

**Procedure for Determination and Hearing Sub-Committee**

**1. Interpretation**

- 1.1 'Councillor' means the member of the Council (including co-opted members) who is the subject of the allegation being considered by the Determination and Hearing Sub-Committee ('the Sub-Committee'), unless stated otherwise. It also includes the Councillor's nominated representative.
- 1.2 'Investigating Officer' means the Ethical Standards Officer (ESO) who referred the report to the Council, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigating Officer means the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).
- 1.3 'The Matter' is the subject matter of the Investigating Officer's report.
- 1.4 'The Sub-Committee' refers to the Determination and Hearing Sub-Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- 1.5 'The Committee Support Officer' means an officer of the Council responsible for supporting the Standards Committee's discharge of its functions and recording the decisions of the Standards Committee.
- 1.6 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.
- 1.7 'The Chair' refers to the person presiding at the hearing.

**2. Modification of the Procedure**

- 2.1 The Chair 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**

- 3.1 The Councillor may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

#### **4 Pre-hearing Procedure (ESO's Report)**

4.1 Upon reference of a matter from an ESO for local determination following completion of the ESO's report, the Monitoring Officer shall, within seven days, instruct the Legal Advisor:

- 4.1.1 to arrange a date for the Sub-Committee;
- 4.1.2 to send a copy of the report to the Councillor and advise him / her of the date, time and place for the hearing;
- 4.1.3 to send a copy of the report to the person who made the allegation and advise him / her of the date, time and place for the hearing;
- 4.1.4 to request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E as recommended by Standards for England within 14 days of receipt;
- 4.1.5 in the light of any Pre-Hearing Forms returned by the Councillor, to determine whether the Sub-Committee will require the attendance of the ESO and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing and arrange for their attendance;
- 4.1.6 to prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and highlighting the issues which the Sub-Committee will need to address; and
- 4.1.7 to arrange that the agenda for the hearing, together with the Pre-hearing Summary Report and copies of any relevant documents are sent to:
  - 4.1.7.1 all Members of the Sub-Committee who will conduct the hearing;
  - 4.1.7.2 the Councillor;
  - 4.1.7.3 the person who made the allegation; and
  - 4.1.7.4 the Investigating Officer.

#### **5. Pre-Hearing Process (Local Investigation)**

5.1 Upon receipt of the final report of the Investigating Officer including a finding that the Councillor failed to comply with the Code of Conduct or the Standards Committee finds that the matter should be considered at the formal hearing, the Monitoring Officer shall instruct the Legal Advisor:

- 5.1.1 to arrange a date for the Sub-Committee hearing;
- 5.1.2 to send a copy of the report to the Councillor and advise him / her of the date, time and place for the hearing;
- 5.1.3 to send a copy of the report to the person who made the allegation and advise him / her of the date, time and place for the hearing;
- 5.1.4 to request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by Standards for England within 14 days of receipt;
- 5.1.5 in the light of any Pre-Hearing Forms returned by the Councillor, to determine whether the Sub-Committee will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- 5.1.6 to prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and highlighting the issues which the Sub-Committee will need to address; and
- 5.1.7 to arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
  - 5.1.7.1 all members of the Sub-Committee who will conduct the hearing;
  - 5.1.7.2 the Councillor;
  - 5.1.7.3 the person who made the allegation; and
  - 5.1.7.4 the Investigating Officer.

## **6. Legal Advice**

- 6.1 The Sub-Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. Wherever possible, such legal advice shall be given to the Sub-Committee in open session.

## **7. Setting the Scene**

- 7.1 At the start of the hearing, the Chair shall introduce each of the members of the Sub-Committee, the Councillor (if present), the Investigating Officer (if present) and any other officers present, and shall then explain the procedure which the Sub-Committee will follow in the conduct of the hearing.

## **8. Preliminary procedural issues**

- 8.1 The Sub-Committee shall then deal with the following preliminary procedural matters in the following order.

### **Disclosures of interests**

- 8.2 The Chair shall ask members of the Sub-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.

### **Quorum**

- 8.3 The Chair shall confirm that the Sub-Committee is quorate.

