

BATH AND NORTH EAST SOMERSET COUNCIL STANDARDS COMMITTEE
HEARING GUIDANCE AND PROCEDURE

A. INTRODUCTION

Standards Committees need to have an efficient and effective hearing process. This guidance and procedure aims to ensure the committee deal with all the issues that need to be resolved in a way that is fair to all and provides a consistent approach. Members should bear in mind that a Standards Committee Hearing is a formal meeting of the Authority and is not a Court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The Standards Committee should work at all times in a fair, independent and politically impartial way. This helps to ensure that members of the public and Councillors have confidence in its procedures and findings. The Chair and the Committee have the ability to amend the procedures as necessary from time to time in the circumstances of individual cases to ensure the procedures are fair and independent

Interpretation

In this guidance the following definitions apply:

‘Subject member’ means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise.

‘Investigator’ means the person investigating the complaint appointed by the Monitoring Officer.

‘Legal Adviser’ means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority or from outside the authority.

B. LEGAL FRAMEWORK

The Local Government Act 2000 and associated regulations contained the specific details for conducting Standards Committee hearings prior to 2012. While these were repealed by the Localism Act 2011, the guidance they contained is still a good example of best practice and complies with the common law principle of natural justice.

Common Law Principles

The basic principles contained within the concept of ‘procedural fairness’ are the “right to a fair hearing” and the “absence of bias”. Case law *Ridge-v-Baldwin* (1964) AC 40 states that the matter:

- Must be heard by an unbiased tribunal
- Notice of the charge must be given and

- The accused must be heard in relation to the charge.

The Standards Committee must also ensure fairness and flexibility of application and process. As only a reprimand can be issued, it is unlikely that Article 6 of the Human Rights Act (the statutory right to a fair trial) applies.

If a member has a conflict of interest or a real possibility of bias, the member should have to withdraw from participation. Members should take advice from their legal adviser at an early stage if they have any concerns about participation.

The Standards Committee must do everything it reasonably can to ensure that the subject member receives a fair hearing. This means that where members are taking procedural decisions, these must be taken in the light of that over-arching obligation. This could be relevant before a hearing, as well as at the hearing. Examples of procedural decisions include a request by the subject member to call various witnesses to give evidence, or a request to introduce additional evidence at a late stage.

C. SETTING UP THE HEARING

Pre-hearing process

In readiness for convening a meeting of the Standards Committee, the Monitoring Officer will conduct a written “pre-hearing process”, requiring the Member concerned to give their response to the Investigating Officer’s report in order to identify what is likely to be agreed and what is likely to be in contention at the Hearing. This will also consider the witnesses required.

Who must be present? There must be three members for a Standards Committee to be quorate, at least one of whom should be an independent member. Where a hearing concerns a member of a parish council, it is best practice for a parish council member to be present. The Standards Committee should invite the Independent Person to attend the hearing so they can consult the Independent Person before deciding what action, if any, to take in respect of the matter.

Rights of the member: The subject member must be “given an opportunity to present the evidence in support of his case” and to be “given the opportunity to make representations at the hearing”. These are very important rights that help to ensure that the member is given a fair hearing. It is essential that the member be given an opportunity to put his case and to present evidence that is relevant to the matters before the Standards Committee. The subject member may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the committee, another person.

Legal Advice: The Committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the

outcome. The substance of any legal advice given to the committee should be shared with the subject member and the investigator if they are present.

Witnesses and other evidence: The Standards Committee should consider the purpose of any witness and whether it is necessary for them to attend. The Standards Committee should ask the relevant parties to provide outlines or statements of the evidence their witnesses intend to give. This will allow the Committee to decide how many witnesses may reasonably be needed and to identify the issues they will be dealing with at the hearing. While the subject member must be allowed to present their case, the Standards Committee should avoid time being wasted on irrelevant matters or witnesses. Some members may find it difficult to focus on the issues set out in the report. They may be tempted to bring in a variety of matters that are only of tangential relevance to the hearing or sometimes of no relevance at all. The committee's primary task is to decide whether or not the member breached the Code of Conduct. It is unlikely to be a good use of the committee's time to hear oral evidence that is either undisputed or not relevant to the alleged breach of the Code of Conduct.

Character evidence is likely to be relevant only to the third stage of the process, in relation to any appropriate sanction. Such evidence is usually undisputed and may be most conveniently dealt with on paper, through written testimonials. Under Local Hearing - Procedure A the only witnesses permitted are people referred to in the evidence, and not, for example, character witnesses.

The Standards Committee may also choose not to hear from certain witnesses if it believes that they will simply be repeating evidence of earlier witnesses or if a witness will not be providing evidence that will assist the Standards Committee to reach its decision. The over-arching principle is that the Standards Committee has the right to govern its own procedures as long as it acts fairly. The Standards Committee (and, in particular the Chair) must strive to ensure that it does not lose control of the hearing.

