

STANDARDS COMMITTEE – 9TH DECEMBER 2003

REPORT OF INTERIM DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

**LOCAL DETERMINATIONS – HEARING PROCEDURE FOR THE
STANDARDS COMMITTEE**

1. PURPOSE OF REPORT

The purpose of the report is to seek the approval of the Standards Committee to the adoption of a hearing procedure for dealing with local determinations by the Standards Committee

2. RECOMMENDATIONS

- a) The Committee agrees to the adoption of the hearing procedure as set out in this report
- b) The Committee agrees to the adoption of the forms for the pre-hearing process as set out in this report

Signed
Interim Director of Legal & Democratic Services

28 November 2003

3. BACKGROUND PAPERS

- a) Standards Committee Determinations - Guidance for Monitoring Officers and Standards Committees published by the Standards Board
- b) Letter from Eversheds, Solicitors, dated 8th October 2003
- c) Letter from the Adjudication Panel for England dated 16th October 2003.

LOCAL DETERMINATIONS – HEARING PROCEDURE FOR THE STANDARDS COMMITTEE

BACKGROUND

At its meeting held on 8th July 2003 the Standards Committee considered a report on the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003. These regulations provide for an ethical standards officer to refer a report on a breach of the Code of Conduct to a monitoring officer for determination by the Standards Committee.

A training session for members of the Committee was organised with assistance from Eversheds, Solicitors, and took place on 1st October.

Hearing Procedure for Local Determinations

Standards Committees are encouraged to adopt a procedure for use when they have to conduct a local determination. This is important to ensure that the Committee acts within human rights principles as well as complying with natural justice and in order to avoid any legal challenges to the procedure used.

The Standards Board has issued a model procedure. However, the Committee is recommended to adopt a slightly more detailed procedure which incorporates the Standards Board guidance as well as advice received from Eversheds.

The procedure should enable members to handle cases with confidence. It is set out at Appendix 1 to this report.

Key Features of the Procedure

- Cases will be heard by a Hearing Panel of 5 members selected from the Standards Committee
- A Hearing Panel will consist of 3 independent members and 2 elected members from different political parties
- The Chair of the Hearing Panel will be an independent member selected by the Chair of the Standards Committee
- There is provision for a substitute member of the Standards Committee if a member of the Hearing Panel cannot attend
- Legal advice will be available to the Panel throughout the hearing
- The procedure to be followed at the hearing is set out in detail
- The Hearing will normally be held in public but the Panel will consider its decision in private session
- The decision will be announced by the Chair on the day of the hearing and a short written decision made available that day
- A full written decision in draft will be available by the following day and the final written decision available within two weeks
- The Monitoring Officer will inform a member of his or her right of appeal where it is determined the member has failed to comply with the Code of Conduct
- There are provisions about publicity for the Hearing Panel's Decision

Pre-Hearing Process

The Standards Board recommend the use of a pre-hearing process to deal with procedural issues prior to the hearing taking place. The pre-hearing process should usually take place in writing. In order to facilitate this process the Standards Board have recommended the use of a number of forms. These are set out in Appendix 2 to this report and it is recommended they be adopted by the Committee. The forms are as follows:-

Form A - is to help the member, the subject of the ESO's report, identify any disagreements about the findings of fact in the ESO's report

Form B - helps the member set out any other evidence that is relevant to the allegation

Form C - helps the member set out any representations the Standards Committee should take account of if the member is found to have broken the Code of Conduct

Forms D and E - cover details of the hearing the witnesses who will give evidence

Form F - is a checklist of what should be included in the pre-hearing process summary

In addition the Adjudication Panel has produced an Appeal Form to be used if a member wishes to appeal against a decision of the Standards Committee. A copy of this form is also appended.

Recommendations

It is recommended that the Standards Committee adopts the procedure set out in the appendix as its hearing procedure.

It is also recommended that the pre-hearing form appended to this report be adopted as part of the pre-hearing process.

Appendix 1.

