

# **GWYNEDDD COUNCIL STANDARDS COMMITTEE**

## **PROCEDURE FOR HEARINGS**

### **BACKGROUND**

1. These arrangements will be followed when the Standards Committee ('the Committee') is required to decide upon a complaint that a member has breached the Code of Conduct. If there is any conflict between this document and the provisions of Part III of the Local Government Act 2000 and relevant regulations, then the statutory provisions will prevail.
  
- 2 The Committee will have to decide on a complaint against a member either :
  - When a complaint is referred to the Monitoring Officer by the Ombudsman to investigate and then report to the Committee; or
  
  - When the the Ombudsman refers his report to the Monitoring Officer to present to the Committee.

There are two possible steps to the procedure of considering a complaint:

### **THE FIRST STEP**

#### **THE FIRST MEETING OF THE STANDARDS COMMITTEE (INITIAL HEARING)**

3. 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, 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
  - An officer who has not been involved in the investigation or the complaint itself ('the Advising Officer') will be present to provide legal advice to the Committee.
  - Any criteria established to assist the Committee and to ensure consistency in decisions will be considered.
  - If it is decided to give the person who is subject to the complaint ('the Member') the opportunity to make representations (i.e. hold a full hearing) the Committee will:
    - 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 SECOND STEP

### THE FULL HEARING

If the Committee decides that the Member should be given the opportunity to make representations, the following procedure will be followed:

#### Before the Hearing

4. The intention is to 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.

5. 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.

6. The Investigating Officer will be informed of the proposed hearing and ask whether he/she intends to attend.

7. 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.

8. It will 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.

9. A meeting will be held between the Chair and the Advising Officer to consider whether there is sufficient information to hand for the hearing. They will decide whether any further steps are required to ensure that all the necessary information is available to the Committee.

10. The following information will be sent to members of the Committee, the member and the Investigating Officer beforehand:

- The Investigating Officer's report.
- The written response from the Member

- Any further written 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 a few days beforehand to confirm his/her attendance.

### **The Hearing**

12. 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. There will be three possible stages to a hearing :

#### **Stage 1 of the Hearing - Preliminary Procedural Issues.**

The Chair will welcome everyone and ensure that everybody present has been introduced. He/she will explain the practical arrangements for the day and will then explain the steps to be taken during the hearing itself.

There will be an opportunity first of all for the Committee to resolve any issues that have arisen regarding the way the hearing should be conducted, including :

- Whether public and press should be excluded from the hearing or parts of it.
- Any matters that have come to the Committee's attention after the agenda was prepared.
- Whether the hearing should proceed in the absence of any party.
- If the Member or the Investigating Officer is not present, or represented, at the hearing, the 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, hear and decide the matter in the party's absence. Alternatively it may 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

## **Stage 2 of the Hearing – Deciding whether the Member has breached the Code of Conduct**

**The Committee will have to decide on any disputed facts and whether what took place constituted a breach of the Code of Conduct by the Member.**

### **General Rules of Procedure**

- Members of the Committee can ask questions of anybody present, at any time.
- No cross-examination by the parties will be allowed, but questions can be directed through the Chair.
- The Committee will decide factual evidence on the balance of probabilities.
- If any new matter or evidence is raised that could have been raised during the 'pre-hearing' process, the assumption will be that it should not be allowed unless there is good reason to do so.

The procedure will be as follows:

- The Investigating Officer will be invited to present his/her report.
- He/she may call witnesses to give evidence, with the Committee's permission.
- The Committee may ask questions to the Investigating Officer and/or any witnesses.
- The Member may ask questions (through the chair) to the Investigating Officer and/or any witnesses.
  
- The Member will be invited to present his/her case
- He/she may call witnesses to give evidence, with the Committee's permission
- The Committee may ask questions to the Member and/or any witnesses.
- The Investigating Officer may ask questions (through the chair) to the Member and/or any witnesses.
- The Investigating Officer and the Member will be given an opportunity to sum up.
  
- The Committee will retire to consider its decision.
- If the Committee decides that the Member has breached the Code it will consider generally what kind of sanction would be appropriate in the circumstances.
- 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.
- Once the decision is reached and the meeting reconvened, the Chairman will announce the Committee's decision.

### **Stage 3 of the Hearing – Deciding what action should be taken.**

If the Committee decides that a member has breached the code:

- The Chair will give an indication of the kind of sanction the Committee is considering and will invite representations from the parties.
  - The Committee will retire to consider whether the member should be punished, and if so, what punishment should be imposed, and if there are any general recommendations 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.
13. A written decision will be provided in the form of a Decision Notice shortly after the hearing.
14. 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.