

## Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 11 September 2008.

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### Subject:

Local Investigation of Complaints – Criteria for Application of Sanctions

### Summary statement:

This report identifies issues for consideration by Standards Committee Hearings Panel when applying sanctions as part of the local investigation procedures.

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Improving Rural Services  
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## 1. **Summary**

This report identifies issues for consideration by Standards Committee Hearings Panels when applying sanctions as part of the local investigation procedures.

## 2. **Background**

- 2.1 From May 2008 complaints about the conduct of a Councillor are referred to the Monitoring Officer for consideration by the local Standards Committee.
- 2.2 If the matter is referred for investigation the Monitoring Officer or his/her representative will investigate the allegation and prepare a report for the Standards Committee. The report must make one of the following findings:
  - That there has been a failure to comply with the Code of Conduct (a finding of failure).
  - That there has not been a failure to comply with the Code (a finding of no failure).
- 2.3 The report and findings are presented to the Standards Committee Hearings Panel who will decide, based on the facts in the report, whether it agrees that the Code has not been breached or if there is a case to answer. If the Hearings Panel believes there is a case to answer there will be a hearing.
- 2.4 If the Hearings Panel determines that there is to be a hearing in the matter they will adjourn to a date when all the evidence can be presented and the member can attend and present their response to the allegation. After hearing all the evidence the Hearings Panel will make a final determination on whether there has been a breach of the Code of Conduct.
- 2.5 If the Hearings Panel finds that the subject member has failed to follow the Code of Conduct they then must consider the imposition of a sanction.

## 3. **Other considerations**

- 3.1 Standards Committee members are invited to consider the guidance document at Appendix A which deals with issues for consideration when determining the application of a sanction. It is recognised that elected members of City of Bradford Metropolitan District Council, Independent Members and Parish Council representatives each bring their own perspective to the work undertaken by this Committee. Members of the Committee are therefore encouraged to consider the document and discuss whether they feel the guidance will be of assistance.

## 4. **Options**

- 4.1 The Standards Committee are asked to consider the attached document and to either:
  - Approve the document for guidance to hearings panels
  - Suggest amendments to the document.

5. **Financial and resource appraisal**

5.1 There are no financial implications.

6. **Legal appraisal**

6.1 It is important to ensure that where sanctions are applied it is done in a consistent, reasonably and proportionate manner. The guidance is designed to assist in ensuring these requirements are met.

7. **Recommendations**

7.1 Standards Committee is asked to consider the guidance document and put forward any suggested amendments.

8. **Appendices**

9.1 Appendix A – Member Code of Conduct – Complaints Procedure  
Issues for Consideration when applying a sanction

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**Member Code of Conduct – Complaints Procedure**

**Issues for consideration when applying a sanction.**

If the Standards Committee Hearings Panel finds that a subject member has failed to follow the Code of Conduct they will then need to consider whether they should impose a sanction.

The Standards Committee may impose any one or a combination of the following:

1. Censure of that member. This is the only sanction available when dealing with a person who is no longer a member of the authority.
2. Restriction for a period not exceeding 6 months of that member's access to the premises of the authority or that member's use of the resources of the authority provided that those restrictions meet both the following requirements:
  - a. They are reasonable and proportionate to the nature of the breach
  - b. They do not unduly restrict the person's ability to perform the functions as a member.
3. Partial suspension of that member for a period not exceeding 6 months.
4. Suspension of that member for a period not exceeding 6 months.
5. That the member submits a written apology in a form specified by the Standards Committee.
6. That the member undertakes such training as the Standards Committee specifies.
7. That the member participates in such conciliation as the Standards Committee specifies.
8. Partial suspension of that member for a period not exceeding 6 months or until such time as the member has met either of the following restrictions:
  - a. That they have submitted a written apology in a form specified by the Standards Committee,
  - b. That they have undertaken such training or have participated in such conciliation as the Standard Committee specifies.
9. Suspension of that member for a period not exceeding 6 months or until such time as the member has met either of the following restrictions:
  - a. That they have submitted a written apology in a form specified by the Standards Committee;
  - b. That they have undertaken such training or have participated in such conciliation as the Standards Committee specifies.

Suspension or partial suspension will normally start immediately after the Standards Committee has made its decision. However, the Standards Committee can choose to start the sanction at any time up to 6 months following its decision. This may be appropriate if the sanction would otherwise have little affect on the subject member. For example in the case of a

suspension or partial suspension where there are no authority or committee meetings which the subject member would normally go to in the period after the hearing has finished.

The Standards Committee will also need to consider the consequences, if any, for any allowances the subject member may be receiving.

Members should note that periods of suspension or partial suspension set by a Standards Committee do not count towards a 6 month limit for absences from authority meeting after which a member would normally be removed from office under Section 85 of the Local Government Act 1972.

### **Issues for consideration when determining a sanction**

When deciding on a sanction the Standards Committee should ensure that it is **reasonable and proportionate** to the subject member's behaviour. Before deciding what sanction to issue the Standards Committee should consider the following questions along with other relevant circumstances.

