

**STANDARDS COMMITTEE  
9<sup>TH</sup> MARCH 2004**

**REPORT OF THE MONITORING OFFICER**

**LOCAL DETERMINATION OF CODE OF CONDUCT  
COMPLAINTS BY STANDARDS COMMITTEE**

1. **Introduction**

The Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 came into effect on the 30<sup>th</sup> June 2003 and provide for the Standards Board's Ethical Standards Officers (ESO) to refer complaints of misconduct by Councillors to the Standards Committees of local authorities for local determination. These regulations cover the case where the ESO has already completed the investigation into a complaint. Later this year, further regulations will provide for complaints to be referred at an earlier stage, for the Monitoring Officer to arrange for local investigation before reporting to the Standards Committee. The Standards Board for England has now published statutory guidance on how local authorities should implement the new regulations.

2. **Which cases will be referred for local determination?**

On completing their investigation of a complaint, the ESO has to decide which of the following descriptions the matter comes within:

(a) **There is no evidence of a failure to comply with the Code of Conduct**

- (i) In this case the ESO simply sends a copy of his/her report with that conclusion to the member, the complainant and the Monitoring Officer and the Monitoring Officer would report to the Standards Committee that the complaint had not been upheld. The Standards Committee then has no role in relation to the matter

(b) **No action needs to be taken in respect of the matters which are the subject of the investigation**

This would normally be the case where the failure has been very minor and has not caused any loss or damage to any person. It does not mean that there has not been a failure to comply. In this case the ESO sends a copy of his/her report with that conclusion to the member, the complainant and the Monitoring Officer and the Monitoring Officer will report to Standards Committee that there is no action to be taken. The Standards Committee then has no role in respect of the matter.

(c) **The matters which are the subject of the investigation should be referred to the Monitoring Officer of the relevant authority concerned**

This will be the case where the ESO concludes that there has been a significant failure to comply with the Code of Conduct but that it is likely that the appropriate action to be taken is within the range of actions which are available to the Standards Committee of the authority concerned, namely:

- (i) Censure  
(ii) Withdrawal or partial withdrawal of Council-provided facilities for up to 3 months  
(iii) Suspension as a member of that Council, in whole or in part, for up to 3 months, and/or  
(iv) Consequent withdrawal or partial withdrawal of allowances for up to 3 months

In this case, the Monitoring Officer is required to report the matter to the Standards Committee and the Standards Committee is required to determine the matter within 3 months of the ESO referring the matter to the Monitoring Officer.

(d) **The matters which are the subject of the investigation should be referred to the President of the Adjudication Panel for England for adjudication by a Case Tribunal**

This will normally be the case where the ESO considers that there has been a significant failure to comply with the code of conduct and either:

- (i) it is likely that the appropriate action to be taken is in excess of that which can be imposed by a Standards Committee (a Case Tribunal can suspend a member in whole or in part for up to a year, or can disqualify a member from membership of any local authority for up to 5 years), or
- (ii) the nature of the failure to comply is such that it would be inappropriate for it to be dealt with by the Standards Committee, for example where it affects broader national issues or would be difficult to resolve locally.

In this case, the Monitoring Officer will report to the Standards Committee that the matter is to go to a Case Tribunal and will report the final decision of the Case Tribunal. Where the Case Tribunal decides to disqualify the member, that disqualification takes effect as soon as the Case Tribunal writes to the member and the authority to that effect. At that point the member ceases to be a member of any local authority and is ineligible to be nominated or elected as a member until the disqualification period has expired. At that point, a vacancy arises necessitating a by-election. Where the Case Tribunal decides that the member should be suspended, it will write to the Monitoring Officer to instruct the Standards Committee to suspend the member, and the Standards Committee must then meet and suspend the member as instructed. Suspension can be in whole (ie: the member cannot act as a Councillor, such as acting as an executive member, or participating in Council or Committees, and receives no members' allowances during the period of suspension) or can be partial (for example, suspension from membership of the Executive or as a member of Planning Committee, losing any special responsibility allowances otherwise payable for such duties). At the end of the suspension, the member returns to his/her previous positions, unless he/she has otherwise ceased to be a member or the Council has in the meantime removed him/her from such positions. In addition, the Case Tribunal can make recommendations to the Standards Committee, for example about improving systems or providing further training for members, and the Standards Committee must consider those recommendations and report back to the Standards Board.

