

# SC/010/11

**Committee** The Essex County Council and Essex Fire Authority Joint Standards Committee

**Date** Thursday 24 November 2011

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## Procedures For Hearing Allegations of Misconduct

### 1. Purpose of the Report

- 1.1 The purpose of this report is to propose new procedures for hearing allegations of misconduct against members.

### 2. Recommendations

- 2.1 To note the draft hearing procedures set out in **Appendix 1** and authorise the Monitoring Officer to make, in consultation with the Chairman, such changes as she considers necessary for the purposes of the forthcoming standards hearing.

### 3. Background

- 3.1 On 4<sup>th</sup> December 2009 the Joint Committee considered procedures for hearing allegations of misconduct against members. The committee agreed that the Chairman would agree changes to the Hearings Procedure note with the then Monitoring Officer. Since then, a new Monitoring Officer has been appointed who has had experience of standards hearings in other authorities and who recommends adopting a new set of procedures which have been tried and tested elsewhere with positive feedback as to the process adopted. The draft procedures are attached at **Appendix 1**. Members are asked to note the proposed draft procedures and authorise the Monitoring Officer to make, in consultation with the Chairman, such amendments as she feels necessary for the purposes of the intended hearing.

3.2 The comments made by the committee in February 2009 and the new Monitoring Officer's response to those comments are set out below:

|                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Committee requested that the draft procedures be amended by the Deputy County Solicitor.                                                                                                                                                                       | Agreed, and updated further. See Appendix 1.                                                                                                                                                                                      |
| That any witnesses will be questioned through asking permission from the Chairman, the Chairman could then intervene if appropriate.                                                                                                                               | Agreed                                                                                                                                                                                                                            |
| That the Deputy County Solicitor would contact Standards for England to ask who should receive copies of the investigators report                                                                                                                                  | The report must be sent to the councillor concerned and to members of the committee                                                                                                                                               |
| That the Deputy County Solicitor would contact Standards for England to ask whether it was sufficient for members to receive merely a summary of the report, as some Members were concerned that they would need all the information to make an informed decision. | Members will receive the entire report but the summary is used as a guide to help the members of the hearing committee                                                                                                            |
| The Committee agreed that in Section 5.1.7 the Agenda should be sent out to Members two weeks before the meeting to give them time to read these documents.                                                                                                        | Agreed                                                                                                                                                                                                                            |
| The Committee agreed in Section 6, legal advice, that the Sub-Committee may adjourn to hear the legal advice and then may ask for this advice to be re-stated in the public meeting.                                                                               | Legal advice will be given in public providing it does not prejudice the outcome of the hearing nor disclose any private or confidential information.                                                                             |
| The Committee agreed that five Members should be appointed and available on the day for these meetings as Members may have to declare interests when they are informed about the case. This should ensure that there are three Members to sit on the Sub-          | The terms of reference of the committee require 3 members to sit on the sub-committee, including 1 independent member. However, two additional members will be asked to stand by in the event that a substitute member is needed. |

|                                                                                                                                                                     |                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
| Committee. Two of these five Members should be independent Members. A pre-meeting should take place for these Sub-Committees.                                       |                                                        |
| The Committee agreed that the Chairman and the Deputy County Solicitor would agree and amend the report accordingly and then circulate the final report to Members. | The new draft procedures are attached for information. |

#### **4. Legal and Other implications**

4.1 Legal implications have been addressed in the body of the report.

#### **Background Papers**

None

**ESSEX COUNTY COUNCIL**  
**STANDARDS COMMITTEE**  
**HEARING PROCEDURE**

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## **CHAPTER ONE**

### **INTRODUCTION**

- 1.1 The Local Government Act 2000 introduced a new ethical framework for local government including the establishment of a the Standards Board for England, a Model Code of Conduct for Members of the Council and a requirement for Councils to have their own Standards Committees which would be responsible for promoting high standards of conduct amongst Members. The Standards Committee of an authority was given the power to determine allegations of breaches of the Code of Conduct by members of the authority and to impose sanctions.
- 1.2 The Local Government and Public Involvement in Health Act 2007 recently amended the framework and extended the role of the Standards Committee so that allegations of misconduct against a member are now made to the Standards Committee rather than the Standards Board for England. The Standards Committee, through its sub-committee the Standards (Initial Assessment) Sub-Committee may decide to refer the matter to the Council's Monitoring Officer to investigate or for other appropriate action, they may refer to the matter to the Standards Board for investigation or they may decide not to investigate the matter.
- 1.3 If the Standards Committee decides not to refer a complaint for investigation, the person who made the complaint has a right to ask for a review of that decision. The review will be undertaken by the Standards (Review) Sub-Committee.
- 1.4 A decision by the Standards Committee not to investigate an allegation or not to take any action in respect thereof will not prevent the Monitoring Officer having an informal discussion with the member concerned about the incident that gave rise to the allegation and to advise on how similar incidents/allegations might be avoided in future.

