

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

COMPLAINT DETERMINATION SUB-COMMITTEE

COMPLAINT DETERMINATION PROCEDURE

1.0 INTRODUCTION

- 1.1 The Standards Committee (England) Regulations provide for the local receipt, assessment, investigation and determination of complaints that Members may have breached the Code of Conduct for Members (the Code), by local standards committees. The Council's Standards Committee has established Sub-Committees to deal with the different stages of complaint handling. The Standards Committee has also has agreed local Assessment, Review and Investigation Procedures to deal with the earlier stages of complaint handling. The Standards Committee and its Sub-Committees will also take account of the detailed Guidance issued by Standards for England in conducting these processes
- 1.2 Complaint Determination Procedure deals with the consideration and hearing of complaints following an investigation.
- 1.3 The main purpose of the Standards Committee's determination hearing is to decide whether a Member of the Council has breached the Code of Conduct, and if so, whether a sanction should be applied, and what form the sanction should take.

2.0 CONSIDERATION OF INVESTIGATION REPORTS

- 2.1 The Standards Committee has appointed the Complaint Determination Sub-Committee (the Sub-Committee) to consider investigation reports from Investigating Officer (the Investigator), and to hold determination hearings. The Investigator may be the Monitoring Officer or his/her representative, or and Ethical Standards Officer. References in this procedure to the Sub-Committee include references to the Standards Committee.
- 2.2 The Monitoring Officer will need to be aware of potential conflicts in advising the Standards Committee or Sub-Committee and members. The Monitoring Officer will be the main adviser to the Standards Committee unless he or she has an interest in the matter which prevents him/her for carrying out his/her role independently. In the event that this situation occurs, the Monitoring Officer will arrange another appropriately qualified officer to advise the Sub-Committee. In addition, if the Monitoring Officer has conducted the investigation, another officer will advise the Sub-Committee.
- 2.3 In relation to the Sub-Committee, the Monitoring Officer or other legal adviser will:
 - (a) make sure that Sub-Committee members understand their powers and procedures;
 - (b) make sure that the determination procedure is fair and will allow the complaint to be dealt with as efficiently and as effectively as possible;
 - (c) make sure that the subject member understands the procedures the Sub-Committee will follow;
 - (d) provide advice to the Standards Committee/Sub-Committee during the hearing and their deliberations;

- (e) help the Sub-Committee to produce a written decision and summary of that decision.
- 2.4 The Monitoring Officer or Investigating Officer will make one of the following findings on completion of an investigation:
- There has been a failure to comply with the Code
 - There has not been a failure to comply with the Code
- 2.5 The Investigator must prepare a report to the Standards Committee. The Sub-Committee will meet to receive and consider the report.
- 2.6 If the conclusion of the report is that there has been no failure to comply with the Code, the Sub-Committee must decide whether to accept that recommendation. The Sub-Committee must also decide whether it the Adjudication Panel for England should hear the case. This is a preliminary decision which must be made and recorded.
- 2.7 Information presented to the Sub-Committee for the purpose of considering the investigation report may, if appropriate, be considered as exempt information. The Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The categories of exempt information under Schedule 12A Local Government Act 1972 as modified in relation to local determinations by Standards Committees is set out at Appendix 3.
- 2.8 If the Sub-Committee accepts the recommendation in the report that there has not been a failure to comply with the Code it must give written notice of the finding to:
- the member who is the subject of the complaint (the subject member)
 - any ethical standards officer involved
 - the standards committee of any other authority concerned
 - any parish council concerned; and
 - the person who made the allegation,

The Sub-Committee shall also arrange for notice of the finding to be published in a newspaper circulating in the area, and if the Sub-Committee considers appropriate, on the Council's web page, and in any other publication it determines.

- 2.9 The above notice shall not be published if the subject member so requests.

3.0 HEARING AND PRE-HEARING PROCESS

- 3.1 If the investigation report concludes that there has been a failure to comply with the Code, a hearing must take place unless the Sub-Committee decides that the matter must be referred to the Adjudication Panel for England. A pre-hearing process will be followed.
- 3.2 The hearing must take place within **three months** of the date when the Monitoring Officer's report is completed, or, in the case of a report referred by an Ethical Standards Officer, the date when the report is received by the Monitoring Officer. If it is not held within the three month period it must be held as soon as possible after that. It must not be held until at least **fourteen days after** the report is sent to the subject member, unless the subject member agrees that it can be held earlier.
- 3.3 When the Sub-Committee is convened for a hearing, information presented to the Sub-Committee may if appropriate be considered as exempt information. The Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. A decision as to whether to maintain an exemption will not necessarily need to result in the public being

excluded from a hearing, or in details of the complaint being excluded from the report sent out in advance of the hearing. In most cases the parties will agree to a hearing in public. The views of the parties on this should be sought in good time to allow for legal advice to be sought if necessary.

