

# CARLISLE CITY COUNCIL

**Report to:-** THE CHAIRMAN AND MEMBERS OF THE STANDARDS COMMITTEE

**Date of Meeting:-** 11 December 2003

**Agenda Item No:-**

AI

**Public**

**Operational**

**Delegated: Yes**

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## **Accompanying Comments and Statements**

**Required**

**Included**

Environmental Impact Statement:

No

No

Corporate Management Team Comments:

No

No

Financial Comments:

No

No

Legal Comments:

Yes

Yes

Personnel Comments:

No

No

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**Title:-**

**PROCEDURE FOR DEALING WITH ALLEGATIONS OF MISCONDUCT OF CITY AND PARISH COUNCIL MEMBERS**

**Report of:-**

**HEAD OF LEGAL AND DEMOCRATIC SERVICES**

**Report reference:-**

**LDS 67/03**

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## **Summary:-**

The report sets out a proposed procedure for dealing with complaints against City and Parish Council Members in respect of alleged breaches of their relevant Codes of Conduct.

## **Recommendation:-**

1. To consider the attached procedure and, if satisfied with it, to adopt it with any amendments which the Committee believes to be appropriate for Carlisle's own particular circumstances.
2. In particular, to give instructions on whether Members would wish complaints to be determined by the full Standards Committee or by a smaller hearing Panel as mentioned in paragraphs 2.4 to 2.6.

**Contact Officer:** John Egan

**Ext:** 7004

**Note:** in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: Standards Board Guidance

## 1. INTRODUCTION

- 1.1 Members will recall that at the last meeting of the Committee on 2 September 2003 it was reported that there would be a need for the Committee to put in place a procedure for dealing with allegations of misconduct by City and Parish Council Members which would fall within the Committee's responsibility.
- 1.2 Members may recall that, at the present time, any complaints are investigated and reported on by an Ethical Standards Officer appointed by the external Standards Board for England and the Committee's function will be to deal with that report when received. However, Regulations will soon be in place to pass responsibility for dealing with the investigation of the complaint itself to the Council's Monitoring Officer and the Committee will then be required to consider and decide upon the Monitoring Officer's report.
- 1.3 The Committee were informed at the last meeting that all the local authorities in Cumbria, together with Cumbria Police, were endeavouring for the sake of consistency to put in place a common procedure for dealing with misconduct allegations. Until that agreed procedure was to hand, the Committee decided to determine any complaints which might be received in the meantime in accordance with the general guidance principles issued by the Standards Board for England but that, as soon as the Cumbria wide procedure had been finalised, it should be forwarded to the Committee for formal consideration and approval.
- 1.4 The procedure has now been drawn up by the relevant officers in Cumbria and is attached as Appendix 1. It reflects the current guidance issued by the Standards Board for England which legislation requires it to have regard to.

## 2. COMMENTS ON THE PROCEDURE

- 2.1 The procedure is intended to stand on its own and there is a very simple summary of the relevant steps set out on the last page. Some matters do, however, require further comment.

### **Role of Reporting Officer and Monitoring Officer**

- 2.2 Members will see that the procedure draws a separation between the roles of what are described as the Reporting Officer and the Monitoring Officer. This is to address the potential conflict of interest in having the same person at officer level

being responsible for both preparing and presenting a case to the Committee and also acting as a legal adviser to that Committee. The potential conflict will become more pronounced once responsibility for investigation is passed to the Monitoring Officer from the Ethical Standards Officer. The procedure, therefore, envisages the two functions of investigating the complaint and advising the Committee being split between different officers in the authority. If conflicts of interest still arose (for example where the Monitoring Officer may have already given legal advice to the Member concerned on the matter of the complaint and where it would be inappropriate for him/her to advise the Committee) then it may be necessary to look outside the authority for an independent person to advise the Committee at the hearing and reciprocal arrangements between the Cumbria Authorities are currently being discussed to allow mutual support.

### **Two Stage Process**

- 2.3 Members will see that, as recommended by the Standards Board for England guidance, the decision making process is effectively in two parts. Firstly, the Committee having heard the evidence retires to consider whether or not there has been a breach of the Code and then, having heard further representations from the Member concerned, it retires once again to decide on the penalty, if any, to be imposed. The process is akin to the determination of a matter before the Magistrates.