### 3. **The Pre-Hearing Procedure**

The Standards Board's guidance sets out a pre-hearing procedure in preparation for the hearing. This pre-hearing procedure is designed to identify any disputes of fact between the member and the Ethical Standards Officer's report, and to identify any witnesses and evidence to be presented, so that the necessary documents and witnesses can be organised to ensure that there are no surprises at the hearing and that the Standards Committee has everything which it needs in order to determine the complaint. In practice, much of this pre-hearing procedure will be conducted by the Monitoring Officer writing to the member and asking him/her to provide necessary information, but the Standards Board recommends that the member be given the opportunity to deal with the matter at a formal meeting of the Standards Committee if he/she so demands. Given the requirement that the hearing be held within 3 months of the case being referred to the authority, and the need to maintain the impartiality of the Standards Committee in advance of the actual hearing, I would recommend that the conduct of the pre-hearing process and the reporting of that process to the Standards Committee be delegated to the Monitoring Officer.

One feature of the pre-hearing process is that, once the member has identified any points on which he/she disagrees with the ESO, the Monitoring Officer will ask the ESO whether he/she wishes to attend the local hearing to give evidence, or to arrange for the attendance of any

witnesses. The Standards Committee can request his/her attendance at the hearing where it feels that this would be helpful in resolving any dispute.

A recommended procedure for the conduct of the pre-hearing is set out at Appendix One.

4. **The Hearing Procedure**

The Standards Board has recommended a very helpful model procedure for the actual hearing before the Standards Committee. There are a few areas where I recommend that the Committee amplify this model procedure to make it clearer and to comply with normal committee procedures, or where the Committee may wish to streamline the procedure without any loss of fairness. I therefore attach as Appendix Two a procedure and recommend that the Committee adopt it for use at any local hearings. Note that the Chairman of the Standards Committee can vary the procedure in any particular case where he/she considers that it would be beneficial to do so.

5. **Further Developments**

(a) **Standards Sub-Committees**

Initially, the Standards Committee was only permitted to form a Sub-Committee to deal with Parish Council matters. The Local Government Act 2003 includes provision for such Sub-Committees for any other purpose and the Standards Board recommends that it would be appropriate to set up such Sub-Committees, of no more than 5 members, to hear individual matters rather than have hearings before the full Standards Committee. The Committee may prefer to hold the first few hearings before the full Committee in order to develop expertise, but then to set up Sub-Committees, perhaps standing "Borough matter" and "Parish matter" Sub-Committees to hear individual matters. A possible course of action would be to establish a number of such Sub-Committees, each of five members (but with a Parish Council representative only on the "Parish matter" Sub-Committees) and to delegate to the Monitoring Officer the allocation of individual matters to individual Sub-Committees, broadly in rotation, but also according to the availability of the relevant members and any conflicts of interest.

(b) **Local Investigation**

The Local Government Act 2003 also paves the way for early reference of full local investigation of complaints. Previously, the Monitoring Officer had no power to delegate his/her functions, which means that there has been an unavoidable conflict between the Monitoring Officer's duty to investigate a referred complaint and his/her role as impartial adviser to the Standards Committee. The Act has now enabled the Monitoring Officer to delegate any of his/her responsibilities. We therefore anticipate a further set of regulations under which the complaint will be referred to the Monitoring Officer before it has been investigated, and the Monitoring Officer will then arrange for its local investigation. In practice, he/she will arrange for another officer or an external investigator to conduct the investigation and I will continue as the primary adviser to the Standards Committee. I will bring a further report on this once the further regulations are published. Monitoring Officers within Kent are in the process of agreeing a protocol whereby it will be possible to seek mutual assistance between authorities in certain limited circumstances upon payment of a fee. Otherwise, it may be necessary to arrange for external investigation.