### **Hearing procedure**

- 8.4 The Chair shall confirm that all present know the procedure which the Sub-Committee will follow in determining the matter.

### **Proceeding in the absence of the Councillor**

- 8.5 If the Councillor is not present at the start of the hearing:
- 8.5.1 the Chair shall ask the Legal Advisor whether the Councillor has indicated his/her intention not to attend the hearing;
  - 8.5.2 the Sub-Committee shall then consider any reasons which the Councillor has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
  - 8.5.3 if the Sub-Committee is satisfied with such reasons, it shall adjourn the hearing to another date;
  - 8.5.4 if the Sub-Committee is not satisfied with such reasons, or if the Councillor has not given any such reasons, the Sub-Committee shall decide whether to consider the matter and make a

determination in the absence of the Councillor or to adjourn the hearing to another date.

### **Exclusion of the Press and Public**

- 8.6 The Sub-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.
- 8.7 The Chair shall ask the Councillor, the Investigating Officer and the Legal Advisor to the Sub-Committee whether they wish to ask the Sub-Committee to exclude the press or public from all or any part of the hearing. If any of them so request, the Chair shall ask them to put forward reasons for so doing and ask for responses from the others and the Sub-Committee shall then determine whether to exclude the press and public from all or any part of the hearing.
- 8.8 Where the Sub-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.

### **9 A failure to comply with the Code of Conduct?**

- 9.1 The Sub-Committee will then address the issue of whether the Councillor failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report.
- 9.2 The Chair shall ask the Councillor to confirm that he/she maintains the position as set out in the pre-hearing summary.

### **The Pre-Hearing Process Summary**

- 9.3 The Chair will ask the Legal Advisor to present their report, highlighting any points of difference in respect of which the Councillor has stated that he / she disagrees with any finding of fact in the Investigating Officer's report. The Chair will then ask the Councillor to confirm that this is an accurate summary of the issues and ask the Councillor to identify any additional points upon which he / she disagrees with any finding of fact in the Investigating Officer's report.
  - 9.3.1 If the Councillor admits that he / she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Sub-Committee may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken.

- 9.3.2 If the Councillor identifies additional points of difference, the Chair shall ask the Councillor to explain why he / she did not identify these points as part of the pre-hearing process. The Investigating Officer (if present) shall then be asked if 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.
- 9.3.3. Where the Sub-Committee is not satisfied with the Councillor'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 Councillor to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which the Councillor 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 Investigating Officer and/or any additional witnesses to attend the hearing.

#### **Presenting the Investigating Officer's report**

- 9.4 If the Investigating Officer is present, the Chair will then ask the Investigating Officer to present his / her report, having particular regard to any points of difference identified by the Councillor and why he / she concluded, on the basis of his / her findings of fact, that the Councillor had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
- 9.5 If the Investigating Officer is not present, the Sub-Committee shall only conduct a hearing if it is satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Sub-Committee shall determine, on the advice of the Legal Advisor, which witnesses, if any, to call. Where such witnesses are called, the Chair shall draw the witnesses attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
- 9.6 No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chair shall ask the Councillor if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer or the witness.

### **The Councillor's response**

- 9.7 The Chair shall then invite the Councillor to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
- 9.8 No cross-examination shall be permitted but at the conclusion of the Councillor's evidence and/or of the evidence of each witness, the Chair shall ask the Investigating Officer if there are any matters upon which the Standards Committee should seek the advice of the Councillor or the witness.

### **Witnesses**

- 9.9 The Sub-Committee shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that the witness is likely to give evidence which it needs to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.
- 9.10 Any member of the Sub-Committee may address questions to the Investigating Officer, to the Councillor or to any witness.

### **Additional Evidence**

- 9.11 At the conclusion of the evidence, the Chair shall check with the members of the Sub-Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.
- 9.12 If the Sub-Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct is of the opinion that it requires additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Sub-Committee may (on not more than one occasion) adjourn the hearing, and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Sub-Committee.

