

## Update to Local Investigation and Hearing Procedures

### Report of the Clerk and Monitoring Officer

For further information about this report please contact:

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### 1 Purpose of Report

This report provides the Standards Committee with updated procedures for local investigation of Code of Conduct complaints and local hearings, following local investigations, for consideration and approval.

### 2 Recommendations

That the Standards Committee:

- a) Approve the local investigation and hearing procedures, attached at Appendix A and Appendices B1 to B3 respectively, subject to any amendments that the Committee may consider to be necessary; and
- b) Give delegated authority to the Monitoring Officer to amend or depart from the procedures, when it is considered necessary to do so.

### 3 Background

The Standards Committee has the authority to direct the Monitoring Officer to conduct an investigation of a complaint alleging that an elected Member may have breached the Members' Code of Conduct. The Standards Committee can also conduct a hearing, following the completion of an investigation, to decide whether there has been a breach of the Code and (in the event that a breach is discovered) to determine a sanction against the Member concerned.

This is not a new role for the Committee but the introduction of the new provisions, contained in the Local Government and Public Involvement in Health Act 2007, coupled with the subsequent guidance from Standards for England, means that the existing procedures are out-of-date and, therefore, in need of review.

The revised Local Investigation Procedure is attached at Appendix A. It is more concise than the previous version.

The Local Hearing Procedure and related documents, set out at Appendices B1 to B3, have also been revised in consideration of the legislation and guidance referred to above.

Recommendation b) of this report seeks delegated authority for the Monitoring Officer to amend, or depart from, the procedures, when it is considered necessary to do so. This recommendation has been included to take account of either a scenario during an investigation or hearing, which was not envisaged when the procedures were produced, and / or when there has been a change brought about by statute, guidance or case law, which requires the process to be amended.

## **4 Summary**

The Standards Committee has previously approved a process for investigating and hearing Code of Conduct complaints. Changes in legislation and guidance from Standards for England require the previous procedures to be updated. Officers have prepared new draft procedures for the Standards Committee to consider and approve, subject to any amendments, which the Committee may consider appropriate.

## **5 Financial Implications**

The updated procedure has no direct financial implications. There is, however, no dedicated budget for costs associated with investigations and hearings, which would, therefore, need to be met from reserves, as and when they arose.

## **6 Legal Comment**

The Standards Committee undertakes functions in accordance with legislative requirements set out in the Local Government Act 2000, the Local Government and Public Involvement in Health Act 2007 and other associated legislation. In accordance with the new provisions in the 2007 Act the Committee also needs to take account of guidance issued by Standards for England (the operating name for the Standards Board for England). Any procedures adopted by the Standards Committee must be compliant with the aforementioned (and any related) legislation and associated guidance.

## **7 Equality Impact Assessment**

Officers have considered the Service's Brigade Order on Equality Impact Assessments (Personnel 5 Part 2) and have decided that there are no discriminatory practices or differential impacts upon specific groups arising specifically from this report. An Initial Equality Impact Assessment has not, therefore, been completed.

## **8 Appendices**

### **Appendix A**

Revised Local Investigation Procedure

### **Appendix B1**

Revised Local Hearing Procedure

### **Appendix B2**

Revised Local Hearing Panel Procedure

### **Appendix B3**

Revised Chair's Procedural Notes for Local Hearing Panel Procedure

## **9 Background Papers**

Local Government Act 2000

Local Government and Public Involvement in Health Act 2007

Standards Committee (England) Regulations 2008

Standards Board for England Guidance – "Local Investigations and other action", "How to conduct an investigation", Local investigation toolkit, "Standards Committee Determinations", Standards Committee determinations toolkit

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	*
Capacity		Member Involvement	*
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial	*	Staff	
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*

## Shropshire and Wrekin Fire and Rescue Authority Standards Committee

### *Revised Local Investigation Procedure*

#### 1. Introduction

This procedure applies in relation to alleged breaches of the relevant Code of Conduct where the matter has been referred to the Monitoring Officer of the Authority for investigation.