- 1.5 When the Monitoring Officer or her nominee completes their investigation their final report will be considered by the Standards Committee. The Committee will be asked to decide whether there is a case to answer and, if there is, a hearing will then be convened in order to determine the matter.
- 1.6 The purpose of the Standards Committee's hearing is to decide whether or not a member has breached the Member Code of Conduct and what, if any, sanction should be imposed. The Committee may also want to give general guidance or advice to the authority or to all or some members.
- 1.7 The Member may appeal against the decision of the Standards Committee and have 28 days in which to seek an appeal. Such appeals are made to the First-Tier Tribunal (Local Government Standards in England). Any party to a Code of Conduct complaint may now apply to appeal (subject to being granted permission of the First-Tier Tribunal to do so) a decision of the First-Tier Tribunal. Such appeals are heard in the Upper Tribunal.
- 1.8 This Procedure Note has been prepared in accordance with the relevant legislative requirements and the guidance which has been issued by the Standards Board for England. The procedure has been updated following the introduction of the Local Government and Public Involvement in Health Act 2007 and the Standards Committee (England) Regulations 2008.
- 1.9 This Procedure Note describes the procedure that will be followed by the Standards Committee following referral of complaints by the Monitoring Officer to them for the purposes of determining whether there has been a breach of the Code of Conduct
- 1.10 This Procedure Note is designed to ensure that the Standards Committee has an effective, fair and transparent hearing process and to assist Members who are the subject of a complaint. The procedure is the same for all Members of the Council, no matter what political party they represent and no matter

whether or not they are a member of the Executive or any other body. It also applies to voting co-opted Members and Independent Members.

- 1.11 The procedure does not apply to alleged breaches of any other local codes of practice such as the Planning Code of Practice or the Licensing Code of Practice unless the breach also constitutes a breach of the Code of Conduct.
- 1.12 Any departures from the procedure set out in this Note will be notified to interested parties by the Monitoring Officer.

## INTERPRETATION

Most words and phrases used in this Procedure Note have the same meaning as in the Local Government Acts 2000 and 2003 and regulations made thereunder. However, there may be some words and phrases which require further explanation. For example, for the purposes of this Procedure Note:

- **Committee** means the Standards Committee or any of its sub-committees and Chairman is a reference to the Chairman of the Standards Committee or any of its sub-committees.
- **Ethical Standards Officer** means a person appointed by the Standards Board for England to carry out investigations into allegations of misconduct by members of the Council which have been referred to the Standards Board.
- **Investigator** means the Monitoring Officer, or the person appointed by the Monitoring Officer to investigate the allegation or in the case of an allegation referred to the Standards Board for England, the Ethical Standards Officer.
- **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 authority, or someone appointed for this purpose from outside the authority.



- **Member** means a councillor or voting co-opted member or an independent member who is the subject of the allegation.
- **Monitoring Officer** means the officer appointed by the Council for that purpose pursuant to section 5 of the Local Government and Housing Act 1989. This includes the Deputy Monitoring Officer if acting in the absence of the Monitoring Officer. For the purposes of this guidance, some of the tasks assigned to the Monitoring Officer may be carried out by other officers.
- **Panel** refers to Standards Committee or its sub-committee, which hears an allegation under this procedure.
- **Partial suspension** means that the Member is prevented for the period specified by the Standards Committee from being on a particular committee, sub-committee, joint committee or the Executive or other body they have been appointed to by the Council or from exercising particular specified functions or from having particular specified responsibilities. This may include executive functions or responsibilities.
- **Parties** means the Member & Investigator
- **Suspended** means suspended from being a Member of the Council for the period specified by the Standards Committee. This means that the Member is also suspended from being a member of all committees, sub-committees and joint committees, the Executive and all of its committees and sub-committees and any body to which he or she was appointed to by the Council.

## **CHAPTER TWO**

### **INITIAL ASSESSMENT AND REVIEW**

- 2.1. The Monitoring Officer may refer a complaint to the sub-committee for initial assessment. The Panel will within 20 working days of receipt of the complaint meet to determine what course of action to take in relation to the complaint. All sub-committee meetings will be held in private.
- 2.2 At the start of the meeting, the Chairman should:
  - 2.2.1 Confirm the panel is quorate;
  - 2.2.2 Ask members to declare personal and prejudicial interests;
  - 2.2.3 Summarise the procedure for the hearing;
  - 2.2.4 Confirm all panel members have the correct documentation before them; and
  - 2.2.5 Ask panel members or its legal advisor, if they wish to raise any preliminary procedural issues before considering the complaint.
  - 2.2.6 Where the complainant has requested to withdraw the complaint prior to a decision by the Panel, the Panel shall determine the request taking into account the following factors:
    - 2.2.7 Whether it is in the public interest in taking some action on the complaint which outweighs the complainant's desire to withdraw it?
    - 2.2.8 Is the complaint such that the action can be taken on it, for example, an investigation, without the complainant's participation?

2.2.9 Is there an identifiable underlying reason for the request to withdraw the complaint? (For example, is there evidence to suggest that the complainant may have been pressured to withdraw the complaint?)

The Panel may also consider other relevant factors and evidence.

