

ALLERDALE BOROUGH COUNCIL

PROCEDURE FOR LOCAL DETERMINATION OF ALLEGATIONS ABOUT THE PERSONAL CONDUCT OF COUNCIL MEMBERS

INTRODUCTION

1. The local determination of complaints by the Standards Committee where an investigation has been completed by an Ethical Standards Officer [ESO] of the Standards Board for England, **or following a local investigation**, will be governed by this procedure. Regard shall be had to any relevant guidance issued by the Standards Board for England.
2. The person[s] making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member. The allegation will be heard by the Standards Committee or a Sub-Committee of the Standards Committee.

PRE-HEARING PROCESS [LOCAL INVESTIGATIONS]

3. Upon receipt of the final report of the Investigating Officer including a finding that the Member failed to comply with the Code of Conduct for Members or the Standards Committee finds that the matter should be considered at a formal hearing the Monitoring Officer shall arrange for the Standards Committee to consider the matter.
4. Where the Monitoring Officer is the Investigating Officer he/she must arrange for a separate legal advisor to the Committee to be appointed in respect of the allegation.

NOTIFYING THE MEMBER AND COMPLAINANT

5. Within five working days of the receipt of the Investigating Officer's report the Monitoring Officer shall send a copy of the report to the Member and, where possible, the Complainant, making the provision of the report conditional upon any appropriate undertaking of confidentiality. The Chairman and Members of the Committee shall be informed of the allegation by the Monitoring Officer, as well as any Parish or Town Council Clerk where the allegation relates to conduct of a Member in his/her capacity as a member of a Parish or Town Council.
6. The Member shall be asked for a written response, within fifteen working days of the receipt of the report, which response shall set out the reply to the Investigating Officer's report and state whether or not he/she:
 - i. disagrees with any of the findings of fact in the Investigating Officer's report, including the reasons for any disagreement;
 - ii. wants to be represented, at his/her own expense, at the hearing by a Solicitor, Barrister or any other person;
 - iii. wants to give evidence to the Committee, either verbally or in writing;

- iv. wants to call relevant witnesses to give evidence to the Committee;
- v. wants any part of the hearing to be held in private;
- vi. wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.

[Pre-Hearing Forms A B D and E as recommended by the Standards Board will be used in this process]

7. The Member shall be informed that if, at the meeting of the Committee, he/she seeks to dispute any matter contained in the Investigating Officer's report without having previously notified the Monitoring Officer of the intention to do so the Committee may either [a] adjourn the meeting to enable the Investigating Officer to provide a response, or [b] refuse to allow the disputed matter to be raised.
8. Upon receipt, the Monitoring Officer shall invite the relevant Investigating Officer to comment, within ten working days, on the Member's response, and to say whether or not he/she:
 - i. wants to be represented or be present at the hearing;
 - ii. wants to call relevant witnesses to give evidence or submit written or other evidence to the Committee;
 - iii. wants any part of the hearing to be held in private;
 - iv. wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
9. Upon receipt of the Investigating Officer's response, the Monitoring Officer will consider the responses of the Member and the Investigating Officer and request the Monitoring Officer to set a date for the hearing in consultation with the Chairman and all Members.
10. The Members and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chairman of the Hearing may limit the number of witnesses to be called, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Committee to reach its decision.
11. Nothing in this procedure shall limit the Chairman of the Hearing from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Committee to reach its decision.
12. The Monitoring Officer, in consultation with the Chairman, will:
 - i. confirm a date, time and place for the Hearing, which must be within three months from the date of the Investigating Officer's report was received;
 - ii. confirm the main facts of the case that are agreed;
 - iii. confirm the main facts that are not agreed;

- iv. provide copies of any written evidence to the relevant parties;
- v. confirm which witnesses will be called by the parties;
- vi. provide the parties with a copy of the proposed procedure for the Hearing, specifying which parts of the matter, if any, may be considered in private; and
- vii. ensure the appropriate information, with the agenda, is provided to everyone involved in the Hearing at least two weeks before the proposed date of the Hearing.

THE HEARING

- 13. The Committee shall decide, on a balance of probabilities, whether the complaint[s] is or are upheld upon the evidence presented to it.
- 14. Each Committee Member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast.
- 15. The meeting of the Committee will be open to the public and press unless confidential information or exempt information is likely to be disclosed.

PROCEDURE AT THE HEARING

- 16. The initial order of business at the meeting shall be as follows:-
 - i. Establishing whether the Committee is quorate;
 - ii. Declarations of interest;
 - iii. Introductions
 - iv. Consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present;
 - v. Consideration of any procedural issues and, in particular, any representation from the Investigating Officer and/or the Member as to reasons why the Committee should exclude the press and public and determination as to whether to exclude the press and public.
- 17. The purpose of the Hearing is to determine the facts at issue and what action, if any, should be taken. An inquisitorial approach will be adopted by the Committee members in seeking information and clarifying facts and issues. The Chairman will control the procedure and evidence presented at the Hearing, including the questioning of witnesses.
- 18. The Committee members may at any time seek legal advice from their advisor. [Such advice will be notified to the public in the presence of the Investigation Officer and the Member.]
- 19. The procedure will be as follows, subject to the Chairman being able to make changes as he or she thinks fit in order to ensure a fair and efficient hearing.

