



**GUIDANCE ON THE PROCEDURE FOR  
LOCAL DETERMINATION OF ALLEGATIONS OF  
MISCONDUCT AGAINST MEMBERS OF THE COUNCIL**

Terry Osborne  
Borough Solicitor  
Legal Services  
Town Hall  
Forty Lane,  
Wembley,  
Middlesex HA9 9HD

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## CHAPTER 1 - INTRODUCTION

The *Local Government Act 2000* introduced a new ethical framework for local government including the establishment of a new Standards Board for England, a model code of conduct for members of the Council and a requirement for Councils to have their own Standards Committees which would be responsible for promoting high standards of conduct amongst members. The Standards Committee of an authority would also have power to determine allegations of breaches of the Code of Conduct by members of the authority and to impose sanctions.

Under the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003*, Ethical Standards Officers (ESOs) are responsible for investigating complaints of misconduct which have been referred to the Standards Board. Having completed their investigation they may decide that no action is necessary or, if they feel further action is necessary, they could refer the matter to an Adjudication Panel or to the Council's Monitoring Officer who is then required to forward it onto the Standards Committee. The Standards Committee is then required to hold a hearing and to determine whether or not the member complained of has in fact breached the Code of Conduct and, if so, what penalty, if any, should be applied. In some cases the Monitoring Officer will themselves be required to carry out the investigation into the allegation (or to arrange for another person to carry out the investigation) and then refer the matter onto the Standards Committee for determination.

The types of complaints that an ESO is likely to refer to the Standards Committee for local determination rather than to the Adjudication Panel are those which are of an entirely local nature and do not affect broader national issues and those which do not appear to warrant the heavier penalties which are only available to the Adjudication Panel. However, ESOs will refer matters on a case-by-case basis and all the relevant circumstances will need to be considered. An ESO is unlikely to refer a case where it would be difficult or inappropriate to try to resolve it locally, for example, if there is an allegation that serious bullying and harassment has taken place in the authority.

This procedure note describes the procedure that will be followed by the Standards Committee when dealing with matters which are required to be determined by the Standards Committee, whether or not the matter has been investigated by the Monitoring Officer or an ESO. The procedure is designed to ensure that the Standards Committee has an effective, fair and transparent hearing process and to assist members who are the subject of a complaint. The procedure is the same for all members of the Council, no matter what political party they represent and no matter whether or not they are a member of the Executive or any other body. It also applies to all members of the Council, including voting co-opted and independent members. The main features of the procedure have been approved by the Standards Committee but changes may be made to it from time to time by the Monitoring Officer which will be notified to interested parties.

It is important to note that this procedure note does not deal with the investigation stage of the process. Complaints which are referred by an ESO to the Monitoring Officer for investigation follow an investigatory process which is completely separate from the determination process described in this document. The investigation procedure that will be followed by the Monitoring Officer and other officers is explained in a separate procedure note.

Nor does this procedure note apply to alleged breaches of any other local codes of practice such as the Planning Code of Practice or the Licensing Code of Practice, unless the breach is such that it also amounts to a breach of the main Code of Conduct.

Standards Committees only have the power to determine whether or not a member has breached the Code of Conduct following a referral from the Standards Board. If someone makes an allegation about a member's conduct direct to the authority, which is never referred to the Standards Board then the Standards Committee, whilst it may consider the matter in general, cannot deal with it in the same way as Standards Board referrals and the committee may not impose any penalty on the member concerned. It could however consider whether general lessons can be learnt from the allegation or incident and give advice or a warning to the member.

Finally, a decision by the Standards Board for England not to take any action at all should not prevent the Monitoring Officer having an informal discussion with the member concerned about the incident that gave rise to the allegation and to advise on how similar incidents/allegations might be avoided in future.

## CHAPTER 2 – PRELIMINARY MATTERS

### Definitions

Most words and phrases used in this procedure note have the same meaning as in the Constitution or the Local Government Act 2000 or regulations made thereunder. However, there maybe some which need further explanation. For example, for the purposes of this procedure note:

- **Member** means a councillor or voting co-opted member or an independent member
- **Ethical Standards Officer** means a person appointed by the Standards Board for England to act as such and who carries out on behalf of the Standards Board investigations into allegations of misconduct by members of the Council (including councillors, voting co-opted members and independent members)
- **Investigator** means the person appointed to investigate the allegation which may be the Ethical Standards Officer or the Monitoring Officer or a person appointed by the Monitoring Officer.
- **Suspended** means suspended from being a member of the Council for the period specified by the Standards Committee. This means being suspended from being a member of any committee, sub-committee or joint committee of the authority and from the Executive and any of its committees or sub-committees
- **Partial suspension** means that the member is prevented for the period specified by the Standards Committee from exercising particular specified functions or from having particular specified responsibilities. This may include executive functions or responsibilities

### Representation by a solicitor or other person

A member the subject of the allegation may be represented or accompanied by another person during any interviews and/or at the hearing although this is not essential. In the event that the person representing the member is not a solicitor or barrister then permission will be required from, in the case of interviews, the Monitoring Officer or, in the case of hearings, the Chair of the Standards Committee. Permission can be withdrawn if the representative disrupts or hinders the conduct of the interview/hearing or is unwilling or unable to follow the procedural rules.

