

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

18 MAY 2009

COMPLAINT DETERMINATION PROCEDURE

1.0 INTRODUCTION

- 0.1 North Yorkshire County Council (“the Authority”) has adopted a Code of Conduct for Members (attached at Appendix 1), based on the statutory national model. The Code applies to the Members of the Authority and voting co-opted Members on Authority Committees, eg the independent Members on the Authority’s Standards Committee, and the phrase “Member” within this procedure refers to all such Members.
- 0.2 The Standards Committee (England) Regulations 2008 provide for the local receipt, assessment, investigation and determination of complaints that Members may have breached the Code of Conduct, by local standards committees.
- 0.3 Consequently, if someone (“the complainant”) wishes to complain about the conduct of a Member of North Yorkshire County Council (“the subject Member”), s/he must submit their complaint, in writing, to:

The Standards Committee
c/o The Monitoring Officer
North Yorkshire County Council
County Hall
Racecourse Lane
NORTHALLERTON
North Yorkshire
DL7 8AD

- 0.4 The Standards Committee can only deal with complaints about the behaviour of a Member and cannot deal with complaints about things that are not covered by the Members’ Code of Conduct. A complaint to the Committee must be about why the complainant thinks a Member has *not followed the Code*.
- 0.5 The Standards Committees will not look at complaints that are about:
- people employed by the Authority;
 - incidents that happened before a Member was elected/co-opted/appointed or after they have resigned or otherwise cease to be a Member;
 - incidents that happened before the Authority adopted the Code of Conduct;
 - the way the Authority conducts or records its meetings;
 - the way the Authority has or has not done something;
 - decisions of the Authority or one of the services it provides. In this case, the complainant should ask how to complain using the Authority’s own complaints system.

0.6 When submitting a complaint that a Member has breached the Code of Conduct, complainants should provide the following written details:

- the complainant's name, address and other contact details;
- the complainant's status, eg member of the public, fellow Member or Officer;
- who the complaint is about and the authority or authorities that the Member belongs to;
- details of the alleged misconduct including, where possible, dates, witness details and other supporting information;
- where possible, the parts of the Code which have been breached.

0.7 The complainant should set out the complaint clearly and provide at the outset all supporting information s/he wishes to be considered.

0.8 The Standards Committee has established various Sub-Committees, each chaired by an independent Member, to deal with the different stages in the complaints process:

- i. a Complaint Assessment Sub-Committee ("Assessment Sub-Committee"), to receive and assess complaints that Members may have breached the Code;
- ii. a Complaint Review Sub-Committee ("Review Sub-Committee"), to review Assessment Sub-Committee decisions to take no further action on complaints, where requested to do so by complainants; and
- iii. a Complaint Determination Sub-Committee ("Determination Sub-Committee"), to consider investigation reports and conduct hearings determining complaints, following investigation;

with fixed membership and substitute lists.

0.9 Complaints will be assessed and reviewed in accordance with the Standards Committee's local Assessment Criteria which have been agreed by the Standards Committee and which will be periodically reviewed by the Committee.

0.10 The Standards Board for England ("SBE"), an independent, national body, is a key part of the ethical framework, providing advice and guidance to authorities on the framework and acting as a 'light touch' regulator. The Board may still investigate certain, more serious, complaints in particular, limited circumstances. The Standards Board's website (www.standardsboard.gov.uk) contains further information about the ethical framework.

2.0 SCOPE OF PROCEDURE

1.1 This procedure shall be followed by the Standards Committee and/or all relevant Sub-Committees when dealing with the determination of complaints.

1.2 The procedures for the assessment and investigation of complaints are set out in separate protocols.

3.0 PURPOSE OF DETERMINATION HEARING

- 3.1 The main purpose of the standards committee's determination hearing is to decide whether a member has breached the Code of Conduct and, if so, to decide if a sanction should be applied and what form the sanction should take. All complaints that a member may have breached the Code are assessed by the relevant authority's standards committee.

The standards committee has appointed a complaint determination sub-committee to consider a monitoring officer's investigation report and to hold determination hearings. This sub-committee must be chaired by an independent member of the standards committee.

- 2.2 On completion of an investigation the monitoring officer must make one of the following findings:-

- There has been a failure to comply with the Code.
- There has not been a failure to comply with the Code.

