

# **Procedure Guide for Investigations and Hearing Sub Committee Determinations**

## **1. INVESTIGATION PRELIMINARIES**

### **Referral of complaint by the Assessment Sub-committee or Review Sub-committee to the Monitoring Officer for investigation**

#### **1.1 Delegation of investigation**

- (1) The Monitoring Officer will consider whether he/she personally investigates the complaint or delegates the role of investigation to another officer/person. The decision of the Monitoring Officer will be based on a careful assessment of the circumstances of the particular issue and any other issues appropriate to him/her and/or the Authority. Delegation of the investigation will be appropriate in the case of a conflict of interest.
- (2) The Monitoring Officer will record that he/she has delegated the investigative role to another person.
- (3) The Monitoring Officer may at any time, obtain such professional advice as may be necessary for the purposes/conduct of the investigation.

#### **1.2 Modification of this Procedure**

- (1) The conduct of the investigation will be undertaken in accordance with the rules detailed in this part of this Procedure.
- (2) The Monitoring Officer may for the purposes of an investigation and in consultation with the Subject Member, vary this part of the Procedure in any particular instance where the Monitoring Officer is of the opinion that such a variation is necessary, in the interests of fairness. Reasons for the variation will be recorded in writing.

#### **1.3 General rights of the Subject Member**

- 1.3.1** The Subject Member will be provided with an opportunity to make representations on the complaint and the Investigating Officer's draft report. **(section 2.4.14 of this Procedure).**

**1.3.2** In circumstances requiring a formal Hearing Sub-committee hearing (**section 3 of this Procedure**), the Subject Member may:

- (i) attend the Hearing Sub-committee hearing and present evidence in support of his/her case;
- (ii) make representations at the Hearing Sub-committee hearing orally or in writing or through a representative;
- (iii) subject to the rules detailed in **section 1.3.3 of this Procedure**, call witnesses to the Hearing Sub-committee, to give evidence.

**1.3.3 Witnesses**

- (i) Witnesses will be identified at the investigation stage and their evidence supported by witness statements and/or notes of interview with the Investigating Officer. Only in exceptional circumstances, will a witness be permitted to attend a hearing without first having submitted a witness statement in advance of the hearing. The decision as to whether the circumstances are exceptional, will be a matter for the Hearing Subcommittee, whose decision will be final.
- (ii) Limits may be placed by the Hearing Sub-committee on the number of witnesses called to a formal hearing if the Sub-committee is of the view that the number is unreasonable.
- (iii) The Hearing Sub-committee may arrange for the attendance at a formal hearing of such witnesses, as the Sub-committee deems appropriate, including the Complainant. However, the Sub-committee cannot compel witnesses to appear or give evidence but could draw adverse inferences.
- (iv) The Hearing Sub-committee has the right to govern its own procedures as long as it acts fairly. The Sub-committee may therefore choose not to hear from certain witnesses if the Sub-committee is of the view that the witnesses will simply be repeating evidence of earlier witnesses or if a witness will not be providing evidence that will assist the Sub-committee in reaching its decision. The Sub-committee may also choose not to hear from witnesses if they have not submitted a witness statement in accordance with the rules detailed in **section 1.3.3 (i) of this Procedure**.
- (v) If the Subject Member is to call witnesses to the Sub-committee hearing, he/she must provide notification in advance (**Form E contained in The Standards Committee Determinations Toolkit**).

#### 1.3.4 Notification to relevant parties

- (1) The Monitoring Officer will, within seven working days of referral of a complaint by the Assessment Sub-committee or Review Sub-committee, notify the Subject Member and the Complainant, in writing:
  - (i) that a complaint has been referred to the Monitoring Officer for investigation and determination by the Hearing Sub-committee;
  - (ii) of the name of the person undertaking the investigation, or that someone is to be appointed.
- (2) The Monitoring Officer will record that he/she has delegated the investigative role or the taking of other action to another person.
- (3) An Investigating Officer will be appointed by the Monitoring Officer.
- (4) Within seven working days of being appointed, the Investigating Officer will notify the following in writing:

##### **Subject Member**

- (i) that he/she has been appointed by the Monitoring Officer to investigate the complaint;
- (ii) of the details of the conduct which is the subject of the complaint, including providing the Subject Member with a copy of the complaint and the Assessment Sub-committee's or Review Sub-committee's written summary of the complaint (***unless a written summary has not been provided***);
- (iii) of the identity of the Complainant;
- (iv) of the sections(s) of the Authority's Code of Conduct which appear to be relevant to the complaint;
- (v) of the procedure which will be followed in respect of the investigation;
- (vi) that the Subject Member provide a response within 14 days (unless an extension of time is agreed) of notification with specific reference to:
  - (a) whether he/she admits or denies the breach of the Authority's Code of Conduct (**Form A contained in The Standards Committee Determinations Toolkit**);
  - (b) matters which the Investigating Officer should take into account; where possible, providing copies of any documents etc and where original documents may be inspected (**Form B contained in The Standards Committee Determinations Toolkit**);

(c) contact details of any potential witnesses (**Form D contained in The Standards Committee Determinations Toolkit**).

### **The Complainant**

The notification to the Complainant will include the matters referred to in paras. (i), (ii), (iv),(v) and (vi)(b) and (c) above.

### **Another Authority (dual-hatted Subject Member)**

Where the Subject Member is also a member WSCC, the notification to WSCC's standards committee will include the Assessment Sub Committee's or Review Sub-committee's Decision Notice without a summary and that the complaint is the subject of an investigation.

### **1.3.5 Confidentiality Agreement**

The Investigating Officer will require that each recipient of information referred to in **section 1.3.4 of this Procedure**, maintains confidentiality and that the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. For the avoidance of doubt, members of the Sub-committee are bound by the confidentiality provisions detailed in the Code of Conduct.

## **2 THE INVESTIGATION**

**2.4.1** The Monitoring Officer and the Investigating Officer will have regard to guidance issued from time to time by the SBE and will comply with any ESO direction.

