



**LOCAL DETERMINATION/INVESTIGATION  
HEARINGS SUB-COMMITTEE**

**PRE-HEARING AND HEARING PROCESS**

**2005/2006**





## **WEST LANCASHIRE DISTRICT COUNCIL**

### **THE PRE-HEARING PROCESS FOR STANDARDS COMMITTEE DETERMINATIONS**

#### **1. Pre-amble**

The pre-hearing process will be used to:

- identify whether the member who the allegation has been made about disagrees with any findings of fact in the Ethical Standards Officer/investigator's report;
- decide whether those disagreements are significant to the hearing;
- decide whether to hear evidence about those disagreements during the hearing;
- decide whether or not there are any parts of the hearings that should be held in private; and
- decide whether or not any parts of the Ethical Standards Officer/Investigator's report or other documents should be withheld from the public.

**The pre-hearing process should be carried out in writing, although occasionally a meeting may be necessary.**

#### **2. Procedure**

2.1 The Monitoring Officer will give a copy of the Ethical Standards Officer/Investigator's referred report to the member who the allegation has been made about as soon as practicable.

**(See Document 1)**

2.2 The officer providing administrative support to the Local Determination/Investigation Hearings Sub-Committee, in consultation with the Chairman of the Sub-Committee, will:

- provide a copy of the Sub-Committee's pre-hearing and hearing procedures to the member who the allegation has been made about;
- outline the member's rights and responsibilities;

- propose a date for the hearing;
- ask for a written response from the Member by a set time to find out whether he or she:
  - disagrees with any of the findings of fact in the Ethical Standards Officer/Investigator's report, including the reasons for any disagreements;
  - wants to be represented at the hearing by a solicitor, barrister or any other person, noting that the Sub-Committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined;
  - wants to give evidence to the Sub-Committee, either verbally or in writing;
  - wants to call relevant witnesses to give evidence to the Sub-Committee;
  - can come to the hearing on the proposed date;
  - wants any part of the hearing to be held in private; and
  - wants any part of the Ethical Standards Officer's/Investigator's report or other relevant documents to be withheld from the public;

**(See Document 2)**

- send a copy of the Member's response to the ESO/Investigator and invite the Ethical Standards Officer/Investigator to say by a set time whether he or she:
  - will be in attendance at the hearing or will be represented at the hearing;
  - wants to call relevant witnesses to give evidence to the Sub-Committee;
  - wants any part of the hearing to be held in private;
  - wants any part of the Ethical Standards Officer's/Investigator's report or other relevant documents to be withheld from the public; and
  - wants to invite any other witnesses the Sub-Committee feels are appropriate.

**(See Document 3)**

2.4 The officer providing administrative support to the Sub-Committee in consultation with the Chairman and the legal advisor, should then:

- confirm a date, time and place for the hearing;
- confirm the main facts of the case that are agreed;
- confirm the main facts which are not agreed;

- confirm which witnesses will give evidence;
- outline the proposed procedure for the hearing; and
- provide this information to everyone involved in the hearing at least two weeks before the proposed date of the hearing.

**(See Document 4)**

(NOTES:

- (i) The hearing cannot be held until at least 14 days after the date the Monitoring Officer sent the report to the member who is the subject of the hearing (unless that member agrees to an earlier hearing).
- (ii) During the course of a hearing, the Sub-Committee may decide that it needs additional information in order to reach a decision. Under regulation 6(9), it can ask the Council Secretary and Solicitor, as Monitoring Officer, to obtain further information or undertake further investigation. It can make this request only once per case.
- (iii) The Hearing must be held within three months from the date on which the Monitoring Officer first received the report. *(If the Sub-Committee does not hear the matter within three months, the Sub-Committee will be failing in its legal duty and may face judicial review proceedings. See case title Dawkins v Bolsover District Council 10 December 2004.)*
- (iv) On occasion, the Sub-Committee may decide that the sanctions available to it are not adequate for the seriousness of the situation, or that the evidence indicates that the alleged breach is more serious than initially thought, and the case should not be dealt with at the local level. In this situation, it may, under regulation 6(10), write to the ethical standards officer for investigation. The Sub-Committee must set out reasons why the case should be referred back. It can make this request only once and must be made before completion of the hearing.