They must write an investigation report and send a copy of it to the subject member. Alternatively, where a Standards Board ethical standards officer has completed an investigation and decided that a complaint should be determined by the standards committee, they will refer their report to the monitoring officer.

The monitoring officer must refer the report to the standards committee. A sub-committee should be appointed to receive and consider such reports.

- 3.3 If the investigator, in their report, finds no failure to comply with the Code of Conduct, the complaint determination sub-committee must decide whether to accept that recommendation. The complaint determination sub-committee must also decide whether it or the Adjudication Panel for England should hear the case. This preliminary decision must be formally made and recorded.

4.0 CONSIDERATION MEETINGS

- 4.1 A meeting of the complaint determination sub-committee to consider the monitoring officer's investigation report must be convened under Regulation 17 of the regulations. Regulation 8(6) allows the consideration of any information presented for that purpose to be considered as exempt information. As with all exempt information decisions, the complaint determination sub-committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. When advising on this matter the monitoring officer should consider the effect of Regulation 17(4). This regulation allows the subject member to prohibit the publication of a notice, stating that the complaint determination sub-committee has found that there has been no failure to comply with the Code. Despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a meeting. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the meeting. In most cases, the public interest in transparent decision-making by the complaint determination sub-committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has not yet been determined.
- 4.2 A member of the complaint determination sub-committee who considers and overturns a monitoring officer's finding that there has been no failure to comply with the Code may participate in a subsequent hearing.
- 4.3 This meeting to consider the monitoring officer's investigation report provides a useful opportunity for the complaint determination sub-committee to consider the potential issues which might arise during the pre-hearing process. This

consideration meeting is separate to the meeting at which the hearing is conducted.

- 4.4 If the investigation report finds that there has been a failure to comply with the Code a hearing must take place – unless the complaint determination sub-committee decides that the matter should be referred to the Adjudication Panel for England for determination.

5.0 ARRANGING A HEARING

- 5.1 Under Regulation 18 of the regulations, a complaint determination sub-committee must hear a complaint within three months of the date on which the monitoring officer's report was completed. (If the investigation was carried out by an ethical standards officer, the complaint determination sub-committee must hear the complaint within three months of the date that the monitoring officer received the ethical standards officer's report.)
- 5.2 As with a meeting to consider a monitoring officer or ethical standards officer's report, when the complaint determination sub-committee is convened for a hearing under Regulation 18 it is also subject to Regulation 8(6). When assessing whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information, monitoring officers similarly need to consider the effect of Regulation 20(2). This allows the subject member to prohibit normal publication of the committee's notice of the finding of no failure to comply with the Code of Conduct. Despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a hearing. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the hearing. In most cases, the public interest in transparent decision making by the complaint determination sub-committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has not yet been determined.
- 5.3 In most cases all parties will agree that the hearing should take place in public. It is sensible to seek the views of the relevant parties as early as possible to allow for legal advice to be sought if required.
- 5.4 If the complaint determination sub-committee decides that a hearing is appropriate they should give a copy of the report to:-
- the subject member
 - the clerk of any relevant town or parish council
 - the complaint determination sub-committees of any other authorities concerned
- 5.5 The hearing must take place at least 14 days after the subject member receives a copy of the report from the monitoring officer. However, the hearing can be held sooner than 14 days after the member receives a copy of the report if the subject member agrees.
- 5.6 The complaint determination sub-committee may consider the report in the subject member's absence if the subject member does not go to the hearing. If the complaint determination sub-committee is satisfied with the subject member's reasons for not being able to come to the hearing, it should arrange for the hearing to be held on another date.
- 5.7 If the complaint determination sub-committee does not hear the matter within three months of receiving the completed report, it must ensure that the matter is heard as soon as possible after that.

- 5.8 Except in the most complicated cases, complaint determination sub-committees should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. When scheduling hearings, complaint determination sub-committees should bear in mind that late night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to important matters being forgotten.

6.0 PRE-HEARING PROCESS

(Also see Appendix 1 to this procedure).

