

## PROCEDURE FOR LOCAL STANDARDS HEARINGS

### 1. Interpretation

- (a) 'Councillor means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor's nominated representative.
- (b) 'Investigating Officer" means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative.
- (c) "The Matter" is the subject matter of the Investigating Officer's report.
- (d) 'The Standards Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) "The Committee Administrator" means an officer of the authority responsible for supporting the Standards Committee's discharge of its functions and recording the decisions of the Standards Committee.
- (f) '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.
- (g) "The Chair" refers to the person presiding at the hearing.

### 2. Modification of Procedure

The Chair may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

3. Representation

The Councillor may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person. Note that the cost of such representation must be met by the member, unless the Standards Committee has expressly agreed to meet all or any part of that cost.

4. Pre-hearing Procedure (ESO's Report)

Upon reference of a matter from an Ethical Standards Officer for local determination following completion of the Ethical Standards Officer's report, the Monitoring Officer shall:

- (a) Arrange a date for the Standards Committee's hearing;
- (b) Send a copy of the report to the Councillor and advise him/her of the date, time and place for the hearing;
- (c) Send a copy of the report to the person who made the allegation and advise him/her of the date, time and place for the hearing;
- (d) Request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by the Standards Board for England within 14 days of receipt;
- (e) In the light of any Pre-Hearing Forms returned by the Councillor, determine whether the Standards Committee will require the attendance of the Ethical Standards Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (f) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and high-lighting the issues which the Standards Committee will need to address, and
- (g) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
  - (i) All members of the Standards Committee who will conduct the hearing;
  - (ii) The Councillor;
  - (iii) The person who made the allegation, and
  - (iv) The Investigating Officer.

5. Pre-Hearing Process (Local Investigation)

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

- (a) Arrange a date for the Standards Committee's hearing;
- (b) Send a copy of the report to the Councillor and advise him/her of the date, time and place for the hearing;
- (c) Send a copy of the report to the person who made the allegation and advise him/her of the date, time and place for the hearing;
- (d) Request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by the Standards Board for England within 14 days of receipt;
- (e) In the light of any Pre-Hearing Forms returned by the Councillor, determine whether the Standards Committee will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (g) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and high-lighting the issues which the Standards Committee will need to address, and
- (h) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
  - (i) All members of the Standards Committee who will conduct the hearing;
  - (ii) The Councillor;
  - (iii) The person who made the allegation, and
  - (iv) The Investigating Officer.

6. Legal Advice

The Standards Committee may take legal 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 Standards Committee should be shared with the Councillor and the Investigating Officer if they are present.

7. Setting the Scene

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

8. Preliminary procedural issues

The Standards Committee shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chair shall ask members of the Standards 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.

(b) Quorum

The Chair shall confirm that the Standards Committee is quorate

(c) Hearing procedure

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

(d) Proceeding in the absence of the member

If the Councillor is not present at the start of the hearing:

(i) the Chair shall ask the Monitoring Officer whether the Councillor has indicated his/her intention not to attend the hearing;

(ii) the Standards Committee shall then consider any reasons which the Councillor has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;

(iii) if the Standards Committee is satisfied with such reasons, and the Councillor has indicated the wish to attend the hearing, it shall adjourn the hearing to another date;

(iv) if the Standards Committee is not satisfied with such reasons, or if the Councillor has not given any such reasons, the Standards Committee shall decide whether to consider

the matter and make a determination in the absence of the Councillor or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Standards Committee may exclude the press and public from its consideration of this matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration. However, Standards Board guidance urges openness and so that hearing should be in public unless there are pressing reasons in favour of a private hearing. When considering whether a hearing should be in public, the Committee is having to comply with the rules on public access to information and has to apply the public interest test ie is the public interest served better by a private hearing rather than a public hearing. It may be that it is in the public interest to exclude the public from part of the hearing eg when sensitive evidence is given.

The Chair shall ask the Councillor, the Investigating Officer and the legal adviser to the Standards Committee whether they wish to ask the Standards Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chair shall ask them to put forward reasons for so doing and ask for responses from the others and the Standards Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

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

9. A failure to comply with the Code of Conduct?

The Standards Committee will then address the issue of whether the Councillor failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report.

(a) The Chair shall ask the Councillor to confirm that he/she maintains the position as set out in the pre-hearing summary.

(b) The Pre-Hearing Process Summary

The Chair will ask the legal advisor to present his/her report, highlighting any points of difference in respect of which the Councillor has stated that he/she disagrees with any finding of fact in the Investigating Officer's report. The Chair will then ask the Councillor to confirm that this is an accurate summary of the issues and ask the Councillor to identify any additional points

upon which he/she disagrees with any finding of fact in the Investigating Officer's report.

