

Standards Hearing Sub-Committee

Agenda

Date:	Tuesday, 20th September, 2011
Time:	10.00 am
Venue:	East Committee Room - Municipal Buildings, Earle Street, Crewe, CW1 2BJ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. Election of Chairman

To elect a Chairman for the meeting. In accordance with the Standards Committee (England) Regulations 2008, the Chairman must be an independent Member of the Standards Committee.

2. Chairman's Opening Remarks (Pages 1 - 4)

The Chairman to explain the procedure to be followed during the hearing which has been extracted from the Standards for England Standards Committee Determinations Guidance 2010 (Appendix 2).

3. Declarations of Interest

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item of business on the agenda.

For any apologies or requests for further information

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4. **Report of Monitoring Officer** (Pages 5 - 12)

The report of the Monitoring Officer/Borough Solicitor provides a summary of the business to be transacted in consideration of complaint number CEC/2010/02.

The Hearings Sub-Committee will normally meet in public. However, the Sub-Committee will be invited to determine whether it is appropriate and in the public interest for the hearing to take place in public as the Subject Member has requested that the hearing be held in private.

In the event that the Subject Member's request is granted, the Sub-Committee will be invited to pass a resolution that the press and public be excluded from the meeting as set out at item 5 on the agenda.

If the Sub-Committee declines the Subject Member's request, the papers listed under agenda item 6 will be made available to the public at the meeting.

5. **Exclusion of the Press and Public**

The reports relating to the remaining items on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 (as amended) on the grounds that the matters may be determined with the press and public excluded.

The Sub-Committee may decide that the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 7C of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) and public interest would not be served in publishing the information.

PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT

6. **Complaint No. CEC/2010/02** (Pages 13 - 274)

The Sub-Committee is invited to determine whether or not there has been a breach of the Code of Conduct, and if so, the appropriate sanction which should be applied.

Supporting Papers

Sub Committee Terms of Reference

Draft Statement of Facts

Disputed Statement of Facts

Investigating Officer's report

Schedule of Evidence Volume 1

Schedule of Evidence Volume 2

Standards Committee Sanctions

(Extracted from Standards for England Standards Committee Determinations Guidance 2010)

appendix 2

Model hearing procedures for the standards committee

The model hearing procedures below aim to give standards committees a consistent approach to determining matters locally. These procedures are not compulsory, but authorities should make sure that any procedures they do use are consistent with the principles in this guidance.

Standards committees need to have an efficient and effective hearing process. This will help committees deal with all the issues that need to be resolved in a way that is fair to the member. It will also reduce the prospects of any successful appeal.

The model procedure below is intended to give standards committees a consistent approach to determining matters locally.

The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

Interpretation

- 1) 'Subject 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 monitoring officer or ethical standards officer and includes their nominated representative.

- 3) 'Committee' also refers to a sub-committee.

- 4) 'Legal adviser' 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 from outside the authority.

Representation

- 5) The subject 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, in private if necessary, from its legal adviser 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 subject member and the investigator if they are present.

Setting the scene

- 7) After all the members and everyone involved have been formally introduced, the chair should explain how the committee is going to run the hearing.

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Preliminary procedural issues

- 8) The committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

- 9) After dealing with any preliminary issues, the committee should then move on to consider whether there are any significant disagreements about the facts contained in the investigator's report.

- 10) If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.

- 11) If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the subject 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 their 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 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 the subject member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether it would be in the public interest to continue in their absence.

After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:

- continue with the hearing, relying on the information in the investigator's report
- allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary

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- postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already

- 16) The committee will usually move to another room to consider the representations and evidence in private.
- 17) On their return, the chair will announce the committee's findings of fact.

Did the subject member fail to follow the Code of Conduct?