- 6.1 The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself. Other than in very straightforward cases, authorities should use a pre-hearing process to:-
- identify whether the subject member disagrees with any of the findings of fact in the investigation report
 - identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
 - identify whether evidence about those disagreements will need to be heard during the hearing
 - decide whether there are any parts of the hearing that are likely to be held in private
 - decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material
- 6.2 The pre-hearing process should usually be carried out in writing. However, occasionally a meeting between the complaint determination sub-committee, the relevant parties and their representatives may be necessary. It is important for the monitoring officer advising the complaint determination sub-committee to consider pre-hearing matters carefully. Some matters in the pre-hearing process may be decided only by the complaint determination sub-committee. Therefore, if it is necessary for the complaint determination sub-committee to meet, they will have to do so formally as with any other council committee meeting. However, it is usually more appropriate for the majority of the pre-hearing process to be dealt with by the monitoring officer or other suitable officer.
- 6.3 The officer providing administrative support to the complaint determination sub-committee should write to the subject member proposing a date for the hearing, and they should do this in consultation with the chair of the complaint determination sub-committee. They should also outline the hearing procedure, the member's rights and they should additionally ask for a written response from the subject member within a set time. This is to find out whether the subject member:-
- wants to be represented at the hearing by a solicitor, barrister or any other person
 - disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements
 - wants to give evidence to the complaint determination sub-committee, either verbally or in writing
 - wants to call relevant witnesses to give evidence to the complaint determination sub-committee
 - wants any part of the hearing to be held in private
 - wants any part of the investigation report or other relevant documents to be withheld from the public
 - can attend the hearing

- 6.4 It is important for complaint determination sub-committee members involved in the pre-hearing process to bear in mind the distinction between the essential facts of the case and any inferences based on those facts. A critical part of the pre-hearing process should be an attempt to focus the relevant parties' attention on isolating all relevant disputes of facts between them. This is because attention to the factual issues will save valuable time later on in the determination process. The complaint determination sub-committee should start this process by requesting that the subject member makes clear precisely what findings of fact in the report it disagrees with and why. It should invite the monitoring officer or ethical standards officer to comment on the subject member's response within a set time period. This is to ensure that all parties are clear about the remaining factual disputes and can prepare to deal with those issues on the appointed day.
- 6.5 The complaint determination sub-committee should also ask the relevant parties to provide outlines or statements of the evidence their witnesses intend to give. This will allow the complaint determination sub-committee to decide how many witnesses may reasonably be needed and to identify the issues they will be dealing with at the hearing. It should only allow the relevant parties to raise new disagreements over factual matters in the investigation report at the hearing in exceptional circumstances, such as new evidence becoming available that the parties could not have produced before. The complaint determination sub-committee should make clear to the subject member that unless they comply with the above procedure, it may rule that it will not allow the new evidence to be presented at the hearing.
- 6.6 Members of the complaint determination sub-committee should consider the evidence provided to them before the hearing to identify any potential conflicts of interest. In addition they should consider the evidence to identify any connection with the people involved or any other doubts they have over the integrity of the hearing. If they have such concerns, they should seek advice from the monitoring officer as soon as possible. For example, they may know a witness who will be giving controversial evidence or they may have an interest in an important element of the case.
- 6.7 The determinations toolkit features model forms that can help the member respond to the complaint determination sub-committee. It includes a form to identify any findings of fact that the member disagrees with – a form to outline any further evidence for the complaint determination sub-committee.
- 6.8 The complaint determination sub-committee may also arrange for any other witnesses to be present who they feel may help in determining the case. This may include the complainant. However, the complaint determination sub-committee cannot order witnesses to appear or give evidence.
- 6.9 The complaint determination sub-committee's clerk should consult with the committee's legal adviser and send a pre-hearing process summary (SBE toolkit Form F) to everyone involved in the complaint at least two weeks before the hearing. This should be done after the complaint determination sub-committee has received responses from the subject member and from the investigating officer. The pre-hearing process summary should:-
- set the date, time and place for the hearing
 - summarise the allegation
 - outline the main facts of the case that are agreed
 - outline the main facts which are not agreed
 - note whether the subject member or investigating officer will go to the hearing or be represented at the hearing
 - list those witnesses, if any, who will be asked to give evidence, subject to the power of the complaint determination sub-committee to make a ruling on this at the hearing

- outline the proposed procedure for the hearing
-

7.0 THE HEARING

(Also see Appendix 2 to the procedures for model hearing procedure).

