
Basic procedure

- Pre-hearing process in which Member submits response and directions may be issued by Chair

At hearing:

- Investigating Officer presents report, calls witnesses to support his/her case makes representations
- Member has opportunity to question each witness
- Member then:
 - Gives his/her evidence
 - Calls any witnesses to support his/her case
 - Makes any representations
- Sub-Committee receives any advice from the Independent Person

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- Sub-Committee then deliberates on whether Member failed to comply with Code
 - Chair announces decision on that issue

If no failure to comply with Code...

- complaint is dismissed

If failure to comply with Code...

- Member is given the opportunity to make representations on sanction
- Sub-Committee receives any advice from the Independent person
- Sub-Committee then deliberates on sanction
- Chair announces decision on sanction

(5) After the hearing: Making a decision

Stage 1: Make findings of fact

Sub-Committee first needs to decide what it considers that the evidence reveals Member did

- Facts may be largely or wholly agreed
- If not, what is in dispute?
 - Will be assisted if Member and Investigating Officer have agreed a list of agreed and disputed facts
 - Otherwise, will have to work this out from the parties' submissions and the evidence
- Only need to resolve factual disputes on relevant matters
 - Although parties may differ over what they consider to be relevant

- Apply the civil standard of proof – balance of probabilities
 - In the light of the evidence is it more likely than not that X happened
 - Do not need to be sure
- Have reasons for your conclusions on main disputed areas of fact
- Possible that both parties are “half right”

Stage 2: Was the Member's conduct a failure to comply with the Code?

- Identify the provisions of the Code that are alleged not to have been complied with
- Need to consider separately: (a) *each* alleged piece of conduct; and (b) *each* provision of the Code alleged not to have been complied with in respect of each piece of conduct
- In the light of what you have found happened at Stage 1, consider whether that amounts failure to comply with the relevant provision(s) of the Code.
 - May be the Member accepts that if he did X (which he denies) that would be failure to comply with the Code
 - Conversely, Member may accept he did X but deny it is failure to comply with the Code
 - You will need to consider any arguments put forward on either side

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- Need to have reasons for your conclusion on whether conduct found does or does not amount to failure to comply with the Code

Complicating scenarios:

- Factual finding falls short of what is alleged by the Investigating Officer, but arguably still amounts to a failure to comply with the Code?
- Sub-Committee considers that conduct found is a failure to comply with other or additional provisions of the Code

Safest to put these scenarios to the parties for their comment either:

- If these possibilities are anticipated – at the hearing
- If not, consider adjourning deliberation and briefly re-convening the hearing

Stage 3: Sanction

This stage only arises if there is a finding of failure to comply with the Code.

Need to consider among other things:

- Seriousness of failure to comply found
- Public interest in maintenance of standards
- Whether the failure to comply has had a particular impact on an individual/individuals
- Any mitigation on behalf of Member
- Any "*insight*" shown my Member
- How sanction might reduce risk of similar failures in future

Available sanctions:

- Recommendation to Group Leader that Member be removed from Committees/Sub-Committees
- Recommend to Leader of Council Member be removed from Cabinet or removed from particular portfolio
- Instruct Monitoring Officer to arrange training for Member
- Recommend to Council to remove Member from outside appointments
- Withdraw facilities from Member, e.g. computer, email, etc.
- Exclude Member from Council offices or other premises (NB must not stop Member attending Council, Committees, Sub-Committees)

Sanction should be "*appropriate, reasonable and proportionate to the particular conduct*" (§9)

- Tailor the sanction