

**LOCAL AUTHORITIES (CODE OF CONDUCT)
(LOCAL DETERMINATIONS) REGULATIONS 2003
(Report by the Executive Director of Central Services and
Monitoring Officer)**

1. INTRODUCTION

- 1.1 At the meeting of the Committee on 10th September 2003 Members noted guidance issued by the Standards Board for England on the Local Determination Regulations and practical advice for Monitoring Officers and Standards Committees on the determination of cases referred to them by the Standards Board.
- 1.2 In noting the guidance issued by the Board, the Committee asked for a further report outlining a procedure to assist in preparations for and the conduct of hearings in anticipation of the reference of cases to the Committee for local determination.
- 1.3 The Committee may recall that it resolved that in the event of cases being referred for determination locally, an Independent Member should chair the hearings.

2. LOCAL DETERMINATION PROCESS

General

- 2.1 The main purpose of a Standards Committee's hearing is to decide in the light of a report by an Ethical Standards Officer from the Standards Board for England whether or not a Member has failed to follow the authority's Code of Conduct and, if so, to decide whether or not any penalty should be applied and what form any penalty should take. The Standards Committee must hold a hearing in relation to an allegation within three months of the Monitoring Officer receiving a report from the Standards Board for England. If the Standards Committee does not hear the matter within three months of receiving a report, the Committee will be failing in its legal duty and may face judicial review proceedings. The Committee cannot refer the matter back to the Standards Board for England.
- 2.2 Except in complicated cases, the Standards Committee should aim to complete a hearing at one sitting or in consecutive sittings of no more than one working day in total.
- 2.3 It is suggested that a small number of Members (three or five) should take part in a determination hearing and that the hearing be convened by the Executive Director of Central Services and Monitoring Officer. Currently, at least three Members of the Standards Committee, including at least one who is an Independent Member of the Committee, must be present at each meeting. If a case relates to a

Parish Councillor, one of the Committee Members present must be a Parish Councillor.

- 2.4 The Standards Board for England has prescribed a pre-hearing process and model documentation to support it. The process is intended to provide a consistent approach to administrative arrangements for a hearing and to
- ◆ identify whether the Member against whom the allegation has been made disagrees with any findings of fact in the ESO's report;
 - ◆ decide whether those disagreements are significant to the hearing;
 - ◆ decide whether to hear evidence about those disagreements during the hearing;
 - ◆ decide whether or not there are any parts of the hearings that should be held in private; and
 - ◆ decide whether or not any parts of the ESO's report or other documents should be withheld from the public.

- 2.5 It is suggested that the Monitoring Officer (or his representative) after consultation with the Chairman of the Committee should manage the pre-hearing process using the model documentation recommended by the Standards Board.

3. PROPOSED PROCEDURE FOR THE HEARING OF CASES

Attendance

- 3.1 The Councillor against whom an allegation has been made may arrange to be accompanied at the hearing at his/her own expense by a solicitor, counsel or friend.
- 3.2 If the Councillor is not present at the start of the hearing the Committee must decide whether to adjourn to enable the Councillor to attend, or to proceed in the absence of the Councillor. Where the Committee proceeds in the absence of the Councillor, the procedure for the meeting shall be adapted as necessary giving any representative of the Councillor who is present such rights as would otherwise be accorded to the Councillor.

Order of Business

- 3.3 The order of business at the meeting will be as follows:
- (i) Quorum: the Monitoring Officer or his/her representative must confirm that the hearing is quorate;
 - (ii) Introduction of the Committee: the Chairman must introduce the Committee, the Monitoring Officer (or his/her representative), the Investigating Officer (from the Standards Board for England), the Councillor and any representative of the Councillor;
 - (iii) Disclosures of interest: any disclosable interests will be made at this point in the proceedings;

- (iv) The Committee will receive representations from the Investigating Officer and the Councillor as to reasons why the hearing should exclude the press and public. The Committee shall determine whether to exclude the press and public (where the hearing decides that it will not exclude press and public, the Democratic Services Manager shall at this point provide copies of the agenda and reports to any members of the press and public who are present);
- (v) Presentation by the Investigating Officer of his/her report: the Investigating Officer will at this stage address only the issue of whether the Councillor has acted in breach of the Code of Conduct or local protocol. The Investigating Officer may introduce any witnesses required to substantiate any matter contained in that report which the Councillor has disputed in his/her written statement in response. Members of the Committee may question the Investigating Officer and any witnesses on their evidence. There will be no cross-examination by the Councillor, but the Councillor may request the Chairman of the meeting to direct appropriate questions to the Investigating Officer or to any witness whom he/she has introduced;
- (vi) Presentation by the Councillor: the Councillor will at this stage address only the issue of whether he/she has acted in breach of the Code of Conduct or local protocol. The Councillor may introduce witnesses required to substantiate any matter containing his/her written statement in response. Members of the Committee may question the Councillor and any witness on their evidence. There shall be no cross-examination by the Investigating Officer, but the Investigating Officer may request the Chairman of the meeting to direct appropriate questions to the Councillor or to any witness whom he/she has introduced;
- (vii) Where the Councillor seeks to dispute any matter in the Investigating Officer's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Investigating Officer will draw this to the attention of the hearing. The hearing may then decide –
 - ◆ not to admit such dispute but to proceed to a decision on the basis of the information contained in the Investigating Officer's report;
 - ◆ to admit the dispute, but invite the Investigating Officer to respond thereto, recalling any witness as necessary; or
 - ◆ to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information;
- (viii) At the conclusion of representations by the Councillor, the Chairman will ask the Investigating Officer whether there was any matter raised during the course of that presentation which was not raised on the Councillor's written statement in response. The Investigating Officer may then respond to any new such matter, or may request the hearing to adjourn to

