

Standards Committee – 21st April 2015

Process for Standards Hearing Committee when investigating complaints

Summary of report

The standards committee requested a report outlining how the Standards Hearing Committee would consider a complaint against an elected member.

Recommendations

That the report be noted.

1.0 Background

- 1.1 The Arrangements for hearing complaints, as approved by Council, sets out the procedure for the hearing of complaints by a Standards Hearing at Committee.
- 1.2 If a complaint is reviewed by the Monitoring Officer, in conjunction with the Independent Person, and it is decided that a complaint merits formal investigation, the Monitoring Officer will appoint an investigating officer to investigate the complaint. This can either be an internal member of staff, or an external independent appointment. The latter would have a cost implication. The investigating officer would conduct the investigation in the manner they thought appropriate however the investigation would need to comply with the rules of natural justice. The investigating officer would have to speak to the elected member to establish their explanation for the events leading up to the complaint. They would need to speak to relevant witnesses, and examine any relevant documents. At the end of this process the investigating officer would produce a draft report which they would send to the elected member and the complainant for comment. The final report would then be submitted to the Monitoring Officer.
- 1.3 If the report determines that there is a breach of the code of conduct, then if the matter is not capable of resolution, it will be referred to a hearing panel/committee. Prior to any hearing there will be a pre-hearing process where the Monitoring Officer will seek to discover what is or is not agreed in the report. Directions will also be issued in consultation with the chair of the hearing panel, as to how the hearing will be conducted. The pre-hearing process will attempt to limit the time needed to determine the matter, and deal with any preliminary issues which may arise.
- 1.4 The hearing panel will be a subcommittee of the standards committee which will comprise of a maximum of five members. This has to be politically balanced. An Independent Person will be invited to sit on the hearing panel as the law requires the Independent Person to be consulted with prior to any sanction being imposed on an elected member if they have been found to have breached Council code of conduct. Independent person however does not have a vote at this meeting.

1.5 The arrangements for dealing with complaints require that all decisions will be made in accordance with the following principles:

- Proportionality
- due consultation and taking of professional advice
- a presumption in favour of openness
- clarity of aims and desired outcomes and;
- taking accounts of and explaining the options consulted on and the reasons for decision is taken
- due regard to the members code of conduct.

1.6 At least two weeks before any hearing the clerk in conjunction with the legal adviser will:

- Set time, date and place of hearing
- provide a report summarising the allegations
- outline the agreed facts and the fact not agreed
- provide a list of witnesses
- identifying representation hearing.

It has to be remembered that the hearing is a local authority meeting not a court of law. The meeting will decide any evidence on the balance of probabilities. The hearing committee for work at all times in a fair, independent, and politically impartial way. Please see the Appendix 1 attached herewith.

2.0 Resource and legal considerations

2.1 There are no resource or legal considerations.

Citizen impact

The work of the Standards Committee is intended to ensure that effective governance arrangements are in place. This protects the council and its officers and provides an assurance to stakeholders and citizens regarding the security of the council's operations, and their ability to complain about elected member behaviour where they feel it may have breached the Local Code of Conduct as approved by council. This helps to retain confidence in standards of behaviour by elected members in the way in which they carry out their work in their official capacity.

Performance and risk management issues

Performance and risk management form part of the corporate governance framework. Ensuring High standards of elected member supports the governance of the council.

Equality implications

None arising from this report.

Consultation

None required



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APPENDIX 1

The Hearing Process

Firstly all matters in disputed proceedings are decided on the evidence before the committee. Evidence is the proof presented at a hearing by the parties through witnesses, records, documents, electronic and physical evidence for the purpose of inducing the tribunal to believe their contentions

Any standard of proof to determine a member complaint will be decided on the balance of probability. **In a civil case such as complaints about member conduct before the committee, one party's case need only be more probable than the other.** This is the civil standard of proof which is known as the balance of probability as opposed to matters before the criminal courts which have a higher test of beyond all reasonable doubt.

The burden of proof will be on the complainant to present the case in order to meet the legal requirements for establishing that a breach of the code of conduct has taken place.