#### 2. Interpretation

- 2.1 'Code of Conduct' means the relevant Code of Conduct for Members of the Authority, including Non-Elected, Independent members of the Authority's Standards Committee.
- 2.2 'The Authority' means Shropshire and Wrekin Fire and Rescue Authority.
- 2.3 'Member' means the Member of the Authority, who is the subject of the allegation being investigated. It also includes, where appropriate, the Member's nominated representative.
- 2.4 'Standards Board' means Standards for England.
- 2.5 'ESO' means an Ethical Standards Officer employed by the Standards Board.
- 2.6 'Monitoring Officer' means the Monitoring Officer of the Authority.
- 2.7 'Investigating Officer' means the Monitoring Officer or his/her deputy or other person instructed by the Monitoring Officer to conduct the local investigation, including an independent external investigator.
- 2.8 'The Standards Committee' means the Authority's Standards Committee and can also refer to a sub-committee set up by the Standards Committee.
- 2.9 'Complainant' means the person, who made the allegation being investigated.
- 2.10 'Corporate Services Manager' means the Authority officer appointed to this post or his/her representative.
- 2.11 'Local Protocol' means the following Protocols adopted by the Authority:
- Protocol on Member / Officer Relations
  - Protocol on Gifts and Hospitality for Members

### 3. Notification of Referral

- 3.1 Whenever an allegation is referred to the Monitoring Officer for investigation, the Monitoring Officer shall (unless otherwise directed by the Standards Committee or by an ESO):
- (i) Appoint an Investigating Officer, instructing him/her to conduct the investigation of the allegation. The Investigating Officer may be an officer of the authority, an officer of another local authority or an external consultant.
  - (ii) Notify the Member in writing, confirming that the allegation has been referred for investigation, outlining the conduct which is the subject of the allegation and identifying the section(s) of the Code of Conduct, which appear to be relevant. The notification will also outline the procedure, which will be followed, and confirm the identity of the Investigating Officer.
  - (iii) Write to the Complainant confirming that the allegation has been referred for investigation and outlining the procedure to be followed.
- 3.2 When notifying the Member, the Monitoring Officer (or the Investigating Officer) will also request the Member to provide a response in writing to the Investigating Officer within 21 days of notification. Such a response should:
- (i) Indicate whether the Member admits or denies the breach of the Code of Conduct, which is the subject of the allegation and in so doing, identifies, which (if any) of the facts set out in the notification to the Member are disputed.
  - (ii) List any document, which the Member would wish the Investigating Officer to take into account in investigating the allegation, and include, where possible, copies of such documents. Alternatively, the Member should inform the Investigating Officer where any such documents may be located/inspected.
  - (iii) Provide the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person(s) or organisation(s), whom the Member would wish the Investigating Officer to interview in the course of the investigation.
  - (iv) In the event that the Member wishes to appoint a representative to act on his/her behalf during the investigation, provide the name and address of any such representative and indicate whether or not further contact (including correspondence, telephone calls etc) should be directed to that representative or whether contact should continue to be maintained with the Member. Where such a representative is appointed, this will be at the expense of the Member.

## **4. Conduct of the Investigation**

- 4.1 In conducting the investigation, the Investigating Officer will at all times pay due regard to the Authority's obligations under the Data Protection Act 1998, the Human Rights Act 1998 and other relevant legislation and to any relevant guidance issued by the Standards Board.
- 4.2 If the Investigating Officer uncovers, during the course of the investigation, evidence of a possible breach of the Code, which does not directly relate to the particular allegation under investigation, the Investigating Officer shall invite the person, from whom the evidence was received, to submit a written allegation to the Authority. Where evidence of a breach of a Local Protocol (but not a breach of the Code of Conduct) is uncovered, the Investigating Officer shall report it to the Monitoring Officer.
- 4.3 The Investigating Officer may appoint any person to assist him/her in the conduct of his/her investigation and may obtain such professional advice as he/she deems necessary during the investigation process
- 4.4 The Investigating Officer will gather all appropriate information, documentation and other evidence sufficient to be able to present a report to the Standards Committee, which will enable the Committee to determine whether the Member has acted in breach of the Code of Conduct. The Investigating Officer may terminate the investigation at any time, if satisfied that there is sufficient information to enable such a report to be presented to the Standards Committee.
- 4.5 The Investigating Officer will ask all those, who are interviewed or otherwise contacted as part of the investigation, not to disclose information that they have received in confidence as part of the investigation in order to preserve the integrity of the investigation. The Investigating Officer will also remind any Members involved in the investigation of their obligation under the Code of Conduct i.e. not to disclose information that they have received in confidence.

## **5. Reference back from the Monitoring Officer**

- 5.1 If, during the course of the investigation, the Investigating Officer or the Monitoring Officer concludes that it would be inappropriate to continue with the investigation, the Monitoring Officer shall then decide (having regard, where relevant, to the provisions of Regulation 16 of The Standards Committee (England) Regulations 2008) whether:
  - (i) an alternative Investigating Officer should be appointed; or
  - (ii) the matter should be referred back to the Standards Committee for re-consideration.

