

MEMORANDUM OF UNDERSTANDING
BETWEEN THE AUDIT COMMISSION AND
STANDARDS FOR ENGLAND
(previously known as the Standards Board for England)

THIS MEMORANDUM OF UNDERSTANDING (MoU)
made this 16th day of October 2009

1. INTRODUCTION

Some of the work and areas of responsibility of Standards for England (SfE) and the Audit Commission are related. The parties wish to cooperate in order to ensure that their respective roles can be fulfilled effectively and efficiently.

Standards for England and the Audit Commission agree that they share a common objective which is to ensure that high standards of conduct in local government are promoted and maintained, and that conduct issues are investigated at the minimum reasonable cost to the public purse, avoiding duplication wherever possible. In this context the reference to “standards of conduct” includes the proper expenditure of public money by local authorities.

This Memorandum of Understanding replaces the previous memorandum of understanding agreed in 2004. It is designed to enhance existing arrangements for liaison and co-operation between the parties, and has been agreed by the Audit Commission and Standards for England.

2. DEFINITIONS

Audit Commission

The Audit Commission is an independent statutory corporation, established under the Audit Commission Act 1998 (“the 1998 Act”).

Standards for England

Standards for England was established under the Local Government Act 2000 (“the 2000 Act”).

Parties

Means the Audit Commission and Standards for England.

3. STATUTORY FRAMEWORK

The relevant statutory framework, coverage of the agreement, and the legislative basis for the sharing of information are set out in Appendix 1.

4. GENERAL PRINCIPLES

Standards for England and the Audit Commission agree to follow the principles set out in this Memorandum and to make the Memorandum accessible to the public, appointed auditors, local authorities and relevant bodies.

Standards for England and the Audit Commission agree to regularly review this Memorandum so as to ensure that developments and changes in the practices and working relationships of both bodies are adequately reflected.

Standards for England and the Audit Commission propose to regularly convene meetings to discuss other matters of common interest, to develop mechanisms for information sharing, and to identify any themes that have emerged from casework and engagement, monitoring and support functions.

Standards for England acknowledges that, although appointed auditors are referred to in this MOU, appointed auditors are independent of the Audit Commission and the Audit Commission can only encourage its auditors to act in accordance with the principles of this MOU. The Audit Commission agrees to provide guidance to its appointed auditors regarding sharing of information in line with the principles of this MOU.

This Memorandum is not intended to create a legal relationship and its provisions are not intended to give rise to legal rights, obligations or liabilities.

5. SHARING INFORMATION ABOUT LOCAL AUTHORITIES, MEMBERS AND INDIVIDUALS

Standards for England and the Audit Commission will share information where they are of the view that such sharing might assist the other party to fulfill their functions, subject to either party's legislative constraints. Shared information will not be a substitute for their own work. This information will consist of material that each party has obtained in the ordinary course of its work. Each party will respond as soon as practicable to requests made by the other party for information.

The parties agree to be as transparent as possible with authorities and other key stakeholders in the use of and sharing of evidence.

The Audit Commission and Standards for England perform work to meet their respective statutory responsibilities and for no other purpose. It is acknowledged that information of possible interest to the Audit Commission, Standards Board or an appointed auditor or Ethical Standards Officer (ESO) may not have been addressed by the other party during the course of their work.

6. LIAISON AND COOPERATION

This section covers liaison and cooperation relating to aspects of the parties work in local authorities as follows:

- audit, inspection, assessment work for the Audit Commission and investigative or support work, including engagement and intervention, by Standards for England;
- development of methodologies; and
- research and good practice dissemination;

Information from audit, inspection, investigations and support work

Issues specific to individual members and councils

Where, in the course of their work, the Audit Commission or an appointed auditor finds information that amounts (or may amount) to a breach of the Code of Conduct or ethical governance arrangements generally which have not already been reported through the proper channels, and they are satisfied that providing the information will not prejudice audit or assessment functions, the Audit Commission will pass share this information through the Audit Commission's Regional Director, or their nominated representative, to share with the nominated representative in Standards for England. This includes information from the appointed auditor.

Where, in the course of an investigation or support work, Standards for England finds information which may be relevant to the Audit Commission or appointed auditor (for example, information on financial management or governance which may be of relevance to the audit process) Standards for England may share this information with the relevant Audit Commission Regional Director or their nominated representative. Where appropriate, this information will be passed by the Regional Director to the appointed auditor.

