



STANDARDS COMMITTEE
18 February 2011

**GUIDE TO SUB-COMMITTEE MEETINGS AND HEARINGS DEALING
WITH ALLEGATIONS OF BREACHES OF THE MEMBERS' CODE OF
CONDUCT**

PURPOSE OF REPORT: To seek the approval of the Standards Committee to a guide for Members to Sub-Committee meetings and hearings dealing with allegations of breaches of the Members' Code of Conduct.

Background

1. The Standards Committee has previously approved a guide to the investigation process when an allegation of a breach of the Code of Conduct has been made. This guide was produced to assist members' understanding of the process, particularly if they are the subject of an investigation.
2. The Committee subsequently asked Officers to prepare a similar guide dealing with the various meetings and hearings that might occur in connection with an allegation, again for the assistance of Members. The intention is that this is made available to Members when advising them that an allegation has been made about them which is being dealt with by the Standards Sub-Committee.
3. There has been some delay in producing this note, as it was decided that it would need to reflect any changes to the Constitution made concerning the attendance of Members at the Standards Sub-Committee. Given that such amendments have not been made by the Council, the guidance note has now been prepared and is attached as **Appendix A** for the Committee's consideration and views.

Conclusions:

4. The Committee is requested to consider the attached guidance note, make any suggestions regarding its content and agree that it should be available to Members to assist them in understanding the process if allegations regarding a breach of the Code of Conduct are made about them.

Financial and value for money implications

5. None.

Equalities Implications

6. The Monitoring Officer will need to consider in any individual case whether there is a need to provide the guidance in any other format, given the particular needs of any Member concerned.

Risk Management Implications

7. None.

Implications for the Council's Priorities or Community Strategy/Local Area Agreement Targets

8. None.

Recommendations:

To agree that the Monitoring Officer finalise the Standards Committee's guide to Sub-Committee meetings and hearing dealing with allegations of breaches of the Code of Conduct, taking account of the comments of the Committee, and that the guide is made available to Members of the Council to assist them in their understanding of the process.

Next steps:

The Monitoring Officer will finalise the guide and make it available to any Member who is the subject of an allegation of a breach of the Code of Conduct, and any other Members who wish to receive it.

Report contact: Allan Wells, Corporate Group Manager, Legal Services

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Sources/background papers:

Minutes of Standards Committee 30 November 2009
Surrey County Council Constitution
Standards Board for England- Local Standards Framework

Appendix A attached

Appendix A – D R A F T



Standards Committee: Guide to Sub-Committee Meetings and Hearings dealing with allegations of breaches of the Members' Code of Conduct

Introduction

1. This guidance has been produced for the assistance of Councillors and co-opted members of the Council to help to understand the processes relating to the different types of Sub-Committee meetings that can take place when dealing with allegations that a member has breached the Members' Code of Conduct. This includes guidance about determination hearings which are the final stage of the process for the Standards Committee when dealing with allegations.
2. The guidance should be read in conjunction with the Committee's guide to the investigation of allegations that a member has breached the Code of Conduct.
3. When the Monitoring Officer receives a complaint about the conduct of a County Councillor or a co-opted member, it may be the subject of four different types of meetings of the Standards Sub-Committee before reaching a final determination.

Assessment Meetings

4. Any complaint which alleges that a member has breached the Code of Conduct must first be assessed by one of the two Standards Sub-Committees, and this must happen within an average of 20 working days from receipt. Democratic Services will advise the subject member that a complaint has been received, and refer to the paragraphs of the Code of Conduct that it relates to. The name of the complainant may only be given to the subject member at this stage if agreed to by the complainant, and no details of the allegations can be given to the subject member until after the Sub-Committee has considered the matter.
5. The Sub-Committee has to decide whether:

- a. it is a complaint against a member of the authority
 - b. the member was in office at the time of the alleged conduct
 - c. the complaint, if proven, would be a breach of the Code of Conduct.
6. The Sub-Committee will meet in a closed meeting to make the assessment. These meetings are not subject to notice and publicity requirements because the Sub-Committee may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. Instead, there are rules about what must be done by way of publicity after the Sub-Committee has considered a complaint (see below). The Monitoring Officer considers that it would not be possible for the subject member to be present at the meeting because of having a prejudicial interest in relation to the matter.
7. Having assessed the complaint, the Sub-Committee must reach one of the three following decisions:
- a. To refer the complaint to the Monitoring Officer for investigation or other action
 - b. To refer the complaint to Standards for England
 - c. That no action should be taken in respect of the complaint.
8. Most complaints will be dealt with by the Council's own Standards Sub-Committees. However, sometimes matters such as the severity of the allegations, the status of the member or complainant concerned, or potential conflicts of interest mean that the Standards Committee could not deal with the complaint. In those cases, the matter may be referred to Standards for England.
9. Sometimes, instead of an investigation, the Sub-Committee may decide that other action would be appropriate. Examples of other action that may be taken are arranging for training, or conciliation or making changes to Council procedures.
10. The Standards Committee has developed assessment criteria against which it will assess new complaints, which are available on Snet.
11. After the decision has been made, Democratic Services will usually notify the complainant and the subject member within five working days, if possible.
12. If the Sub-Committee decides to take no action on the complaint, it will give its reasons for this. If the Sub-Committee decides that the allegation, if proven, would not be a breach of the Code, the decision notice will explain what the allegation was and the Sub-Committee's reasons for its decision. This notice will be sent to the complainant, and the subject member and will be available for inspection by the public at County Hall for a period of 6 years.

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13. If the Sub-Committee decides to refer the complaint for investigation either to the Monitoring Officer or Standards for England, Democratic Services will normally send a summary of the complaint to the parties, stating what type of referral has been made, and the reasons for it. The Sub-Committee may decide not to give the subject member a summary of the complaint, if it decides that doing so would be against the public interest, or could prejudice any future investigation. This is something that will need to be kept under review by the Sub-Committee as the matter progresses.

Review Hearings

14. If the Sub-Committee decides not to take any action on a complaint, the complainant has a right to ask for the decision to be reviewed. The request must be made within 30 days of the assessment decision.
15. The review must be independent of the original decision and is therefore heard by the other Standards Sub-Committee. Members who took part in the original assessment must not be involved in the review. Just as for the assessment hearing, the review hearing will take place in a closed meeting.
16. The Sub-Committee reviewing the decision must apply the same criteria and will reach its own separate conclusions.
17. The subject member, and any other relevant parties, will be informed when a complainant asks for a review.
18. After the review, Democratic Services will notify the complainant and the subject member of the decision in the same way as they would after an assessment hearing.
19. If the Sub-Committee decides at a review hearing to take no further action, that is the end of the process. There is no further review unless the complainant pursues this matter through legal proceedings by way of Judicial Review.

Consideration meeting

20. Please see the separate guidance available on the process of investigation, in the event that the case is referred to the Monitoring Officer for investigation. Where an investigation has been carried out and the investigator finds that there was no failure to comply with the Code, the Standards Sub-Committee must then decide whether to accept that recommendation at a consideration meeting.
21. Alternatively, if the investigator has found a failure to comply with the Code, the Standards Sub-Committee must decide whether it should be referred to Standards for England, or for a determination hearing by the Sub-Committee- and again this is dealt with at a consideration meeting.

22. The decisions made at a consideration meeting are separate from the hearing itself which is dealt with at a further different meeting. The subject member has no right to speak or make representations at the consideration meeting.
23. The Regulations allow for any information presented to the Sub-Committee sitting as a consideration meeting to be considered as exempt information, which need not be made public. The Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. However, the Sub-Committee must also take into account the fact that a subject member may refuse to allow publication of a decision notice if it finds that there has been no failure to follow the Code.
24. The Monitoring Officer is of the view that, in most cases, a subject member would have a prejudicial interest, which would prevent him from attending a consideration meeting. The member will, of course, have been interviewed by the investigator and given an opportunity to comment on the investigator's report.