### **Determination as to whether there was a failure to comply with the Code of Conduct**

- 9.13 At the conclusion of the Councillor's response, the Chair shall ensure that each member of the Sub-Committee is satisfied that they have sufficient information to enable them to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigating Officer's report.

- 9.14 Unless the determination merely confirms the Councillor's admission of a failure to comply with the Code of Conduct, the Sub-Committee shall then retire to another room to consider in private whether the Councillor did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.
- 9.15 The Sub-Committee shall take its decision on the balance of probability based on the evidence which it has considered at the hearing.
- 9.16 The Sub-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 Investigating Officer, the Councillor or a witness, or to seek the legal advice from its Legal Advisor. If it requires any further information, it may adjourn and instruct an officer or request the Councillor to produce such further evidence to the Sub-Committee.
- 9.17 At the conclusion of the Sub-Committee's consideration, the Sub-Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Councillors.
- 9.18 The Sub-Committee shall then return to the main hearing room and the Chair will state the Sub-Committee's principal findings of fact and its determination as to whether the Councillor failed to comply with the Code of Conduct as set out in the Investigating Officer's report.

## **10. If the Councillor has not failed to follow the Code of Conduct**

- 10.1 If the Sub-Committee determines that the Councillor has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report:
- 10.1.1 If the Sub-Committee apprehends, from the evidence which it has received during the hearing, that a Councillor has failed to comply with the Code of Conduct (other than the matter which the Sub-Committee has just determined), the Chair shall outline the Sub-Committee's concerns and state that the Sub-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.
- 10.1.2 The Chair shall then set out any recommendations which the Sub-Committee is minded to make to the Council with a view to promoting high standards of conduct among Councillors and seek the views of the Councillor, the Investigating Officer and the Legal Advisor before the Sub-Committee finalises any such recommendations.



10.1.3 Finally, the Chair shall ask the Councillor whether he / she wishes the authority not to publish a statement of its finding in a local newspaper.

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

- 11.1 The Chair shall ask the Investigating Officer (if present, or otherwise the Legal Advisor) whether, in his/her opinion, the Councillor's failure to comply with the Code of Conduct is such that the Sub-Committee should impose a sanction and, if so, what would be the appropriate sanction.
- 11.2 The Chair will then ask the Councillor to respond to the Investigating Officer's or Legal Advisor's advice.
- 11.3 The Chair will then ensure that each member of the Sub-Committee is satisfied that they have sufficient information to enable them to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- 11.4 Any member of the Sub-Committee may address questions to the Investigating Officer or to the Councillor as necessary to enable them to take such an informed decision.
- 11.5 The Chair shall then set out any recommendation which the Sub-Committee is minded to make to the Council with a view to promoting high standards of conduct among Councillors, and seek the views of the Councillor, the Investigating Officer and the Legal Advisor.
- 11.6 The Sub-Committee shall then retire to another room to consider in private whether to impose a sanction, and where a sanction is to be imposed, what sanction to impose, when that sanction should take effect, and any recommendations which the Sub-Committee will make to the Council.
- 11.7 At the completion of their consideration, the Sub-Committee shall return to the main hearing room and the Chair shall state the Sub-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 Sub-Committee will make to the authority.

## **12. Reference back to the Ethical Standards Officer**

If, at any time before the Sub-Committee has determined upon any appropriate sanction, the Sub-Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Sub-Committee, the Sub-Committee may instruct the Monitoring Officer to request the ESO to resume responsibility for the

conduct of the matter, and may adjourn the hearing until the Monitoring Officer advises the Sub-Committee of the ESO's response to such a request.

### **13. The close of the hearing**

- 13.1 The Sub-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 Councillor as soon as practicable after the close of the hearing.
- 13.2 The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing.
- 13.3 Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Sub-Committee's determination and the Legal Advisor 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.

### **14. Appeals**

- 14.1 The Councillor may appeal against the decision of the Sub-Committee by writing to the President of the Adjudication Panel for England, ensuring that his / her letter sets out the grounds for such an appeal, includes a statement as to whether or not he / she consents to the appeal being heard by way of written representations, and is received by the President within 21 days of the date of the written notice of decision under Paragraph 13.3 above.