The Ethical Standards Officer must respond to the request within 21 days. Regulation 6(11) enables them to direct the Sub-Committee to continue with the hearing or stop the hearing and recall the matter for further investigation. Where the Ethical Standards Officer directs the Sub-Committee to continue with the hearing, the hearing must be held within three months of the direction.





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Fax: 01695 585082

2005

**(DOCUMENT 1)**

**PRIVATE AND CONFIDENTIAL**

((Parish) Councillor .....  
Address

Dear (Parish) Councillor .....

**REFERENCE SBE.....**

**Standards Board for England – Allegation of a Breach of the Code of Conduct for Members**

Please find enclosed a copy of a report I have received today/on .....from  
..... in respect of an allegation that .....

Under the Local Determination Regulations, the allegation will be considered at a hearing of the Local Determination/Investigation Hearings Sub-Committee.

The Sub-Committee must hold a hearing in relation to an allegation within three months of the Monitoring Officer receiving the Ethical Standards Officer/Investigator's report. Normally, hearings should take place at least 14 days after the member who the allegation has been made about receives a copy of the report.

The officer providing administrative support to the Sub-Committee, from Member Services, will be in touch in due course to arrange a convenient hearing date with you.

Should you require any further information, please do not hesitate to contact me.

**Yours faithfully**

**Gillian L Rowe LL.B**  
**Council Secretary and Solicitor**  
**E-mail: [Gill.Rowe@westlancsdc.gov.uk](mailto:Gill.Rowe@westlancsdc.gov.uk)**

**cc. Member Services**







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2005

**(DOCUMENT 2)**

(Parish) Councillor.....  
Address

Dear Councillor .....

**Local Determination/Investigation Hearings Sub-Committee**

**Hearing Date:** .....

**REFERENCE SBE**.....

Further to our telephone conversion regarding the allegation of misconduct that has been referred to the above Sub-Committee for consideration, I am writing to confirm that the hearing will be held on ...*date*..... In .....*room*....., 52 Derby Street, Ormskirk L39 2DF.

You have the right to:

- Go to the hearing and present your case
- Call a reasonable number of witnesses to give relevant evidence at the hearing.
- Be represented at the hearing by a solicitor, barrister or any other person, the Sub-Committee will normally give permission for you to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined.

Any disagreements with the findings of fact in the Ethical Standards Officer/Investigator's report must be raised during the pre-hearing process. (A copy of the process is attached for information) The Sub-Committee will not consider any new disagreements about the report's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.

You do not have to attend the hearing or be represented. If you choose not to go to the hearing, the Sub-Committee may make a determination in your absence.

The hearing will be held in public and the relevant papers will be available for public inspection unless the Sub-Committee is persuaded that there is good reason to exclude

the public, in line with the relevant access to information and human rights legislation. (A copy of which is attached as an appendix for information.)

In order to assist you and the Sub-Committee, I have enclosed a number of forms for you to complete I would be grateful if you could please return these to me, no later than, ..... (2 weeks from the date on the letter)

- Form A – Your response to the evidence set out in the Ethical Standards Officer/Investigator's report.
- Form B – Other relevant evidence. Please state if this will be given verbally or in writing.
- Form C – Any representations the Sub-Committee should take into account if you are found to have breached the Code.
- Form D – Details of the Member's proposed arrangements for the Sub-Committee hearing.
- Form E – Details of any proposed witnesses to be called.

I have also enclosed a copy of the hearing procedure for your information.

**Yours faithfully**

**Jacky Denning** (Officer providing administrative support to the Sub-Committee)  
**Assistant Member Services Manager**  
E-mail: [Jacky.Denning@westlancsdc.gov.uk](mailto:Jacky.Denning@westlancsdc.gov.uk)

**cc. Mrs Gillian Rowe, Monitoring Officer**



**FORM A**                      **COUNCILLOR .....**

Please enter the number of any paragraph where you disagree with the findings of fact in the ESO/Investigator's report, and give your reasons and your suggested alternative.

