
LOCAL AUTHORITIES (CODE OF CONDUCT)(LOCAL DETERMINATION) REGULATIONS 2003 (MIN 338)/03)

1 SUMMARY

- 1.1 This report proposes rules of procedure for the local determination of misconduct allegations against Parish and District Councillors in the Rochford District following publication of the above regulations and guidance from the Standards Board for England.

2 INTRODUCTION.

- 2.1 The Local Authorities (Code of Conduct) (Local Determination) Regulations came into force on 30 June. Their effect is to enable the Ethical Standards Officers of the Standards Board for England to investigate and then refer a report on allegations of misconduct to a Standards Committee for local determination.
- 2.2 The Local Government Act 2003 came into force on 18 September 2003 and provides the Standards Committee with the power to delegate its responsibilities to a sub-committee, a member of the Committee or an officer.
- 2.3 Further primary legislation is expected early next year to enable an allegation to be referred directly to the Council's Monitoring Officer for investigation and report to the Standards Committee.

3 THE PROCEDURE

- 3.1 It is important for the authority to have a procedure that applies to any referred allegations so that all parties are clear as to how the matter will be dealt with and what opportunity they will have to contribute to the process. The Standards Board for England has now issued guidance. Copies have been provided to all Members of this Committee and a suggested procedure is set out as Appendix 1 to this report.
- 3.2 Some matters Members may wish to give particular consideration to are;
- The role of the Chairman in the procedure
 - The use of sub-committees
 - How oral evidence is challenged by the parties
 - Whether there should be a specific provision preventing the use of substitutes in such hearings
 - Whether the Reporting Officer should arrange support for Members who are otherwise unrepresented
 - The use of model pro forma taken from the guidance

- 3.3 The following is a suggested amendment to the procedure to provide for the setting up of a sub-committee if members are minded to adopt this approach;

“The Hearing Panel

11. The Reporting Officer in consultation with the Chairman will appoint a sub-committee to consider the complaint and the report.

12. The Chairman of the sub-committee will be an independent member selected by the Chairman of the Standards Committee.

13. The membership of the sub-committee will be chosen by the Chairman of the sub-committee to consist of a majority of independent members comprising a minimum of three and a maximum of five members of the Standards Committee.”

Inclusion of this or a similar form of words in the Rules of Procedure will necessitate some other minor amendments to the draft.

4 RESOURCE IMPLICATIONS

- 4.1 Depending on the nature of the complaint, it should be possible to deal with most hearings in less than half a day. The principal cost relates to officer time in preparation and administration, possibly totalling 15 to 20 hours spread between several officers for each hearing.

5 LEGAL IMPLICATIONS

- 5.1 There is a statutory requirement to undertake such hearings. Determinations made by the Standards Committee in circumstances outlined in the report are quasi-judicial and the process is governed regulation, Human Rights legislation and the rules of natural justice.

6 PARISH IMPLICATIONS

- 6.1 The Standards Committee has jurisdiction over matters referred to it by the Standards Board affecting Parish Council Members.

7 RECOMMENDATION

- 7.1 It is proposed that the Committee **RESOLVES**

to agree the procedure for determining allegations as to the personal conduct of Members under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 to be included in Part 4 of the Council's Constitution.

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Background Papers:

None

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APPENDIX 1**ROCHFORD DISTRICT COUNCIL****STANDARDS COMMITTEE****PROCEDURE FOR LOCAL DETERMINATION OF ALLEGATIONS
ABOUT THE PERSONAL CONDUCT OF MEMBERS UNDER THE
LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL
DETERMINATION) REGULATIONS 2003****Introduction**

1. This procedure governs the local determination of complaints where a matter has been referred to the Council's Monitoring Officer by an Ethical Standards Officer of the Standards Board for England. It applies to complaints about the conduct of elected members, and co-opted members with voting rights, of Rochford District Council and Parish Councillors within the Rochford District Council area.

2. The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member. The Ethical Standards Officer or Investigator appointed on their behalf will be referred to as the ESO.

