

## **PART 4**

### **(J) PROCEDURES RELATING TO THE STANDARDS COMMITTEE**

- 1. Procedure for the Assessment, Review and Withdrawal of Complaints and Investigation of Complaints of Breaches of the Code of Conduct.**
- 2. Consideration Sub-Committee, Pre-Hearing Process and Hearing Procedure.**

**(1) PROCEDURE FOR THE ASSESSMENT, REVIEW AND WITHDRAWAL OF COMPLAINTS AND INVESTIGATION OF COMPLAINTS OF BREACHES OF THE CODE OF CONDUCT**

**Introduction**

1. This procedure applies when a complaint is received that a Councillor, Independent Member of the Standards Committee or Co-opted Member has or may have failed to comply with the Members Code of Conduct.
2. The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “subject member.”
3. The procedure will also apply if a complaint is referred back to the Standards Committee by the Standards Board for England.
4. No Member or Officer will participate in any stage of the assessment process if he or she has or may have any personal conflict of interest in the matter.

**Assessment Sub-Committee**

5. Upon receipt of a complaint that the subject member has failed or may have failed to comply with the Members Code of Conduct, the Monitoring Officer will liaise with the Committee Services Section to convene as soon as possible and in any event within 20 working days a meeting of an Assessment Sub-Committee.
6. The Assessment Sub-Committee will comprise five members of the Standards Committee (one from each of the Council’s three political groups) and two Independent Members one of whom will act as Chair. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Committee Services Section on a rotational basis, taking account of availability.
7. The Assessment Sub-Committee will be advised by the Monitoring Officer, the Deputy Monitoring Officer or another Legally qualified officer.
8. The purpose of the Assessment Sub-Committee will be to decide whether any action should be taken on the complaint, either as an investigation or some other action. The Assessment Sub-Committee will not make any findings of fact.
9. The Assessment Sub-Committee will receive in advance of the meeting a copy of the complaint, together with a pre assessment report prepared by the Monitoring Officer or her representative which will set out the following details:
  - Whether the complaint is within the jurisdiction of the Standards Committee;
  - The paragraphs of the Code of Conduct the complaint may refer to, or the paragraphs the complainant has identified;
  - A summary of key aspects of the complaint if it is lengthy or complex;
  - Any further information that the Officer has obtained to assist the Assessment Sub-Committee with its decision. This may include minutes of meetings, a copy of a member’s entry in the register of interests, information from Companies House or the Land Registry, or other easily obtainable documents;

- Any clarification obtained by the Officer from the complainant if the complaint was unclear.

It should be noted, however, that pre-assessment inquiries will be limited, and will not be carried out in such way as to amount to an investigation.

### **The Assessment Process**

10. The Assessment Sub-Committee will first consider whether the complaint meets the following tests:

- The complaint is against one or more named members Independent Members or co-opted members of the Council within its district;
- The subject member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code of Conduct under which the subject member was operating at the time of the alleged misconduct.

If the complaint fails on one or more of these tests, then it cannot be investigated as a breach of the Code of Conduct the decision of the Assessment Sub-Committee must be that no further action will be taken. The complainant must be informed that no further action will be taken in respect of the complaint.

11. If the complaint meets the above tests, then the Assessment Sub-Committee will proceed to consider whether to refer it to the Monitoring Officer, to refer it to the Standards Board for England, or whether no action should be taken. In making its decision, the Sub-Committee will take account of Assessment Criteria which are to be approved by the Standards Committee, and which will from time to time be reviewed by the Standards Committee.

12. The Assessment Sub-Committee will, unless there are exceptional circumstances, reach a decision within 20 working days of receipt of the complaint.

13. If the Assessment Sub-Committee decides to take no action over a complaint, then it will arrange for notice of that decision, including the reasons for it, to be given to the complainant, the subject member. This will be done within five working days after the date of the meeting.

14. If the Assessment Sub-Committee decides to refer the complaint to the Monitoring Officer or to the Standards Board for England, it will arrange for a summary of the complaint to be sent to the complainant and the subject member stating what the allegation is, and the type of referral that has been made. This will be done within five working days after the date of the meeting.

