

Amended Procedures in relation to Local Determinations, Investigations and Hearings

Report of the Clerk

For further information about this report please contact Sue Kembrey, Clerk and Monitoring Officer to the Authority, on 01952 383200 or Matt Cumberbatch, Group Solicitor (Standards and Regulatory) on 01952 383255.

1 Purpose of Report

This report seeks to address issues raised by the Committee following their initial consideration of the amended procedures in relation to local determinations, investigations and hearings.

2 Recommendations

The Committee is asked to:

- a) Agree the wording of the change to the local Standards Hearing Procedure at paragraph 3; and
- b) Consider the additional information provided in response to the queries raised at the meetings on the 1 August 2007 and whether further changes need to be made to the Local Investigation Procedure.

3 Background

On 1 August 2007 this Committee considered a report proposing amendments to the procedures in relation to local determinations, investigations and hearings.



The Committee decided to approve the amended procedures appended to the report subject to the following:

- i) At paragraph 3 of the local Standards Hearing Procedure (attached to this report at Appendix 3) there was reference to appointing a Sub Committee of five members of the Authority's Standards Committee ("the Panel") to consider a report following a local investigation. The Committee took the view that given the relatively small membership of the Standards Committee, a Panel of five Members was too large and accordingly it should be a Panel of three, which would still allow the quorum set out at paragraph 6.2 to be met.

There was a further suggestion that a fourth Member be chosen to receive the same paperwork as the three Members selected for the Panel, and that their availability also be obtained in respect of any hearings. This would allow a replacement to be introduced to the hearing panel and help to avoid any loss of time, costs etc in respect of the hearing process. Attached at Appendix 3 for consideration by the Committee is the revised Local Hearings Procedure, which accommodates those points.

- ii) In respect of the draft Local Determination Procedure and Local Hearings Procedure (attached at Appendix 1 and 3 respectively) a query was raised with regard to the pre-hearing process, as set out at paragraph 3.2 of the Local Determination Procedure and paragraph 5.3 of the Local Hearings Procedure, which, with reference to the Member who is subjected to the complaint, sets out the procedure for nominating a representative. It states that, if they ask to be represented at their own expense by someone who is not a Solicitor or Barrister, then that "other person" would only be allowed to represent the Member concerned with the permission of the Hearing Panel. The Committee were concerned to know under what criteria the Panel could refuse to allow the "other person" to act as a representative of the Member.

It is not expected that there will be many occasions when the Panel would take the draconian step of refusing to allow the Member the opportunity to be represented by a person of their choice. However, there may be occasions when it may be inappropriate for a person to represent a Member in such matters. This may be because the other person concerned could be a witness to the complaint, or is also a Member, which may cause a conflict for some members of the Hearing Panel. In any event, any decision of the Panel to refuse a Member use of a particular representative would only be undertaken after proper consideration and if both proportionate and reasonable in the circumstances.

Standards Board guidance on this issue states that "The Standards Committee should normally give permission for members to be



represented by a person they chose, but may refuse permission if the representative is directly involved in the matter being determined”.

- iii) As far as the Local Investigations Procedure is concerned (attached at Appendix 2), the Committee raised an issue at paragraph 4.2 in respect of the Investigating Officer. The Committee were curious as to why the previous version of the investigations procedure contained reference to the investigator being able to report his discovery of a separate breach of the Code (not forming part of his investigation) to the Standards Board, but that such a provision had been removed in the new version.

The Investigator is entitled to report matters to the Standards Board for England, if he/she considers it appropriate to do so, be that during the investigation process or otherwise. However, it is suggested that the procedure set out, which is for the Investigator to request that the person providing the information report the matter to the Standards Board for England, may be a better avenue to follow in this regard and follows Standards Board guidance.

Nevertheless, if the Committee are of the view that this aspect of the investigation procedure should be reinstated, an amendment to that effect has been inserted in draft at paragraph 4.2 (attached at Appendix 2). The amendment makes reference to consulting with the Monitoring Officer prior to making the referral. This takes account of the fact that the allegation, which is new to the investigator, may be known to the Monitoring Officer or linked to the subject of the current investigation (and therefore require reference back to the Ethical Standards Officer, as set out in paragraph 5 of the procedure). The proposed amendment is compliant with Standards Board guidance.

4 Financial Implications

There are no direct financial implications arising from this report.

5 Legal Comment

The legal comments are contained within the main body of the report.

