

## **Hearing Procedures for the Standards Sub Committee**

### **1. Application**

- 1.1. This procedure applies to hearings of the Sub Committee of the Standards Committee about alleged breaches of the Member Code of Conduct by Borough or Parish Members.

### **2. Interpretation**

- 2.1. "Code" means the code referred to in paragraph 1.
- 2.2. "Investigator" means either or the Monitoring Officer or other investigating officer, and his or her nominated representative.
- 2.3. "Legal advisor" means the officer responsible for providing legal advice to the Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the Council.
- 2.4. "Member" means the member of Council or voting co-opted member or member of a parish council who is the subject of the allegation being considered by the Sub-Committee, unless stated otherwise. It also includes the member's nominated representative.
- 2.5. "The Chairman" refers to the person presiding at the hearing.
- 2.3 "The Matter" is the subject matter of the Investigator's report.
- 2.4 "The Sub-Committee Support Officer" means an officer of the Council responsible for supporting the Sub-Committee's discharge of its functions and recording the decisions of the Sub-Committee.

### **3. Modification of Procedure**

- 3.1. The Sub-Committee may vary this procedure where it is appropriate to do so in the interests of fairness.

### **4. Representation**

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

**5. Legal advice**

- 5.1. The Sub-Committee may take legal advice from its legal advisor at any time during the hearing or its deliberations. The substance of any legal advice given to the Sub-Committee should be shared with the Member and the Investigator if they are present.

**6. Preliminary and Procedural issues**

- 6.1. At the start of the hearing, the Chairman shall invite all participants to introduce themselves and indicate their role at the hearing, clarify that they are aware of this procedure and deal with the following:

6.1.1. Disclosures of interest

6.1.2. Confirm that the Sub-committee is quorate

6.1.3. Explain any proposed change to the procedure arising from the pre-hearing process

6.1.4. Decide whether to proceed in the absence of the Member  
If the Member is not present at the start of the hearing the Sub-Committee shall consider any reasons which the Member has provided for not attending the hearing and shall decide whether to proceed in the absence of the Member or adjourn the hearing;

6.1.5. Exclusion of Press and Public  
The Sub-Committee shall normally meet in public but may determine whether to exclude the Press or public from all or any part of the hearing and shall consider and determine any request to do so after hearing the reasons in support of the request [**Please see Appendix A**].

6.1.6. Clarify matters arising from the pre-hearing process as to what evidence is agreed and what points of difference there are for the Sub-Committee to determine.

**7. Admission of breach**

- 7.1 If the Member admits that he/she has failed to comply with the Code in the manner described in the Investigator's report, the Sub-Committee may make a determination that the Member has failed to comply with the Code and proceed directly to consider whether any penalty should be applied under paragraph 9.

**8. Hearing evidence**

8.1. Where there are points of difference in the evidence, the Sub-Committee shall hear the evidence of the Investigator and the Member in the following order:

8.1.1. The Investigator shall present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact that the Member had/had not failed to comply with the Code. The Investigator may call witnesses to give evidence on the points of difference.

8.1.2. The Member may ask questions of these witnesses and of the Investigator.

8.1.3. At any time the members of the Sub-Committee may question the Investigator and witnesses.

8.1.4. The Member may respond to the Investigator's report and may call any witnesses to give evidence on the points of difference.

8.1.5. The Investigator may ask questions of the Member and these witnesses.

8.1.6. At any time the members of the Sub-Committee may question the Member and witnesses.

8.1.7. 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. If the Investigator is not present, the Sub-Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Sub-Committee may then:

8.1.7.1. continue with the hearing, relying on the information in the Investigator's report;

8.1.7.2. allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or

8.1.7.3. postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already.

8.1.8. The Sub Committee may invite the Investigator and the Member to summarise their representations on the points

of difference, with reference to the evidence of the witnesses.

- 8.1.9. The Sub Committee may adjourn and resume the hearing if it needs to hear evidence from any person not present.
- 8.1.10. The Sub Committee shall require the room to be vacated (or move to another room) to enable it to deliberate on the representations and evidence and to make its findings of fact and decision as to whether there was a breach of the code.
- 8.1.11. The Sub Committee may require the hearing to be resumed if it needs to hear further evidence.
- 8.1.12. The Sub Committee shall resume the hearing to announce its decision or give all parties notice of the date and time on which it shall be resumed.
- 8.1.13. The Sub Committee may, prior to deliberating on whether there was a breach of the code, if it considers appropriate, announce its findings of fact and hear further representations on whether the findings amount to a breach of the code.
- 8.1.14. If the Sub Committee considers that it requires additional evidence not available at the hearing in order to come to a finding, it may (on not more than one occasion) adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on points specified by the Sub-Committee.