1. What was the subject member's intention?
2. Did the subject member know that they were failing to follow the Code of Conduct?
3. Did the subject member get advice from officers before the incident?
4. Was that advice acted on or ignored in good faith?
5. Has there been a breach of trust?
6. Has there been any financial impropriety, for example improper expense claims or procedural irregularities.
7. What was the result of failing to follow the code of conduct?
8. What were the potential results of the failure to follow the code of conduct?
9. How serious was the incident?
10. Does the subject member accept they were at fault?
11. Did the subject member apologise to the relevant people?
12. Has the subject member previously been warned or reprimanded for similar misconduct?
13. Has the subject member failed to follow the Code of Conduct before?
14. Is the subject member likely to do the same thing again?
15. How will the sanction be carried out, for example who will provide the training or mediation?
16. Are there any resource or funding implications, for example if a subject member has repeatedly or blatantly misused the authority's information technology resources the Standards Committee may consider withdrawing those resources from the subject member?

## **Issues when considering suspension**

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

- Trying to gain an advantage or disadvantage for themselves or others.
- Dishonesty or breaches of trust.
- Bullying.

Sanctions involving restricted access to an authority's premises or equipment should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member. For example care must be taken if the member's access to Council buildings are to be restricted if the member's surgeries are held in a Council building.

## **Mitigating Factors**

The Adjudication Panel for England has issued guidance on aggravating and mitigating factors they have taken into account when assessing an appropriate sanction. This list is not exhaustive but should be considered.

1. An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where a view has been formed after taking appropriate advice.
2. A member's previous record of good service.
3. Substantiated evidence that the member's actions have been affected by ill health.
4. Recognition that there has been failure to follow the code including co-operation in rectifying the effects of that failure, an apology to affected persons where that is appropriate or self reporting of the breach by the member.
5. Compliance with the Code since the events giving rise to the determination.
6. Some actions which may have involved a breach of the code may nevertheless have had some beneficial affect for the public.

## **Aggravating Factors**

1. Dishonesty.
2. Continuing to deny the facts despite clear evidence to the contrary.
3. Seeking unfairly to blame other people.
4. Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.

5. Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

In addition the Adjudication Panel for England also advised the following:

“In deciding what action to take, the case tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus the action taken by the case tribunal should be designed both to discourage or prevent the particular respondent from any future non-compliance and also to discourage similar action by others.

Case tribunals should take account of the actual consequences which have followed as a result of the member’s actions, while at the same time bearing in mind what the possible consequences may have been even if they did not come about.”

Although the Local Government Act 2000 enables the Standards Committee to suspend and partially suspend members it does not specify exactly what members can and cannot do in their official capacity during the term of suspension. This has led to confusion as to what role, if any, a suspended member can perform. It has also led to confusion over what Council facilities they are allowed to use and what entitlements they can continue to receive as a suspended member.

The Standards Board for England have provided guidance to assist in these situations.

### **Full Suspension**

Members under full suspension should not:

1. Take part in any formal business of the authority. Section 83 of the Local Government Act 2000 provides that a suspended member should not participate in any committee or sub-committee of the authority.
2. Have access to Council facilities. The member would not be performing Council business whilst suspended and therefore should not use or have access to Council facilities.
3. Receive their Council allowance. Under Regulation 4(3) of the Local Authorities (Members Allowance) Regulations 2003 Councils may specify in their member allowance schemes that where the member is suspended or partially suspended from his responsibilities or duties as a member in accordance with the Local Government Act 2000 the part of basic allowance payable to him in respect of the period for which he is suspended, or

partially suspended, may be withheld by the authority.

4. It is recommended that members should not receive their allowance whilst under suspension because they are not performing their role as a member. However the decision to withhold the member's allowances is ultimately at the discretion of the individual authority.
5. In addition members under suspension should:
  - 5.1 Make their suspended status clear.  
Whilst suspended members remain Councillors however they should put "Suspended" after their name when referring to themselves in writing as members. They should also notify constituents of this when contacting by them on constituency business.
  - 5.2 Suspended members should arrange for other ward members to handle their constituency work.

### **Partial Suspensions**

Members can be partially suspended under Sections 83(9) and (10) of the Local Government Act 2000. While members who are fully suspended cannot take part in any formal business of the authority during the period of suspension, members who are partially suspended are restricted only from certain activities or business.

The terms of a partial suspension must be set by the Standards Committee during sentencing. It will often involve suspension from certain committees or restricted access to certain areas or individuals. A partial suspension enables the Committee to tailor a sanction for the particular breach while still allowing the member to carry out other functions. For example, a member who fails to uphold the Code of Conduct of a planning committee could be suspended from taking part in planning committee meetings for a certain period. A member who bullied licensing officers about an application might be barred from contact with officers of the licensing department for a certain period. It is recommended that members should not receive allowances relating to the areas in which they are suspended from the duration of their suspension. This would mean that a member would continue to receive their basic allowance but would not receive a special responsibility allowance if they were suspended from those areas.

### **APOLOGY /CONCILIATION/TRAINING**

Such sanctions combined with suspension or partial suspension can help both to draw a line under an issue and encourage good conduct in the future.



## **CENSURE**

Where the Hearings Panel decide a period of suspension is not warranted, a censure is an available sanction. This is the lowest sanction that can be applied. This may be appropriate where the breach is at the lower end of the spectrum of misconduct but the panel wishes to mark the fact that the behaviour was unacceptable and must not happen again.

This may be the only sanction available where the person is no longer a serving member .

## **A DECISION NOT TO IMPOSE ANY SANCTION**

Circumstances where such a decision may be appropriate include:

- 1 A wholly inadvertent failure to abide by the Code
- 2 An acceptance that despite the lack of any sanction there is not likely to be any further failure to comply on the part of the member
- 3 The absence of any harm having been caused or the potential for such harm as a result of the failure to comply with the Code
- 4 There is no need to impose sanction in order to discourage others.