6 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 from this report. An Initial Equality Impact Assessment has not, therefore, been completed.



7 Appendices

- Appendix 1** Draft Local Determination Procedure
- Appendix 2** Draft Local Investigations Procedure
- Appendix 3** Draft Local Hearings Procedure
- Appendix 4** Draft Procedure for Breach of Local Protocol

8 Background Papers

“Standards Committee Determinations – Guidance for monitoring officers and Standards Committees” – guidance issued by the Standards Board for England (July 2003)

“Local Investigations – Guidance for monitoring officers and standards committees” – guidance issued by the Standards Board for England (November 2004)

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 Authority

Draft Local Determination Procedure

1. Introduction

This procedure applies to the local determination of complaints by the Fire Authority's Standards Committee where the investigation has been completed by an Ethical Standards Officer (ESO).

2. Interpretation

- 2.1 'Code of Conduct' means the Code of Conduct for Members of the Authority.
- 2.2 'the Authority' means Shropshire and Wrekin Fire Authority.
- 2.3 '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.
- 2.4 'Standards Board' means the Standards Board for England
- 2.5 'ESO' means the Ethical Standards Officer employed by the Standards Board
- 2.6 'Monitoring Officer' means the Monitoring Officer of the Authority
- 2.7 'Reporting Officer' means the person appointed under paragraph 3.5 below
- 2.8 'Legal Adviser' means the person responsible for providing legal advice to the Standards Committee. This will normally be the Monitoring Officer, another officer of the Authority who is legally qualified, or someone appointed for the purpose from outside the Authority
- 2.9 'Corporate Services Manager' means the Authority officer appointed to this post or his/her representative
- 2.10 'Standards Committee' means the Authority's Standards or such Committee exercising the functions of a standards committee. It can also refer to a Sub-Committee set-up by the Standards Committee.
- 2.11 'Panel' means the panel of Members from the Standards Committee appointed in accordance with the Authority's Local Standards Hearing Procedure.
- 2.12 'Complainant' means the person who submitted the complaint of an alleged breach of the Code of Conduct

3. Pre-hearing Process

3.1 Within five working days of the receipt of the ESO's report by the Monitoring Officer, the Corporate Services Manager shall send a copy of the report to the Member.

3.2 At the same time the Corporate 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 ESO's 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 ESO's report or other relevant documents to be withheld from the public

3.3 The Corporate 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 ESO's report, without having previously notified the Corporate 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 invite the Reporting Officer or the ESO to respond and/or call witnesses
- adjourn the hearing to enable the ESO to respond

3.4 Upon receipt, the Member's response shall be forwarded to the 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 ESO's 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 take conduct of the matter. In that event references to the ESO in these procedures shall also mean the Reporting Officer.
- 3.6 Upon receipt of the ESO's response, the Corporate Services Manager will forward the responses of the Member and the ESO to the Chair of the Panel.
- 3.7 The Member and the ESO are entitled to request that any witnesses they want should be called. However, the Corporate 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 Corporate 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 it decision.
- 3.9 At least two weeks before the date of the hearing the Corporate Services Manager, in consultation with the Legal Adviser will send to the Member, the Panel, the 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 ESO's 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 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. Hearing

The hearing will be conducted in accordance with the Authority's Local Standards Hearings Procedure.

Shropshire and Wrekin Fire Authority

Draft Local Investigations Procedure

1. Introduction

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

No departure will be made from this procedure unless the Monitoring Officer notifies the Member of the variation and the reason for this.

2. Interpretation

- 2.1 'Code of Conduct' means the relevant Code of Conduct for Members of the Authority.
- 2.2 'The Authority' means Shropshire and Wrekin Fire Authority.
- 2.3 'Member' means the member of the Authority who is the subject of the allegation being investigated. It also includes the Member's nominated representative.
- 2.4 'Standards Board' means the Standards Board for England
- 2.5 'ESO' means The 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, or the Committee which has terms of reference of a Standards Committee included within it. It can also refer to a sub-committee set up by the Standards Committee
- 2.9 'Complainant' means the person who submitted the complaint to the Standards Board.
- 2.10 'Corporate Services Manager' means the officer of the Authority appointed to this post or his/her representative.

