

TELFORD & WREKIN COUNCIL

LOCAL STANDARDS HEARINGS PROCEDURE

1. Introduction

This procedure applies to hearings of an alleged breach

- of the Code of Conduct where the investigation has been completed by an Ethical Standards Officer
- of the Code of Conduct where a local investigation has been carried out by or on behalf of the Monitoring Officer
- of a protocol adopted by the Council.

The Monitoring Officer has delegated authority to amend this procedure if required.

2. Interpretation

- 2.1 'Code of Conduct' means the relevant Code of Conduct for Members of the Council and any Parish Council within the Council's administrative area including co-opted members with voting rights
- 2.2 'Complainant' means the person who submitted the complaint of an alleged breach of the Code of Conduct or Protocol
- 2.3 'the Council' means Telford & Wrekin Council
- 2.4 'Democratic Services Manager' means the Council officer appointed to this post or his/her representative
- 2.5 'ESO' means the Ethical Standards Officer employed by ~~the Standards Board~~ for England or person taking conduct of the matter on his/her behalf
- 2.6 'Investigating Officer' means the Monitoring Officer or his/her deputy or other person instructed by the Monitoring Officer to conduct a local investigation including an independent external investigator
- 2.7 'Legal Adviser' means the person responsible for providing legal advice to the Standards Committee. This will normally be the Monitoring Officer, but may be another officer of the authority who is legally qualified, or someone appointed for the purpose from outside the authority
- 2.8 'Member' means a member of any of the above authorities who is the subject of a report into an allegation being considered by the Standards Committee. It also includes the Member's nominated representative
- 2.9 'Monitoring Officer' means the Monitoring Officer for the Council and includes a Deputy Monitoring Officer acting in the absence of or on behalf of the Monitoring Officer
- 2.10 'Panel' means the panel of Members from the Standards Committee appointed in accordance with this Procedure

2.11 'Protocol' means the following Protocol, Code and Policy adopted by the Council

- Member/Officer Relations Protocol
- the Members' Planning Code of Good Practice
- the use of Council Resources by Councillors Acceptable Use Policy

2.12 'Report' means the report of the ESO or the report of the Investigating Officer

2.13 'Reporting Officer' means the person appointed under paragraph 3.5 below

~~2.14 'Standards Board' means Standards for England~~

2.1~~4~~⁵ 'Standards Committee' means the Council's Standards Committee or the Committee exercising the functions of a standards committee. It can also refer to a Sub-committee set-up by the Standards Committee.

3 Consideration of the Final Report

3.1 After the investigator has provided the final copy of their report (as referred to in the local investigation procedure) the Democratic Services Manager will arrange a meeting of the Standards Committee to consider the final report.

3.2 The consideration hearing can be by way of a sub-committee meeting and does not have to be the same sub-committee that may subsequently conduct a hearing of the matter for consideration. The sub-committee may be made up of members of the sub-committee that initially assessed the complaint.

3.3 The consideration hearing may take place in public session but this will be a decision for the Standards Committee to make at the meeting before the report is considered. Prior to the meeting the report will not be made public. Regulation 8(6) of the Standards Committee (England) Regulations 2008 allows the consideration of any information presented at the meeting as exempt information considered in private session.

3.4 If the final report found no breach of the code of conduct then the Standards Committee will decide whether or not to accept the finding in the report. The investigator does not need to attend this meeting. If the Standards Committee decides not to accept the finding consideration will be made as to how to proceed in accordance with paragraphs 3.6 and 3.7 of this procedure.

3.5 If a finding of acceptance is made the Standards Committee will confirm that finding to the complainant, the member(s) concerned and the Parish/Town clerk (if applicable). A notice of the decision will be drafted and sent to the member in order to obtain permission for the notice to be published (in accordance with Regulation 17 of the Standards Committee (England) Regulations 2008). If the notice is to be published this will be done by way of publishing in at least one newspaper circulating in the area and by placing it on the Council's website.

3.6 If the Standards Committee consider the investigation report and decide that the matter should be heard by the Standards Committee the procedure as set out below from paragraph 4 will be followed

3.7 If the Standards Committee consider the investigation report and decide to refer the matter to the First Tier Tribunal for determination the Monitoring Officer will proceed to refer the matter accordingly.