### **Monitoring Officer power to refer back to the Assessment Sub-Committee**

**2.4.2** Where a matter has been referred to the Monitoring Officer by the Assessment Sub-Committee for investigation, the Monitoring Officer may in accordance with the rules **detailed in sections 4.8 and 2.4.6.2** of this Procedure refer the matter back to the Assessment Sub-Committee at any time before the end of the investigation.

**2.4.3** The consideration by the Assessment Sub-committee of a referral back by the Monitoring Officer, will be in closed session.

**2.4.4** The Assessment Sub-Committee will consider the referral back in accordance **with section 2.4.6.5 of this Procedure**.

## **2.4.5 Conduct of Investigation**

### **Powers and purpose of investigation**

(a) The Investigating Officer's powers of investigation include investigations into breaches of the Code of Conduct.

(b) The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Hearing Sub-Committee, a report which will provide the Sub-Committee with sufficient information to determine whether the Subject Member has acted in breach of the Authority's Code of Conduct and where there has been a breach, whether the Sub-committee should sanction the Subject Member.

(c) The Investigating Officer will be aware of his/her obligations under the Data Protection Act 1998 and the Human Rights Act 1998 and other relevant legislation.

## **2.4.6 Evidence of further breaches and referrals back to the Assessment Subcommittee**

**2.4.6.1** (a) The Investigating Officer cannot investigate further potential breaches of the Authority's Code of Conduct, arising out of an investigation.

(b) Where, in the course of his/her investigation, the Investigating Officer becomes aware of any new matter(s) which appears to him/her to indicate a further breach, other than the breach which he/she is currently investigating, the Investigating Officer will report to the Monitoring Officer who will either:

(i) tell the person who provided the information that the alleged further breach cannot be investigated as part of the existing investigation and that he/she may therefore wish to make a separate complaint to the Assessment Subcommittee;

or

(ii) under notice to the Subject Member refer the matter to the Assessment Sub-committee as a 'new complaint'.

**2.4.6.2** During an investigation, a case may be referred back to the Assessment Subcommittee by the Monitoring Officer in the following situations.

(i) the Monitoring Officer believes that the evidence suggests that the case is more or less serious than may have seemed first apparent to the Sub-committee and had the Sub-committee been aware of that evidence, it would have come to a different decision about how the case was to be dealt with;

(ii) the Subject Member has died, is \*seriously ill (i.e. a terminal illness or degenerative condition which would prevent them from engaging with the process of investigation or hearing for the foreseeable future), has

resigned from the Authority and the Monitoring Officer is of the opinion that it is no longer appropriate to continue with the investigation.

*\*to be established from a reliable and authoritative source*

- 2.4.6.3** Referral back to the Assessment Sub-committee must be made before the Investigating Officer concludes his/her investigation.
- 2.4.6.4** The Monitoring Officer will notify the Subject Member and the Complainant of a decision to refer the case back to the Assessment Sub-committee and will provide the timescales within which the matter will be dealt with.
- 2.4.6.5** The Assessment Sub-committee will deal with the referral back as an 'initial complaint' The Sub-committee may refer the case back to the Monitoring Officer and limit the circumstances in which the case can be referred back to the Sub-committee e.g. referred back only in the circumstances set out in section **2.4.6.2 (ii) above**. The Sub-committee may direct that the matter will not be referred back a further time

#### **2.4.7 Disclosure of information**

The Investigating Officer will not disclose information obtained during the course of the investigation unless in accordance with **section 2.4.12 (d) of this Procedure**.

#### **2.4.8 Defer or terminate investigation**

##### **2.4.8.1 Deferral**

The Monitoring Officer may defer part or all the investigation when one or more of the following conditions are met:

- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct;
- (b) investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
- (c) the investigation might prejudice another investigation or court proceedings;
- (d) on-going investigation by another regulatory body;
- (e) serious illness of a key party;
- (f) genuine unavailability of a key party.

- 2.4.8.2** In some cases, the investigation may run parallel with another investigation e.g. local government ombudsman investigating a Council decision. The Investigating Officer will liaise with the other investigator to agree the steps that each party will take, how each party will be kept informed of the progress and outcome of their case etc.

- 2.4.8.3** The Monitoring Officer may in accordance with section 17 of the Council's Procedure for dealing with complaints, refer the investigation to the SBE, to allow for closer co-operation between the two investigators.
- 2.4.8.4** The Monitoring Officer will keep deferred cases under review, in the interests of natural justice.
- 2.4.8.5** Notification of the deferral and resumption of the investigation and the reasons for the deferral/resumption be will given to the persons listed in **section 2.4.15(5) of this Procedure.**

**2.4.8.6 Termination of investigation**

The Investigating Officer may terminate his/her investigation at any point, where he/she is satisfied that he/she has sufficient information to enable him/her to report to the Hearing Sub-committee.

**2.4.9 Agreeing in advance the relevance of documents**

It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents which will be relied on, or in support of, the Subject Member's case. The purpose of this agreed set of documents is to ensure that the Hearing Sub-committee only read those documents which are relevant to the hearing.

**2.4.10 Advice and Assistance to the Monitoring Officer**

The Monitoring Officer may require:

- (a) the Authority to provide such advice and assistance as he/she may reasonably need to assist him/her in the investigation;
- (b) the Authority to afford him/her reasonable access to such documents in the possession of the Authority as appear to the Monitoring Officer to be necessary for the purpose of the conduct of the investigation.

**2.4.11 Witnesses**

(i) The Investigating Officer cannot compel the attendance of witnesses or their co-operation.

(ii) A Subject Member or any member of an Authority who is regarded as a potential witness or otherwise involved in the conduct of the investigation may be regarded as being in breach of the Authority's Code of Conduct, if they fail to co-operate with the Monitoring Officer during the conduct of the investigation.