The Audit Commission may consult with Standards for England when scoping a relevant inspection in a local authority. Standards for England may consult the Audit Commission when considering using its powers to suspend a standards committee's powers to make initial assessments.

The Audit Commission and Standards for England may share reports and findings, where appropriate, related to the governance of an authority, including its ethical governance and standards of member behaviour. This may include relevant key line of enquiry scores, judgements from the organisational and use of resources assessments, or quarterly and annual statistics collated by Standards for England prior to their publication.

Standards for England may also share letters to chief executives, monitoring officers and standards committees, recording concerns about the way in which the local standards committee assesses, investigates or determines complaints and about its ethical governance generally. This also includes progress on how an authority, with which Standards for England is engaged, is addressing concerns. Where appropriate and possible, the parties will coordinate any engagement and support activities.

Standards for England and the Audit Commission may also share emerging findings where appropriate, clearly stating the status of emerging findings.

Regional issues

The Audit Commission's appropriate Regional Director or nominated regional representative and Standards for England's nominated representative will meet on a regular basis to discuss any particular issues arising, trends and emerging issues, and to review the arrangements for regional sharing of findings and judgments. Where appropriate, this information will be passed by the Regional Director to the appointed auditor.

Development of methodologies

The Audit Commission and Standards for England will continue to maintain dialogue and, where appropriate, consult each other over the way in which

they collect data and make assessments about governance in relevant authorities.

Research and Good Practice Dissemination

The Audit Commission and Standards for England will, where appropriate, collaborate and share resources on projects, research and good practice dissemination.

6 COMMUNICATION TO STAFF, ESOs AND AUDITORS

Arrangements will be made for communicating the provisions of this Memorandum within Standards for England and to ESOs, and within the Audit Commission, to all appointed auditors, and CAA leads.

Further information about each party may be located via its respective website.

www.standardsforengland.gov.uk/

or,

www.audit-commission.gov.uk


Signed:



**Director of Regulation
Standards for England**



**Managing Director
Local Government
Audit Commission**



**Managing Director
Audit
Audit Commission**

Appendices

Appendix 1 Statutory Framework

Appendix 2 Information Sharing Policy

STATUTORY FRAMEWORK

The Audit Commission

The Audit Commission has statutory responsibilities to regulate the audit of local government and National Health Service bodies in England and to promote improvement in the economy, efficiency and effectiveness of local government and the National Health Service.¹

The Audit Commission appoints auditors to audit the accounts of local authorities (and certain other public bodies), following consultation with those bodies, and in accordance with the provisions of the 1998 Act.² Auditors appointed by the Commission may be either professionally qualified individuals, members of its own staff (District Auditors) or firms of accountants. In each case they are under a duty to act in accordance with the Code of Audit Practice, which is prepared by the Audit Commission.³ Auditors' opinions, conclusions and recommendations should both be, and be seen to be, impartial. Auditors and their staff should exercise their professional judgement and act independently of both the Audit Commission and the audited body.

Auditors are required under the Audit Commission Act 1998 and Local Government Act 1999 to review and report on the audited body's accounts and financial statements, including that body's compliance with relevant legislation and observance of proper practices in relation to financial statements, making proper arrangements for securing economy, efficiency and effectiveness (which may include reviewing and reporting on matters relating to studies undertaken by the Commission under its study powers) and publishing performance information as required;⁴

Auditors may also be questioned about the accounts of audited bodies⁵ and must determine formal objections which are made by members of the public who are electors in the area to which the accounts relate. An auditor's powers include:

- making a report on any matter arising in the course of an audit which is in the public interest;⁶
- applying to the Court for a declaration that items of account are contrary to law;⁷
- issuing an advisory notice.⁸

In addition the Audit Commission has powers to carry out inspections of a best value authority's performance of its functions⁹ or of any particular function. It may

¹ The statutory basis for the Commission's work is located principally in the Audit Commission Act 1998, the Local Government Act 1999 and the Local Government Act 2003.

