

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 4 December 2008.

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Subject:

Standards Committee Procedures

Summary statement:

Members are invited to consider revised procedures for adoption in connection with the determination of complaints alleging that members of the Council including voting co-opted members, Town and Parish Councillors have acted in breach of the Member Code of Conduct or of local protocols.

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Suzan Hemingway, Assistant Director Corporate Services (City Solicitor)



1. Summary

- 1.1 Members are invited to consider revised procedures for adoption in connection with the determination of complaints alleging that members of the Council including voting co-opted members, Town and Parish Councillors have acted in breach of the Member Code of Conduct or of local protocols.

2. Background

- 2.1 Members will be aware that since 8 May 2008 allegations that members are in breach of the Member Code of Conduct are to be referred to the Council's Monitoring Officer and not to the Standards Board for England. The Monitoring Officer now refers the matter to Standards Committee initially for assessment. The Sub Committee will determine if the complaint is to be the subject of investigations, referred to the Monitoring Officer for other action or whether there should be no further action.

- 2.2 The Committee has in place certain procedures and Panels to carry out local determinations but in August 2008 the Standards Board for England issued further guidance which includes suggested new procedures following changes to the way in which complaints are determined. The procedures are not mandatory but the Standards Board expects authorities to adopt procedures similar to the ones suggested. The procedures cover the pre hearing protocol and the actual hearing and are attached to this report as attachments 1 and 2. The procedures themselves have appendices. At present there is a procedure covering investigations but in the latest guidance there is no such procedure. The Standards Board appears to take the view that none is required given the very detailed advice in the guidance on investigations.

3. Other considerations

- 3.1 The Committee may adopt the attached procedure with or without modification, or call for alternative procedures to be considered by the Committee.

4. Financial and resource appraisal

- 4.1 The adoption of the procedure would have no direct financial consequence.

5. Legal appraisal

- 5.1 The Committee is under a duty to determine complaints that the Members Code of Conduct code has been breached. The suggested procedure would be a useful tool in the carrying out of that duty.

6. Other implications

6.1 Equal Rights

There are no direct equal rights implications arising from this report.

6.2 Sustainability implications

None

6.3 Community safety implications

There are no direct community safety implications.

6.4 Human Rights Act

There are no direct Human Rights Act implications.

6.5 Trade Union

There are no implications for the Trade Union arising from this report.

7. Not for publication documents

None

9. Recommendations

That the attached procedures be approved with any modification that the Committee sees fit.

10. Appendices

Pre Hearing Procedure
Hearing Procedure

11. Background documents

Local Standards Framework

STANDARDS COMMITTEE

Pre Hearing Process

1. The purpose of the pre-hearing process is to:

- Identify whether the subject member disagrees with any findings of fact in the investigation report.
- Decide whether those disagreements are significant to the hearing.
- Decide whether to hear evidence about those disagreements during the hearing.
- Decide whether there are any parts of the hearings that should be held in private.
- Decide whether any parts of the investigation report or other documents should be withheld from the public, prior to the hearing on the grounds that they contain 'exempt' material.

2. Pre-hearing process checklist for authorities

- 2.1 The monitoring officer must give a copy of the investigation report to the subject member.
- 2.2 An officer of the Council providing administrative support to the committee, in consultation with the chair of the committee, should:
- provide a copy of the standards committee's pre-hearing and hearing procedures to the subject member
 - outline the subject member's rights and responsibilities
 - propose a date for the hearing
 - ask for a written response from the subject member by a set time to find out whether they:
 - i) disagree with any of the findings of fact in the investigation report, including the reasons for disagreement
 - ii) want to be represented at the hearing by a solicitor, barrister or any other person. This should be done while noting that the standards committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined
 - iii) want to give evidence to the standards committee, either verbally or in writing
 - iv) want to call relevant witnesses to give evidence to the standards committee
 - v) can attend the hearing on the proposed date

- vi) want any part of the hearing to be held in private
 - vii) want any part of the investigation report or other relevant documents to be withheld from the public
- send a copy of the subject member's response to the monitoring officer or the person who prepared the report or ethical standards officer and invite the monitoring officer or ethical standards officer to say by a set time whether they want:
 - i) to be represented at the hearing
 - ii) to call relevant witnesses to give evidence to the standards committee
 - iii) any part of the hearing to be held in private
 - iv) any part of the investigation report or other relevant documents to be withheld from the public
 - v) to invite any other witnesses the committee feels are appropriate

- 2.3 The chair of the committee, in consultation with the legal adviser to the committee, should then:
- confirm a date, time and place for the hearing
 - confirm the main facts of the case that are agreed
 - confirm the main facts which are not agreed
 - confirm which witnesses will give evidence
 - outline the proposed procedure for the hearing
 - provide this information to everyone involved in the hearing at least two weeks before the proposed date of the hearing

3. Checklist for members

- 3.1 The officer providing administrative support to the committee, in consultation with the chair of the committee, should make sure that the subject member is aware of the following points.