**Member's response to the evidence set out in the ESO/Investigator's report**

Paragraph number from the ESO/Investigator's report	Reasons for disagreeing with the findings of fact provided in that paragraph	<u>Suggestion as to how the paragraph should read</u>

Please attach separate sheets if necessary.

To be returned to:  
 Jacky Denning, Member Services, 52 Derby Street, Ormskirk L39 2DF



FORM B COUNCILLOR .....

Please set out below, using the numbered paragraphs, any other evidence you feel is relevant to the allegation made about you.

Other evidence relevant to the allegation

Paragraph number	Details of the evidence
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

To be returned to:  
Jacky Denning, Member Services, 52 Derby Street, Ormskirk L39 2DF



FORM C COUNCILLOR .....

*Representations to be taken into account if a member is found to have failed to follow the Code of Conduct*

**Please set out below, using the numbered paragraphs, any factors that the Local Determination/Investigation Hearings Sub-Committee should take into account if it finds that a member has failed to follow the Code of Conduct. Please note that no such finding has been made yet.**

Paragraph number	Factors for the Sub-Committee to take into account when deciding whether or not to order any censure, restriction of resources or allowances, suspension or partial suspension
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

To be returned to:  
Jacky Denning, Member Services, 52 Derby Street, Ormskirk L39 2DF



**FORM D (PARISH) COUNCILLOR .....**

**Arrangements for the Local Determination/Investigation Hearings Sub-Committee**

Please tick the relevant boxes.

1	The proposed date for the Sub-Committee hearing is given in the accompanying letter. Are you planning to go to the hearing? If 'No', please explain why.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Reason: ..... ..... .....	6	Are you going to call any witnesses?  If 'Yes', please fill in Form E	YES <input type="checkbox"/> NO <input type="checkbox"/>	
2	Are you going to present your own case?	YES <input type="checkbox"/> NO <input type="checkbox"/>		7	Do you, your representative or your witnesses have any access difficulties (eg. is wheelchair access needed)? If 'Yes' please give details.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Details: ..... ..... .....
3	If you are not presenting your own case, will a representative present it for you? If 'Yes' please state the name of your representative	YES <input type="checkbox"/> NO <input type="checkbox"/>	Name: ..... ..... .....	8	Do you, your representative or witness have any special needs (eg. is an interpreter needed)? If 'Yes' please give details.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Details: ..... ..... .....
4	Is your representative a practising solicitor or barrister? If 'Yes' please give his or her legal qualifications. Then go to question 6 If 'No' please go to question 5	YES <input type="checkbox"/> NO <input type="checkbox"/>	Qualifications: ..... ..... .....	9	Do you want any part of the hearing to be held in private?  If 'Yes' please give reasons.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Reasons: ..... ..... .....
5	Does your representative have any connection with the case?  If 'Yes' please give details.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Details: ..... ..... .....	10	Do you want any part of the relevant documents to be withheld from public inspection? If 'Yes' please give reasons.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Reasons: ..... ..... .....

Please attach separate sheets if necessary.

To be returned to: Jacky Denning, Member Services, 52 Derby Street, Ormskirk L39 2DF



