

<b>COMMITTEE:</b>	<b>Standards Committee</b>
<b>DATE:</b>	<b>13<sup>th</sup> April, 2011</b>
<b>TITLE:</b>	<b>Procedure for Standards Committee Hearings</b>
<b>AUTHOR:</b>	<b>Monitoring Officer</b>
<b>ACTION:</b>	<b>To agree the principles of a procedure.</b>

## **1. Background.**

- 1.1 The hearing by the Standards Committee will occur as a result of either :
  - a complaint being referred to the Monitoring Officer by the Ombudsman for investigation; or
  - the Ombudsman referring his report to the Monitoring Officer to present to the Committee.
- 1.2 If the Committee receives such a report, it will first have to hold a preliminary hearing to decide, on the basis on the report only, either:
  - (a) that there is no evidence of any failure to comply with the Code of Conduct; or
  - (b) that any person who is the subject of the investigation should be given the opportunity to make representations (orally or in writing) to the Committee.
- 1.3 If the decision is (b), a full hearing will be held. A full hearing will, in contrast to the preliminary hearing, will be held in public (unless there are particular reasons for excluding the public and press).
- 1.4 The relevant regulations (*The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001*) provide that it shall be for the Standards Committee to decide upon the practice and procedure to be followed (subject to any specific provision in the regulations). This Committee does not have a detailed procedure for hearings at the moment, apart from the general provisions of the regulations.
- 1.5 This report therefore outlines a process that could be adopted. If the Committee is satisfied with this process, a more detailed procedure can be drawn up.

## 2. Proposed Procedure.

### THE PRELIMINARY HEARING.

- A hearing to decide, on the basis of the Monitoring Officer's report, whether there is evidence of a failure to comply with the Code of Conduct.
- An officer who has not been part of the investigation will be present to provide legal advice to the Committee.
- Criteria will be established to assist the Committee and to ensure consistency in decisions.

### THE FULL HEARING

The procedure can be split into two main parts, what needs to be done in preparation for the hearing and the procedure to be followed at the hearing itself.

#### A. Before the hearing.

The following steps will be taken:

***Contact the member who is the subject of the complaint to confirm whether he/she:***

- wishes to submit written and/or oral representations,
- disagrees with any finding of fact in the report of the 'Investigating Officer' (i.e. the Ombudsman investigator or the Monitoring Officer)
- intends to be represented by a solicitor, barrister or any other person,
- wishes to call any witnesses to give evidence before the committee,
- believes that any part of the meeting/any documents should be confidential.

***The Investigation Officer asked to confirm whether he/she:***

- intends to be represented at the hearing,
- wishes to call any witnesses to give evidence before the committee,
- believes that any part of the meeting/any documents should be confidential.

***Provide the following information to members of the Committee an all those involved:***

- The Investigating Officer's report.
- Any relevant documents.
- The response from the member who is subject of the investigation.
- Any further response by the investigating officer.
- An outline of the main facts of the case that have been agreed and those that have not been agreed.
- A list of witnesses who will appear.
- Whether the member will be attending the hearing, and whether he/she will be represented.
- The procedure for the hearing.

## **B. The Hearing.**

The procedure should ensure that all parties to the hearing are able to participate in the full knowledge of the matters requiring investigation and that the proceedings are fair, transparent and impartial. The hearing should be kept as informal as possible. Members of the Committee can ask questions of anybody present, at any time. No cross-examination will be allowed, but questions can be directed through the chair. An officer who has not been part of the investigation will be present to provide the Committee with legal advice.

There will be four possible stages to a hearing :

### **(1) Preliminary Procedural Issues.**

The Chair will welcome everybody and explain the manner and order of proceedings. The Committee will resolve any issues or disagreements about how the hearing should continue, including :

- Whether public and press should be excluded from the hearing or parts of it.
- Whether any late evidence should be admitted.
- Whether the hearing should proceed in the absence of the member (if he/she has indicated his/her intention to attend).

### **(2) Findings of Facts.**

The Committee will consider those facts where there is a disagreement:

- The Investigating Officers will be called to support the findings of facts in his/her report.
- The member will be given the opportunity to make representations.
- The Investigating Officer will be given the opportunity to respond.
- The Committee to resolve to exclude the public and press from its deliberations and retire to consider its decision.
- Once the decision is reached and the meeting reconvened, the Chairman will announce the Committee's findings of facts.

### **(3) Did the member fail to follow the code?**

The Committee will then consider, on the basis of the facts that it has found whether the member breached the code of conduct.

- Representations invited from the Investigating Officer.
- Representations invited from the member.
- The Committee will resolve to exclude the public and press from its deliberations and retire to consider its decision.
- Once a decision is reached and the meeting reconvened, the Chairman will announce the Committee's decision as to whether or not the councillor has breached the code of conduct.

**(4) Penalty.**

If the Committee decides that the member did not breach the code of conduct, it can still consider whether or not to make general recommendations to the Council to avoid similar situations arising in the future. If it decides that a member has breached the code:

- Representations will be invited from the Investigating Officer and the member regarding whether there should be a penalty, and if so, what kind of penalty would be appropriate.
- The Committee will resolve to exclude the press and public from its deliberations and retire to consider its decision as to whether the member should be punished, and if so, what punishment should be imposed, and if there are any general recommendation that should be made to the Council.
- Once a decision is made and the meeting reconvened the Chairman will announce the decision.
- A full written decision will be provided soon after the hearing.

**3. Recommendation.**

The Committee is asked to approve the procedure outlined above.