(iii) An officer of the Authority who is regarded as a potential witness or otherwise involved in the conduct of the investigation may be regarded as

being in breach of the Authority's Employee Code of Conduct, if they fail to cooperate with the Monitoring Officer during the conduct of the investigation.

(iv) The Investigating Officer will confirm individual witness statements/interview notes with the parties concerned before finalising his/her draft report (**section 2.4.15 of this Procedure**).

#### **2.4.12 Managing Information/Confidentiality**

a) Maintaining confidentiality during the conduct of the investigation reduces opportunities for evidence to be seen as unfair or biased and preserves the integrity of the investigation.

(b) The information that the Investigating Officer obtains during the course of his/her investigation will be treated as confidential. The Subject Member, the Complainant, interviewees, witnesses and others aware of the investigation will be required to maintain confidentiality (**Form E contained in The Standards Committee Determinations Toolkit**).

(c) The fact that an investigation is being conducted does not need to remain confidential.

(d) Information obtained during an investigation may be disclosed in the following circumstances:

i. the disclosure will enable and/or assist the Standards Committee, Assessment Sub-committee, Review Sub-committee and the Monitoring Officer to perform their statutory functions;

ii. the Monitoring Officer has permission from the person the information relates to, to disclose it;

iii. the information has already lawfully been made public;

iv. the disclosure is made for purposes of criminal proceedings in the UK;

v. the Monitoring Officer is required to disclose the information by a Court or similar body.

#### **2.4.13 Investigation costs**

The Monitoring Officer may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, reimburse any person for reasonable costs associated with the production of documents and /or any other information which the Monitoring Officer considers to be appropriate.

#### **2.4.14 The draft report**

a) On the conclusion of his/her investigation and/or when the Investigating Officer is satisfied that he/she has sufficient information to present to the Hearing Sub-committee or has obtained as much information as is likely to be reasonably capable of being obtained, the Investigating Officer will issue a draft report (clearly labelled DRAFT) which will be sent in confidence, to the Subject Member and the Complainant for comment. The draft report will be marked 'confidential'. The draft report will detail:

(i) the relevant provisions of the law, the Authority's Code of Conduct;

(ii) a summary of the complaint(s);

(iii) the Subject Member's initial response to notification of the complaint;

(iv) relevant information, explanations etc which the Investigation Officer has obtained in the course of the investigation;

(v) a list of any documents relevant to the matter;

(vi) a list of those persons/organisations who have been interviewed;

(vii) a note of any person/organisation who has failed to co-operate with the investigation and the manner in which they have failed to cooperate;

(viii) a statement of the Investigating Officer's draft findings of fact and reasons;

(ix) the Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct.

(b) The draft report will state that it does not necessarily represent the Investigating Officer's final finding(s) and explanation and that the investigating Officer will present a final report to the Hearing Sub-committee once he/she has considered any comments received on the draft.

(c) The Subject Member and the Complainant may make written representations on the draft report. Such representations must be received by the Investigating Officer within 14 days of the issue of the draft report, unless an extension of time has been agreed with the Investigating Officer.

(d) The draft report will not be sent to witnesses or other parties interviewed, as the Investigating Officer will have confirmed individual statements with the parties concerned.

(e) Responses to the draft report may reveal the need for further investigation by the Investigating Officer or they may add nothing of further relevance.

(f) The Investigating Officer will issue a second draft report where responses

reveal the need for further investigation and where responses result in such significant changes to the report.

(g) Once the Investigating Officer has determined that the responses received from the Subject Member add nothing of substance to the investigation, he/she will make his/her final conclusions and recommendations to the Monitoring Officer in the manner set out in **section 2.4.15 of this Procedure**.

## **2.4.15 The Investigating Officer's Final Report**

### **Finalisation of Draft Report**

(1) Having considered and/or amended the draft report in light of any comments received, the Investigating Officer will make one of the following findings:

(a) that there has been a breach of the Authority's Code of Conduct (referred to as 'a finding of failure');

(b) that there has not been a breach of the Authority's Code of Conduct (referred to as 'a finding of no failure').

(2) The Investigating Officer will produce a final written report on his/her investigation and finding(s) (the IO Report). The IO Report will be clearly labelled FINAL, dated and open to public inspection i.e. through the Hearing Sub-committee agenda process, unless it contains confidential and/or exempt information.

(3) The IO Report will include the matters referred to in **section 2.4.14(i) – (ix) of this Procedure**.

(4) The IO Report will be presented to the Monitoring Officer.

(5) Within seven working days of the date of the IO Report, the Monitoring Officer will send a copy to:

1. the Subject Member;
2. the Complainant;
3. WSCC's standards committee (applicable only where the Subject Member is serving at both Borough and County level).

(6) Once an investigation is complete, the case cannot be referred back to the Standards Committee or ESO.

#### **2.4.16 Finding of failure**

Where the IO Report concerns a '**finding of failure**', the Monitoring Officer will, in writing:

(i) (a) advise the persons listed in **section 2.4.15(5)** of this Procedure, that complaint will have to be determined by and on a formal hearing before the Hearing Sub-committee;

(b) draw the Subject Member's attention to his/her rights and responsibilities in accordance with section 1.3 of this Procedure;

(c) request the completion of **Forms A: B: C: D and E contained in The Standards Committee Determinations Toolkit**).

(d) propose a date for the hearing before the Hearing Sub-committee.

#### **2.4.17 Finding of no failure**

(i) Where the IO Report concerns a '**finding of no failure**', the Monitoring Officer will, in writing, advise those persons listed in **section 2.4.15(5)** of this Procedure, that the IO Report will be submitted to an ordinary meeting of the Hearings Sub Committee and that the Committee may:

(a) accept the Investigating Officer's finding of no failure (finding of acceptance); or

(b) require that the allegation/complaint be determined by and on a hearing before the Hearing Sub-committee.