2.11 'Local Protocol' means following Protocol, Code and Policy adopted by the Authority:-

- the Member/Officer Relations Protocol
- the Protocol on Gifts and Hospitality for Members

3. Notification of Referral

3.1 Unless otherwise directed by the ESO the Monitoring Officer shall on receipt of an allegation

- (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 to her for local investigation and determination, outlining the conduct which is the subject of the allegation and the section(s) of the Code of Conduct which appear to be relevant to the allegation. 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 to him/her for investigation and outlining the procedure to be followed.

3.2 When contacting the Member, the Investigating Officer will also request that the Member concerned provides a response in writing within 21 days of notification as follows:-

- (i) Confirmation to the Investigating Officer as to whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation and in doing so indicating whether any of the facts set out in the notification to the Member are disputed (and setting out a reason for disputing any of those facts).
- (ii) Listing any document which the Member would wish the Investigating Officer to take into account in any investigation of the allegation, and including, where possible, copies of such documents. Alternatively, informing 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 of the allegation.

- (iv) In the event that the Member wishes to appoint a representative to act on his/her behalf during the investigation, to provide the name and address of any such representative and indicating whether or not further contact (including correspondence, telephone calls etc) should be made directly and only with that representative or whether contact should continue to be maintained with the Member himself/herself where such a representative is appointed this will be at the expense of the Member

4. Conduct of the Investigation

- 4.1 During the course of the investigation the Investigating Officer will give due consideration to the Authority's obligations under the Data Protection Act 1998, the Human Rights Act 1998, and other relevant legislation, and any guidance from the Standards Board for England in that regard.
- 4.2 If the Investigating Officer uncovers evidence of a possible breach of the Code that does not directly relate to the investigation itself he/she shall ask the person from whom the evidence was received to make an allegation to the Standards Board. [If the person providing the information to the Investigating Officer appears reluctant to proceed with a formal complaint, or it becomes clear that a number of sources have provided the same information then the investigating officer can, if he/she considers it appropriate, and after consultation with the Monitoring Officer, report the matter directly to the Standards Board.](#) Where there is evidence of a breach of a local protocol but not a breach of the Code, he/she will report it to the Monitoring Officer.
- 4.3 The Investigating Officer may appoint any such 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 to present a report to the Standards Committee which would 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 a report to be prepared for the Standards Committee.
- 4.5 The Investigating Officer will ask all those who are contacted, or in any other way involved as part of the investigation not to disclose information that they have in confidence as part of the investigation in order to preserve the integrity of the investigation. Also he/she will remind 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 to the ESO

- 5.1 If, during the investigation the Investigating Officer concludes that it would be inappropriate to continue with the investigation, he/she may refer the matter

back to the Monitoring Officer. In such a case the Monitoring Officer shall then decide whether

- (i) an alternative Investigating Officer should be appointed; or
- (ii) the matter should be referred back to the ESO for the investigation to be continued by the ESO

5.2 If the Monitoring Officer refers the complaint back to the ESO the reason for the referral back should be set out clearly. The ESO will respond within 21 days, confirming whether the matter is to be retained by him/her or referred back for the Monitoring Officer to continue the local investigation.

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 document identified by the Member if it is considered by him/her 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.

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 they have obtained the express permission of the interviewee prior to the interview.

6.5 Representation

Any person who is interviewed or contacted for information as part of the investigation may arrange for representation by a solicitor or friend at their own expense.

6.6 Interview notes

The Investigating Officer will ensure that a note or transcript of the interview is made. Such notes or transcripts should be forwarded to the interviewee as soon as practicable after the conclusion of the interview with a request that it be signed (and amended by the interviewee if they think appropriate) to confirm that it is a correct record of the interview.

7. Completing the Investigation and Providing 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', and 'confidential'.
- (ii) The date of the Draft Report.
- (iii) The nature of the initial allegation
- (iv) The relevant *section* of the Code of Conduct
- (v) 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, confirmation as to whether payments were made in respect of expenses of those subject to the investigation
- (vi) A copy of all supporting information
- (vii) The Member's initial response to the notification of the allegation
- (viii) Details of any person or organisation who has failed to cooperate during the investigation, and any outstanding information or documentation which has not been provided
- (ix) The draft findings of fact
- (x) The conclusion reached by the Investigating Officer confirming whether, in their view, there has been a breach of the Code of Conduct, *with* supporting reasons for reaching their conclusion.
- (xi) Any recommendations to the Authority
- (xii) Confirmation that the Draft Report does not represent the final findings and these may be subject to change in the light of comments on the Draft

8. Procedure following production of the Draft Report

8.1 On the issuing of a Draft Report, copies will be sent to

- (i) The Monitoring Officer
- (ii) the Member
- (iii) the Complainant

for them to comment on the contents on the Draft within a time specified by the Investigating Officer.

