

PROCEDURE FOR DEALING WITH ALLEGATIONS MADE AGAINST COUNCILLORS AND CO-OPTED MEMBERS WHICH ARE AND REFERRED TO THE STANDARDS COMMITTEE

Interpretation

1. In this document the words or phrases set out below have the meanings ascribed to them.

Word or phrase	Meaning
Democratic Services Officer	The officer for the time being providing clerical and administrative assistance to the Standards Committee
Investigating Officer	(a) in the case of an investigation undertaken by or on behalf of the Public Services Ombudsman and referred to the Monitoring Officer under section 71(2) of the Local Government Act 2000, the person who conducted the investigation; or (b) in the case of an investigation referred to him or her under section 70(4) of the Local Government Act 2000, the Monitoring Officer <u>or a person appointed by the Monitoring Officer to undertake the investigation</u>
Legal Advisor	The officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, the Deputy Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the <u>a</u> Authority
Monitoring Officer	The officer for the time being appointed by the Council under section 5 of the Local Government and Housing Act 1989

Background

2. Under section 69 of the Local Government Act 2000 (the 'LGA 2000') the Public Services Ombudsman For Wales (the 'Public Services Ombudsman') may

investigate any alleged breach by members or co-opted members (or former members or co-opted members) of the code of conduct of the Council or one of the Community or Town Councils in the area of the Council.

3. Where the Public Services Ombudsman ceases such an investigation into allegations that a councillor has breached the code of conduct before it is completed (under section 70(4) of the LGA 2000-Act) he or she may refer the matter subject to the investigation to the Council's Monitoring Officer.
4. Alternatively, where the Public Services Ombudsman decides after investigating (under section 71(2) of the LGA 2000-Act) that it is appropriate, he or she may produce a report on the outcome of the investigation and send it to the Monitoring Officer and the Council's Standards Committee.
5. The Local Government Investigation (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 provide that the Monitoring Officer:
 - (a) will investigate matters referred under section 70(4) before reporting and, if appropriate, making recommendations, to the relevant authority's Standards Committee; or
 - (b) where a matter has been referred under section 71(2), he or she will consider the report of the Public Services Ombudsman, before, if appropriate, making recommendations to the relevant authority's Standards Committee.
6. In carrying out an investigation, conducted under section 70(4) of the LGA 2000 the Monitoring-Investigating Officer may follow such procedures as he or she considers appropriate in the circumstances of the case and in particular may:
 - (a) make such enquiries of any person as he or she thinks necessary for the purposes of carrying out the investigation,
 - (b) require any person to provide him or her with such information, explanation or documents as he or she considers necessary,
 - (c) require any member or co-opted member or officer of the Council to appear before him or her for the purposes of paragraph (a) and (b) above.
7. In conducting the investigation, the Monitoring-Investigating Officer may be assisted by any person and may obtain expert or other advice. In certain ~~cases~~cases, expenses may be paid to persons attending or assisting the Monitoring-Investigating Officer or providing advice to him or her.
8. After concluding an investigation, the Monitoring-Investigating Officer must:

- (a) produce a report on the findings of his or her investigation and, if appropriate, may make recommendations to the Standards Committee.
 - (b) Send a copy of the report to any person who is the subject of the investigation, and
 - (c) Take reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation.
9. The Standards Committee must consider a report from the **Monitoring Investigating** Officer on his or her investigation or a report from the Public Services Ombudsman together with any recommendations of the Monitoring Officer. It must then make an initial determination either:
- (a) that there is no evidence of a failure to comply with the code of conduct, or
 - (b) that any person who is the subject of the investigation must be given an opportunity to respond, either orally or in writing.
10. Where the Standards Committee decides that an opportunity to respond needs to be given and after considering any response made by any such person, the Committee must come to one of three conclusions:
- (a) there is no evidence of a failure to comply with the code of conduct and no further action should be taken;
 - (b) There is evidence of a failure to comply with the code of conduct, but no further action should be taken; or
 - (c) There is evidence of a failure to comply with the code of conduct and a member or co-opted member (or former member or co-opted member) should be censured or suspended.
11. The Standards Committee must take any appropriate action arising from the conclusions it has drawn.
12. The decision of the Standards Committee is subject to a right of appeal to an appeals tribunal drawn from the Adjudication Panel for Wales.
13. An appeals tribunal may endorse the decision of the Standards Committee, refer a matter back to it recommending it impose a different penalty, or overturn the decision.

