

GWYNEDDD COUNCIL STANDARDS COMMITTEE

PROCEDURE FOR HEARINGS

1. These are the arrangements that will be followed when the Standards Committee is required to reach a decision following an investigation by the Public Services Ombudsman for Wales or the Council's Monitoring Officer under part III of the Local Government Act 2000 and relevant regulations. If there is any conflict between this document and any statutory provisions then the statutory provisions will prevail.
2. The Standards Committee will be required to decide upon a complaint that a member has breached the Code of Conduct as a result of either :
 - A complaint being referred to the Monitoring Officer by the Ombudsman to investigate and then report to the Committee; or
 - The Ombudsman referring his report to the Monitoring Officer to present to the Committee.

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:

3. If the Committee receives such a report then it will first have to hold an initial hearing to decide, solely on the basis of the report, 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.
4. The relevant regulations (*The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001* ("the Regulations") 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).

THE PROCEDURE.

The Standards Committee's first hearing (The Preliminary Hearing)

5. Following receipt of the report by the Ombudsman or the Monitoring Officer ("the Investigating Officer") :
 - A hearing will be held to decide, on the basis of the Investigating 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 or involved in the complaint itself will be present to provide legal advice to the Committee.
 - Criteria will be established to assist the Committee and to ensure consistency in decisions.
 - If it is decided to give the person who is subject to the complaint the opportunity to make representations (i.e. hold a full hearing):
 - Decide whether the Investigating Officer should be asked to attend to present the report explain any matters in it.
 - Decide on a date for the hearing to offer the member (together with two alternative dates to be kept in reserve)

THE FULL HEARING

Before the hearing.

6. A questionnaire will be sent to the member who is the subject of the complaint to asking him/her to confirm in writing within 14 days whether he/she:
 - wishes to submit written and/or oral representations,
 - disagrees with any finding of fact in the report of the 'Investigating 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.
7. The Investigating Officer will be informed of the proposed hearing and ask whether he/she intends to attend.
8. The member's responses will be sent to the Investigation Officer and ask him/her to confirm within 7 days 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.
9. It should be made clear to all parties that details should be provided beforehand of all the findings of fact that they intend to challenge and the evidence that they intend to produce.

10. The following information will be sent to members of the Committee, the member and the Investigating Officer beforehand:
 - 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.
11. If the member has said that he/she will be attending the hearing, he/she will be contacted the day before to confirm his/her attendance.

Failure to make representations / attend the hearing

If the Member fails to make representations, the Standards Committee may:

- (a) unless it is satisfied that there is sufficient reason for such failure, consider the investigation report and make a determination in the Member's absence; or
- (b) give the Member a further opportunity to make representations

If a party fails to be present or represented at a hearing, the Standards Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence -

- (b) hear and decide the matter in the party's absence; or
- (c) adjourn the hearing.

If the Standards Committee is satisfied (after receiving a medical certificate) that any party is unable, through sickness, to attend the hearing and that the party's inability is likely to continue for a long time, the Standards Committee may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter

The Hearing.

15. 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 procedure at the meeting shall be as set out below, subject to the Chair making such changes as he or she thinks fit in order to ensure a fair and efficient hearing. The hearing should be kept as informal as it appears appropriate.
16. Members of the Committee can ask questions of anybody present, at any time. No cross-examination will be allowed by the parties, but questions can be directed

through the chair. An officer who has not been part of the investigation or involved in the complaint itself will be present to provide the Committee with legal advice. The Committee will decide factual evidence on the balance of probabilities. There will be four possible stages to a hearing :

(i) Preliminary Procedural Issues.

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).

(ii) Findings of Facts.

The Committee will confirm which facts have been agreed and which have not. If there is any disagreement:

- The Investigating Officer, if present, will be invited to support the findings of facts in his/her report. He/she may call any necessary supporting witnesses to give evidence, with the Standards Committee's permission. The Committee shall give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer
- The member will be given the opportunity to make representations to support his/her version of the facts. He/she may call any necessary witnesses to give evidence, with the Standards Committee's permission and the Committee shall give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member
- If the Member disagrees with any relevant fact in the investigation report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Standards Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:
 - (a) continue with the hearing, relying on the information in the investigation report
 - (b) allow the Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already present.
- The Committee will retire to consider its decision.
- Once the decision is reached and the meeting reconvened, the Chairman will

announce the Committee's findings of facts.

(iii) 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 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.

(iv) Action to be taken.

Even 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 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.

In respect of imposing a sanction, the Committee will decide either that:

- (a) no action needs to be taken in respect of the failure to comply with the Code of Conduct,
- (b) the Member should be censured or
- (c) the Member should be suspended or partially suspended from being a member or co-opted member of his or her authority for a period not exceeding six months,

- Once a decision is made and the meeting reconvened the Chairman will announce the decision.

18. A written decision will be provided in the form of a Decision Notice shortly after the hearing.
19. The Committee shall cause to be produced and distributed a report on the outcome of the investigation in accordance with the Regulations. The Monitoring Officer on receipt of the report shall publish the report as required by the Regulations.

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