

REVISED PROCEDURE

PROCEDURE FOR DETERMINATION OF REFERRED COMPLAINTS BY THE STANDARDS COMMITTEE

Introduction

Under the provisions of the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007, standards committees may require monitoring officers to conduct investigations into allegations that a member of a relevant council has failed to comply with the code of conduct. The Standards Committee (England) Regulations 2008 (the Regulations) provide a framework for the operation of a locally based system for the assessment, referral, investigation and hearing of complaints of member misconduct. The purpose of this procedure is to set out in detail how the findings of investigations will be heard by the Standards Committee.

1 Interpretation

1.1 'Member' means the elected or co-opted member of the council or an elected or co-opted member of a town or parish council within the council's area who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.

1.2 'Investigator' means the person appointed by the monitoring officer to undertake an investigation of an allegation of misconduct. This may include the monitoring officer, and his or her nominated representative.

1.3 'Committee' means a sub-committee of the Standards Committee appointed to discharge the functions of the Standards Committee in relation to the consideration of reports referred by the monitoring officer (Paragraph 17 of the Regulations) and to the hearing of complaints against members (Paragraphs 18 to 20 of the Regulations).

1.4 'Legal Adviser' means the officer responsible for providing legal advice to the Standards Committee. This will usually be the monitoring officer, unless he/she has a conflict of interest in which case another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council, who is also legally qualified.

1.5 'Chairman' means the member appointed as chairman of the committee, who shall be an independent member as defined in the Regulations.

1.6 'Clerk' means the clerk to the Standards Committee

Right to Representation

The member may be represented or accompanied during the meeting by a solicitor, by counsel, or (with the permission of the Committee) by any other person. It should be noted that the costs of such representation must be met by the Member.

3 Legal Advice

The Committee may take legal advice from its Legal Adviser at any time during the hearing or while it is 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 at the hearing.

4 Timescale

A hearing must be held within three months of receipt of the investigator's report by the monitoring officer. However, all hearings will be arranged in the shortest timescale possible and no later than three months. The hearing should not be held until at least fourteen days after the date on which the monitoring officer sent the report to the member, unless the member concerned agrees to the hearing being held earlier.

5 Consideration of reports by the Standards Committee

Where the monitoring officer refers a report to the Standards Committee the committee shall convene to consider that report and make one of the following findings—

- (a) that it accepts the investigating officer's finding of no failure ("a finding of acceptance"); or
- (b) that the matter should be considered at a hearing of the Standards Committee conducted under paragraph 18 of the Regulations; or
- (c) that the matter should be referred to the Adjudication Panel for England for determination.

The committee may only make a finding under sub-paragraph 5 (c) if—

- (a) it has determined that the action it could take against the member would be insufficient were a finding of failure to be made; and
- (b) the president or deputy president of the adjudication panel has agreed to accept the referral.

6 Pre-Hearing

6.1 The following pre-hearing process to deal with procedural matters will normally be carried out in writing, although exceptionally, a face-to-face meeting between the chairman, the member, the legal adviser and the investigator and their representatives may be necessary.

6.2 As soon as reasonably practicable, and in any event within three working days after receiving a copy of the investigator's report from the Investigator, the monitoring officer shall send a copy of the investigator's report to the member, by special delivery or by hand. The member shall be requested to acknowledge receipt of the report immediately by telephone or e-mail. A copy will also be sent to the complainant.

6.3 The ethical governance officer, in consultation with the chairman, will write to the member, enclosing a copy of this procedure, to propose a date for the hearing and to explain the member's rights. They will ask for a written response from the member, within 10 working days, to find out whether or not he or she:

- disagrees with any of the findings of fact in the investigator's report, and if so, which ones and the reasons for any disagreements;
- wants to be represented at the hearing by a solicitor, barrister or any other person (the latter will require the express permission of the committee which is not to be unreasonably withheld);
- wants to give evidence to the committee, either orally or in writing;
- wants to call relevant witnesses to give evidence or submit written evidence on any disagreements as to the findings of fact or mitigation to the committee;

- wants any part of the hearing to be held in private;
- wants any part of the investigator's report or other relevant documents to be withheld from the public; and the reason why
- can come to the hearing.