**NB** Regulation 16 of The Standards Committee (England) Regulations 2008 covers 'References back from monitoring officer', and sets out circumstances when a complaint referred to a monitoring officer under section 57(2)(a) of the Local Government Act 2000 (as amended) for investigation can be referred back to the Standards Committee to provide a further assessment of the complaint in respect of new evidence or information that is available.

## **6. Investigation Procedure**

### **6.1 List of Witnesses and Documents to be Examined**

The Investigating Officer will prepare a list of persons to be interviewed, organisations, from which information is to be sought, and documents, which are to be inspected. This will include witnesses and documents identified by the Member, provided that the Investigating Officer is satisfied that this will assist the investigation

### **6.2 Production of Documents, Information and Explanations in the Course of an Investigation**

The Investigating Officer and any person authorised on his/her behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any documentation or information, which is in their possession or control, or provide any explanation as they think necessary, for the purpose of carrying out the investigation. The Investigating Officer may require any authority concerned, to meet the reasonable cost of providing this documentation or information.

### **6.3 Interviews in the Course of the Investigation**

The Investigating Officer may request any person to attend and appear before him/her to provide any information or document considered necessary for the investigation.

### **6.4 Telephone Interviews**

The Investigating Officer will not conduct any interviews by telephone unless the express permission of the interviewee has been obtained prior to the interview. In addition, in considering the appropriateness of conducting an interview by telephone, the Investigating Officer will have particular regard to the guidance issued by the Standards Board.

### **6.5 Representation**

Any person who is called for interview by the Investigating Officer or contacted for information as part of the investigation may be represented or accompanied by, for example, a solicitor, friend or Union representative (at their own expense).



## **6.6 Interview Notes**

The Investigating Officer will ensure that a note or transcript of every interview is made. Such a note or transcript must be forwarded to the interviewee as soon as practicable after the conclusion of the interview with a request that the interviewee confirms, subject to any amendments, which he/she may suggest, that the note or transcript provides a fair and accurate record of the interview.

## **7. Completing the Investigation and Preparing the Draft Report**

- 7.1 The Investigating Officer shall conclude the investigation when he/she believes that there is sufficient information to meet the requirements, set out in 4.4 above, or when he/she has obtained such information as is likely to be reasonably capable of being obtained.
- 7.2 The Investigating Officer shall prepare a Draft Report containing the following:
- (i) A marking of 'Draft'
  - (ii) A marking of 'Confidential'
  - (iii) The date of the Report
  - (iv) The details of the allegation(s) originally made
  - (v) The relevant section(s) of the Code of Conduct
  - (vi) Details of the investigation process, information about the persons/organisations contacted, the way in which enquiries were made, the method and location for any interviews undertaken and confirmation as to whether payments were made in respect of expenses of those subject to the investigation
  - (vii) A copy of all supporting information
  - (viii) The Member's response to the allegation(s)
  - (ix) Details of any person or organisation, who has failed to co-operate during the investigation, and any outstanding information or documentation, which has not been provided
  - (x) The findings of fact (where any facts have been disputed)
  - (xi) The conclusion reached by the Investigating Officer as to whether, in his/her view, there has been a breach of the Code of Conduct, with supporting reasons for reaching such conclusion
  - (xii) Confirmation that the Draft Report does not represent the final findings and that these may be subject to change in the light of comments on the Draft

## **8. Procedure following Preparation of the Draft Report**

- 8.1 The Investigating Officer shall ensure that copies of the Draft Report are sent to:
- (i) the Monitoring Officer
  - (ii) the Member

- (iii) the Complainant

for them to submit their comments (if any) on the Draft Report by a date specified by the Investigating Officer.

## **9. The Final Report**

- 9.1 After the expiry of the period allowed for submitting comments on the Draft Report (or any reasonable extension thereof, as allowed by the Investigating Officer), the Investigating Officer may amend the Draft Report as he/she considers appropriate and shall then produce the Final Report.
- 9.2 The Final Report must include the following:
  - (i) All of the contents required for the Draft Report, as detailed in paragraph. 7.2 above, with the exception of those detailed in (i) and (xii)
  - (ii) Confirmation that it is the Final Report
- 9.3 Within 5 working days of completing the Final Report, the Investigating Officer shall ensure that copies are sent to:
  - (i) the Monitoring Officer
  - (ii) the Member
  - (iii) the Complainant
- 9.4 If the Investigating Officer has found that there has been no breach of the Code of Conduct, then his/her covering letter should explain that the Report will now be presented to the Standards Committee for consideration.
- 9.5 If the Investigating Officer has found that there has been a breach of the Code of Conduct, then his/her covering letter should explain that the matter will now proceed to a hearing before the Standards Committee.

