

Agenda Item: 12

Meeting: Standards Committee

Date: 1 May 2009

Subject: Hearing Procedure

Report of: Monitoring Officer

Summary: To approve the Standards Committee's Hearing Procedure and decision notice.

Contact Officer: Mrs Barbara Morris, Assistant Director Legal & Democratic/Monitoring Officer
Tel: 01462 611028

Public/Exempt: Public

Wards Affected: All

Function of: Non-executive

Reason for urgency (if appropriate) N/A

RECOMMENDATIONS:

1. That the Committee approve the Hearing Procedure and Decision Notice attached at Appendix "A" to this report.
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Hearings Procedure

1. Members will find attached at Appendix "A" to this report a Hearings Procedure for the Standards Committee when dealing with matters. The Procedure is based on a standardised document produced by the Standards Board for England which is incorporated in their toolkit. Members are requested to review the procedure and to make any comments.
2. Additionally, attached at Appendix "B" is a flow chart which has been put together to try to simplify the process. Members' views are welcomed.

Decision Notice of the Standards Committee

3. Attached at Appendix "C" to this report is a Decision Notice which has been drawn up to record decisions of the Standards Committee once the Hearing is complete. Member's views are welcomed.

Conclusions

4. Once adopted these procedures will be used at all Hearings.

CORPORATE IMPLICATIONS

Council Priorities:

Contributes to all Council priorities to ensure good governance

Financial:

None

Legal:

To ensure high ethical standards are maintained in accordance with the Local Government Act 2000, the Local Government and Public Involvement in Health Act 2007

Standards Committee (England) Regulations 2008

Risk Management:

N/A

Staffing (including Trades Unions):

N/A

Equalities/Human Rights:

Section 6(1) Human Rights Act 1998

Article 6 of the Convention on Human Rights

Community Development/Safety:

N/A

Sustainability:

N/A

Location of papers: Priory House, Chicksands

**HEARING PROCEDURE FOR
THE STANDARDS SUB-COMMITTEE
in respect of local determinations**

Interpretation

1. "Member" means the Member of the Authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Member's nominated representative.
2. "Investigator" means the Investigating Officer nominated by the Monitoring Officer to carry out the investigation.
3. "Committee" refers to the Standards Committee.
4. "Legal Advisor" means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority or someone appointed for this purpose outside the Authority.

Representation

5. The Member may be represented or accompanied during the meeting by a Solicitor, Counsel or with the permission of the Committee, another person.

Legal Advice

6. 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 and the Investigator if they are present.

Setting the Scene

7. The Chairman will formally introduce all Members of the Committee and everyone who is formally involved in the Committee. The Chairman will then explain that the Committee is following a set procedure to ensure a fair and consistent approach is adopted which follows the principles of natural justice.

Preliminary Procedure Issues

8. The Committee should then resolve any issues of disagreement about how the hearing should continue, which has not been resolved during the pre-hearing process.

Making finding of facts

9. After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.

10. If there are no disagreement about the facts, the Committee can move on to the next stage of the hearing at 18.
11. If there is a disagreement, the Investigator, if present should be invited to make any necessary representations to support the relevant findings of facts in the report. With the Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.
12. The subject Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.
13. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Member.
14. If the subject Member disagrees with most of the facts, it may make sense for the Investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
15. If a subject Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:-
 - (a) continue with the hearing, relying on the information in the Investigator's report;
 - (b) allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or the Investigator to be present if he or she is not already.
16. The Committee will usually request all persons leave the room while they consider the representations and evidence in private.
17. On their return, the Chairman will announce the Committee's finding of the fact.

Did the Member fail to follow the code

18. The Committee then needs to consider whether or not based on the fact it has found, the Member has failed to follow the Code of Conduct.
19. The Member should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.
20. The Committee should then consider any verbal or written representations from the Investigator.

21. The Committee may, at any time, question any one involved on any point they raise in their representations.
22. The Member should be invited to make any final relevant points.
23. The Committee will usually request all persons leave the room while they consider the representations.
24. On their return, the Chairman will announce the Committee's decision as to whether or not the Member has failed to follow the Code of Conduct.

If the Member has not failed to follow the Code of Conduct

25. If the Committee decides that the Member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the Authority.

If the Member has failed to follow the Code of Conduct

26. If the Committee decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to:-
 - (a) whether the Committee should set a penalty; or
 - (b) what form the penalty should take
27. The Committee may question the Investigator and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
28. The Committee will request that all persons leave the room while they consider whether or not to impose a penalty on the Member and, if so, what the penalty should be.
29. On their return the Chairman will announce the Committee's decision.