Pre-Hearing

Prior to forming part of any hearing panel, panel members will receive relevant reports. This may comprise of substantive reports including:

- Investigating officers report;
- Witness statements
- Documentary evidence
- Experts reports

The first priority is for the hearing panel member to consider *all* the paperwork they receive thoroughly. Thereafter the panel member will need to form an initial view as to whether or not they can actually sit on the case, this is because in law when making decisions particularly, for example quasi judicial hearings, a committee or councillor must follow the rules of natural justice. When an elected member is deciding any issue they should consider whether or not they can determine the matter objectively and fairly. This complies with the Localism Act 2011, and accords with the general requirements of the council's current code of conduct selflessness, integrity, objectivity, accountability, openness and honesty.

Also the rules of natural justice apply which are enshrined in the English common law and comprise:

The Right to a Fair Hearing.

When conducting an investigation in relation to a complaint it is important that the person being complained against is advised of the allegations in as much detail as possible and given the opportunity to reply to the allegations.

Any hearing must allow to the parties before it the opportunity to prepare and present evidence and to respond to arguments presenting by the opposite side.

The Bias Rule.

This states that no one should be judge in his or her case. This is the requirement that the deciding authority must be unbiased when according the hearing or making the decision.

Additionally, investigators and decision-makers must act without bias in all procedures connected with the making of a decision.

A decision-maker must be impartial and must make a decision based on a balanced and considered assessment of the information and evidence before him or her without favouring one party over another.

Even where no actual bias exists, investigators and decision-makers should be careful to avoid the appearance of bias. Investigators should ensure that there is no conflict of interest which would make it inappropriate for them to conduct the investigation.

In making decisions, councillors must observe the distinction between having a closed mind to arguments that may be contrary to the rules of natural justice and therefore unlawful, and simply having a predisposition to taking a certain view. The test was set out in the case of *Porter v Magill* (2001) where it was stated that ***the question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.*** One of the concerns about minimising the role of independent members on standard steering committees was that it would reduce confidence in the standards regime as in essence elected members would be sitting in judgement upon each other. This increases the risk of politicised standards decisions. It also makes it more difficult for elected members to sit in judgement upon other elected members whom they may have known for a number of years. This is why the role of the independent person under the Localism Act 2011 is so important, and why an independent person should be a part of any hearing panel.

The Evidence Rule

The third rule is that any administrative decision must be based upon logical proof or evidence material. Investigators and decision makers should not base their decisions on mere speculation or suspicion. An investigator or decision maker should be able to clearly point to the evidence on which the inference or determination is based. Evidence (arguments, allegations, documents, photos, etc.) presented by one party must be disclosed to the other party, who may then subject it to scrutiny.

Decisions

Any decision must be one that is within a reasonable range of decisions available to the decision maker on the evidence.

Any decision made must always be supported by detailed reasons for the decision that must be disclosed to the parties subject to the decision.

The Hearing

The procedure should be set out at the start of the hearing so all the parties know how the proceeding will be managed. The chair of the hearing panel will manage the hearing and has discretion as to how the hearing should progress subject to the principles of natural justice set out above and normally follow along the lines of:

- It would be normal for the Investigator, who has investigated the case to set out his case first. The Investigator may call witnesses in support of the investigation report. The respondent councillor will be entitled to ask questions of the investigator and the witnesses. The questions should be courteous and to the point. The chair may intervene if they think the questioning is unfair, aggressive, or not relevant. However before intervening the Chair should always remember that the overriding principal is to allow a fair hearing.
- Once the Investigator has set out the case it will then be the turn of the respondent councillor to set out their case and they will call witnesses. The Investigator will be entitled to ask questions of the councillor and their witnesses.
- Members of the hearing panel will be entitled to ask questions of the parties and their witnesses themselves.
- The Investigator will then sum up the case, drawing the hearing panels attention to matters that they feel support the case and setting out any relevant law.
- The respondent councillor will then have the opportunity to sum up their case in the same manner.
- The hearing panel will then retire to consider their decision. As stated above any decision must be one that is within a reasonable range of decisions available to the decision maker on the evidence.
- Finally any decision made must always be supported by detailed reasons for the decision that must be disclosed to the parties subject to the decision.