

HERTFORDSHIRE COUNTY COUNCIL
STANDARDS COMMITTEE
FRIDAY 26 SEPTEMBER 2003 AT 10 A.M.

Agenda Item No:

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LOCAL HANDLING OF COMPLAINTS

Report of the County Secretary

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1. Purpose of Report

To inform the Committee of new Regulations about local handling of complaints, and to invite them to agree a procedure to follow when dealing with complaints.

2. Background

The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 made under Section 66 of the Local Government Act 2000 came into force on 30 June 2003. They enable an Ethical Standards Officer who has conducted an investigation into a complaint and completed a report on it to refer the report to the Monitoring Officer for consideration by the Standards Committee. The Regulations specify the sanctions which the Committee can impose if they find that the Code of Conduct has been breached.

The Government has announced that further Regulations will be made in the Autumn which will enable the Standards Board to refer complaints to the Monitoring Officer for investigation and report to the Standards Committee.

The Standards Board has issued Guidance on the Regulations. A copy is attached as Annex 1.

3. Hearings

- (1) The first step is for the Ethical Standards Officer to send the report of his investigation into the complaint to the Monitoring Officer.
- (2) The Monitoring Officer copies the report to the member concerned and arranges a hearing by the Standards Committee to consider the report.
- (3) The hearing will normally be held at least 14 days after receipt of the report and must be held within 3 months of receipt.

- (4) The Guidance recommends that the Committee adopt a preliminary process to deal with procedural issues, including identifying issues of disagreement, evidence to be called and whether the hearing should be in public or private.
- (5) At the hearing itself, the member concerned must be allowed to
 - be represented by a barrister, solicitor or (with the Committee's consent) any other person
 - make representations to the Committee orally or in writing
 - present evidence and call witnesses in support of his case. The Committee may place a limit on the number of witnesses if it considers the member's proposed number of witnesses unreasonable.
- (6) The Committee may itself arrange for witnesses to be called.
- (7) If the member fails to attend the hearing the Committee may:
 - consider the allegation and reach a decision, unless they are satisfied with the reason for the failure to attend
 - adjourn the hearing.
- (8) The Guidance recommends that a hearing is completed in one sitting, or in consecutive sittings of not more than one day in total.
- (9) The Guidance sets out a Model Procedure for hearings (at Appendix 2). This is discussed below, at para. 7.

4. Findings

Having conducted the hearing, the Committee may:

- a) find that the member has not failed to comply with the Code of Conduct of the County Council or of any other authority
- b) find that the member has failed to comply, but that no action needs to be taken
- c) find that the member has failed to comply, and that a sanction should be imposed.

5. Sanctions

- a) If the person is no longer a member of the Council the Committee can censure them.

- b) If they are still a member, the Committee can impose one or more of the following sanctions
 - (i) Censure
 - (ii) Restriction for up to 3 months on the member's access to premises and/or use of resources, but such restrictions must be reasonable and proportionate and must not unduly restrict the member's ability to perform their functions and duties
 - (iii) Suspension, or partial suspension, for up to 3 months, or until the member apologises in writing or undertakes any specified training or conciliation. 'Suspension' means suspension from office as a Councillor. 'Partial Suspension' means suspension from particular functions or responsibilities.
- c) The Committee must publish a summary of its findings in one or more newspapers.
- d) The Guidance recommends factors to be taken into account in deciding the appropriate sanction.

6. Appeals

A member who is the subject of a finding by the Standards Committee may apply to the President of the Adjudication Panel for permission to appeal. The request must be received within 21 days. If the President grants permission, the appeal is heard by an appeals tribunal. The tribunal can uphold or overturn the finding of the Committee; if it upholds it the tribunal can require a different penalty to be imposed.

7. Procedure for Hearings by the Committee

The Committee needs to decide whether to follow the Model Procedure at Appendix 2 of the Guidance, or whether to modify it in any way. The Model Procedure follows the requirements of the Regulations and is in the main acceptable. There are some aspects however which appear unnecessarily complicated. An amended Procedure is attached as Annex 2 for consideration by the Committee. The main change is to reduce the decision-making stages of the hearing from three to two.

8. Financial Implications

None.

To view this document please click on the link below:

[Standards Committee Determinations
\(Guidance for monitoring officers and Standards Committees\)](#)

HERTFORDSHIRE COUNTY COUNCIL STANDARDS COMMITTEE

Procedure for hearings by the Committee in relation to matters referred by an Ethical Standards Officer.

Interpretation

- 1 'Member' means the member of the council who is the subject of the allegation being considered by the Standards Committee. Unless stated otherwise. It also includes the member's nominated representative.
- 2 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the Council, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator mean the County Secretary (i.e. Monitoring Officer) or other investigating officer, and his or her nominated representative.
- 3 'Committee' also includes a sub-Committee of the Standards Committee.
- 4 'Legal advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the County Secretary, another legally qualified officer of the council, or someone appointed for this purpose from outside the council.

Representation

- 5 The 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 from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the member and the investigator if they are present.

Setting the scene

- 7 After all the members and everyone involved have been formally introduced, the Chairman 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 will move on to consider whether or not 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 will move on to the next stage of the hearing. See paragraph 16 below.
- 11 If there is a disagreement, the investigator, if present, shall be invited to make representations to support the relevant findings of fact in the report. With the Committee's permission, the investigator may call supporting witnesses to give evidence. The Committee will give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.
- 12 The member will then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call witnesses to give evidence.
- 13 At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
- 14 If the member disagrees with most of the facts, the investigator should start by making representations on all the relevant facts, instead of discussing each fact individually.
- 15 If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the Committee may then:
 - a continue with the hearing, relying on the information in the investigator's report;
 - b allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
 - c postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.
- 16 The Investigator will sum up his or her case on the facts, and (if he or she wishes) make representations on whether the member has breached the Code.
- 17 The member will sum up his own case on the facts and will be invited to make representations on whether he or she has breached the Code.
- 18 All parties will then withdraw, leaving the Committee with their legal advisor to consider their decision on the facts and whether the member has breached the Code.
- 19 The Committee will recall the parties and the Chairman will announce the Committee's decision.

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

- 20 If the Committee decides that the member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the council.

If the member has failed to follow the Code

- 21 If the Committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:
- a whether or not the Committee should set a penalty; and
 - b what form any penalty should take.
- 22 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.
- 23 All parties will then withdraw to allow the Committee, with their legal advisor, to consider whether or not to impose a penalty on the member and, if so, what the penalty should be.
- 24 The Committee will recall the parties and the Chairman will announce the Committee's decision. The Chairman will also notify the member of the right of appeal.

Recommendations to the authority

- 25 After considering any verbal or written representations from the investigator, the Committee will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among members.

The written decision

- 26 The County Secretary will write to the member with a summary of the decision within two working days. The County Secretary will provide a full written decision to relevant parties within two weeks and will arrange for any necessary publication of the decision.