

**Swindon Borough Council
Procedure for Determination of Complaints
Referred by the Ethical Standards Officer**

**Local Government Act 2000
The Local Authorities (Code of Conduct)
(Local Determination) Regulations 2003**

Adopted by the Standards Committee: 17 November 2003

Contents

	Page No.
1. Interpretation	3
2. Right to Representation	3
3. Legal Advice	4
4. Timescale	4
5. Pre-Hearing	4
6. Procedure for the Hearing – Setting the Scene	6
7. Absence of the Member	6
8. Making Findings of Fact	6
9. Did the Member fail to comply with the Code?	7
10. If the Member has not failed to comply with the Code of Conduct	8
11. If the Member has failed to comply with the Code of Conduct	8
12. The Written Decision	9
Form A	10
Form B	11
Form C	12
Form D	13
Form E	15
Form F	16

Procedure for Determination of Complaints Referred by the Ethical Standards Officer

Under the provisions of the Local Government Act 2000 Ethical Standards Officers may carry out investigations into allegations that a Member of the Council has failed to comply with the Code of Conduct. Where the Ethical Standards Officer carries out the investigation, they may refer investigation reports to the Monitoring Officer for the Standards Committee to decide whether there has been a failure to comply with the Code and if there has been, what the penalty should be. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 provide a framework for what happens when an Ethical Standards Officer refers a report. The Regulations require the Standards Committee to conduct a hearing using such procedures as it considers appropriate having regard to any guidance issued by the Standards Board for England.

1. INTERPRETATION

- 1.1 'Member' means the elected or co-opted 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.
- 1.2 'Investigator' means the Ethical Standards Officer who referred the report to the Council, and includes his or her nominated representative.
- 1.3 'Legal Advisor' means the Officer responsible for providing legal advice to the Standards Committee. This will usually be the Monitoring Officer, unless he/she has a conflict of interest in which case another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council, who is also legally qualified.
- 1.4 'Chair' means the member of the Standards Committee appointed as Chair for each individual hearing.
- 1.5 'Monitoring Officer' means the Officer appointed by the Council to be the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989. Where the context refers to administrative acts being carried out it shall be permissible for those to be done by a member of the Monitoring Officer's staff.

2. RIGHT TO REPRESENTATION

- 2.1 The Member may be represented or accompanied during the meeting by a solicitor, barrister, or (with the permission of the Standards Committee) another person.

3. LEGAL ADVICE

- 3.1 The Standards Committee may take legal advice from its Legal Advisor at any time during the hearing or while it is considering the outcome. The substance of any legal advice given to the Standards Committee should be shared with the Member and the Investigator if they are present at the hearing.

4. TIMESCALE

- 4.1 The Regulations require a hearing to be held within 3 months of receipt of the Ethical Standards Officer's report by the Monitoring Officer. All hearings will be arranged in the shortest timescale possible, but may not be held until at least 14 days after the Monitoring Officer has sent the Investigator's report to the Member, unless the Member agrees otherwise.

5. PRE-HEARING

- 5.1 The following pre-hearing process to deal with procedural matters will normally be carried out in writing, although exceptionally, a face-to-face meeting between the Chair, the Member, the Legal Advisor, and the Investigator, and their representatives may be necessary.
- 5.2 As soon as reasonably practicable, and wherever possible within 3 working days after receiving a copy of the Investigator's Report from the Ethical Standards Officer, the Monitoring Officer shall send a copy of the Investigator's Report to the Member.
- 5.3 The Monitoring Officer (or an Officer on his / her behalf) in consultation with the Chair of the Committee, will also write to the Member, enclosing a copy of this Procedure, to propose a date, time and place for the hearing and to explain the Member's rights. They will ask for a written response from the Member, within a set time of 10 working days, to find out whether or not he or she:
- disagrees with any of the findings of fact in the Investigator's Report, and if so, which ones and the reasons for any disagreements;
 - wants to be represented at the hearing by a solicitor, barrister or any other person (the latter will require the express permission of the Standards Committee which is not to be unreasonably withheld);
 - wants to give evidence to the Standards Committee, either orally or in writing;
 - wants to call relevant witnesses to give evidence or submit written evidence on any disagreements as to the findings of fact or mitigation to the Standards Committee;
 - wants any part of the hearing to be held in private;

- wants any part of the Investigator's Report or other relevant documents to be withheld from the public; and
- can come to the hearing.