9. The Final Report

- 9.1 After the expiry of the time limit provided for comment on the Draft Report (or a reasonable extension to that time limit allowed by the Investigating Officer) the Investigating Officer may make amendments as appropriate and should then produce the Final Report.
- 9.2 The Final Report should include the following:-
- (i) All of the contents required for the initial draft report as referred to at paragraph 7 above (with the exception of removing the words 'draft' and re-dating).
 - (ii) Confirmation that this is the Final Report.
 - (iii) Copies of any documents which the Investigating Officer has relied upon in reaching his/her conclusions (this will include background documents of telephone conversations, letters and notes of interviews with witnesses together with a chronology of events).
- 9.3 Within 5 working days of completion of the Final Report copies should be sent to the following parties:-
- (i) The Monitoring Officer
 - (ii) The Member
 - (iii) The Complainant
 - (iv) All members of the Standards Sub-Committee referred to in paragraph 10.1
 - (v) The ESO who referred the matter for investigation
- 9.4 If the investigation has found that there has been no breach of the Code of Conduct the covering letter should explain to all parties who receive the Report, that it will be sent to a Sub Committee of the Standards Committee for consideration.
- 9.5 If there is a finding in the Report there has been a breach of the Code of Conduct, a covering letter should be sent with it to all parties which should make it clear that there will be a hearing into the allegations and it should set out the procedure for such a hearing.

10. Consideration of a Final Report concluding that there has been no breach

- 10.1 If the Final Report finds that there has not been a breach of the Code of Conduct, the report should be considered by a Sub Committee of the Standards Committee within 10 working days of completion of the report. The Sub Committee shall conclude either:
- (i) that it accepts the Investigating Officer's finding that the Member has not failed to comply with the Code; or
 - (ii) that the matter should be considered at a hearing

- 10.2 The Sub-Committee will consist of 3 members of the Standards Committee and shall be appointed by the Corporate Services Manager. The Sub-Committee will be chaired by an independent member.
- 10.3 The Corporate Services Manager will write to the Member and the Complainant informing them of the date of the Sub-Committee meeting pointing out that they may attend that meeting but have no right to address the Sub-Committee.
- 10.4 If the Sub-Committee accepts the finding of no breach of the Code the Monitoring Officer shall write to the Member confirming this and the reasons for that decision. At the same time the Member will be asked whether he/she wishes a notice to this effect to be published in a local newspaper. The published notice will state the Sub Committee's finding and the reasons for it. Written notification will also be sent to
- (i) the Ethical Standards Officer
 - (ii) the Authority's Standards Committee
 - (iii) the Standards Committee of any other local authority of which the Member is a member
 - (iv) the Complainant
- 10.5 If the Committee decide that there is a case to answer, the matter will then be referred for a final determination on whether the Code of Conduct was breached by a Panel of members appointed under the Authority's Local Standards Hearings Procedure.
- 11. Consideration of a Final Report concluding that there has been a breach or where the Sub-Committee decide that there should be a hearing**
- 11.1 If the Final Report concludes that there has been a breach of the Code of Conduct, or if the Sub-Committee decide that there is a case to answer in accordance with 10.5 above, then it must be referred for hearing to a Panel of members of Standards Committee appointed in accordance with the Authority's Local Standards Hearing Procedure.
- 11.2 The hearing must be held within 3 months of the completion of the Final Report.
- 11.3 At that hearing, the report of the Investigating Officer will be treated as the report of the Ethical Standards Officer
- 11.4 The Investigating Officer will present his/her report to the Panel and introduce any witnesses considered necessary

12. Pre-Hearing Process

- 12.1 Where a hearing is to be held following the issue of a Final Report, the Corporate Services Manager shall ask for a written response from the Member, within 15 working days, stating whether or not he/she
- disagrees with the findings of fact in the Report including the reasons for any disagreements
 - wants to be represented, at his/her 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
- 12.2 The Corporate 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 Corporate 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 to respond and call any witnesses as necessary or
 - to adjourn the hearing to enable the Investigating Officer to respond
- 12.3 Upon receipt, the Member's response shall be forwarded to the Investigating Officer to comment on the Member's response, within fifteen working days, 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
- 12.4 Upon receipt of the Investigating Officer's response, the Corporate Services Manager will forward the responses of the Member and the Investigating Officer to the Chair of the Panel.
- 12.5 The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Corporate 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.

