

PROCEDURE FOR STANDARDS COMMITTEE HEARINGS

1. Interpretation.

In this Procedure, the following words and phrases shall have the meanings assigned to them unless the context otherwise requires:

- 1.1 “Committee” means the Standards Committee or any Standards Sub-Committee to which it has delegated the conduct of the hearing;
- 1.2 “Democratic Services Officer” means the officer of the Council responsible for providing clerical and administrative support to the Committee, including the recording of decisions.
- 1.3 “Investigating Officer” means
 - (a) in the case of an investigation undertaken under Section 71(2) of the Local Government Act 2000, the Ombudsman or his Investigator who referred the report to the Council and includes his or her nominated representative.
 - (b) In the case of an investigation referred for local investigation under Section 70(4) of the Local Government Act 2000, means the Monitoring Officer, Deputy Monitoring Officer or other investigating officer, and his or her nominated representative.
- 1.4 “Legal Advisor” means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.
- 1.5 “Member” means the elected or co-opted member of the Council (or community council) who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member’s nominated representative.
- 1.6 “The Monitoring Officer” means the officer for the time being appointed by the Council under section 5 of the Local Government and Housing Act 1989 and shall include, where appropriate, the person appointed as Deputy Monitoring Officer.
- 1.7 “The Chairman” means the person presiding at the hearing;

2. Modification of Procedure.

The Chairman may agree to depart from or vary this Procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness and transparency.

3. Representation.

The Member may be represented or accompanied during the meeting by a solicitor, counsel or (with the permission of the Committee) another person. The costs of any such representation must be met by the Member, unless Standards Committee has expressly agreed to meet all or any part of that cost (and subject always to the financial cap on indemnities set by the Council, from time to time).

4. Legal advice

The Committee may take legal advice from its Legal Advisor 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 Member and the Investigating Officer if they are present.

5. Setting the Scene

5.1 At the start of the hearing, the Chairman shall introduce each of the members of the Committee, the Legal Adviser and the Democratic Services Officer and shall invite the Member (if present), the Investigating Officer (if present) and any other persons in attendance to introduce themselves.

5.2 After all the Committee and everyone involved have been formally introduced, the Chairman will explain the procedure which the Committee will follow in the conduct of the hearing. The Committee will conduct the proceedings as informally as possible but will ensure that the Member is given a fair hearing, according to the rules of natural justice. The hearings will not usually be recorded and a verbatim note of the proceedings will not be taken, unless there are exceptional circumstances and good reason to do so.

5.3 The hearing will be conducted in English unless the Member expresses a preference to have the hearing conducted in Welsh and the Committee agrees that it is reasonably practicable to do so. If a hearing is conducted in Welsh, an instantaneous translation service will be provided for the Committee and any other persons attending the hearing who request it.

5.4 The Member has the right to make representations to the Committee and to be represented by counsel, a solicitor or any other person. The Member will be entitled to give evidence, call witnesses, question any witnesses and address the Committee both on the evidence and generally on the subject matter of the hearing. The right to make representations will not extend to the person making the complaint, though this may be allowed by the Committee if it is considered that their attendance would assist the Committee with any matter relevant to the proper determination of the complaint.

5.5 The Committee may limit the number of witnesses called by the Member, where this is conducive to the efficient and judicial hearing of the case. The circumstances in which the Committee may impose such a limitation include, for example, where it appears to the Committee that such witnesses will not be presenting significant new evidence or facts, or where an excessive number of witnesses are being called by the Member to give character testimony.

5.6 Witnesses will not be allowed to sit in the public gallery prior to being called to give evidence before the Committee and, where the Committee meeting is held in private, they will be required to leave after giving their evidence. A designated waiting room will be available for witnesses until they are called.

5.7 Evidence before the Committee may be given orally or by written statement. At any stage during the proceedings the Committee can request the attendance of any person making a written statement or any other person they consider will be able to assist them, but the Committee has no power to require the attendance of any person. Members of the Committee can ask questions of anybody present, at any

time. No cross-examination of witnesses will be allowed by the parties, but questions can be directed through the chair.