3.2 Pre-hearing process

The subject member has the right to:

- go to the hearing and present their case
- call a reasonable number of witnesses to give relevant evidence to the standards committee
- be represented at the hearing by a solicitor, barrister or any other person.

Note – the committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined.

- 3.3 Any disagreements with the finding of facts in the investigation report must be raised during the pre-hearing process. The standards committee will not consider any new disagreements about the report's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand. The subject member does not have to go to the hearing or be represented. If the subject member chooses not to go to the hearing, the committee may make a determination in their absence.
- 3.4 The hearing will be held in public and the relevant papers will be available for public inspection unless the standards committee is persuaded that there is a good reason to exclude the public. This is in line with the relevant access to information and human rights legislation.

4. Checklist for the pre-hearing process summary

- 4.1 After the standards committee has received responses from the subject member and the monitoring officer or ethical standards officer, it should prepare a summary of the main aspects of the case that will be heard.
- 4.2 The pre-hearing process summary should include:
- the name of the authority
 - the name of the subject member
 - the name of the complainant (unless there are good reasons to keep their identity confidential)
 - case reference numbers of the principal authority or the Standards Board for England
 - the name of the standards committee member who will chair the hearing
 - the name of the monitoring officer
 - The name of the ethical standards officer who referred the matter (if applicable)
 - the name of the clerk of the hearing or other administrative officer
 - the date the pre-hearing process summary was produced
 - The date, time and place of the hearing
 - a summary of the complaint
 - the relevant section or sections of the Code of Conduct
 - the findings of fact in the investigation report that are agreed
 - the findings of fact in the investigation report that are not agreed
 - whether the subject member or the monitoring officer or ethical standards officer will attend or be represented

- the names of any witnesses who will be asked to give evidence
- an outline of the proposed procedure for the hearing.

Appendix

1. Categories of exempt information under Schedule 12A of the Local Government Act 1972 (as modified in relation to local determinations by standards committees) are:
 - 1.1 Information relating to any individual.
 - 1.2 Information which is likely to reveal the identity of an individual.
 - 1.3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
 - 1.4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a minister of the Crown and employees of, or office holders under, the authority.
 - 1.5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
 - 1.6 Information which reveals that the authority proposes:
 - to give under any enactment a notice under or by virtue of which requirements are imposed on a person
 - to make an order or direction under any enactment
 - 1.7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
 - 7A) Information which is subject to any obligation of confidentiality.
 - 7B) Information which relates in any way to matters concerning national security.
 - 7C) Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.

Source: Appendix 3 is an extract from the Local Government Act 1972 (as modified in relation to local determination by standards committee).

STANDARDS COMMITTEE

Procedure for Hearings

1. Application

- 1.1** This procedure applies to hearings of the Determination Sub Committee of the Standards Committee about alleged breaches of the Members' Code of Conduct and so far as it is applicable alleged breaches by members of other codes and protocols

2. Interpretation

'Subject member' 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 member's nominated representative.

'Investigator' means the monitoring officer or ethical standards officer and includes their nominated representative.

'Committee' also refers to a sub-committee.

'Legal adviser' 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. Representation

- 3.1** The subject member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

4. Legal advice

- 4.1** The committee may take legal advice, in private if necessary, from its legal adviser 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 subject member and the investigator if they are present.

5. Setting the scene

- 5.1** After all the members and everyone involved have been formally introduced, the chair should explain how the committee is going to run the hearing.

6. Preliminary procedural issues

- 6.1** The committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

7. Making findings of fact

- 7.1** After dealing with any preliminary issues, the committee should then move on to consider whether there are any significant disagreements about the facts contained in the investigator's report.
- 7.2** If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.
- 7.3** If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.
- 7.4** The subject member should then have the opportunity to make representations to support their version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.
- 7.5** At any time, the committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
- 7.6** If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
- 7.7** If the subject member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether it would be in the public interest to continue in their absence.
- 7.8** After considering the member's explanation for not raising the issue at an earlier stage, the committee may then continue with the hearing,

relying on the information in the investigator's report allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary _ postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already.

