

Standards Committee

Consideration of complaint of a breach of the Protocol for Member / Officer relations

Practical arrangements for the hearing at the Standards Committee

Interpretation:

- “Respondent”** means the person who is the subject of the allegation(s) being considered by the Standards Committee, unless stated otherwise. It also includes the Member’s nominated representative
- “Investigator”** means the Investigating Officer, and includes his or her nominated representative

1. The elected Chairman will introduce all those present and explain how the committee is going to run the hearing

Making Findings of Fact

2. The Investigator will present his case in the presence of the Respondent and may call witnesses to support the relevant findings of fact in the report.
3. The Respondent will have the opportunity to ask questions of any witnesses he or she may call
4. The committee may ask questions of the Investigator and witnesses
5. The Respondent will present his or her case in the presence of the Investigator and call such witnesses as he or she wishes to support his or her version of the facts
6. The Investigator will have the opportunity to ask questions of the Respondent and his or her witnesses
7. The committee may ask questions of the Respondent and his or her witnesses
8. The committee will then retire to consider the representations and evidence in private
9. Upon the committee’s return, the Chairman will announce the committee’s findings of fact

Post Finding of Fact Procedure 1 - based on the facts found has there been a breach of the Protocol?

10. The Respondent will be invited to give relevant reasons why the committee should not decide that he or she has breached the Protocol
11. The committee will consider any verbal or written representations from the Investigator
12. The committee may, at any time, question anyone involved on any point they raise in their representations
13. The Respondent will be invited to make any final relevant points.
14. The committee will then retire to consider the representations
15. Upon the committee's return, the Chairman will announce the committee's decision as to whether or not the Respondent has breached the Protocol

Post Finding of Fact procedure 2 – recommendations and/or penalty

16. If the committee decide that the Respondent **has not** breached the Protocol, then it can move on to consider whether it should make any recommendations to the Council, Leader of the Council, Group Leader or Chief Executive as appropriate. The committee will at this stage consider any further verbal or written representations from the Investigator on whether or not the committee should make any recommendations to the authority, with a view to promoting high standards of conduct among members and officers.
17. If the committee decide that the Respondent **has** breached the Protocol, then it will consider any verbal or written representations from the Investigator and the Respondent as to:
 - Whether or not the committee should impose a sanction or penalty; and
 - What form any sanction or penalty should take (*see appendix A attached*)
18. The committee may question the Investigator and Respondent, and take legal advice if appropriate
19. The committee will then retire to consider whether or not to impose a sanction or penalty on the Respondent, and if so, what the penalty should be
20. The committee will return and the Chairman will announce the committee's decision and will provide a short written decision on the day.

Post hearing procedure

21. A written decision will be issued as soon as practicable following the end of the hearing, which will include full reasons for its decision.
22. The committee may arrange to publish a summary of its findings and decision as to whether there is a breach of the Protocol and where appropriate the sanction or penalty set. If the finding is that the Respondent has not breached the Protocol, then that Member can ask the committee not to have the information published.

Appeal

A Respondent who is the subject of a Standards Committee finding has no right of appeal other than by judicial challenge

(Appendix A – List of sanctions or penalties)

Standards Committee Hearing - Potential Sanctions for breach of the Protocol

On their return, the Chairman will announce the Standards Committee's decision in relation to sanctions or penalties, namely any one or a combination of the following:-

- censure the Respondent;
- request the person in breach to submit a written apology in a form specified by the Standards Committee;
- request that the Respondent to undertake such training as the Standards Committee specifies;
- request that the Respondent participates in such conciliation as the Standards Committee specifies;
- report to Council on the outcome of the hearing with an appropriate recommendation;
- advise the Chief Executive, if the Respondent is an officer of the Council, and/or the Leader of the Council and/or Leader of the Political Group to which the person belongs if he or she is a councillor, of the outcome of the hearing in order that they can consider what appropriate disciplinary or other action should be taken, taking into account any relevant case law, which could include:
 - o Formal letter of censure from them;
 - o Formal censure of members e.g. through a motion at Council or Committee of the Council;
 - o Securing the removal of a member from cabinet / committees;
 - o Issuing a press release setting out the outcome of the hearing;

Considering the sanction

When deciding on a penalty or sanction, the standards committee should ensure that it is reasonable and proportionate to the Respondent's behaviour. Before deciding what penalty or sanction would be appropriate, the standards committee should consider the following questions, along with any other relevant circumstances:

- What was the Respondent's intention? Did he or she know that they were failing to follow the Protocol?
- Did the Respondent 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 Protocol?
- What were the potential results of the failure to follow the Protocol?

- How serious was the incident?
- Does the Respondent accept he or she was at fault?
- Did the Respondent apologise to the relevant people?
- Has the Respondent previously been warned or reprimanded for similar misconduct?
- Has the Respondent failed to follow the Protocol before?
- Is the Respondent likely to do the same thing again?
- How will the sanction or Penalty be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a Respondent has repeatedly or blatantly misused the authority's information technology resources, the standards committee may consider withdrawing those resources from the Respondent.

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 in relation to a breach of the Code of Conduct which is equally applicable to a breach of the Protocol:

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 Protocol.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Protocol.