### Costs

Members are responsible for meeting the cost of any representation at a Standards Committee hearing or appeal tribunal. The government is considering allowing authorities to cover the cost of representation at hearings and appeal tribunals and this procedure note will be updated accordingly.

### **Departures from the Code**

Any significant variations to this procedure will be notified to the relevant parties as soon as possible by the Monitoring Officer.

In some special cases it may be appropriate for the Monitoring Officer to both investigate the allegation and advise the committee. This may be appropriate if, for example, the facts are agreed and/or the breach is admitted. In these cases the procedure will be adapted accordingly.

### **Reopening the investigation**

The Standards Committees should not re-open the investigation into the allegation. However, the member who the allegation has been made about has the right to give evidence to the Standards Committee and, if more evidence becomes available after the completion of the investigation, the Standards Committee may consider that evidence during the course of the hearing.

## CHAPTER 3 – PROCEDURE PRIOR TO THE HEARING

### Notification of investigation report

1. Upon receipt of a completed investigation report from the investigator into an allegation of misconduct the Monitoring Officer shall, send a copy to the complainant and to the member who is the subject of the complaint and the members of the Standards Committee.

### Written response from member

2. The Monitoring Officer shall at the same time request from the member concerned a written response to the investigator's report. The response shall be provided within 10 days from the date of the letter from the Monitoring Officer or such longer period as he or she may allow. A form will be sent to the member on which he or she can give their written response. If no response is received the procedure will continue. The model form is attached at **Appendix 1**. The form allows the member to say:
  - whether they agree the findings of fact in the report from the investigator and, if so, in what respect
  - whether they consider they have breached the code of conduct and if not why
  - whether they would be willing to give an apology
  - whether they will be attending the hearing and whether they intend to be represented by a solicitor or barrister or other person
  - whether they intend to call any other witnesses and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence they will give
  - whether they will be asking the committee to consider any documentary or other written evidence and, if so, to provide copies with the response form
  - whether they would like the hearing to be held in private and, if so, the reasons for the request
  - whether they would wish to have any documents withheld from the public and, if so, the reasons for the request
  - anything else they would like to add.

### Written response from Investigator

3. Upon receipt of the member's response, the Monitoring Officer shall forward a copy to the Investigator together with an appropriate form (see **Appendix 2**) inviting him or her to comment within 10 days on:
  - the response provided by the member and whether the investigator is able to concede any points of disagreement raised in it
  - whether they will be attending the hearing and whether they intend to be represented by a solicitor or barrister or other person
  - whether they intend to call any other witnesses and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence they will give

- whether they will be asking the committee to consider any documentary or other written evidence (other than the report of their investigation) and, if so, to provide copies with the response form
- whether they think the hearing should be held in private and, if so, the reasons why
- whether they would wish to have any documents should be withheld from the public and, if so, why
- anything else they would like to add.

#### **Written response from complainant**

4. The Monitoring Officer will also send a copy of the member's response to the complainant and will seek their comments on the members response. The Monitoring Officer will dispense with this requirement if in his or her reasonable opinion it is not necessary or reasonable to seek the views of the complainant

#### **Scheduling the meeting and agreeing preliminary matters**

5. Upon receipt of the investigator's response, the Monitoring Officer shall, in consultation with the Chair of the Standards committee agree a date, time and place for the hearing, which must be within 3 months from the date that the investigator's report was received.
6. The Monitoring Officer will also seek agreement from the Chair on:
  - whether the member can be represented by the person named by them (if not a solicitor or barrister)
  - the witnesses permitted to be called by the parties. The Chair may limit the number of witnesses called if he or she believes the number requested is unreasonable or the witness will simply repeat earlier evidence or the evidence is not relevant.
  - whether the hearing is likely to be held in private
7. The Monitoring Officer will decide whether any documents should be withheld from the public.

