

**CITY AND COUNTY OF SWANSEA**

**DRAFT STANDARDS COMMITTEE HEARING PROCEDURE**

**FOR CODE OF CONDUCT REFERRALS**

There is a requirement to set out the procedure for the Standards Committee to follow where it is required to make a decision as to the conduct of a councillor, town/community councillor or co-opted member following a referral by the Public Service Ombudsman for Wales.

**1. Background**

- 1.1 The Standards Committee (the Committee) may be required to determine a complaint referred to the Committee by the Public Service Ombudsman for Wales (PSOW) under Part 3 Local Government Act 2000 (the Act). This may arise as the result of either:
  - (a) The PSOW ceasing an investigation and referring the matter to the Monitoring Officer under section 70(4) of the Act. The Monitoring Officer must then investigate the matter and report the conclusion of his/her investigation to the Committee.
  - (b) The PSOW undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer under section 71(2) of the Act for reporting to the Standards Committee.
- 1.2 The following procedure has been agreed by the Standards Committee to comply with the legislative requirements and laws of natural justice.

**2. Initial Determination**

- 2.1 Upon receipt of a report from either the Monitoring Officer or the PSOW, together with any recommendations of the Monitoring Officer, the Standards Committee must meet and make an initial determination that either:
  - (a) There is no evidence of any failure to comply with the Code of Conduct; or
  - (b) Any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing, in respect of the findings of the investigation to the Committee.
- 2.2 If the Committee makes a determination under paragraph 2.1(b) above, the Committee will request arrangements to be made for a Committee Hearing in accordance with the rules set out below.

**3. Arrangements prior to Hearing**

- 3.1 The Investigating Officer shall provide a written report as to the results of their investigation and include copies of all relevant evidence relied upon. A copy of the Investigation Report will be sent to the Committee and to the Councillor concerned.
- 3.2 Having made an initial determination the Committee will write to the Councillor to notify him/her of the Committee's decision. If the Committee determine that there is no evidence of a failure to comply with the Code that will be referred back to the Councillor and the Investigating Officer.
- 3.3 In the event that the Committee determine that a Hearing is required the Committee will proceed to the second stage which will either involve a hearing of the case at a further

meeting or, by agreement with all parties, proceed by way of written representations to be considered by the Committee.

3.4 The Committee will write to the Councillor setting out further steps. This will include a summary of the possible sanctions open to the Committee and inviting a written response to the following:

- (a) clarification as to whether the Councillor wishes to make written representations or proceed by way of an oral Hearing;
- (b) clarification as to whether the Councillor will be represented and if so, by whom;
- (c) details as to which areas of the Investigation Report are disputed and not disputed and if possible with brief reasons;
- (d) details of any witnesses which the Councillor proposes to call at the Committee Hearing;
- (e) details of any written evidence upon which the Councillor proposes to rely including any documentation listed within the unused material schedule served by the PSOW;
- (f) an indication as to whether the Councillor intends to make representations to the Committee as to whether members of the public should be excluded from the Committee Hearing and grounds for doing so;
- (g) any dates of unavailability to attend a Committee Hearing to include unavailability dates of witnesses and legal representation;
- (h) any other information that the Committee feels appropriate at this stage.

3.5 The Committee will also write to the Investigating Officer requesting:

- (a) that the Investigating Officer attend the Committee Hearing to present the Investigation Report or to ask if the Investigating Officer wishes to attend the Committee Hearing for this purpose;
- (b) clarification as to whether the Investigating Officer will be represented and if so, by who;
- (c) any dates of unavailability to attend a Hearing to include unavailability dates of any witnesses and legal representation;
- (d) any other information that the Committee feels appropriate at this stage.

3.6 Following the receipt of both the Councillor's and the Investigating Officer's response a date, time and location for the Hearing will be confirmed and all parties notified at least 21 days prior to the hearing.

#### **4. The Monitoring Officer**

4.1 The Committee Hearing will have the support of legal and democratic service assistance and advice. Legal advice will be provided by either the Monitoring Officer, the Deputy Monitoring Officer or another Legal officer.

4.2 In the event that the Monitoring Officer has investigated a complaint then he/she will attend the Committee Hearing in that capacity and will not be the legal advisor to the Committee hearing. In such cases, the Deputy Monitoring Officer or another legal officer will be present to advise the Committee Hearing.

## **5. Pre-Hearing review**

- 5.1 Where the Committee considers that a pre-hearing review is necessary notice of at least 14 days will be given to the Councillor, who may attend with or without any representation. The pre-hearing review will be held in private session, unless the Committee directs otherwise.
- 5.2 The purpose of the pre-hearing review would be to consider any directions which may be required to facilitate a Hearing including evidence, location of Hearing, timings and narrowing of any issues.

## **6. Public Notice of Hearings**

- 6.1 Notice of any Committee Hearing will be given in accordance with statutory requirements.

## **7. Public Access to Hearings**

- 7.1 The Committee will consider whether the case should be considered in public or private in accordance with the relevant statutory rules and with legal advice from the legal officer.
- 7.2 The PSOW or the representative officer/s of the PSOW and the Monitoring Officer are entitled to attend the Hearing whether or not the Hearing is held in private.
- 7.3 The Committee may permit any other person to attend the Hearing which is held in private upon legal advice.
- 7.4 The Committee may exclude from a Hearing, or any part of it, any person whose conduct is disruptive or is likely to disrupt the Hearing in accordance with the Council Procedure Rules as set out in the Constitution of the City and County of Swansea.

