

# Procedure for Local Determination Hearings

## **1 Interpretation**

- (a) 'Member' means the member of the Authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the member's nominated representative.
- (b) 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the Authority, and includes his or her nominated representative or 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 Investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) "The Committee Support Officer" means an officer of the Authority responsible for supporting the Committee's discharge of its functions and recording the decisions of the Committee.
- (f) 'Legal Advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.
- (g) "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 Member may be represented or accompanied during the hearing by a solicitor, counsel or, with the permission of the Committee, another person. (Note that the cost of such representation must be met by the Member.)

## **4 Legal Advice**

The Committee may take legal advice, in private if necessary, 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 Committee should be shared with the Member and the Investigator if they are present.

## **5 Setting the Scene**

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

## 6 Preliminary procedural issues

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

(a) Disclosures of interest

The Chairman shall ask members of the Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the Matter if so required.

(b) Quorum

The Chairman shall confirm that the Committee is quorate

(c) Hearing Procedure

The Chairman shall confirm that all present know the Procedure which the Committee will follow in determining the Matter.

(d) Proceeding in the absence of the Member

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

(i) the Chairman shall ask the Legal Advisor whether the Member has indicated his/her intention not to attend the hearing;

(ii) the Committee shall then consider any reasons which the Member 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 Committee is satisfied with such reasons, it shall adjourn the hearing to another date;

(iv) if the Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Committee shall decide whether to consider the Matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Committee may exclude the press and public from all or part of its consideration of this Matter, or to withhold certain documents from the press and public where it appears likely that confidential or exempt information will be disclosed in the course of this consideration or by the disclosure of such documents.

The Chairman shall ask the Member, the Investigator and the Legal Advisor to the Committee whether they wish to ask the Committee to exclude the press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

## **7 A failure to comply with the Code of Conduct?**

The Committee will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the Investigator's report.

- (a) The Chairman shall ask the Member to confirm that he/she maintains the position as set out in the pre-hearing summary.
- (b) The Pre-Hearing Process Summary

The Chairman will ask the Legal Advisor or the Committee Support Officer to present his/her report, highlighting any points of difference in respect of which the Member has stated that he/she disagrees with any finding of fact in the Investigator's report. The Chairman will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the Investigator's report.

- (i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigator's report, the Committee may then make a determination that the Member has failed to comply with the Code of Conduct in the manner described in the Investigator's report and proceed directly to consider whether any action should be taken (Paragraph 9)
  - (ii) If the Member identifies additional points of difference, the Chairman shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigator (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Committee is not satisfied with the Member'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 Member to challenge the veracity of those findings of fact which are set out in the Investigator's report but in respect of which the Member did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.
- (c) Presenting the Investigator's report
- (i) If the Investigator is present, the Chairman will then ask the Investigator to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigator may call witnesses as necessary to address any points of difference.
  - (ii) If the Investigator is not present, the Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigator. In the absence of the Investigator, the 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 Investigator'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 Investigator's report and/or of the evidence of each witness, the Chairman shall ask the Member if there are any matters upon which the Committee should question the Investigator or the witness.
- (d) The Member's response
  - (i) The Chairman shall then invite the Member to respond to the Investigator'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 Member's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigator if there are any matters upon which the Committee should question the Member or the witness.
- (e) Witnesses
  - (i) The Committee shall be entitled to refuse to hear evidence from 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 Committee may address questions to the Investigator, to the Member or to any witness.
- (f) Additional Evidence**
  - (i) At the conclusion of the evidence, the Chairman shall check with the members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.**
  - (ii) If the 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 Committee may (on not more than one occasions) adjourn the hearing and make a request to the Investigator to seek and provide such additional evidence and to undertake further investigation on any point specified by the Committee.**
- (g) Determination as to whether there was a failure to comply with the Code of Conduct.
  - (i) At the conclusion of the Member's response, the Chairman shall ensure that each member of the 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 Investigator's report.
  - (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 7(b)(i) above), the Committee shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigator's report.

- (iii) The Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
- (iv) The 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 from the Investigator, the Member or a witness. If it requires any further information, it may adjourn and instruct an officer or request the Member to produce such further evidence to the Committee.
- (v) At the conclusion of the Committee's consideration, the Committee shall consider whether it is minded to make any recommendations to the Authority with a view to promoting high standards of conduct among members.
- (vi) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings of fact and their determination as to whether the Member failed to comply with the Code of Conduct as set out in the Investigator's report.

## **8 If the Member has not failed to follow the Code of Conduct**

If the Committee determines that the Member has not failed to follow the Code of Conduct in respect of the matters set out in the Investigator's report:

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

## **9 Action consequent upon a failure to comply with the Code of Conduct**

- (a) The Chairman shall ask the Investigator (if present, or otherwise the Legal Advisor) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction.<sup>1</sup>
- (b) The Chairman will then ask the Member to respond to the Investigator's advice.

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<sup>1</sup> The sanctions available to the Committee are set out under the Standards Committee (England) Regulations 2008, Regulation 19.

- (c) The Chairman will then ensure that each member of the 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 Committee may address questions to the Investigator or to the Member as necessary to enable him/her to take such an informed decision.
- (e) The Chairman should then set out any recommendations which the Committee is minded to make to the Authority with a view to promoting high standards of conduct among members and seek the views of the Member, the Investigator and the Legal Advisor;
- (f) The 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 the Committee will make to the Authority.
- (g) At the completion of their consideration, the Committee shall return to the main hearing room and the Chairman shall state the 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 Committee will make to the Authority.

## **10 Reference back to the Ethical Standards Officer**

**If, at any time before the Committee has determined upon any appropriate sanction, the 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 Committee, the Committee may instruct the Legal Advisor to request the ESO to resume responsibility for the conduct of the matter, and may adjourn the hearing until the Legal Advisor advises the Committee of the ESO's response to such a request.**

## **11 The close of the hearing**

- (a) The Committee will announce its decision and any right of appeal on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Member as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the 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) in accordance with Regulation 20 of the Standards Committee (England) Regulations 2008.

## 12 Appeals

The Member may appeal against the decision of the Committee by writing to the President of the Adjudication Panel for England, ensuring that his/her letter sets out the grounds for such an appeal, includes a statement as to whether or not he/she consents to the appeal being heard by way of written representations, and is received by the President within 21 days of the date of the written notice of decision given under Paragraph **11(a)**.

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