NOTE: The member is encouraged to use the forms attached to this part of the procedure to identify any findings of fact that he or she disagrees with (Form A) and outline any further evidence that he or she believes the Committee should consider (Form B).

The member is encouraged to give advance consideration to any representations to be taken into account if he or she is found to have failed to follow the code of conduct (Form C).

The member will be asked to give information about his or her requirements for representation and witness attendance at the hearing (Forms D and E).

NOTE: The complainant will be notified of the proposed date, location of the hearing and procedure at the same time as the member.

6.4 The ethical governance officer will ask the investigator to comment on the member's response, within 10 working days from the date of receipt, to say whether or not he or she:

- wants to be represented at any hearing (and if so to indicate their availability to attend);
- wants to call relevant witnesses to give evidence to the Committee;
- wants any part of the hearing to be held in private; and
- wants any part of the Investigator's Report or other relevant documents to be withheld from the public.

6.5 For the avoidance of doubt, should the member and/or the Investigator fail to respond within the time set for a response they will, for the purpose of this procedure, be deemed to have no objection to the findings of fact or the member's response as the case may be.

The committee will meet within 10 working days to consider any responses from the member concerned and the investigator, and to decide whether any other witnesses should be present who it feels may help in determining the case, including the person who made the original allegation. However, no witnesses can be ordered to appear or give evidence. The committee should resolve any issues raised during the pre-hearing process about how the hearing should be conducted.

NOTE: The ethical governance officer will produce a pre-hearing process summary to include information listed in Form F and will include this with the letter to everyone involved.

6.6 When the committee has considered any responses as set out above, the ethical governance officer, in consultation with the legal adviser, will write to everyone involved within five working days of the pre-hearing and at least 10 working days before the hearing, to:

- confirm the date, time and place for the hearing
- summarise the allegation;
- outline the main facts of the case that are agreed;
- outline the main facts which are not agreed;

- state whether the member or the Investigator will attend or be represented at the hearing;
- list those witnesses, if any, who will be asked to give evidence; and
- outline the proposed procedure for the hearing

7 Procedure for the Hearing – Setting the Scene

7.1 After the members of the committee and everyone involved have been formally introduced, the chairman will explain how the committee is going to run the hearing.

7.2 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.

7.3 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.

The chairman shall ask the member, the investigator and the legal adviser 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 other parties present and the committee shall then determine whether to exclude the press and public from all or any part of the hearing.

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

8. Absence of the member

If the member is not present at the time and place fixed for the hearing and the committee is satisfied that s/he has been given notice of the hearing, the committee may, unless it is satisfied that there is sufficient reason for the member's absence, consider the allegation and make a determination in the absence of the member concerned or adjourn the hearing to another date.

9. Making findings of fact

9.1 After dealing with any preliminary issues, the committee will move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report or other pre hearing papers circulated with the agenda.

9.2 If there is no disagreement about the facts, the committee will move on to the next stage of the hearing set out at section 10 below.

9.3 If there is a disagreement, the investigator, if present, will be invited to make any representations to support the relevant findings of fact in the report. With the committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The committee will give the member an opportunity to challenge any evidence put forward by any witness called by the Investigator.

9.4 The member will have the opportunity to make representations to support his or her version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.

9.5 The committee may at any time question any of the people involved or any of the witnesses, and will allow the Investigator to challenge any evidence put forward by witnesses called by the member.

9.6 If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. After considering the member's explanation for not raising the issue at an earlier stage, the committee may, if the Investigator is present:

- continue with the hearing, relying on the information in the Investigator's Report;
- allow the member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or
- adjourn the hearing to arrange for appropriate witnesses to be present.

Should the circumstances mentioned in paragraph 9.6 arise, and the Investigator is not present, the committee will consider whether or not it will be in the public interest to continue in his or her absence. If the committee decides that it is not in the public interest to continue, it shall adjourn the hearing to allow the Investigator to attend or to make further representations.

9.7 The committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the Investigator to seek further information or undertake further investigation on any point specified by the committee. No more than one adjournment may be allowed on this basis.