WALSALL METROPOLITAN BOROUGH COUNCIL

Procedure for local determination of allegations of breach of the Council's Code of Conduct following completion of an investigation by an Ethical Standards Officer

Introduction

1. Under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, Ethical Standards Officers (ESOs) can refer completed investigation to the Council's Monitoring Officer for the Standards Committee to determine whether or not a member has failed to follow the Code of Conduct and, if so, what penalty should be applied, if any.
2. When an ESO refers a matter to the Monitoring Officer the Monitoring Officer must arrange for the authority's Standards Committee to consider the ESO's report and determine the matter.
3. The main purpose of the Standards Committee's hearing is to decide whether or not a member has failed to follow the authority's Code of Conduct and, if so, to decide whether or not any penalty should be applied and what form any penalty should take.
4. This procedure sets out how the Standards Committees will prepare for and hold a hearing and how it will proceed after the decision.
5. It applies to complaints about the conduct of signatories to the Council's Code of Conduct for Council Members. Such signatories include elected members and co-opted members with voting rights.
6. The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member.

Appointment of Administrative Officer

7. Upon receipt of the ESO's report, the Monitoring Officer will determine whether or not to appoint an Administrative Officer to take conduct of the matter and to arrange for the Standards Committee to consider the report and to determine the matter.
8. Where the Monitoring Officer takes on the role of the Administrative Officer personally, a separate legal adviser must be designated to advise the Standards Committee in respect of the allegation.

Notifying the Member and Complainant

9. Within 5 working days of the receipt of the ESO's report by the Monitoring Officer, the Administrative Officer shall send a copy of the report to the Chair of the Standards Committee, the Member and, where possible, the Complainant.
10. At the same time the Administrative Officer shall ask for a written response from the Member, within 15 working days, stating whether or not he/she:

- disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements
 - wants to be represented, at their own expense, at the hearing by a solicitor, barrister or any other person
 - wants to give evidence to the Standards Committee, either verbally or in writing
 - wants to call relevant witnesses to give evidence to the Standards Committee
 - wants any part of the hearing to be held in private
 - wants any part of the ESO's report or other relevant documents to be withheld from the public
11. The Administrative Officer will also inform the Member that if, at the meeting of the Hearing Panel, he/she seeks to dispute any matter contained in the ESO's report, without having previously notified the Administrative Officer of their intention to do so, the Hearing Panel may either adjourn the meeting to enable the Administrative Officer to provide a response, or refuse to allow the disputed matter to be raised.
12. Upon receipt, the Member's response shall be forwarded to the Administrative Officer, who shall invite the relevant ESO to comment, within 15 working days, on the Member's response, to say whether or not he/she:
- wants to be represented at the hearing
 - wants to call relevant witnesses to give evidence to the Hearing Panel
 - wants any part of the hearing to be held in private
 - wants any part of the ESO's report or other relevant documents to be withheld from the public
13. Upon receipt of the ESO's response, the Administrative Officer will forward the responses of the Member and the ESO to the Chair of the Hearing Panel.
14. The Member, the ESO and the Administrative Officer are entitled to request that any witnesses they want should be called. However, the Chair of the Hearing Panel may limit the number of witnesses, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Hearing Panel to reach its decision.
15. Nothing in this procedure shall limit the Chair of the Hearing Panel from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Hearing Panel to reach its decision.
16. The Chair of the Hearing Panel, in consultation with the Panel's legal adviser, will then
- confirm a date, time and place for the hearing, which must be within 3 months from the date that the ESO's report was received

- confirm the main facts of the case that are agreed
 - confirm the main facts that are not agreed
 - confirm which witnesses will give evidence
 - outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private and
 - request the Administrative Officer to provide this information, with the Agenda, to everyone involved in the hearing at least 2 weeks before the proposed date of the hearing
17. Where appropriate, the Administrative Officer shall arrange for support for an unrepresented Member who wishes to make an oral representation to the Hearing Panel.

The Hearing Panel

18. When the ESO's report is sent to the Standards Committee by the Administrative Officer a Panel ("the Hearing Panel") shall be formed to consider the report and such other matters as are appropriate in the light of the outcome of the pre-hearing procedure.
19. The Hearing Panel shall be composed of members of the Standards Committee chosen by the Chair of the Hearing Panel to consist of a majority of independent members.
20. The Hearing Panel shall be chaired by an independent member selected by the Chair of the Standards Committee.
21. The Hearing Panel will be composed of 5 members in total with a minimum of 3 independent members and 2 elected members from different political parties.
22. Where a member of the Hearing Panel is unable to attend a meeting of the Panel, the Administrative Officer shall arrange for a substitute member of the Standards Committee to attend the meeting. The substitute member shall be briefed about the complaint under consideration by the Administrative Officer.
23. The Hearing Panel shall decide, on the balance of probability, whether the grounds of the complaint are upheld. It shall do so by considering the ESO's report and, where appropriate, written or oral representations made by the Member or the Complainant.
24. Each Hearing Panel member shall have one vote and all matters/issues shall be decided by simple majority of votes cast. Abstentions shall not be permitted.
25. Administration for the hearing shall be carried out by the Administrative Officer.
26. The meeting of the Hearing Panel will be open to the public and press unless confidential information or exempt information under Schedule 12A of the Local Government Act 1972 and regulations is likely to be disclosed.