**FORM E**

Details of proposed witnesses to be called

Name of witness or witnesses	1	..... .....	<b>WITNESS 2</b>  <b>A</b> Will the witness give evidence about the allegation? If 'Yes' please provide an outline of the evidence the witness will give.  <b>B</b> Will the witness give evidence about what action the Sub-Committee should take if it finds that the Code of Conduct has not been followed? If 'Yes, please provide an outline of the evidence the witness will give.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Outline of evidence: ..... ..... .....
	2	..... .....		YES <input type="checkbox"/> NO <input type="checkbox"/>	Outline of evidence: ..... ..... .....
	3	..... .....		YES <input type="checkbox"/> NO <input type="checkbox"/>	Outline of evidence: ..... ..... .....
<b>WITNESS 1</b>  <b>A</b> Will the witness give evidence about the allegation? If 'Yes' please provide an outline of the evidence the witness will give.  <b>B</b> Will the witness give evidence about what action the Sub-Committee should take if it finds that the Code of Conduct has not been followed? If 'Yes' please provide an outline of the evidence the witness will give	YES <input type="checkbox"/> NO <input type="checkbox"/>  YES <input type="checkbox"/> NO <input type="checkbox"/>	Outline of evidence: ..... .....  Outline of evidence: ..... ..... .....	<b>WITNESS 3</b>  <b>A</b> Will the witness give evidence about the allegation? If 'Yes' please provide an outline of the evidence the witness will give.  <b>B</b> Will the witness give evidence about what action the Sub-Committee should take if it finds that the Code of Conduct has not been followed? If 'Yes' please provide an outline of the evidence the witness will give.	YES <input type="checkbox"/> NO <input type="checkbox"/>  YES <input type="checkbox"/> NO <input type="checkbox"/>	Outline of evidence: ..... ..... .....  Outline of evidence: ..... ..... .....

Please attach separate sheets if necessary.

To be returned to:  
 Jacky Denning, Member Services, 52 Derby Street, Ormskirk L39 2DF





**CONFIDENTIAL INFORMATION AND EXCLUSION OF THE PUBLIC**

**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 a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority.
- 2 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder appointed by:
  - (a) a magistrates' court committee;
  - (b) a probation committee within the meaning of the *Probation Service Act 1993*; or
  - (c) a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
- 2A Information relating to a particular chief officer, former chief officer or applicant to become a chief officer of a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
- 3 Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
- 4 Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
- 5 Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
- 6 Information relating to the adoption, care, fostering or education of any particular child.
- 7 Information relating to the financial or business affairs of any particular person (other than the authority).
- 8 The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.
- 9 Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
- 10 The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.

- 11 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.
- 12 Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:
  - a any legal proceedings by or against the authority; or
  - b the determination of any matter, affecting the authority.(whether in either case, proceedings have been commenced or are in contemplation).
- 13 Information which, if disclosed to the public, would reveal that the authority proposes:
  - a to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - b to make an order or direction under any enactment.
- 14 Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 15 The identity of a protected informant.
- 16 Information relating to the personal circumstances of any person.
- 17 Information which is subject to any obligation of confidentiality.
- 18 Information which relates in any way to matters concerning national security.
- 19 The deliberations of a Standards Committee or a sub-committee of a Standards Committee established under the provisions of Part III of the *Local Government Act 2000* in reaching any finding on a matter referred under the provisions of section 64(2) or 71(2) of the *Local Government Act 2000*.

#### 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 above. 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.
- 3 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.
- 4 There should be a public hearing unless the committee decides that there is good reason, which falls within one of the five categories above (3a 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. We do not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.



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Council Secretary and Solicitor  
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Fax 01695 585082

2005

**(DOCUMENT 3)**

Ethical Standards Officer/Investigator's name  
Address

Dear .....

**Local Determination/Investigation Hearings Sub-Committee –  
Hearing Date: .....  
Case No.  
(Parish) Councillor**

I have enclosed for your consideration copies of: the following forms completed by (Parish) Councillor ..... in response to your report regarding allegations of misconduct:

Form A – response to the evidence set out in the Ethical Standards Officer/Investigator's report.

Form B – Other relevant evidence.

Form C – Which sets out any representations the Sub-Committee should take into account if the member is found to have broken the Code of Conduct

Form D – Details of the Members proposed arrangements for the Sub-Committee hearing.

Form E – Details of any proposed witnesses the Member wishes to call.

I would be most grateful if you could please supply me with the following information by ..... (2 weeks from the date of the letter):

- Any comments you may have on the member's response.
- If you will be in attendance at the hearing or a representative.

- Details of any relevant witnesses you will be calling to give evidence to the Sub-Committee.
- If you would like any part of the hearing to be held in private.
- If you would like any part of your report or other relevant documents to be withheld from the public.
- If you would like to invite any other witnesses that the Sub-Committee feels are appropriate.

Should you require any further information please do not hesitate to contact me.