2.3 Where a complainant requests that some or all of the details of the allegation be kept confidential, the Panel shall determine the request taking into account the following factors:

2.3.1 Does the complainant have reasonable grounds for believing that they will be at risk of physical harm, victimisation or intimidation if their identity is disclosed (this includes protected disclosures under the Council's whistle blowing policy);

2.3.2 There are medical risks associated with the complainant's identity being disclosed. The Panel should normally wish to request medical evidence of the complainant's condition and the impact of the disclosure.

2.3.3 Whether it is possible for an investigation to take place without making the identity of the complainant known;

The Panel may also consider other relevant factors and evidence.

2.4 Where the Panel refuses a request of confidentiality, it may offer the complainant the option to withdraw their complaint.

2.5 The Panel will determine whether the following requirements are met before considering the complaint:

2.5.1 Is the complaint against one or more named members of the authority;

- 2.5.2 The member(s) was in office at the time of the alleged conduct and the Code of Conduct was in force at the time; and
- 2.5.3 The complaint, if proven, would be a breach of the Code of Conduct in force at the time of the alleged misconduct.
- 2.6 If the factors at 2.5 are met, the Panel shall consider the assessment criteria set out in section 2.7, and make one of the following decisions:
  - 2.6.1 decide that no action should be taken in respect of the allegation;
  - 2.6.2 refer the complaint to the Monitoring Officer for investigation;
  - 2.6.3 refer the complaint to the Monitoring Officer to take other action, for example, mediation, training or an alternative measure to address the issue that has arisen;
  - 2.6.4 refer the matter to Standards for England if there are exceptional circumstances.
- 2.7 The Panel shall take into account the following criteria (“the assessment criteria”) in making its decision whether or not to investigate a complaint:
  - 2.7.1 It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee.
  - 2.7.2 It is part of the continuing pattern of less serious misconduct that its unreasonably disrupting the business of the authority and there is no other avenue left to deal with it, short of investigation;
  - 2.7.3 The time that has passed since the alleged conduct occurred;

2.7.4 It is an anonymous complaint but includes documentary or photographic evidence indicating an exceptionally serious or significant matter;

2.7.5 The Panel should not refer the complaint for investigation if it falls into any one or more of the following categories:

- (i) It is believed to be malicious, relatively minor, politically motivated or tit-for-tat;
- (ii) The same or substantially similar complaint has already been the subject of an investigation or inquiry by this Authority or other regulatory authorities and there is nothing further to be gained by seeking the sanctions available to the Adjudication Panel;
- (iii) The complaint concerns acts carried out in the Members private life, when they are not carrying out the work of the authority or have not misused their position as a Member;
- (iv) The complaint is about something that happened so long ago that there would be little benefit in taking action now;
- (v) It appears that the complaint is really about the dissatisfaction with a Council decision;
- (vi) There is not enough information currently available to justify a decision to refer the matter for investigation; or
- (vii) Except in the most serious of cases, conduct that would not be considered to be a breach of the revised Code of Conduct which authorities were able to adopt from May 2007 and became mandatory in October 2007

2.8 The Panel will prepare a written summary of their decision and any appropriate decision notice. The Panel may ask the Legal Advisor to draft the documentation in accordance with their decision.

- 2.9 The written summary and/or decision notice will be sent to the relevant parties within 5 working days and made available for public inspection, unless it is not in the public interest to do so or is likely to prejudice any subsequent investigation.
- 2.10 The Monitoring Officer will make the final decision in relation to the timing of the disclosure of the decision notice/written summary.

### **3. REVIEW**

- 3.1 If a Panel has considered the complaint as set out in section 2 and has come to the decision not to take action in respect of the complaint under 2.6.1, the complainant has a right in law to seek a review of that decision within 30 days beginning with the date of the decision notice.
- 3.2 On receipt of a request to review the decision not to proceed, the Monitoring Officer will refer a complaint to a differently constituted sub-committee.
- 3.3 The Panel will within three months of receipt of the request to review the decision meet to determine the complaint.
- 3.4 At the start of the meeting, the Chairman should:
- 3.4.1 Confirm the panel is quorate;
  - 3.4.2 Ensure the disclosure of personal and prejudicial interest;
  - 3.4.3 Summarise the procedure for the hearing;
  - 3.4.4 Confirm all panel members have the correct documentation before them;

- 3.4.5 Ask panel members or its legal advisor if there are any preliminary procedural issues before considering the complaint, as set out in 2.2.5 above.
- 3.5 The Panel shall consider the assessment criteria set out in section 2.7 and make one of the following decisions:
- 3.5.1 decide that no action should be taken in respect of the allegation;
- 3.5.2 refer the complaint to the Monitoring Officer of the authority for investigation or other action; or
- 3.5.3 refer the complaint to the Standards Board for England for investigation if there are exceptional circumstances.
- 3.6 The Panel will prepare a written summary of their decision and any appropriate decision notice. The Panel may ask the Legal Advisor to draft the documentation in accordance with their decision.
- 3.7 The written summary and/or decision notice will be sent to the relevant parties within 5 working days and made available for public inspection, unless it is not in the public interest to do so or is likely to prejudice any subsequent investigation.
- 3.8 The Monitoring Officer will make the final decision in relation to the timing of the disclosure of the decision notice/written summary.
- 3.9 There is no right of appeal against a review decision. The complainant may complaint to the Local Government Ombudsman on the grounds of maladministration.

