

## **SOUTH KESTEVEN DISTRICT COUNCIL**

### **STANDARDS COMMITTEE**

#### **PROCEDURE FOR CONSIDERATION AND HEARINGS OF INVESTIGATIONS**

##### **1. Interpretation**

- (a) 'Member' means the member of the District or Parish Council 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 person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer and his or her nominated representative). In the case of matters referred to the Standards Board for investigation it shall mean the Ethical Standards Officer nominated by the Standards Board to investigate the matter
- (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.
- (h) "The Complainant" means the persons who made the complaint about the Member.

##### **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 meeting 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 unless the Committee has expressly agreed to meet all or any part of that cost.

4. **Legal Advice**

The 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 Committee should be shared with the Member, Complainant and the Investigator if they are present.

5. **Investigator's report**

The Investigator will prepare a report of his/her investigation in accordance with the Standards Board guidance on investigations from time to time in place. The report will be sent to the Committee in confidence to be considered at the next meeting of the Committee. The Complainant and the Member will be informed of the date time and place of the meeting of the Committee at which the report is to be considered. The Complainant, Investigator and the Member will be invited to attend at that meeting

6. **Commencement of the meeting**

At the start of the meeting of the Committee at which a report is to be considered, the Chairman shall introduce each of the members of the Committee, the Member (if present), the Investigator (if present), the Complainant (if present) and any other officers present, and shall then explain the procedure which the Committee will follow in the conduct of the consideration of the matter and a hearing.

.7. **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

8. **Consideration and hearing procedure**

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

- (a) If the Member is not present at the start of the consideration of the matter:
  - (i) the Chairman shall ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the meeting;
  - (ii) the Committee shall then consider any reasons which the member has provided for not attending the meeting 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 proceed with the consideration of the report and if it considers a hearing into the matter is necessary, it shall adjourn that matter to another date if it considers the Member should be given further opportunity to attend;
  - (iv) if the Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Committee shall consider the matter, proceed with a hearing and make a determination in the absence of the Member or consider the matter and adjourn the hearing to another date.

(b) **Exclusion of Press and Public**

The Chairman shall proceed to ask the Committee to exclude the press and public from the meeting to allow the Committee to consider the report. The Member, the Complainant and their representative or friend and the Investigator are asked to remain for the pre-hearing consideration of the matter.

(c) **Legal Advisor's 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.

- (d) 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 he or she wishes to raise and upon which

he/she disagrees with any finding of fact in the Investigator's report. The Complainant will be given a similar opportunity to raise any additional points not already raised.

- (e) The Investigator will be asked if he or she wishes to respond to any new information provided by either the Member or the Complainant.
- (f) The Complainant, Member and Investigating Officer will be asked to leave the meeting to allow the Committee the opportunity to consider all the information before it and determine how the matter should proceed. The Committee may call any party back to the meeting if clarification on any point is required during the consideration process.
- (g) Following consideration of the appropriate process, the Chairman will invite all parties, the public and press to join the meeting and announce to all present how the matter is to proceed. Provided there is no known reason to exclude the Investigator's report from publication, the Chairman will confirm the Investigator's report and the matter will be dealt with in public.

9. **Investigator's finding of no failure to comply with the Members' Code of Conduct**

- (i) If the Committee agree with the finding of the Investigator's report of no failure to comply with the Member's Code of Conduct, the Chairman will confirm this finding and provide reasons for not proceeding with a hearing into the Investigator's report. This will be the conclusion of such a matter.
- (ii) If the Committee do not agree with the finding of no failure to comply with the Members' Code of Conduct, the Chairman will confirm a hearing into the matter and proceed as detailed below.

10 **Investigator's finding of failure to comply with the Members' Code of Conduct**

- (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 13 ).
- (ii) If the Member does not admit he/she has failed to comply with the Members' Code of Conduct and has not identified any

additional points of difference other than those already identified during the prehearing/consideration process, the Chairman will confirm the matter will proceed to a hearing.

- (iii) If the Member does not admit he/she has failed to comply with the Members' Code of Conduct and 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.

## 11 **Hearing Process**

The hearing may proceed at the same meeting of the Committee as the prehearing/consideration process provided the Member is present or, if not present, the Member has confirmed his intention not to attend the hearing process

- (a) 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 of there are any matters upon which the Committee should seek the advice of the investigator or the witness.

(c) 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 seek the advice of the Member or the witness.

(d) Witnesses

- (i) The Committee shall be entitled to refuse to hear evidence from the Investigator, the Member 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 Committee may address questions to the Investigator, to the Member or to any witness.

(e) The Complainant

If present, the Complainant will be asked by the Chairman if he or she has anything they may wish to say to assist the Committee with its deliberations

12. **Determination as to whether there was a failure to comply with the Code of Conduct.**

- (a) 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.

- (b) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 10(i) above) the Chairman shall ask the Member, Complainant, Investigator, representatives, witnesses and members of the press and public to leave the 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.
- (c) The Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
- (d) 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, or to seek the legal advice from or on behalf of the Monitoring Officer. 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.
- (e) 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.
- (f) The Chairman shall invite those present to 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.
- (g) If the Committee determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigator's report, 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;
- (h) If the Committee determines that the Member has failed to comply with the Code of Conduct in the manner set out in the Investigator's report, it will then proceed to consider whether it should impose any sanction in respect of the Member and what (if any) would be the appropriate sanction to impose.

**13. 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.
- (b) The Chairman will then ask the Member to respond to the Investigator's advice.
- (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 Adviser.
- (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 which 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.

**14. The close of the hearing**

- (a) The Committee will announce its decision 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 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.

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