

CONFIDENTIAL INFORMATION AND EXCLUSION OF THE PUBLIC

Excluding the public from hearings

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private.

- 1 At the hearing, the committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the *Local Government Act 1972* (as modified in relation to local determinations by Standards Committees). If the committee considers that 'confidential information' is likely to be revealed during the hearing, the committee must exclude the public by law. 'Confidential information' is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
- 2 The committee also has the power to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are listed below:

Categories of exempt information under Schedule 12A of the *Local Government Act 1972* (as modified in relation to local determinations by standards committees)

- 1 Information relating to any individual.
 - 2 Information which is likely to reveal the identity of an individual.
 - 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
 - 4 Information relating to any consultations or negotiations, in connection with any labour relations matter arising between the authority or a minister of the Crown and employees of, or office holders under, the authority.
 - 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
 - 6 Information which reveals that the authority proposes:
 - to give under any enactment a notice under or by virtue of which requirements are imposed on a person.
 - to make an order or direction under any enactment
 - 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 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 to a sub-committee of a Standards Committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, referred under section 58(1)(c) of the Local Government Act 2000.

3. The committee should act in line with Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The committee also has a duty to act fairly and in line with the rules of natural justice.
4. Article 6 says that the public may be excluded from all or part of the hearing if it is in the interests of:
 - a morals;
 - b public order;
 - c justice;
 - d national security in a democratic society; or
 - e protecting young people under 18 and the private lives of anyone involved.

There should be a public hearing unless the committee decides that there is good reason, which falls within one of the five categories above (a to e), for the public to be excluded.

5. The committee must also act in line with Article 10 of the *European Convention on Human Rights*, which sets out the right for people to 'receive and impart information and ideas without interference by public authority'. Any restrictions on this right must be 'prescribed by law and...necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.
6. Conflicting rights often have to be balanced against each other. The committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the committee) may interfere with this right unless it is:
 - a in line with the law; and
 - b necessary in a democratic society in the interests of:
 - i national security;
 - ii public safety;
 - iii the economic wellbeing of the country;
 - iv preventing crime or disorder;
 - v protecting people's health and morals (which would include protecting standards of behaviour in public life); or
 - vi protecting people's rights and freedoms.

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 hearing should be held in public unless the committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

- 7 In relation to people's rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be 'necessary in a democratic society'. A measure will only be 'necessary' if it meets 'a pressing social need', and any restriction on people's rights must be 'proportionate'.
- 8 The Standards Board for England recommends that a Standards Committee should move to a private room when considering its decisions, they do not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.