Initial Determination of Standards Committee

14. After the **Monitoring Investigating** Officer has:
- (a) Produced a report on the findings of his or her investigation, or
 - (b) Considered the report of the Public Services Ombudsman: and

- (c) Sent a copy to the person who is the subject of the investigation, and taken reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation.

He or she will ask the Democratic Services Officer to call a meeting of the Standards Committee as soon as possible and will send a copy of the report together with his or her recommendations (if any) to each of the Members of the Committee.

15. Where the report is that of the Public Services Ombudsman the Monitoring Officer will advise the Standards Committee. Where the report is that of the Monitoring Officer, the Deputy Monitoring Officer or some other suitably qualified person will advise the Standards Committee.

16. The Democratic Services Officer will give notice of the time and place of the meeting.

17. The business of the meeting will be limited to considering the report and to making a determination either:

- a) that there is no evidence of any failure to comply with the relevant authority's code of conduct or;
- b) that 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 and any allegation that he or she has failed or may have failed to comply with the relevant authority's code of conduct.

18. Where the Standards Committee decides that there is no evidence of any failure to comply with the relevant authority's code of conduct the Committee will ask the Democratic Services Officer to notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman accordingly.

19. Where the Standards Committee decides that any person who is the subject of the investigation should be given the opportunity to make representations in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant authority's code of conduct, the Committee will ask the Democratic Services Officer to notify the person who is the subject of the investigation of the Committee's decision and of the procedure which the Committee proposes to adopt to receive and consider any representations that he or she may wish to make.

Procedure prior to consideration of representations

20. The Democratic Services Officer, in consultation with the Chair of the Standards Committee, will write to the person who is the subject of the investigation to propose a date for the hearing, outline the meeting-hearing procedure and the person's rights.

21. The person who is the subject of the investigation will be required to notify the Democratic Services Officer in writing within not more than 14 days from the date of the communication sent by the said Officer, whether or not he or she

- (a) wants to make representations and if so, whether orally or in writing;
- (b) disagrees with any of the findings of fact in the report, including what matters he or she disagrees with and the reasons for any disagreements;
- (c) wants to be represented at the meeting hearing by a solicitor, barrister or any other person;
- (d) wants to give evidence to the Standards Committee, either orally or in writing;
- (e) wants to call relevant witnesses to give evidence to the Standards Committee;
- (f) wants any part of the meeting hearing to be held in private;
- (g) wants any part of the report or other relevant documents to be withheld from the public; and
- (h) can come to the meeting hearing.

22. For the avoidance of doubt should a person who is subject of an investigation not respond in writing within the 14 day period referred to in paragraph 21 above the Standards Committee can proceed to make arrangements for the matter to proceed to a hearing.

23. The Investigating Officer will notify the Democratic Services Officer in writing within 7 days of any comments on the response and whether or not he or she

- a. wants to be represented at the hearing;
- b. wants to call relevant witnesses to give evidence to the Standards Committee;
- c. wants any part of the meeting hearing to be held in private; and
- d. wants any part of the report or other relevant documents to be withheld from the public.

24. The Democratic Services Officer in consultation with the Legal Advisor to the Standards Committee, will write to the members of the Committee and to everyone involved at least two weeks before the meeting hearing to:

- (a) set the date, time and place for the hearing;
- (b) summarise the allegation;
- (c) outline the main facts of the case that are agreed;
- (d) outline the main facts which are not agreed;
- (e) note whether the persons who is the subject of the investigation or the Investigating Officer will go to or be represented at the hearing;
- (f) list those witnesses, if any, who will be asked to give evidence;
- (g) enclose the Investigating Officer's report, any relevant document(s), the response from the person who is the subject of the investigation and any further response from the Investigating Officer; and
- (h) outline the proposed procedure for the meetinghearing.