(ii) All parties will be advised that the Standards Committee will at this stage, simply consider the IO Report and will not seek to interview witnesses or take representations from the parties and that the Committee's role at this point is to decide whether, based on the facts set out in the IO Report, the Committee agrees with the Investigating Officer.

### **2.5 Presentation of the IO Report to the Hearing Sub-committee**

#### **2.5.1 'Finding of no failure'**

(i) An ordinary meeting of the Hearing Sub-committee will be convened no later than 3 months from the date of the IO Report and the agenda published in accordance with the access to information rules detailed in the Borough Council's Constitution.

(ii) The agenda will include the IO Report, a chronology of events and exhibits (background documents such as witness statements/interview notes and supporting documents).

(iii) The agenda will be sent to the persons listed in **section 2.4.15(5)** of this

Procedure.

(iv) The rules relating to exempt/confidential information detailed in 1.3.5 of this Procedure will apply.

(v) The Hearing Sub-committee must decide at its meeting whether it agrees with the finding of no failure or believes there is a case to answer.

(vi) Exempt Information as defined in Schedule 12A to the Local Government Act 1972 in paragraph 7.

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 Sub Committee of a Standards Committee set up to consider any matter under regulations 13 or 16 to 20 of the 2008 Regs. or referred to under Section 58(1)(C) of the 2000 Act.

The Hearing Sub-committee will simply consider the IO Report and will not seek to interview witnesses or take representations from the parties. The Sub-committee's role is to decide whether, based on the facts set out in the IO Report, the Sub-committee agrees with the finding of no failure.

(vii) If the Hearing Sub-committee accepts the finding of no failure, the Subcommittee's acceptance will be referred to as 'a finding of acceptance'. The Sub-committee may consider whether it is minded to make any recommendation(s) to the Authority with a view to promoting high standards of conduct.

(viii) Where the Hearing Sub-committee decides that on the balance of probability there is a case to answer, the Sub-committee will arrange for a formal hearing to be convened no later than 3 months of the date of the IO Report. The Sub committee's decision to hold a hearing will be based on careful consideration of the information in the IO Report and on witness statements/interview notes.

### **2.5.2 'Finding of a failure'**

(i) The Hearing Sub-committee will hold a hearing in accordance with section 3 of this Procedure to determine whether a breach of the Authority's Code of Conduct has occurred and whether in consequence, any action in accordance with section 3.21.2 of this Procedure should be taken against the Subject Member.

(ii) The Monitoring Officer will ensure, as far as possible, that all the information which is relevant to the allegation(s) against the Subject Member is identified and presented to the Hearing Sub-committee to enable the Sub-committee to come to an informed decision as to whether the Subject Member has failed to comply with the Authority's Code of Conduct and upon any consequential

action.

(iii) It should be possible for the Hearing Sub-committee to proceed on the basis of the IO Report without the need to consider any further evidence. However, additional evidence may be considered necessary:

- a. where evidence has come to light after the conclusion of the IO Report;
- b. where the Subject Member wishes to introduce relevant evidence not considered during the Investigating Officer's investigation.

(iv) The Hearing Sub-committee will not re-open the investigation, although it has discretion to receive additional evidence. The Sub-committee may instruct the Monitoring Officer to obtain further information or undertake further investigation. This request can only be made once per case.

### **3 HEARING SUB-COMMITTEE**

- 3.1** Standards Committee members involved in the Assessment Sub-committee or Review Sub-committee decision making may not take part in the Hearing Subcommittee's deliberations
- 3.2** The Hearing Sub-Committee will comprise at least 3 members of the Standards Committee and be chaired by an independent member. At least one Borough Councillor shall serve on the Sub Committee.
- 3.3** There is no requirement for fixed membership or a fixed Chairman of the Hearing Sub-committee. Subject to ensuring no conflicts of interest, a form of 'floating' or 'pool' membership, drawn from the membership of the Standards Committee, will be implemented.
- 3.4** The quorum for a meeting of the Hearing Sub-committee will be three members.
- 3.5** The Hearing Sub-committee will conduct the hearing having regard to SBE guidance and the legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Sub-committee.
- 3.6** The Sub-committee will conduct the hearing during the daytime and except in complicated cases, the Sub-committee will aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.
- 3.7** The Sub-committee hearing will be held no earlier than fourteen working days after the Monitoring Officer has copied the IO Report to the Subject Member (although the hearing could be held earlier if the Subject Member agrees e.g. when it is agreed that the only evidence before the Sub-committee will be the IO Report), but in any event, no later than three months from the date the IO Report.

**3.8** The hearing should be completed within the three-month period, although the jurisdiction of the Sub-committee will not be lost where the three-month deadline is not met e.g. illness of the Subject Member. Where the Sub-committee is unable to complete the hearing within the three-month deadline, it should do so as soon as is reasonably practicable thereafter.

**3.9** The Hearing Sub-committee will be supported by the Legal Advisor.

**3.10 Public/Press Admittance to Hearing Sub-committee meetings**

(a) There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons, the Sub-committee hearing will be held in public, unless the Sub-committee determine that protecting the privacy of anyone involved is more important than the need for a public hearing. The exclusion of the press and public will only be in exceptional circumstances.

(b) Relevant papers i.e. reports and supporting documentation will be available for public inspection unless the following information would be disclosed:

1. confidential information i.e. information that has been provided by a Government Department under the condition that it must not be revealed as well as information that cannot be revealed under any legislation or by a Court Order; or

2. subject to the rules detailed in para. (g) below, exempt information falling within one or more of the exempt categories

(c) The hearing (either in whole or in part), will be held in private where confidential information as defined in **section 3.10(b)1.** above is likely to be revealed.

(d) When considering whether to exclude the press/public from a hearing, the Sub-committee will identify which parts of the report and/or other supporting information is not to be made available for public inspection.

(e) Where evidence is heard in private, persons attending the hearing will be advised by the Chairman not to disclose or quote in public, the contents of any agenda, report or other document which is marked 'confidential' or 'not for publication' unless or until the document has been made available to the public or the press by or on behalf of the Authority.