enable him/her to investigate and report on that matter and/or to secure the attendance of witnesses as to the new matter;

- (ix) The Committee is required to come to a decision as to whether the Councillor acted in breach of the Code of Conduct or local protocol. Accordingly, it has to satisfy itself that it has sufficient information upon which to take that decision and Members of the Committee may question the Investigating Officer, the Councillor and any witness in order to obtain sufficient information to enable the hearing to come to a decision on this issue;
- (x) At the conclusion of the presentations of the Investigating Officer and of the Councillor and any questions from the Members of the Committee, the Members of the Committee will adjourn to another room with the Monitoring Officer or his representative where they will consider in private session whether the Member has acted in breach of the Code of Conduct or local protocol. At any stage in their consideration they may return to ask any further questions of the Investigating Officer or the Councillor or to seek legal advice;
- (xi) The Committee may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the investigating officer and the Councillor.

The Findings

- (xii) At the conclusion of their consideration, the Committee will return and the Chairman will advise the Monitoring Officer and the Councillor of the decision as to whether the Councillor has acted in breach of the Code of Conduct or local protocol and the reasons for that decision;
- (xiii) If the Committee conclude that the Council has acted in breach of the Code of Conduct or local protocol, the Committee will then hear representations from the Investigating Officer and then the Councillor as to whether the Committee should take any action against the Councillor and what form any action should take. Members of the Committee may ask questions of the Investigating Officer and the Councillor and seek legal advice if they require it in order to satisfy themselves that they have the information upon which to take a proper decision;
- (xiv) The Committee will then adjourn into another room together with the Monitoring Officer or his representative where they will consider in private session whether to take any action against the Councillor and what form such action should take. The Committee will then return and the Chairman will advise the Investigating Officer and the Councillor of their decision, whether they have decided to take any action against the Councillor and what action they have decided to take and the reasons for those decisions;

- (xv) For District Councillors: the Committee will then consider in open session whether there are any recommendations which the Committee should make arising from their consideration of the allegation, eg providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or local protocol or related matters, for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct;
- (xvi) For Town or Parish Councillors: the Committee will then consider in open session whether there are any recommendations which it should make to the Council of which the Councillor is a Member arising from their consideration of the allegation in the same circumstances as set out in paragraph (xv) ante.

The Written Decision

- (xvii) As soon as practicable after the Committee has completed its consideration and decision in respect of the allegation, the Monitoring Officer shall:
 - (i) send to the Councillor a written notice of the decision of the Committee which statement shall include a statement of any rights of appeal against that decision;
 - (ii) send a written report of the decision of the Committee to the next convenient meeting of the Council;
 - (iii) where the allegation relates to a Councillor in his/her capacity as a Member of a Parish/Town Council, send a written notice of the decision of the Committee to the Clerk to the Parish or Town Council;
 - (iv) take reasonable steps to inform the person(s) who made the allegation which gave rise to the investigation of the outcome of the hearing.
- (xviii) As soon as possible after the time limit for any appeal by the Councillor against the decision of the Committee has expired and provided that no such appeal has been lodged by the Councillor, the Monitoring Officer will send a report of the outcome of the investigation and the Committee's decision to the Standards Board for England.

4. CONCLUSIONS

- 4.1 In the event that a case is referred to them by the Standards Board for England, Members are requested to
 - ◆ authorise the Executive Director of Central Services and Monitoring Officer, after consultation with the Chairman of the Committee, to administer the pre-hearing process and to convene hearings as necessary; and

- ◆ approve the procedure for the hearing of cases by the Committee.

BACKGROUND PAPERS

Local Authorities (Code of Conduct) (Local Determination) Regulations 2003
Guidance for Monitoring Officers and Standards Committees on Standards
Committee Determinations published by the Standards Board for England

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