Consideration of Representation and Further Determination by the Standards Committee

- 25. The Standards Committee may, in accordance with the requirements of natural justice, conduct the meetinghearing in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it must so far as appears to it appropriate seek to avoid formality and inflexibility in its proceedings.
- 26. The person who is the subject of the investigation or the Investigating Officer may be represented or accompanied whether or not legally qualified; but if in any particular case the Standards Committee is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.
- 27. The Standards Committee may take legal advice from its legal advisor at any time during the meetinghearing or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the person who is the subject of the investigation and the Investigating Officer if they are present but not the detail of the request for legal advice.

Failure of Parties to Attend

- 28. If a party failed to be present or represented at a meetinghearing, the Standards Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence –
 - (a) hear and decide the appeal/application or question in the party's absence; or

- (b) adjourn the hearing.
- (c) Before deciding to dispose of any matter or question in the absence of a party, the Standards Committee will consider any representation in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal and any reply shall be treated as representations in writing.
- (d) Where a party has failed to be present or presented at a ~~meeting~~ hearing of which he or she was duly notified, and the Standards Committee has disposed of the matter, no fresh appeal/application may be made to the Standards Committee.

Illness or incapacity

29. If the Standards Committee is satisfied that any party is unable, through physical or mental sickness or impairment, to attend the ~~meeting~~ hearing and that the party's inability is likely to continue for a long time, the Standards Committee may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter, including;

- (a) for the party to be visited at some convenient place by other persons appointed for the purposes by the Standards Committee, for the purpose of recording the party's evidence and any statement he or she may wish to make;
- (b) for taking the evidence of other witnesses on behalf of the party;
- (c) for enabling the party's representative and the other party or parties to comment, whether at a ~~meeting~~ hearing of the Standards Committee or in writing, on the evidence so taken and to make a statement in writing or to address the Standards Committee;
- (d) for the consideration of the matter to take place at the party's home or elsewhere convenient to the party; or
- (e) for the matter to be decided in the absence of the party.;

but any arrangement made must make provision for the other party or parties and their representatives, if they so wish, to be present while the evidence of the party or his or her witnesses is taken and to ask questions of the party or the witnesses.

Recording

30. An audio recording of the hearing proceedings shall be made by the Council, but no recording shall be made at any time during the Standards Committee's deliberations or when the Committee is seeking advice from its Legal Advisor.

31. Access to the recording made under paragraph 30 may be granted, upon request, at any time after the hearing has ended, provided that no exempt or confidential information shall be publicly disclosed.
32. Save for the recording made under paragraph 30 no other digital recording, audio or visual or use of social media, shall be permitted during the hearing.

The Procedure for ~~the Meeting a Hearing~~ of the Standards Committee

33. At the beginning of any ~~meeting~~ hearing the Chair of the Standards Committee will:
- (i) introduce each of the members of the Committee and everyone involved in the hearing;
 - (ii) explain the manner and order of proceedings; and
 - (iii) obtain confirmation from everybody taking part in the hearing that they have understood the procedure.
34. The Chair, having taken legal advice from the Legal Advisor, may agree to vary these procedures in any instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.
35. The Chair, having taken legal advice from the Legal Advisor, may also agree to vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure). Such power will include, for the avoidance of doubt:
- (i) the ability to combine Stages 1 and 2 of this procedure set out below so that both the person who is the subject of the investigation and the Investigating Officer give combined submissions on both the facts and whether the facts amount to a breach of the Code of Conduct; and
 - (ii) the ability to request that the proceedings be conducted by exchange of written submissions only if the person who is the subject of the investigation so agrees.

Preliminary Procedural Issues

36. The Committee should then resolve any issues or disagreements about how the hearing should continue, including whether all or part of the hearing should be heard without the attendance of the public.
37. If either party want to adduce further information to the Committee they should make an application to the Committee for permission to do so prior to the commencement of the formal part of the hearing. It will assist if the Legal Advisor and the other party have been provided with details

of any late information which must be relevant to the alleged breach/es and must be provided to the Monitoring Officer as early as possible, but in any event at least two working days before the commencement of the hearing. Late evidence will not be accepted at the hearing, unless the Committee is satisfied that there are exceptional circumstances. The Committee retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present the evidence which is relevant to the matters before the Committee.