1 Appointment of Reporting Officer

3. Upon receipt of a report from the ESO (the ESO report), the Monitoring Officer will appoint a Reporting Officer to take conduct of the matter, make arrangements for a hearing of the Standards Committee (the Committee) and present the ESO report. The Reporting Officer may be the Monitoring Officer, the deputy Monitoring Officer or any other appropriate officer.

4. The Monitoring Officer will normally provide advice to the Committee but if he takes on the role of Reporting Officer, he must arrange for a separate legal adviser in respect of the allegation.

2 Notifying the Member and Complainant

5. As soon as is practicable, the Reporting Officer shall notify the Chairman of the Committee of receipt of the ESO report and provide a copy of the ESO report to the Member and, where possible, the Complainant, conditional upon an appropriate undertaking of confidentiality.

6. At the same time the Reporting Officer will ask the Member to state in writing, within fifteen working days, whether he/she:

- disagrees with any of the findings of fact in the ESO report, including the reasons for any disagreements

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- intends to be represented at the hearing, at his/her own expense, by a solicitor, barrister or any other person
 - intends to give evidence to the Committee, either verbally or in writing
 - intends to call any witnesses to give evidence and if so to provide details
 - wants any part of the hearing to be held in private
 - wants any part of the ESO report or other relevant documents to be withheld from the public

A pro forma based on guidance from the Standards Board for England will be supplied to the Member for the purpose of providing this information. This will include notice that if the Member seeks to dispute any matter contained in the ESO report, without previous notification, the Committee may postpone the hearing or refuse to admit the disputed matter.

7. On return of the pro forma, the Reporting Officer will provide the ESO with a copy of the Member's response for comment, within fifteen working days, to say whether or not the ESO:

- wants to be represented at the hearing
- wants to call relevant witnesses to give evidence at the hearing
- wants any part of the hearing to be held in private
- wants any part of the ESO report or other relevant documents to be withheld from the public

8. The Reporting Officer will notify the Monitoring Officer and Chairman of the Committee of the responses from the Member and the ESO.

9. The Member, the ESO and the Reporting Officer are entitled to request that any witnesses they want should be called. However, the Reporting Officer on behalf of the Committee may limit the number of witnesses if he/she believes the number requested is unreasonable so as to avoid repetition of the same evidence by several witnesses or evidence that will not assist the Committee to reach its decision.

10. Nothing in this procedure shall limit the Reporting Officer on behalf of the Committee from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Committee to reach its decision.

11. The Reporting Officer, in consultation with the Chairman, will then

- confirm a date, time and place for the hearing, which must be within three months from the date that the ESO report was received by the Monitoring Officer
- confirm the main facts of the case that are agreed
- confirm the main facts that are not agreed
- confirm the witnesses to give evidence
- outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private and
- provide this information, with an Agenda, to everyone involved in the hearing at least two weeks before the proposed date of the hearing.

12. Where appropriate the Reporting Officer may arrange for support for a Member who is not represented but who wishes to make an oral representation to the Committee.

3 The Hearing

13. The quorum for the Committee shall be three with a minimum of one third independent members. If the hearing involves a parish councillor, the parish representative must be present.

14. To ensure impartiality, an independent member will be selected by the Committee at the commencement of proceedings to chair the hearing.

15. The Committee will decide, on a balance of probability, whether there has been a breach of the Code. It shall do so by considering the ESO report and any written or oral representations made by the parties to the hearing.

16. Each Committee member present for the duration of the hearing shall have one vote and all matters/issues shall be decided by a simple majority of votes cast. Abstentions shall not be permitted.

17. The Principal Committee Administrator will provide administrative services for the hearing.

18. The hearing will be open to the public and press unless confidential information or exempt information under Schedule 12A of the Local Government Act 1972 and regulations is likely to be disclosed.