## **CHAPTER THREE**

### **INVESTIGATIONS**

- 4.1 In the event a complaint has been referred for investigation the Monitoring Officer will either carry out the investigation themselves, or appoint another officer to carry out the investigation (the 'Investigating Officer').
- 4.2 Information that an 'Investigating Officer' obtains during the course of a local investigation is covered by Section 63 of the act. Such information is confidential until the investigation is completed.
- 4.3 The Monitoring Officer must inform the following of the decision to refer the matter for investigation:
- the subject member
  - the complainant
  - the standards committee of any other authority concerned
  - the relevant town or parish council if the subject member is a town or parish member
- 4.4 Investigating Officers must always be aware of the obligations under the Data Protection Act 1998, the Human Rights Act 1998 and other relevant legislation, when carrying out an investigation or other action.
- 4.5 When conducting an investigation the 'Investigating Officer' has the power to make inquiries of any person they think necessary. However, there is no obligation for them to respond.



- 4.6 If difficulties in obtaining a response occur the 'Investigating Officer' may refer the matter to the Standards Committee who may consider referring the matter to the Standards Board for England to investigate, as ethical standards officers have the power to compel a witness to provide information.
- 4.7 Investigating Officers are referred to Guidance provided by Standards for England in the conduct of investigation. This is not statutory guidance, but contains practical information.
- 4.8 On completion of an investigation the Investigating Officer must make one of the following findings:
- There has been a failure to comply with the Code
  - There has not been a failure to comply with the Code
- 4.9 The Investigating Officer must write an investigation report and send a copy of it to the subject member. Alternatively, where a Standards Board ethical standards officer has completed an investigation and decided that a complaint should be determined by the standards committee, they will refer their report to the monitoring officer.

## **CHAPTER FOUR**

### **STEPS FOLLOWING INVESTIGATION**

- 5.1 Following receipt of an Investigation Report the monitoring officer must refer the report to the standards committee.
- 5.2 The Standards Committee will consider the report received from the Monitoring Officer and must make one of the following findings:
- (a) it accepts the Monitoring Officers findings that there has been no failure to comply with the Code of Conduct;
  - (b) that the matter should be considered at a determination hearing;
  - (c) or that the matter should be referred to the First Tier Tribunal (Local Standards in England) for determination.

This preliminary decision must be formally made and recorded.

- 5.3 The meeting of the standards committee to consider the Monitoring Officer's investigation report must be convened under Regulation 17 of the regulations. Regulation 8(6) allows the consideration of any information presented for that purpose to be considered as exempt information.
- 5.4. Where the Standards Committee decides that the matter should be considered at a determination hearing it must appoint a sub-committee (the panel) to hold the determination hearing. The political balance requirements do not apply to the panel and it is preferable if the panel has no overall majority from one political party. This sub-committee must be Chaired by an independent member of the Standards Committee.
- 5.5 Members who were previously involved in making the initial assessment of the same complaint may still be appointed as a member of the panel.

- 5.6 If the decision by the Standards Committee is that the matter be referred to a determination hearing any preliminary matters will be conducted in accordance with this procedure note as follows:

### **Date of hearing**

- 5.7 The Monitoring Officer shall, in consultation with the Chairman of the Standards Committee arrange the date, time and place for the hearing which shall take place within 3 months from the date that the Investigator's report was received (but which may not be until 14 days after the date on which the Investigator's report was sent to the Member unless the Member so agrees). When setting the dates the Monitoring Officer will consult with involved parties if possible, and will in any event notify all parties of the date, time and place of the hearing as soon as possible.
- 5.8 Any objection to the proposed hearing date must be notified in writing to the Monitoring Officer forthwith. The Monitoring Officer will act reasonably in considering any requests for an alternative hearing date but is not obliged to re-schedule the hearing, having particular regard to the requirement to convene a hearing within three months. The Monitoring Officer will consult with the Chairman before re-scheduling the meeting.

### **Notice of procedure**

- 5.9 Once the hearing date has been set the Monitoring Officer will send a copy of this Procedure Note and a note of any proposed departures from the procedure in it to the Member and to the Complainant and to the members of the Committee.

## **Written response from Member**

5.10 Prior to the Hearing the Monitoring Officer shall ask the Member to complete a Questionnaire in respect of the findings in the report and other issues relevant to the Hearing. This Questionnaire may be sent to the Member before the Standards Committee has made a decision to refer the matter to a determination hearing if the Monitoring Officer considers it expedient to do so.