² Ss 1, 3 and Schedule I Audit Commission Act 1998

³ S 4 Audit Commission Act 1998

⁴ Ss 5, 33-40 Audit Commission Act 1998

⁵ S 15(2) Audit Commission Act 1998

⁶ Ss 8 and 16 Audit Commission Act 1998

⁷ Ss 16 and 17 Audit Commission Act 1998

⁸ S 19A Audit Commission Act 1998

⁹ S10 of the Local Government Act 1999 as amended

also produce comparative and other reports relating to the performance of English local authorities in exercising their functions including:

- a) the risk that authorities may fail to perform their functions or fail to perform them adequately
- b) the rate at which authorities' performance is improving
- c) the economy, efficiency and effectiveness of authorities' use of resources

Appointed auditors are required to report on the economy, efficiency and effectiveness of authorities' use of resources (Use of Resources assessments) and to make scored judgments in accordance with a framework published by the Commission.¹⁰

It is anticipated that the work undertaken in relation to use of resources assessments, corporate governance inspections and questions raised by the public and formal objections are likely to be the most common sources of overlap with the work of Standards for England and Ethical Standards Officers.

In addition the Audit Commission may conduct studies, either at its own instigation or at the request of an audited body or the Secretary of State.¹¹

Standards for England

Standards for England was set up under the 2000 Act to deal with complaints that members and co-opted members of an authority have breached their authority's Code of Conduct and to promote high standards of conduct.¹² Standards for England cannot deal with complaints that are made against the relevant authorities or against the actions of their officers.

Standards for England employs Ethical Standards Officers (ESOs), who are responsible for investigating complaints that a code of conduct has been breached. The Board does not become involved in individual investigations, which the ESOs conduct independently.

An ESO can, as a result of an investigation, make one of four findings:

- there has been no failure to comply with a Code of Conduct;
- there has been such a failure to comply but no action needs to be taken¹³
- the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority for determination by the local Standards Committee; or,
- the matters that are the subject of the investigation should be referred for determination to the Adjudication Panel for England.

Local Standards Committees can impose sanctions on members who are found to have breached

¹⁰ The current version of the use of resources framework is available from <http://www.audit-commission.gov.uk/useofresources/>

¹¹ Ss 33-40 Audit Commission Act 1998

¹² S 57 Local Government Act, 2000

¹³ This provision reflects the changes made to legislation from 1 April 2008 and any cases which predate this will be decided under the previous legislative provision

their local authority's code of conduct, including suspension or partial suspension from office for up to 3 months for cases which predate 8 May 2008 and for up to six months post this date.¹⁴ The Adjudication Panel can impose sanctions, including up to a five-year disqualification from office for members who are found to have breached a local authority's code of conduct.¹⁵

The Local Government and Public Involvement in Health Act 2007 introduced important changes to the role of Standards for England. These changes introduce a locally managed framework of compliance with the Code of Conduct and a new strategic regulatory role for Standards for England. The system involves local standards committees receiving complaints about members directly and making initial assessments of misconduct allegations and most cases now will be handled locally through to investigation and hearings stages. Standards for England champions and promotes high standards of member behaviour, provides support and guidance to members and local authorities and ensures effective local standards frameworks. To ensure effective local standards frameworks Standards for England will be monitoring arrangements within local government. This monitoring takes the form of collecting data and information from local authorities on a quarterly and an annual basis. In addition to this data Standards for England uses information it receives through telephone calls as well as information from other regulators or sources

Standards for England also issues guidance to local authorities.

Coverage of agreement

There are some authorities over which one party has jurisdiction but the other party does not. As they are not relevant to both parties, they are not listed here.

This Memorandum concerns all dealings between the parties in respect of the following English authorities:

- County councils
- District councils
- London borough councils
- Parish councils
- The Greater London Authority
- The Metropolitan Police Authority
- The London Fire and Emergency Planning Authority
- The Common Council of the City of London in its capacity as a local authority or police authority
- The Council of the Isles of Scilly

¹⁴ R 7 The Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 and R19 the Standards Committee (England) Regulations 2008

¹⁵ S 79 Local Government Act 2000

- A fire authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies
- A police authority (established under section 3 of the Police Act 1996)
- A joint authority established under Part IV of the Local Government Act 1985
- The Broads Authority
- A National Park authority

Audit Commission

Under section 6 of the 1998 Act, the appointed auditor has wide powers and rights of access to documents relating to an audited body that appear necessary for the purposes of the audit. Information relating to an audited body may therefore be required from Standards for England/ESOs if it appears necessary by an appointed auditor.

Similarly, under section 11 of the Local Government Act 1999 the Audit Commission's inspectors have wide powers and rights of access to documents relating to a best value authority that appears to be necessary for the purposes of the inspection.

