

# London Borough of Harrow

## Standards Committee

### Procedure for Local Standards Hearings

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#### 1. Interpretation

- a) 'Councillor' means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor's nominated representative.
- b) 'Investigating Officer' means the Ethical Standards Officer (ESO) 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 Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).
- c) 'The Matter' is the subject matter of the Investigating Officer's report.
- d) 'The Standards Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- e) 'Legal Advisor' 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 someone appointed for this purpose from outside the authority.
- f) 'The Chairman' refers to the person presiding at the hearing.

#### 2. Modification of Procedure

The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

#### 3. Representation

The Councillor may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

#### 4. Pre-Hearing Procedure

Upon reference of a matter from an Ethical Standards Officer for local determination following completion of the Ethical Standards Officer's report; or

Upon receipt of the final report of the Investigating Officer including a finding that the Councillor failed to comply with the Code of Conduct for Members or the Standards Committee finds that the matter should be considered at a formal hearing

the Monitoring Officer shall:

- a) Arrange a date for the Standards Committee's hearing;
- b) Send a copy of the report to the Councillor and advise him or her of the date, time and place for the hearing;

- c) Send a copy of the report to the person who made the allegation and advise him or her of the date, time and place for the hearing;
- d) Request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by the Standards Board for England;
- e) In the light of any Pre-Hearing Forms returned by the Councillor, determine whether the Standards Committee will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- f) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and highlighting the issues which the Standards Committee will need to address, and
- g) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
  - (i) All members of the Standards Committee who will conduct the hearing;
  - (ii) The Councillor
  - (iii) The person who made the allegation, and
  - (iii) The Investigating Officer.

## **5. Legal Advice**

The Standards Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Standards Committee should be shared with the Councillor and the Investigating Officer if they are present.

## **6. Setting the Scene**

At the start of the hearing, the Chairman shall introduce each of the members of the Standards Committee, the Councillor (if present), the Investigating Officer (if present) and any other officers present, and shall then explain the procedure which the Standards Committee will follow in the conduct of the hearing.

## **7. Preliminary Procedural Issues**

The Standards Committee shall then deal with the following preliminary procedural matters:

- (a) Disclosures of interest
- (b) Quorum
- (c) Proceeding in the absence of the member

If the Councillor is not present at the start of the hearing:

- (i) the Chairman shall ask the Monitoring Officer whether the Councillor has indicated his/her intention not to attend the hearing;

- (ii) the Standards Committee shall then consider any reasons which the Councillor has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
- (iii) if the Standards Committee is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iv) if the Standards Committee is not satisfied with such reasons, or if the Councillor has not given any such reasons, the Standards Committee shall decide whether to consider the matter and make a determination in the absence of the Councillor or to adjourn the hearing to another date.

(d) Exclusion of Press and Public

The Standards Committee may exclude the press and public where it appears likely that confidential or exempt information will be disclosed. If the Councillor, the Investigating Officer or the Legal Adviser wish to exclude the press or public from all or any part of the hearing the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others, before the Standards Committee determines whether an exclusion shall apply.

**8. Considering Whether the Councillor Failed to Comply with the Code of Conduct**

The Standards Committee will then address the issue of whether the Councillor failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report.

- (a) The Chairman shall ask the Councillor to confirm that he/she maintains their position as set out in the pre-hearing documentation.
- (b) The Pre-Hearing Process Summary
  - (i) The Chairman will ask the legal advisor or a nominated Council officer to present a summary report, highlighting any points of difference in respect of which the Councillor has stated that he/she disagrees with any finding of fact in the Investigating Officer's report. The Chairman will then ask the Councillor whether he or she considers that this is an accurate summary of the issues.
  - (ii) If the Councillor admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Standards Committee may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken.
  - (iii) If the Councillor identifies additional points of difference, the Chairman shall ask the Councillor to explain why he/she did not identify these points as part of the pre-hearing process. Where the Standards Committee is not satisfied with the Councillor's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Councillor to challenge the veracity of those findings of fact, or it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.
- (c) Presenting the Investigating Officer's report
  - (i) If the Investigating Officer is present, the Chairman will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Councillor and why he/she concluded, on

the basis of his/her findings of fact, that the Councillor had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.