## **9. Decision and Penalty**

- 9.1. If the Sub-Committee decides that the Member has not failed to follow the Code of Conduct, the Sub-Committee can move on to consider whether it should make any recommendations to the Standards Committee.
- 9.2. If the Sub-Committee decides that the Member has failed to follow the Code, it will consider any oral or written representations from the Investigator and the Member as to:
  - 9.2.1. whether or not the Sub-Committee should set a penalty;  
and
  - 9.2.2. what form any penalty should take.

- 9.3. The Sub-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.
- 9.4. The Sub-Committee shall then require the room to be vacated (or move to another room) to enable it to decide whether a penalty is to be applied and in what form.
- 9.5. The Sub-Committee shall resume the hearing to announce its decision or give all parties notice of the date and time on which it shall be resumed.
- 9.6. The Sub-Committee may apply the penalties, as applicable and as appropriate, that are indicated in **"Standards Sub-Committee Decision-Making Process" (Appendix C)**.

## **10. The Close of the Hearing**

- 10.1. The Chairman will indicate when the written form of the Sub-Committee's decision is likely to be available and arrangements for providing this to the Member [**Please see "Standards Sub-Committee Decision-Making Process"**].
- 10.2. Following the close of the hearing, the Sub-Committee's Support Officer will agree a formal written notice of the Sub-Committee's decision and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 20 of the Standards Committee (England) Regulations 2008.

## Appendix A

**Excluding the public from hearings**

**Standards for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private:**

1. At the hearing, the Sub-Committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the *Local Government Act 1972* (as modified in relation to local determinations by Standards Committees). If the Sub-Committee considers that 'confidential information' is likely to be revealed during the hearing, the Sub-Committee must exclude the public by law. 'Confidential information' is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
2. The Sub-Committee also has the power to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are listed in **Appendix B**. The Sub-Committee should act in line with Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The Sub-Committee also has a duty to act fairly and in line with the rules of natural justice.
3. Article 6 says that the public may be excluded from all or part of the hearing if it is in the interests of:
  - 3.1. morals;
  - 3.2. public order;
  - 3.3. justice;
  - 3.4. national security in a democratic society; or
  - 3.5. protecting young people under 18 and the private lives of anyone involved.
4. There should be a public hearing unless the Sub-Committee decides that there is good reason, which falls within one of the five categories above (3.1 to 3.5), for the public to be excluded.
5. The Sub-Committee must also act in line with Article 10 of the *European Convention on Human Rights*, which sets out the right for people to 'receive and impart information and ideas without interference by public authority'. Any restrictions on this right must be 'prescribed by law and...necessary in a democratic society, in the

interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary’.

6. Conflicting rights often have to be balanced against each other. The committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Sub-Committee) may interfere with this right unless it is:

- 6.1. in line with the law; and

- 6.2. necessary in a democratic society in the interests of:

- 6.2.1. national security;

- 6.2.2. public safety;

- 6.2.3. the economic wellbeing of the country;

- 6.2.4. preventing crime or disorder;

- 6.2.5. protecting people’s health and morals (which would include protecting standards of behaviour in public life); or

- 6.2.6. protecting people’s rights and freedoms.

There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons the hearing should be held in public unless the Sub-Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

7. In relation to people’s rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be ‘necessary in a democratic society’. A measure will only be ‘necessary’ if it meets ‘a pressing social need’, and any restriction on people’s rights must be ‘proportionate’.

8. Standards for England recommends that a Standards Committee should move to a private room when considering its decisions. We do not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

**Appendix B**

**Categories of exempt information under Schedule 12A of the Local Government Act 1972 (as modified in relation to local determination by Standards Committee)**

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:
  - To give notice under or by virtue of which requirements are imposed on a person.
  - To make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
  - 7(a) Information which is subject to any obligation of confidentiality.
  - 7(b) Information which relates in any way to matters concerning national security.
  - 7(c) Information presented to a Standards Committee, or to a sub-committee, set up to consider any matter under Regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.



**Appendix C**

**Standards Sub-Committee Decision-Making Process**

**The finding of the Sub-Committee**

1. Following its hearing, the Sub-Committee can make one of the following findings:
  - 1.1. the Member has not failed to follow the authority's Code of Conduct;
  - 1.2. the Member has failed to follow the authority's Code of Conduct, but no action needs to be taken; or
  - 1.3. the Member has failed to follow the authority's Code of Conduct and should be penalised.