(f) Minutes dealing with any part of the hearing when the press/public has been excluded will be produced in a way which does not disclose confidential or exempt information for example by the use of appropriate initials to protect the identity of witness(es).

(g) Exempt Information

(i) The Sub-committee has the discretion to decide whether or not to exclude the public if exempt information may be revealed and on the

advice of the Legal Advisor, may resolve in the public interest, to disclose otherwise 'exempt information' falling within one of the specified categories of exempt information, even where such a disclosure could cause harm to a specific interest.

(ii) If the Sub-committee resolves to exclude the press/public to prevent exempt/confidential information from being revealed, (and reasons for so resolving will be minuted accordingly) the press/public should only be excluded for that part of the proceedings where such information is likely to be revealed e.g. if a witness's evidence is likely to reveal exempt information, the press/public will only have to be excluded while that witness is giving evidence.

### **3.11 Legal Advice**

The Hearing Sub-committee may seek legal advice from its Legal Advisor at any time during the Sub-committee hearing or whilst considering the outcome. The substance of any legal advice given to the Sub-committee, may be shared with the Subject Member and other parties, if they are present at the hearing.

### **3.12 Qualified Privilege**

Statements made in Hearing Sub-committee meetings are subject to the general principles of the law of defamation. However, the Sub-committee's proceedings are regarded in law as a 'privileged occasion' to which the doctrine of qualified privilege attaches to statements made in the Sub-committee's proceedings (quasi-judicial in nature) providing the following criteria are met:

- a. any opinions expressed are honestly held;
- b. opinions/statements are based on the facts of the matter;
- c. opinions/ statements are on a matter of public interest;
- d. a clear distinction is made between what is fact and what is opinion;
- e. no malice.

### **3.13 Absence of the Subject Member**

(a) Where the Subject Member fails to attend the Hearing Sub-committee, and where the Sub-committee is not satisfied with the Subject Member's explanation for his/her absence from the hearing, the Sub-committee may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date.

(b) The Hearing Sub-committee may resolve in exceptional circumstances, that

it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously [*Janik v Standards Board for England & Adjudication Panel for England (2007)*].

### **3.14 Representative**

(a) The Subject Member may choose to be represented at the Hearing Subcommittee by a lawyer or, with the prior consent of the Chairman (and subsequently endorsed by the Sub-committee), by any other person e.g. a fellow Councillor, friend or colleague.

(b) The Hearing Sub-committee will normally give permission for a Subject Member to be represented by a non - legally qualified person but may refuse permission if the representative is directly involved in the matter under determination.

(c) If the Subject Member is to be represented at the Hearing Sub-committee, he/she must provide notification in advance (**Form C contained in The Standards Committee Determinations Toolkit**).

(d) The Hearing Sub-committee may withdraw its permission to allow a representative if that representative disrupts the hearing. However, the Subcommittee will first issue an appropriate warning to prevent more disruptions before permission is withdrawn.

### **3.15 Indemnity for costs**

The Subject Member (if a Borough Councillor or Borough Co-opted Member) may rely on the Borough Council's indemnity for meeting the reasonable cost of any representation at the Sub-Committee hearing, including reasonable costs associated with ancillary advice provided by his/her representative during the course of the investigation. However, the Subject Member will be required to reimburse the Borough Council where the Sub-committee issues a finding of failure to comply with the Code of Conduct and that finding is not overturned on appeal. The indemnity cannot be relied on where the Subject Member admits that he/she has failed to comply with the Code of Conduct.

### **3.16 The Hearing Sub-committee process**

1. The purpose of the hearing is to test the robustness of the IO Report by examining the reasoning contained within the Report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Hearing Subcommittee based on seeking information in order to identify potential flaws in the IO Report and to clarify issues.
2. The Sub-committee will control the hearing process and evidence presented at the hearing, including the manner in which witnesses are questioned.

### **3.17 Preliminaries on procedural issues**

1. The Hearing Sub-committee will have due regard to and conduct the hearing in accordance with this part of the Procedure and will decide on the balance

of probability, whether the grounds of the complaint are upheld.

2. All matters/issues will be decided by a simple majority of votes cast. Abstentions will not be permitted.

3. Administration for the hearing will be undertaken by Democratic Service Officers.

4. The hearing will be open to the public and press unless confidential information or exempt information is likely to be disclosed (**section 3.10 of this Procedure**).

### **3.18 The conduct of the proceedings**

(1) To avoid allegations of collusion between any parties to the hearing and Hearing Sub-committee members, all relevant parties as the Monitoring Officer, Investigating Officer, the Subject Member and representatives will assemble in the meeting room before the start of the hearing. Sub-committee members will be brought into the room by an officer of the Authority, at the beginning of the hearing.

(2) The quorum will be three (chaired by the Independent Member/Person).

(3) The order of business will be as follows:

(i) apologies for absence;

(ii) declarations of interests;

(iii) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing [**section 3.13 of this Procedure**];

(iv) introduction by the Chairman, of members of the Sub-committee, the Monitoring Officer, Investigating Officer, Legal Advisor, Complainant and the Subject Member and his/her representative.

#### **(v) Representations as to exempt/confidential information**

a. Subject to the rules detailed in **sections 3.10(b) and 3.10(g) of this Procedure**, the Sub-committee will consider representations/reasons from the Monitoring Officer, and/or the Subject Member, as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public.

b. The Sub-committee will determine whether the public/press are to be excluded. Where it is determined not to exclude the public/press, copies of the agenda and other documentation will be made available to any members of the public/press who are present.

