

# CITY AND COUNTY OF CARDIFF DINAS A SIR CAERDYDD

**STANDARDS AND ETHICS COMMITTEE: 28 SEPTEMBER 2010**

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**REPORT OF THE MONITORING OFFICER      AGENDA ITEM: 4(i)**

## **PROPOSED PROCEDURE FOR DEALING WITH ALLEGATIONS MADE AGAINST COUNCILLORS AND REFERRED TO THE STANDARDS AND ETHICS COMMITTEE**

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### **Reason for this Report**

1. To approve a procedure for dealing with Hearings in respect of an allegation that a County Councillor or Community Councillor in Cardiff has failed to comply with the Member Code of Conduct.

### **Background**

2. At the last meeting of the Standards and Ethics Committee on 27 July 2010, the Committee took the decision to instruct the Council's Monitoring Officer to prepare, having regard to best practice, a procedure for any Hearings that would be undertaken by the Committee in the future.
3. With reference to the procedure and powers of Standards Committees, Regulation 8 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 – as amended, states that: *“the practice and procedure to be followed in exercising its functions under these Regulations shall be for the Standards Committee of the relevant authority to decide”*.
4. The Standards and Ethics Committee therefore needs to have in place effective and efficient procedures for dealing with Hearings in respect of an allegation that a County Councillor or Community Councillor in Cardiff has failed to comply with the Code of Conduct adopted by his/her respective Authority. All such allegations must in the first instance be made to the Public Services Ombudsman for Wales, who will decide whether or not to investigate the allegation.

## Issues

5. Standard and Ethic Committee Hearings may occur as the result of either:
  - (a) The Ombudsman ceasing an investigation and referring the matter to the Council's Monitoring Officer. The Monitoring Officer must then investigate the matter and report on the conclusion of his/her investigation to the Standards and Ethics Committee.
  - (b) The Ombudsman undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer, for reporting to the Standards and Ethics Committee.
6. It is recommended that the Procedure for Hearings, which is attached as **Appendix A** to the report, should be used in respect of both instances referred to above. The procedure has been prepared with regard to the legislative requirements governing this matter, the rules as to natural justice and existing best practice within Wales.

## ADVICE

This report has been prepared by the Monitoring and City and County Solicitor. It contains all the information necessary to allow Members to arrive at a reasonable view, taking into account the advice contained in this section.

### Legal and Financial Implications

There are none directly arising from this report, though it should be appreciated that there is an expense associated with convening and holding hearings in term of both internal officer resource and any external resource that may be required at any particular hearing.

## RECOMMENDATION

That the Committee approves the Procedure for Hearings as set out in Appendix A to the report.

**KATE BERRY**

**Monitoring Officer and City and County Solicitor**

**22 September 2010**

**Appendix A:** Procedure for Hearings

## **APPENDIX A**

### **CARDIFF COUNTY COUNCIL** **STANDARD AND ETHICS COMMITTEE**

#### **PROCEDURE FOR HEARINGS**

Adopted by Standard and Ethics Committee on *[insert date]*.

#### **Introduction**

The Standard and Ethics Committee needs to have in place effective and efficient procedures for dealing with Hearings in respect of an allegation that a County Councillor or Community Councillor in Cardiff has failed to comply with the Code of Conduct adopted by his/her respective Authority. All such allegations must in the first instance be made to the Public Services Ombudsman for Wales, who will decide whether or not to investigate the allegation.

Standard and Ethics Committee Hearings will occur as the result of either:

- (a) The Ombudsman ceasing an investigation and referring the matter to the Council's Monitoring Officer. The Monitoring Officer must then investigate the matter and report on the conclusion of his/her investigation to the Standard and Ethics Committee.
- (b) The Ombudsman undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer, for reporting to the Standard and Ethics Committee.

The following procedure should be used in respect of both instances referred to above and provides the Standard and Ethics Committee with a consistent approach in determining matters locally.