15. However, the Assessment Sub-Committee may decide not to give the subject member a summary of the complaint if it considers that doing so would or might be against the public interest or would or might prejudice any future investigation. In considering this, the Sub-Committee will take advice from the Monitoring Officer, and will consider in particular whether it is likely that the subject member or other person may seek to intimidate, or influence or pressurise the complainant or any witnesses involved or whether early disclosure of the complaint may lead to evidence being compromised or destroyed. The Sub-

Committee will balance whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

### **The Review Process**

16. If the Assessment Sub-Committee decides not to take any action on a complaint, then the complainant has a right to request a review of that decision, and will be so advised when notified of the decision.
17. When a request for review is received, the Monitoring Officer will liaise with the Committee Services Section to convene as soon as possible and in any event within 20 working days a meeting of a Review Sub-Committee. The subject member will be informed when a review has been received
18. The Review Sub-Committee will comprise five members of the Standards Committee, including three Councillors (where possible – political balance permitting – one from each of the Council's three political groups) and two Independent Members one of whom will act as Chairman. None of these Members will have been members of the Assessment Sub-Committee that considered the original complaint. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Committee Services Section on a rotational basis, taking account of availability.
19. In addition to the documents referred to in paragraph 9 above, the Review Sub-Committee shall have a copy of the Assessment Sub-Committee's decision notice, but will consider the complaint afresh, using the Assessment Criteria referred to in paragraph 11 above. The Review Sub-Committee has the same range of decisions available to it as the Assessment Sub-Committee and will follow the process outlined above in paragraphs 10-15 above.
20. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Sub-Committee will consider if it is more appropriate to pass this to an Assessment Sub-Committee as a new complaint. In this instance, the Review Sub-Committee will make a formal decision that the review request will not be granted. Within 5 working days of making its decision both the complainant and the subject member will be provided with notice in writing of both the decision and reasons for the decision.

### **Withdrawing Complaints**

21. If a complainant asks to withdraw the complaint prior to the Assessment Sub-Committee having made a decision on it, the Assessment Sub-Committee will decide whether or not to grant the request. In making its decision, the Sub-Committee will consider:
  - Whether the public interest in taking some action on the complaint outweighs the complainant's wish to withdraw it;
  - Whether the complaint is such that action can be taken on it without the complainant's participation;
  - Whether there is an identifiable underlying reason for the request to withdraw the complaint, and in particular whether there is any evidence that the complainant may have been intimidated, influenced or pressurised by the

subject member or other person to withdraw the complaint, or any witnesses involved may have been intimidated, influenced or pressurised.

- If a request to withdraw a complaint is made after the Assessment Sub-Committee has met then in such cases the Monitoring Officer in consultation with the chair of the Standards Committee shall consider the request to withdraw the complaint and, if necessary, determine that the Assessment Sub-Committee be reconvened.

### **Confidentiality**

22. If a complainant has asked for his or her identity to be withheld, this request will be considered by the Assessment Sub-Committee at the same time as it considers the complaint.
23. As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Sub-Committee may grant confidentiality if it is satisfied that the complainant has reasonable grounds for believing that he or she or any witness involved will be at risk of physical harm, or his or her employment will be jeopardised if his or her identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.
24. The Assessment Sub-Committee will also take into account whether it would be possible to refer the complaint without making the complainant's identity known, and, in particular, whether the complainant's participation would be required if the complaint were referred.
25. If the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it may offer the complainant the option to withdraw, rather than proceed with his or her identity being disclosed. The Assessment Sub-Committee will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have his or her identity withheld from the subject member

### **Complaints about Members of more than one Authority**

26. Where a complaint is received about a councillor, an Independent Member or a co-opted Member who is known to be a member of another authority, for example, the Greater Manchester Police Authority, the Monitoring Officer will before the meeting of the Assessment Sub-Committee establish whether a similar allegation has been made to the other authority. In the light of information from and in co-operation with the other authority, the Assessment Sub-Committee will consider which authority should deal with the complaint.