### **Composition of the Committee**

- 2.4 Members do need to give some thought as to the composition of the Committee when hearing complaints. Primarily, it has to decide whether the full Committee, ie all eight Members will hear the complaint or whether a smaller number should be nominated to determine the matter. The procedure attached envisages that the matter will be dealt with by the whole Committee. The Standard Board Guidance, however, recommends that between three and five Members should hear complaints because in their view "it is fairer and more efficient to hold a hearing before a small group". The matter is, however, a question for each individual Committee to decide upon. It is perhaps a question of balancing the need for efficiency which a smaller number might bring against the desirability of having as broad a spectrum of views as possible represented on the Committee which a full Committee might produce.
- 2.5 Members need to be aware of the statutory requirements before deciding on the size and composition of the hearing panel. The determining body must include at

least one independent Member and, if it is dealing with a Parish matter, at least one Parish Council representative as well. By way of illustration, if the Committee decided that a five Member Panel was the appropriate size and it was dealing with a complaint against a City Councillor, then at least one Member would have to be independent but it would be a matter for the Committee to decide how the remaining four places were to be allocated. Although there is no requirement for Standards Committees to be politically balanced, it would seem desirable to make sure that each of the Groups had at least one of those seats. If the matter related to a complaint against a Parish Councillor then, of a five Member Panel, there would need to be at least one independent Member and one Parish Councillor, leaving three seats to be allocated, and again it would seem desirable that each political group should be represented.

- 2.6 If it were to be decided to proceed with a smaller body of Members to hear complaints rather than the full Committee, then a practice used elsewhere is to leave it to the Chairman of the Committee to pick the Panel once the Committee itself has set the governing rules as to how it should be constituted. This is likely to be better than simply electing a standing Sub-Committee where the membership would be static and where availability could prove to be a problem.
- 2.7 However, there is something to be said for the proposition that, at least in the first instance, complaints should be dealt with by the full Committee and the Committee could then decide, with the benefit of operating experience, whether that number was too large and a smaller hearing panel would be more appropriate.

### 3. RECOMMENDATIONS

- 3.1 To consider the attached procedure and, if satisfied with it, to adopt it with any amendments which the Committee believes to be appropriate for Carlisle's own particular circumstances.
- 3.2 In particular, to give instructions on whether Members would wish complaints to be determined by the full Standards Committee or by a smaller hearing Panel as mentioned in paragraphs 2.4 to 2.6.

JOHN EGAN  
HEAD OF LEGAL AND DEMOCRATIC SERVICES

## **PROCEDURE FOR LOCAL DETERMINATION OF ALLEGATIONS ABOUT THE PERSONAL CONDUCT OF COUNCIL MEMBERS**

### **Introduction**

1. The local determination of complaints by the Standards Committee where an investigation has been completed by an Ethical Standards Officer (ESO) of the Standards Board for England, will be governed by this procedure.
2. The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member. The allegation will be heard by the Standards Committee (the Committee).

### **Appointment of Reporting Officer**

3. Upon receipt of the ESO's report, the Monitoring Officer will appoint a Reporting Officer to take conduct of the matter and to arrange for the Standards Committee to consider the report and determine the allegation. The Reporting Officer may be the Monitoring Officer, or any other appropriate officer.
4. Where the Monitoring Officer takes on the role of the Reporting Officer, if appropriate, he must arrange for a separate legal adviser to the Committee to be appointed in respect of the allegation.

### **Notifying the Member and Complainant**

5. Within five working days of the receipt of the ESO's report, the Reporting Officer shall send a copy of the report to the Member and, where possible, the Complainant, making the provision of the report conditional upon any appropriate undertaking of confidentiality. The Chairman and Members of the Committee shall be informed of the allegation by the Reporting Officer.
6. The Member shall be asked for a written response, within fifteen working days of the receipt of the report, which response shall set out the reply to the ESO's report and state whether or not he/she:
  - disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreement;
  - wants to be represented, at his/her own expense, at the hearing by a solicitor, barrister or any other person;
  - wants to give evidence to the Committee, either verbally or in writing;