- (i) If the Councillor admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Standards Committee may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken (Paragraph 8)
- (ii) If the Councillor identifies additional points of difference, the Chairman shall ask the Councillor to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigating Officer (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Standards Committee is not satisfied with the Councillor's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Councillor to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which the Councillor did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

(c) Presenting the Investigating Officer's report

- (i) If the Investigating Officer is present, the Chairman will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Councillor and why he/she concluded, on the basis of his/her findings of fact, that the Councillor had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
- (ii) If the Investigating Officer is not present, the Standards Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Standards Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where

such witnesses are called, the Chair shall draw the witnesses attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.

(iii) No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chair shall ask the Councillor if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer or the witness.

(d) The Councillor's response

(i) The Chair shall then invite the Councillor to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.

(ii) No cross-examination shall be permitted but, at the conclusion of the Councillor's evidence and/or of the evidence of each witness, the Chair shall ask the Investigating Officer if there are any matters upon which the Standards Committee should seek the advice of the Councillor or the witness.

(e) Witnesses

(i) The Standards Committee shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.

(ii) Any member of the Standards Committee may address questions to the Investigating Officer, to the Councillor or to any witness.

(f) Additional Evidence

At the conclusion of the evidence, the Chair shall check with the members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

(g) If the Standards Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Standards Committee may (on not more than one

occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee

- (h) Determination as to whether there was a failure to comply with the Code of Conduct.
  - (i) At the conclusion of the Councillor's response, the Chair shall ensure that each member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the code of conduct as set out in the Investigating Officer's report.
  - (ii) Unless the determination merely confirms the Councillor's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 6(a)(i) above), the Standards Committee shall then retire to another room to consider in private whether the Councillor did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.
  - (iii) The Standards Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
  - (iv) The Standards Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Councillor or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an officer or request the Councillor to produce such further evidence to the Standards Committee.
  - (v) At the conclusion of the Standards Committee's consideration, the Standards Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Councillors.
  - (vi) The Standards Committee shall then return to the main hearing room and the Chair will state the Standards Committee's principal findings of fact and their determination as to whether the Councillor failed to comply with the Code of Conduct as set out in the Investigating Officer's report.



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

If the Standards Committee determines that the Councillor has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report:

- (a) If the Standards Committee apprehends, from the evidence which they have received during the hearing, that a Councillor has failed to comply with the Code of Conduct (other than the matter which the Standards Committee has just determined), the Chairman shall outline the Standards Committee's concerns and state that the Standards Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (b) The Chair should then set out any recommendations which the Standards Committee is minded to make to the authority with a view to promoting high standards of conduct among Councillors and seek the views of the Councillor, the Investigating Officer and the legal advisor before the Standards Committee finalises any such recommendations.
- (c) Finally, the Chairman should ask the Councillor whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

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

- (a) The Chair shall ask the Investigating Officer (if present, or otherwise the legal advisor) whether, in his/her opinion, the Councillor's failure to comply with the Code of Conduct is such that the Standards Committee should impose a sanction and, if so, what would be the appropriate sanction.
- (b) The Chair will then ask the Councillor to respond to the Investigating Officer's advice.
- (c) The Chair will then ensure that each member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (d) Any member of the Standards Committee may address questions to the Investigating Officer or to the Councillor as necessary to enable him/her to take such an informed decision.
- (e) The Chair should then set out any recommendations which the Standards Committee is minded to make to the authority with a view to promoting high standards of conduct among

Councillors and seek the views of the Councillor, the Investigating Officer and the legal advisor;

- (f) The Standards Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Standards Committee will make to the authority.
- (g) At the completion of their consideration, the Standards Committee shall return to the main hearing room and the Chair shall state the Standards Committee's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Standards Committee will make to the authority.

12. Reference back to the Ethical Standards Officer

If, at any time before the Standards Committee has determined upon any appropriate sanction, the Standards Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Standards Committee, the Standards Committee may instruct the Monitoring Officer to request the Ethical Standards Officer to resume responsibility for the conduct of the matter, and may adjourn the hearing until the Monitoring Officer advises the Standards Committee of the Ethical Standards Officer's response to such a request.

13. The close of the hearing

- (a) The Standards Committee will announce its decision on the day of the hearing and provide the Committee Administrator with a short written statement of their decision, which the Committee Administrator will deliver to the Councillor as soon as practicable after the close of the hearing;
- (b) The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Committee Administrator will agree a formal written notice of the Standards Committee's determination 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 8 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.

14.        Appeals

The Councillor may appeal against the decision of the Standards Committee by writing to the President of the Adjudication Panel for England, ensuring that his/her letter sets out the grounds for such an appeal, includes a statement as to whether or not he/she consents to the appeal being heard by way of written representations, and is received by the President within 21 days of the date of the written notice of decision under Paragraph 13(c).