- 5.8 The Committee can receive evidence of any fact that appears to it to be relevant even though such evidence would be inadmissible in proceedings before a court of law. The Committee shall not refuse to admit any relevant evidence
- 5.9 Any witnesses may be required to give evidence on oath or affirmation, where there are disputes of fact. The Member and the Investigating Officer shall be entitled to request that witnesses be required to give evidence on oath or affirmation, but the final decision shall rest with the Committee.
- 5.10 The Public Service Ombudsman for Wales (“the Ombudsman”) shall be entitled to attend before the Committee for the purposes of:
 - (a) presenting the Investigating Officer’s Report and/or explaining any matters in it; and
 - (b) otherwise playing such part or assisting the Committee as the Committee considers appropriate.
- 5.11 The Investigating Officer may attend on behalf of the Ombudsman, and the Ombudsman/Investigating Officer may be represented by Counsel or a solicitor.
- 5.12 The usual procedure to be followed is set out in the following paragraphs, but the Committee is free to depart from that procedure where it considers it appropriate to do so. The Committee will decide factual evidence on the balance of probabilities. There will be four possible stages to a hearing.

6. Stage 1 – Preliminary procedural issues

The following procedural matters shall be dealt with in the following order:-

6.1. Disclosure of interests.

The Chairman shall ask the members of the Committee to disclose the existence and nature of any personal and/or prejudicial interests that they may have in the matter and to withdraw from the consideration of the matter, if so required.

6.2 Quorum.

At least 3 members of the Committee must be present at all times during the hearing for the meeting to be quorate. The 3 members must include a majority of independent members. If the Committee is dealing with a complaint against a community councillor, then it must include at least one community councillor representative, but there is no requirement for him/her to actually attend the meeting for the hearing to be quorate. The Chairman shall confirm that the Committee is quorate before proceeding with the hearing;

6.3 Exclusion of Press and Public

The hearings should generally be conducted in public. The Committee should only exclude the press and public where “exempt information” within the meaning of Schedule 12A of the Local Government Act 1972 is likely to be disclosed during the

hearings and the public interest in maintaining confidentiality outweighs the public interest in disclosure. There is a presumption that the public interest is best served by holding hearings in public unless there are overriding and compelling reasons to the contrary. It is expected that a Standards Committee would normally hear evidence and submissions in relation to an alleged breach of the Code of Conduct in public. Among other things, this recognises a member's right under Article 6 of the European Convention on Human Rights to a fair and public hearing. However, the legislative framework recognises there may be circumstances in which it is appropriate for the Standards Committee to consider matters in private, including when deliberating the evidence and submissions it has received prior to making a determination.

The Chairman shall, in turn, ask the Member, the Investigating Officer and the Legal Adviser whether they wish to ask the Committee to exclude the press and public from all or part of the hearing. If any of them so request, they should be invited to put forward their reasons for so doing and the Chairman shall ask for responses from the others. The Committee shall then resolve, by majority vote, whether to exclude the press and public from all or any part of the hearing.

Where the agenda papers or any reports have been classified as confidential Part 2 items and withheld in advance of the meeting, and the Committee does not resolve to exclude the press and public, the papers should now be provided to the press and public.

The Standards Committees (Wales) Regulations (as amended) expressly provide that Standards Committee may exempt from publication agendas, records or information connected to the consideration of a misconduct report, until such time as the misconduct proceedings are concluded, that is when any time limit for appealing to the Adjudication Panel has expired or any such adjudication has been completed. This recognises there may be circumstances in which it is appropriate for Standards Committee to consider matters in private, including when deliberating the evidence and submissions it has received prior to making a determination

6.4 Hearing procedure

The Chairman shall confirm that all present know and understand the procedure which the Committee will follow in determining the matter.

6.5 Proceeding in the absence of any Member.

If the Member fails to attend or is not represented at the hearing, the Committee may:

- (a) hear and decide the matter in the absence of the Member, if it is satisfied that the Member was duly notified of the hearing and that there is no good reason for such absence or
- (b) adjourn the hearing.

Before deciding to hear and determine any matter in the absence of the Member, the Committee shall consider any written representations submitted by the Member and whether the Member had indicated that he/she did not intend to attend the hearing.

Where the Member has failed to attend, without good reason and the Committee has decided the matter in his/her absence, there is no further right of appeal or re-hearing of the matter.

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.

7. Stage 2 – Findings of Fact

- 7.1 After dealing with any preliminary issues, the Committee will next seek to resolve any remaining disputes of fact that have been identified in the Investigating Officer's Report.
- 7.2 If there is no disagreement about the facts, the Committee can move on to the next **Stage 3** of the hearing.
- 7.3 If there is disagreement, the Ombudsman/Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the Investigation Report. With the Committee's permission, the Ombudsman / Investigator may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witnesses called by the Ombudsman / Investigating Officer.
- 7.4 The Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any witnesses to give evidence.
- 7.5 At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Ombudsman/Investigating Officer to challenge any evidence put forward by witnesses called by the Member.
- 7.6 If the Member disagrees with any relevant fact in the Ombudsman/Investigator's 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 Ombudsman/ Investigating Officer is not present, the 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 Ombudsman/Investigating Officer's Report;
 - (b) Allow the Member to make representations about the issue, and invite the Ombudsman/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 Ombudsman/Investigating Officer to be present if he or she is not already.
- 7.7 At the conclusion of the representations as to matters of fact, the Chairman shall ensure that each member of the Committee is satisfied that he/she has sufficient factual information to enable him/her to determine whether there has been a failure to comply with the Code of Conduct, as set out in the Investigating Officer's Report.