## **Shropshire and Wrekin Fire and Rescue Service Standards Committee**

### ***Revised Local Hearing Procedure***

#### **1. Introduction**

This procedure applies to hearings of an alleged breach:

- of the Code of Conduct where the investigation has been completed by an Ethical Standards Officer
- of the Code of Conduct where a local investigation has been carried out by or on behalf of the Monitoring Officer
- of a protocol adopted by the Authority

#### **2. Interpretation**

- 2.1 'Code of Conduct' means the relevant Code of Conduct for Members of the Authority, including Non-Elected, Independent Members of the Authority's Standards Committee.
- 2.2 'Complainant' means the person, who submitted the complaint of an alleged breach of the Code of Conduct or Protocol.
- 2.3 'the Authority' means Shropshire and Wrekin Fire and Rescue Authority
- 2.4 'Committee Services Manager' means the Authority officer appointed to this post or his/her representative.
- 2.5 'ESO' means the Ethical Standards Officer employed by the Standards Board or person taking conduct of the matter on his/her behalf.
- 2.6 'Investigating Officer' means the Monitoring Officer or his/her deputy or other person instructed by the Monitoring Officer to conduct a local investigation including an independent external investigator.
- 2.7 'Legal Adviser' means the person responsible for providing legal advice to the Standards Committee. This will normally be the Monitoring Officer, but may be another officer of the authority, who is legally qualified, or someone appointed for the purpose from outside the Authority.

- 2.8 'Member' means a Member of the Authority, who is the subject of a report into an allegation being considered by the Standards Committee. It also includes the Member's nominated representative.
- 2.9 'Monitoring Officer' means the Monitoring Officer for the Authority.
- 2.10 'Panel' means the panel of Members from the Standards Committee appointed in accordance with this Procedure.
- 2.11 'Local Protocol' means the following Protocols adopted by the Authority:
- Protocol on Member / Officer Relations
  - Protocol on Gifts and Hospitality for Members
- 2.12 'Report' means the report of the ESO or the report of the Investigating Officer.
- 2.13 'Reporting Officer' means the person appointed under paragraph 3.5 below.
- 2.14 'Standards Board' means Standards for England.
- 2.15 'Standards Committee' means the Authority's Standards Committee. It can also refer to a Sub-committee set up by the Standards Committee.

### **3. Pre-Hearing Process**

- 3.2 Within five working days of the final report being sent out (as set out in the local investigations procedure – section 9.3) the Committee Services Manager shall ask for a written response from the Member, within fifteen working days, stating whether or not he/she:
- disagrees with any of the findings of fact in the Report, including the reasons for any disagreements
  - wants to be represented, at their own expense, at the hearing by a solicitor, barrister or, with the permission of the Panel, any other person
  - wants to give evidence to the Panel, either verbally or in writing
  - wants to call relevant witnesses to give evidence to the Panel
  - wants any part of the hearing to be held in private having regard to all guidance issued
  - wants any part of the Report or other relevant documents to be withheld from the public
  - can attend the hearing

- 3.3 The Committee Services Manager will also inform the Member that, if, at the meeting of the Panel, he/she seeks to dispute any matter contained in the Report, without having previously notified the Committee Services Manager of their intention to do so, the Panel may either:
- refuse to allow the disputed matter to be considered
  - allow the disputed matter to be considered but to invite the Investigating Officer or the ESO to respond and/or call witnesses
  - to adjourn the hearing to enable the Investigating Officer or ESO to respond
- 3.4 Upon receipt, the Member's response shall be forwarded to the Investigating Officer or ESO to comment, within fifteen working days, on the Member's response, to say whether or not he/she:
- wants to be represented at the hearing
  - wants to call relevant witnesses to give evidence to the Panel
  - wants any part of the hearing to be held in private, having regard to all guidance issued
  - wants any part of the Report or other relevant documents to be withheld from the public
- 3.5 If the ESO is not attending the hearing or being represented, the Monitoring Officer will appoint a Reporting Officer to conduct the matter. In that event references to the ESO in these procedures shall also mean the Reporting Officer.
- 3.6 Upon receipt of the Investigating Officer/ESO's response, the Committee Services Manager will forward the responses of the Member and the Investigating Officer/ESO to the Chair of the Panel.
- 3.7 The Member and the Investigating Officer/ESO are entitled to request that any witnesses they want should be called. However, the Committee Services Manager, in consultation with the Chair of the Panel, may limit the number of witnesses, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Panel to reach its decision.
- 3.8 Nothing in this procedure shall limit the Committee Services Manager in consultation with the Chair of the Panel from requesting the attendance of any additional witnesses, whose evidence he/she considers would assist the Panel to reach its decision.