6. **Standards Terms of Reference etc**

The proposed method of hearing cases by way of Sub-Committees will require complete revision of the current articles of the Constitution and Terms of Reference and Membership of the Standards Committee and appointment of Sub-Committees as well as additions to the Scheme of Delegation. It will be necessary for the Administrative Services Manager to submit a further report on these matters to the Selection and Constitutional Review Committee.

7. **Training**

I have now arranged for a training session on the conduct of local hearings for Wednesday 24<sup>th</sup> March. The training will be provided by Peter Keith-Lucas, Local Government Partner at Wragge & Co LLP, a national firm of solicitors based in Birmingham and London. Peter Keith-Lucas is a former Local Authority Solicitor and District Council Chief Executive who is an

acknowledged expert in this area of law and he wrote the model procedure for local hearings which has been adopted by the Standards Board for England. He has conducted a number of high profile standards investigations and is recognised as an entertaining speaker.

The training will be based on a fictional complaint that Councillor Richard Green treated Mrs. Suzanne Holt, an Assistant Director of Planning, with disrespect at a meeting of the Planning Committee, and will require the Standards Committee to conduct the actual hearing, receiving the evidence of the Ethical Standards Officer and of Councillor Richard Green and determining whether a breach of the Code of Conduct occurred, and if so, what sanction might be appropriate. The training will be of interest and relevance to all members whether or not they are members of the Standards Committee. The programme for the training is as follows:

- 09.30 Coffee and registration
- 10.0 an update and refresher on the Code of Conduct
- 11.15 Coffee
- 11.30 Complaints to the Standards Board  
The "Tariff" – How cases have been dealt with by Case Tribunals  
The Pre-hearing process and introduction to the Case Study
- 13.00 Lunch
- 13.45 The Hearing
- 15.30 Appeals and local investigations
- 16.00 Finish.

## **RECOMMENDATIONS**

- 1 That the Committee adopt the attached Pre-Hearing Procedure (Appendix One) and the attached the Local Determinations Hearing Procedure (Appendix Two);**
- 2 That the Committee delegate the conduct and reporting of the pre-hearing process to the Monitoring Officer;**
- 3 That the Committee resolve to hear the first three referred matters as full Committee;**
- 4 That the Committee establish "Borough matter" and "Parish matter" Sub-Committees as suggested to hear individual matters, and delegate to the Monitoring Officer the allocation of individual matters to individual Sub-Committees each Sub-Committee to consist of five Members, three Borough Councillors and two Independent Members on Borough matter Sub-Committees and two Borough Councillors, two Independent Members and a Parish Councillor on Parish matter Sub-Committees.**
- 5 The Administrative Services Manager submit a further report to the Selection and Constitutional Review Committee with suggested changes to the Council's Constitution, the Terms of Reference and Membership of the Standards Committee and the proposed Sub-Committees to reflect the new arrangements.**

## THE PRE-HEARING PROCEDURE

### 1. **Purpose of Pre-Hearing Procedure**

The pre-hearing process is designed to address procedural issues in order to ensure local determinations are dealt with fairly and efficiently.

The aims are:-

- (a) to identify whether the member the subject of the hearing disagrees with any of the findings of fact in the report of the investigator;
- (b) to decide whether any disagreements are significant to the hearing;
- (c) to decide whether or not to hear evidence about these disagreements;
- (d) to decide whether any parts of the hearing should be held in private or any parts of the investigator's report should be withheld from the public.

### 2. **Format of Pre-Hearing Procedure**

The pre-hearing process will be conducted in writing and with the Monitoring Officer acting as link between the member and the investigator.