- 7.1 A complaint determination sub-committee hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities. The complaint determination sub-committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings. It should bear in mind the need to maintain public confidence in the council's ethical standards. This requires that the complaint determination sub-committee's decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the council and the public. For the subject member, an adverse decision by the committee can result in censure or in suspension for up to six months.
- 7.2 The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. If the subject member concerned wants to have a nonlegal representative, the subject member must obtain the consent of the complaint determination sub-committee. The complaint determination sub-committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.
- 7.3 The complaint determination sub-committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned. In many cases, the complaint determination sub-committee may not need to consider any evidence other than the investigation report (or the ethical standards officer's report) and any other supporting documents. However, the complaint determination sub-committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report. The complaint determination sub-committee can allow witnesses to be questioned and cross-examined by the subject member, the monitoring officer, the ethical standards officer or their representative. Alternatively, the complaint determination sub-committee can ask that these questions be directed through the chair. The complaint determination sub-committee can also question witnesses directly.
- 7.4 Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. The subject member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing.
- 7.5 The complaint determination sub-committee has the right to govern its own procedures as long as it acts fairly. For this reason, the complaint determination sub-committee may limit the number of witnesses if the number is unreasonable. The complaint determination sub-committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue. Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be cross-examined. Witnesses as to the character of the subject member, if required, regularly present their evidence in writing and may or may not actually attend the hearing.

Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect. Authorities may wish to consider developing a witness care scheme. At the very least, witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

- 7.6 Complaint determination sub-committees should recognise that subject members also need to be kept fully apprised of the process and any changes to it. Some authorities appoint an officer as a point of contact with the subject member for the duration of the process.

8.0 SANCTIONS

- 8.1 If the complaint determination sub-committee finds that a subject member has failed to follow the Code of Conduct and that they should be sanctioned, it may impose any one or a combination of the following:-

- censure of that member
- restriction for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions meet both the following requirements:-
 - i) They are reasonable and proportionate to the nature of the breach.
 - ii) They do not unduly restrict the person's ability to perform the functions of a member.
- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)
- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)
- that the member submits a written apology in a form specified by the complaint determination sub-committee
- that the member undertakes such training as the complaint determination sub-committee specifies
- that the member participates in such conciliation as the complaint determination sub-committee specifies partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met either of the following restrictions:-
 - i) They have submitted a written apology in a form specified by the complaint determination sub-committee.
 - ii) They have undertaken such training or has participated in such conciliation as the complaint determination sub-committee specifies.
- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met either of the following restrictions:-
 - i) They have submitted a written apology in a form specified by the complaint determination sub-committee.
 - ii) They have undertaken such training or has participated in such conciliation as the complaint determination sub-committee specifies.

- 8.2 Suspension or partial suspension will normally start immediately after the complaint determination sub-committee has made its decision. However, if the complaint determination sub-committee chooses, the sanction may start at any time up to six months following its decision. This may be appropriate if the sanction would otherwise have little effect on the subject member. For example, in the case of a suspension or partial suspension where there are no authority or committee meetings which the subject member would normally go to in the period

after the hearing has finished. The complaint determination sub-committee should also confirm the consequences, if any, for any allowances the subject member may be receiving. Periods of suspension or partial suspension set by a complaint determination sub-committee do not count towards the six-month limit for absences from authority meetings, after which a member would normally be removed from office under section 85 of the Local Government Act 1972.

8.3 When deciding on a sanction, the complaint determination sub-committee should ensure that it is reasonable and proportionate to the subject member's behaviour. Before deciding what sanction to issue, the complaint determination sub-committee should consider the following questions, along with any other relevant circumstances:-

- What was the subject member's intention? Did the subject member know that they were failing to follow the Code of Conduct?
- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the subject member accept they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct?
- Has the subject member failed to follow the Code of Conduct before?
- Is the subject member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a subject member has repeatedly or blatantly misused the authority's information technology resources, the complaint determination sub-committee may consider withdrawing those resources from the subject member.

