

# GWYNEDD 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, [the Local Government Investigations \(Functions of Monitoring Officers and Standards Committees\)\(Wales\) Regulations 2001](#) or any other statutory provisions 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 Ombudsman refers his report to the Monitoring Officer to present to the Committee.
3. There are two possible steps to the procedure of considering a complaint:

### THE FIRST STEP

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

4. Following receipt of the report by the Ombudsman or the Monitoring Officer (if he/she investigated the complaint) ("the Investigating Officer") :
  - The following will be contacted:
    - the person who is the subject of the complaint ("the Member")
    - the Ombudsman
    - the person who made the complaint ("the Complainant")

to confirm that we have received the Report, and to explain the procedure that will be followed (this will include an Information Leaflet outlining the steps and possible outcomes).

5. When the Monitoring Officer is notified that an investigation has been initiated into a complaint against one of the members of Gwynedd Council he will inform the Member of the authority's Indemnity Policy. The Member will be reminded of this if the investigation leads to a referral to the Standards Committee.

## The First Meeting of the Committee

68. The Committee must meet 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 (the Monitoring Officer may undertake this rôle or appoint an officer to do so on his/her behalf).
- Any criteria established to assist the Committee and to ensure consistency in decisions will be considered.
- If it is decided to give 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.
  - o Decide if it wishes to call any of the witnesses named in the Report to give evidence at the hearing
  - o Decide if it requires any additional information to assist it in the hearing
  - Decide on dates for
    - (1) a meeting to decide on an application for indemnity should the Member submit one
    - (2) a date for the hearing and 2 reserve hearing dates
  - o Decide if the hearing should be held virtually or in hybrid form

\*Committee members will be asked to consider in advance when they will be available so that dates can be agreed at the meeting itself. Officers will also look for possible dates and locations.

## THE SECOND STEP

### THE FULL HEARING

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

#### Corporate Steps

8. If the complaint is against a member of Gwynedd Council, the Monitoring Officer will contact the Council's Head of Democratic Services. to arrange and co-ordinate any necessary corporate actions as the process progresses. This will include issues such as preparing statements, responding to inquiries, informing members and officers and the necessary arrangements should the member be suspended. They will also agree on the contact arrangements with the Member and any support that is appropriate that can be provided by the authority.

9. If the complaint is against a member of a community/town council then the Monitoring Officer will contact the clerk of the relevant council to inform them and to explain the process

#### Before the Hearing

10. 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.

11. A **questionnaire** will be sent to the Member asking him/her to confirm in writing by means of a questionnaire 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.

12. The Investigating Officer will be informed of the proposed hearing and a questionnaire will be sent to confirm whether he/she :

- intends to attend.
- Intends to to call any witnesses
- believes that any part of the hearing/documentation should be confidential

13. The Member's responses will be sent to the Investigation Officer and the Investigating Officer's response to the Member and they will be asked to confirm within 7 days if they have any further observations or documents to submit

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14. 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.

15. The Chair and the Advising Officer will meet to consider whether there is sufficient information to hand for the hearing. They will decide on any further steps that are required to ensure that all the necessary information is available to the Committee, and/or any other questions regarding how the hearing should proceed. Such meetings can be held at any stage of the process, as required.

16. The report presented to the Committee will include the following:

1. The Advising Officer's cover report

2. The Standards Committee's Hearing Procedure

3. The Adjudication Panel for Wales Sanctions Guidelines

4. The Investigating Officer's Report

5. The Member's and the Investigating Officer's responses to the questionnaires

6. Any further observations or evidence that have been presented

7. Any further information or guidance that the Advisory Officer considers appropriate in the circumstances

A copy of the full Report will be sent to the Advising Officer, the Member and the Ombudsman

Only 1-3 will be made public before the hearing

17. The Member will be informed of the date that the papers will become public beforehand.

18. 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**

19. 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.**

20 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**

22 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.

### **23. 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.

### **24. 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.**

23. 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.

24. 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 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.

### **After the Hearing**

25. The Advising Officer will send an email to the member following the hearing confirming the following:

- The Committee's decision,
- That a formal, written Notice of Decision will be sent to him/her setting out in full the reasons for the decision.

- That the period for submitting an appeal to the Adjudication Panel for Wales will start from the date he/she receives the Notice of Decision,
- That any period of suspension will come into force the day after that period ends (if no appeal is lodged).

26. The Advising Officer will prepare a written Notice of Decision and send it to the Chairman to be agreed and signed. This will be the final form of the decision and will be included in the report published by the Committee at the conclusion of the process.

27. The Notice will be sent to the Member (the aim is for it be sent within 5 working days) in a manner whereby it the date on which the Notice was received can be confirmed.

28. The relevant Council departments will be informed of what is happening emphasising that any period of suspension will not be come into force immediately and is subject to the appeals process.

### **Appeal**

29. The Member may request permission to appeal against the Committee's decision by giving written notice within 21 days of receiving the formal written decision, to the President of the Adjudication Panel for Wales . The President of the Panel will decide if the Member should be allowed to appeal or not. If the appeal proceeds the Adjudication Panel may decide:

- Endorse the penalty imposed, or
- Refer the matter back to the Committee with a recommendation that a different penalty be imposed; or,
- Overturn the Committee's determination that the Member has breached the Code of Conduct

30. After the time for submitting an appeal has expired, or after receiving notification that any appeal process has come to an end, the Council's Democracy and Communications services will be informed. The necessary steps to enact any suspension will be taken and the Member, and any other person that needs to know will be informed

31. 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.

A summary of the procedure to be followed at the hearing is set out in the **Appendix**.



## Standards Committee Order of Hearing - Summary

### 1. Welcome by the Chair

### 2. Preliminary Issues

### 3. The Ombudsman's Report

- 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.

### 4. The Member's Case

- 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.

### 5. Decision

- The Committee will retire to consider whether the member has breached the code of conduct.
- 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.
- Once the decision is reached and the meeting reconvened, the Chairman will announce the Committee's decision.

### 6. 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
- Once a decision is made and the meeting reconvened the Chairman will announce the decision.