#### **Pre-Hearing Summary**

8. The Monitoring Officer will write to the relevant parties no later than 2 weeks before the hearing date and will send to them a report (a 'Pre-Hearing Summary') setting out the following:
  - Date, time and place of the hearing
  - Summary of the allegation and those parts of the Code of Conduct alleged to have been breached
  - Whether the allegation has been admitted and, if so, whether an apology has been given
  - Outline of main facts in the case that are agreed
  - Outline of any facts which are not agreed and the reasons for that disagreement



- List of persons attending meeting, including witnesses and the reasons for any limitation on witnesses
  - Whether the person named by the member as his or her representative will be permitted to act as their representative
  - A list of documents to be considered by the committee (copies of the documents will be enclosed if possible but in any event will be sent to the parties prior to the hearing)
  - A list of any documents that will be withheld from the public
  - Whether the meeting will be held in private
  - A copy of this procedure note
9. Any objection to the proposed hearing date or any other thing stated in the Pre-Hearing Summary must be notified to the Monitoring Officer forthwith. The Monitoring Officer will act reasonably in considering any requests for an alternative hearing date but is not obliged to re-schedule the hearing.

### **Failure to agree contents of Pre-Hearing Summary**

10. Any other disagreements with any part of the Pre-Hearing Summary should be resolved with the Monitoring Officer prior to the hearing. If necessary, the member should contact the Monitoring Officer forthwith to arrange a convenient time to meet the Monitoring Officer to discuss the points of disagreement. In any event the member must give notice of any disagreement on the findings of fact presented in the investigators report. Failure to do so may mean that the committee will not be required to listen to the members views on the disputed facts at the hearing. This meeting must take place before the hearing and should be convened as soon as possible in order to allow sufficient time to resolve any disputes.

NB. Paragraph numbering will continue into the next chapter.

## **CHAPTER 4 – THE HEARING PROCEDURE**

### **Commencement of the hearing**

11. The parties attending the hearing should arrive in good time and should assemble outside the meeting room prior to the start of the hearing. Members of the committee will assemble inside the meeting room and will invite the other parties to enter immediately prior to commencement of the hearing.

### **Delay at start of hearing**

12. The hearing shall commence on the date and at the time stipulated in the notification sent to the relevant parties but the start may be delayed by the Chair for a reasonable period if having had regard to the advice of the officers present and any representations received from others he or she considers such delay to be reasonable in the circumstances

### **Absent member**

13. If the member is not present at the time the hearing is due to start the Chair will ask the Monitoring Officer whether the member has provided any reasons for his or her non-attendance. If the Committee is satisfied with such reasons, it shall adjourn to another date. If the Committee is satisfied that the member received adequate notice of the hearing and either no reasons for the member's non-attendance were given or the reasons given are considered to be inadequate then the Committee shall decide whether to proceed with the hearing in their absence or adjourn to another date.

### **Chair to deal with preliminary matters**

14. At the start of the hearing, the Chair will deal with the following preliminary matters:
  - Introductions of all persons present;
  - Any declarations of interest
  - Confirmation that the committee is quorate
  - Whether the parties have a copy of the procedure to be followed
  - Whether the procedure has been departed from and, if so, the reasons why
  - Whether all or any part of the hearing will be conducted in private (the press and public will be refused access where it is likely that confidential or exempt information will be disclosed in the course of the hearing).

### **Explanation of procedure and Pre-Hearing Summary**

15. The Chair will ask the Monitoring Officer to describe the procedure that will be followed during the hearing.
16. The Chair will ask the Monitoring Officer to present the Pre-Hearing Summary. This requirement can be dispensed with if all parties agree since a copy would have already been sent to them.

### **Disputes on Pre-hearing Summary**

17. The Chair will ask the member concerned whether there is anything in the Pre-Hearing Summary that they disagree with. If there is anything which they disagree with then the member will be asked whether he or she raised those issues with the Monitoring Officer prior to the hearing and if not the reason for doing so.
18. If the committee is satisfied that the member has submitted sufficient reasons for failing to notify the Monitoring Officer of the disputed issues prior to the meeting, the Chair will ask the Monitoring Officer whether he or she is able to deal with them. If not, the matter shall be adjourned. If he or she can deal with them then the hearing may proceed.
19. If the committee is not satisfied that the member has submitted sufficient reasons for failing to notify the Monitoring Officer of the disputed issues the hearing may proceed.
20. If the hearing proceeds then any unresolved issues relating to the Pre-Hearing Summary will be dealt with as a preliminary matter save that any outstanding dispute as to facts will be dealt with in accordance with the remainder of this procedure.

### **Presentation of report by Investigator**

21. If the investigator or his or her representative is attending the hearing the Chair will invite him or her to present their findings to the committee (both findings of fact and findings on whether there has been a breach of the code).

