

The Hearing Procedure

The Local Authorities (Code of Conduct)(Local Determinations) Regulations 2003 (S.I. 2003 No. 1483), now as amended by the Local Authorities (Code of Conduct) (Local Determinations) (Amendment) Regulations 2004 (S.I. 2004 No. 2617), provide that:

A Standards Committee may determine the procedure under which it will conduct hearings;

In determining that procedure, the Standards Committee must have regard to guidance issued by the Standards Board;

In any procedure, the member who is the subject of the hearing must be given an opportunity to present evidence in support of his case and to make representations, either orally or in writing, in person or through a representative, to the Committee.

The procedure, which follows, is based closely on the model procedure been published by the Standards Board for England

Standards Committee or any constituted Sub Committee 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)¹ 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.²
- (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.

¹ At this stage the procedure may appear lengthy, this is because there is still a possibility that a matter will be referred to the Council by the Standards Board for England. It is anticipated that the vast majority will be dealt with locally. It is suggested that the Hearing Procedure should be reviewed in the light of experience.

² This definition has been amended to make it clear that, when the Monitoring Officer arranges for someone else to undertake the investigation, the definition of the “Investigating Officer” no longer includes the Monitoring Officer.

- (e) “The Committee Support Officer” 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.³
- (g) “The Chairman” refers to the person presiding at the hearing.

2 Modification of Procedure

The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that, upon taking legal advice, 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 member must meet the cost of such representation, unless the Standards Committee has expressly agreed to meet all or any part of that cost.⁴

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 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 of the date, time and place for the hearing;
- (d) *Notify the Parish or Town Council of the matter and of the date, time and place of the hearing;*

³ In practice, the matter is referred by the ESO to the Monitoring Officer, who is then responsible for reporting the matter to the Standards Committee. It is therefore convenient for the Monitoring Officer to conduct the pre-hearing process, except in so far as the member requires it to be conducted at a meeting of the Standards Committee, and to present the introductory report to the Standards Committee at the commencement of the hearing. Where the Monitoring Officer is not legally qualified, he/she will need to ensure that a suitably qualified person is available to provide legal advice to the Standards Committee. It is obviously preferable that any such separate legal advisor be present throughout the hearing, in order to be able to provide such advice against an understanding of the context in which the advice is given.

⁴ Regulations under Section 101 of the Local Government Act 2000 grant authorities a discretion to provide an indemnity or to provide insurance to Councillors to meet the costs which they may incur in “Part 3 proceedings” (investigations, hearings or other proceedings under Part III of the 2000 Act), any such indemnity or insurance is required to be subject to a requirement to repay any sums received in the event that the member is found to have failed to comply with the Code of Conduct.

- (e) 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;
 - (f) 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, arrange for their attendance;
- and
- (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.

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 hearing⁵;
- (b) Send a copy of the report to the Councillor and advise him 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 of the date, time and place for the hearing;
- (d) Notify the Parish or Town Council of the matter and of the date, time and place of the hearing;
- (e) 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;
- (f) 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

⁵ The hearing must be conducted no earlier than 14 days after, and within 3 months of the date when the matter is referred by the Ethical Standards Officer to the Monitoring Officer (in the case of an Ethical Standards Officer investigation) or the date when the Investigating Officer delivers his final report to the Monitoring Officer (in the case of local investigations).

and enable it to come to a properly considered conclusion at the hearing, 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 member and the Investigating Officer if they are present.

7 Setting the Scene

At the start of the hearing, the Chairman shall introduce each of the members of the Standards Committee, the member (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 Chairman 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 Chairman shall confirm that the Standards Committee is quorate⁶

⁶ A meeting of the Standards Committee or any sub Committee is not quorate unless at least three members of the Standards Committee are present and remain so for the duration of the meeting. The three members must include at least one Independent member.

If the Standards Committee is responsible for Parish Council matters, it must include at least one Parish Council representative amongst its members. However it is only a requirement that the parish representative is actually present when the Standards Committee is dealing with a parish matter. Parish Sub-Committees, convened to deal with a parish matter, must have a parish representative as a member of the Sub-Committee, but there is not requirement for him/her actually to attend the meeting for it to be quorate.