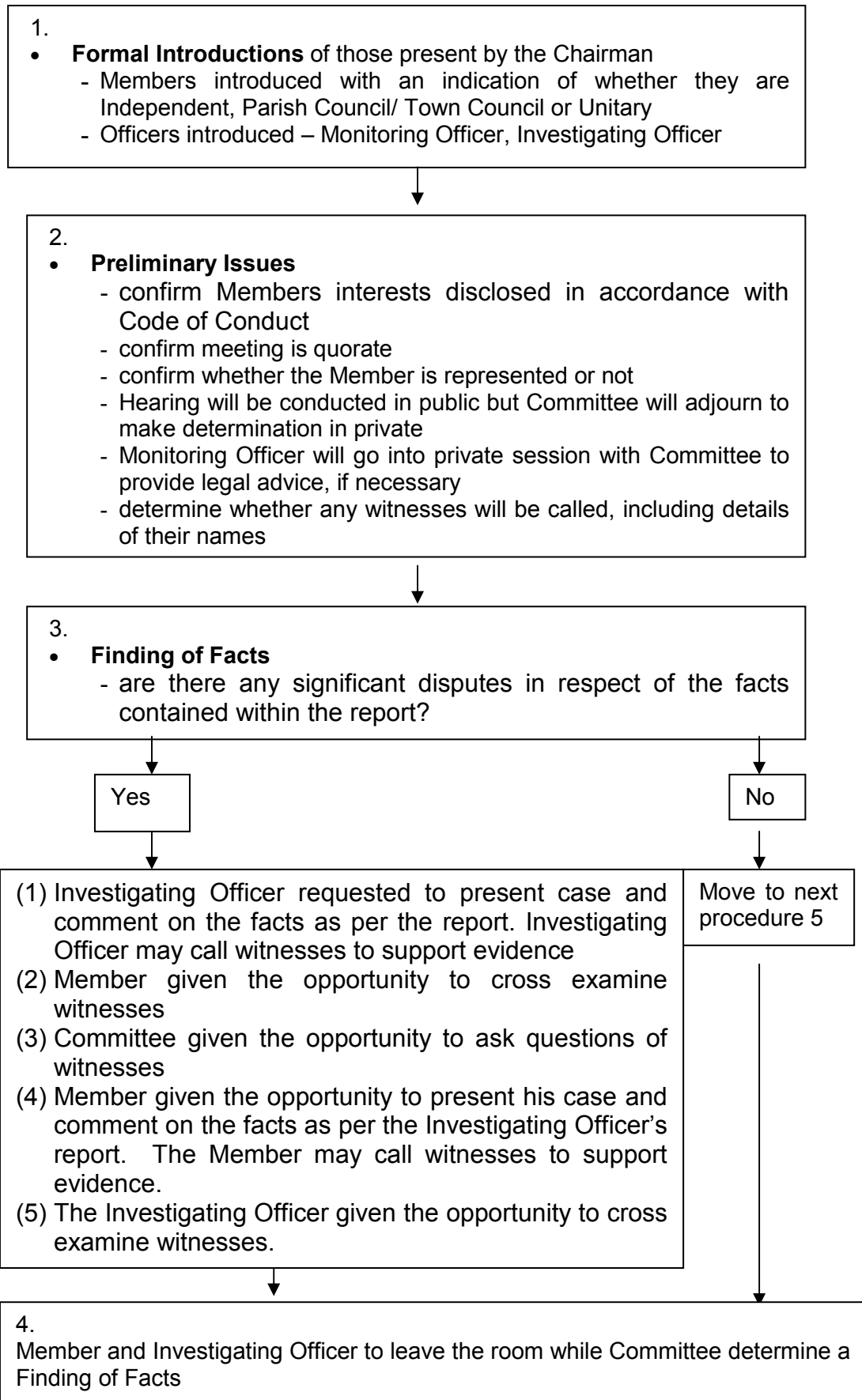
Recommendations to the Authority

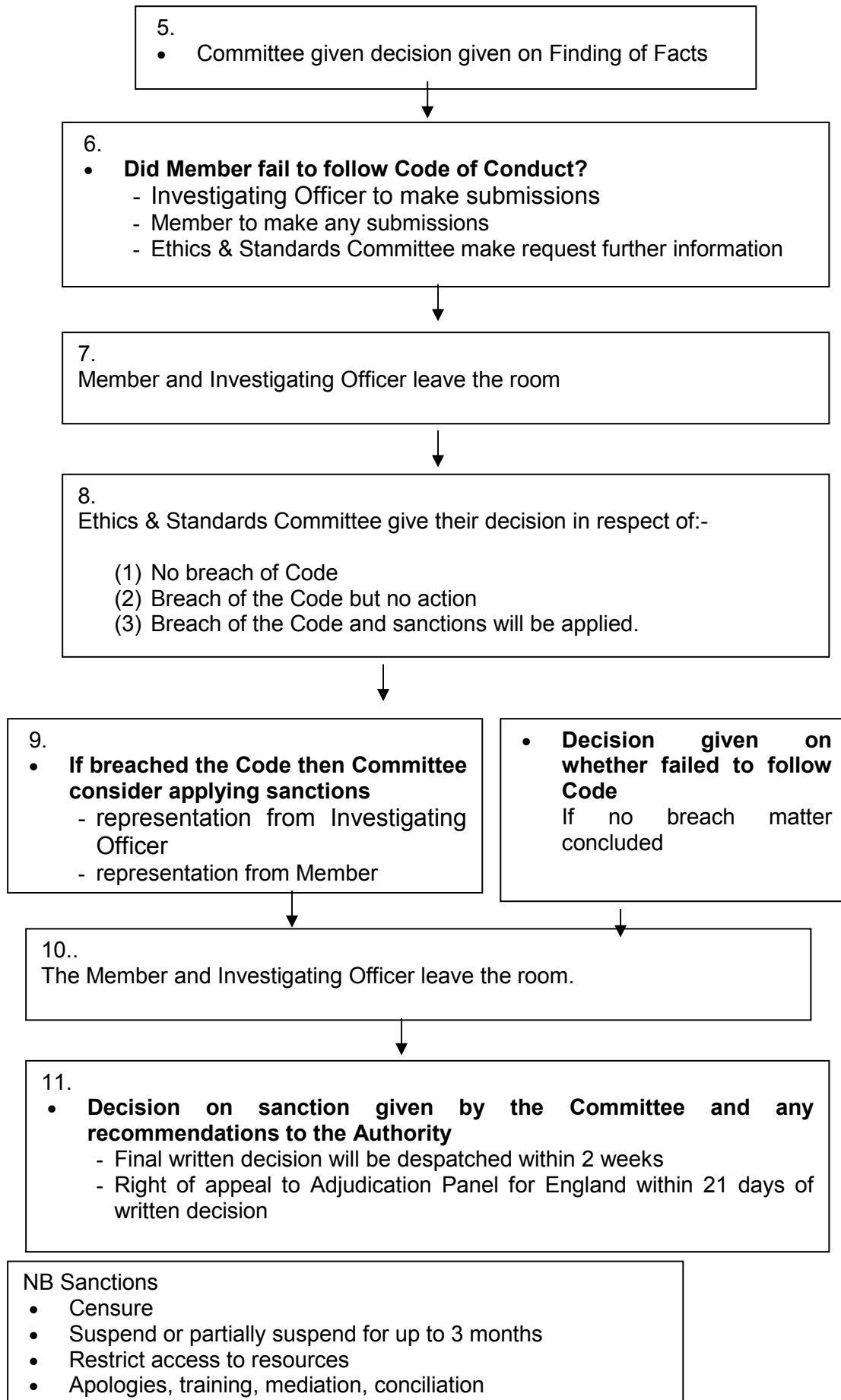
30. After considering any verbal or written representations from the Investigator, the Committee will consider whether or not it should make any recommendations to the Authority, with a view to promoting high standards of conduct amongst members.

The written decision

31. The Committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision within 2 weeks.
32. The decision will be circulated to all relevant persons including the Standards Board.

