

EAST HERTFORDSHIRE DISTRICT COUNCIL

STANDARDS COMMITTEE

PROCEDURE FOR LOCAL STANDARDS HEARINGS WHERE THE ETHICAL STANDARDS OFFICER HAS REFERRED A CASE TO THE STANDARDS COMMITTEE

1. INTERPRETATION

- (a) “Member” means the Member of the authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the Member’s nominated representative.
- (b) “Investigator” 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 investigator mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).¹
- (c) “The Matter” is the subject matter of the investigator’s report.
- (d) “The 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 Support Officer” means an officer of the authority responsible for supporting the Committee’s discharge of its functions and recording the decisions of the Committee.

¹ 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 “investigator” no longer includes the Monitoring Officer

- (f) “Legal Advisor” means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.²
- (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 the Chairman is of the opinion that such a variation is necessary in the interests of fairness.

3. REPRESENTATION

The Member 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 Committee has expressly agreed to meet all or any part of that cost.³

4. LEGAL ADVICE

The 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 Committee should be shared with the Member and the investigator if they are present.⁴

² In practice, the matter is referred by the ESO to the Monitoring Officer, who is then responsible for reporting the matter to the 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 Committee, and to present the introductory report to the 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 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.

³ Under the Local Authorities (Indemnities for Members and Officers) Order 2004, authorities have discretion to provide an indemnity to Councillors in specified circumstances.

⁴ In the interests of openness, the Committee may prefer to receive any such advice in the main hearing room in the presence of the investigator and the Member. Where this is not practicable, the legal advisor should repeat in the presence of the investigator and the Member the advice which he/she has tendered.

5. SETTING THE SCENE

At the start of the hearing, the Chairman shall introduce each of the Members of the Committee, the Member (if present), the investigator (if present) and any other officers present, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.

6. PRELIMINARY PROCEDURE ISSUES

The 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 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 Committee is quorate.⁵

(c) Hearing procedure

The Chairman shall confirm that all present know the procedure which the Committee will follow in determining the

⁵ (1) A meeting of a Standards Committee, or Sub-Committee of a Standards Committee, shall not be quorate unless at least three Members of that Committee or Sub-Committee are present for its duration.
(2) Where a meeting of a Sub-Committee of a Standards Committee is convened to consider a request under section 57B (2) of the Act, no decision on that request may be taken by the Sub-Committee if any member of that Sub Committee is present who took part in the decision under section 57A (2) of the Act to which that request relates.
(3) Where a meeting of a Standards Committee, or Sub-Committee of a Standards Committee of an authority is convened to –
a) carry out an initial assessment or review an assessment or
b) have a consideration meeting or a hearing,
no decision may be taken unless at least one Member of that authority is present when such matters are being considered.
(4) Where a meeting of a Standards Committee, or Sub-Committee of a Standards Committee of an authority is convened to –
a) carry out an initial assessment or review an assessment or
b) have a consideration meeting or a hearing,
relating to a member or former member of a Parish Council, no decision may be taken unless at least one member of a Parish Council for which the authority is the responsible authority, who is not also a member of that responsible authority, is present when such matter are being discussed.
[Standards Committee (England) Regulations 2008 Regulation 7]

matter.

(d) Proceeding in the absence of the Member

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

- (i) the Chairman shall ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing;
- (ii) the Committee shall then consider any reasons which the Member 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 Committee is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iv) if the Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Committee shall decide whether to consider the matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

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 in the course of this consideration.

The Chairman shall 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.

Where the 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.

7. A FAILURE TO COMPLY WITH THE CODE OF CONDUCT⁶

The Committee will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the investigator's report.⁷

(a) The Chairman shall ask the Member 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 Committee Support Officer⁸ to present his/her report, highlighting any points of difference in respect of which the member has stated that he/she disagrees with any finding of fact in the investigator's report. The Chairman will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the investigator's report.

⁶ Model separates findings of fact from failure to comply. It is suggested that these two are so closely connected that the Committee may find that it can conveniently determine the two together without any loss of fairness.

⁷ Note that the Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the investigator's report. It is possible that, in the course of their consideration, the Committee apprehend 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, at that stage, the Member will not have had notice of the 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 Committee do apprehend a possible additional 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 Committee.

⁸ As set out above, unless conflicted out, it is likely that the Monitoring will:

- (i) take on the conduct of the pre-hearing process;
- (ii) present an introductory report to the 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 Committee; and
- (iv) will distribute and publish any required notices of the 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.