The Questionnaire will contain the following information and ask the Member the following questions:

1. The Investigator explains in their report the process of the investigation, evidence gathered, comments on that evidence by yourself and the complainant. Their findings of fact are set out in paragraphs XXXX. We need to know if there is anything in the findings of fact section of the report that you disagree with. You do not need to address their overall recommendation, but merely provide your comments on the findings of fact. To assist you we refer you to paragraphs XXXX since they contain the findings of fact that have led to a recommendation to hold a hearing. Do you disagree with any of the findings of fact in the Investigator's report? If so, please set out below your reasons for the disagreement. (Please note that if you do not notify the Monitoring Officer now of the findings of fact with which disagree with, then you may not be permitted to raise them at the Hearing.)
2. The Investigator feels that there has been a breach of the code of conduct, in particular as set out in paragraph XXX and that you have breached paragraphs XXX (insert summary of codes considered by the Investigator to have been breached). Do you agree you have breached the code of conduct as set out?
3. If there is found to be a breach, is there anything you would like to be taken into account by the Committee when it considers whether a sanction should be imposed and what that sanction might be? You do not have to repeat anything you have said above.

4. Please confirm whether you will be attending the Hearing or whether you intend to submit only written representations. If you do not intend to attend please attach your written representations when responding to this questionnaire.
5. Please confirm if you would like to be represented by a solicitor or barrister or other person at the hearing? If so, please confirm who and whether that person is connected to the matter in any way.
6. Do you wish to call any witnesses and, if so, please provide the name and contact details for those witnesses and a brief description of the evidence each witness will give? Please note that witnesses will be questioned under Oath and may be cross examined by the Officers, Members and by any Solicitor, Barrister or other advocates speaking for the complainant.
7. Do you intend to ask the Committee to consider any documentary or other written evidence not already provided and, if so, please provide copies when responding to this questionnaire?
8. Do you wish to have any documents withheld from the public and, if so, please give your reasons for this request?
9. Would you like the hearing to be held in private or public and, if so, please outline your reasons the reasons for the request? (Meetings will normally be held in public but the Committee will consider the Member's request to hold it in private.)
10. Do you have any comments or questions on the procedure to be followed? (Please see attached copy of the Hearing Procedure).
11. Do either you, or your witnesses or representative have any special access requirements or other special requirements e.g. interpreter, special print or a hearing loop?

5.11 The Member shall respond to the Questionnaire within 10 days from the date the Questionnaire was sent to them. A copy of the Member's response shall be sent to the Investigator for comment but if no response is received from the Member the hearing will continue as scheduled.

#### **Written response from the Investigator**

5.12 The Standards Committee shall ask the Investigator to submit certain information prior to the Hearing and to comment on:

- the response to the Questionnaire provided by the Member and whether the Investigator is able to accept any of the points raised in it.
- whether he or she will be attending the hearing and/or whether he or she intends to be represented by a solicitor or barrister or other person.
- whether he or she would like to call any witnesses and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence they will give if different to the summary of their evidence in the Investigator's report.
- whether he or she will be asking the Committee to consider any documentary or other written evidence not already provided (other than the report of the investigation) and, if so, to provide copies.
- whether he or she thinks the hearing should be held in private and, if so, the reasons why.
- whether he or she would wish to have any documents withheld from the public and, if so, why.
- any comments or questions on the proposed procedure.

## **Pre-Hearing Summary**

5.13 The Monitoring Officer will write to the relevant parties prior to the hearing date with a Pre-Hearing Summary setting out:

- the name of the Authority
- the name of the Member
- the name of the Complainant (unless in very special circumstances the Monitoring Officer considers that the name of the Complainant should not be revealed)
- the name of the Investigator
- the name of the Chairman of the Committee that will determine the allegation
- the name of the Monitoring Officer or his or her deputy
- the date of the Pre-Hearing Summary
- the date, time and place of the Hearing
- a summary of the allegation
- the findings of fact of the Investigator
- the findings of fact which are not agreed by the Member, if any, the reasons for that disagreement and the comments from the Investigator on those reasons
- an explanation of those parts of the Code of Conduct which are alleged to have been breached
- whether the Member has acknowledged the breach
- whether the Member has agreed to give an apology and/or to undergo any training or conciliation

- a list of persons expected to attend the meeting, including any witnesses who have been invited to attend
- whether a limitation is likely to be placed on the number of witnesses who may be called
- whether the person named by the Member as his or her representative (if not a solicitor or barrister) is likely to be permitted to act as the Member's representative
- a list of documents to be considered by the Committee including any written representations which the Member has asked to be placed before the Committee (copies of the documents will be enclosed if possible but in any event will be sent to the parties prior to the hearing)
- a list of any documents that have been or will be withheld from the public
- whether the meeting is likely to be held in private
- whether there will be any departures from the procedure set out in this Procedure Note which have not already been notified to the Parties.

### **Disputes on the Pre-Hearing Summary**

5.14 If having received the Pre-Hearing Summary the Member disagrees with any part of it he or she shall forthwith give notice of the disputed issues to the Standards Committee. The Member should then seek to resolve the disputed issues through the Monitoring Officer prior to the Hearing. If necessary, the Member can contact the Monitoring Officer to arrange a convenient time to meet the Monitoring Officer to discuss the issues. This meeting must take place before the Hearing and should be convened as soon as possible in order to allow sufficient time to try to resolve any disputes prior to the hearing.