### 3. **Notification to the Member**

Upon receipt of the Ethical Standards Officer's report, the Monitoring Officer will:-

- (a) arrange a provisional date for the hearing (not less than 35 days from the date the investigator's report is received by him but the hearing must be held within the period of three months from the date the Monitoring Officer received the report) and identify the Committee or Sub-Committee by which the hearing will be held;
- (b) notify the members of the Committee/Sub-Committee of the date;
- (c) notify the member of the reference of the complaint for local determination, of the provisional date for the hearing and provide the member with a copy of the report, the pre-hearing procedure note and the hearing procedure note;
- (d) notify the Parish Clerk of the same matters in the case the relevant member is a Parish Councillor;
- (e) notify the complainant of the same matters.

### 4. **Pre-Hearing Inquiries of the Member**

Following notification under paragraph 3 the Monitoring Officer will write to the member and require him to complete and return within 14 days (or such longer period as the Monitoring Officer shall in his discretion permit) Forms A to E substantially in the form recommended by the Standards Board. These forms will ask the member to identify findings of fact with which the member disagrees; identify any additional evidence relevant to the allegation, and to provide detailed information relevant to attendance at the hearing and calling of witnesses and views on the need for private hearings in whole or part.

**Notes:** (a) The presumption is that the hearing will be conducted in public and that all documentation will be available for public inspection at least five clear days before the hearing. The decision to conduct all or any part of the hearing in private or to withhold any document from public inspection will be taken in accordance with the legal provisions on access to information in the Local

Government Act 1972 (as amended) having due regard to the Human Rights Act 1998. A note on admission of press and public to Standards Committee hearings is attached to the Hearing Procedure.

- (b) Having been given an opportunity to identify disagreement with the findings of fact contained in the report of the investigator, the member will not be permitted to raise at the hearing any new disagreement, unless exceptional reasons exist for doing so eg: as a result of new evidence which has only just become available.
- (c) The provisional hearing date will not be changed unless the member has indicated a wish to attend the hearing/be represented and there are good reasons why he/she/the representative is unable to attend on the proposed date. Even where there are good reasons to change a date, the hearing may have to take place in the absence of the member or representative if necessary to enable the Committee/Sub-Committee to make a determination within the period required by law.
- (d) If the member fails or declines to acknowledge receipt of the investigator's report or return the Forms A to E (or any of them) or decides not to attend the hearing, the Committee or Sub-Committee may hear the case in his absence.

#### 5. **Pre-Hearing Inquiries of the Investigator**

On receipt of the response of the member to the investigator's report and the forms referred to in section 4 (or on the expiry of 14 days or such longer period as has been permitted from their being sent to the member whichever is the sooner), the Monitoring Officer will:-

- (a) notify the investigator of the date of the hearing;
- (b) invite the investigator to comment on the member's response (if any) within 14 days and indicate whether he intends to attend the hearing or be represented or give evidence or call witnesses and whether he wishes any part of the hearing to be held in private or any part of his report to be withheld from the public;
- (c) invite the attendance of the investigator if the proper conduct of the hearing requires it in the opinion of the Monitoring Officer.

#### 6. **Preparations for Hearing**

- (a) The Monitoring Officer shall identify any areas of dispute between the member and the investigator and arrange for the attendance of any necessary witnesses to enable the hearing to resolve any such points of difference.
- (b) The Monitoring Officer shall have the discretion to decide whether the hearing date should be changed and, subject to ratification by a resolution of the Committee or Sub-Committee conducting the hearing, whether any part of the hearing should be conducted in private or any part of the investigator's report or documents should be withheld from the public.
- (c) The Monitoring Officer shall prepare a written report summarising:-
  - (i) the complaint;
  - (ii) the investigator's report and findings;
  - (iii) the conduct of the pre-hearing procedure recording any facts which are not agreed, who will be present at the hearing and the witnesses to be called;
  - (v) the key issues to be determined by the hearing;
  - (vi) enclosing a copy of the adopted hearing procedure;

and he shall provide the Proper Officer with this report together with all relevant documents to be sent to the member, the complainant and members of the Committee/Sub-Committee together with an agenda for the meeting.