Agreed facts: A pre-hearing process aimed at establishing what facts are agreed and what witnesses are required should prevent the Standards Committee being taken by surprise by unexpected disputes of fact on the day of the hearing. If such a dispute arises, the committee can refuse to allow the member to raise the matter. This may be the appropriate course where the committee is not satisfied with the reasons given by the member for failing to raise the issue before the hearing, and further considers that it would not be possible to deal with the matter without an adjournment. However, in an appropriate case, the committee can adjourn the proceedings to allow further evidence to be obtained.

D. THE HEARING

The Committee will follow the following stages:-

- (1) Formal introductions
- (2) Making Findings of Fact
- (3) Did the Subject Member fail to follow the Code of Conduct?
- (4) Any sanctions if there has been a breach of the Code of Conduct
- (5) Decision.

1. Formal introductions

After the Chair has formally introduced all the committee members and everyone involved, they will outline how the hearing will be run and deal with any preliminary procedural issues..

Preliminary Procedural Issues: The committee should firstly resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process, eg, determine whether the matter should be held in private and the reasons for this; the merits of any new evidence or witnesses etc. If the subject member has not attended, the Chair should suggest the Committee adjourn the hearing to allow them to attend, explaining that if they do not attend the rearranged hearing, then it will go ahead in their absence. If the member does not attend the second time, then the committee should proceed in their absence.

If the Standards Committees consider that, for whatever reason, they do not have sufficient information to deal with the matter fairly then they are able to adjourn the hearing and require the Investigator to seek further information or undertake further investigation. . However the power needs to be used with caution since any adjournment will inevitably lead to delays in resolving the matter.

In the interests of fairness if the Standards Committee is minded to exercise this power, they should give both the subject member and the investigating officer the opportunity to make representations before reaching any final decision.

The committee must come to clear conclusions as to:

- i. The disputed facts
- ii. Whether there has been any breach of the Code of Conduct, and if so
- iii. Whether any sanction should be implemented, and whether any recommendations should be made to the Council.

It is recommended that the committee should withdraw to consider their conclusions separately in relation to each of the first three issues. Where the facts are complicated, it is helpful for the Standards Committees to distinguish between determining any facts in dispute and the question of whether or not there has been a breach of the Code of Conduct. The three-stage process helps committees to do this.

2. Making Findings of Fact

After dealing with any preliminary issues , the committee should then move on to consider whether there are any significant disagreements about the facts contained in the Investigators report. If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.

If there is a disagreement, the investigator should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.

The subject member should then have the opportunity to make representations to support their version of the facts and, with the committee's permission, to call any necessary witness to give evidence.

At any time, the committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member. Questions should be put via the Chair.

If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually. If the subject member disagrees with any relevant fact in the investigators report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. After considering the members explanation for not raising the issue at an earlier stage, the committee may then:

- Continue with the hearing, relying on the information in the investigators report.
- Allow the subject member to make representations about the issue, and invite the investigator to respond to and call any witnesses, as necessary.
- Postpone the hearing to arrange appropriate witnesses to be present, or for the investigator to be present if they are not already.

The committee will usually move to another room to consider the representations and evidence in private. On their return, the chair will announce the committee's findings of fact.

3. Did the subject member fail to follow the Code of Conduct?

The committee then needs to consider whether, based on the facts it has found, the subject member has failed to follow the code. The subject member should be invited to give relevant reasons why the committee should decide that they have not failed to follow the code.

The committee should then consider any verbal or written representations from the investigator. The committee may at any time, question anyone involved on any point they raise on their representations via the Chair. The subject member should be invited to make any final relevant points. The committee will then move to another room to consider the representations. On their return, the chair will announce the committee's decision as to whether the subject member has failed to follow the code.

If the committee decides the subject member has not failed the Code, the committee can move on to consider whether it should make any recommendations to the authority.

4. Sanction

This stage is only reached if the committee finds that there has been a failure to comply with the Code of Conduct. The committee needs to consider the full range of sanctions available, tailoring any sanction to the facts of the case before them. They must remember that there is no obligation to impose any sanction at all.

The committee will consider any verbal or written representations from the investigator and the subject member as to whether the committee should apply a sanction and what form any sanction should take. The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision. The committee will then deliberate in private to consider whether to impose a sanction on the subject member and, if so what sanction it should be. On their return, the chair will announce the committee's decision.

The committee should consider any aggravating and mitigating factors even if they have not previously identified these. Examples of factors that might be relevant include the member's knowledge of the Code of Conduct at the time of the incident, the consequences of the misconduct; whether the member accepts that they have breached the Code of Conduct, whether an apology has been offered, and whether there is likely to be a repeat of any misconduct. Bullying of officers or trying to gain an improper advantage were regarded in the guidance as particularly serious breaches.