- 7.8 The Committee will then adjourn the meeting and retire in private to consider its decision. The Committee shall reach its decision on the balance of probability based on the evidence which it has received at the hearing.
- 7.9 The Committee may, at any time, reconvene the meeting in order to seek additional evidence from the Investigating Officer, the Member or any of the witnesses, or to seek advice from the Monitoring Officer or Legal Advisor. If the Committee requires any further information, it may adjourn the proceedings pending the production of further evidence.
- 7.10 Once the decision has been reached, the meeting shall be reconvened and the Chairman will announce the Committee's findings of facts.

8. Stage 3 – Did the Member fail to follow the Code?

- 8.1 The Committee will then need to consider whether or not, based on its findings of fact and/or the facts that have been agreed by the parties, the Member has failed to comply with the Code of Conduct, on the basis set out in the Investigating Officers' Report. The function of the Committee is to make a determination based on the failures to comply with the Code of Conduct set out in the Investigation Report and any additional or alternative breaches of the Code that may come to light during the hearing shall not be taken into account in reaching a decision.
- 8.2 The Committee shall invite the Investigating Officer to make representations regarding the alleged breaches of the Code of Conduct by the Member, as set out in the Investigation Report, having regard to the findings of fact or agreed facts.
- 8.3 The Member should then be invited to respond to the representations from the Investigating Officer and give reasons why he or she has not failed to follow the Code of Conduct.
- 8.4 The Committee may, at any time, question anyone involved on any point they raise in their representations.
- 8.5 The Member should be invited to make any final relevant points.
- 8.6 The Committee will then ask all those present to leave the room and will retire in private to consider its decision. The Democratic Services Officer and Legal Adviser will remain to take notes and give legal advice respectively.
- 8.7 Once a decision has been reached and the meeting reconvened, the Chairman will announce the Committee's decision as to whether or not the Member has breached the Code of Conduct
- 8.8 If the Committee decides that there is no evidence of any failure to comply with the Code of Conduct and no further action needs to be taken, the Member will be informed at this point. In this case, the Committee may also consider whether it should make any general recommendations to the Council (or community council, as the case may be).

9. Stage 4 – If the Member has failed to comply with the Code

- 9.1 If the Committee finds that a failure to comply with the Code of Conduct has occurred, the Committee will invite the Ombudsman/Investigating Officer whether in his/her

opinion the breach of the Code is such that the Committee should impose any sanction and, if so, what the appropriate sanction should be.

- 9.2 The Committee will then invite the Member to respond and to make representations as to what action the Committee should take, including any mitigating factors.
- 9.3 The Committee may question the Ombudsman/Investigating Officer and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 9.4 The Committee will then adjourn to and retire in private to consider whether the failure to comply with the Code of Conduct warrants no action, a censure, or a suspension of the Member, before announcing its decision.
- 9.5 In coming to its decision, the Committee must determine one of the following:-
 - (a) That the Member has failed to comply with the Code of Conduct but that no action needs to be taken; or
 - (b) That the Member has failed to comply with the Code of Conduct and should be censured; or
 - (c) That the Member has failed to comply with the Code of Conduct and should be suspended or partially suspended for a period not exceeding 6 months or, if shorter, for the remainder of that person's term of office .

10. Decision of the Committee.

- 10.1 The decision of the Committee may be taken by a simple majority of votes cast, with the Chairman having a second and casting vote, in the case of equality of voting. The decision will record whether it was unanimous or taken by a majority.
- 10.2 Once the Committee has reached a decision, the meeting shall be reconvened and the Chairman will announce the Committee's decision. The decision will be recorded in the Minutes of the meeting by the Democratic Services Officer and the Legal Adviser/Monitoring Officer will, in consultation with the Chairman, prepare a written record of the Committee's decision, setting out the relevant findings of fact and the reasons for the decision.
- 10.3 The Committee may also consider whether or not it should make any recommendations to the Council (or community council, as the case may be) with a view to promoting high standards of conduct among Members.
- 10.4 Where a document refers to evidence that has been heard in private, only a summary of the document will be entered in the Minutes, with such material omitted as the Committee may direct.