## PROCEDURE FOR LOCAL DETERMINATION HEARINGS

### 1. Interpretation

- (a) 'Member' means the member or former member of a relevant authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the member's nominated representative.
- (b) 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative.<sup>1</sup>
- (c) 'The Matter' is the subject matter of the investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) 'The Committee Support Officer' means an officer of the authority responsible for supporting the Committee's discharge of its functions and recording the decisions of the Committee.
- (f) 'Legal Advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) 'The Chairman' refers to the person presiding at the hearing.

### 2. Modification of Procedure

The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

### 3. Representation

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person other than someone who will also be a witness. Note that the cost of such representation must be met by the Member, unless the Committee has expressly agreed to meet all or any part of that cost.<sup>2</sup>

### 4. Legal Advice

The Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Member and the Investigator if they are present.<sup>3</sup>

### 5. Setting the Scene

At the start of the hearing, the Chairman shall introduce each of the members of the Committee, the Member (if present), the Investigator (if present) and any other officers

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<sup>1</sup> In practice, the matter is referred by the ESO to the Monitoring Officer, who is then responsible for reporting the matter to the Committee. It is, therefore, convenient for the Monitoring Officer to conduct the pre-hearing process and to present the introductory report to the Committee at the commencement of the hearing.

<sup>2</sup> Once regulations are made under Section 100 of the Local Government Act 2000, authorities will have a discretion to provide an indemnity to Councillors in specified circumstances.

<sup>3</sup> In the interests of openness, the Committee may prefer to receive any such advice in the main hearing room in the presence of the Investigator and the Member. Where this is not practicable, the Legal Advisor should repeat in the presence of the Investigator and the Member the advice which he/she has tendered.

present, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.

## 6. **Preliminary Procedural Issues**

The Committee shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chairman shall ask members of the Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chairman shall confirm that the Committee is quorate.<sup>4</sup>

(c) Hearing Procedure

The Chairman shall confirm that all present know the procedure which the Committee will follow in determining the matter.

(d) Proceeding in the absence of the Member

If the Member is not present at the start of the hearing:-

(i) the Chairman shall ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing;

(ii) the Committee shall then consider any reasons which the Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;

(iii) if the Committee is satisfied with such reasons, it shall adjourn the hearing to another date subject to its overriding duty to determine the Matter within three months;

(iv) if the Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Committee shall decide whether to consider the Matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Committee may exclude the press and public from its consideration of this Matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chairman shall ask the Member, the Investigator and the Legal Advisor to the Committee whether they wish to ask the Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

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<sup>4</sup> A meeting of the Committee is not quorate unless at least three Members of the Committee are present for the duration of the meeting. The three Members must include at least one Independent Member, unless an Independent Member would have been present but was precluded from participating in any of the business of the Committee in consequence of a prejudicial interest under the Council's Code of Conduct. If the Committee is responsible for Parish Council matters, it must include at least one Parish Council representative amongst its Members. However it is only a requirement that the parish representative is actually present when the Committee is dealing with a parish matter. Parish Sub-Committees, convened to deal with a parish matter, must have a parish representative as a Member of the Sub-Committee, but there is no requirement for him/her actually to attend the meeting for it to be quorate. [The Relevant Authorities (Standards Committee) Regulations 2001, Regulations 3 and 6. SI 2001 No. 2812].