- 18) The committee then needs to consider whether, based on the facts it has found, the subject member has failed to follow the Code.
- 19) The subject member should be invited to give relevant reasons why the committee should decide that they have not 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 anyone involved on any point they raise on their representations.
- 22) The subject member should be invited to make any final relevant points.
- 23) The committee will then move to another room to consider the representations.

- 24) On their return, the chair will announce the committee's decision as to whether the subject member has failed to follow the Code.

If the subject member has not failed to follow the Code of Conduct

- 25) If the committee decides that the subject member has not failed to follow the Code, the committee can move on to consider whether it should make any recommendations to the authority.

If the subject member has failed to follow the Code of Conduct

- 26) If the committee decides that the subject member has failed to follow the Code, it will consider any verbal or written representations from the investigator and the subject member as to:
- whether the committee should apply a sanction
 - what form any sanction 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 then deliberate in private to consider whether to impose a sanction on the subject member and, if so, what sanction it should be.

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- 29) On their return, the chair 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 it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

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 shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

CHESHIRE EAST COUNCIL STANDARDS HEARING SUB-COMMITTEE

Date of meeting: 20 September 2011
Report of: Borough Solicitor/Monitoring Officer
Title: Allegation of a Breach of the Code of Conduct
(Complaint CEC/2010/02)

1. Purpose of the Report

- 1.1 To enable the Sub-Committee to consider the Investigating Officer's report referred by the Hearing Consideration Sub-Committee under Regulation 17(1)(b) of the Standards Committee Regulations 2008.

2. Recommendations

- 2.1 The Sub-Committee is invited to consider –
- (i) Whether it is in the public interest for the hearing to take place in public or private, the appendices to this report to be made available to the public in the event that it is determined that it should be held in public; and
 - (ii) The Investigating Officer's report in accordance with the Standards Committee's Hearing procedure and the relevant legislation and guidelines and determine whether or not there has been a breach of the Code of Conduct, and if so, the appropriate sanction which should be applied.

3. Introduction

- 3.1 This hearing arises out of an allegation made by the Complainant (Complaint number CEC/2010/02) that the Subject Member breached the Code of Conduct in that he failed to treat others with respect. The details of the case are set out in the report of the Investigating Officer (Agenda item 6).
- 3.2 The Sub-Committee has full powers delegated to it by the Standards Committee to determine this complaint and must deliver its verbal decision on the day of the hearing; to be followed by a written decision. In the event of an adverse finding the Subject Member may appeal to the First-tier Tribunal.

4. Hearing Procedure

- 4.1 The hearing procedure to be followed is attached at Agenda item 2 and has been extracted from the Standards for England Determinations Guidance 2010 (Appendix 2).

5. Complaint and Investigators Report

- 5.1 A complaint was made on 21 May 2010 by the Complainant who asserted that the Subject Member had breached Paragraph 3(1) of the Code of Conduct in that he had "*failed to treat others with respect*". The Assessment Sub-Committee considered the complaint on 13 July 2010 and decided to refer the matter to the Monitoring Officer for investigation.

- 5.2 Jonathan Goolden of Wilkin Chapman Goolden, Solicitors was appointed to conduct the investigation and his report was submitted for consideration to the Hearings Sub Committee on 18 March 2011. Mr Goolden concluded that the Subject Member had breached the Code of Conduct.
- 5.3 In accordance with Regulation 17 of the Standards Committee (England) Regulations 2008 ("the Regulations"), the Sub-Committee was required (a) to determine that a hearing should be held, or (b) refer the matter to the First-Tier Tribunal, as the investigation had concluded that there had been a breach of the Code of Conduct. Referral to the First-Tier Tribunal would only be appropriate if it was determined that the action available against the Member would be insufficient if a finding of breach was made, and that the First-Tier Tribunal had agreed to accept the referral.
- 5.4 Having taken into account the report's contents and Members' obligations under the Regulations, together with relevant Guidance issued by Standards for England, the Sub-Committee concluded that a local hearing was sufficient.

