

MONMOUTHSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

PROCEDURE FOR DEALING WITH REFERRALS FROM THE OMBUDSMAN

1. Introduction

- 1.1. The Standards Committee ("the Committee") is required to have a procedure in place for dealing with hearings in respect of an allegation that a County Councillor, Community Councillor or co-opted member of any committee or sub-committee in the administrative area of Monmouthshire County Council has failed to comply with the Code of Conduct adopted by his/her respective Authority.
- 1.2. A hearing under this procedure may be required to determine a complaint referred to the Committee by the Ombudsman under Part 3 of the Local Government Act 2000 ("the Act"). This may occur as the result of either:
 - 1.2.1. The Ombudsman ceasing an investigation and referring the matter to the Council's Monitoring Officer (under section 70(4) of the Act). The Monitoring Officer must then investigate the matter and report on the conclusion of his/her investigation to the Standards Committee; or
 - 1.2.2. The Ombudsman undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer (under section 71(2) of the Act), for reporting to the Standards Committee.
- 1.3. This procedure should be used in respect of both instances of Ombudsman referrals set out above.

2. Interpretation

- 2.1. "Councillor" means a member of the County Council or a member of the Community Council or a co-opted member of any committee or sub-committee who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. Unless the context requires otherwise it also includes the Councillor's nominated representative;
- 2.2. "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;
- 2.3. "Legal Advisor" means the person responsible for providing legal advice to the Panel;
- 2.4. "Panel" means the Standards Committee or a sub-committee established to conduct a hearing under this procedure.

3. Composition of the Panel

- 3.1. The Committee may delegate the functions under this procedure to a sub-committee. Any such sub-committee established for this purpose shall be composed of three members of the Committee, at least two of whom must be independent members of the Committee.
- 3.2. For complaints about a member of a Community Council, the Panel shall include the Community Council representative on the Committee, unless the complaint concerns a member of his/her own community council.
- 3.3. Where the Chair of the Committee is not a member of the Panel, then the Panel shall elect one of the independent members to serve as Chair for each meeting.
- 3.4. Except for any decisions that may be expressed in this procedure to be taken by the Chair, any decision of the Panel shall be made on the basis of a simple majority vote.

4. Initial Determination

- 4.1. 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 Panel must make an initial determination that either:
 - 4.1.1. there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned (and must then notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman for Wales accordingly); or
 - 4.1.2. there is evidence of a potential failure to comply with the Code of Conduct and 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.
- 4.2. If the Panel makes a determination under paragraph 4.1.2 above, the Panel will instruct the Monitoring Officer to make arrangements for a hearing in accordance with the rules below.

5. Prior to the Hearing

- 5.1. The Investigating Officer shall set out in writing the results of their investigation, including copies of all written evidence the report relies upon in an Investigation Report; and send copies of the Investigation Report to the Committee and to the Councillor.
- 5.2. The Panel shall write to the Councillor to notify him/her of the Panel's initial determination (made under paragraph 4.1 above); provide information about the possible sanctions open to the hearing if a breach of the Code of Conduct is found; and invite a written response to the findings of the Investigation Report to be submitted to the Panel within three weeks from receipt of the Panel's notification letter.

5.3. The Councillor shall be informed that his/her written response need not set out the Councillor's position in full, but it should:

5.3.1. indicate whether or not the Councillor will be represented and if so, by whom;

5.3.2. indicate whether the Councillor intends to apply to the Panel to have the press and public excluded from the hearing and any grounds for doing so;

5.3.3. indicate all areas of the Investigation Report that the Councillor intends to dispute, with brief reasoning;

5.3.4. attach all written evidence the Councillor intends to rely upon;

5.3.5. indicate any witnesses the Councillor wishes to call (which may include any witnesses referred to in the Investigation Report) and brief reasons for doing so (if any); and

5.3.6. indicate any dates or times when the Councillor, the representative and any witnesses they wish to call will be unavailable to attend a hearing.

5.4. The Panel shall also write to the Investigating Officer to notify him/her of the Panel's initial determination (made under paragraph 4.1.2 above), and to:

5.4.1. request that the Investigating Officer should attend the hearing to present the Investigation Report and explain any matters in it, if the Panel considers it appropriate or to ask if the Investigating Officer wishes to attend the hearing for this purpose;

5.4.2. ask if there are any dates or times when the Investigating Officer will be unavailable to attend a hearing; and

5.4.3. ask the Investigating Officer to indicate any witnesses he/she wishes to call and brief reasons for doing so (if any).

5.5. Following receipt of the Councillor's and the Investigating Officer's written response, the Monitoring Officer shall write to the Investigating Officer and the Councillor confirming the following:

5.5.1. the date, time and location set for the hearing (having taken reasonable steps to accommodate the availability of the Councillor and the Investigating Officer);

5.5.2. whether the witnesses the Investigating Officer and the Councillor wishes to call will be allowed (giving reasons and allowing opportunity to respond if any witnesses are not to be allowed); and

5.5.3. any other steps the Panel may in its discretion require prior to the hearing.

6. The Role of the Legal Advisor

6.1. The Monitoring Officer, Deputy Monitoring Officer or another legal officer shall be in attendance to advise the Panel ("the Legal Advisor").

6.2. If the Monitoring Officer has investigated a complaint, he/she (or a nominated representative) 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.