Where the Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

7. **A failure to comply with the Code of Conduct?**<sup>5</sup>

The Committee will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the Investigator's report.<sup>6</sup>

- (a) The Chairman shall ask the Member to confirm that he/she maintains the position as set out in the pre-hearing summary.
- (b) The Pre-Hearing Process Summary

The Chairman will ask the Legal Advisor or the Committee Support Officer<sup>7</sup> to present his/her report, highlighting any points of difference in respect of which the Member has stated that he/she disagrees with any finding of fact in the Investigator's report. The Chairman will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the Investigator's report.

- (i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigator's report, the Committee may then make a determination that the member has failed to comply with the Code of Conduct in the manner described in the Investigator's report and proceed directly to consider whether any action should be taken (Paragraph 8).
- (ii) If the Member identifies additional points of difference, the Chairman shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigator (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Committee is not satisfied with the Member's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the member to challenge the veracity of those findings of fact which are set out in the Investigator's report but in respect of which the member did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.

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<sup>5</sup> The model procedure recommended by the Standards Board suggests that the Committee should first determine findings of fact and then determine whether there has been a failure to comply with the Code of Conduct. I suggest that these two are so closely connected that the Committee may find that it can conveniently determine the two together without any loss of fairness.

<sup>6</sup> Note that the Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the Investigator's report. It is possible that, in the course of their consideration, the Committee apprehend that the Member may have failed to comply with the Code of Conduct in some other manner (for example that the Member's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the Member's office or authority into disrepute). Note that such a possible additional or alternative failure will not, at that stage be able to be considered since the Member will not have had notice of the Committee's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Committee do apprehend a possible additional or alternative failure, a failure by a different member, or a failure in respect of the code of conduct of another authority, they should refer the second matter to the Monitoring Officer with a view to a separate allegation being made to the Standards Boards for England.

<sup>7</sup> As set out above, unless conflicted out, it is likely that the Monitoring Officer will:-

- (i) take on the conduct of the pre-hearing process;
- (ii) present an introductory report to the Committee at the commencement of the hearing setting out the outcomes of the pre-hearing process;
- (iii) will (if legally qualified) act as the Legal Advisor to the Committee; and
- (iv) will distribute and publish any required notices of the Committee's determination.

However, there may be reasons in particular cases for the Monitoring Officer to arrange for any or all of these functions to be carried out on his/her behalf.

- (c) Presenting the Investigator's report
  - (i) If the Investigator is present, the Chairman will then ask the Investigator to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigator may call witnesses as necessary to address any points of difference.
  - (ii) If the Investigator is not present, the Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigator. In the absence of the investigator, the Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses attention to any relevant section of the Investigator's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
  - (iii) No cross-examination shall be permitted but, at the conclusion of the Investigator's report and/or of the evidence of each witness, the Chairman shall ask the Member if there are any matters upon which the Committee should seek the advice of the Investigator or the witness.
- (d) The Member's response
  - (i) The Chairman shall then invite the Member to respond to the Investigator's report and to call any witnesses as necessary to address any points of difference.
  - (ii) No cross-examination shall be permitted but, at the conclusion of the Member's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigator if there are any matters upon which the Committee should seek the advice of the Member or the witness.
- (e) Witnesses
  - (i) The Committee shall be entitled to refuse to hear evidence from the Investigator, the Member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.
  - (ii) Any Member of the Committee may address questions to the Investigator, to the Member or to any witness.
- (f) Determination as to whether there was a failure to comply with the Code of Conduct
  - (i) At the conclusion of the Member's response, the Chairman shall ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the code of conduct as set out in the Investigator's report.
  - (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 6(b)(i) above), the Committee shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigator's report.
  - (iii) The Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.

- (iv) The Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigator, the Member or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an officer or request the Member to produce such further evidence to the Committee.
- (v) At the conclusion of the Committee's consideration, the Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
- (vi) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings of fact and their determination as to whether the member failed to comply with the Code of Conduct as set out in the Investigator's report.