- wants to call relevant witnesses to give evidence to the Committee;
  - wants any part of the hearing to be held in private;
  - wants any part of the ESO's report or other relevant documents to be withheld from the public.
7. The Member shall be informed that if, at the meeting of the Committee, he/she seeks to dispute any matter contained in the ESO's report without having previously notified the Reporting Officer of the intention to do so the Committee may either (a) adjourn the meeting to enable the ESO to provide a response, or (b) refuse to allow the disputed matter to be raised.
8. Upon receipt, the Reporting Officer shall invite the relevant ESO to comment, within ten working days, on the Member's response, and to say whether or not he/she:
- wants to be represented or be present at the hearing;
  - wants to call relevant witnesses to give evidence or submit written or other evidence to the Committee;
  - wants any part of the hearing to be held in private;
  - wants any part of the ESO's report or other relevant documents to be withheld from the public.
9. Upon receipt of the ESO's response, the Reporting Officer will consider the responses of the Member and the ESO and request the Monitoring Officer to set a date for the hearing in consultation with the Chairman.
10. The Member, the ESO and the Reporting Officer are entitled to request that any witnesses they want should be called. However, the Chairman of the hearing may limit the number of witnesses to be called, 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 Committee to reach its decision.
11. Nothing in this procedure shall limit the Chairman of the hearing from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Committee to reach its decision.
12. The Monitoring Officer, in consultation with the Chairman, will:

- confirm a date, time and place for the hearing, which must be within three months from the date that the ESO's report was received;
- confirm the main facts of the case that are agreed;
- confirm the main facts that are not agreed;
- provide copies of any written evidence to the relevant parties;
- confirm which witnesses will be called by the parties;
- provide the parties with a copy of the proposed procedure for the hearing, specifying which parts of the matter, if any, may be considered in private; and
- ensure the appropriate information, with the Agenda, is provided to everyone involved in the hearing at least two weeks before the proposed date of the hearing.

### **The Hearing**

13. The Committee shall decide, on a balance of probabilities, whether the complaint(s) is or are upheld upon the evidence presented to it.
14. Each Committee Member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.
15. The meeting of the Committee will be open to the public and press unless confidential information or exempt information under Schedule 12A of the Local Government Act 1972 is likely to be disclosed.

### **Procedure at the Hearing**

16. The initial order of business at the meeting shall be as follows:
  - Establishing whether the Committee is quorate, declarations of interest;
  - Introductions;
  - Consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present;

- Consideration of any procedural issues and, in particular, any representation from the Reporting Officer and/or the Member as to reasons by the Committee should exclude the press and public and determination as to whether to exclude the press and public.

17. The purpose of the hearing is to determine the facts at issue and what action, if any, should be taken. An inquisitorial approach will be adopted by the Committee Members in seeking information and clarifying facts and issues. The Chairman will control the procedure and evidence presented at the hearing, including the questioning of witnesses.

18. The Committee Members may at any time seek legal advice from their legal adviser. Such advice will on all occasions be given in public in the presence of the ESO/Reporting Officer and the Member.

19. The procedure will be as follows, subject to the Chairman being able to make changes as he or she thinks fit in order to ensure a fair and efficient hearing.

20. **Presentation by the ESO/Reporting Officer**

20.1 The ESO/Reporting Officer will present the evidence which is relevant to the matter. The ESO/Reporting Officer may introduce any witnesses required to substantiate any matter contained in the report which has been disputed and present any other relevant evidence.

20.2 The Member or his/her representative may ask questions of the ESO/Reporting Officer or any witness.

20.3 The Committee Members may ask questions of the ESO/Reporting Officer or any witness.

21. **Presentation by the Member**

21.1 The Member or his/her representative will present the evidence which is relevant to the matter. The Member or his/her representative may introduce witnesses or present any other relevant evidence. Where the Member seeks to dispute any matter in the ESO's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Reporting Officer shall draw this to the attention of the Hearing Panel. The Hearing Panel may then decide:

- Not to admit such dispute but to proceed to a decision.

- To admit the dispute, but to invite the Reporting Officer to respond.

- To adjourn the meeting to enable the Reporting Officer to investigate and report on the dispute.

21.2 The ESO/Reporting Officer may ask questions of the Member, or any witness.

21.3 The Committee Members may ask questions of the Member or any witness.

21.4 The ESO/Reporting Officer and then the Member or his/her representative will be given the opportunity to sum up.

## **22. Decision by the Committee**

22.1 The Committee will consider in private all the evidence which it has heard in order to establish its findings of fact;

22.2 At any stage in the consideration of the matter the Committee may return to ask further questions of the ESO/Reporting Officer or the Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

22.3 The Committee may seek legal advice at any time. Such advice may be given in the presence of the ESO/Reporting Officer and the Member if appropriate.