- 3.9 At least two weeks before the date of the hearing the Committee Services Manager, in consultation with the Legal Adviser, will send to the Member, the Panel, the Investigating Officer/ESO, the Reporting Officer and the Legal Adviser the Pre-Hearing Process Summary (Appendix 1 Form F of the Standard Board's Guidance), which will include the following information:
- Confirmation of the date, time and place for the hearing, which must be within three months from the date that the Report was received
  - A summary of the allegations
  - The main facts of the case that are agreed
  - The main facts that are not agreed
  - Which witnesses will give evidence
  - Whether the Member concerned or the Investigating Officer/ESO will attend or be represented at the hearing
  - Outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private

#### **4. Selection of the Hearing Panel**

- 4.1 The Committee Services Manager, in consultation with Legal Adviser, shall appoint a sub-committee of five Members of the Authority's Standards Committee ("the Panel") to consider the Report.
- 4.2 Where a member of the Panel is unable to attend a meeting of the Panel, the Corporate Services Manager, in consultation with the Legal Adviser, shall appoint another member of the Standards Committee to attend the hearing.

#### **5. Confidentiality and Disclosure of Information**

Where the Legal Adviser considers that the Report and/or any of the written statements in response is likely to disclose "exempt information" (as defined in Schedule 12A to the Local Government Act 1972 and regulations), and in consequence that it is likely that the Panel will, during consideration of these papers, not be open to the public, he/she shall instruct the Corporate Services Manager not to provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.

#### **6. General Procedure at the Hearing**

- 6.1 The Chair may agree to vary the procedure at the hearing, where, in consultation with the Legal Adviser, he/she is of the opinion that such a variation is necessary in the interest of fairness.

- 6.2 The purpose of the hearing is to decide on the balance of probability whether the Member has breached the Code/Protocol. In doing so, the Panel will consider the Report and any written or oral representations, made by the ESO, the Investigating Officer or the Member.
- 6.3 The Member may be represented or accompanied by a solicitor, counsel or, with the permission of the Panel, another person. The Panel may refuse permission for representation by another person, if, for example, it considers that that person is directly involved in the matter being determined.
- 6.4 The hearing will be open to the public and press, unless confidential information provided by a Government Department will be revealed or unless the Panel decides that the hearing or part of it should be held in private, having considered the representations of the parties and the guidance issue by the Standards Board.
- 6.5 The Panel may take legal advice from the Legal Adviser at any time during the hearing. Any legal advice will be given in the presence of all parties.
- 6.6 The Panel may ask the Member, the ESO, the Investigating Officer or any witness a question at any time during the hearing. It can also allow witnesses to be questioned by the Member, ESO or Investigating Officer or the Legal Advisor. All such questions must be directed through the Chair.
- 6.7 All matters/issues shall be decided in accordance with the ordinary decision-making procedure, with each Member having one vote and, in the case of equality of votes, the Chair having the casting vote.
- 6.8 The Panel can adjourn the hearing at any time.

## **7. Preliminary Procedural Issues**

- 7.1 The Chair will introduce all the parties and will explain how the hearing will be conducted.
- 7.2 The initial order of business shall be as follows:
- For any member of the Panel to state whether he/she has an interest in the matter, which should be declared
  - To confirm that the Panel is quorate. A quorum is 3 Members, including a Non-Elected, Independent Member
  - To consider any representations from the ESO, Investigating Officer and/or the Member as to whether the Panel should exclude the press and public from the hearing or parts of it. Where the Panel decides not to exclude the press and public, the Corporate Services Manager shall at this point provide copies of the papers to any members of the press and public, who are present.

7.3 If the Member has indicated that he/wishes to attend the hearing but is not present on the hearing date, the Panel will consider reasons, which have been given for his/her absence. If the Panel is satisfied with those reasons, it will arrange for the hearing to be held on another date. If no reasons are given, or the Panel is not satisfied with those given, it may proceed in the Member's absence.