**Yours faithfully**

**Jacky Denning** (Officer providing administrative support to the Sub-Committee)  
**Assistant Member Services Manager**  
E-mail: [Jacky.Denning@westlancsdc.gov.uk](mailto:Jacky.Denning@westlancsdc.gov.uk)

**cc. Mrs Gillian Rowe, Monitoring Officer**



William J Taylor BA (Hons), M Soc Sc, FIPD  
Chief Executive

52 Derby Street  
Ormskirk  
West Lancashire  
L39 2DF  
Telephone 01695 585000  
Fax 01695 585021

2005

**(DOCUMENT 4)**

TO: A maximum of 5 Members selected from the Standards Committee membership, by the Council Secretary and Solicitor, in consultation with the Chairman of the Standards Committee. Must have at least one independent member and at least one Parish Councillor when a Parish Council matter is being considered.

(Political balance does not apply.)

The Member: (Parish) Councillor .....  
The ESO  
The Investigator  
The Monitoring Officer

COPY TO: All other Members of the Standards Committee  
(For information) The person who made the allegation  
All Parish Councils in West Lancashire  
The Press

Dear Councillor,

A meeting of the **LOCAL DETERMINATION/INVESTIGATION HEARINGS SUB-COMMITTEE** will be held in the .....on ..... at .....at which your attendance is requested.

Yours faithfully,

William J Taylor  
Chief Executive

**A G E N D A**  
**(Open to the Public)**

**1. APPOINTMENT OF CHAIRMAN**

To appoint a Chairman for the meeting

**2. APOLOGIES**

**3. DECLARATIONS OF INTEREST**

If a member requires advice on Declarations of interest he/she is advised to contact the Council Secretary and Solicitor in advance of the meeting.

(For the assistance of members a checklist for use in considering their position in relation to any particular item is included at the end of this agenda sheet.)

**4. MINUTES**

To receive as a correct record the minutes of the meeting held on

**5. (PARISH) COUNCILLOR.....**

To hear and determine whether or not the Member has failed to follow the authorities Code of Conduct and if so, to decide whether or not a penalty should be applied and what form any penalty should take.

**FIRE EVACUATION PROCEDURE: Please see attached sheet.**

**NO SMOKING: The Council has a no smoking policy which applies to all meetings.**

**MOBILE PHONES: These should be switched off at all meetings.**

*For further information, please contact:-  
Jacky Denning on 01695 585384  
or email  
Jacky.Denning@westlancsdc.gov.uk*





**AGENDA ITEM: 5**  
**LOCAL DETERMINATION/INVESTIGATION**  
**HEARINGS SUB COMMITTEE:**  
.....2005

**PRE-HEARING PROCESS SUMMARY**

**(Parish) Councillor:** .....

**Authority:** .....

.....(Parish) Council

**Name of the person who made the original allegation:** .....

**Case Reference Numbers:** .....

SBE

**Monitoring Officer:**

Mrs Gillian Rowe, Council Secretary and Solicitor

**Ethical Standards Officer who referred the matter:**.....

**Investigator:**

(If the case is a local investigation)

**Officer providing administrative support for the hearing:**

Mrs Jacky Denning, Assistant Member Services Manager

**Date the pre-hearing process summary was produced:**

**Hearing Date and Time:**

**Venue:**

**Allegation summary:**

**Relevant Section or Sections of the Code of Conduct:**

**The findings of fact in the Ethical Standards Officer/Investigator's report that are agreed:**

**The findings of fact in the Ethical Standards Officer/Investigator's report that are not agreed:**

**In attendance:**

(Parish) Councillor..... and/or representative.

Mr/Ms .....(Ethical Standards Officer or representative/Investigator)

**Witnesses:**

## **HEARING PROCEDURE**

- The Hearing Procedure, which we will follow, is attached as Appendix 1 (Green Papers)
- The Ethical Standards Officer/Investigator's report is attached as Appendix 2 (Blue Papers)
- The Evidence Bundle is attached as Appendix 3 (Yellow Papers)
- Response of (Parish) Councillor ..... is attached as Appendix 4 (Grey Papers)
- Response on behalf of the Ethical Standards Officer/Investigator is attached as Appendix 5 (Lilac Papers)
- The Pre-Hearing Process is attached as Appendix 6 (Pink Papers)
- Categories of exempt information for excluding the public from meetings is attached as Appendix 7 (Cream Papers).