43. Pre-hearing process

43.1 Following a referral for local hearing from the Standards Committee as set out at section 3 of this procedure ~~Within five working days of the final report being sent out (as set out in the local investigations procedure—section 9.3)~~ the Democratic Services Manager shall inform the member of the decision in writing and will ask for a written response from the Member, within fifteen working days, stating whether or not he/she:

- disagrees with any of the findings of fact in the Report, including the reasons for any disagreements
- wants to be represented, at their own expense, at the hearing by a solicitor, barrister or, with the permission of the Panel, any other person
- wants to give evidence to the Panel, either verbally or in writing
- wants to call relevant witnesses to give evidence to the Panel
- wants any part of the hearing to be held in private having regard to all guidance issued
- wants any part of the Report or other relevant documents to be withheld from the public
- can attend the hearing.

3.2 The Democratic Services Manager will also inform the Member that if, at the meeting of the Panel, he/she seeks to dispute any matter contained in the Report, without having previously notified the Democratic Services Manager of their intention to do so, the Panel may either:

- refuse to allow the disputed matter to be considered
- allow the disputed matter to be considered but to invite the Investigating Officer or the ESO to respond and/or call witnesses
- to adjourn the hearing to enable the Investigating Officer or ESO to respond

3.3 Upon receipt, the Member's response shall be forwarded to the Investigating Officer or ESO to comment, within fifteen working days, on the Member's response, to say whether or not he/she:

- wants to be represented at the hearing
 - wants to call relevant witnesses to give evidence to the Panel
 - wants any part of the hearing to be held in private, having regard to all guidance issued
 - wants any part of the Report or other relevant documents to be withheld from the public
- 3.4 If the ESO is not attending the hearing or being represented, the Monitoring Officer will appoint a Reporting Officer to take conduct of the matter. In that event references to the ESO in these procedures shall also mean the Reporting Officer.
- 3.5 Upon receipt of the Investigating Officer/ESO's response, the Democratic Services Manager will forward the responses of the Member and the Investigating Officer/ESO to the Chairman elect of the Panel.
- 3.6 The Member and the Investigating Officer/ESO are entitled to request that any witnesses they want should be called. However, the Democratic Services Manager in consultation with the Chairman elect of the Panel may limit the number of witnesses, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Panel to reach its decision.
- 3.7 Nothing in this procedure shall limit the Democratic Services Manager in consultation with the Chairman elect of the Panel from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Panel to reach it decision.
- 3.8 At least two weeks before the date of the hearing the Democratic Services Manager, in consultation with the Legal Adviser will send to the Member, the Panel, the Investigating Officer/ESO, the Reporting Officer and the Legal Adviser the Pre-Hearing Process Summary (Appendix 1 Form F of the Standard for England Board's Guidance) which will include the following information:
- Confirmation of the date, time and place for the hearing, which must be within three months from the date that the Report was received.
 - A summary of the allegations.
 - The main facts of the case that are agreed
 - The main facts that are not agreed
 - Which witnesses will give evidence

- Whether the member concerned or the Investigating Officer/ESO will attend or be represented at the hearing
- Outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private

4. Selection of the Hearing Panel

- 4.1 The Democratic Services Manager, in consultation with Legal Adviser, shall appoint a sub-committee of five members of the Council's Standards Committee ("the Panel") to consider the Report.
- 4.2 The Panel shall be chaired by an independent member and shall include a parish council representative where the allegation relates to a parish councillor. If the panel contains more than one independent member the Democratic Services Manager will consult one of those members as Chairman elect for the purpose of undertaking the procedures set out in 3.5, 3.6 and 3.7 above.
- 4.3 Where a member of the Panel is unable to attend a meeting of the Panel, the Democratic Services Manager, in consultation with the Legal Adviser, shall appoint another member of the Standards Committee to attend the hearing. Another member of the Standards Committee does not need to be added to the Panel if there is a conflict of interest or availability problems that may prevent them from taking part (provided the quorum of three is still maintained).

5. Confidentiality and disclosure of information

Where the Legal Adviser considers that the Report and/or any of the written statements in response is likely to disclose "exempt information" (as defined in Schedule 12A to the LGA 1972 and regulations), and in consequence that it is likely that the Panel will, during consideration of these papers, not be open to the public, he/she shall instruct the Democratic Services Manager not to provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.