## **8. Making Findings of Fact**

8.1 After dealing with any preliminary issues, the Panel will consider whether or not there are any significant disagreements about the facts contained in the Report.

8.2 If there is no disagreement, the Panel will confirm its findings of fact.

8.3 If there is a disagreement, the ESO or Investigating Officer will be invited to make representations to support the relevant findings of fact in the Report. With the Panel's permission, the ESO or Investigating Officer may call any necessary supporting witnesses to give evidence. The Panel may give the Member an opportunity to challenge any evidence put forward by any witness called by the ESO or Investigating Officer.

8.4 The Member will then have the opportunity to make representations to support his or her version of the facts and, with the Panel's permission may call any necessary witnesses to give evidence. The Panel may give the ESO or Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member.

8.5 At the conclusion of various representations the Chair will check with the Panel whether it is satisfied that it has sufficient evidence to come to a conclusion on the matter.

8.6 If the Panel considers that it requires additional evidence it may at its discretion adjourn and make a request for this. It can only adjourn on one occasion for this purpose.

8.7 Where the Member seeks to dispute any matter in the Report, which he/she had not given notice of intention to dispute in his/her written statement in response, he/she must give good reasons for not mentioning it before the hearing. After considering the Member's explanation for not raising the issue at an earlier stage, the Panel may then:

- continue with the hearing, relying on the information in the Report; or
- allow the Member to make representations about the issue, and invite the ESO or Investigating Officer to respond and call any witnesses, as necessary; or
- postpone the hearing to arrange for the appropriate witnesses to be present, or for the ESO or Investigating Officer to be present.



8.8 The Panel will withdraw with the Legal Adviser to consider the representations and evidence. On its return, the Chair will announce the Panel's findings of fact.

## **9. Did the Member Fail to Follow the Code?**

9.1 The Panel will then consider whether or not, based on the findings of fact, the Member has failed to follow the Code of Conduct/Protocol.

9.2 The Member should be invited to give relevant reasons why the Panel should not decide that he or she has failed to follow the Code of Conduct/Protocol.

9.3 The Panel should then consider any representations from the ESO or Investigating Officer.

9.4 The Member should be invited to make any final relevant points.

9.5 The Panel will withdraw with the Legal Adviser to consider the various representations. On its return the Chair will announce its decision.

## **10. If the Member has not Failed to Follow the Code**

10.1 If the Panel decides that the Member has not failed to follow the Code, it will announce the decision.

10.2 The Panel will ask the Member whether, in the light of a finding of no breach of the Code, he/she wishes a summary of the decision to be published.

## **11. If the Member has Failed to Follow the Code**

11.1 If the Panel decides that the Member has failed to follow the Code, it will consider any verbal or written representations from the ESO or the Investigating Officer and the Member as to:

- whether or not the Panel should set a penalty.
- what form the penalty should take.

11.2 Having heard any representations, the Panel will then consider in private session, accompanied by the Legal Adviser, whether or not to impose a penalty and, if so, what the penalty should be.

11.3 In deciding what penalty to set, the Panel will consider all relevant circumstances, including those covered in the Guidance produced by the Standards Board. Penalties may start immediately or up to six months after the hearing, if the Panel wishes.

## **12. Penalties which May be Imposed**

### **12.1** The Member may be:

- censured (This is the only form of penalty available when dealing with a person, who is no longer a Member of the Authority); or
- restricted access to the premises and/or resources of the Authority for a maximum period of six months; or
- suspended or partially suspended for a maximum period of six months; or
- required to submit a written apology in a form specified by the Panel; or
- required to undertake training, as specified by the Panel; or
- required to undertake conciliation, as specified by the Panel; or
- suspended or partially suspended for a maximum period of six months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Panel

### **12.2** Where access to resources or premises is restricted, the Panel will ensure that the restrictions are proportionate to the nature of the breach and do not unduly restrict the Member's ability to perform his or her duties as a Member.

## **13. Reference back to the ESO**

At any time prior to the conclusion of the hearing the Panel may adjourn and make a written request to the ESO to take the matter back to undertake an investigation. If it does so, it must set out its reasons for making the request.