## **WEST LANCASHIRE DISTRICT COUNCIL**

### **HEARING PROCEDURE FOR THE LOCAL DETERMINATION/INVESTIGATION HEARINGS SUB-COMMITTEE:**

#### **CHAIRMAN'S INTRODUCTION**

The purpose of the Sub-Committee's hearing is to decide whether or not (Parish) Councillor ..... has failed to follow the Code of Conduct for .....Council and, if so, to decide whether or not any penalty should be applied and what form any penalty should take.

All of those present will introduce themselves.

The Chairman will advise that the hearing will be conducted using the Hearing Procedure enclosed with the agenda.

The Sub-Committee will run the hearing as set out in this document.

*(If the Member who the allegation has been made about is not in attendance, the Sub-Committee can consider the Ethical Standards Officer/Investigator's report in the Members absence. If the Sub-Committee is satisfied with the Member's reason for not being able to attend, another date should be arranged for the hearing.)*

The Chairman shall ask the Councillor, the Investigating Officer and the Legal Adviser to the Sub-Committee whether they wish to exclude the Press or public from all or any part of the hearing.

*(If any of them so request, the Chairman shall ask them to put forward reasons for s doing and ask for responses from the others and the Sub-Committee shall then determine whether to exclude press and public from all or any part of the hearing.*

*Where the Sub-Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall be made available to the press and public.)*

#### **Preliminary Procedural Issues**

Any issues or disagreements about how the hearing should continue should be resolved at this stage.

## Stage 1 – Findings of fact

1. The Chairman will refer to the pre-hearing process summary to see if there are any significant disagreements with the facts contained in the Investigator's report?

If no, move to Stage 2.

If yes,

the investigator, if present, should be invited to make any necessary representation to support the relevant findings of fact in the report. (If the member disagrees with most of the facts, it may make sense for the investigator to start by making representation on all the relevant facts, instead of discussing each fact individually.)

2. With the Sub-Committee's permission, the investigator may call any necessary supporting witnesses to give evidence.
3. The Sub-Committee may give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.
4. The Member will then make representations to support his or her version of the facts and, with the Sub-Committee's permission, call any necessary witnesses to give evidence.
5. The Sub-Committee may allow the investigator to challenge any evidence put forward by witnesses called by the member

(After each representation, the Sub-Committee may question any of the people involved or any of the witnesses)

6. If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing.
7. All parties except the Sub-Committee and the officer providing administrative support to the Sub-Committee should leave the room whilst the Sub-Committee consider
  - (i) the member's explanation for not raising the issue at an earlier stage and decide to either:
    - (a) continue with the hearing, relying on the information in the Investigator's report;
    - (b) allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
    - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.
  - (ii) all the representations and evidence.
8. On their return, the Chairman will announce the Sub-Committee's findings of fact.

*(Note: During the course of a hearing, the Sub-Committee may decide that it needs additional information in order to reach a decision. Under regulation 6(9), it can ask the Monitoring Officer to obtain further information or undertake further investigation. It can make this request only once per case.)*

## **Stage 2**

### **Did the member fail to follow the Code?**

The Sub-Committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.

1. The member should be invited to give relevant reasons why the Sub-Committee should not decide that he or she has failed to follow the Code.
2. The Sub-Committee should then consider any verbal or written representations from the investigator.

The Sub-Committee may, at any time, question anyone involved on any point they raise in their representations.

3. The member should be invited to make any final relevant points.
4. All parties except the Sub-Committee and the officer providing administrative support to the Sub-Committee should leave the room whilst the Sub-Committee considers the representations.
5. On their return, the Chairman will announce the Sub-Committee's decision as to whether or not the member has failed to follow the Code of Conduct.