7.4 Suspension may be appropriate for more serious cases, such as those involving:-

- trying to gain an advantage or disadvantage for themselves or others
- dishonesty or breaches of trust
- bullying

8.5 Sanctions involving restricting access to an authority's premises or equipment should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

7.6 The following is an extract from useful guidance published by the Adjudication Panel for England on aggravating and mitigating factors they take into account when assessing an appropriate sanction:-

- Examples, but not an exhaustive list, of mitigating factors are:-
 - An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
 - A member's previous record of good service.
 - Substantiated evidence that the member's actions have been affected by ill-health.

- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
 - Compliance with the Code since the events giving rise to the determination.
 - Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.
- Examples, but again not an exhaustive list, of aggravating factors are:-
 - Dishonesty.
 - Continuing to deny the facts despite clear contrary evidence.
 - Seeking unfairly to blame other people
 - Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
 - Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

The Adjudication Panel for England also advises the following:-

In deciding what action to take, the Case Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy.

Thus, the action taken by the Case Tribunal should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.

Case Tribunals should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code.

Any such tariff would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.

9.0 NOTICE OF THE STANDARDS COMMITTEE'S FINDINGS

9.1 The standards committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people's memories fade. The officer providing administrative support to the standards committee will normally also draft minutes of the meeting.

9.2 The standards committee must give its full written decision to the relevant parties as soon as possible after the hearing. In most cases this should be within two weeks of the hearing.

The relevant parties are:-

- the subject member
- the complainant

- the standards committees of any other authorities concerned
- any parish or town councils concerned
- the Standards Board for England

8.3 Making the findings public

The standards committee must arrange for a summary of the decision and reasons for it to be published in at least one newspaper that is independent of the authorities concerned. The newspapers where the decision and reasons are published should be circulated in the area of the authorities involved. A summary of the decision may also be published on the website of any authorities concerned, and in any other publication if the standards committee considers it appropriate.

8.4 If the standards committee finds that the subject member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding. In such cases, the subject member is also entitled to decide that no summary of the decision should be passed to local newspapers.

9.5 If the standards committee finds that the subject member failed to follow the Code but that no action is needed, the public summary must:-

- say that the member failed to follow the Code, but that no action needs to be taken
- outline what happened give reasons for the standards committee's decision not to take any action
- state that the member may appeal against that finding

9.6 If the standards committee finds that a member failed to follow the Code and it imposed a sanction, the public summary must:-

- say that the member failed to follow the Code
- outline what happened
- explain what sanction has been imposed
- give reasons for the decision made by the standards committee
- state that the member may appeal against that finding

9.7 The standards committee's reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

9.8 For consistency and thoroughness, the following format should be used for full written decisions.

The front cover of the standards committee's full written decision should include the name of the:-

- authority
- subject member
- complainant
- standards committee member who chaired the hearing
- standards committee members who took part in the hearing
- monitoring officer
- ethical standards officer who referred the matter (if applicable)
- local investigator who investigated the matter (if applicable)
- clerk of the hearing or other administrative officer

It should also include:-

- case reference numbers from the principal authority and from the Standards Board for England, (if applicable)
- the date of the hearing
- the date of the report

The standards committee's full written decision should include:-

- a summary of the complaint
- the relevant section or sections of the Code of Conduct
- a summary of the evidence considered and representations made
- the findings of fact, including the reasons for them
- the finding as to whether the member failed to follow the Code, including the reasons for that finding
- the sanctions imposed, if any, including the reasons for any sanctions
- the right to appeal

10.0 SUSPENSIONS

10.1 The Local Government Act 2000 enables the Adjudication Panel for England and standards committees to suspend and partially suspend members found to be in breach of the Code of Conduct. But, it does not specify exactly what members can and cannot do in their official capacity during the term of suspension. This has led to confusion in some authorities as to what representative roles, if any, a suspended member can perform. It has also led to confusion over what council facilities they are allowed to use and what entitlements they can continue to receive as a suspended member. This section clarifies what representative roles, if any, a suspended member can perform.