Stage 1 – Formal Findings of Fact

38. The Standards Committee can receive evidence of any fact that appears to it to be relevant even though such evidence would be inadmissible in proceedings before a court of law.
39. The Standards Committee will first consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report. If there is no disagreement the Committee can move onto the next stage of the hearing.
40. If there is a disagreement as to the facts, the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant finding of fact in the report. With the Standards Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee shall give the person who is the subject of the investigation an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.
41. The person who is the subject of the investigation will then be invited to make representations to support his or her version of the facts and, with the Standards Committee's permission, to call any necessary witnesses to give evidence. The Committee shall give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the person who is the subject of the investigation.
42. At any time, the Standards Committee may question any of the people involved or any of the witnesses.
43. If the person who is the subject of the investigation disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the ~~meeting~~ hearing. If the Investigating Officer is not present, the Standards Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the explanation of the person who is the subject of the investigation for not raising the issue at an earlier stage, the Committee may then;

- a. continue with the hearing, relying on the information in the Investigating Officer's report;
 - b. allow the person who is the subject of the investigation to make representations about the issue, and invite the ~~Investigating~~ Investigating Officer to respond and call any witnesses, as necessary; or
 - c. postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.
44. At the conclusion of the representations as to matters of fact the Chairman shall check with the members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a conclusion ~~on~~ the matter.
45. The Committee shall then retire to consider their decision. Depending on the number of persons attending the hearing, the Committee will move to another room to deliberate on the presentations and evidence in private or request the parties to leave the room during the deliberations.
46. Once the decision is reached and the hearing re-convened, the Chair will announce the Committee's findings of fact.

Stage 2- Did the Member fail to follow the Code?

47. The Committee then needs to consider, based on the facts it has found, whether or not the person who is the subject of the investigation has failed to follow the relevant authority's Code of Conduct. It should be noted that this stage of the hearing does not provide either the person who is the subject of the investigation or the Investigating Officer an opportunity to re-examine the facts of the case in question.
48. The Standards Committee will invite the person who is the subject of the investigation to respond to the representations of the Investigating Officer and to make representations whether or not, based on the facts the Committee has found, he or she has failed to follow the Code of Conduct.
- ~~48-49.~~ The Standards Committee will invite the Investigating Officer to make representation on whether or not, based on the facts the Committee has found, ~~the~~ person who is the subject of the investigation has failed to follow the Code of Conduct.
- ~~49. The Standards Committee will invite the person who is the subject of the investigation to respond to the representations of the Investigating Officer and to make representations whether or not, based on the facts the Committee has found, he or she has failed to follow the Code of Conduct.~~
50. The Standards Committee may, at any time, question anyone involved on any point they raise in their representations.

51. The person who is the subject of the investigation will be invited to make any final relevant points.
52. The Standards Committee shall then retire to consider in private whether the Councillor did fail to comply with the Code of Conduct. Depending on the number of persons attending the hearing, the Committee will move to another room to deliberate on the presentations and evidence in private or request the parties to leave the room during the deliberations.
53. The Standards Committee shall take its decision on the balance of probability and based in the evidence which is received at the hearing.
54. The Standards Committee will reconvene in public 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.

Stage 3 – Breach of the Code and Sanctions

55. If the Standards Committee decides that there has been no breach of the Code of Conduct it will formerly record that there is no evidence of a failure by the person who is the subject of the investigation to comply with the Code of Conduct and no further action should be taken. Nevertheless, the Committee may make general recommendations to the relevant authority in question.
56. If the Standard Committee decides that there is evidence of a failure to comply with the Code of Conduct it will invite the person who is the subject of the investigation and the Investigating Officer to make representations as to:
- (a) whether or not the committee should set a 'penaltysanction'; and
 - (b) what form any 'penalty' sanction should take.
57. The Committee may question the Investigating Officer and the person subject to the investigation and, if necessary, take legal advice, to make sure it has the information needed in order to make an informed decision.
58. The Standards Committee will consider the representations and shall then retire to consider in private ~~vide~~ whether no further action should be taken in respect of that failure to comply with the relevant authority's code of conduct, or whether the person who is the subject of the investigation should be censured, partially suspended or suspended for a period not exceeding six months. Depending on the number of persons attending the hearing, the Committee will move to another room to deliberate on the presentations and evidence in private or request the parties to leave the room during the deliberations.

59. The Standards Committee will then reconvene in public and the Chair of the Standards Committee will announce their decision.