### **Presentation by Member**

22. The Chair will invite the member to respond to any evidence given by the investigator or his or her witnesses.

### **Witnesses**

23. At any stage during their presentations, the [Monitoring Officer], the investigator and the member may call the witnesses identified in the Pre-Hearing Summary. Any witnesses not named in the Pre-Hearing Summary may only be called with the agreement of the Chair.

### **Oaths**

24. An oath will be administered in respect of any person who gives evidence including the member.

### **Questioning by the Committee, the Investigator and Member**

25. Members of the committee will be permitted to ask questions at any point with the permission of the Chair.
26. A party wishing to challenge any part of the presentations or any oral evidence given by a witness will be invited by the Chair to direct questions through him or her at the conclusion of the relevant speaker's presentation or at the end of the witness's evidence.
27. The Monitoring Officer may ask questions of the member or the investigator or any witness if he or she thinks the question may assist the committee in its allegations.

### **Closing Remarks and final questions**

28. The Chair will invite the Monitoring Officer to make any closing remarks. He or she will then invite the member or his or her representative to make any closing remarks. At the conclusion of the Member's closing remarks, the Chair shall invite Members of the Committee to ask any further questions they may have.

### **Deliberations**

29. The Chair shall then ask all parties except the Monitoring Officer to leave the room so the committee can consider in private the findings of fact and whether based on what they have read and heard they feel that there has been a breach of the Code of Conduct. The committee shall seek to reach a unanimous decision but if that is not possible than the decision shall be reached by a majority.
30. The Chair shall ask the parties to return to the hearing room and the Chair shall explain to those present the findings of fact and whether they feel the member has breached the Code of Conduct.

### **Finding of no evidence of breach**

31. If the Committee finds no evidence of any breach of the Code of Conduct no further action shall be taken save that the Chair will set out any recommendations which he or she feels should be made to the authority or all or any of its members with a view to promoting high standards of conduct. The Chair will seek the views of the member and Monitoring Officer before making any such recommendations.
32. The Chair will also ask the member whether he or she wishes the decision of the committee to be published in the local paper.

### **Finding of breach of the Code of Conduct**

33. If the committee finds that the member did breach the Code of Conduct, the Chair will invite the Monitoring Officer to explain to those present what sanctions are available to the committee. The Monitoring Officer will also

describe what sanctions have been imposed by the committee at previous hearings and any sanctions imposed specifically in relation to the member concerned. The sanctions which are available to the committee are set out in the Table below.

### The sanctions

i	censure of that member (this is the only sanction available if the member is no longer a member of the authority)
ii	restriction for a maximum period of three months of that members access to the premises of the authority and/or that member's use of the resources of the authority, provided that those restrictions are reasonable and proportionate having regard to the nature of the breach and provided they do not unreasonably restrict the members ability to perform his or her functions as a member
iii	partial suspension of that member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the Committee
iv	suspension of that member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the Committee

34. If the investigator or his or her representative is present the Chair shall invite them to make any comments on the sanction to be imposed.
35. The Chair will then invite the member to respond to the comments from the investigator or the Monitoring Officer.
36. The Chair shall ask the parties to leave the room so that the committee can consider in private:-
  - i whether to impose a sanction (in some cases although there may be evidence of a breach the committee may decide that no further action needs to be taken);
  - ii where a sanction is to be imposed -
    - (a) what sanction to impose; and
    - (b) when that sanction should take effect (it will normally take effect forthwith), how long it should be for, whether it will be suspended and, if so, in what circumstances; and
  - iii any recommendations which the Committee considers it should make to the authority or any other person or body.

37. In determining the sanction to be imposed the committee should consider all relevant information, including the factors listed in this guidance.

### **Conclusion of hearing**

38. At the conclusion of their deliberations, the Chair shall ask the parties to return to the meeting room and the Chair shall state the decision on the above matters. The Chair will explain to the member that a right of appeal exists. The Chair will formally close the hearing

### **Notice of Findings**

39. The Monitoring Officer will prepare a short written notice of the decision which the Monitoring Officer will send to the parties as soon as possible after the close of the hearing.
40. Within two weeks after the hearing, the Monitoring Officer shall prepare a full written decision of the Standards Committee and shall send it to the parties. The full written decision will where appropriate follow the format recommended by the Standards Board for England.
41. In the cases of a suspended penalty, the report will explain what steps need to be taken by the member if they are to avoid the sanction coming into effect
42. The Monitoring Officer will also publish a summary of the findings in a local newspaper and on the website of the borough save in the case where there was no finding of a breach in which case a notice shall only be published if the member concerned agrees to such publication.