- 3.4 The Sub-Committee can consider the Investigator's report in the subject-member's absence if s/he fails to attend. If the Sub-Committee is satisfied with the subject member's reasons for not attending, it should arrange an alternative hearing date.

4.0 PRE-HEARING PROCESS

- 4.1 The purpose of the pre-hearing process is to ensure the hearing is dealt with fairly and efficiently. It will usually be carried out in writing, but may sometimes require a formal meeting of the Sub-Committee.

- 4.2 The pre-hearing process aims to:

- a) identify whether the subject member disagrees with any findings of fact in the investigation report;
- b) decide whether those disagreements are significant to the hearing;
- c) decide whether to hear evidence about those disagreements during the hearing;
- d) decide whether there are any parts of the hearings that should be held in private;
- e) 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.

- 4.3 The following steps will be taken as part of the pre-hearing preparations.

- 4.4 The Monitoring Officer will provide copy of the investigation report to the subject member.

- 4.5 The Democratic Services Officer, in consultation with the Chair of the Sub-Committee, will:

- (a) provide a copy of the Sub-Committee's Pre-hearing and Hearing procedures to the subject member
- (b) outline the subject member's rights and responsibilities
- (c) propose a date for the hearing
- (d) ask for a written response from the subject member by a set time to find out whether s/he:
 - (i) disagrees with any of the findings of fact in the investigation report, including the reasons for disagreement (Appendix 1 Form A);
 - (ii) wants to be represented at the hearing by a solicitor, barrister or any other person. It should be noted that the Sub-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 (Appendix 1 Form D);
 - (iii) wants to give evidence to the Sub-Committee, either verbally or in writing (Appendix 1 Form B);
 - (iv) wants to call relevant witnesses to give evidence to the Sub-Committee, in which case an outline of the evidence to be given by the witness should be given (Appendix 1 Form E)

- (v) can attend the hearing on the proposed date
 - (vi) wants any part of the hearing to be held in private
 - (vii) wants any part of the investigation report or other relevant documents to be withheld from the public
- (e) send a copy of the subject member's response to the Monitoring Officer or ethical standards officer for comment, 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 Sub-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 Sub-Committee feels are appropriate

The parties should note that at the hearing, new disagreements about factual matters in the investigation report will only be allowed in exceptional circumstances e.g. where new evidence has just come to light and could not have been produced before, and otherwise new evidence may be ruled out.

- 4.6 At least fourteen days before the hearing date, the Democratic Services Officer in consultation with the legal adviser, will issue to all involved in the complaint a Pre-Hearing Process Summary (Appendix 1 Form F) which will:
- (a) confirm a date, time and place for the hearing;
 - (b) confirm the main facts of the case that are agreed;
 - (c) confirm the main facts which are not agreed;
 - (d) note whether the subject-member and investigating officer will attend the hearing and/or be represented;
 - (e) confirm which witnesses will give evidence, subject to the power of the Sub-Committee to rule on this issue;
 - (f) outline the proposed procedure for the hearing.

5.0 HEARING

- 5.1 The hearing will be conducted in accordance with the Hearing Procedure set out at Appendix 2 .
- 5.2 If the Sub-Committee decides that the member has failed to follow the Code and that the member should be sanctioned, it may impose any one or a combination of the following sanctions:
- (a) Censure. This is the only sanction available when dealing with a person who is no longer a member of the authority.

- (b) Restrict the member's access to the premises or resources of the relevant authority for up to six months, provided the restriction is reasonable and proportionate to the nature of the breach, and does not unreasonably restrict the member's ability to perform the functions of a member.
- (c) Suspend or partly suspend the member for up to six months.
- (d) Suspend or partly suspend the member for up to six months on condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the Sub-Committee orders. Conciliation involves an independent person helping the relevant people to try to reach an agreement on the matter as set out by the Sub-Committee.
- (e) Require that the member submits a written apology in a form specified by the Sub-Committee.
- (f) Require the subject member to undertake training which it specifies
- (g) Require that the subject member participates in conciliation as specified by the Sub-Committee

5.3 Sanctions may start immediately or up to six months after the hearing, at the discretion of the Sub-Committee.

6.0 NOTICE AND PUBLICATION OF FINDINGS

6.1 The Sub-Committee will announce its decision at the end of the hearing and where reasonably possible, within two weeks, will give a full written decision to the relevant parties, being:

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

6.2 The Sub-Committee must also arrange to publish a summary of its findings and any sanction applied in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities.