60. The Committee may request the person subject to the investigation to take any remedial action it considers to be reasonable and proportionate in the circumstances, for example to apologise or attend training, and it may adjourn a decision on sanction to allow time for the requested remedial action to be taken prior to a decision on sanction.

61. After considering any verbal or written representations from the Investigating Officer and the person subject to the investigation (should they choose to do so), the Committee will consider whether or not it should make any recommendations to the relevant authority concerned, with a view to promoting high standards of conduct among councillors and co-opted members.

The Written decision

62. The Standards Committee will secure that its determination and the reasons for the determination are committed to writing. The Panel will announce its decision on the day the decision is made and provide a short-written confirmation of its decision on that same day. It will issue a full written decision, with reasons, within ten working days from the end of the hearing, although this time may be extended by the Chair, in consultation with the Monitoring Officer, if necessary.

63. The Standards Committee will instruct the Democratic Services Officer to send a copy of the full written decision record of the determination to the person who is the subject of the investigation, to the person who made any allegation, which gave rise to the investigation and to the Public Services Ombudsman for Wales (the 'Decision Notification').

57-64. Suspension

A period of suspension or partial suspension will commence on the day after whichever is the later of:

- a) The expiry of the time allowed to lodge a Notice of Appeal to an Appeals Tribunal of the Adjudication Panel For Wales (which is within 21 days of receiving the Standards Committee's determination Decision Notification). The grounds and procedure for making such an application are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended); or
- b) Receipt of the notification of the conclusion of any appeal; or
- c) A further determination by the Standards Committee made after receiving a recommendation from an appeals panel.

Referral by an Appeals Tribunal

~~58-65.~~ If:

- (a) the Standards Committee determines that the person who is the subject of the investigation failed to comply with the Code of Conduct;
- (b) that person appeals to an appeals tribunal drawn from the Adjudication Panel for Wales; and
- (c) the said tribunal refers the matter back to the Standards Committee with a recommendation that a different penalty be imposed the Standards Committee shall meet as soon as reasonably practicable to consider the recommendation of the appeals tribunal and will determine whether it should uphold its original determination or accept the recommendation.

~~59-66.~~ After making its determination the Standards Committee will secure that its determination and the reasons for the determination are committed to writing. The Standards Committee will instruct the Democratic Services Officer to send a copy of the written record of the determination to the person who is the subject of the investigation, to the person who made any allegation, which gave rise to the investigation, to the Public Services Ombudsman and to the ~~p~~President of the Adjudication Panel for Wales.

Publication

~~60-67.~~ The Standards Committee will cause to be produced within 14 days after:

- (a) The expiry of the time allowed to lodge a notice of appeal under ~~r~~Regulations 10(2) of the Local Government Investigations (~~f~~Functions of mMonitoring appliesOfficers and Standards Committees) (Wales) Regulations 2001;
- (b) receipt of notification of the conclusion of any appeal in accordance with Regulation 12(a)(i) or (b) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001; or
- (c) a further determination by the Standards Committee made after receiving a recommendation from an appeals tribunal under Regulation 12(a)(ii) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001,

whichever occurs last, a report on the outcome of the investigation and send a copy to the Public Services Ombudsman for Wales, the Monitoring Officer and Proper Officer of the relevant authority concerned, the person subject

to the investigation and take reasonable steps to send a copy to any person who made any allegation which gave rise to the investigation.

~~61-68.~~ Upon receipt of the report of the Standards Committee, the Monitoring Officer shall:

- (a) For a period of 21 days publish the report on the Council's website and make copies available for inspection by the public without charge at all reasonable hours at one or more of the Council's offices, where any person shall be entitled to take copies of, or extracts from, the report when made so available,
- (b) supply a copy of the report to any person on request if he or she pays such charge as the Council may reasonably require, and
- (c) not later than 7 days after the report is received from the Standards Committee, give public notice, by advertisement in a newspapers circulating in the area of the Council and such other ways as appear to him or her to be appropriate, that copies of the report will be available as provided by sub-paragraphs (a) and (b) above, and shall specify the date (being a date not more than seven days after public notice is first given) from which the period of 21 days will begin.

Costs

~~62-69.~~ The Standards Committee has no power to make an award of any costs or expenses arising from any of its proceedings.

~~January 2011~~ Adopted by the Standards Committee on 19th March 2021