- (i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the investigator's report, the Committee may then make a determination that the Member has failed to comply with the Code of Conduct in the manner described in the investigator's report and proceed directly to consider whether any action should be taken (Paragraph 9)
 - (ii) If the Member identifies additional points of difference, the Chairman shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigator (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 Committee is not satisfied with the Member'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 Member to challenge the veracity of those findings of fact which are set out in the Investigator's report but in respect of which the Member 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 Investigator and/or any additional witnesses to attend the hearing.
- (c) Presenting the Investigator's report
- (i) If the Investigator is present, the Chairman will then ask the Investigator to 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 failed to comply with the Code of Conduct. The Investigator may call witnesses as necessary to address any points of difference.
 - (ii) If the Investigator is not present, the 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 Investigator. In the absence of the Investigator, the Committee shall determine on the advice of the Monitoring 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 Investigator'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 Investigator's report and/or of the evidence of each witness, the Chairman shall ask the Member if there are any matters upon which the Committee should seek the advice of the Investigator or the witness.

(d) The Member's Response

- (i) The Chairman shall then invite the Member to respond to the Investigator'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 Member's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigator if there are any matters upon which the Committee should seek the advice of the Member or the witness.

(e) Witnesses

- (i) The Committee shall be entitled to refuse to hear evidence from the Investigator, the Member 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 Committee may address questions to the Investigator, to the Member or to any witness.

- (f) Determination as to whether there was a failure to comply with the Code of Conduct
- (i) At the conclusion of the Member's response, the Chairman shall ensure that each member of the 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 investigator's report.
 - (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 6(a)(i) above), the Committee shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigator's report.
 - (iii) The Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
 - (iv) The 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 Investigator, the Member 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 Member to produce such further evidence to the Committee.
 - (v) At the conclusion of the Committee's consideration, the Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
 - (vi) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings of fact and their determination as to whether the Member failed to comply with the Code of Conduct as set out in the Investigator's report.

8. IF THE MEMBER HAS ADDITIONALLY FAILED TO FOLLOW THE CODE OF CONDUCT

If the Committee determines that the Member has additionally failed to follow the Code of Conduct in the manner set out in the Investigator's report:

- (a) If the Committee apprehends, from the evidence which they have received during the hearing, that a Member has additionally failed to comply with the Code of Conduct (other than the matter which the Committee has just determined), the Chairman shall outline the Committee's concerns and state that the 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 Committee is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigator and the legal advisor before the Committee finalises any such recommendations.
- (c) Finally, the Chairman should ask the Member whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

9. ACTION CONSEQUENT UPON A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

- (a) The Chairman shall ask the Investigator (if present, or otherwise the legal advisor) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction.⁹

⁹ The sanctions which are available to the Committee under the Standards Committee (England) Regulations 2008, Regulation 19, are any, or any combination, of the following:

- “(a) censure of that Member;
- (b) restriction for a period not exceeding six 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 those restrictions -

- (b) The Chairman will then ask the Member to respond to the Investigator's advice.
- (c) The Chairman will then ensure that each Member of the 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 Committee may address questions to the Investigator or to the Member as necessary to enable him/her to take such an informed decision.
- (e) The Chairman should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigator and the legal advisor;
- (f) The Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is

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- (i) are reasonable and proportionate to the nature of the breach; and
 - (ii) do not unduly restrict the person's ability to perform the functions of a Member
 - (c) partial suspension (a) of that Member for a period not exceeding six months;
 - (d) suspension of that Member for a period not exceeding six months;
 - (e) that the Member submits a written apology in a form specified by the Standards Committee;
 - (f) that the Member undertaken such training as the Standards Committee specifies;
 - (g) that the Member participate in conciliation as the Standards Committee specifies;
 - (h) partial suspension of that Member for a period not exceeding six months or until such time as the Member submits a written apology in a form specified by the Standards Committee;
 - (i) partial suspension of that 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 Standards Committee specifies;
 - (j) 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 Standards Committee;
 - (k) suspension of the Member for a period not exceeding six months or until such time as that member has undertaken such training or has participated in such conciliation as the Standards Committee specifies."

Subject to the paragraph below and any appeal any sanction imposed under this regulation shall commence immediately following its imposition by the Standards Committee.

A Standards Committee may direct that the sanction imposed under any of sub-paragraphs (b) to (k) or, where a combination of such sanctions is imposed, such one or more of them as the Committee specifies, shall commence on such date, within a period of six months after the imposition of that sanction, as the Committee specifies.

to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Committee will make to the authority.

- (g) At the completion of their consideration, the Committee shall return to the main hearing room and the Chairman shall state the Committee's decisions as to whether or not 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 Committee will make to the authority.

10. THE CLOSE OF THE HEARING

- (a) The 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 Member 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 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 20 of the Standards Committee (England) Regulations 2008.

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