## **8. Failure of a Party to attend a hearing**

- 8.1 If a Councillor fails to attend or be represented at a Hearing of which he/she has been notified, the Committee may:
- (a) determine the matter in the Councillor's absence unless it is satisfied that there is good reason for the absence; or
- (b) adjourn the hearing.
- 8.2 Before deciding to determine a matter in the absence of the Councillor, the Committee will take legal advice and consider any written representations submitted by the Councillor or his/her representative in response to the notice of Hearing.

## **9. Procedure at the Hearing**

- 9.1 Where requested the Hearing will be conducted in Welsh in order to comply with statutory requirements and Welsh Language Standards. A translation service will be provided for any person attending the Hearing that requires it.
- 9.2 Witnesses will not be allowed to sit in the public gallery prior to being called to give evidence by the Committee. A designated waiting area will be available to witnesses until they are called.

- 9.3 The Committee may limit the number of witnesses to be called by the Councillor, where considered this would not detract from a fair hearing. Examples may be where the Committee considers that there are too many character witnesses being called or where witnesses are simply repeating previous evidence given to the Hearing.
- 9.4 Where evidence is being given by way of written statement and the witness is not being called to give oral evidence, the Committee may at any stage during the proceedings require the attendance of any person making a written statement.

## **10. Stage 1 – Finding of Fact**

- 10.1 The usual procedure to be followed is as set out below but the Committee is free to depart from the procedure where it considers it appropriate to do so.
- 10.2 At the commencement of the Hearing the Chair will introduce each of the Members of the Committee present and everyone else involved in the Hearing. The Chair will also explain the order of proceedings that the Committee proposes to adopt and obtain confirmation from everybody taking part in the Hearing that they understand the procedure. The procedure to be followed is at the discretion of the Committee which will aim to conduct the Hearing in such manner as it considers most appropriate and suitable to be able to clarify all issues before it and to ensure a fair and just Hearing to take place. The Committee will, as far as possible, try to avoid formality in its proceedings.
- 10.3 After the Chair has explained the order of proceedings, the Committee will first seek to resolve any procedural issues or disputes arising from any direction which has been given.
- 10.4 The Committee should then move on to consider whether or not there are any significant disagreements as to the facts contained in the Investigating Officer's report.
- 10.5 If there are no disagreement as to the facts the Committee can move to the next stage of the Hearing.
- 10.6 If however there is disagreement as to the facts, the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant findings of fact in the Report. Alternatively the Investigating Officer may simply chose to invite the Committee to consider all the evidence contained within the Investigation Report and not make any further comment. With the Committee's permission the Investigating Officer may call witness evidence in support. The Committee will allow the Councillor an opportunity to challenge or comment upon any evidence put forward by any witness called by the Investigating Officer.
- 10.7 The Councillor will then have the opportunity to make representations to support his/her version of the facts and with the Committee's permission may call witness evidence in support. At the conclusion of the Councillor's evidence the Councillor will be afforded an opportunity to sum up his or her case.
- 10.8 At any time, the Committee may questions any of the people who are involved or who are giving evidence. The Committee will also allow the Investigating Officer an opportunity to challenge or comment upon any evidence put forward by witnesses or the Councillor.
- 10.9 The Committee will then retire to consider their decision. Depending on the number of persons attending the hearing, the Committee will either retire to a separate room or ask the public to leave the room during deliberations.

10.10 Once a decision is reached the meeting will be re-convened and the Chair will announce the Committee's findings.

**11. Stage 2 – Did the Councillor fail to follow the Code**

11.1 Based on the facts as found the Committee will then consider whether the Councillor has breached the Code of Conduct. This stage does not provide the Councillor or the Investigating Officer an opportunity to re-examine the facts of the case.

11.2 The Councillor will be invited to make representations as to whether there has been a breach of the Code.

11.3 The Committee will then consider any verbal or written representations from the Investigating Officer.

11.4 The Councillor will be invited to make any final relevant representations.

11.5 The Committee will then retire to consider their decision as to whether the Councillor is in breach of the Code of Conduct.

11.6 Once a decision is reached the meeting will be re-convened and the Chair will announce the Committee's findings.

**12. Stage 3 – Breach of the Code/Consideration of Sanctions**

12.1 In the event that the Committee determines that there has been a breach of the Code by the Councillor, the Committee will then consider any written or verbal representations from the Investigating Officer and the Councillor as to whether or not the Committee should impose a sanction and if so, what form any sanction should take. The Councillor will be afforded an opportunity at this stage to rely on either written or oral evidence as to character/mitigating factors that the Committee should take into account before making a decision on sanction.

12.2 The Committee may question the Investigating Officer and/or the Councillor and, if appropriate, take legal advice in order to make an informed decision as to any sanction.

12.3 The Committee will then retire to consider their decision as to whether to impose a sanction and if so, the nature of the sanction.

12.4 Once a decision is reached the meeting will be re-convened and the Chair will announce the Committee's decision.

**13. Written Decision**

13.1 The Committee will announce its decision on the day and provide a short written decision on the day. A full written decision, with reasons supporting the decision, will be issued within 10 working days of the end of the hearing and notified to the PSOW, the Councillor and the person who made the original allegation (if known).

**14. Appeals**

14.1 Where the Committee decides that a person has failed to comply with the Code of Conduct that person may appeal to the Adjudication Panel for Wales as per the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 (as amended).