9.8 The committee may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request to the ethical standards officer of the Standards Board that the matter is referred to the ethical standards officer for further investigation. The committee must set out its reasons for making the request. Only one such request may be made by the committee.

9.9 The committee will usually move to another room to consider the representations and evidence in private. The clerk shall accompany the committee.

9.10 On their return, the chairman will announce the committee's findings of fact.

10 Did the member fail to comply with the 'Code of Conduct'?

10.1 The committee will determine whether or not, based on the facts either as agreed at section 9.2 above or based on its findings following sections 9.3 to 9.10, the member has failed to comply with the 'Code of Conduct' (Code).

10.2 The committee will consider any oral or written representations from the member as to why the committee should decide that he or she has not failed to comply with the Code of Conduct.

10.3 The committee will consider any oral or written representations from the Investigator as to why the committee should decide that the member has failed to comply with the Code of Conduct.

10.4 The committee may, at any time, question anyone involved on any point they raise in their representations.

10.5 The member will, if present, be invited to make any final relevant points.

10.6 The committee will move to another room to consider the representations. The clerk shall accompany the committee.

10.7 The committee may make one of the following findings:-

- the member has not failed to comply with the council or other relevant authority's Code of Conduct; or
- the member has failed to comply with the council or other relevant authority's code of conduct.

10.8 On their return, the chairman will announce the committee's decision as to whether or not the member has failed to comply with the Code of Conduct.

11 If the member has not failed to comply with the Code of Conduct

11.1 If the Committee decides that the member has not failed to comply with the Code of Conduct, in the manner set out in the investigator's report, the committee will consider, having regard to any oral or written representations from the Investigator, whether it should make any recommendations to the Council or other relevant authority with a view to promoting high standards of conduct among members.

11.2 If the committee considers, from the evidence which they have received during the hearing, that a member has failed to comply with the Code of Conduct for reasons other than those covered by the complaint) the chairman will outline the committee's concerns whilst recognising that there can be no further action without a written complaint.

11.3 Finally, the chairman will ask the member whether he/she wishes the council not to publish a statement of its findings in accordance with the Regulations.

12. If the member has failed to comply with the Code of Conduct

12.1 If the committee decides that the member has failed to comply with the Code of Conduct, it will consider any oral or written representations from the Investigator and the member as to:

- whether or not the committee should impose a sanction; and
- what form any sanction should take.

12.2 The committee may question the Investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

12.3 The committee will then move to another room to consider whether or not to impose a sanction on the member and, if so, what the sanction should be. The clerk shall accompany the committee.

12.4. In accordance with paragraph 19 of the regulations the committee may impose any one of, or any combination of the following sanctions:-

(a) censure of the member;

(b) restriction for a period not exceeding six months of the member's access to the premises of the Council or authority concerned or the member's use of its resources, provided that those restrictions—

(i) are reasonable and proportionate to the nature of the breach; and

(ii) do not unduly restrict the member's ability to perform the functions of a member;

(c) partial suspension of the member for a period not exceeding six months;

(d) suspension of the member for a period not exceeding six months;

- (e) that the member submits a written apology in a form specified by the committee;
- (f) that the member undertakes such training as the committee specifies;
- (g) that the member participates in such conciliation as the committee specifies;
- (h) partial suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the committee;
- (i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the committee specifies;

12.5 On their return, the chairman will announce the committee's decision

12.6 Any sanction imposed by the committee (other than censure) shall commence immediately unless the committee directs that it shall commence on any date specified within six months of the date of the hearing.

12.7 If, at any time before the committee has determined upon any appropriate sanction, the committee considers that the nature of the failure to comply with the Code of Conduct is such that the appropriate sanction would exceed the powers of the Standards Committee, the committee may request that the matter is referred to the adjudication panel for determination.

13. The written decision

13.1 The committee will announce and provide a short written note of its decision on the day of the hearing. It will issue a full written decision as soon as reasonably practicable after the hearing.

13.2 After the hearing, the ethical governance officer will prepare a written notice of the committee's determination and shall arrange for the distribution and publication of the notice in accordance with the requirements of paragraph 20 of the regulations.

14. Appeals

14.1 The member will be advised of their right to appeal in accordance with paragraph 21 of the regulations.