Prior to the Hearing, following receipt of a Report and any recommendations from the Monitoring Officer, or a Report from the Ombudsman, together with any recommendations of the Monitoring Officer, the Standard and Ethics Committee must determine either:

- (a) that there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned and must notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Local Commissioner in Wales accordingly; or
- (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant Authority's Code of Conduct.

If the Standards and Ethics Committee makes a determination under paragraph (b) above, the Hearing rules set out below will be followed at a subsequent meeting of the Committee. The adopted "Pre-hearing Procedures" will be applied following the Committee's determination that a Hearing is required.

If the Monitoring Officer has investigated a complaint, he/she will attend a Hearing in his/her role as the person who has investigated the complaint and will not be present to provide legal advice to the Committee. In such cases, the Deputy Monitoring Officer or another of the Authority's Lawyers will be present to advise the Committee.

## **1. Interpretation**

- (a) "Councillor" means the Member or former Member of the County or Community Council who is the subject of the allegation being considered by the Standards and Ethics Committee, unless stated otherwise. It also includes the Councillor's nominated representative.
- (b) "Investigating Officer" means the Public Services Ombudsman for Wales and includes his/her nominated representative. In the case of matters that have been referred to the Monitoring Officer for investigation, references to the "Investigating Officer", means the Monitoring Officer, or a person appointed by the Monitoring Officer to undertake the investigation, and his/her nominated representative.
- (c) "Legal Advisor" means the officer responsible for providing legal advice to the Standards and Ethics Committee. This may be the Monitoring Officer, or another legally qualified officer of the Authority.

## **2. Powers of the Standards and Ethics Committee**

- (a) The Chair 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.
- (b) The members of the Committee may question anyone taking part in the proceedings on a point they raise in their representations or to seek clarification of views on points raised by others appearing at the Hearing.
- (c) The Committee may also require the attendance of a particular witness or the production of specific documentation where it appears that such additional material may resolve conflict on facts.

### 3. **Representation**

The Councillor may be represented or accompanied during the Hearing by Counsel or a Solicitor, or any other person he or she desires. The Councillor is responsible for meeting the cost of any representation.

### 4. **Legal Advice**

The Committee may take legal advice from its Legal Advisor at any time during the Hearing or while the outcome is being considered. The substance of any legal advice given to the Committee should be shared with the Councillor and the Investigating Officer, if they are present, but not the detail of the request for legal advice.

### 5. **Introductions**

At the start of the Hearing, the Chair shall introduce each of the Members of the Standards and Ethics Committee and everyone involved in the Hearing. The Chair shall then explain the procedure which the Committee is to follow in its conduct of the Hearing and should obtain confirmation from everybody taking part in the Hearing that they have understood the procedure.

### 6. **Preliminary Procedural Issues**

- (a) The Committee should then resolve any issues or disagreements about how the Hearing should continue, including whether all or part of the Hearing should be heard without the attendance of the public. If it is decided that the public should be excluded from part of the proceedings, the Committee will decide the most efficient way to organise the proceedings.
- (b) If either party want to adduce further information to the Committee they should make an application to the Committee for permission to do so prior to the commencement of the formal part of the Hearing. It will assist if the Legal Advisor and the other party have been provided with details of the late information as early as possible but at least two days before the commencement of the Hearing. The Committee retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present the evidence which is relevant to the matters before the Committee.
- (c) If the Councillor fails to attend the Hearing, the Committee may, unless there is a sufficient reason for such non-attendance, continue with the proceedings or adjourn the Hearing to another date to give the Councillor a last opportunity to make representations.