11. Procedure after the Committee determination.

- 11.1 As soon as possible after the hearing, the written decision of the Committee will be sent to the Member, the person who made any allegation which gave rise to the investigation (if known) and the Ombudsman. Where the Standards Committee has made its determination pursuant to arrangements with the monitoring officer or

Standards Committee of another relevant authority, notice of the decision must also be sent to the Standards Committee of that authority

- 11.2 If the Committee impose a period of suspension or partial suspension, then that period of suspension or partial suspension will commence on the day after the expiry of 21 days from receiving the written notification of the Committee's determination (in order to allow for any appeal to the Adjudication Panel for Wales, as set out below). If an appeal is lodged, then any such sanction, if upheld, will not commence until the day after the final determination of the appeal process.
- 11.3 Within 14 days after the expiry of the time allowed to lodge a notice of appeal (i.e. 14 days after the 21 day appeal period), or upon receipt of notification of the conclusion of an appeal process, the Committee must cause to be produced a Report on the outcome of the investigation and send a copy to the Ombudsman, the Monitoring Officer, the Member and take reasonable steps to send a copy to any person who made any allegation which gave rise to the investigation.
- 11.4 Upon receipt of the Report of the Committee, the Monitoring Officer must, for a period of 21 days, publish the Report on the Council web site, make copies available for public inspection and not later than 7 days after the Report is received from the Committee give public notice, by advertisement, that copies of the Report are available and specify the date (being a date not more than 7 days after public notice is first given) from which the period of 21 days will begin. If the matter involves a Community Councillor, a copy of the Report will be sent to the Clerk of that Community Council.

12. Orders for Costs and Expenses

- 12.1 The Committee has no power to make an award of any costs or expenses arising from any of its proceedings.

13. Appeals

- 13.1 Where the Committee decides that a Member has failed to comply with the Code of Conduct, the Member may seek permission to appeal against the determination to an Appeals Tribunal drawn from the Adjudication Panel for Wales. The appeal process is in accordance with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 as amended.
- 13.2 A Member wishing to appeal against the determination of a Standards Committee will first need to obtain the permission of the President (or another nominated member) of the Adjudication Panel for Wales. The requirement to obtain permission to appeal is intended to ensure that only appeals that have a reasonable prospect of success (in whole or in part) will proceed. A member will have no right to challenge, or indeed seek to delay implementation of, a sanction imposed by the Standards Committee on entirely frivolous or spurious grounds
- 13.2 The application for permission to appeal must be instigated by giving notice in writing within 21 days of receiving notification of the Committee's determination to the President of the Adjudication Panel for Wales,
- 13.3 The application for permission to appeal must specify:
 - (a) The grounds for appeal; and

- (b) Whether or not the person giving notice of appeal consents to the appeal being conducted by way of written representations.

- 13.4 The application for permission to appeal will be decided by the President of the Adjudication Panel for Wales or a member of the panel nominated by the president of the Adjudication Panel to exercise this function. Unless the president or the person nominated considers that special circumstances render a hearing desirable, the decision on whether to grant permission to appeal is to be made in the absence of the parties. In reaching a decision on whether to grant permission to appeal, the president of the Adjudication Panel for Wales or the nominated panel member must have regard to whether the appeal or part of it has a reasonable prospect of success.
- 13.5 The President of the Adjudication Panel for Wales or the nominated panel member must decide whether to grant permission to appeal and give notice of the decision no more than 21 days after receipt of the application for permission to appeal, or where further information has been requested, no more than 14 days after the end of the period specified for providing that information.
- 13.6 The President of the Adjudication Panel for Wales or the nominated panel member must notify the decision to:
 - (a) the person seeking permission to appeal;
 - (b) the Ombudsman; and
 - (c) the Standards Committee which made the determination that is the subject of the application for permission to appeal.
- 13.7 If permission to appeal is refused the notice must also include the reasons for that decision.
- 13.8 If permission to appeal is granted, the President of the Adjudication Panel for Wales or the nominated panel member must refer the matter to an Appeals Tribunal

14. Referral Back from the Adjudication Panel

- 13.1 In circumstances where there is a referral back to Standards Committee from the Adjudication Panel for Wales with a recommendation that a different sanction should be imposed, the Committee shall meet as soon as reasonably practicable to consider the recommendations of the Appeals Tribunal and shall determine whether to uphold its original determination or accept the recommendation.
- 13.2 As soon as possible after meeting to reconsider its determination, the written decision of the Committee will be sent to the Member, the person who made any allegation which gave rise to the investigation (if known), the Ombudsman and the President of the Adjudication Panel for Wales.

FLOW-CHART FOR FULL HEARINGS