6. General Procedure at the Hearing

- 6.1 The Chairman may agree to vary the procedure at the hearing where in consultation with the Legal Adviser he/she is of the opinion that such a variation is necessary in the interest of fairness.
- 6.2 The purpose of the hearing is to decide on the balance of probability whether the Member has breached the Code/Protocol. In doing so the Panel will consider the Report and any written or oral representations made by the ESO, the Investigating Officer or the Member.
- 6.3 The Member may be represented or accompanied by a solicitor, counsel or, with the permission of the Panel, another person. The Panel may refuse permission for representation by another person if for example they consider that that person is directly involved in the matter being determined.

- 6.4 The hearing will be open to the public and press unless confidential information provided by a Government Department will be revealed or unless the Panel decide that the hearing or part of it should be held in private having considered the representations of the parties and the guidance issue by ~~the~~ Standards for England Board.
- 6.5 The Panel may take legal advice from the Legal Adviser at any time during the hearing. Any legal advice will be given in the presence of all parties
- 6.6 The Panel may ask the Member, the ESO, the Investigating Officer or any witness a question at any time during the hearing. It can also allow witnesses to be questioned by the Member, ESO or Investigating Officer or the Legal Advisor. All such questions must be directed through the Chairman.
- 6.7 All matters/issues shall be decided in accordance with the ordinary decision making procedure with each member having one vote and, in the case of equality of votes, the Chairman having the casting vote.
- 6.8 The Panel can adjourn the hearing at any time.

7. Preliminary Procedural Issues

- 7.1 The Chairman will introduce all the parties and will explain how the hearing will be conducted.
- 7.2 The initial order of business shall be as follows:
- For any member of the Panel to state whether he/she has an interest in the matter which should be declared.
 - To confirm that the Panel is quorate. A quorum is 3 members including an independent member (and a parish council representative if the matter relates to a member of a parish council).
 - To consider any representations from the ESO, Investigating Officer and/or the Member as to whether the Panel should exclude the press and public from the hearing or parts of it. Where the Panel decide not to exclude the press and public, the Democratic Services Manager shall at this point provide copies of the papers to any members of the press and public who are present.
- 7.3 If the Member has indicated that he/wishes to attend the hearing but is not present on the hearing date, the Panel will consider reasons which have been given for his/her absence. If the Panel are satisfied with those reasons, it will arrange for the hearing to be held on another date. If no reasons are given, or the Panel is not satisfied with those given, it may proceed in the Member's absence.

8. Making findings of fact

- 8.1 After dealing with any preliminary issues, the Panel will consider whether or not there are any significant disagreements about the facts contained in the Report.
- 8.2 If there is no disagreement, the Panel will confirm their findings of fact.
- 8.3 If there is a disagreement, the ESO or Investigating Officer will be invited to make representations to support the relevant findings of fact in the Report. With the Panel's permission, the ESO or Investigating Officer may call any necessary supporting witnesses to give evidence. The Panel may give the Member an opportunity to challenge any evidence put forward by any witness called by the ESO or Investigating Officer.
- 8.4 The Member will then have the opportunity to make representations to support his or her version of the facts and, with the Panel's permission may call any necessary witnesses to give evidence. The Panel may give the ESO or Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member.
- 8.5 At the conclusion of various representations the Chair~~man~~ will check with the Panel whether they are satisfied that they have sufficient evidence to come to a conclusion on the matter.
- 8.6 If the Panel consider that they require additional evidence they may at their discretion adjourn and make a request for this. They can only adjourn on one occasion for this purpose.
- 8.7 Where the Member seeks to dispute any matter in the Report which he/she had not given notice of intention to dispute in his/her written statement in response, he/she must give good reasons for not mentioning it before the hearing. After considering the Member's explanation for not raising the issue at an earlier stage, the Panel may then:
- continue with the hearing, relying on the information in the Report; or
 - allow the Member to make representations about the issue, and invite the ESO or Investigating Officer to respond and call any witnesses as necessary; or
 - postpone the hearing to arrange for the appropriate witnesses to be present, or for the ESO or Investigating Officer to be present.
- 8.8 The Panel will withdraw with the Legal Adviser to consider the representations and evidence. On their return, the Chair~~man~~ will announce the Panel's findings of fact.