10.2 Members under full suspension should not:-

- 1) Take part in any formal business of the authority A member who is fully suspended may not exercise any of the functions or responsibilities of membership of the authority. Section 83(9) of the Local Government Act 2000 further provides that a suspended member should not participate in any committee or sub-committee of the authority.
- 2) Have access to council facilities Suspended members should not use or have access to council facilities. As the member is under suspension and unable to conduct council business, it follows that any use of council facilities by a suspended member would not be conducive to the discharge of the functions of the authority. This is because the member would not be performing council business while suspended.
- 3) Receive their council allowance Under Regulation 4(3) of the Local Authorities (Members Allowances) Regulations 2003, councils may specify in their member allowance schemes that:
 - Where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with part III of the Local Government Act 2000 or regulations made under that Part, the part of basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority.

It is recommended that members should not receive their allowance while under suspension because they are not performing their role as a member. But, the decision to withhold a member's allowance is ultimately at the discretion of the individual authority.

10.3 Members under suspension, should:-

- 1) Make their suspended status clear while suspended members remain councillors, they should put 'suspended' after their name when referring to themselves in writing as members. They should also notify constituents of this when contacted by them on constituency business. This is to ensure that all concerned are aware that the member is under suspension and unable to perform council duties.
- 2) Make arrangements for another member to handle their constituency work with help from their council officers, suspended members can arrange for other ward members to handle their constituency work. Or, in the case of a single-member ward, suspended members can arrange for neighbouring ward members to take over their constituency work for the duration of the suspension. This ensures that constituents continue to be democratically represented.

9.4 The Code of Conduct does not apply to a person who has been suspended in respect of a relevant function of office for a relevant period of time, so long as the member makes it clear that they have been suspended and does not purport to act as a representative of their authority. However, when amendments to section 52 of the Local Government Act 2000 come into effect, three paragraphs under the Code of Conduct will apply, "at any other time, where that conduct constitutes a criminal offence". As such, these paragraphs will still apply to members who are suspended. These paragraphs will be:-

- paragraph 3(2)(c) – intimidation of certain persons in relation to an allegation under the Code of Conduct
- paragraph 5 – disrepute
- paragraph 6(a) – improperly conferring or securing an advantage or disadvantage

9.5 Members can be partially suspended under sections 83(9) and (10) of the Local Government Act 2000. While members who are fully suspended cannot take part in any formal business of the authority during the period of suspension, members who are partially suspended are restricted only from certain activities or business. The terms of a partial suspension must be set by the standards committee during sentencing. It will often involve suspension from certain committees, or restricted access to certain areas or individuals. A partial suspension enables the committee to tailor a sanction to the particular breach, while still allowing the member to carry out other functions. For instance, a member who failed to uphold the Code of Conduct at a planning committee could be suspended from taking part in planning committee meetings for a certain period. Or a member who bullied licensing officers about an application might be barred from contact with officers of the licensing department for a certain period. Again we recommend that members should not receive allowances relating to areas in which they are suspended from for the duration of their suspension.

9.6 Officers and members of the authority should be informed of a member's suspension and advised of the suspended member's rights and obligations, as detailed earlier. The council should also help the member make arrangements for another member, either from their ward or a neighbouring ward, to take over constituency work. It may also notify the public in the authority's area that the member is suspended and unable to perform official council duties until the end of the suspension. Once the suspension has ended, the member is free to resume their duties in full as a member of the authority.

11.0 APPEALS

11.1 A member subject to a standards committee finding may apply in writing to the resident of the Adjudication Panel for England for permission to appeal against

that finding. The President must receive the member's written application within 21 days of the member receiving notice of the standards committee's decision. In this application, the member (appellant) must outline the reasons for the proposed appeal and apply for any sanction imposed to be suspended, if appropriate. They must also indicate whether they want the appeal carried out in writing or in person.

- 11.2 When deciding whether to grant permission to appeal, the President will consider if there is a reasonable chance of the appeal being successful, either in whole or in part. The President will give the appellant concerned their written decision within 21 days of receiving the application. The President will also give their written decision to:-
- the Standards Board for England
 - the standards committee of any authority concerned
 - any parish or town councils concerned
 - the complainant
- 10.3 If the President refuses to give permission, they will explain the reasons for that decision.
- 11.4 If permission is granted, the President of the Adjudication Panel for England will arrange for a tribunal to deal with the appellant's appeal. The tribunal will be made up of at least three members appointed by the President. It may also include the President.