6. Parties attending the Hearing

- 6.1 The Subject Member has confirmed that he will be in attendance at the meeting. He has also confirmed that he wishes to call a witness (who is the affected party) and that he will be represented by Mr M Asquith of Counsel.
- 6.2 It should be noted that the Complainant and the affected party have been asked if they will be present at the hearing but both have indicated that they will not. There is no power to compel either party to attend.
- 6.3 The Investigating Officer will be in attendance but does not intend to call any witnesses.

7. Matters for Determination

7.1 Confidentiality of Proceedings

- 7.1.1 The Sub Committee will need to consider whether or not the hearing should be held in public. Currently, the documents attached to the agenda have been marked as restricted as they contain information about named individuals which is being presented for consideration under Regulation 18 of the Standards Committee (England) Regulations 2008.
- 7.1.2 In considering whether or not to hold the hearing in public, the Sub Committee will wish to consider whether the public interest in transparency and openness outweighs the public interest in withholding the information and may wish to consider representations from the Subject Member and the Investigating Officer on this point.
- 7.1.3 The Sub-Committee is asked to note that the Subject Member has requested that the hearing be held in private.

7.2 Findings of Fact

- 7.2.1 On 24 May 2011, the Chairman of the Consideration Sub-Committee gave direction that, in preparation for the hearing, the Investigating Officer should prepare a draft Statement of Fact, for agreement with the Subject Member's representative.
- 7.2.2 The Subject Member has had sight of the Investigator's report and has been invited to consider the Investigating Officer's draft statement of facts. At the time of preparation of this report, the draft statement has not been agreed by or on behalf of the Subject Member.

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Designation:	Borough Solicitor and Monitoring Officer
Tel No.	01270 685882
Email:	caroline.elwood@cheshireeast.gov.uk

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Cheshire East Council

Arrangements for the Standards Sub-Committee Hearing

Please tick the relevant boxes and provide details where appropriate.
(Note: This form can be provided electronically if required.)

1	Are you planning to attend the Standards Hearings Sub-Committee <u>on the proposed date</u> in the accompanying letter? If 'No', please explain why.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Reason: <i>NO DATE YET AGREED</i>
2	Do you disagree with any findings of fact contained in the Investigator's report?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	THIS IS A POLITICALLY MOTIVATED COMPLAINT. I DO NOT REMEMBER * SENDING THE EMAIL <i>See Below</i>
3	Are you going to present your own case?	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Only if Mr Asquith cannot be present.</i>
4	If you are not presenting your own case, will a representative present it for you? If 'Yes', please state the name of your representative.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Name: <i>MARE ASQUITH</i>
5	If 'Yes', please give their legal qualifications. Then go to Question 6. <i>If 'No' please go to Question 5.</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Qualifications: <i>Barrister</i>

Findings of fact:- Details to follow in 7 days

6	Does your representative have any connection with your case? If 'Yes', please give details.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Details:
7	Are you going to call any witnesses? If 'Yes', please fill in the attached form.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Not already sent to Guy Remond leave book Remond.
8	Do you, your representative or your witnesses have any access difficulties? For example, is wheelchair access needed? If 'Yes', please give details.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Details: I WILL NOT CLIMB STAIRS
9	Do you, your representative or witnesses have any special needs? For example, is an interpreter needed? If 'Yes' please give details	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Details:
10	Do you want any part of the hearing to be held in private? If 'Yes', please give reasons.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Reasons: This is a political malicious complaint designed to damage me and the Conservative administration
11	Do you want any part of the relevant documents to be withheld from public inspection? If 'Yes', please give reasons.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Reasons: As above



Standards Hearings Sub-Committee

Details of proposed witnesses to be called

Name of witness or witnesses	1	Guy Remond
	2	
	3	

Witness 1

a	<p>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>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p> <p>Witness is alleged victim of disrespect.</p>
b	<p>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>	<p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p>	<p>Outline of evidence:</p>

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of the Local Government Act 1972.

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