**Penalties**

2. If the Sub-Committee finds that a Member has failed to follow the Code of Conduct and that he or she should be penalised, it may do any one or a combination of the following:
  - 2.1. censure the Member. This is the only form of penalty available when dealing with a person who is no longer a Member of the authority;
  - 2.2. restrict the Member's access to the premises or their use of the resources of the relevant authority for up to six months, provided that any such restrictions imposed upon the member:
    - 2.2.1. are reasonable and proportionate to the nature of the breach; and
    - 2.2.2. do not unduly restrict the member's ability to perform his functions as a member
  - 2.3. Partial suspension of that member for a period up to a maximum of six months.
  - 2.4. Suspension of that member for a period up to a maximum of six months.
  - 2.5. A requirement that that member submit a written apology in a form specified by the Standards Sub-Committee.
  - 2.6. A requirement that that member undertake training as specified by the Sub-Committee

- 2.7. A requirement that that member participates in such conciliation as specified by the Sub-Committee
  - 2.8. Partial suspension of that member for a period up to a maximum of six months or until such time as he submits a written apology in a form specified by the Sub-Committee
  - 2.9. Partial suspension of that member for a period up to a maximum of six months or until such time as he undertakes such training or participates in such conciliation as the Sub-Committee may specify
  - 2.10. Suspension of that member for a period up to a maximum of six months or until such time as he submits a written apology in a form specified by the Sub-Committee
  - 2.11. Suspension of that member for a period up to a maximum of six months or until such time as he undertakes such training or participates in such conciliation as the Sub-Committee may specify.
3. Subject to paragraph 4, any sanction imposed shall commence immediately following its imposition by the Sub-Committee.
  4. The Sub-Committee may direct that a sanction imposed under any of sub-paragraphs 2.2 to 2.11 of paragraph 2 shall commence on such date, within a period of six months after the imposition of that sanction, as the sub-committee may specify in their direction.

### **Deciding a Penalty**

5. When deciding a penalty, the Sub-Committee should make sure that it is reasonable and in proportion to the member's behaviour. Before deciding what penalty to set, the Sub-Committee should consider the following questions, along with any other relevant circumstances.
  - 5.1. What was the member's intention? Did the member know that he or she was failing to follow the Code of Conduct?
  - 5.2. Did the member get advice from officers before the incident? Was that advice acted on in good faith?
  - 5.3. Has there been a breach of trust?
  - 5.4. Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
  - 5.5. What was the result of failing to follow the Code of Conduct?
  - 5.6. How serious was the incident?
  - 5.7. Does the member accept he or she was at fault?

- 5.8. Did the member apologise to the relevant people?
- 5.9. Has the member previously been warned or reprimanded for similar misconduct?
- 5.10. Has the member failed to follow the Code of Conduct before?
- 5.11. Is the member likely to do the same thing again?
- 5.12. How will the sanction be carried out?
- 5.13. Are there any resource or funding implications? For example , if a subject member has repeatedly or blatantly misused the authority's IT resources, the sub-committee may consider withdrawing those resources

### **Notice of the Sub-Committee's Findings**

6. The Sub-Committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day. The officer providing administrative support to the Sub-Committee will normally also draft minutes of the meeting.
7. As soon as possible after the hearing, the Sub-Committee must give its full written decision to the relevant people. Ideally the Sub-Committee will give its full written decision to those people within two weeks. The relevant people are:
  - 7.1. the member who is the subject of the finding;
  - 7.2. the complainant
  - 7.3. the Standards Committees of any other authorities concerned;
  - 7.4. any parish/town councils concerned; and
  - 7.5. the Standards Board for England.

### **Full Written Decision Format**

8. The front cover of the Sub-Committee's full written decision should include:
  - 8.1. the name of the authority;
  - 8.2. the name of the member who the allegation has been made about;

- 8.3. the name of the person who made the original allegation (unless there are good reasons for keeping his or her identity confidential);
  - 8.4. case reference numbers of the principal authority and The Standards Board for England;
  - 8.5. the name of the Sub-Committee member who chaired the hearing;
  - 8.6. the names of the Sub-Committee members who took part in the hearing;
  - 8.7. the name of the Monitoring Officer;
  - 8.8. the name of the IO who investigated the matter (where applicable);
  - 8.9. the name of the clerk of the hearing or other administrative officer;
  - 8.10. the date of the hearing; and
  - 8.11. the date of the report.
9. The Sub-Committee's full written decision should include:
- 9.1. a summary of the allegation;
  - 9.2. the relevant section or sections of the Code of Conduct;
  - 9.3. a summary of the evidence considered and representations made;
  - 9.4. the findings of fact, including the reasons for them;
  - 9.5. the finding as to whether or not the member failed to follow the Code of Conduct, including the reasons for that finding;
  - 9.6. the penalties applied, if any, including the reasons for any penalties; and
  - 9.7. the right to appeal

### **Making the Findings Public**

10. The Sub-Committee must also arrange for a summary of the decision and reasons for that decision to be published in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities.

- 11.If the Sub-Committee finds that a member did not fail to follow the authority's Code of Conduct, the public summary must say this, and give reasons for this finding. In these cases, the member involved is also entitled to ask that no summary of the decision should be passed to local newspapers.
- 12.If the Sub-Committee finds that a member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the member failed to follow the Code, outline what happened and give reasons for the Sub-Committee's decision not to take any action.
- 13.If the Sub-Committee finds that a member failed to follow the Code and it sets a penalty, the public summary must say that the member failed to follow the Code of Conduct, outline what happened, explain what penalty has been set and give reasons for the decision made by the Sub-Committee.
- 14.The Sub-Committee's reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.