Determination hearings

25. If, at a consideration meeting, the Sub-Committee decides that the matter should proceed to be dealt with at a determination hearing this will also be dealt with by one of the Standards Sub-Committees and must be heard within three months of the completion of the Monitoring Officer's report. A final decision will then be made on the alleged breach.
26. Democratic Services will liaise, as appropriate, with the Investigating Officer, the subject member, the Monitoring Officer and the Sub-Committee chairman to sort out the arrangements for the hearing including dealing with the following issues:
 - a) sorting out a mutually convenient date as soon as is possible
 - b) identification of the extent to which findings of fact in the Investigator's report are disputed
 - c) identification of whether any disagreements are relevant to the matters the hearing will need to decide
 - d) identification of the evidence that will need to be heard, and from whom
 - e) consideration of whether any part of the hearing needs to be in private
 - f) consideration of the extent to which material should be treated as "exempt" material
27. Again, the Regulations allow for any information presented to the Sub-Committee to be considered as exempt information, which need not be made public. The Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. However, the Sub-Committee must also take into account the fact that a subject member may refuse to allow

publication of a decision notice if the Sub-Committee finds that there has been no failure to follow the Code.

28. The subject member has the right to speak at the meeting, and be represented if they wish. The Sub-Committee hearing is a formal meeting of the County Council, and not a court of law. It does not hear evidence under oath, but does decide factual evidence on the balance of probabilities. Witnesses can be called by the Investigator or by the subject member- although it is for the Sub-Committee to decide on the number of witnesses. The Monitoring Officer (or her representative) will be present to advise the Sub- Committee on points of law or procedure.
29. The procedure to be followed will be decided by the Sub-Committee, but the likely procedure is as follows:
- a) The investigating officer will present the case that there has been a failure to comply with the Council's Code of Conduct.
 - b) The investigating officer and any witnesses called may then be questioned on any points arising from the presentation of the case by the subject member, by members of the Sub Committee and by the Monitoring Officer.
 - c) The subject member will then present his/her case.
 - d) The subject member and any witnesses called may then be questioned on any points arising from this presentation by the Investigating Officer, by members of the Sub-Committee and by the Monitoring Officer.
 - e) The Chairman will remind all parties of the findings that can be made, which are:
 - i. That the subject member had not failed to comply with the Council's Code of Conduct
 - ii. That the subject member had failed to comply with the Council's Code of Conduct but that no action needs to be taken
 - iii. That the subject member has failed to comply with the Council's Code of Conduct and that a sanction should be imposed
 - f) The investigating officer will sum up.
 - g) The subject member will sum up.
 - h) The Sub-Committee will ask the parties to retire whilst it reaches a decision. At this point, the Monitoring Officer may remain with the Sub-Committee to offer advice on points of law or procedure. The Democratic Services Officer may remain to take notes.

Sanctions

30. If the Sub-Committee decides that the subject member has failed to comply with the Code of Conduct and that a sanction should be imposed, it shall impose any one, or a combination of, the following sanctions:
- a) censure of that member;

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- b) restriction for a period not exceeding six months of that member's access to the premises or use of resources of the authority provided that the restrictions:
 - i. are reasonable and proportionate to the breach and
 - ii. do not unduly restrict the person's ability to perform the functions of a member;
- c) partial suspension for a period not exceeding six months;
- d) suspension for a period not exceeding six months;
- e) that the member submits a written apology in a form specified by the Sub-Committee;
- f) that the member undertakes such training as specified by the Sub-Committee;
- g) that the member participate in such conciliation as the Sub-Committee specifies;
- h) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the Sub-Committee;
- i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies;
- j) suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the Sub-Committee;
- k) suspension of the member for a period not exceeding six months or until such time as that member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies.

Decision

31. This should be set out in writing which is then sent as soon as possible after the hearing to all parties including the subject member. A summary of the decision and the reasons are published in at least one local newspaper and will also be posted on the County Council website. In the event that the Sub-Committee decides that the Member did not breach the Code of Conduct, the subject member can veto the publication of the decision.

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