## 8. **If the Member has not failed to follow the Code of Conduct**

If the Committee determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigator's report:

- (a) If the Committee apprehends, from the evidence which they have received during the hearing, that a member has failed to comply with the Code of Conduct (other than the Matter which the Committee has just determined), the Chairman shall outline the Committee's concerns and state that the Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (b) The Chairman should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigator and the Legal Advisor before the Committee finalises any such recommendations.
- (c) Finally, the Chairman should ask the Member whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

## 9. **Action consequent upon a failure to comply with the Code of Conduct**

- (a) The Chairman shall ask the Investigator (if present, or otherwise the Legal Advisor) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction.<sup>8</sup>

<sup>8</sup> The sanctions which are available to the Committee under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, Regulation 7, are any, or any combination, of the following:-

- "(i) censure of that Member;
- (ii) restriction for a maximum period of three months of that Member's access to the premises of the authority and that Member's use of the resources of the authority, provided that such restrictions imposed upon the Member –
  - (aa) are reasonable and proportionate to the nature of the breach; and
  - (bb) do not unreasonably restrict the Member's ability to perform his functions and duties as a Member.
- (iii) partial suspension of that Member for a maximum period of three months;
- (iv) partial suspension of that Member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the Standards Committee;
- (v) suspension of that Member for a maximum period of three months;
- (vi) suspension of that Member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the Standards Committee."

Any sanction imposed shall commence immediately unless the Committee direct (for any sanction other than censure) that it shall commence on any date specified by the Committee within six months of the date of the hearing. The effect of suspension is temporarily to deprive the Member of the benefits of any position within this authority from which the Member is suspended, for the duration of the suspension. Thus, during the period of suspension, a Member who is suspended from the Executive would lose any special responsibility allowances which he/she received as a Member of the Executive. A Member who is suspended in total would also lose any basic allowances for the duration of the suspension, and be unable to claim any travelling or subsistence allowances as they would not be incurring any such expenses in the discharge of their functions as a Councillor. But at the end of the period of suspension, the Councillor would automatically slot back into the positions which he/she held prior to the suspension, unless the Council had positively removed him/her from any such position in the meantime.

- (b) The Chairman will then ask the Member to respond to the Investigator's advice.
- (c) The Chairman will then ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (d) Any member of the Committee may address questions to the Investigator or to the Member as necessary to enable him/her to take such an informed decision.
- (e) The Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Committee will make to the authority with a view to promoting high standards of conduct.
- (f) At the completion of their consideration, the Committee shall return to the main hearing room and the Chairman shall state the Committee's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Committee will make to the authority.

10. **The Close of the Hearing**

- (a) The Committee will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Member as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing
- (c) Following the close of the hearing, the Committee Support officer will agree a formal written notice of the Committee's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 8 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.<sup>9</sup>
- (d) The notice to the Member shall include a statement as to the rights of the Member to seek permission to appeal from the president of the Adjudication Panel within 21 days of receipt of notification of the finding and shall provide the Member with the necessary appeal form.

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<sup>9</sup> Note that the summary will include:-

- (a) the name of the Member
- (b) the alleged failure to comply with the Code of Conduct
- (c) the finding of the Committee that the Member did or did not fail to comply with the Code of Conduct
- (d) the details of any failure
- (e) brief reasons for the finding
- (f) any sanction or other action determined or recommended
- (g) a statement that the Member has a right of appeal

## ADMISSION OF PRESS AND PUBLIC TO STANDARDS COMMITTEE DETERMINATION 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 discretion to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are set out below. 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) natural 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 a 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'.
- 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 or 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' and must meet '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. This will not conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

**CATEGORIES OF EXEMPT INFORMATION UNDER SCHEDULE 12A OF THE LOCAL  
GOVERNMENT ACT 1972 (AS MODIFIED IN RELATION TO LOCAL DETERMINATIONS BY  
STANDARDS COMMITTEE)**

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-holder or applicant 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.
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 matter, 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 under the provisions of section 64(2) or 71(2) of the Local Government Act 2000.