Procedure at the Hearing

27. The initial order of business at the meeting shall be as follows:

- Quorum for the Hearing Panel shall be 3 with a majority of independent members
- declarations of interest
- consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present
- introductions
- any representation from the Administrative Officer and/or the Member as to reasons why the Hearing Panel should exclude the press and public and determination as to whether to exclude the press and public. Where the Hearing Panel decides that it will not exclude the press and public, the Administrative Officer shall at this point provide copies of the agenda and reports to any members of the press and public who are present

28. The purpose of the hearing is to test the robustness of the report of the investigation produced by the ESO, by examining the reasoning contained within the report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Hearing Panel based on seeking information in order to identify potential flaws in the report and to clarify issues. The Hearing Panel will control the procedure and evidence presented at the hearing, including the questioning of witnesses.

29. The Hearing Panel may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the Administrative Officer and the Member.

30. The procedure at the hearing will be as follows, subject to the Chair of the Hearing Panel being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting.

- Examination of report and written representations

The Panel will consider the ESO's report together with any written response from the Member to the report. The Panel may require the Administrative Officer to answer questions put to him or her by members of the Panel regarding the contents of the report.

- Oral evidence

If there is any disagreement as to the facts of the case, the Administrative Officer will be invited to make any necessary representations to support the relevant findings of fact in the report, calling supporting witnesses as agreed by the Chair of the Panel (see paragraph 10 above)

Questions may be asked by the Panel at any point. Neither the Member, the Complainant nor any representative of either party will be permitted to directly question the Administrative Officer or the witnesses he/she calls. If the Member, the Complainant or any representative of either party wishes to

challenge any oral evidence being presented, then these questions shall be directed through the Chair.

The Member will then be invited to make any necessary representations to support his or her version of the facts, calling supporting witnesses as agreed by the Chair of the Panel (see paragraph 10 above)

Questions may be asked by the Panel at any point. Neither the Administrative Officer, the Complainant nor any representative of either party will be permitted to directly question the Member or the witnesses he/she calls. If the Administrative Officer, the Complainant or any representative of either party wishes to challenge any oral evidence being presented, then these questions shall be directed through the Chair.

31. Where the Member seeks to dispute any matter in the ESO's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Administrative Officer shall draw this to the attention of the Hearing Panel. The Hearing Panel may then decide:
 - not to admit such dispute but to proceed to a decision
 - to admit the dispute but to invite the Administrative Officer to respond
 - to adjourn the meeting to enable the Administrative Officer to investigate and report on the dispute
32. Where appropriate the Administrative Officer will make representations on behalf of the Complainant to the Hearing Panel.

Decision by the Hearing Panel

33. The Hearing Panel will consider in private session which of the following findings to adopt:
 - That there is no evidence of any failure to comply with the Code of Conduct
 - That the Member has failed to comply with the Code of Conduct but that no action needs to be taken
 - That the Member has failed to comply with the Code of Conduct and should be:
 - censured, or
 - restricted access to the premises and resources of authority for a maximum period of 3 months (but ensuring that such restrictions will not unnecessarily restrict the Member's ability to carry out his/her responsibilities as an elected or co-opted member)
 - suspended or partially suspended for a maximum period of 3 months, or
 - suspended or partially suspended for a maximum period of 3 months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Hearing Panel

34. In deciding what penalty to set, the Hearing Panel will consider all relevant circumstances including those covered in the Guidance produced by the Standards Board for England.
35. The Hearing Panel will then return and the Chair will announce the decision of the Panel and the reasons for that decision.
36. If the matter is a complicated one, where the complaint has a number of aspects, the Hearing Panel can decide to consider the evidence and reach a finding on each aspect separately.
37. The Hearing Panel will then consider in open session whether there are any recommendations which the authority should make arising from consideration of the allegation. For example, providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or related matters; for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct, for rectifying any deficiency in the authority's decision making procedures or for preventing or deterring any further breaches of the Code of Conduct.