22.4 At the conclusion of their deliberations, the Chairman will advise the Member and the ESO/Reporting Officer of their findings and whether the Code of Conduct has been breached.

22.5 If the Committee concludes that the Member has acted in breach of the Code representations will be invited from the ESO/Reporting Officer and the Member as to what action, if any, it should take. The Committee may ask questions of the Member and the ESO/Reporting Officer.

23. The Committee, having heard any representations, will consider in private session what actions, if any, to take.

The findings that the Committee may make are:

- (a) that there has been no breach of the Code of Conduct;
- (b) that the Member has failed to comply with the Code of Conduct, but that no action needs to be taken;

- (c) that the Member has failed to comply with the Code of Conduct and should be:
- censured, or
  - restricted access to the premises and the resources of authority for a maximum period of three months (but ensuring that such restrictions will not unnecessarily restrict the Member's ability to carry out his/her responsibilities as an elected or co-opted member);
  - suspended or partially suspended for a maximum period of three months, or
  - suspended or partially suspended for a maximum period of three months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Committee.
24. In deciding what penalty to set, the Committee will consider all relevant circumstances including those covered in any Guidance produced by the Standards Board for England.
25. The Chairman will announce the decision of the Committee, the action, if any, it is proposed to take and the reasons for the decision.
26. The Committee will then consider in open session whether there are any recommendations which should be made to any Authority concerned arising from the consideration of the allegation.

### **Appeal**

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

### **Notice of Findings**

28. A full written decision in draft will be prepared as soon as practicable. The draft will be prepared with regard to any format recommended by the Standards Board for England. The draft decision will be forwarded to the Chairman of the Committee for approval.
29. Once approved and as soon as reasonably practicable after the Hearing the full written decision will be forwarded to the Member, the Complainant (where possible), the ESO/Reporting Officer and any other Authority concerned.

30. The Monitoring Officer, subject to paragraph 31, shall arrange for a summary of the findings to be published in one or more newspapers circulating in the area of the Authority.
31. Where the Committee determines that there has not been a breach of the Code of Conduct, the notice shall:
  - (i) state that the Committee found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
  - (ii) not be published in local newspapers if the Member so requests.
32. Where the Committee 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 Committee found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
  - (ii) specify the details of the failure;
  - (iii) give reasons for the decision reached; and
  - (iv) state that Member concerned may apply for permission to appeal against the determination.
33. Where the Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:
  - (i) state that the Committee found that the Member had failed to comply with the Code of Conduct;
  - (ii) specify the details of the failure;
  - (iii) give reasons for the decision reached;
  - (iv) specify the sanction imposed, and
  - (v) state that the Member concerned may apply for permission to appeal against the determination.
34. 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.

## **Summary of Hearing Procedure**

1. The Chairman determines the preliminary issues as per the Committee's Agenda such as apologies.
2. The Chairman introduces the parties.
3. The Chairman explains the procedure.
4. Any procedural issues are determined.
5. The Ethical Standards Officer/Reporting Officer presents his report – he may call witnesses.

The Member may ask questions.

The Panel Members may ask questions.

6. The Member presents his case – he may call witnesses.

The Ethical Standards Officer/Reporting Officer may ask questions.

The Panel Members may ask questions.

7. The Ethical Standards Officer/Reporting Officer and the Member sum up their cases.
8. The Committee decides upon the disputed facts.
9. The Committee announces its findings of fact and its determination upon the breach of the Code of Conduct.
10. If appropriate the Committee invites submissions as to any penalty and the Members of the Committee may ask any questions of the parties.
11. The Committee decides upon the penalty.
12. The Chairman announces the decision of the Committee upon the penalty and states that the decision will be confirmed in writing and sent to the parties as soon as is practicable.

## **Post Hearing**

The Legal Adviser to the Committee prepares the decision letter which is passed to the Chairman of the Committee for approval. The draft is dispatched within five working days of the hearing. The comments of the Chairman are made within five working days of receipt.

The Legal Adviser prepares any revised draft and submits it to the Chairman for signature.

The signed decision is dispatched to the parties within fifteen working days of the hearing.