## **14. Notice of Decision**

### **14.1** At the conclusion of the hearing the Chair will announce the decision and the reasons for it.

### **14.2** The Corporate Services Manager will make a short written decision available on the day of the hearing.

### **14.3** Within two weeks of the conclusion of the hearing the Corporate Services Manager will circulate the full written decision, in the format recommended by the Standards Board, to

- the Member,
- the Complainant,
- the Standards Board,
- the Standards Committee of any other local authority of which the Member is also a member.

## **15. Publication of Summary of Decision**

- 15.1 Within two weeks of the hearing, the Corporate Services Manager shall arrange for a summary of the decision to be published in one newspaper circulating in the area of the Member's Authority and on the Authority's web site.
- 15.2 Where the Panel determines that there has not been a breach of the Code of Conduct, the Notice shall:
- (i) state that the Panel 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 a local newspaper or on the Authority's website, if the Member so requests.
- 15.3 Where the Panel determines that there has been a failure to comply with the Code of Conduct but no action is required, the Notice shall:
- (i) state that the Panel found that the Member had failed to comply with 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 the Member concerned may apply for permission to appeal against the determination.
- 15.4 Where the Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:
- (i) state that the Panel 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.

## **16. Availability of Agenda, Reports etc.**

- 16.1 Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for six years after the hearing.

## **17. Appeal**

- 17.1 Where the Panel determines that the Member has failed to comply with the Code of Conduct, the Corporate Services Manager shall inform the Member of his or her right to seek permission to appeal against the determination to an appeal tribunal, drawn from the Adjudication Panel, within 21 days of the Member's receiving Notice of the Panel's decision. Any party to an appeal will bear their own costs in relation to that appeal.

**Shropshire and Wrekin Fire and Rescue Authority  
Standards Committee**

*Revised* Local Hearing Panel Procedure

1. The various parties are identified.
2. The Legal Adviser to the Panel will ask the Member to confirm that he/she received notice of the hearing and of his/her right to be represented.
3. The Legal Adviser to the Panel will explain the procedure to be followed and advise parties that the written report and all supporting papers have been received and have been placed before Panel Members. Therefore it is expected that oral submissions will be by way of a succinct summary of the key points and will address any points of dispute. All questions are to be addressed through the Chair.
4. The Chair will ask the Corporate Services Manager if notice of a representative or witness has been received. If so, Members will decide whether the representative/witness will be allowed.
5. The Chair will set out the nature of the complaint.
6. The Monitoring Officer will present his/her report.
7. The Chair will ask the Investigating Officer/ESO if they dispute any of the facts, as set out in the report.
8. The Chair will ask the Member if they dispute any of the facts, as set out in the report.
9. If there is a dispute as to the facts, the Chair will invite the Investigating Officer/ESO to make submissions on those facts and call any witnesses.
10. The Member will be given an opportunity to ask questions of the Investigating Officer/ESO and any witnesses called.
11. The Panel Members may ask questions of the Investigating Officer/ESO and any witnesses.
12. The Member will be given an opportunity to make submissions on those facts and call any witnesses.
13. The Investigating Officer/ESO may ask questions of the Member and any witnesses.
14. The Panel Members may ask questions of the Member and any witnesses.

15. The Panel will retire to determine the facts.
16. The Panel will return and announce its findings of fact.
17. The Chair will invite representations from the Investigating Officer/ESO as to whether the findings amount to a breach of the Code.
18. The Member may ask the Investigating Officer/ESO questions on his/her representations.
19. The Panel Members may ask questions of the Investigating Officer/ESO.
20. The Chair will invite representations from the Member as to whether the findings amount to a breach of the Code.
21. The Investigating Officer/ESO may ask the Member questions on his/her representations.
22. The Panel Members may ask questions of the Member.
23. The Panel will retire to determine if a breach of the Code has occurred.
24. The Panel will return and announce its decision.
25. If the Panel determines that there has not been a breach of the Code, the Chair will close the hearing.
26. If the Panel determines that there has been a breach of the Code, the Chair will invite submissions from the Investigating Officer/ESO in respect of which sanction(s) should be applied.
27. The Chair will invite submissions from the Member in respect of which sanction(s) should be applied.
28. The Panel will retire to determine the appropriate sanction.
29. The Panel will return and announce its decision.
30. The Member will be notified of his/her right to seek permission to appeal.
31. As soon as possible thereafter the decision will be confirmed in writing to all parties. The letter will advise the Member of his/her right of appeal.