9. Did the Member fail to follow the Code?

- 9.1 The Panel will then consider whether or not, based on the findings of fact, the Member has failed to follow the Code of Conduct/Protocol.
- 9.2 The Member should be invited to give relevant reasons why the Panel should not decide that he or she has failed to follow the Code of Conduct/Protocol.

- 9.3 The Panel should then consider any representations from the ESO or Investigating Officer.
- 9.4 The Member should be invited to make any final relevant points.
- 9.5 The Panel will withdraw with the Legal Adviser to consider the various representations. On their return the Chair~~man~~ will announce their decision.

10. If the Member has not failed to follow the Code

- 10.1 If the Panel decides that the Member has not failed to follow the Code, it will announce the decision.
- 10.2 The Panel will ask the Member whether in the light of a finding of no breach of the Code, he/she wishes a summary of the decision to be published.

11. If the Member has failed to follow the Code

- 11.1 If the Panel decides that the Member has failed to follow the Code, it will consider any verbal or written representations from the ESO or the Investigating Officer and the Member as to:
- whether or not the Panel should set a penalty.
 - what form the penalty should take.
- 11.2 Having heard any representations, the Panel will then consider in private session accompanied by the Legal Adviser whether or not to impose a penalty and if so what the penalty should be.
- 11.3 In deciding what penalty to set, the Panel will consider all relevant circumstances including those covered in the Guidance produced by ~~the~~ Standards ~~for England~~Board. Penalties may start immediately or up to six months after the hearing, if the Panel wishes.

12. Penalties which may be imposed

- 12.1 The Member may be
- censured (This is the only form of penalty available when dealing with a person who is no longer a member of the council concerned); or
 - restricted access to the premises and/or resources of authority for a maximum period of six months; or
 - suspended or partially suspended for a maximum period of six months; or
 - required to submit a written apology in a form specified by the Panel; or
 - required to undertake training as specified by the Panel; or

- required to undertake conciliation as specified by the Panel; or
- suspended or partially suspended for a maximum period of six months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Panel

12.2 Where access to resources or premises is restricted, the Panel will ensure that the restrictions are proportionate to the nature of the breach and do not unduly restrict the Member's ability to perform his or her duties as a member.

13. Reference back to the ESO

At any time prior to the conclusion of the hearing the Panel may adjourn and make a written request to the ESO to take the matter back to undertake an investigation, and if it does so it must set out its reasons for making the request.

14. Notice of Decision

14.1 At the conclusion of the hearing the Chairman will announce the decision and the reasons for it.

14.2 The Democratic Services Manager will make a short written decision available on the day of the hearing.

14.3 Within two weeks of the conclusion of the hearing the Democratic Services Manager will circulate the full written decision, in the format recommended by ~~the~~ Standards for England Board, to

- the Member,
- the Complainant,
- the Standards for England Board,
- the Standards Committee of any other local authority (other than a parish council) of which the Member is also a member, and
- the Clerk to any Parish Council concerned.

15. Publication of Summary of Decision

15.1 Within two weeks of the hearing, the Democratic Services Manager shall arrange for a summary of the decision to be published in one newspaper circulating in the area of the Member's authority and on the Council's web site.

15.2 Where the Panel determines that there has not been a breach of the Code of Conduct, the Notice shall

- (i) state that the Panel found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
- (ii) not be published in a local newspaper or on the Council's website if the Member so requests.

- 15.3 Where the Panel determines that there has been a failure to comply with the Code of Conduct but no action is required, the Notice shall
- (i) state that the Panel found that the Member had failed to comply with Code of Conduct but that no action needs to be taken in respect of that failure;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached; and
 - (iv) state that Member concerned may apply for permission to appeal against the determination.
- 15.4 Where the Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall
- (i) state that the Panel found that the Member had failed to comply with the Code of Conduct;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached;
 - (iv) specify the sanction imposed, and
 - (v) state that the Member concerned may apply for permission to appeal against the determination.

16. Availability of Agenda, Reports etc.

- 16.1 Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for six years after the hearing.

17. Appeal

- 17.1 Where the Panel determines that the Member has failed to comply with the Code of Conduct, the Democratic Services Manager shall inform the Member of his or her right to seek permission to appeal against the determination, to an appeal tribunal drawn from the Adjudication Panel within 21 days of the Member receiving Notice of the Panel's decision. Any party to an appeal will bear their own costs in relation to that appeal.