- 12.6 Nothing in this procedure shall limit the Corporate 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.
- 12.7 At least two weeks before the date of the hearing the Corporate Services Manager, in consultation with the Panel's Legal Adviser will send to all parties 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 of completion of 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 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

13. Hearing

The hearing will be conducted in accordance with the Authority's Local Standards Hearing Procedure.

Shropshire and Wrekin Fire Authority

Draft Local Standards Hearings 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 Code of Conduct for Members of the Authority
- 2.2 'The 'Authority' means Shropshire and Wrekin Fire Authority
- 2.3 'Member' means a member of any 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.
- 2.4 'Standards Board' means the Standards Board for England
- 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 'Monitoring Officer' means the Monitoring Officer of the Authority
- 2.7 'Investigating Officer' means the Monitoring Officer or her deputy or other person instructed by the Monitoring Officer to conduct a local investigation including an independent external investigator
- 2.8 'Report' means the report of the ESO or the report of the Investigating Officer
- 2.9 '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
- 2.10 'Corporate Services Manager' means the Authority officer appointed to this post or his/her representative

- 2.11 'Standards Committee' means the Authority's Standards Committee or the Committee exercising the functions of a standards committee. It can also refer to a Sub-committee set-up by the Standards Committee.
- 2.12 'Protocol' means the following Protocol, Code and Policy adopted by the Authority
- Member/Offices Relations Protocol
 - Protocol on Gifts and Hospitality for Members
- 2.13 'Complainant' means the person who submitted the complaint of an alleged breach of the Code of Conduct or Protocol

3. Selection of the Hearing Panel

- 3.1 The Corporate Services Manager, in consultation with Legal Adviser, shall appoint a sub-committee of three members of the Authority's Standards Committee ("the Panel") to consider the Report. [In addition a fourth member of the Authority's Standards Committee shall be selected to receive documentation and be consulted on availability for any hearings in the event that a member of the panel is unable to attend a meeting \(see paragraph 3.3 below\).](#)
- 3.2 The Panel shall be chaired by an independent member.
- 3.3 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 [\(see paragraph 3.1 above\).](#)

4. 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 LGA 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.

5. General Procedure at the Hearing

- 5.1 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.
- 5.2 The purpose of the hearing is to decide on the balance of probability whether the Member has breached the Code. 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.

- 5.3 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 they consider that that person is directly involved in the matter being determined.
- 5.4 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 decide 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 for England.
- 5.5 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
- 5.6 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. All such questions must be directed through the Chair.
- 5.7 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.
- 5.8 The Panel can adjourn the hearing at any time.

6. Preliminary Procedural Issues

- 6.1 The Chair will introduce all the parties and will explain how the hearing will be conducted.
- 6.2 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 an 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 decide 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.
- 6.3 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 are 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.

7. Making findings of fact

- 7.1 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.
- 7.2 If there is no disagreement, the Panel will confirm their findings of fact.
- 7.3 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.
- 7.4 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.
- 7.5 At the conclusion of various representations the Chair will check with the Panel whether they are satisfied that they have sufficient evidence to come to a conclusion on the matter.
- 7.6 If the Panel consider that they require additional evidence they may at their discretion adjourn and make a request for this. They can only adjourn on one occasion for this purpose.
- 7.7 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 and 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.
- 7.8 The Panel will withdraw with the Legal Adviser to consider the representations and evidence. On their return, the Chair will announce the Panel's findings of fact.

8. Did the Member fail to follow the Code?

- 8.1 The Panel will then consider whether or not, based on the finding of fact, the Member has failed to follow the Code of Conduct.
- 8.2 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.
- 8.3 The Panel should then consider any representations from the ESO or Investigating Officer.
- 8.4 The Member should be invited to make any final relevant points.
- 8.5 The Panel will withdraw with the Legal Adviser to consider the various representations. On their return the Chair will announce their decision.

9. If the Member has not failed to follow the Code

- 9.1 If the Panel decides that the Member has not failed to follow the Code, it may consider whether it should make any recommendations to the Authority. Such recommendations could, for example, relate
 - to providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct
 - for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct.
 - for rectifying any deficiency in the authority's decision making procedures or for preventing or deterring any further breaches of the Code of Conduct.
- 9.2 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.