Procedure at the Hearing

19. The order of business at the hearing will be as follows, subject to any changes the Committee thinks fit in order to ensure a fair and efficient meeting:

- appointment of Chairman for the duration of the hearing
- declarations of interest
- where the Member is not present, to decide whether to proceed in his/her absence or to adjourn
- introductions
- to receive representations from any party to the proceedings on procedural issues with regard to the hearing
- presentation of the ESO report by the Reporting Officer or ESO if present
- if there is any disagreement as to the facts of the case, the Reporting Officer or ESO will be invited to make representations to support the relevant findings of fact in the report, calling supporting witnesses as agreed
- the Member will then be invited to make representations to support his or her version of the facts, calling supporting witnesses as agreed
- the Committee may ask questions at any point during the hearing.
- other parties or their representatives will only be allowed to challenge any oral evidence by questions directed through the Chairman

- the Committee may at any time seek advice from its legal adviser
- the parties will be given the opportunity to make closing statements

20. Where the Member seeks to dispute any matter in the ESO report without having given prior notice of disagreement, the Member must give good reasons for not having raised it before the hearing. If the ESO is not present, the Committee will consider whether or not it is in the public interest to continue in his/her absence. Having considered the Member's explanation the Committee may then;

- continue with the hearing, relying on the information in the ESO report to proceed to a decision
- allow the member to make representations about the issue and invite the Reporting Officer or ESO to respond and call any witnesses as necessary; or
- postpone the hearing to enable appropriate witnesses and/or the ESO to be present

21. Where appropriate the Reporting Officer will make representations on behalf of the Complainant to the Committee.

4 Decision by the Committee

22. The Committee will consider in private session which of the following findings to adopt:

- That there is no evidence of any failure to comply with the Code of Conduct
- That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken
- That the Member has failed to comply with the Code of Conduct and should be:
 - censured, or
 - restricted access to the premises and resources of the authority for a period up to a maximum of three months (but ensuring that such restrictions will not unnecessarily restrict the Member's ability to carry out his/her responsibilities as an elected or co-opted member), or
 - suspended or partially suspended for a maximum period of three months, or
 - suspended or partially suspended for a maximum period of three months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Committee.

23. In deciding on a penalty, the Committee will consider all relevant circumstances including those covered in the Guidance produced by the

Standards Board for England.

24. The Committee will then return and the Chairman will announce the decision and the reasons for that decision.

25. If the matter is a complicated one, where the complaint has a number of aspects, the Committee can decide to consider the evidence and reach a finding on each aspect separately.

26. The Committee may make recommendations to the Council arising from consideration of the allegation. For example, to review or reconsider any decision which was the subject of the breach of the Code of Conduct or to rectify any deficiency in the Council's decision making procedures or to prevent or deter any further breaches of the Code of Conduct.

5 Appeal

27. Where the Committee determines that the Member has failed to comply with the Code of Conduct, the Monitoring Officer shall inform the Member of his or her right to appeal against the determination to an appeal tribunal drawn from the Adjudication Panel.

6 Notice of findings

27. The Principal Committee Administrator will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared by the following day.

28. Within two weeks of the end of the hearing the Principal Committee Administrator will circulate a full written decision to the Member, the Complainant (where possible), the ESO concerned, the Standards Committee and any other authority concerned.

29. At the same time the Principal Committee Administrator shall arrange for a summary of the findings to be published in at least one newspaper circulating in the area of the Authority and on the Council's web site.

30. Where the Committee determines that there has not been a breach of the Code of Conduct, the notice specified in paragraph 29 shall:

- (i) state that the Committee found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
- (ii) not be published in local newspapers if the Member so requests.

31. Where the Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice specified in paragraph 29 shall

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- (i) state that the Committee found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached; and
 - (iv) state that Member concerned may apply for permission to appeal against the determination.

32. Where the Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice specified in paragraph 29 shall:

- (i) state that the Committee found that the Member had failed to comply with the Code of Conduct;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached;
- (iv) specify the sanction imposed, and
- (v) state that the Member concerned may apply for permission to appeal against the determination.

7 Confidentiality and disclosure of information

33. The Hearing will be held in public except:

- (i) where 'confidential information' is to be revealed. Confidential information is information provided by a government department under the condition that it must not be revealed, and information that cannot be revealed under any legislation or by a court order.
- (ii) where 'exempt information' is likely to be revealed the Committee may exercise their discretion in deciding whether or not to exclude the public. The categories of exempt information are set out in Part 1 of Schedule 12A to the LGA 1972 and regulations and include information relating to the personal circumstances of any person.