

## CITY OF PLYMOUTH

**Subject:** The process for dealing with hearings by the Standards Committees.

**Committee:** Standards Committee

**Date:** 9, December 2009

**Cabinet Member:** -

**CMT Member:** Director for Corporate Support.

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**Ref:** LT

**Part:** I

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### **Executive Summary:**

The purpose of the report is to make recommendations to Members of the Committee on the new process for dealing with hearings into allegations of breaches of the Members' Code of Conduct.

Following an investigation of an alleged breach of the Code of Conduct the Committee is required to hold a hearing if it considers that to be appropriate. This has not been required to date and so the Committee has not adopted procedures to deal with hearings. It is recommended, however, that a set of procedures is adopted, so that the Committees procedures are clear and transparent.

Standards for England have issued guidance and a model hearing process for determining alleged breaches of the Members Code of Conduct. It is recommended that these procedures are adopted by the Committee, further details of which are given in the main body of the report

### **Corporate Plan 2007-2010:**

This links to the corporate plan objective of putting the customer first by increasing the Councils ability to deal with complaints about Councillors locally.

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**Implications for Medium Term Financial Plan and Resource Implications:  
Including finance, human, IT and land**

It is hoped that the costs of the new regime can be contained within existing budgets. This will depend on the volume and complexity of complaints. Training will be a key requirement for Standards Committee members and officers.

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**Other Implications: e.g. Section 17 Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment, etc.**

It will be important to make sure that the complaints system is accessible to all citizens.

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**Recommendations & Reasons for recommended action:**

- 1.1 To recommend that the Committee adopts the model hearing process for determining alleged breaches of the Members' Code of Conduct.
  
  - 1.2 That the Committee authorises the Monitoring Officer to make appropriate pre hearing arrangements for any hearings in liaison with the Hearings Committee who will deal with any individual hearing.
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**Alternative options considered and reasons for recommended action:**

The reasons for the recommended action are to allow the Council to comply with its statutory requirements under the Standards Committees (England) Regulations 2008. No other options are considered to be appropriate.

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**Background papers:**

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**Sign off:** comment must be sought from those whose area of responsibility may be affected by the decision, as follows (insert initials of Finance and Legal reps, and of Heads of HR, AM, IT and Strat. Proc.):

Head of Fin		Head of Leg		Head of HR		Head of AM		Head of IT		Head of Strat Proc	
Originating SMT Member: Head of Legal Services											

## **1.0 Introduction**

- 1.1 Members of the Committee will be aware of the proposals, now enacted in Part 10 of the Local Government and Public Involvement in Health Act 2007, for allegations of breaches of the Members' Code of Conduct to be assessed, investigated and determined by local Standards Committees.
- 1.2 The new regime came into effect on 8 May 2008 following the making of regulations and the issuing of guidance by the Standards Board for England.
- 1.3 Standards for England has issued guidance dealing with the process that need to be followed by local Standards Committees determining alleged breaches of the Members' Code of Conduct.
- 1.4 The Committee is recommended to establish procedures to be followed at any determination hearing.

## **2.0 Pre-Hearing**

- 2.1 The purpose of having a pre-hearing process is to allow matters at the hearing to be dealt with more fairly and efficiently. This is because it highlights possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself. In particular the pre-hearing process should be an attempt to focus the relevant parties' attention on isolating all relevant disputes of facts between them. This is because attention to the factual issues will save valuable time later on in the determination process.
- 2.2 It is recommended that the Hearings Sub Committee should request the subject member to make clear precisely what, if any, findings of fact in the investigation report they disagree with and why. It should then invite the monitoring officer or investigating officer to comment on the subject member's response within a set time period. This is to make sure that all parties are clear about any factual disputes and can prepare to deal with those issues on the appointed day.
- 2.3 It is also recommended that the Hearings Sub Committee ask the relevant parties to provide outlines or statements of the evidence their witnesses intend to give. This is to allow the Hearings Sub Committee to decide how many witnesses may be needed and to identify the issues they will be dealing with at the hearing and estimate the time of the hearing. Standards for England recommend that the Hearings Sub Committee should then not allow the relevant parties to raise new disagreements over factual matters in the investigation report at the hearing unless there are

exceptional circumstances for doing so; such as new evidence becoming available that the parties could not have produced before.

- 2.4 Parts of the pre-hearing process will be able to be carried out in writing. However, a pre meeting of the Hearings Sub Committee may be necessary to deal with any preliminary matters. The aim of the pre-hearing process is to:
- set the date, time and place for the hearing;
  - summarise the allegation;
  - outline the main facts of the case that are agreed;
  - outline the main facts which are not agreed;
  - note whether the subject member or investigating officer will go to the hearing or be represented at the hearing;
  - list those witnesses, if any, who will be asked to give evidence, subject to the power of the standards committee to make a ruling on this at the hearing;
  - outline the proposed procedure for the hearing.

- 2.5 It is recommended that the Monitoring Officer should liaise with the Hearings Sub Committee and the parties to make sure that matters which can be dealt with in any prehearing process are done so. These may vary from case to case.

### 3.0 The process at a hearing

- 3.1 Standards for England have issued the following guidance about holding hearings:

*"A hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.*

*The Committee should work at all times in a demonstrably fair independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings.*

*The standards committee should bear in mind the need to maintain public confidence in the council's ethical standards. This requires that the standards committee's decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the council and the public. For the subject member, an adverse decision by the committee can result in censure or in suspension for up to six months."*

### **3.2 Representatives**

The subject member may choose to be represented if they wish. If the subject member concerned wants to have a non legal representative, the subject member must obtain the consent of the standards committee.

The standards committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

### **3.3 Evidence**

The Hearings Sub Committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned. It can allow witnesses to be questioned and cross-examined by the subject member, the monitoring officer, the ethical standards officer or their representative. Alternatively, it can ask that these questions be directed through the chair. It can also question witnesses directly.

### **3.4 Witnesses**

Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. The subject member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing.

### **3.5 The Process for the Hearing**

The process recommended by Standards for England is a three stage process. At stage one the Hearings Sub Committee would hear any evidence and representations about any factual disputes before retiring to make a decision about the facts of the case which the parties would be told. The second stage would be to listen to any representations about whether there has been a breach of the Members' Code of Conduct based on those facts, before retiring to form a view on that issue. Finally if there has been a breach of the Code the Committee will listen to any representations about what sanction is appropriate before retiring to decide this. A draft procedure based on this model is attached as Appendix One to this report and it is recommended that the Standards Committee adopt this for use by any Hearings Sub Committee.

## **4 Sanctions**

The maximum sanction the standards committee can impose is six months suspension, or partial suspension from office. Guidance from Standards for England on considering sanctions is attached as Appendix Two.