**(vi) Presentation by the Monitoring Officer of the summary of the IO Report**

a. The Chairman will invite the Monitoring Officer to present his/her summary of the IO Report. The Monitoring Officer will highlight whether there is prior written notice from the Subject Member of any significant disagreement(s) as to the facts contained in the IO Report.

b. The Chairman will then invite the Subject Member to confirm that the Monitoring Officer's summary is an accurate assessment of the position.

c. If there are disagreements as to fact and no prior written notice has been given by the Subject Member, the Sub-committee will consider the Subject Member's reason(s) for not giving prior written notice and may:

i. continue with the hearing relying on the information in the IO Report;

ii. allow the Subject Member to make representations about the issue(s) as to fact and invite the Investigating Officer to respond and subject to the rules referred to in **section 1.3.3 of this Procedure**, call any witness(es); or

iii. adjourn the hearing to arrange for appropriate witnesses to be called.

d. If there are no disagreements as to fact, the Sub-committee will proceed to the next stage of the hearing (**section 3.19(3) of this Procedure**).

e. The Sub-committee may adjourn the hearing to obtain further information or to ask the Monitoring Officer to undertake further investigation on any point(s) specified by the Sub-committee. A hearing may only be adjourned once.

f. Where the complaint was referred to the ESO by the Assessment Subcommittee or the Review Sub-committee, the Hearing Sub-committee may at any stage prior to the conclusion of the hearing, adjourn the hearing and make a written request to the ESO that the matter be referred back to him/her for further investigation and the request will set out the Hearing Subcommittee's reasons for making the request.

g. Where the complaint is referred back by the ESO to the Hearing Subcommittee, the Sub-committee will reconvene within 3 months of the ESO's referral back or as soon as practicable thereafter, to continue its deliberations on the matter.

### 3.19 Presentation of evidence

The presentation of the evidence at the hearing will be as follows:

(1) If the Subject Member admits that he/she has failed to comply with the Authority's Code of Conduct in the manner described in the IO Report, the Sub-committee may then proceed directly to consider whether any action should be taken (**sections 3.21.1 and 3.21.2 of this Procedure**).

(2) Where there are no disagreements as to fact, the Sub-committee will invite the Monitoring Officer to outline any matters which he/she would wish the Sub-committee to take account of and the Sub-committee will invite the Subject Member his/her representative to respond. The Sub-committee will then proceed to consider whether any action should be taken in accordance with **section 3.21.2 of this Procedure**.

(3) Where the Subject Member disputes the facts in the IO Report:

a. The Sub-committee will invite the Investigating Officer to make any necessary oral representations to support the relevant findings of fact in his/her report, in particular, having regard to any point(s) of difference identified by the Subject Member and why he/she [the Investigating Officer] has concluded that the Subject Member has failed to comply with the Authority's Code of Conduct.

b. Subject to **section 1.3.3 of this Procedure**, the Investigating Officer may call any supporting witness(es) (as agreed at the investigation stage) to give evidence as to any point(s) of difference.

c. The Sub-committee will provide the Subject Member with an opportunity to challenge any points of difference put forward by any witness(es) for the Investigating Officer by inviting the Subject Member or his/her representative to \*question the witness(es).

d. The Subject Member or his/her representative will be invited to make any representations to support his/her version of the facts which are in dispute and subject to the rules in section 1.3.3 of this Procedure, to call any witness(es) to give evidence as to points of difference.

e. The Sub-committee will provide the Investigating Officer with an opportunity to challenge any points of difference put forward by the Subject Member's witness(es) by inviting the Monitoring Officer to \*question the witness(es).

*\*The Chairman may request that questions be directed through him/her*

f. The Sub-committee may refuse to hear evidence from a witness where the Sub-committee is satisfied that the witness is unlikely to give evidence which the Sub-committee needs to hear in order to be able to determine whether there has been a breach of the Authority's

Code of Conduct.

g. The Sub-committee may at any time in the proceedings ask questions of the Investigating Office, Monitoring Officer, the Subject Member and witnesses and seek legal advice from the Legal Advisor.

(4) Where the Subject Member seeks to dispute any matter in the IO Report of which he/she has not given notice (**Form A**), the Legal Advisor will draw this to the Sub-committee's attention and the Sub-committee will direct in accordance with **section 3:18(3)(iv)c of the Procedure**.

(5) Any member of the Sub-committee may address questions to the Investigating Officer, Monitoring Officer, the Subject Member, and any witnesses.

(6) Having heard all the evidence, the Sub-committee will adjourn with the Legal Advisor and in private session, consider the representations and evidence. The Legal Advisor will advise only on matters relating to law and procedure.

### **3.20 Hearing Sub-committee findings**

(a) Where the Investigating Officer's 'finding of no failure' is accepted by the Subcommittee, the Sub-committee will make a 'finding of acceptance'.

(b) Where the allegation/complaint has been considered at a hearing, the Subcommittee will make one of the following findings:

- That there has been no breach of the Authority's Code of Conduct;
- That there has been a breach of the Authority's Code of Conduct but that no action be taken;
- That there has been a breach of the Authority's Code of Conduct and that a sanction be imposed.

### **3.21 Sanction and Penalties**

#### **3.21.1 Preliminaries**

(a) When deciding on a sanction/penalty as set out in **section 3.21.2 of this Procedure**, the Hearing Sub-committee will ensure that the application of any sanction/penalty is reasonable and proportionate to the Subject Member's behaviour and will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

I. what was the Subject Member's intention and did he/she know that he/she was failing to follow the Authority's Code of Conduct?

II. did the Subject Member receive advice from Officers before the incident and was that advice acted on in good faith?

III. has there been a breach of trust?

IV. has there been financial impropriety e.g. improper expense claims or procedural irregularities?

V. what was the result/impact of failing to follow the Authority's Code of Conduct?

VI. how serious was the incident?

VII. does the Subject Member accept that he/she was at fault?

VIII. did the Subject Member apologise to the relevant persons?

IX. has the Subject Member previously been reprimanded or warned for similar misconduct?

X. has the Subject Member previously breached of the Authority's Code of Conduct?

XI. is there likely to be a repetition of the incident?

(b) Suspension may be appropriate for more serious cases such as those involving:-

- the Authority breaching equalities legislation through the Subject Member's actions;
- bullying;
- intimidation by threat;
- undue political interference;
- the Subject Member trying to gain an advantage or disadvantage for himself/herself or others;
- improper influence;
- dishonesty or breaches of trust.