## **(2) CONSIDERATION SUB-COMMITTEE, PRE-HEARING PROCESS AND HEARING PROCEDURE**

### **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) 'Investigating Officer' means the Monitoring Officer or Ethical Standards Officer and includes their nominated representative.
- 3) The 'Matter' is the subject matter of the investigator's report.
- 4) 'Committee' also refers to a Sub-Committee.
- 5) '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, or someone delegated by the Monitoring Officer to so advise
- 6) 'The Committee Services Officer means an officer of the authority responsible for supporting the Standards Committee discharge of its functions and recording the decisions of the Standards Committee.
- 7) 'The Chairman' refers to the person presiding at the Hearing.

### **CONSIDERATION SUB-COMMITTEE**

1. A Consideration Sub-Committee should be convened to meet within 10 working days of the completion of a report (into a complaint that has been referred for investigation by the Assessment Sub-Committee or the Review Sub-Committee) of the Monitoring Officer or an Independent person by the Monitoring Officer.
2. The Consideration Sub-Committee should comprise five members of the Standards Committee, including one from each of the Council's three political groups and two Independent Members. One of the Independent members shall act as Chair of the Sub-Committee. The Sub-Committee will meet on an ad hoc basis and members will be appointed by Committee Services on a rotational basis, taking account of availability.
3. The Consideration Sub-Committee shall be advised by the Monitoring Officer, the Deputy Monitoring Officer or another legally qualified officer.
4. Consideration Sub-Committees will consider reports prepared by or on behalf of the Monitoring Officer following a referral by the Assessment Sub-Committee, or Review Sub-Committee, on an initial assessment and determine:
  - (i) that it accepts the Monitoring Officer's findings of no failure (a finding of acceptance) to comply with the code of conduct

- (ii) that the matter should be considered at a Hearing Sub-Committee of the Standards Committee
  - (iii) that the matter should be referred to the Adjudication Panel for determination
5. After making a finding of acceptance the Monitoring Officer on behalf of the Consideration Sub-Committee shall give written notice thereon to the Subject Member and Complainant.

## **PRE-HEARING PROCESS AND PREPARATION FOR A HEARING**

The Pre-Hearing process is to be carried out in writing unless the case is very complicated and the Chair of the Standards Committee and the Legal Advisor agree that a Pre-Hearing Sub-Committee should be organised.

1. The Pre-Hearing process shall be conducted in writing.
2. The Subject Member will be asked for a written response to the Investigating Officer (IO's) report within fifteen working days of a complaint being referred to a Hearing Sub-Committee by the Consideration Sub-Committee, and shall state whether he/she
  - disagrees with any of the findings of fact in the report, giving the reasons for any disagreement;
  - wishes to detail other evidence relevant to the complaint
  - wishes to be legally represented or by any other person;
  - wishes to give evidence to the Sub-Committee, either orally or in writing;
  - confirm if any party has specific needs (e.g. access requirements)
  - confirm they are attending the Hearing
  - wishes to call relevant witnesses to give evidence to the Sub-Committee (and to outline that evidence);
  - wishes any part of the Hearing to be held in private;
  - wishes any part of the IO's report or other relevant documents to be withheld from the public;
  - wishes to outline any representations to be taken into account if the Subject Member is found to be in breach.
3. The Subject Member shall be informed that if he/she seeks to dispute any matter contained in the IO's report without having previously notified the intention to do so, the Sub-Committee may refuse to allow the disputed matters to be raised unless satisfied that there are good reasons why they have not been raised beforehand.
4. The IO shall be invited to comment on the Subject Member's response within ten working days of receipt, and shall state whether or not he/she: -
  - wishes to call relevant witnesses to give evidence or submit written or other evidence to the Hearing Sub-Committee;
  - wishes any part of the Hearing Sub-Committee to be held in private;
  - wishes any part of the IO's report or other relevant documents to be

withheld from the public;