Any unresolved issues will be dealt with as a preliminary matter at the hearing. Failure to notify the Standards Committee of any issues of dispute or any failure to attempt to resolve those issues with the Monitoring Officer prior to the Hearing may mean that the Committee may decline to listen to the Member's views on the disputed issues at the Hearing.

## **CHAPTER FIVE**

### **THE DETERMINATION HEARING**

#### **THE PANEL**

- 6.1 The Panel will comprise of three or five members of the Standards Committee appointed by the Standards Committee and will be Chaired by an independent member.
- 6.2 The Panel's quorum is three, including at least one independent member, who would then be appointed the Chairman. Substitute Panel members may be appointed where the original member cannot attend a scheduled hearing.
- 6.3 Panel decisions will be made by simple majority and the standard of proof to be applied is the balance of probabilities in any findings against the member. Abstentions are not permitted.
- 6.4 The Panel may take 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 Panel should be shared with the member at the full hearing and the investigator, if they are present.
- 6.5 The member may be represented or accompanied during a full determination hearing by a solicitor, counsel or, with the permission of the Panel, another person.

#### **Commencement of the hearing**

- 6.6 The parties attending the hearing should arrive in good time and should assemble outside the meeting room prior to the start of the Hearing. Members

of the Committee will assemble in the meeting room or in a separate room if one is available.

- 6.7 Where possible seats will be reserved for the relevant parties and their witnesses. A separate seat will be provided for a witness when giving evidence.

### **Delay at start of hearing**

- 6.8 The hearing shall commence on the date and at the time stipulated in the notice convening the meeting but the start may be delayed by the Chairman for a reasonable period if, having had regard to the advice of the officers present and any representations received from or on behalf of the parties he or she considers such delay to be reasonable in the circumstances. The Chairman will take into account the effect the delay may have on the likelihood of the hearing being concluded in the one session.

### **Quorum**

- 6.9 The quorum for the meeting shall be 3 (including at least 1 independent member and at least 1 elected member).
- 6.10 Where at least one independent member would have been present for the duration of the meeting but for the fact that he or she was prevented or restricted from participating in any business by virtue of a conflict of interest the requirement for the quorum to include one independent member shall not apply.

### **Absent Member**

- 6.11 If the Member is not present at the time the hearing is due to start the Chairman will ask the Monitoring Officer whether the Member has provided

any reasons for his or her non-attendance. If the Committee is satisfied with such reasons, it shall adjourn to another date. If the Committee is satisfied that the Member received adequate notice of the hearing and either no reasons for the Member's non-attendance were given or the Committee considers the reasons given to be inadequate then the Committee shall decide whether to proceed with the hearing in their absence or adjourn to another date.

### **Chairman to deal with preliminary matters**

6.12 At the start of the hearing, the Chairman will deal with the following preliminary matters:

- Introductions of all persons present.
- Declarations of interest.
- Whether the parties have received a note of the procedure to be followed at the Hearing.
- An explanation of the procedure to be followed (the Chairman may invite the Monitoring Officer to explain the procedure) and whether that procedure that will be followed is different to the procedure described in this Procedure Note (again, the Chairman may invite the Monitoring Officer to address this issue). Any questions on the procedure will also be dealt with.
- Whether there are any outstanding issues or disagreements on the Pre-Hearing Summary and whether they have already been raised by the Member with the Monitoring Officer prior to the Hearing and whether there was any attempt at resolving them.

#### **6.13 The Committee will then determine:**

- whether the Member is entitled to be represented by the person nominated by him or her (if not a barrister or solicitor).
- whether all or any part of the hearing should be conducted in private (the press and public will be refused access where it is likely that confidential information will be disclosed in the course of the hearing or to the relevant part thereof and may be excluded in the case of exempt information where in all the circumstances the public interest in excluding the press and public outweighs the public interest in disclosing the information. The presumption should be that if no-one objects or confidential information is not being disclosed (as defined in paragraph 1.2 of Appendix A), the hearing should be in public. Objections should be considered in accordance with the guidelines in Appendix A & B.
- whether, acting reasonably, a limit should be placed on the number of witnesses which the Member or the Investigator will be entitled to call and if so, how many. This may be, for example, if the Committee feels that witnesses will simply repeat earlier evidence or if their evidence is not relevant.

#### **Explanation of Pre-Hearing Summary**

6.14 The Chairman will ask the Monitoring Officer to present the Pre-Hearing Summary. As a copy would have already been sent to the parties this requirement can be dispensed with if the Committee and the Member agrees.

#### **Written Representations**

6.15 In the event that the Member or the Investigator has submitted written representations prior to the Hearing then they shall stand as read.