## 7. **Stage 1 – Formal Findings of Fact**

- (a) 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 Investigating Officer's Report.
- (b) If there is no disagreement about the facts, the Committee can move on to the next stage of the Hearing.
- (c) If there is a disagreement about the facts, the Investigating Officer, 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 Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee may allow the Councillor an opportunity to challenge or comment upon any evidence put forward by any witness called by the Investigating Officer.
- (d) The Councillor should then have the opportunity to make representations to support his/her version of the facts and with the Committee's permission, to call any necessary witnesses to give evidence.
- (e) At any time, a Member of the Committee may question any of the people involved or any of the witnesses. The Committee may allow the Investigating Officer an opportunity to challenge or comment upon any evidence put forward by a witness called by the Councillor.
- (f) If the Councillor disagrees with most of the facts in the Report, it may make sense for the Investigating Officer to start by making representations on all of the relevant facts, instead of discussing each fact individually.
- (g) If the Councillor disagrees with any relevant fact in the Investigating Officer's Report, without having given prior notice of the disagreement, he/she must give good reasons for not mentioning it before the Hearing. If the Investigating Officer is not present, the Committee will consider whether or not it would be in the public interest to continue in his/her absence. After considering the Councillor's explanation for not raising the issue at an earlier stage, the Committee may then:
  - (i) continue with the Hearing, relying on the information in the Investigating Officer's Report;

- (ii) allow the Councillor to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
  - (iii) adjourn the Hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present, if he or she is not already present.
- (h) The Committee shall then retire to consider their decision. Depending on the number of persons attending the Hearing, the Committee will either move to another room to deliberate on the representations and evidence in private or request the parties to leave the room during the deliberations.
- (i) Once the decision is reached and the meeting re-convened, the Chair will announce the Committee's findings of fact.

**8. Stage 2 – Did the Member fail to follow the Code?**

- (a) The Committee then needs to consider whether or not, based on the facts it has found, the Councillor has failed to follow the Code of Conduct.
- (b) The Councillor should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.
- (c) The Committee should then consider any verbal or written representations from the Investigating Officer.
- (d) The Committee may, at any time, question anyone involved on any point they raise in their representations.
- (e) The Councillor should be invited to make any final relevant points.
- (f) The parties shall then retire or the Committee will then move to another room to consider the representations and make its decision as to whether or not the Member has failed to follow the Code of Conduct.
- (g) On the Hearing being re-convened, the Chair will announce the Committee's decision as to whether or not the Councillor has failed to follow the Code of Conduct.

**9. Stage 3 – Breach of the Code and Sanctions**

- 9.1 **If it is found that the Councillor has not failed to follow the Code of Conduct.**

If the Committee decides that the Councillor has not failed to follow the Code of Conduct, the Committee can however consider whether it should make any general recommendations to the Authority in question.

**9.2 If it is found that the Councillor has failed to follow the Code of Conduct**

- (a) If the Committee decides that the Councillor has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Councillor as to:
  - (i) whether or not the Committee should set a penalty: and
  - (ii) what form any penalty should take.
- (b) The Committee may question the Investigating Officer and the Councillor and, if necessary, take legal advice, to make sure it has the information needed in order to make an informed decision.
- (c) The parties shall then retire or the Committee will then move to another room to consider whether or not to impose a penalty on the Councillor and, if so, what the penalty should be.
- (d) On reconvening the Hearing, the Chair will announce the Committee's decision.

**9.3 If it is found by the Standards and Ethics Committee that a Councillor has failed to comply with an Authority's Code of Conduct**

If the Committee finds that a Councillor has breached the Code, it can decide:

- (a) that no action needs to be taken in respect of that failure, or
- (b) that the Councillor should be censured, or
- (c) that the Councillor should be suspended or partially suspended from being a Member or Co-opted Member of the Authority in question, for a period not exceeding six months.

**10. Recommendations to the Authority**

After considering any verbal or written representations from the Investigating Officer, the Committee will consider whether or not it should

make any recommendations to the Authority concerned, with a view to promoting high standards of conduct among Councillors.

**11. 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 memories fade.

**12. Appeals**

Where the Standards and Ethics Committee determines that a person has failed to comply with the Code of Conduct, that person may appeal against the determination to an Appeals Tribunal drawn from the Adjudication Panel for Wales.

Any such appeal must be instigated by giving notice in writing to the National Assembly for Wales, with 21 days of receiving notification of the Standards and Ethics Committee's determination.

**13. Publication**

The Committee will cause a report of the proceedings to be published on the Authority's website not later than 14 days after the period for an appeal or the appeal process has been completed, whichever is the later, and also publish a notice in a newspaper circulating in the area.