(c) Penalties/sanctions involving restricting access to the Authority's premises or equipment should not unnecessarily restrict the Subject Member's ability to carry out his/her responsibilities as an elected representative or Co-opted Member.

(d) When deciding on an appropriate penalty, the Hearing Sub-committee may also wish to consider decisions made by other standards committees and case tribunals. Appropriate summaries of such decisions may be found respectively on the SBE's and APE's websites at [www.standardsboard.co.uk](http://www.standardsboard.co.uk) and [www.adjudicationpanel.co.uk](http://www.adjudicationpanel.co.uk)

(e) The length of time summaries remain on the SBE site, will be determined by the outcome of the investigation and, where appropriate, the hearing:

- if there is no evidence of a breach, the summary is removed six months after the case is closed;
- if no further action needs to be taken, the summary is removed two years after the case is closed;
- if the case is referred to the APE or the Hearing Subcommittee, the summary is removed two years after the case is closed, or two years after the end of any sanction, if one is imposed.

(f) Guidance on suspensions and what this means for Members is set out as an Annex.

### **3.21.2 Types of Sanctions/Penalties: Code of Conduct Breaches**

(a) Where the Subject Member has ceased to be an elected representative or Co-opted Member by the date of the hearing, the only sanction which the Sub-Committee may impose, is one of censure i.e. the issue of an unfavourable opinion or judgement.

(b) Where the Subject Member is still an elected representative or Co-opted Member at the date of the hearing, the range of sanctions may include all, or any, or a combination of the following:

1. Censure of the Subject Member;
2. Withdrawal of allowances (para.(d) below refers);
3. Restriction of the Subject Member's access to Authority premises and use of Authority resources for up to 6\* months, provided that this is reasonable and proportionate to the nature of the breach and does not unduly restrict the Subject Member's ability to perform his/her functions as an elected representative or Co-opted member e.g. barring a Councillor from Council Offices where the misconduct relates to the bullying of Officers, or taking away the Councillor's Council-provided computer where the misconduct is related to inappropriate use of this facility;
4. Partial suspension as Councillor of the Borough for up to 6\* months;
5. Suspension as a Councillor of the Borough for up to 6\* months;
6. Suspension as a member of a relevant committee of the Authority for up to 6\* months e.g. suspension from the Development Control Board if the misconduct related to the Subject Member's participation in a planning decision where the Subject Member had a prejudicial interest;

7. That the Subject Member provides a written apology in a form specified by the Sub-committee;
8. That the Subject Member undertakes training as specified by the Subcommittee;
9. That the Subject Member undertakes conciliation or mediation (refer to para.(e) below) as specified by the Sub-committee i.e. involving an independent person to assist relevant persons in reaching agreement on matters determined by the Sub-committee;
10. Partial suspension of the Councillor for up to 6\* months until the Subject Member provides a written apology in the form specified by the Sub-committee;
11. Partial suspension of the Subject Member for up to 6\* months until the Subject Member undertakes such training, conciliation or mediation as specified by the Sub-committee;
12. Suspension of the Subject Member for up to 6\* months until the he/she provides a written apology in the form specified by the Subcommittee;
13. Suspension of the Subject Member for up to 6\* months until the he/she undertakes such training or has participated in conciliation or mediation, as specified by the Sub-committee;

*\* This period does not count towards any disqualification by reason of failure to attend a meeting for 6 months*

(c) (i) The Hearing Sub-committee may specify that any sanction(s) imposed take effect immediately; or

(ii) The Hearing Sub-committee may specify that any sanction(s) imposed by the Sub-committee, take effect at a later date, but within 6 months of its decision.

(d) In addition to any one or combination of the sanctions referred to above, the Hearing Sub-committee may determine that any allowance payable to the Subject Member under the Members' Allowances Scheme be withheld during a period of suspension/partial suspension. Where payment of any allowance under the Scheme has already been made in respect of any period during which a Subject Member is suspended or partially suspended from his/her responsibilities or duties as a member of the Authority, the Sub-committee may determine that the allowance as it relates to any such period of suspension be repaid to the Authority.

(e) Any conciliation or mediation process will have an agreed timeframe for resolution. The process may be of an informal or formal nature, involving elements of training and mediation that will lead to an effective and fair conclusion of the matter. Any decisions reached regarding future behaviour of the Subject Member and measures to prevent a repetition of the

circumstances that gave rise to the initial allegation, should be agreed by all parties.

### **3.21.3 Deliberation/Determination as to whether there has been a breach of the Code of Conduct**

1. At this stage in the hearing process, the Hearing Sub-committee considers (in private session) on the facts it has found, whether or not the Subject Member has breached the Authority's Code of Conduct in the manner set out in the IO Report. The Sub-committee may also consider whether it is minded to make any recommendation(s) to the Authority with a view to promoting high standards of conduct.

2. The Sub-committee will make its decision on the balance of probability, based on the evidence before it during the hearing.

3. The Sub-committee may at any time come out of private session and reconvene the hearing in public in order to seek additional evidence from the Investigating Officer, the Subject Member or the witness(es). If further information to assist the Sub-committee cannot be presented, then the Subcommittee may adjourn the hearing and issue directions as to the additional evidence required and by whom.

4. Having deliberated on its decision(s) and/or recommendation(s) to the Authority, the Sub-committee will reconvene the hearing in public and the Chairman will announce the Sub-committee's principal findings of fact and the Sub-committee's decision(s) as to whether or not the Subject Member has breached the Authority's Code of Conduct **[section 3.21.5 of this Procedure]** including any recommendation(s) to the Authority.