CAROLE DUNN

Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer

County Hall
NORTHALLERTON

8 May 2009

Author: Stephen Knight, Principal Officer, Democracy and Governance

Background documents:

Standards Board for England's Guidance "Standards Committee Determinations"

Model documentation for the pre-hearing process

Authorities should use a pre-hearing process to:-

- Identify whether the subject member disagrees with any findings of fact in the investigation report.
- Decide whether those disagreements are significant to the hearing.
- Decide whether to hear evidence about those disagreements during the hearing.
- Decide whether there are any parts of the hearings that should be held in private.
- Decide whether any parts of the investigation report or other documents should be withheld from the public, prior to the hearing on the grounds that they contain 'exempt' material.

Below is a checklist for authorities to use before the hearing. At the end of Appendix 1 is model documentation to support it. The documentation is intended to give authorities a consistent approach to help them decide what the relevant issues are before the hearing itself. It is not compulsory.

Pre-hearing process checklist for authorities

The monitoring officer must give a copy of the investigation report to the subject member.

The officer providing administrative support to the committee, in consultation with the chair of the committee, should:-

- provide a copy of the standards committee's pre-hearing and hearing procedures to the subject member
- outline the subject member's rights and responsibilities
- propose a date for the hearing
- ask for a written response from the subject member by a set time to find out whether they:-
 - i) disagree with any of the findings of fact in the investigation report, including the reasons for disagreement
 - ii) want to be represented at the hearing by a solicitor, barrister or any other person. This should be done while noting that the standards committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined.
 - iii) want to give evidence to the standards committee, either verbally or in writing
 - iv) want to call relevant witnesses to give evidence to the standards committee
 - v) can attend the hearing on the proposed date
 - vi) want any part of the hearing to be held in private
 - vii) want any part of the investigation report or other relevant documents to be withheld from the public
 - send a copy of the subject member's response to the monitoring officer or ethical standards officer and invite the monitoring officer or ethical standards officer to say by a set time whether they want:
 - i) to be represented at the hearing
 - ii) to call relevant witnesses to give evidence to the standards committee
 - iii) any part of the hearing to be held in private

- iv) any part of the investigation report or other relevant documents to be withheld from the public
- v) to invite any other witnesses the committee feels are appropriate

The chair of the committee, in consultation with the legal adviser to the committee, should then:-

- confirm a date, time and place for the hearing
 - confirm the main facts of the case that are agreed
 - confirm the main facts which are not agreed
 - confirm which witnesses will give evidence
 - outline the proposed procedure for the hearing
 - provide this information to everyone involved in the hearing
- at least two weeks before the proposed date of the hearing

Checklist for members

The officer providing administrative support to the committee, in consultation with the chair of the committee, should make sure that the subject member is aware of the following points.

Pre-hearing process.

The subject member has the right to:-

- go to the hearing and present their case
- call a reasonable number of witnesses to give relevant evidence to the standards committee
- be represented at the hearing by a solicitor, barrister or any other person. Note – the committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined

Any disagreements with the finding of facts in the investigation report must be raised during the pre-hearing process. The standards committee will not consider any new disagreements about the report's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.

The subject member does not have to go to the hearing or be represented. If the subject member chooses not to go to the hearing, the committee may make a determination in their absence.

The hearing will be held in public and the relevant papers will be available for public inspection unless the standards committee is persuaded that there is a good reason to exclude the public. This is in line with the relevant access to information and human rights legislation.

Hearing process

After considering the written and verbal presentations, the standards committee will reach and announce its findings of fact, whether the subject member has failed to follow the Code of Conduct and whether a sanction should be applied. As well as announcing its decision at the hearing and providing a short written decision on the day of the hearing, the standards committee will give the member concerned its full written decision within two weeks of the end of the hearing.

