

MEMBERS' CODE OF CONDUCT

(The Local Authorities (Code of Conduct) (Local Determinations) Regulations 2003)

Devon County Council - Procedure for Hearings

Definitions

'**Member**' means the Member of the Council who is the subject of the allegation being considered by the Standards Committee. It also includes the Member's nominated representative.

'**Investigator**' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator mean the Monitoring Officer or other investigating officer, and his or her nominated representative.

'**Committee**' includes a Sub-Committee of the Standards Committee.

'**Legal advisor**' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, Deputy Monitoring Officer, another legally qualified officer of the authority or someone appointed for this purpose from outside the authority.

General

Hearings will take place at County Hall, Exeter unless there are exceptional reasons for using an alternative venue.

The Chairman of the Standards Committee will normally preside at a hearing but if he/she is unable to attend the other independent member of the Committee will do so.

Every effort will be made to ensure that a private room is made available for the Member, his/her representative and any witnesses he/she elects to call.

If the Investigator attends the hearing every effort will be made to ensure that a private room is available for him/her and any witnesses he/she elects to call.

All parties will be expected to conduct themselves in a manner which accords proper respect to the proceedings and everyone present. The Chairman and/or the legal advisor to the Committee will remind parties and their representatives of this responsibility whenever necessary.

The Committee may take advice from its legal advisor at any time during the hearing or while they are considering what they have heard. The substance of any legal advice given to the Committee will be shared with the Member and the Investigator if they are present.

N.B Hearings will normally be held in public unless the Standards Committee considers it proper to exclude the public in accordance with Human Rights and Access to Information legislation.

Procedure for Hearings

Introduction and Outline of the Proceedings

1. The Chairman will introduce the members of the Committee and the officers supporting them.
2. The Chairman will ask the parties involved to introduce themselves to the Committee.
3. The Chairman or at his/her request the Legal Advisor to the Committee will explain the reason for the meeting and will then outline the procedure to be followed.

Preliminary Procedural Issues

4. The Chairman will then confirm that all those involved understand the procedure to be followed and ask if there are any preliminary procedural issues which anyone wishes to raise before the hearing commences.
5. The Chairman may raise any procedural issues not raised by any of the parties involved.
6. The Committee will then hear representations on any procedural issues raised.
7. The Committee will determine any preliminary procedural issues having heard the representations and asked questions as necessary. The decision of the Committee in this respect shall be final.

Stage 1 – Findings of Fact

8. The Chairman will invite the Legal Advisor to the Committee to outline for members the facts which are agreed and not agreed as stated in the pre-hearing summary.

Disagreement of Facts without Prior Notification

9. If the Member disagrees with any relevant fact in the Investigator's report but has not given prior notice to that effect (so that the disagreement is not included in the pre-hearing summary) he/she must raise it at this stage. In these circumstances the Member will then explain to the Committee the reason(s) why this disagreement was not raised during the pre-hearing process.
10. (i) If the Investigator is not present the Committee must decide whether it is in the public interest to continue.

(ii) If the Investigator is present he/she will be given the opportunity to comment upon the Member's explanation.

(iii) If the Committee decide that it is in the public interest to continue in the absence of the Investigator or the Investigator is present it may:
 - (a) proceed with the hearing admitting the new disagreement of fact(s) into the process;
 - (b) proceed without admitting the new disagreement of fact(s); or
 - (c) adjourn the hearing to a later date to enable the parties to address this issue.

(iv) If the Committee decide that it is not in the public interest to continue in the absence of the investigator it shall adjourn the hearing to a later date to enable the Investigator to address the new disagreement of fact(s) raised and if appropriate to attend the adjourned hearing.

11. The Committee will only admit any new disagreement of fact where it is satisfied that the Member has provided good reason why this issue was not raised during the pre-hearing process.

Hearing of Disagreement of Facts

12. Where the facts are not agreed and the Member and/or Investigator intend to call witnesses, the witnesses shall remain outside the room in which the hearing is taking place until such time as they are called to give evidence.
13. Where the facts are not agreed the Investigator, if present, will be invited to make representations in support of his/her report and call witnesses as identified in the pre-hearing summary. The Investigator may also address any matters of evidence identified in the pre-hearing process.
14. The Member may cross-examine any witnesses called by the Investigator.
15. The Member will then be invited to make representations in support of his/her view of the fact(s) concerned and call witnesses as identified in the pre-hearing summary. The Member may also address any matters of evidence identified in the pre-hearing process.
16. The Investigator may cross-examine any witnesses called by the Member.
17. At an appropriate time and with the permission of the Chairman the Investigator or the Member may make further representations or re-question a witness on matters arising out of their evidence.
18. At any time the Committee may question the either party or any witness.
19. At the conclusion of the representations and evidence on any disagreement of facts the Committee will consider what it has heard in private accompanied only by its clerk and legal advisor. When the Committee has reached a conclusion the Chairman will announce the Committee's findings of fact to all present at the hearing.

Stage 2 – Did the Member fail to follow the Code?

20. Based on the facts it has found the Committee will then hear representations as to whether or not the Member has failed to comply with the Code of Conduct.
21. The Member will be invited to give reasons why the Committee should decide that he/she has not failed to comply with the Code of Conduct.
22. The Committee will then consider any verbal or written representations from the Investigator upon this point.
23. The Committee may, at any time, question anyone making oral representations.
24. The Member will be invited to make any final relevant points.
25. The Committee will consider what it has heard in private accompanied only by its clerk and legal advisor.

26. The Chairman will then announce to all present at the hearing the Committee's decision as to whether or not the Member has failed to comply with the Code of Conduct.

Stage 3 – If there is no breach of the Code

27. If the Committee decides that the Member has not failed to follow the Code of Conduct it will then consider whether it should nevertheless make any recommendations to the Authority.

Stage 4 – If there is a breach of the Code

28. If the Committee decides that the Member has failed to comply with the Code of Conduct it will consider any verbal or written representations from the Member and the Investigator as to:

- (a) whether or not the Committee should impose a penalty; and if so
- (b) what form any penalty should take.

29. The Committee may question the Member and the Investigator to make sure it has sufficient information in order to make a fair decision.

30. The Committee will consider in private, accompanied only by its clerk and Legal Advisor, whether or not to impose a penalty on the Member and, if so, what the penalty should be.

31. The Chairman will then announce the Committee's decision to all present at the hearing.

Stage 5 - Recommendations to the Authority

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

Issue of decision

33. The Committee will announce its decision at the conclusion of the hearing or as soon as practicable thereafter and will provide a short written decision at that time.

34. The Committee will issue a full written decision including reasons within two weeks of the hearing or as soon as practicable thereafter.

35. The 21 days within which the Member may lodge an appeal will be deemed by the Committee to run from the date of receipt of the full written decision of the Committee.