**FLOW CHART
STANDARDS HEARING PROCEDURE**





Reference Number: *[enter reference number]*SBE Reference Number: *[enter SBE number]*Date of Report: *[enter date]*

Hearing in relation to a possible failure to follow the code of conduct – <i>[enter reference number]</i>	
Member who is the subject to the allegation:	<i>[enter name]</i>
Member's representative:	<i>[enter name]</i>
Relevant Authority:	<i>[enter authority]</i>
Person who made the allegation: <i>[if the Standard Committee or Ethical Standards Officer/Investigating Officer has decided there are good reasons to keep the identity of this person confidential, this should be state]</i>	<i>[enter name/s]</i>
Ethical Standards Officer (ESO)/Investigating Officer:	<i>[enter name]</i>
ESO's representative/ Investigating representative:	<i>[enter name]</i>
Date of the hearing:	<i>[enter date]</i>
Chair of the hearing:	<i>[enter name]</i>
Standards Committee Members attending the hearing:	<i>[enter name/s]</i>
Legal advisor to the Standards Committee:	<i>[enter name]</i>
Clerk of the hearing:	<i>[enter name]</i>

1	Preliminary Documents	
	1.1	The referral from the Ethical Standards Officer/Investigating Officer
		On <i>[enter date]</i> the Standards Committee received a report under Section 64(2) of the Local Government Act 2000 from an Ethical Standards Officer (ESO) in relation to an allegation made against <i>[enter name of the member who is the subject of the allegation]</i> . The allegation was that <i>[state allegation]</i>
2	Oral and written submissions (procedural)	
	2.1	The Standards Committee's decision on any procedural matters: <i>[enter decision]</i>
3	Findings of Fact	
	3.1	The following facts in the ESO's/Investigating Officer report were undisputed: <i>[enter facts]</i>
	3.2	The following facts in the ESO's/Investigating Officer report were disputed: <i>[enter facts]</i>
	3.3	Summary of evidence <i>[enter summary]</i> <i>[includes written evidence not dealt with in the ESO's/Investigating Officer report and any oral evidence give at the hearing relevant to establishing the findings of fact]</i>
	3.4	Summary of submissions by <i>[enter name of the member who is the subject of the allegation]</i> :

	3.5	Summary of submissions by the ESO/Investigating Officer (if present): <i>[enter summary]</i>	
	3.6	Standards Committee's findings of facts	
		3.6.1	The Standards Committee made the following findings in relation to the facts in dispute after considering the submissions of the parties and the evidence before the Committee: <i>[enter findings]</i>
4	Whether or not the member has failed to follow the Code of Conduct		
	4.1	Summary of submissions by <i>[enter name of the member who is the subject of the allegation]</i> :	
	4.2	Summary of submissions by the ESO/Investigating Officer (if present): <i>[enter summary]</i>	
	4.3	Standards Committee's decision on whether or not there had been a failure to comply with the Code of Conduct	
		<i>No failure to comply with Code</i>	
		<i>Has been a failure to comply with Code but no action is taken</i>	
		<i>There has been a failure to comply with Code and a sanction should be imposed</i>	
		4.3.1	<i>The Standards Committee reached the following decision after considering the submissions of the parties</i>
		4.3.2	<i>The relevant Sections of the Code of Conduct are: [enter the relevant sections]</i>
		4.3.3	<i>[enter name] did/did not fail to comply with paragraph [enter paragraph number] of the Code of Conduct. The Standards Committee's reasons for this decision were [enter reasons for decision]</i>
	<i>[If there was a failure to follow the Code of Conduct, include the following sections]</i>		

5	What penalty, if any, ought to be imposed	
	5.1	Summary of submissions by <i>[enter name of the member who is the subject of the allegation]</i> :
	<i>[includes written evidence not dealt with in the ESO's/Investigating Officer report and any oral evidence given at the hearing relevant to what penalty, if any, ought to be imposed]</i>	
	5.2	Summary of submissions by the ESO/Investigating Officer (if present): <i>[enter summary]</i>
	5.3	Ethics & Standards Committee's decision on what penalty, if any, ought to be imposed
	5.3.1	<i>The Standards Committee reached the following decision after considering the written evidence and submissions of the parties</i>
	5.3.2	<i>[enter name of the member who is the subject of the allegation] [enter penalty]</i>
	5.3.3	<i>The [enter penalty] will take effect from the date of the decision [enter date]</i>
	5.3.4	<i>The Standards Committee decided to impose [enter penalty] because [enter reason]</i>
6	Right of Appeal	
	6.1	<i>[enter name of the member who is the subject of the allegation] has the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal the Standards Committee's finding. Written notice requesting permission to appeal must be received by the President of the Adjudication Panel within 21 days of the Member's receipt of notification of the Standards Committee's finding.</i>

7	Recommendations to the Authority	
	7.1	The Standards Committee made the following recommendations in relation to the promotion and maintenance of high standards of conduct by the Members and co-opted members of the Authority. <i>[enter recommendations]</i>

[sign here]

Chair of the Ethics & Standards Committee

[enter date]