(c) Hearing procedure

The Chairman 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 Chairman 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, 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.

The Chairman 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 Chairman 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?⁷

[The Relevant Authorities (Standards Committee) Regulations 2001, Regulations 3 and 6. SI 2001 No. 2812.]

⁷ The model procedure recommended by the Standards Board suggests that the Standards Committee should first determine findings of fact and then determine whether there has been a failure to comply with the Code of Conduct. I suggest that these two are so closely connected that the Standards

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.⁸

- (a) The Chairman 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 Chairman will ask the legal advisor or the Democratic Services Officer⁹ 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 Chairman 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 11)
- (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

⁸ Committee may find that it can conveniently determine the two together without any loss of fairness. Note that the Standards Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the Investigating Officer's report. It is possible that, in the course of their consideration, the Standards Committee discover that the member may have failed to comply with the Code of Conduct in some other manner (for example that the member's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the member's office or authority into disrespect). Note that such a possible additional or alternative failure will not be within the remit of the Standards Committee as, at that stage, the member will not have had notice of the Standards Committee's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Standards Committee do discover a possible additional or alternative failure, a failure by a different member, or a failure in respect of the code of conduct of another authority, they should refer the second matter to the Monitoring Officer with a view to a separate allegation being made to the Standards Board for England or the local Standards Committee or any sub Committee thereof.

⁹ As set out above, unless conflicted out, it is likely that the Monitoring Officer will:

- (i) take on the conduct of the pre-hearing process;
- (ii) present an introductory report to the Standards Committee at the commencement of the hearing setting out the outcomes of the pre-hearing process;
- (iii) will (if legally qualified) act as the legal advisor to the Standards Committee; and
- (iv) will distribute and publish any required notices of the Standards Committee's determination.

However, there may be reasons in particular cases for the Monitoring Officer to arrange for any or all of these functions to be carried out on his/her behalf.

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 prehearing 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 or legal officer which witnesses, if any, to call. Where such witnesses are called, the Chairman 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 Chairman 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 Chairman 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 Chairman 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 Chairman 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 occasions) 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 Chairman 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 or clarification 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 Chairman 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 Chairman 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 Chairman 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.¹⁰

¹⁰ The sanctions which are available to the Standards Committee under the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, Regulation 7, as amended by the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004 are any of the following :

- (i) censure of that member;
- (ii) restriction for a maximum period of three 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 such restrictions imposed upon the member -
 - (aa) are reasonable and proportionate to the nature of the breach; and
 - (bb) do not unreasonably restrict the member's ability to perform his functions and duties

- (b) The Chairman will then ask the Councillor to respond to the Investigating Officer's advice.
- (c) The Chairman 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 Chairman 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 Chairman 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

as a member.

- (iii) partial suspension of that member for a period up to a maximum of three months;
- (iv) suspension of that member for a period up to a maximum of three 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 undergo training as specified by the Standards Committee;
- (vii) a requirement that that member undergo conciliation as specified by the Standards Committee;
- (viii) partial suspension of that member for a period up to a maximum of three months or until such time as he 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 three months or until such time as he undergoes such training or conciliation as the Standards Committee may specify;
- (x) suspension of that member for a period up to a maximum of three months or until such time as he 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 three months or until such time as he undergoes such training or conciliation as the Standards Committee may specify.

Any sanction imposed shall commence immediately unless the Standards Committee direct (for any sanction other than censure) that it shall commence on any date specified by the Standards Committee within six months of the date of the hearing.

It was clearly not the intention of the legislature to enable the total combination of sanctions to extend beyond a single period of three months, and any sanctions which apply over a longer period might prove vulnerable on appeal.

NB REGULATIONS AWAITED BUT IT IS ANTICIPATED THAT THE MAXIMUM SANCTION WILL BE INCREASED TO 6 MONTHS

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 Monitoring 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 Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Councillor as soon as practicable after the close of the hearing;
- (b) The Chairman 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 Support Officer 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 letter sets out the grounds for such an appeal, includes a statement as to whether or not he 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 9(c).