The Audit Commission has power under section 48 of the 1998 Act to require information from an audited body.

Section 49 of the 1998 Act (which restricts disclosure of information obtained by appointed auditors or the Audit Commission) provides an exception permitting the Audit Commission or the appointed auditor to disclose information (obtained in the course of exercising functions under the 1998 Act or Part I of the Local Government Act 1999) for the purposes of the functions of an ethical standards officer under Part III of the Local Government Act 2000.¹⁶

The Audit Commission and its appointed auditors may disclose information except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the Commission or auditor.¹⁷

Standards for England

Under section 62 of the Local Government Act 2000, ESOs have similarly wide rights and powers of access to documents relating to a relevant authority which appear necessary to the purpose of conducting an investigation under section 59, in relation to a member or co-opted member (or former member or co-opted member) of the authority. This enables Standards for England to require information from the Audit Commission or an appointed auditor.

¹⁶ S 49(1)(de) Audit Commission Act 1998, as inserted by the Local Government Act 2000

¹⁷ S 49 (2A) and (2B) Audit Commission Act 1998.

Under section 63(1)(e) of the Local Government Act 2000, information obtained by ESOs when carrying out their investigations may be disclosed to the Audit Commission for the purposes of any functions of the Audit Commission or an auditor under the 1998 Act.

The Local Government and Public Involvement in Health Act 2007 created a strategic regulatory role for Standards for England with responsibility to monitor and assess how authorities manage their local standards framework. In order to perform the strategic regulatory role the Act gives powers to request information from local authorities. More specifically, under section 66B of the Act, relevant authorities need to submit periodic returns to Standards for England. The information required by these returns is specified by Standards for England. Secondly, under section 66C of the Act, relevant authorities must comply with a request for information from Standards for England. Ultimately Standards for England has the power to suspend standards committees' functions under section 57D (assessment functions) of the Act.

INFORMATION SHARING PRINCIPLES

This appendix outlines the principles that will underpin the approach to information sharing and how any information shared will be managed.

Principles

The following principles underpin the sharing of information between the parties.

- We will exchange information that will add value to our respective planning, inspection, audit, assessment, support and investigation processes.
- We will share information to assist the other party and to seek to prevent the duplication of information collection from authorities.
- The exchange of information will take place through the most effective means, dependent on local circumstances e.g. sharing documents, joint meetings, electronic correspondence, telephone discussions or other reasonable means.

These principles have been developed against the background of information sharing powers in the Local Government Act 2000 (in particular section 63) and the Audit Commission Act 1998 (in particular section 49) and any restrictions on those powers. The principles have also been developed with regard to the Data Protection Act 1998, the Freedom of Information Act 2000 and the Human Rights Act 1998.

Management of Information

Explaining to relevant authorities how we will use their documents and any information provided

Standards for England and the Audit Commission will inform local authorities of the existence of this Memorandum and the respective parties approach to information sharing information supplied by local authorities such as quarterly or annual returns supplied by standards committees.

Information relating to individuals

1. Prior to sharing any information a party will consider whether the information is relevant and accurate.
2. Where appropriate, such as where the information may be incomplete or inaccurate or in the interests of fairness, individuals may be asked for their comments or consent before information is shared.
3. Consent is not required where the information is shared for the purposes of the administration of justice or the exercise of the functions by the Audit Commission, appointed auditors or Standards for England and ESOs.
4. Information will be kept secure and used on a need to know basis and shall be used only as necessary. The information shall not be used for any purpose other than that for which it was shared.

Appendix 2 Information Sharing Principles

5. No information shared between the parties will be passed to any third party without the permission of the party who originally held and shared the information.
6. The status of any written information shared will be made clear and, if confidential, marked as such.
7. The appropriate means by which information is shared should be considered according to the sensitivity of the information.
8. Any information shared must be retained or destroyed in accordance with any legal requirements or any published policies and in any event kept no longer than necessary.

Freedom of Information

Information in the possession of each party is subject to the disclosure provisions under the Freedom of Information Act. Where information is shared this may also be subject to freedom of information requirements unless any exemption from disclosure applies.

Where a party receives a request for information which has been provided under this Memorandum then the party shall seek to inform the other party. The party in receipt of the request shall have the final decision as to how the request is dealt with but shall consider whether any comments or consents from the other party should be obtained.

Confidentiality

Information shared on a confidential basis between each party will be kept confidential and only used as necessary and for the purposes for which it was shared.