## CHAPTER 5 - GUIDANCE ON DECIDING THE APPROPRIATE SANCTION

When deciding a penalty, the Standards Committee should make sure that it is reasonable and in proportion to the member's behaviour. Before deciding what penalty to set, the Standards Committee should consider the following questions, along with any other relevant circumstances:

- What was the member's intention? Did the member know that he or she was failing to follow the Code of Conduct?
- Did the member get advice from officers before the incident? Was that advice acted on in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
- What was the result of failing to follow the Code of Conduct?
- How serious was the incident?
- Does the member accept he or she was at fault?
- Did the member apologise to the relevant people?
- Has the member previously been warned or reprimanded for similar misconduct?
- Has the member failed to follow the Code of Conduct before?
- Is the member likely to do the same thing again?

So, for example, if a member has repeatedly or blatantly misused the authority's information technology resources, the Standards Committee may consider withdrawing those resources from the member. However, penalties involving restricting access to an authority's premises or equipment should not unnecessarily restrict a member's ability to carry out his or her responsibilities as an elected representative or co-opted member.

Suspension may be appropriate for more serious cases, such as those involving:

- bullying officers;
- trying to gain an advantage or disadvantage for themselves or others; or
- dishonesty or breaches of trust.

There may be other factors, specific to the local environment, that the Standards Committee may also consider relevant when deciding what penalty to set.

When deciding on an appropriate penalty, the Standards Committee may

want to consider decisions made by other Standards Committees and case tribunals drawn from The Adjudication Panel that deal with similar types of cases.



## CHAPTER 6 - FULL WRITTEN DECISION FORMAT

For consistency and thoroughness, the full written decision of the committee will usually follow a standard format. The report will include basic information about the allegation and the determination, namely:

- the name of the Council
- the name of the member who the allegation has been made about
- the name of the person who made the original allegation (unless there are good reasons for keeping his or her identity confidential)
- case reference numbers of the Council and The Standards Board
- the name of the Standards Committee member who chaired the hearing
- the names of the Standards Committee members who took part in the hearing
- the name of the Monitoring Officer
- the name of the ESO
- the date of the hearing; and
- the date of the report.

The report should then also give the following further details about the allegation and the findings made at the hearing:

- a summary of the allegation
- the relevant section or sections of the Code of Conduct
- a summary of the evidence considered and representations made
- the findings of fact, including the reasons for them
- the finding as to whether or not the member failed to follow the Code of Conduct, including the reasons for that finding
- the penalties applied, if any, including the reasons for any penalties and in the cases of a suspended penalty, an explanation of what steps need to be taken by the member if they are to avoid the sanction coming into effect; and
- the right to appeal.

## CHAPTER 7 – ACCESS TO THE HEARING AND DOCUMENTS BY MEMBERS OF THE PUBLIC

### Whether the hearing should be held in private

There is a presumption that hearings should be held in public. There are two circumstances in which hearings (or parts of hearings) must or may be held in private:-

1. A hearing must be held in private where this is necessary to prevent *confidential* information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
2. A hearing may be held in private if it is likely that *exempt* information may be revealed to the public. The categories of 'exempt information' are set out in Schedule 12A to the *Local Government Act 1972* which has recently been amended to take account of Standards Committee hearings. (A full list of exempt information is attached at **Appendix 3**). Most importantly, the amended list includes:
  - Information relating to the personal circumstances of any person
  - The deliberations of the Standards Committee when hearing matters referred by an ESO.

In the case of exempt information it is a matter for the committee to decide whether the meeting should be held in private. In reaching their decision the Standards Committee should carefully consider any decision to hold any part of the meeting in private. The Standards Committee has a duty to act fairly and in line with the rules of natural justice. It is important to note that Article 6 favours public hearings, except in specific circumstances, for example, in the interests of national security or to protect the private lives of everyone involved.

If a Standards Committee decides to exclude the public to prevent 'exempt information' being revealed, it should only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal 'exempt information', the public will only have to be excluded while that witness is giving evidence.

### Withholding documents from the press and public

The rules do not only relate to public attendance at hearings. They also establish the general principle that the agenda and reports to be discussed should also be available for public inspection before and during a hearing. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, must be available for public inspection.

Normally, the agenda and reports for a meeting must be made available to the public before the meeting. However, an officer appointed by the authority has the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private. The Standards Board recommends that this power should be exercised where one of the people involved has requested that a document be kept confidential but this depends on the facts in each case.

The Council's Access to information Rules and the associated protocol apply to the Standards Committee.