

Review of Standards Committee Procedures following Hearings

INVESTIGATIONS

Issues identified	Suggestions / Comments	Proposals
Subject Members do not understand the investigation process. One of the complainants also raised the issue that the investigation process was not properly explained to them.	Subject Members should be given more information at the start of the process, including a copy of the Procedure for external Code of Conduct investigations and Standards Committee Procedure Rules.	The purpose of the Procedure for external Code of Conduct investigations is primarily as a guide for the investigator and so will not be useful for this purpose. Instead, a plain-english guide to the investigations process will be created for Members and complainants incorporating the useful information from both Procedures.
Subject Members are not kept up to date on the progress of the investigation.	Subject Members should be provided with information from the investigation plan by the investigator or the Council.	That the Head of Governance Services will provide regular updates on progress to the subject Member, as considered appropriate.
Subject Members should not be interviewed over the telephone. One of the complainants also stated they were dissatisfied with the investigation process, as the interview was conducted over the telephone and only lasted five minutes.	Subject Members and complainants should be interviewed face to face and should not be expected to request such an interview as they do not know what to expect.	That the Procedure for external Code of Conduct investigations be amended to clarify that it is the Council's preference for subject Members and complainants to be interviewed face to face, unless they request otherwise.

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Investigators have mentioned the costs of the investigation to the Member when requesting further witnesses be interviewed.	This is inappropriate as the subject Member should have the right to make sure that the investigation is as thorough as possible in order to be fair.	This is a performance issue which has been raised by the Head of Governance Services with the investigator concerned.
Subject Members (and their representatives) are not always provided with a copy of the draft report in order to pass comments on the findings.	Where the investigator makes significant amendments to their report or carries out further investigation, they should always send a second draft report for the parties to comment on before issuing the final report. This second draft should initially be sent to the Monitoring Officer.	<p>The Procedure for external Code of Conduct investigations currently says <i>“If there are significant changes to the report, the Investigator may wish to consider issuing a second draft. Any such draft should be sent to the Monitoring Officer, Head of Governance Services and Senior Corporate Governance Officer for comment prior to being sent to the parties. Once the Investigator has considered whether the responses add anything of substance to the investigation, they will be able to make their final conclusions and recommendations.”</i></p> <p>It is proposed that this is amended to say that the investigator must issue a second draft in such circumstances.</p>
The investigators do not consistently send the representatives a copy of their report.	That the Council require the investigator to send a copy of their report directly to the representatives at the same time as the subject Member.	To amend the Procedure for external Code of Conduct investigations to include the subject Members’ representatives in the list of recipients of the draft and final reports.

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<p>Consideration Sub-Committee meetings are normally held in private.</p>	<p>Consideration Sub-Committee meetings should generally be held in public so that the subject Member and their representative can attend. This will allow them to begin preparing for the hearing sooner and would be consistent with the approach to Hearings. Officers could ask the subject Member for their opinion first.</p>	<p>The Monitoring Officer does not accept this view, because if the matter was referred to a hearing, the Hearings Sub-Committee agenda would be public and could not be made exempt again, and attending the Consideration Sub-Committee meeting would not assist the subject Member and their representative in preparing for a hearing.</p>
<p>Consideration Sub-Committee meetings take place too long after the final report is issued.</p>	<p>Consideration Sub-Committee meetings need to be arranged in advance of the final report being issued.</p>	<p>Sub-Committee meetings are now scheduled to take place every 3 weeks and the Procedure will be amended to require the investigator to send the final report to the Monitoring Officer first, before issuing it. This will ensure the Monitoring Officer is happy with the final report as drafted and also help to speed up the process of arranging the Consideration Sub-Committee meeting.</p>

PRE-HEARING PROCESS

Issue identified	Suggestions / Comments	Proposal
<p>The time allowed for the subject Member to complete pre-hearing forms is too short.</p>	<p>The time should be extended from 5 working days. This is too short a time for the representatives to meet with the subject Member and complete the forms.</p>	<p>The subject Member has a total of 10 working days to return the completed forms, not 5. This has been reduced from a total of 15 days, and this decision will be kept under review by the Standards Committee.</p> <p>Officers will continue to extend the timescales in exceptional circumstances, wherever possible, whilst still complying with the statutory timescales for the hearing.</p>
<p>The subject Members representatives provided a lot of irrelevant information on the pre-hearing forms in relation to the facts that were in dispute.</p>	<p>That the information provided should be limited to those facts which are disputed, and not other areas of the report and/or Hearing.</p>	<p>To amend the pre-hearing forms to list the findings of fact in the investigators report and to only invite comments on those points. Also to no longer ask the subject Member to provide alternative wording for that section of the report.</p>
<p>Officers did not have contact details for the witnesses and were not aware what arrangements had been made for their attendance.</p>	<p>That the investigator and subject Member should notify the Committee Clerk of these details before the hearing.</p>	<p>That the pre-hearing forms should be amended to include space for these details, whilst still making it clear that it is each of the parties responsibility to arrange the attendance of witnesses.</p>