## **Findings of Fact**

- 6.16 The Chairman will ask the Monitoring Officer to explain the findings of fact in respect of which the Member has given notice of dispute, if any.
- 6.17 If there are none then the Chairman will, subject to the following paragraphs, move on to address whether there has been a breach of the Code of Conduct and in so doing will move onto the next stage in the process.
- 6.18 If there any disputes on the findings of fact which have been notified to the Monitoring Officer the Chairman will invite the Member or his or her representative to briefly outline the findings of fact which he or she disagrees with.
- 6.19 Except in exceptional circumstances and with the permission of the Committee the Member will not be entitled to raise any disputes on any findings of fact other than those in respect of which notice has already been given to the Monitoring Officer in response to the Questionnaire.
- 6.20 If the Committee is satisfied that the Member had good reasons for failing to notify the Monitoring Officer of the disputed facts prior to the hearing the Chairman will ask the Investigator whether he or she is able to deal with them. If not, the hearing shall be adjourned. If he or she can deal with them then the hearing shall proceed and the disputed facts in question will be dealt with.
- 6.21 Once the Member or his or her representative has briefly outlined the findings of fact with which they disagree the Investigator will be invited to make submissions to support the relevant finding(s) of fact in the report which are disagreed and may, with the committee's permission, call any necessary supporting witnesses to give evidence.

- 6.22 The Chairman may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.
- 6.23 The Chairman will then give the Member an opportunity to make submissions to support his or her version of the facts and, with the Chairman's permission, to call any necessary witnesses to give evidence.
- 6.24 The Chairman may give the Investigator an opportunity to challenge any of the evidence put forward by the witnesses called by the Member or his representative.
- 6.25 At any time the members of the Committee may, with the permission of the Chairman, question any of the people involved or any of the witnesses.

#### **Oath or Affirmation**

- 6.26 An oath or affirmation will be administered in respect of any person who gives evidence, including the Member.

#### **Deliberations on Findings of Fact**

- 7.1 Members of the Committee will retire to deliberate in private with assistance from the Monitoring Officer or other officer in order to decide on the findings of fact. The Committee shall seek to reach a unanimous decision but if that is not possible then the decision shall be reached by a simple majority. In the case of an equality of votes the person presiding at the meeting shall have a second or casting vote.
- 7.2 The Hearing will then continue and the Chairman will announce the Committee's finding of fact.

### **Was there a Breach of the Code of Conduct?**

- 7.3 Once the Chairman has announced the Committee's findings of fact the Committee will go on to consider whether or not, based on the facts, the Member has breached the Code of Conduct.
- 7.4 The Chairman will invite the Member to make submissions on the reasons why, if any, he or she does not consider there to have been a breach of the Code of Conduct.
- 7.5 The Chairman will then invite the Investigator to respond to the Member's submission.
- 7.6 Members of the Committee and/or the Monitoring Officer may at any time, but with permission of the Chairman, question anyone involved on any point raised in their submissions.
- 7.7 The Chairman will then invite the Member to make any final relevant points.
- 7.8 Members of the Committee will then retire to consider the submissions in private with assistance from the Monitoring Officer.
- 7.9 Once the Committee has made its decision the Hearing will continue and the Chairman will announce the Committee's decision as to whether or not the Member has breached the Code of Conduct.
- 7.10 In reaching its decision the Committee shall make one of the following findings:
- (a) that the Member had not failed to comply with the Code of Conduct;



- (b) that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of the matters which were considered by the Committee;
- (c) that the Member had failed to comply with the Code of Conduct and that a sanction should be imposed.

### **Finding of No Breach of Code or No Further Action**

- 7.11 If the Committee finds no evidence of any breach of the Code of Conduct or if it finds that there is a breach but no further action is required to be taken then no further action shall be taken save that the Chairman may set out any recommendations which the Committee feels should be made to the authority or to all or any of its members with a view to promoting high standards of conduct. The Chairman will seek the views of the Member, the Investigator and the Monitoring Officer before the Committee makes any such recommendations.
- 7.12 Where there is a finding that there is no evidence of a breach, the Chairman will also ask the Member whether he or she wishes the decision of the Committee to be published in the local paper.

### **Finding of Breach of Code**

- 7.13 If the Committee finds that the Member did breach the Code of Conduct, the Chairman will invite the Monitoring Officer to explain to those present what sanctions are available to the Committee. The Monitoring Officer may where appropriate describe what sanctions have been imposed by the Committee at previous hearings and any sanctions imposed specifically in relation to the

Member concerned. The sanctions which are available to the Committee are set out in the Table below.