### **3.21.4 Identification during the hearing of other potential breach(es)**

It is possible that evidence presented to the Hearing Sub-committee may highlight other potential breaches of the Authority's Code of Conduct. In the circumstances, the Chairman will outline the Sub-Committee's concerns and recommend that the matter be referred to the Assessment Sub-committee as a 'new complaint'.

### **3.21.5 Decision – making by the Hearing Sub-committee**

#### **(1) Finding of Acceptance**

If the Hearing Sub-committee accepts the Investigating Officer's finding of no failure, the Sub-committee may still consider whether it should make any recommendation(s) to the Authority e.g. how similar incidents might be avoided in the future with a view to promoting high standards of conduct.

#### **(2) Decision as to no Breach**

a. If the Hearing Sub-committee determines that the Subject Member has not breached the Authority's Code of Conduct, the Sub-committee may consider whether it should make any recommendation(s) to the Authority e.g. how

similar incidents might be avoided in the future with a view to promoting high standards of conduct.

b. The representations of the Subject Member and the Monitoring Officer may be sought before the Sub-committee finalises its recommendation(s) to the Authority.

c. Having heard the representations, the Sub-committee will adjourn and consider the recommendation(s) in private. After due deliberation, the Subcommittee

will reconvene the hearing in public and the Chairman will announce the Sub-committee's recommendation(s) to the Authority.

### (3) **Decision as to a Breach**

1. If the Hearing Sub-committee determines that the Subject Member has breached the Authority's Code of Conduct, the Sub-committee will consider:

(a) whether it should impose any sanction(s) and what (if any), the appropriate sanction(s) should be (**section 3.21.2 of this Procedure**);  
or

(b) that no action needs to be taken;

(c) that the matter should be referred to the APE for determination although the Sub-committee may only decide to refer the matter to the APE if it determines that the sanctions it could impose would be insufficient and the President or Deputy President of the APE has agreed to accept the referral. In deciding whether to refer the matter to the APE the sub-committee will have regard to guidance issued by the President of the Adjudication Panel.

2. The Sub-committee may also consider whether it should make any recommendation(s) to the Authority e.g. how similar incidents might be avoided in the future with a view to promoting high standards of conduct.

3. The representations of the Subject Member and the Monitoring Officer may be sought before the Sub-committee decides on the sanction(s) to be imposed and the recommendation(s) to make to the Authority.

4. Having heard the representations, the Sub-committee will adjourn and consider in private, whether to impose a sanction(s) and where a sanction(s) is to be imposed, what sanction(s) to impose and when that sanction(s) should take effect. In deciding on the level of sanction(s), the Sub-committee should have regard to the guidance set out in **section 3.21.1 of this Procedure**. The Sub-committee will also determine the recommendations(s) to make to the Authority.

5. If the Sub-committee determines that the Subject Member is in breach of the Authority's Code of Conduct and that the Subject Member should be penalised, the Sub-committee may impose any one or a combination of the sanctions detailed in **section 3.21.2 of this Procedure**.

6. Where the complaint has a number of aspects, the Sub-committee may

decide to reach a finding and impose a sanction/penalty on each aspect separately.

7. At the conclusion of its deliberations, the Sub-committee will reconvene the hearing in public and the Chairman will:

(i) announce whether a sanction(s) is/are being imposed, the nature of the sanction(s) and when it/they should take effect; and

(ii) announce the principal reasons for the decision(s); and

(iii) announce any recommendation(s) to the Authority; and

(iv) announce that the Sub-committee's full decision(s) will be produced by the Monitoring Officer within seven working days following the close of the hearing; and

(v) advise the Subject Member, that in respect of determinations relating to breaches of the Authority's Code, that he/she has a right to appeal against the determination to an appeals tribunal drawn from the Adjudication Panel.

### **3.21.6 Notification of the Hearing Sub-committee's findings**

The Monitoring Officer, will within seven working days of the announcement of the Sub-committee's decision(s) (which for the avoidance of doubt will include 'findings of acceptance' referred to in **sections 2.4.17(i)(a), 2.5.1(vii), 3.20(a), 3.21.5(1)**) of this Procedure, provide a full written decision and the reason(s) for that

decision in the format detailed in Form F to:

- the Subject Member;
- the Complainant;
- any ESO concerned;
- the Standards Committee;
- WSCC's standards committee (applicable only where the Subject Member is serving at both Borough and County level);
- The SBE;
- the APE - (*where the decision is to refer the matter to the APE*).

### **3.21.7 Publication of the Hearing Sub-committee's findings**

The following procedure will be followed in determinations related to the Authority's Code of Conduct:

1. Within seven working days of the Sub-committee's announcement of its

decision(s) (which for the avoidance of doubt will include a 'findings of acceptance' referred to in **sections 2.4.17(i)(a), 2.5.1(vii), 3.20(a), 3.21.5(1) of this Procedure**), the Monitoring Officer will arrange for a summary of the decision(s) and reasons to be *published on the Authority's website* and in one or more newspapers (independent of the Authority) circulating in the Borough.

- A finding of acceptance or of no breach: Publish the name of the Subject Member, a summary of the decision and reason(s) for that decision. The Subject member is entitled to ask that there be no publication in local newspapers. It is to be noted however that the SBE will as a matter of course, publish the decision on its Website.
  - A finding of a breach but no action to be taken: Publish the name of the Subject Member and details of the breach, a summary of the decision and reason(s) for that decision and that the Subject Member may apply in writing for permission to appeal to the President of the APE.
  - A finding of a breach and sanction(s) to be imposed: Publish the name of the Subject Member and details of the breach, a summary of the decision and reason(s) for that decision, sanction(s) imposed and that the Subject Member may apply in writing for permission to appeal to the President of the APE.
2. A case summary produced by the Authority or the SBE, will be published by the SBE on its Website <http://www.standardsboard.co.uk/>
3. The Sub-committee's findings will be minuted and the minutes presented to the next ordinary meeting of the Standards Committee.