(ii) In the absence of the Investigating Officer, the Standards Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.

(iii) No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chairman shall ask the Councillor if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer (if present) or the witness.

(d) The Councillor's response

(i) The Chairman shall then invite the Councillor to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.

(ii) No cross-examination shall be permitted but, at the conclusion of the Councillor's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigating Officer (if present) if there are any matters upon which the Standards Committee should seek the advice of the Councillor or the witness.

(e) Witnesses

(i) The Standards Committee shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.

(ii) Any member of the Standards Committee may address questions to the Investigating Officer, to the Councillor or to any witness.

(f) Additional Evidence

If the Standards Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Standards Committee may (on not more than one occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee.

(g) Determination as to whether there was a failure to comply with the Code of Conduct.

(i) At the conclusion of the Councillor's response, the Chairman shall ensure that each member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigating Officer's report.

(ii) The Standards Committee shall then retire to another room to consider in private whether the Councillor did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.

- (iii) The Standards Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
- (iv) The Standards Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence or information from the Investigating Officer, the Councillor or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer.
- (v) At the conclusion of the Standards Committee's consideration, the Standards Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Councillors. The Standards Committee shall then return to the main hearing room and the Chairman will state the Standards Committee's principal findings of fact and their determination as to whether the Councillor failed to comply with the Code of Conduct as set out in the Investigating Officer's report.

## **9. If the Councillor has not Failed to Comply with the Code of Conduct**

If the Standards Committee determines that the Councillor has not failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report:

- a) If the Standards Committee apprehends, from the evidence which they have received during the hearing, that a Councillor has failed to comply with the Code of Conduct (other than the matter which the Standards Committee has just determined), the Chairman shall outline the Standards Committee's concerns and state that the Standards Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- b) The Chairman should then set out any recommendations which the Standards Committee is minded to make to the authority with a view to promoting high standards of conduct among Councillors and seek the views of the Councillor, the Investigating Officer and the legal advisor before the Standards Committee finalises any such recommendations.
- c) Finally, the Chairman should ask the Councillor whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

## **10. Action Consequent upon a Failure to Comply with the Code of Conduct**

- a) The Chairman shall ask the Investigating Officer (if present, or otherwise the Legal Advisor) whether, in his/her opinion, the Councillor's failure to comply with the Code of Conduct is such that the Standards Committee should impose a sanction and, if so, what would be the appropriate sanction.
- b) The Chairman will then ask the Councillor to respond to the Investigating Officer's advice.
- c) The Chairman will then ensure that each member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- d) Any member of the Standards Committee may address questions to the Investigating Officer or to the Councillor as necessary to enable him/her to take such an informed decision.
- e) The Chairman should then set out any recommendations which the Standards Committee is minded to make to the authority with a view to promoting high standards of conduct among

Councillors and seek the views of the Councillor, the Investigating Officer and the legal advisor;

- f) The Standards Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Standards Committee will make to the authority.
- g) At the completion of their consideration, the Standards Committee shall return to the main hearing room and the Chairman shall state the Standards Committee's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Standards Committee will make to the authority.

#### **11. Reference Back to the Ethical Standards Officer**

Where a matter has been referred by an ESO for local determination, if at any time before the Standards Committee has determined upon any appropriate sanction, the Standards 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 Standards Committee, the Standards Committee may request the Monitoring Officer to refer the matter back to the ESO, and may adjourn the hearing until the Monitoring Officer advises the Standards Committee of the ESO's response to such a request.

#### **12. The Close of the Hearing**

The Standards Committee will announce its decision on the day of the hearing and produce a short written statement of their decision, which will be delivered to the Councillor as soon as practicable after the close of the hearing. Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Standards Committee's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required).

#### **13. Appeals**

The Councillor may apply for permission to appeal against the decision of the Standards Committee by writing to the First Tier Tribunal within 28 days of receiving the written notice of decision, specifying the grounds for appeal, a statement as to whether he or she is applying for suspension of any sanction and whether or not he or she consents to the appeal being heard by way of written representations.