5. Witnesses may only give evidence with the express approval of the Chair of the Sub-Committee.
6. The Subject Member and the IO are entitled to request the Chair's approval for the attendance of such witnesses as are necessary. However, in consultation with the Monitoring Officer, the Chair may limit the witnesses to be called, if he/she believes the number requested for the relevant party is unreasonable or that the relevant witnesses will be repeating the evidence of other witnesses to be called, or else not likely to provide such relevant evidence that will assist the Sub-Committee to reach its decision.
7. The Chairman may request the attendance of any additional witnesses whose evidence he/she considers would assist the Sub-Committee to reach its decision.
8. The Monitoring Officer or the Legal Adviser (who must not be the IO), in consultation with the Chair of the Sub Committee, will write to the Subject Member and the IO to:
  - confirm a date, time and place for the Hearing, which should be within three months from the date on which the IO's report was completed and not less than fourteen working days after the report was sent to the Subject Member
  - confirm the main facts of the case that are agreed
  - confirm the main facts that are not agreed
  - provide copies of any written evidence to the relevant parties
  - confirm which witnesses will be called by the parties
  - provide the parties with copies of the proposed procedure for the Hearing, specifying which parts of the proceedings, if any, may be considered in private

The Monitoring Officer will also write to update the complainant.

## **HEARING SUB-COMMITTEE – PROCEDURE FOR A HEARING**

1. The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such variation is necessary in the interests of fairness.

### **Representation**

2. The Subject Member may be legally represented, or with the permission of the Sub-Committee, by another person. It is the responsibility of the Subject Member to arrange for their own representation.

### **Legal Advice**

3. The Sub-Committee may take legal or procedural advice from its Legal Adviser (who may be the Monitoring Officer) at any time during the Hearing or during the Sub-Committee's deliberations. The substance of any advice given to the Sub-Committee will be shared with the Subject Member and Investigating Officer (IO) if they are present at the Hearing.

## **Introductions and Setting the Scene**

4. At the start of the Hearing, the Chairman shall introduce each of the members of the Sub-Committee, the Subject Member (if present), the IO (if present), and the Legal Adviser, and shall then explain the procedure, which the Sub-Committee will follow.

## **Preliminary Procedural issues**

5. The Sub-Committee shall deal with the following preliminary procedural matters:

### **a) Disclosures of interest**

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

### **b) Quorum**

The Chairman shall confirm that the Sub-Committee is quorate.

### **c) Exclusion of Press and Public**

The Chairman shall ask the Subject Member, the Investigator and the Legal Adviser to the Sub-Committee whether they wish to ask the Sub-Committee to exclude the Press or Public from all or any part of the Hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Sub-Committee shall then determine whether to exclude the press and public from all or any part of the Hearing.

### **d) Hearing procedure**

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

### **e) If the Subject Member is not present at the start of the hearing:**

- The Chairman will ask the Legal Adviser whether the Subject Member has indicated his/her intention not to attend the hearing;
- The Sub-Committee shall then consider any reasons which the Subject Member has provided for not attending the hearing;
- If it is not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Sub-Committee shall decide whether to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the hearing to another date.

## **Making Findings of Fact**

6. After the preliminary procedures, the Sub-Committee will consider whether or not there are any significant disagreements about the facts contained in the IO's report.

If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.

7. If there is disagreement, the IO will present the evidence which is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The Subject Member and the Sub-Committee members may ask questions of the IO or any witness.
8. The Subject Member or his/her representative will then present the evidence which is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The IO and the Sub-Committee members may ask questions of the Subject Member or any witnesses.
9. 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 Subject Member.
10. If the Subject Member disagrees with most of the facts, the Investigator will make representations on all the relevant facts, instead of discussing each fact individually.
11. If the Subject Member disagrees with any relevant fact in the report without having given prior notice, he or she must give good reasons for not mentioning it before the hearing. After considering the Subject member's explanation, the Sub-Committee may continue with the hearing, relying on the information in the report; may allow the Subject Member to make representations about the issue and invite the IO to respond and call witnesses as necessary, or may postpone the hearing to arrange for appropriate witnesses to be present.
12. The Sub-Committee will consider in private all the evidence which has been heard or received as written evidence first, to establish its findings of fact.
13. On their return, the Chairman will announce the Sub-Committee's findings of fact.
14. At any stage in the consideration of the matter, the Sub-Committee may return to ask further questions of the IO or the Subject Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