NOTE: The Member is encouraged to use the forms attached to this part of the Procedure to identify any findings of fact that he or she disagrees with (Form A) and outline any further evidence that he or she believes the Standards Committee should consider (Form B).

The Member is encouraged to give advance consideration to any representations to be taken into account if he or she is found to have failed to follow the Code of Conduct (Form C).

The Member will be asked to give information about his or her requirements for representation and witness attendance at the hearing (Forms D and E).

- 5.4 The Monitoring Officer will ask the Investigator to comment on the Member's response, within a set time of 10 working days from the date of receipt, to say whether or not he or she:
 - wants to be represented at any hearing (and if so to indicate their availability to attend);
 - wants to call relevant witnesses to give evidence to the Standards Committee;
 - wants any part of the hearing to be held in private; and
 - wants any part of the Investigator's Report or other relevant documents to be withheld from the public.
- 5.5 For the avoidance of doubt, should the Member and/or the Investigator fail to respond within the time set for a response they will, for the purpose of this procedure, be deemed to have agreed to the findings of fact or the Member's response as the case may be.
- 5.6 Those members of the Standards Committee who will be present for the hearing will then meet within 10 working days to consider any responses from the Member concerned and the Investigator, and to decide whether any other witnesses should be present who they feel may help in determining the case, including the person who made the original allegation. However, no witnesses can be ordered to appear or give evidence. They should then resolve any issues or disagreements about how the hearing should be conducted, which have been raised but not resolved during the pre-hearing process above.

NOTE: The Monitoring Officer will produce a pre-hearing process summary to include information listed in Form F and will include this with the letter to everyone involved.

5.7 When the Standards Committee has considered any responses as set out above, the Monitoring Officer, in consultation with the Chair, should then write to everyone involved within 5 working days of the pre-hearing and at least 10 working days before the hearing, to:-

- 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;
- state whether the Member or the Investigator will go to or be represented at the hearing;
- list those witnesses, if any, who will be asked to give evidence; and
- outline the proposed procedure for the hearing.

6. PROCEDURE FOR THE HEARING - SETTING THE SCENE

6.1 After the members of the Standards Committee and everyone involved have been formally introduced, the Chair should explain how the Standards Committee is going to run the hearing.

7. ABSENCE OF THE MEMBER

7.1 If the Member is not present at the time and place fixed for the hearing and the Standards Committee is satisfied that he or she has been given notice of the hearing, the Standards Committee may, unless it is satisfied that there is sufficient reason for the Member's absence, consider the allegation and make a determination in the absence of the Member concerned; or adjourn the hearing to another date.

8. MAKING FINDINGS OF FACT

8.1 After dealing with any preliminary issues, the Standards Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.

8.2 If there is no disagreement about the facts, the Standards Committee will move on to the next stage of the hearing set out at section 9 below.

8.3 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 Standards Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Standards Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.

- 8.4 The Member should then have the opportunity to make representations to support his or her version of the facts and, with the Standards Committee's permission, to call any necessary witnesses to give evidence.
- 8.5 At any time, the Standards 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.
- 8.6 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. After considering the Member's explanation for not raising the issue at an earlier stage, the Standards Committee may, if the Investigator is present:
 - continue with the hearing, relying on the information in the Investigator's Report;
 - allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or
 - adjourn the hearing to arrange for appropriate witnesses to be present.
- 8.7 Should the circumstances mentioned in paragraph 8.6 arise, and the Investigator is not present, then the Standards Committee will consider also whether or not it would be in the public interest to continue in his or her absence. If the Standards Committee decides that it is not in the public interest to continue, it shall adjourn the hearing to allow the Investigator to attend or to make further representations.
- 8.8 The Standards Committee will usually move to another room to consider the representations and evidence in private.
- 8.9 On their return, the Chair will announce the Standards Committee's findings of fact.

9. DID THE MEMBER FAIL TO COMPLY WITH THE CODE?

- 9.1 The Standards Committee will then consider whether or not, based on the facts either as agreed at section 8.2 or based on its findings following sections 8.3 to 8.8, it has found the Member has failed to comply with the Code of Conduct.