Appeal

38. Where the Hearing Panel determines that the Member has failed to comply with the Code of Conduct, the Monitoring Officer shall inform the Member of his or her right to appeal against the determination to an appeal tribunal drawn from the Adjudication Panel.

Notice of Findings

39. The Administrative Officer will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared by the following day.
40. Within 2 weeks of the end of the hearing the Administrative Officer will circulate the full written decision, in the form recommended by the Standards Board, to the Member, the Complainant (where possible), the ESO concerned, the Standards Committee of the Council and any other authority concerned.
41. At the same time the Administrative Officer shall arrange for a summary of the findings to be published in two newspapers circulating in the area of the authority and on the Council's web site.
42. Where the Hearing Panel determines that there has not been a breach of the Code of Conduct, the notice shall:
 - (i) state that the Hearing Panel found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
 - (ii) not be published in local newspapers if the Member so requests

43. Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice shall:
- (i) state that the Hearing Panel found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached; and
 - (iv) state that the Member concerned may apply for permission to appeal against the determination
44. Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:
- (i) state that the Hearing Panel found that the Member had failed to comply with the Code of Conduct;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached;
 - (iv) specify the sanction imposed, and
 - (v) state that the Member concerned may apply for permission to appeal against the determination
45. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for 6 years after the hearing.

Confidentiality and disclosure of information

46. Where the Chair of the Hearing Panel considers that the ESO's report and/or any of the written statements in response is likely to disclose "exempt information" (as defined in Schedule 12A to the LGA 1972 and regulations) and in consequence that it is likely that the Hearing Panel will, during consideration of these papers, not be open to the public, he/she shall instruct the Administrative Officer not to provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.
47. The Hearing will be held in public apart from the following two situations:
- Where 'confidential information' is to be revealed, the Hearing Panel must hold such parts of a meeting in private. Confidential information is information provided by a government department under the condition that it must not be revealed and, information that cannot be revealed under any legislation or by a Court Order
 - Where 'exempt information' is to be revealed the Hearing Panel may exercise their discretion in deciding whether or not to exclude the public

48. The categories of exempt information are set out in Schedule 12A to the LGA 1972 and regulations and include information relating to the personal circumstances of any person.

Appendix 2.

**WALSALL METROPOLITAN BOROUGH COUNCIL
STANDARDS COMMITTEE DETERMINATIONS**

FORM A Member's response to the evidence set out in the ESO's report	Please enter the number of any paragraph where you disagree with the findings of fact in the ESO's report and give your reasons and your suggested alternative
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Paragraph number from the ESO's report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestions as to how the paragraph should read

Please attach separate sheets if necessary

**WALSALL METROPOLITAN BOROUGH COUNCIL
STANDARDS COMMITTEE DETERMINATIONS**

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

Paragraph number	Details of the evidence`
1	
2	
3	
4	
5	

Please attach separate sheets if necessary

**WALSALL METROPOLITAN BOROUGH COUNCIL
STANDARDS COMMITTEE DETERMINATIONS**

FORM C 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 Standards 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 Standards 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

**WALSALL METROPOLITAN BOROUGH COUNCIL
STANDARDS COMMITTEE DETERMINATIONS**

FORM D

Arrangements for the Standards Committee hearing

Please tick the relevant boxes

1	The proposed date for the Standards Committee hearing is given in the accompanying letter. Are you planning to go to the hearing? If 'No', please explain why	<input type="checkbox"/> Yes <input type="checkbox"/> No	Reason:
2	Are you going to present your own case?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
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	<input type="checkbox"/> Yes <input type="checkbox"/> No	Name:
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	<input type="checkbox"/> Yes <input type="checkbox"/> No	Qualifications:
5	Does your representative have any connection with the case? If 'Yes', please give details	<input type="checkbox"/> Yes <input type="checkbox"/> No	Details:

FORM D**Arrangements for the Standards Committee hearing**

Please tick the relevant boxes

6	Are you going to call any witnesses? If 'Yes', please fill in Form E	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7	Do you, your representative or your witnesses have any access difficulties (for example is wheelchair access needed) If 'Yes' please give details	<input type="checkbox"/> Yes <input type="checkbox"/> No	Details:
8	Do you, your representative or witnesses have any special needs (for example is an interpreter needed) If 'Yes' please give details	<input type="checkbox"/> Yes <input type="checkbox"/> No	Details:
9	Do you want any part of the hearing to be held in private? If 'Yes', please give reasons	<input type="checkbox"/> Yes <input type="checkbox"/> No	Reasons:
10	Do you want any part of the relevant documents to be withheld from public inspection? If 'Yes', please give reasons	<input type="checkbox"/> Yes <input type="checkbox"/> No	Reasons:

Please attach separate sheets if necessary

**WALSALL METROPOLITAN BOROUGH COUNCIL
STANDARDS COMMITTEE DETERMINATIONS**

FORM E

Details of proposed witnesses to be called

Name of witness or witnesses	<div>1</div> <div>2</div> <div>3</div>	<div>.....</div> <div>.....</div> <div>.....</div> <div>.....</div>
Witness 1 a Will the witness give evidence about the allegation? If 'Yes', please provide an outline of the evidence the witness will give. b Will the witness given evidence about what action the Standards 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	<div>Yes</div> <div>No</div>	Outline of evidence: <div>.....</div> <div>.....</div> <div>.....</div> <div>.....</div> <div>.....</div>

FORM E

Details of proposed witnesses to be called

<p>Witness 2</p> <p>a Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> <p>b Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give</p>	<div>Yes</div> <div>No</div>	<p>Outline of evidence:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>Witness 3</p> <p>a Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> <p>b Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give</p>	<div>Yes</div> <div>No</div>	<p>Outline of evidence:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

Please attach separate sheets if necessary

**WALSALL METROPOLITAN BOROUGH COUNCIL
STANDARDS COMMITTEE DETERMINATIONS**

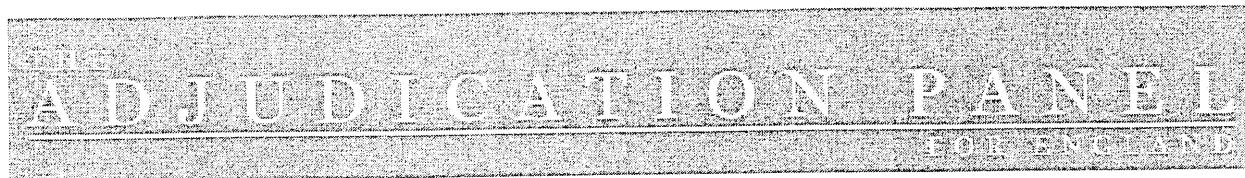
FORM F

Checklist for the pre-hearing process summary

After the Standards Committee has received responses from the member who the allegation has been made about and the ESO, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:

- the name of the authority;
- the name of the member who the allegation has been made about;
- the name of person who made the original allegation (unless there are good reasons to keep his or her identity confidential);
- case reference numbers of the principal authority and the Standards Board for England;
- the name of the Standards Committee member who will chair the hearing;
- the name of the Monitoring Officer;
- the name of the ESO who referred the matter;
- the name of the clerk of the hearing or other administrative officer;
- the date the pre-hearing process summary was produced;
- the date, time and place of the hearing;
- a summary of the allegation;
- the relevant section or sections of the Code of Conduct;
- the findings of fact in the ESO's report that are agreed;
- the findings of fact in the ESO's report that are not agreed;
- whether or not the member or the ESO will attend or be represented;
- the names of any witnesses who will be asked to give evidence; and
- an outline of the proposed procedure for the hearing.



LOCAL GOVERNMENT ACT 2000

The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003

APPLICATION FOR PERMISSION TO APPEAL

1	Your Name and Address	
2	Local Authority or other body of which you are a Member	
3	Date of Standards Committee Decision against which you seek to appeal <i>(The decision itself should be attached to this form)</i>	
4	Do you dispute that you failed to comply with the provisions of the Code of Conduct as determined by the Standards Committee	YES / NO <i>(if yes, please give your reasons)</i>

5	Do you wish to appeal against the sanction imposed by the Standards Committee?	YES / NO <i>(if yes please give your reasons)</i>
6	If permission to appeal is granted do you agree to the Appeal being determined by way of written representations?	YES / NO

Your signature

Print Name:

Date

President's Decision:

Permission **Granted / Denied**

Reason if permission refused:

Signed

Date