:

- say that the councillor failed to follow the Code
- outline what happened
- explain what sanction has been imposed
- give reasons for the decision made by the Hearing Sub-Committee

The Hearing Sub-Committee's reports and minutes should be available for public inspection in the same way as other Council committee papers.

Appeals

There is no right of appeal against any decision taken by the Monitoring Officer, the Assessment Sub-Committee or the Hearing Sub-Committee.

If the complainant or the councillor considers that the complaint has not been considered properly by the Panel, they may be able to complain to the Local Government and Social Care Ombudsman or make an application to judicially review the decision.

Document Retention

Documentation relating to the complaint will be retained for a period of six years from the date of the complaint's final determination, which includes any subsequent legal proceedings.

Minutes of the Standards Committee and its Sub-Committees will be retained in the same way as the minutes of other council decision making bodies.

Revision of these arrangements

The Standards Committee will be advised of any in-year changes to these arrangements that are necessary to take account of any changes in legislation or decisions from the Courts or Local Government and Social Care Ombudsman

Status of procedure note

This procedure note is intended as a guide to the process which the Council will adopt in considering complaints of alleged breaches of the Code of Conduct.

For the avoidance of doubt, the processes set out may be departed from where it is necessary to do so in order to secure the effective and fair consideration of any matter. Where there is a departure from the process this will be recorded in writing, including the reasons for that departure.