#### **Did the Subject Member Fail to follow the Code of Conduct**

15. The Sub-Committee will then consider whether, based on the facts it has found, the subject member has failed to follow the Code.
16. The Subject Member will be invited to give relevant reasons why the Sub-Committee should decide that they have not failed to follow the Code.
17. The Sub-Committee will then consider any verbal or written representations from the Investigator.
18. The Sub-Committee may, at any time, question anyone involved on any point they raise on their representations.

19. The Subject Member will then be invited to make any final relevant points.
20. The Sub-Committee will consider in private the representations.
21. On their return, the Chairman will announce the Sub-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**

22. If the Sub-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**

23. If the Sub-Committee concludes that the Subject Member has failed to comply with the Code of Conduct, the Sub-Committee will consider any verbal or written representations from the Investigator and the Subject Member as to:
  - Whether the Sub-Committee should apply a sanction
  - What form any sanction should take
24. The Sub-Committee may ask questions of the Subject Member and the IO and take legal advice, to make sure they have the information they need in order to make an informed decision.
25. The Sub-Committee shall then consider in private whether to impose a Sanction on the Subject Member, and, if so, what sanction to impose and when that sanction should take effect.
26. The sanctions open to the Sub-Committee are:
  - censure (to express formal disapproval or formally rebuke the actions and/or behaviour) of the Subject Member (suitable for members who are no longer members of the authority);
  - restriction for a period not exceeding six months of the Subject Member's access to the premises of the authority or use of the resources of the authority, provided that those restrictions are reasonable and proportionate to the nature of the breach and do not unduly restrict the person's ability to perform the functions of a member;
  - partial suspension of the Subject Member for a period not exceeding six months;
  - suspension of the Subject Member for a period not exceeding six months;
  - require the Subject Member to submit a written apology in a form specified by the Sub-Committee;
  - require the Subject Member to undertake such training as the Sub-Committee specifies;
  - partial suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member submits a written apology in a form specified by the Sub-Committee;
  - partial suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has undertaken such

- training or has participated in such conciliation as the Sub-Committee specifies;
- suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has submitted a written apology in a form specified by the Sub-Committee;
  - suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies;
  - any combination of the above sanctions.
27. Any sanction imposed by the Sub-Committee shall commence immediately unless the Sub-Committee directs that a sanction shall commence on another date within six months from the imposition of the sanction.
28. In deciding to impose a sanction, the Sub-Committee shall consider all the relevant circumstances and shall have regard to any relevant Guidance issued by the Standards Board.
29. If the Sub-Committee has determined that the action which it could itself take (if there were a finding that there had been a failure to follow the provisions of the Code) would be insufficient then it may decide to refer the matter to the Adjudication Panel for determination. The reference itself can be made only if the President or Deputy President has agreed to accept it.
30. The Chairman will announce the decision of the Sub-Committee. Written notice of the findings of the Sub-Committee will be given as soon as it is reasonably practicable to the Subject Member, the Standards Board, the Standards Committee of any other authority concerned, any parish council concerned, and any person who made an allegation that gave rise to the investigation. Public notices shall be given in accordance with the Regulations.
31. Where the Sub-Committee determines that the Subject Member has failed to comply with the Code of Conduct, the Chairman shall inform the Subject Member of the right to seek permission to appeal against the Sub-Committee's findings or any sanction imposed by sending a notice in writing to:

**The President of the Adjudication Panel for England at  
23 Victoria Avenue, Harrogate, HG1 5RD**

To be received within 21 days of receipt of the written notice of findings.

#### **Recommendations to the Authority**

32. The Sub-Committee may consider making recommendations with a view to promoting higher standards of conduct among members.