PROCEEDING IN THE ABSENCE OF THE MEMBER

20. If the Member is not present at the start of the Hearing:
- i. The Chairman will ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the Hearing;
 - ii. The Standards Committee shall then consider any reasons which the Member has provided for not attending the Hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
 - iii. If the Standards Committee is satisfied with such reasons, it shall adjourn the Hearing to another date;
 - iv. If the Standards Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Standards Committee shall decide whether to consider the matter and make a determination in the absence of the member or to adjourn the Hearing to another date.
21. **Presentation by the Investigating Officer**
- 21.1 The Investigating Officer will present the evidence which is relevant to the matter. The Investigating Officer may introduce any witness required to substantiate any matter contained in the report which has been disputed and present any other relevant evidence.
- 21.2 The Member or his/her representative may ask questions of the Investigating Officer or any witness.
- 21.3 The Committee members may ask questions of the Investigating Officer or any witness.
22. **Presentation by the Member**
- 22.1 The Member or his/her representative will present the evidence which is relevant to the matter. The Member or his/her representative may introduce witnesses or present any other relevant evidence.
- 22.2 The Investigating Officer may ask questions of the Member, or any witness.
- 22.3 The Committee members may ask questions of the Member or any witness.
- 22.4 The Investigating Officer and then the Member or his/her representative will be given the opportunity to sum up.
23. **Decision by the Committee**
- 23.1 The Committee will consider in private all the evidence which it has heard in order to establish its findings of fact.

- 23.2 At any stage in the consideration of the matter the Committee may return to ask further questions of the Investigating Officer or the Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.
- 23.3 The Committee may seek legal advice at any time. Such advice may be given in the presence of the Investigating Officer and the Member if appropriate.
- 23.4 At the conclusion of their deliberations, the Chairman will advise the Member and the Investigating Officer of their findings and whether the Code of Conduct has been breached.
- 23.5 If the Committee concludes that the Member has acted in breach of the Code representations will be invited from the Investigating Officer and the Member as to what action, if any, it should take. The Committee may ask questions of the Member and the Investigating Officer.
24. The Committee, having heard any representations, will consider what actions, if any, to take.
- The findings that the Committee may make are:
- a) That there has been no breach of the Code;
 - b) That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken;
 - c) That the Member has failed to comply with the Code of Conduct and should be:
 - ❖ Censured, or
 - ❖ Restricted access to the premises and the resources of the Authority for a maximum period of six months [but ensuring that such restrictions are reasonable and proportionate to the nature of the breach and will not unnecessarily restrict the Member's ability to carry out his/her responsibilities as an Elected or Co-opted Member];
 - ❖ Suspended or partially suspended for a maximum period of six months;
 - ❖ Required to submit a written apology or undertaking any training or conciliation as specified by the Committee; or
 - ❖ Suspended or partially suspended for a maximum period of six months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Committee.
25. In deciding what penalty to set, the Committee will consider all relevant circumstances, including those covered in any Guidance produced by the Standards Board for England.

26. The Chairman will announce the decision of the Committee, the action, if any, it is proposed to take and the reasons for the decision.
27. The Committee will then consider in open session whether there are any recommendations which should be made to any Authority concerned arising from the consideration of the allegation.

APPEAL

28. Where the Committee determines that the Member has failed to comply with the Code of Conduct, the Chairman shall inform the Member of his or her right of appeal against the determination to an appeal tribunal drawn from the Adjudication Panel. Permission to appeal can be sought in writing to the President of the Adjudication Panel for England at 23 Victoria Avenue, Harrogate, North Yorkshire, HG1 5RD within 21 days of the written Notice of Findings.

NOTICE OF FINDINGS

29. A full written decision in draft [including the reasons for it] will be prepared as soon as practicable. The draft will be prepared with regard to any format recommended by the Standards Board. The draft decision will be forwarded to the Chairman of the Committee for approval.
30. Once approved and as soon as reasonably practicable after the Hearing the full written decision will be forwarded to the Member, the Standards Board, the Complainant [where possible], the Investigating Officer and any other Authority concerned.
 - d) The Monitoring Officer, subject to paragraph 31, shall arrange for a summary of the findings to be published in one newspaper circulating in the area of the Authority.
 - e) Where the Committee determines that there has not been a breach of the Code of Conduct, the notice shall:
 - i. State that the Committee found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
 - ii. Not be published in the local newspaper if the Member so requests.
 - f) Where the Committee determines that there has been a failure to comply with the Code of Code but no action is required, the notice shall:
 - i. State that the Committee found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
 - ii. Specify the details of the failure;
 - iii. Give reasons for the decision reached; and
 - iv. State that the Member concerned may apply for permission to appeal against the determination.

- g) Where the Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:
 - i. State that the Committee could that the Member had failed to comply with the Code of Conduct;
 - ii. Specify the details of the failure;
 - iii. Give reasons for the decision reached;
 - iv. Specify the sanction imposed; and
 - v. State that the Member concerned may apply for permission to appeal against the determination.
31. Copies of the agenda, reports and minutes of a Hearing, as well as any background papers, apart from sections of documents relating to parts of the Hearing that were held in private, shall be available for public inspection for six years after the Hearing.