10. If the Member has failed to follow the Code

- 10.1 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.
- 10.2 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.

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

11. Penalties which may be imposed

11.1 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 concerned); or
- restricted access to the premises and resources of authority for a maximum period of three months; or
- suspended or partially suspended for a maximum period of three 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 three months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Panel

11.2 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.

12. 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, and if it does so it must set out its reasons for making the request.

13. Notice of Decision

13.1 At the conclusion of the hearing the Chair will announce the decision and the reasons for it.

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

- 13.3 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 for England, to
- the Member,
 - the Complainant,
 - the ESO, Reporting Officer or Investigating Officer,
 - the Authority's Standards Committee
 - the Standards Committee of any other local authority of which the Member is also a member.

14. Publication of Summary of Decision

- 14.1 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 Authority and on the Authority's web site.
- 14.2 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.
- 14.3 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 Member concerned may apply for permission to appeal against the determination.
- 14.4 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.

15. Availability of Agenda, Reports etc.

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.

16. Appeal

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 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 Authority

Draft Procedure for Breach of Local Protocol

1. Introduction

This Procedure will apply to allegations of a breach of the Member/Officer Relations Protocol, and the Protocol for Gifts and Hospitality for members the adopted by the Authority.

2. Interpretation

- 2.1 The 'Authority' means Shropshire and Wrekin Fire Authority
- 2.2 'Member' means a member of the Authority including a co-opted member who is the subject of an allegation of a breach of one of the Protocols. It also includes the Member's nominated representative
- 2.3 'Monitoring Officer' means the Monitoring Officer of the Authority
- 2.4 'Standards Committee' means the Authority's Standards or such committee of the Authority exercising the functions of a standards committee and will include a Sub-Committee of the Standards Committee.
- 2.5 'Complainant' means the person who submitted the complaint of a breach of protocol or code.

3. Preliminary Investigation

- 3.1. Upon the receipt of a complaint that a Member has acted in breach of one of the Protocols, the Monitoring Officer will carry out a preliminary investigation.
- 3.2. At the conclusion of the preliminary investigation, the Monitoring Officer may, following consultation with the Chairman or Vice-Chairman of the Standards Committee:
 - (i) dismiss the complaint as frivolous, trivial, mischievous or vexatious; and/or may determine that no further action needs to be taken, in which case she will report the complaint and the findings to the Standards Committee and notify the Member and the Complainant; or
 - (ii) conduct a detailed investigation of the complaint.

4. Detailed Investigation

- 4.1. If, at the conclusion of the preliminary investigation, the Monitoring Officer decides that the complaint be investigated in more detail, she shall notify the Complainant and the Member and proceed with an investigation into the allegation.
- 4.2. In conducting the investigation the Monitoring Officer may:
- interview the Member
 - consider any documentation relating to the complaint
 - interview any member or officer
 - take Counsel's advice
 - instruct a third party to conduct the investigation or part of it
 - consult with any party.

5. Completion of the Investigation

- 5.1 Following the completion of a detailed investigation, the Monitoring Officer will prepare a report to the Standards Committee giving brief details of the investigation and setting out one of the following three findings:-
- that there is no evidence that the Member has breached the relevant protocol; or
 - that there is evidence of a breach of protocol but no action needs to be taken; or
 - that the matter should be referred to the Standards Committee (or Standards Sub-Committee) for a hearing.
- 5.2. If the Monitoring Officer concludes that the matter should be referred to the Standards Committee for a hearing, she will prepare a detailed report on the investigation which will be sent to the Member and the Complainant for comment before the report is finalised.

6. The Hearing

The hearing will be conducted in accordance with the Authority's Local Standards Hearings Procedure modified as appropriate.

7. Penalties/Sanctions

The following penalties/sanctions will be available to the Standards Committee in the event of a Member having been found to have breached the relevant protocol(s) of the Authority:-

- that no further action be taken; or
- that the Member should be censured; and/or
- that the Member's access to member resources should be restricted for up to three months; and/or

- that it be recommended to the Authority that the relevant political group/group leader be requested to remove the Member from a Committee or Committees for a specified period; and/or
- that it be recommended to the Authority that the Member be removed from a Committee or Committees if that member is not affiliated to any political group on the Authority for a specified period of time; and, or
- that the Member be requested to make a written apology in terms set out by the Standards Committee.

DRAFT