6.3 If the Sub-Committee finding is that the subject member did not fail to follow the Code, the summary must say this and set out the reasons. In this case, the subject member is entitled to decide that no summary of the decision shall be passed to the newspapers.

6.4 If the Sub-Committee finds that the subject member has breached the Code but decides that no action is needed, the published 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 decision not to take action
- state that the member may appeal against that finding

6.5 If the Standards Committee finds the member has failed to follow the Code and imposed a sanction, the public summary must:

- say that the member failed to follow the Code
- outline what happened

- explain what sanctions have been imposed
- give reasons for the decision
- state that the member may appeal against that finding

6.6 The reports and minutes should be available for public inspection for six years after the hearing. Sections of documents relating to parts of the hearing that were held in private do not have to be made available for public inspection.

7.0 APPEAL

7.1 The member who is the subject of a Sub-Committee finding has the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal against that finding. The application ~~must~~ ^{must be} ~~written~~ ^{written} submitted within 21 days of the subject member receiving notice of the Sub-Committee's decision.

8.0 Costs

8.1 The subject member is responsible for meeting the costs of representation at a Standards Committee hearing, or at an Appeal Tribunal in the event that she/he submits an appeal. The Council has taken out insurance to cover this. However, insurance will only cover the costs incurred by members found not to be in breach of the Code. Members are advised to refer to the terms of their own insurance scheme.

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FORM A

Subject member's response to the evidence set out in the investigation report

Please enter the number of any paragraph in the investigation report where you disagree with the findings of fact, and give your reasons and your suggested alternative.

Paragraph number from the investigation report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

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FORM B

Other evidence relevant to the complaint

Please set out below, using the numbered paragraphs, any evidence you feel is relevant to the complaint made about you.

Paragraph number	Details of the evidence
1	
2	
3	

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FORM C

Representations to be taken into account if a member is found to have failed to follow the Code of Conduct

Please set out below, using the numbered paragraphs, any factors that the standards committee should take into account if it finds that a member has failed to follow the Code of Conduct. Please note that no such finding has been made yet.

Paragraph number	Factors for the standards committee to take into account when deciding whether to sanction any censure, restriction of resources or allowances, suspension or partial suspension
1	
2	
3	

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FORM D

Arrangements for the standards committee hearing

Please tick the relevant boxes.

1	Are you planning to attend the standards committee hearing on the proposed date in the accompanying letter? If 'No', please explain why.	Yes No	Reason:
2	Are you going to present your own case?	Yes No	
3	If you are not presenting your own case, will a representative present it for you? If 'Yes', please state the name of your representative.	Yes No	Name:
4	Is your representative a practising solicitor or barrister? If 'Yes', please give their legal qualifications. Then go to Question 6. If 'No' please go to Question 5.	Yes No	Qualifications:

<p>5</p>	<p>Does your representative have any connection with your case?</p> <p>If 'Yes', please give details.</p>	<p>Yes</p> <p>No</p>	<p>Details:</p>
<p>6</p>	<p>Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p>	<p>Yes</p> <p>No</p>	
<p>7</p>	<p>Do you, your representative or your witnesses have any access difficulties? For example, is wheelchair access needed?</p> <p>If 'Yes', please give details.</p>	<p>Yes</p> <p>No</p>	<p>Details:</p>
<p>8</p>	<p>Do you, your representative or witnesses have any special needs?</p> <p>For example, is an interpreter needed?</p> <p>If 'Yes' please give details</p>	<p>Yes</p> <p>No</p>	<p>Details:</p>
<p>9</p>	<p>Do you want any part of the hearing to be held in private?</p> <p>If 'Yes', please give reasons.</p>	<p>Yes</p> <p>No</p>	<p>Reasons:</p>
<p>10</p>	<p>Do you want any part of the relevant documents to be withheld from public inspection?</p> <p>If 'Yes', please give reasons.</p>	<p>Yes</p> <p>No</p>	<p>Reasons:</p>

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FORM E

Details of proposed witnesses to be called

Name of witness or witnesses	1 2 3		
Witness 1			
a	Will the witness give evidence about the allegation? If 'Yes', please provide an outline of the evidence the witness will give.	Yes No	Outline of evidence:
b	Will the witness give evidence about what action the standards committee should take if it finds that the Code of Conduct has not been followed? If 'Yes', please provide an outline of the evidence the witness will give.	Yes No	Outline of evidence:

Witness 2

a	Will the witness give evidence about the allegation? If 'Yes', please provide an outline of the evidence the witness will give.	Yes No	Outline of evidence:
b	Will the witness give evidence about what action the standards committee should take if it finds that the Code of Conduct has not been followed? If 'Yes', please provide an outline of the evidence the witness will give.	Yes No	Outline of evidence:

Witness 3

a	Will the witness give evidence about the allegation? If 'Yes', please provide an outline of the evidence the witness will give.	Yes No	Outline of evidence:
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b	Will the witness give evidence about what action the standards committee should take if it finds that the Code of Conduct has not been followed? If 'Yes', please provide an outline of the evidence the witness will give.	Yes No	Outline of evidence:
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FORM F

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

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

COMPLAINT DETERMINATION SUB-COMMITTEE

COMPLAINT HEARING PROCEDURE**1.0 Interpretation**

- (1) 'Subject member' means the member of the authority who is the subject of the allegation being considered by the Sub-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) 'Sub-Committee' also refers to a Sub-Committee.
- (4) 'Legal adviser' means the officer responsible for providing legal advice to the Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

2.0 Representation

- 2.1 The subject member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Sub-Committee, another person. The Sub-Committee may withdraw its permission if the representative disrupts the hearing.

3.0 Legal advice

The Sub-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 Sub-Committee should be shared with the subject member and the investigator if they are present.

4.0 Setting the scene

- 4.1 After the members and everyone involved have been introduced, the chair should explain how the Sub-Committee is going to conduct the hearing.

5.0 Preliminary procedural issues

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

6.0 Making findings of fact

- 6.1 After dealing with any preliminary issues, the Sub-Committee will then move on to consider whether there are any significant disagreements about the facts contained in the investigator's report.
- 6.2 If there is no disagreement about the facts, the Sub-Committee can move on to the next stage of the hearing.
- 6.3 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 Sub-Committee's

permission, the investigator may call any necessary supporting witnesses to give evidence. The Sub-Committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.

- 6.4 The subject member should then have the opportunity to make representations to support their version of the facts and, with the Sub-Committee's permission, to call any necessary witnesses to give evidence.
- 6.5 At any time, the Sub-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.
- 6.6 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.
- 6.7 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 Sub-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 Sub-Committee may then:
- (a) continue with the hearing, relying on the information in the investigator's report
 - (b) allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already.
- 6.8 The Sub-Committee will usually move to another room to consider the representations and evidence in private.
- 6.9 On their return, the chair will announce the Sub-Committee's findings of fact.

7.0 Consideration of whether the subject member failed to follow the Code of Conduct?

- 7.1 The Sub-Committee will then consider whether, based on the facts it has found, the subject member has failed to follow the Code.
- 7.2 The subject member should be invited to give relevant reasons why the Sub-Committee should decide that they have not failed to follow the Code.
- 7.3 The Sub-Committee should then consider any verbal or written representations from the investigator.
- 7.4 The Sub-Committee may, at any time, question anyone involved on any point they raise on their representations.
- 7.5 The subject member should be invited to make any final relevant points.
- 7.6 The Sub-Committee will then move to another room to consider the representations.
- 7.7 On completion of their deliberations, the Chair will announce the Sub-Committee's decision as to whether the subject member has failed to follow the Code.

8.0 Where the subject member is not found to have failed to follow the Code of Conduct

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

9.0 Where the subject member is found to have failed to follow the Code of Conduct

9.1 If the Sub-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:

- (a) whether the Sub-Committee should apply a sanction
- (b) what form any sanction should take

9.2 The Sub-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.

9.3 The Sub-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.

9.4 On their return, the chair will announce the Sub-Committee's decision.

10.0 Recommendations to the Council

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

11.0 The written decision

11.1 The Sub-Committee will announce its decision on the day and also provide a short written decision on that day. It will also need to issue a full written decision if reasonably possible within two weeks of the hearing. The written decision will be issued to the relevant parties, being:

- the subject member
- the complainant
- the standards committees of any other authorities concerned
- any parish or town councils concerned

APPENDIX 3

Categories of exempt information under Schedule 12A of the Local Government Act 1972 (as modified in relation to local determinations by standards committees) are:

- Information relating to any individual.
- Information which is likely to reveal the identify of an individual.
- Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a minister of the Crown and employees of, or office holders under, the authority.
- Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- Information which reveals that the authority proposes:
 - i. to give under any enactment a notice under or by virtue of which requirements are imposed on a person
 - ii. to make an order or direction under any enactment.
- Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 7A) Information which is subject to any obligation of confidentiality.
- 7B) Information which relates in any way to matters concerning national security.
- 7C) Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matters under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.

Source: Appendix 3 is an extract from the Local Government Act 1972 (as modified in relation to local determination by standards committee).