HEARINGS SUB-COMMITTEE MEETING

Issues identified	Suggestions / Comments	Proposals
<p>The investigator was not able to attend for a hearing starting at 9am.</p>	<p>That arrangements should be made so that the investigator or any other party can attend in time for the hearing.</p>	<p>That the Procedure for external Code of Conduct investigations be amended to state that where the investigator has to travel a significant distance, appropriate arrangements should be made for their prompt attendance e.g. an overnight stay in Leeds. Such issues should be discussed with the Head of Governance Services so that these costs can be prepared for.</p>
<p>The room provided for both hearings was too small.</p>	<p>A room should be large enough to allow proper separation between the parties and the Hearings Sub-Committee Members in order to avoid the perception of bias or confusion over roles. There also needs to be an appropriate distance between the 'evidence' table and the chairs for witnesses and public, to avoid concerns of intimidation.</p>	<p>That, as a preference, Committee Rooms 6 and 7 will be sought for future Hearings Sub-Committee meetings, in view of the in-built recording equipment. If this is not possible, i.e. due to a Scrutiny, Plans Panel or Executive Board meeting, a room which is large enough for the relevant parties and public to be sufficiently separated will be sought.</p>
<p>There was no area for the parties to withdraw to.</p>	<p>There should be a separate room (or rooms) for the parties to go to to prepare arguments and take refreshments etc.</p>	<p>This may not always be possible given the shortage of rooms in the Civic Hall. However, wherever possible, officers will seek to reserve a room for the parties, in addition to a room for the witnesses and a room for the Sub-Committee to withdraw to.</p>

HEARINGS SUB-COMMITTEE MEETING

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<p>There were insufficient comfort breaks and time to buy and eat lunch during the hearing.</p>	<p>There should be comfort breaks every two hours, and either a longer lunch period, or lunch should be provided by the Council.</p>	<p>The Chair's guidance will be updated to prompt him to suggest a comfort break every two hours or thereabouts, and to remind him that a lunch break of at least 25 minutes is required. There is currently a policy in place which prevents lunch being provided for Council meetings, and the Chief Democratic Services Officer has confirmed that an exception cannot be made for the Hearings Sub-Committee.</p>
<p>The decision regarding whether to exclude the press and public was not made early enough in the proceedings, and was not included on the agenda front sheet.</p>	<p>The decision about whether to exclude the press and public is currently scheduled to take place during Stage 1 of the hearing (Setting the Scene), after the parties have been formally introduced, and the Chair has explained the role of the Sub-Committee.</p>	<p>The decision on whether to exclude the press and public from all or part of the meeting could be taken at an earlier stage. This could still take place after the Chair has introduced the parties and explained how the hearing will run, if Stage 1 takes place prior to the other items on the agenda i.e. appeals against refusal of inspection of documents, and declarations of interest. However the standard agenda item will have to be amended to include a provision for the parties to make representations to the Sub-Committee on this point, and for the Sub-Committee to withdraw to discuss the matter.</p>
<p>Concerns that if the press are allowed to remain in the room, they may take statements from the press etc. which could be published prior to the Sub-Committee's findings are announced and be detrimental to the subject Member.</p>	<p>That if the press are allowed to remain, they should be instructed that no statement should be published until the hearing is complete and the decision has been announced by the Chair.</p>	<p>The Standards Committee could decide to issue such a direction to the press, although they would not be bound by it. Members of the press do have to comply with the Editors' Code of Practice which requires accuracy in reporting i.e. calling unproven statements "allegations". If the press did not follow the Code they could be reported to the Press Complaints Commission.</p>