## **Note**

*It is an important principle of the rules of natural justice that Members, who take part in the deliberations and decision-making, should only do so, if they have been present for the whole of the hearing.*

*A party may seek to introduce new matters at the hearing. Legal advice should be sought on whether to allow the evidence or to proceed or adjourn to allow all parties time to consider the new matters.*

## Shropshire and Wrekin Fire and Rescue Authority Standards Committee

### Local Hearing Panel Procedure Chair's Procedural Notes

Date:

Member:

#### Agenda Items:

1. The Meeting is opened with **Election of Chair**.  
As no Member is formally appointed at this point, the Corporate Services Manager will ask Members to propose a Chair and for this to be seconded. The Chair will then be declared and take charge of the meeting.
2. The Chair will ask Members for any declarations of interest.
3. The Chair will then need to determine if press and public should be excluded from the hearing or any part of it. The Chair to invite submissions from **(name)** the Investigating Officer/ESO and **(name)** the Member before the Panel makes a determination.
4. The Chair can then move on to item 4 on the agenda and welcome parties to the Hearing, if felt appropriate, before moving on to the Hearing Procedure, which is located behind the agenda in the bundle of papers and modified for ease of use below:

#### Hearings Procedure:

1. Ask parties to identify and introduce themselves.
2. Ask **(insert name)** (the Legal Adviser to the Panel) to explain the procedure.
3. Ask **(insert name)** (the Corporate Services Manager), if notice of a representative or witness has been received. If Members are unsure as to whether these witnesses should be accepted, seek Legal Advice from (legal adviser).
4. Read out the following summary of the complaint:

**(insert summary of complaint)**

5. Ask **(insert name)** (the Monitoring Officer) to present their report.

***If any new matters are raised or new evidence is introduced, seek legal advice on whether to allow it and proceed, or adjourn to allow all parties time to consider the new matters.***

6. Ask **(insert name)** (the Investigating Officer/ESO), if they dispute any of the facts.

7. Ask **(insert name)** (the Member), if they dispute any of the facts.

8. Ask **(insert name)** (the Investigating Officer/ESO) to make his/her submissions on the facts and call any witnesses.

9. **Questions to the Investigating Officer/ESO:**

- (a) Ask **name** (the Member), if he/she has any questions for the Investigating Officer/ESO or their witnesses
- (b) Ask **Members** of the Panel, if they have any questions for the Investigating Officer/ESO or their witnesses

***If parties stray from questioning towards the giving of statements, remind them that this part of the procedure is for questions on the facts only and they will have an opportunity to make their own submission later in the proceedings.***

10. Ask **name** (Member) to make his/her submission and call witnesses

***If any new matters are raised or new evidence is introduced, seek legal advice on whether to allow it and proceed, or adjourn to allow all parties time to consider the new matters.***

11. **Questions to the Member:**

- (a) Ask **name** (the Investigating Officer/ESO), if he/she has any questions to ask the Member or their witnesses
- (b) Ask **Members** of the Panel, if they have any questions for the Member or their witnesses

***If parties stray from questioning towards the giving of statements, remind them that this part of the procedure is for questions on the facts only and they will have an opportunity to make their own submission later in the proceedings.***



12. Panel to retire with Corporate Services Manager. **Withdraw**  
On return **announce** findings of fact.
13. Ask **(insert name)** (the Investigating Officer/ESO) to make his/her submissions as to whether the facts amount to a breach of the Code.
14. **Questions to the Investigating Officer/ESO:**
  - (a) Ask **name** (the Member), if he/she has any questions for the Investigating Officer/ESO
  - (b) Ask **Members** of the Panel, if they have any questions for the Investigating Officer/ESO
15. Ask **name** (Member) to make his/her submission as to whether the facts amount to a breach of the Code.
16. **Questions to the Member:**
  - (a) Ask **name** (the Investigating Officer/ESO), if he/she has any questions to ask the Member
  - (b) Ask **Members** of the Panel, if they have any questions for the Member
17. Panel to retire with Corporate Services Manager. **Withdraw**  
On return **announce** determination on breach.
18. If no breach, **close** the meeting.
19. If there is a breach, ask **name** (the Investigating Officer/ESO) for his/her submissions in respect of sanctions.
20. Ask **name** (the Member) for his/her submissions in respect of sanctions.
21. Panel to retire with Corporate Services Manager. **Withdraw**  
On return **announce** sanction(s) to be applied.

22. Tell **name** (the Member) that he/she has right to seek **appeal**, details of which will be included in the written notification of the decision, which will be sent to all parties as soon as possible.
  
23. Once the decision has been notified, you may thank parties for attending and declare the meeting closed.