The sanctions available to the Standards Committee are:

- Apology
- Training
- Censure by Standards Committee
- Report to Council and
- Any other appropriate action.

The Standards Committee can combine sanctions, so a member can be required to apologise and undertake training or be recommended to undertake conciliation. Any sanction should include a timescale for compliance and an indication of the consequence if it is not complied with.

Giving Reasons: This is an important requirement and failure to give reasons could give grounds for appeal.

In *R v Brent London Borough Council, ex p Baruwa* (1997) 29 HLR 915 at 929, Lord Justice Schiemann observed:

“ It is trite law that where, as here, an authority is required to give reasons for its decision it is required to give reasons which are proper, adequate and intelligible and enable the person affected to know why they have won or lost. That said, the law gives decision-makers a certain latitude in how they express themselves and will recognise that not all those taking decisions find it easy in the time available to express themselves with judicial exactitude.”

The reasons should explain why the committee reached the conclusions it did. The reasons should deal with any evidence or representations made by the parties, particularly those made by the subject member. The committee's reasons should demonstrate that the member has been given a fair opportunity to put his or her case across. The committee should not uncritically accept the findings of fact or the reasoning put forward by the investigator. Reasons should cover each of the stages of the decision: facts, reasoning as to whether or not there has been a breach of the code and, if there has been a breach, decision or sanction.

Recommendations to the Authority: After considering any verbal or written representations from the investigator, the committee will consider whether it should make any recommendations specific to the case or in general to the authority, with a view to promoting high standards of conduct among members.

5. The Written Decision

The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

E. AFTER THE HEARING

There is no formal right of appeal.

PROCEDURE

Members should bear in mind that a Standards Committee Hearing is a formal meeting of the Authority and is not a Court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The Standards Committee should work at all times in a fair, independent and politically impartial way. This helps to ensure that members of the public and Members of the Authority have confidence in its procedures and findings. The Chair and the Committee have the ability to amend the procedures as necessary from time to time as circumstances of individual cases to ensure the procedures fair and independent

The Committee will follow the following stages:-

- (1) Formal introductions
- (2) Making Findings of Fact
- (3) Did the Subject Member fail to follow the Code of Conduct?
- (4) Any sanctions if the Subject Member has been found to have breached the Code of Conduct
- (5) Decision.

Stage 1 Formal introductions.

The Chair will outline how the Committee will be run and deal with any preliminary procedural issues. For example, determine whether the matter should be held in private and the reasons for this.

Stage 2 Making Findings of Fact

The Committee will consider whether there are any significant disputed facts contained within the Investigation Report.

If there are no disputed facts, the Committee will move onto the next stage.

If there is a dispute, the Investigator will be invited to make representations to support the relevant findings of fact in the Report.

The Investigator may call any necessary supporting witnesses to give evidence.

The Subject Member will then have an opportunity to challenge any evidence put forward.

The Subject Member will make representations to support their version of facts and call evidence as necessary.

The Investigator will be given the opportunity to challenge any evidence put forward by the Member.

The Committee can at any time ask any questions or seek clarification from either party via the Chair.

The Committee will retire, along with the monitoring officer, to deliberate on the representations and evidence.

On their return, the Chair will announce the Committee's findings of fact.

Stage 3 Did the Subject Member fail to follow the Code of Conduct?

The Subject Member will be invited to make representations why the Committee should decide that they have not breached the Code of Conduct.

The Committee will invite the Investigator to make any verbal or written representations.

The Committee will raise /clarify issues. The views of the Independent Person will be sought.

The Subject Member should be invited to make any final, relevant points as to whether there has been a breach of the Code of Conduct.

The Committee will retire, along with the monitoring officer, to determine whether there has been a breach of the Code of Conduct.

On their return, the Chair will announce the Committee's decision as to whether the Subject Member has failed to follow the Code.

If the Committee decides that the Subject Member has not failed to follow the Code, the Committee can move onto consider whether it should make any recommendations to the Authority or the Monitoring Officer following the investigation, to promote the high standards of behaviour.

Stage 4 If the Subject Member has been found to have breached the Code of Conduct

The Committee will consider any verbal or written representations from the Investigator and the Subject Member as to:-

- Whether the Committee should apply a sanction;
- What form any sanction should take.

The Committee will raise /clarify issues. The views of the Independent Person will be sought.

The Committee will retire, along with the monitoring officer, to determine whether to impose a sanction and if so, what it should be.

Stage 5 Decision

On their return, the Chair will announce the Committee's decision.

After considering any verbal or written representations from the Investigator, the Committee will decide whether it should make any recommendations to the Authority with a view to promoting high standards of conduct.

A full written decision will be provided to all parties as soon as reasonably practicable after the Hearing.