7.9 The committee will usually adjourn to consider the representations and evidence in private.

7.10 On resumption, the chair will announce the committee's findings of fact.

8. Did the subject member fail to follow the Code of Conduct?

8.1 The committee then needs to consider whether, based on the facts it has found, the subject member has failed to follow the Code.

8.2 The subject member should be invited to give relevant reasons why the committee should decide that they have not failed to follow the Code.

8.3 The committee should then consider any verbal or written representations from the investigator.

8.4 The committee may, at any time, question anyone involved on any point they raise on their representations.

8.5 The subject member should be invited to make any final relevant points.

8.5 The committee will then consider the representations in private.

8.6 On resumption, the chair will announce the committee's decision as to whether the subject member has failed to follow the Code.

9. If the subject member has not failed to follow the Code of Conduct

9.1 If the committee decides that the subject member has not failed to follow the Code, the committee can move on to consider whether it should make any recommendations to the authority.

10. If the subject member has failed to follow the Code of Conduct

10.1 If the committee decides that the subject member has failed to follow the Code, it will consider any verbal or written representations from the investigator and the subject member as to: whether the committee should apply a sanction what form any sanction should take.

10.2 The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

10.3 The committee will then deliberate in private to consider whether to impose a sanction on the subject member and, if so, what sanction it should be.

10.4 On resumption, the chair will announce the committee's decision.

11. Recommendations to the authority

11.1 After considering any verbal or written representations from the investigator, the committee will consider whether it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

12. The written decision

12.1 The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

Appendix

1. Sanctions Available and the Consideration of Sanctions

1.1 If the standards committee finds that a subject member has failed to follow the Code of Conduct and that they should be sanctioned, it may impose any one or a combination of the following:

- censure of that member
- restriction for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) 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:
 - i) They are reasonable and proportionate to the nature of the breach.
 - ii) They do not unduly restrict the person's ability to perform the functions of a member.
- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)
- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)
- that the member submits a written apology in a form specified by the standards committee
- that the member undertakes such training as the standards committee specifies
- that the member participates in such conciliation as the standards committee specifies
- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met **either** of the following restrictions:
 - i) They have submitted a written apology in a form specified by the standards committee.
 - ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.
- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met **either** of the following restrictions:
 - i) They have submitted a written apology in a form specified by the standards committee.
 - ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.

- 1.2 Suspension or partial suspension will normally start immediately after the standards committee has made its decision. However, if the standards committee chooses, the sanction may start at any time up to six months following its decision. This may be appropriate if the sanction would otherwise have little effect 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 should also confirm the consequences, if any, for any allowances the subject member may be receiving.
- 1.3 Periods of suspension or partial suspension set by a standards committee do not count towards the six-month limit for absences from authority meetings, after which a member would normally be removed from office under section 85 of the Local Government Act 1972.

2. Considering the sanction

- 2.1 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 any other relevant circumstances:
- What was the subject member's intention? Did the subject member know that they were failing to follow the Code of Conduct?
 - Did the subject member get advice from officers before the incident? Was that advice acted on or ignored 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?
 - What were the potential results of the failure to follow the Code of Conduct?
 - How serious was the incident?
 - Does the subject member accept they were at fault?
 - Did the subject member apologise to the relevant people?
 - Has the subject member previously been warned or reprimanded for similar misconduct?
 - Has the subject member failed to follow the Code of Conduct before?
 - Is the subject member likely to do the same thing again?

- How will the sanction be carried out? For example, who will provide the training or mediation?
 - 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.
- 2.2 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
- 2.3 Sanctions involving restricting 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.
- 2.4 The following is an extract from useful guidance published by the Adjudication Panel for England on aggravating and mitigating factors they take into account when assessing an appropriate sanction:

Examples, but not an exhaustive list, of mitigating factors are:

- 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 such a view has been formed after taking appropriate advice.
- A member's previous record of good service.
- Substantiated evidence that the member's actions have been affected by ill-health.
- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Examples, but again not an exhaustive list, of aggravating factors are:

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people.

- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

25. The Adjudication Panel for England also advises 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.

This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. Any such tariff would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.