7. Powers of the Panel

7.1. The Chair, having taken legal advice from the Legal Advisor, 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.

7.2. The Chair, having taken legal advice from the Legal Advisor, may also agree to vary this procedure in the interests of ensuring a fair and efficient hearing. Such power will include, for the avoidance of doubt the power to combine stages 1 and 2 of the hearing set out within this procedure.

7.3. The members of the Panel 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. They may also request advice from the Legal Advisor.

7.4. The Panel may also require the attendance of a particular witness or the production of specific documentation where it appears that such additional material may resolve a dispute of fact.

8. Representation

8.1. The Councillor and the Investigating Officer may be represented or accompanied during the hearing by Counsel or a Solicitor, or any other person he or she desires.

8.2. The Councillor and the Investigating Officer are responsible for meeting the cost of any representation.

9. Legal Advice

9.1. The Panel may take legal advice from its Legal Advisor at any time before or during the hearing or while the outcome is being considered.

10. Introductions at the Hearing

10.1. At the start of the hearing, the Chair shall introduce each of the Members of the Panel and everyone involved in the hearing.

11. Preliminary Procedural Issues

11.1. The Chair shall then explain the procedure which the Panel is to follow in its conduct of the hearing, including whether stages 1 and 2 will be combined.

11.2. The Panel 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.

- 11.3.If either party want to adduce further information to the Panel they should make an application at this stage.
- 11.4.The Panel retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that the fairness of the hearing is not prejudiced and all parties are able to present the evidence which is relevant to the matters before the Panel.
- 11.5.If the Councillor fails to attend the hearing, the Panel may, depending on the 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.

12. Stage 1 — Formal Findings of Fact

- 12.1. After dealing with any preliminary issues, the Panel should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report.
- 12.2.If there is no disagreement about the facts, the Panel can move on to the next stage of the hearing.
- 12.3.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 (for the avoidance of doubt, the Investigating Officer may choose to invite the Panel to consider the evidence given in the Investigation Report and not make any further submission). With the Panel's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Panel may allow the Councillor an opportunity to challenge or comment upon any evidence put forward by any witness called by the Investigating Officer.
- 12.4.The Councillor should then have the opportunity to make representations to support his/her version of the facts and with the Panel's permission, to call any necessary witnesses to give evidence.
- 12.5.At any time, a Member of the Panel may question any of the people involved or any of the witnesses. The Panel may allow the Investigating Officer an opportunity to challenge or comment upon any evidence put forward by a witness called by the Councillor.
- 12.6.If the Councillor disagrees with any relevant fact in the Investigation 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 Panel 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 Panel may then:
- 12.6.1. continue with the hearing, relying on the information in the Investigation Report;
- 12.6.2. allow the Councillor to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or

12.6.3. 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.

12.7. The Panel shall then retire to consider their decision. Depending upon the number of persons attending the hearing, the Panel 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.

12.8. Once the decision is reached and the meeting re-convened, the Chair will announce the Panel's findings of fact.

13. Stage 2 — Decision and Sanction

13.1. The Panel then needs to consider whether or not, based on the facts the Councillor has breached the Code of Conduct. It should be noted that this stage of the hearing does not provide either the Councillor or the Investigating Officer an opportunity to re-examine the facts of the case in question.

13.2. The Councillor should be invited to give relevant reasons why the Panel should not decide that he or she has failed to follow the Code.

13.3. The Panel should then consider any verbal or written representations from the Investigating Officer.

13.4. The Panel may, at any time, question anyone involved on any point they raise in their representations. The Councillor should be invited to make any final relevant points. The Panel will then retire consider the representations and make its decision as to whether or not the Member has breached the Code of Conduct.

13.5. Once the Panel had come to a decision the hearing will be re-convened and the Chair will announce the Panel's decision, including any sanction the Panel has decided to impose.

14. Sanctions

14.1. If it is found that the Councillor has breached the Code of Conduct the Panel will determine whether or not a sanction should be imposed. The options open to the Panel are:

14.1.1. that no action needs to be taken in respect of the breach;

14.1.2. that the Councillor should be censured;

14.1.3. 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.

14.2. Alternatively, the Panel may request the Councillor to take any remedial action it considers to be reasonable and proportionate in the circumstances, for example to

apologise or attend training, and it may adjourn a decision on sanction to allow time for the requested remedial action to be taken prior to a decision on sanction.

15. Written Decision

15.1. The Panel will announce its decision on the day and provide a short written confirmation of its decision on that day. It will issue a full written decision, with reasons, within five working days of the end of the hearing and formally notify all parties (“the Decision Notification”)

16. Appeals

16.1. Where the Panel determines that a person has breached the Code of Conduct, that person may seek permission to appeal against the determination to an Appeals Tribunal drawn from the Adjudication Panel for Wales. The grounds and procedure for making such an application are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended).

16.2. Any such application must be instigated by giving notice in writing to the President of the Adjudication Panel for Wales within 21 days of receiving notification of the Panel’s determination (the Decision Notification).

17. Publication

17.1. The Panel will produce a report on the outcome of the investigation and send a copy of this report to all parties, the Ombudsman and the Monitoring Officer within 14 days after the period for an appeal or after the appeal process has been completed, whichever is the later.

17.2. Upon receipt of the Panel’s report, the Monitoring Officer shall arrange for the report to be published on Monmouthshire County Council’s website for a period of 21 days, make copies of the report publicly available upon request and publish a notice in a newspaper circulating in the area to explain the availability of the report.