HEARINGS SUB-COMMITTEE MEETING

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<p>It is currently unclear who is responsible for raising the preliminary issues which are listed in the pre-hearing process summary during Stage 2 of the hearing.</p>	<p>The Monitoring Officer should explain the issues which are outstanding from the pre-hearing process during Stage 2, in addition to those raised by the parties.</p>	<p>That paragraph 4.9 of the Standards Committee Procedure Rules be amended to provide for the Monitoring Officer to raise any outstanding issues first, and then for the parties to raise any additional issues and make representations on all of the issues before the Sub-Committee makes a decision on them.</p>
<p>There is no provision in Stage 3 (making findings of fact) for the parties to make final submissions to the Sub-Committee before they withdraw to consider the facts.</p>	<p>That both parties should have an opportunity to 'sum up' their version of the facts after witnesses have been cross examined, and before the Sub-Committee withdraw to consider the representations.</p>	<p>That paragraph 4.10 of the Standards Committee Procedure Rules be amended to include the provision for the parties to make final submissions to the Sub-Committee in relation to the findings of fact. The investigator will be invited to do so first, followed by the subject Member or their representative.</p>
<p>Witnesses (including the complainants) seemed unsure of the process and what they were being asked to do.</p>	<p>The witnesses should be provided with information prior to the Hearings Sub-Committee to explain what the role of the Sub-Committee is, their role on the day, and advising them not to speak to other witnesses before or after they have given evidence.</p>	<p>That a briefing note be sent out to the witnesses (including complainants) in advance of the Hearings Sub-Committee which explains the procedure for the hearing and the role of the Sub-Committee.</p>

HEARINGS SUB-COMMITTEE MEETING

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<p>The way in which witnesses were questioned and cross-examined may have made them feel uncomfortable, as if they were being accused of being dishonest, and given them the impression that they were not being taken seriously.</p>	<p>Although witnesses of facts that are disputed should be prepared to be cross-examined at the hearing, they should be treated with courtesy and respect. The process of the hearing is not supposed to be adversarial, but inquisitorial, and it is not helpful for the process if witnesses are made to feel uncomfortable or that their integrity is being questioned.</p>	<p>The Monitoring Officer has given feedback to the parties as to how witnesses should be treated during the hearing.</p>

HEARINGS SUB-COMMITTEE MEETING

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<p>Witnesses should not be allowed to remain in the room before they give evidence to the Sub-Committee, and should not be able to talk to other witnesses after they have done so as this creates the appearance of collusion or bias.</p>	<p>There should be a separate designated room for witnesses to wait in which is separate from the main entrance in order that witnesses who have given evidence, and those waiting to do so, can be kept separated. Witnesses for each party should also be separated where possible and/or appropriate.</p> <p>Standards for England do not provide any specific guidance on the treatment of witnesses. During an appeal against a Standards Committee decision, the Appeals Tribunal of the First-Tier Tribunal (APE 0349) expressed their concern about the presence of witnesses throughout the hearing. Further advice was sought on this point, and although the First-Tier Tribunal cannot comment on individual cases, the general procedure at hearings is to ask witnesses or possible witnesses to be excluded from the room until they have given evidence (especially if there are disputes as to the facts on which they are to give evidence) or it is decided that their evidence is not required.</p>	<p>This may not always be possible given the shortage of rooms in the Civic Hall. However, wherever possible, officers will seek to reserve a room for the witnesses, a room for the parties, and a room for the Sub-Committee to withdraw to. Also that these arrangements should be reflected in the Standards Committee Procedure Rules which currently do not cover the issue of witnesses.</p> <p>Members of the Standards Committee may wish to note that they agreed on 26th July 2006 that it would be “the invariable practice of the Committee to exclude witnesses from the hearing until they have given evidence or it has been decided that their evidence is not needed”. This was in response to a review of the Standards Committee Procedure Rules and Hearings Procedure following the Standards Committee hearing held on 25th May 2006. Unfortunately as this decision was not reflected in an amendment to the Standards Committee Procedure Rules it has since been overlooked.</p>

HEARINGS SUB-COMMITTEE MEETING

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<p>The Hearings Sub-Committee meeting was too long (taking approximately 5.5 hours and 10 hours each)</p>	<p>Where there is lots of dispute over the facts of the case, or many witnesses, the Sub-Committee should consider arranging the hearing over two days.</p> <p>However, Standards for England's "Standards Committee Determinations" guidance states that:</p> <p>"Except in the most complicated cases, standards committees should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. When scheduling hearings, standards committees should bear in mind that late-night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to important matters being forgotten."</p> <p>In order for the Council to comply with Regulation 18(1)(b)(ii) of the Standards Committee (England) Regulations 2008 both Hearings Sub-Committee dates would have to be held within three months of the Final Report being issued by the investigator.</p>	<p>That where a case is especially complex or is likely to involve several witnesses, the Committee Clerk could attempt to seek a second date where the parties and the Sub-Committee Members are available, to give the Sub-Committee the option to adjourn if necessary. This second date will be as close to the original date as possible, and ideally on the following working day.</p> <p>However, Members of the Standards Committee should note that the Committee Clerk experienced significant difficulties in securing any suitable date for the hearings in the two recent cases due to the limited availability of the Sub-Committee Members.</p>