Checklist for the pre-hearing process summary

After the standards committee has received responses from the subject member and the monitoring officer or ethical standards officer, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:-

- the name of the authority
- the name of the subject member
- the name of the complainant (unless there are good reasons to keep their identity confidential)
- case reference numbers of the principal authority or the Standards Board for England
- the name of the standards committee member who will chair the hearing
- the name of the monitoring officer
- the name of the ethical standards officer who referred the matter (if applicable)
- the name of the clerk of the hearing or other administrative officer
- the date the pre-hearing process summary was produced
- the date, time and place of the hearing
- a summary of the complaint
- the relevant section or sections of the Code of Conduct
- the findings of fact in the investigation report that are agreed
- the findings of fact in the investigation report that are not agreed
- whether the subject member or the monitoring officer or ethical standards officer will attend or be represented
- the names of any witnesses who will be asked to give evidence an outline of the proposed procedure for the hearing

Pre-hearing process forms

These forms are a guide only and can be found in the Standards committee determinations toolkit. Authorities should prepare their own forms as appropriate.

Form A provides an example table to help the subject member identify any disagreements about the findings of fact in the investigation report.

Form B helps the subject member set out any other evidence that is relevant to the complaint made about them.

Form C helps the subject member set out any representations the standards committee should take account of if the subject member is found to have broken the Code of Conduct.

Forms D and E cover details of the hearing and the witnesses who will give evidence.

Also included is Form F which is a checklist of details for the pre-hearing process summary.

Model hearing procedures for the standards committee

The model hearing procedures below aim to give standards committees a consistent approach to determining matters locally. These procedures are not compulsory, but authorities should make sure that any procedures they do use are consistent with the principles in this guidance.

Standards committees need to have an efficient and effective hearing process. This will help committees deal with all the issues that need to be resolved in a way that is fair to the member. It will also reduce the prospects of any successful appeal.

The model procedure below is intended to give standards committees a consistent approach to determining matters locally.

The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

Interpretation

- 1) 'Subject member' means the member of the authority who is the subject of the allegation being considered by the standards committee, unless stated otherwise. It also includes the member's nominated representative.
- 2) 'Investigator' means the monitoring officer or ethical standards officer and includes their nominated representative.
- 3) 'Committee' also refers to a sub-committee.
- 4) 'Legal adviser' means the officer responsible for providing legal advice to the standards committee. This may be the monitoring officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

- 5) The subject member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

Legal advice

- 6) The committee may take legal advice, in private if necessary, from its legal adviser 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 subject member and the investigator if they are present.

Setting the scene

- 7) After all the members and everyone involved have been formally introduced, the chair should explain how the committee is going to run the hearing.

Preliminary procedural issues

- 8) The committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

- 9) After dealing with any preliminary issues, the committee should then move on to consider whether there are any significant disagreements about the facts contained in the investigator's report.
- 10) If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.
- 11) If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.
- 12) The subject member should then have the opportunity to make representations to support their version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.
- 13) At any time, the committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
- 14) If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
- 15) If the subject member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether it would be in the public interest to continue in their absence.

After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:-

- continue with the hearing, relying on the information in the investigator's report
- allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary
- postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already

- 16) The committee will usually move to another room to consider the representations and evidence in private.
- 17) On their return, the chair will announce the committee's findings of fact.

Did the subject member fail to follow the Code of Conduct?

- 18) The committee then needs to consider whether, based on the facts it has found, the subject member has failed to follow the Code.

- 19) The subject member should be invited to give relevant reasons why the committee should decide that they have not failed to follow the Code.
- 20) The committee should then consider any verbal or written representations from the investigator.
- 21) The committee may, at any time, question anyone involved on any point they raise on their representations.
- 22) The subject member should be invited to make any final relevant points.
- 23) The committee will then move to another room to consider the representations.
- 24) On their return, the chair will announce the committee's decision as to whether the subject member has failed to follow the Code.

If the subject member has not failed to follow the Code of Conduct

- 25) If the committee decides that the subject member has not failed to follow the Code, the committee can move on to consider whether it should make any recommendations to the authority.

If the subject member has failed to follow the Code of Conduct

- 26) If the committee decides that the subject member has failed to follow the Code, it will consider any verbal or written representations from the investigator and the subject member as to:-
 - whether the committee should apply a sanction
 - what form any sanction should take
- 27) The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 28) The committee will then deliberate in private to consider whether to impose a sanction on the subject member and, if so, what sanction it should be.
- 29) On their return, the chair will announce the committee's decision.

Recommendations to the authority

- 30) After considering any verbal or written representations from the investigator, the committee will consider whether it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

The committee will announce its decision on the day and provide a short written decision in that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.