- 9.2 The Standards Committee will consider any oral or written representations from the Member as to why they should not decide that he or she has failed to comply with the Code of Conduct.
- 9.3 The Standards Committee will consider any verbal or written representations from the Investigator.
- 9.4 The Standards Committee may, at any time, question anyone involved on any point they raise in their representations.
- 9.5 The Member will, if present, be invited to make any final relevant points.
- 9.6 The Standards Committee will then move to another room to consider the representations. An Officer shall accompany the Standards Committee for administrative/minuting purposes.
- 9.7 The Committee may make one of the following findings:-
- the Member has not failed to comply with the Council's Code of Conduct; or
 - the Member has failed to comply with the Council's Code of Conduct.
- 9.8 On their return, the Chair will announce the Standards Committee's decision as to whether or not the Member has failed to comply with the Code of Conduct.
- 10. IF THE MEMBER HAS NOT FAILED TO COMPLY WITH THE CODE OF CONDUCT**
- 10.1 If the Standards Committee decides that the Member has not failed to comply with the Code of Conduct, the Standards Committee will consider having regard to any oral or written representations from the Investigator whether it should make any recommendations to the Council with a view to promoting high standards of conduct among Members.
- 11. IF THE MEMBER HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT**
- 11.1 If the Standards Committee decides that the Member has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to:
- whether or not the Standards Committee should set a penalty; and
 - what form any penalty should take.
- 11.2 The Standards 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.

11.3 The Committee will then move to another room to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be. An Officer shall accompany the Standards Committee for administrative/minuting purposes.

11.4 On their return, the Chairman will announce the Standards Committee's decision in accordance with the penalties available under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, namely any one or a combination of the following:-

- censure the Member (this is the only form of penalty available when dealing with a person who is no longer a member of the Council);
- restrict the Member's access to the Council's resources for up to 3 months, which could include limiting their access to the Council offices;
- suspend or partly suspend the Member for up to 3 months;
- suspend or partly suspend the Member for up to 3 months on the 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 Standards Committee orders.

12. THE WRITTEN DECISION

12.1 The Standards Committee will announce its decision on the day and provide a short written decision either on that day, or the following working day. It will also issue a full written decision as soon as reasonably practicable after the meeting.

FORM A

Please enter the number of any paragraph where you disagree with the findings of fact in the Ethical Standards Officer's (ESO) report, and give your reasons and your suggested alternative.

Member's response to the evidence set out in the ESO's report

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

Please attach separate sheets if necessary.

FORM B

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

Other evidence relevant to the allegation

Paragraph number	Details of the evidence
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

FORM C

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.

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

Please note that no such finding has yet been made.

Paragraph number	Factors for the Standards Committee to take into account when deciding whether or not to order any censure, restriction of resources or allowances, suspension or partial suspension
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

FORM D

Arrangements for the Standards Committee hearing

Please tick the relevant boxes

<p>1 The proposed date for the Standards Committee hearing is given in the accompanying letter. Are you planning to go to the hearing?</p> <p>If 'No', please explain why.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>	<p>Reason:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>2 Are you going to present your own case?</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>	
<p>3 If you are not presenting your own case, will a representative present it for you?</p> <p>If 'Yes', please state the name of your representative.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>	<p>Name:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>4 Is your representative a practising solicitor or barrister?</p> <p>If 'Yes', please give his or her legal qualifications. Then go to question 6.</p> <p>If 'No', please go to question 5.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>	<p>Qualifications:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>5 Does your representative have any connection with the case?</p> <p>If 'Yes', please give details</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>	<p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

<p>6 Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p>	<p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	
<p>7 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><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>8 Do you, your representative or witnesses have any special needs (for example, is an interpreter needed)?</p> <p>If 'Yes', please give details.</p>	<p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>9 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><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>10 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><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

Please attach separate sheets if necessary.

FORM E

Details of proposed witnesses to be called

<p>Name of witness or witnesses</p>	<p>1</p> <p>2</p> <p>3</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>WITNESS 1</p> <p>A Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> <p>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?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p> <p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Outline of evidence:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Outline of evidence:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

FORM F

Checklist for the pre-hearing process summary

After the Standards Committee has received responses from the member about whom the allegation has been made and from the 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 member about whom the allegation has been made;
- the name of the person who made the original allegation (unless there are good reasons to keep his or her identity confidential);
- case reference numbers of the Council and 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;
- 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 allegation;
- the relevant section or sections of the Code of Conduct;
- the findings of fact in the Ethical Standards Officer's report that are agreed;
- the findings of fact in the Ethical Standards Officer's report that are not agreed;
- whether or not the member or the Ethical Standards Officer will attend or be represented;
- the names of any witnesses who will be asked to give evidence; and
- an outline of the proposed procedure for the hearing.