### The sanctions

- |      |                                                                                                                                                                                                                                |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| i    | censure of that Member                                                                                                                                                                                                         |
| ii   | restriction for a maximum period of six 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 any such restrictions imposed upon the Member – |
|      | (a) are reasonable and proportionate to the nature of the breach and                                                                                                                                                           |
|      | (b) do not unduly restrict the Member's ability to perform his or her functions as a Member                                                                                                                                    |
| iii  | partial suspension of that Member for a period up to a maximum of six months                                                                                                                                                   |
| iv   | suspension of that Member for a period up to a maximum of six months                                                                                                                                                           |
| v    | a requirement that that Member submit a written apology in a form specified by the Standards Committee                                                                                                                         |
| vi   | a requirement that that Member undertake training as specified by the Standards Committee                                                                                                                                      |
| vii  | a requirement that that Member undertake conciliation as specified by the Standards Committee                                                                                                                                  |
| viii | partial suspension of that Member for a period up to a maximum of six months or until such time as he or she submits a written apology in a form specified by the Standards Committee                                          |
| ix   | partial suspension of that Member for a period up to a maximum of six months or until such time as he or she undertakes such training or conciliation as the Standards Committee may specify                                   |
| x    | suspension of that Member for a period up to a maximum of six months or until such time as he or she submits a written apology in a form specified by the Standards Committee                                                  |

- |    |                                                                                                                                                                                      |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| xi | suspension of that Member for a period up to a maximum of six months or until such time as he or she undertakes such training or conciliation as the Standards Committee may specify |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

7.14 The Chairman shall invite the Investigator to make submissions on the sanction that he or she feels would be reasonable to impose and the date when it should take effect.

7.15 The Chairman will then invite the Member to respond to the comments from the Investigator and /or to make submissions on the sanction to be imposed, the time when it should run from and any mitigating circumstances he or she feels may exist.

7.16 The members shall then retire once more to decide in private with assistance from the Monitoring Officer:-

- i whether to impose a sanction
- ii where a sanction is to be imposed -
  - (a) what that sanction should be; and
  - (b) when that sanction should commence, how long it should be for, whether the sanction should be suspended and, if so, in what circumstances; and
  - (c) any recommendations the Committee considers it should make to the authority or any other person or body.

7.17 In determining the sanction to be imposed the Committee should consider all relevant information, including the factors listed in the following section of this guidance.

7.18 A sanction will normally commence forthwith but the Committee can direct that it commence on any date within a period of six months after the

imposition of the sanction. For example, if there are no meetings which the Member would otherwise attend in the next few months the imposition of an immediate sanction would in practice have little impact and it may therefore be appropriate for the Committee to delay the imposition of the sanction.

- 7.19 The Chairman will explain to the Member that they have a right to seek an appeal to the First Tier Tribunal (Local Government Standards for (England) within 28 days.

### **Written decision of Findings**

- 7.20 The Monitoring Officer shall in conjunction with the Chairman prepare a short written notice of the decision and the reasons for that decision and he or she shall send a copy to the Member, the Complainant and the members of the Committee as soon as possible after the close of the hearing. This will also include guidance on how to appeal and, in the cases of a suspended sanction, an explanation of the steps which need to be taken by the Member if he or she is to avoid the sanction coming into effect.

- 7.21 Within two weeks after the close of the Hearing, the Monitoring Officer shall prepare a full written decision of the Standards Committee and shall send it to the following people:

- the Member
- the Investigator.
- the members of the Committee

- the members of the Standards Committee of any other authority involved
- the person who made the allegation

7.22 The full written decision will follow the format recommended by Standards for England and will also include guidance on how to appeal and the steps to be taken to avoid a suspended sanction taking effect.

7.23 Where the Committee finds that there has not been a failure to comply with the Code of Conduct then the full report shall state that fact and shall state the reasons for that finding.

7.24 Where the Committee finds that there has been a failure to comply with the Code of Conduct but that no action needs to be taken in respect of that failure then the full report shall state that fact and shall also state the details of the failure and the reasons for the Committee's finding.

7.25 Where the Committee finds that there has been a failure to comply with the Code of Conduct then the full report shall state that fact and shall also state the details of the failure, the reasons for the Committee's finding and the sanction to be imposed.

7.26 For consistency and thoroughness, the full written decision of the Committee will usually follow a standard format as recommended by the Standards Board for England. The report will include basic information about the allegation and the determination, namely:

- the name of the Council
- the name of the Member who the allegation has been made about
- the name of the Member's representative

- the name of the person who made the original allegation (unless there are good reasons for keeping his or her identity confidential)
- case reference numbers of the Council and, if relevant, the Standards Board
- the name of the Standards Committee member who Chairmanned the hearing
- the names of the Standards Committee members who took part in the hearing
- the name of the Monitoring Officer and any other officers present
- the name of the Investigator
- the names of all other people present and their role at the hearing
- the date of the hearing; and
- the date of the report.

7.27 The report should then also give the following further details about the allegation and the findings made at the hearing:

- a summary of the allegation
- the relevant section or sections of the Code of Conduct
- a summary of the evidence considered and representations made
- the findings of fact, including the reasons for them
- the decision on whether or not the Member failed to follow the Code of Conduct, including the reasons for that finding
- the sanction imposed, if any, including the reasons for the sanction and in the case of a suspended sanction, an explanation of what steps need to

be taken by the Member if they are to avoid the sanction coming into effect;  
and

- the right to appeal.

### **Press Notice**

7.28 The Monitoring Officer shall publish a summary of the findings in a local newspaper circulating in the area save in the case where there was no finding of a breach in which case a notice shall only be published if the Member agreed to such publication.