

DRAFT

Wiltshire County Council

Standards Committee

**Procedure for Determination of Complaints
Referred by the Ethical Standards Officer**

**Local Government Act 2000
The Local Authorities (Code of Conduct)
(Local Determination) Regulations 2003**

Procedure for Determination of Complaints Referred by the Ethical Standards Officer

Under the provisions of the Local Government Act 2000 Ethical Standards Officers may carry out investigations into allegations that a Member of the Council has failed to comply with the Code of Conduct. Alternatively, the Ethical Standards Officer may instruct the Monitoring Officer to carry out the investigation. Where the Ethical Standards Officer carries out the investigation, they may refer investigation reports to the Monitoring Officer for the Standards Committee to decide whether there has been a failure to comply with the Code and if there has been, what the penalty should be. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 provide a framework for what happens when an Ethical Standards Officer refers a report. The Regulations require the Standards Committee to conduct a hearing using such procedures as it considers appropriate having regard to any guidance issued by the Standards Board for England.

1. INTERPRETATION

- 1.1 'Member' means the elected or co-opted Member of the Council 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 Ethical Standards Officer who referred the report to the Council, and includes his or her nominated representative.
- 1.3 '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.
- 1.4 'Chairman' means the member of the Standards Committee appointed as Chairman for each individual hearing.
- 1.5 'Committee' also refers to a sub-committee of the Standards Committee.
- 1.6 'Clerk' means the Clerk to the Standards Committee.

2. RIGHT TO REPRESENTATION

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

3. LEGAL ADVICE

- 3.1 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.

4. TIMESCALE

- 4.1 The Regulations require a hearing to be held within 3 months of receipt of the Ethical Standards Officer's report by the Legal Adviser. All hearings will be arranged in the shortest timescale possible, but may not be held until at least 14 days after the Legal Adviser has sent the Investigator's report to the Member, unless the Member agrees otherwise.

5. PRE- HEARING

- 5.1 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 Legal Adviser, the Member, and the Investigator and their representatives may be necessary.
- 5.2 As soon as reasonably practicable after receiving a copy of the Investigator's Report from the Ethical Standards Officer, the Legal Adviser will send a copy of the Investigator's Report to the Member.
- 5.3 The Clerk will write to the Member, enclosing a copy of this Procedure, to propose a date, time and place for the hearing and to explain the Member's rights. The Clerk will ask for a written response from the Member, within 14 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, counsel or any other person;
 - 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
- can come to the hearing.

5.4 The Clerk will ask the Investigator to comment on the Member's response, within 14 days, 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.

5.5 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 objections to the findings of fact or the Member's response as the case may be.

5.6 The Legal Adviser will consider any responses from the Member and the Investigator, and decide whether any other witnesses should be present who 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 Legal Adviser will at the same time resolve any other issues or disagreements about how the hearing should be conducted.

5.7 Upon conclusion of the matters in paragraph 5.6 the Clerk will, in consultation with the Legal Adviser, write to everyone involved at least 14 days before the hearing to:

- set 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 go to 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.

6 PROCEDURE FOR THE HEARING – INTRODUCTION

- 6.1 After the members of the Committee and everyone involved have been introduced, the Chairman will explain the procedure for the hearing.
- 6.2 The Committee has the right to vary this procedure in the interests of the efficient conduct of the proceedings.

7 EXCLUSION OF PRESS AND PUBLIC

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

8 ABSENCE OF THE MEMBER

- 8.1 If the Member is not present at the time and place fixed for the hearing and the Committee is satisfied that he or she 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 AND DETERMINING WHETHER THERE HAS BEEN A BREACH OF THE CODE

- 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.
- 9.2 If there is no disagreement about the facts, the Committee will move on to the next stage of the hearing.

- 9.3 If there is a disagreement, the Investigator, if present, will be invited to make any necessary 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 Investigator will also be invited to make representations as to why the Committee should decide that the Member has failed to follow the Code of Conduct.
- 9.4 The Committee will give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator
- 9.5 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. The Member will also be invited to make representations as to why the Committee should decide that he or she has not failed to follow the Code of Conduct.
- 9.6 At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Member.
- 9.7 The Member will, if present, be invited to make any final relevant points.
- 9.8 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; or
 - 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.
- 9.9 Should the circumstances mentioned in paragraph 8.8 arise, and the Investigator is not present, then the Committee will consider whether or not it would 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 will adjourn the hearing to allow the Investigator to attend or to make further representations.

The Committee will usually move to another room to consider the representations and evidence in private. The Legal Advisor and the Clerk will accompany the Committee.

- 9.10 The Committee may make one of the following findings:-

- The Member has not failed to follow the Council's Code of Conduct; or
 - The Member has failed to follow the Council's Code of Conduct.
- 9.11 On their return, the Chairman will announce the Committee's finding of facts and its decision as to whether or not the Member has failed to follow the Code of Conduct.
- 10 IF THE MEMBER HAS NOT FAILED TO COMPLY WITH THE CODE OF CONDUCT**
- 10.1 If the Committee decides that the Member has not failed to comply with the Code of Conduct, it will consider, having regard to any oral or written representations from the Investigator, whether it should make any recommendations to the Council with a view to promoting high standards of conduct among Members.
- 11 IF THE MEMBER HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT**
- 11.1 If the Committee decides that the Member has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to:
- whether or not the Committee should set a penalty; and
 - what form any penalty should take.
- 11.2 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.
- 11.3 The Committee will then move to another room to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be. The Legal Advisor and the Clerk will accompany the Committee.
- 11.4 The Committee may do any one or a combination of the following:
- censure the Member (this is the only form of penalty available when dealing with a person who is no longer a member of the Council);
 - restrict the member's access to the Council's resources for up to 3 months, which could include limiting their access to the Council Offices;

- suspend or partly suspend the member for up to 3 months.
- Suspend or partly suspend the member for up to 3 months on the condition that the suspension or partial suspension will end if the Member apologises in writing, receives any training or takes part in any conciliation that the Committee orders.

11.5 On its return, the Chairman will announce the Committee's decision.

12 **THE WRITTEN DECISION**

12.1 The Committee will announce its decision on the day and provide a short written decision on that day. It will also issue a full written decision as soon as reasonably practicable after the meeting.