## **Stage 3**

### **1. If the member has not failed to follow the Code of Conduct**

If the member has not failed to follow the Code of Conduct: the Sub-Committee can move on to consider whether it should make any recommendations to the authority.

As the Sub-Committee has found that the Code has not been broken, the member may at this stage can ask the Sub-Committee not to publish a summary of findings and reason for it's findings in local newspaper/s. If the member does not do so then this information will be published.

2. **If the member has failed to follow the Code of Conduct**, the Sub-Committee will consider any verbal or written representations first from the investigator and then from the member as to:
  - (a) whether or not the Sub-Committee should set a penalty; and
  - (b) what form any penalty should take.
- 2.2 The Sub-Committee may question the investigator and the member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

2.3 All parties except the Sub-Committee and the officer providing administrative support to the Sub-Committee should leave the room whilst the Sub-Committee consider whether or not to impose a penalty on the member and, if so, what the penalty should be.

2.4 **If the Sub-Committee decides that the member has failed to follow the Code of Conduct and that the member should be penalised, it can impose one, or any combination, of the following:**

- censure the member;
- restrict the Member's access to the premises and resources of the relevant authority for up to three months, ensuring that any restrictions are proportionate to the nature of the breach and do not unduly restrict the Member's ability to perform his or her duties as a Member;
- order the Member to submit a written apology in a form satisfactory to the Sub-Committee;
- order the Member to undertake training specified by the Sub-Committee;
- order the Member to participate in a conciliation process specified by the Sub-Committee;
- suspend, or partially suspend, the Member for up to three months;
- suspend, or partially suspend, the Member for up to three months, or until such time as the Member submits a written apology that is accepted by the Sub-Committee;
- suspend, or partially suspend, the Member for up to three months, or until such time as the Member undertakes any training or conciliation ordered by the Sub-Committee

(Note:

- (i) *Any conciliation process should 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 during the process regarding future behaviour of the Member concerned, and measures to prevent a repetition of the circumstances that gave rise to the initial allegation, should be agreed by all parties.*
- (ii) *The regulations do not provide any powers for the Sub-Committee to award costs.*
- (iii) **Reference back to the Ethical Standards Officer** - *If, at any time before the Sub-Committee has determined upon any sanction, the Sub-Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Sub-Committee, the Sub-Committee may instruct the Monitoring Officer to request the Ethical Standards Officer, who referred the investigation/determination, to resume responsibility for the conduct of the matter, and may adjourn the hearing until the Monitoring Officer advises the Sub-Committee of the Ethical Standards Officer's response to such request.)*

## **Stage 4 - The Decision**

1. On their return, the Chairman will announce the Sub-Committee's decision.
2. The Sub-Committee will consider any verbal or written representations from the investigator, as to whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.
3. The Chairman will advise the attendees
  - (a) that a short written decision would be available at the end of the day from the officer providing administrative support to the Sub-Committee;
  - (b) that the officer providing administrative support to the Sub-Committee will give the member concerned its full written decision within two weeks of the end of the hearing.

*(The Standards Board advises that it is good practice to prepare the full written decision in draft on the day of the hearing before memories fade.)*

- (c) that a summary of the Sub-Committee's findings, reasons for its findings and any penalty set, will be published in one or more newspapers that are independent of the authorities concerned and circulated in the area.
- (d) that the Member who is the subject of a Sub-Committee finding has the right to apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding.

### *(NOTE: Interpretation)*

1. *'Member' means the member of the authority who is the subject of the allegation being considered by the Sub-Committee, unless stated otherwise. It also includes the Member's nominated representative.*
2. *'Investigator' means the Ethical Standards Officer who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator mean the Monitoring Officer or other investigating officer, or his or her nominated representative.*
3. *'Sub-Committee' if the Local Determination/Investigation Hearings Sub-Committee given delegated authority to conduct hearings rather than the main Standards Committee.*
4. *'Legal advisor' means the officer responsible for providing legal advice to the Standards Committee/Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.*
5. *(The Sub-Committee may take legal advice 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 Sub-Committee should be shared with the Member and the Investigating Officer if they are present.)*