



Devon & Cornwall  
Police Authority

# Standards Committee Hearing Procedure



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## Notes

Throughout this document italics are used to indicate extracts and quotations from other documents.

## **Standards Committee Hearing Procedure**

### **Composition of the Standards Committee when Conducting a Hearing**

*“When it is determining a case, the Standards Committee should be recognised as truly fair and politically unbiased, so that members of the public and Members of the Authority have confidence in its procedures and findings.”* (p7, Standards Board for England “Standards Committee determinations Guidance for monitoring officers and Standards Committees.)

The types of issue that are likely to involve the Standards Committee in a hearing are

- Matters that are of an entirely local nature and do not affect broader national issues; and
- Matters that do not appear to need the heavier penalties available to the Adjudication Panel for England.

A Standards Committee may delegate determination of a case to a sub-committee (Local Government Act 2003 s113). For the purposes of this procedure the sub-committee will be known as the Hearing Panel

The Standards Board for England *“... recommend that a small number of Members (three or five) take part in the determination as it is fairer and more efficient to hold a hearing before a small group.”*

The minimum number of members needed to make a valid decision is 3 and at least one of the members must be an independent member appointed to the Standards Committee.

In order to meet the requirements outlined above, the Hearing Panel will comprise a minimum of 3 members drawn from the Standards Committee including one of the independent members appointed to the standards committee and one person who is from the same membership group (councillor, independent member of the authority or lay justice) as the person about whom the allegation is made. In determining the composition of the Hearing Panel the Monitoring Officer in consultation with the Chairman of the Standards Committee will take into account, where appropriate, issues relating to the political persuasion of the member against whom the allegation has been made and also any geographic relevance.

*The Hearing Panel should be chaired by one of the independent members appointed to the Standards Committee. (“to encourage confidence and remove any perception of political interference, we recommend that one of the independent members of the standards committee chairs the hearing.”* (p8, Standards Board for England “Standards Committee determinations Guidance for monitoring officers and Standards Committees.)

### **Scheduling the Hearing**

The Hearing Panel must meet in relation to an allegation within three months of the Monitoring Officer receiving the Ethical Standards Officer’s or the Investigating Officer’s report. If the three month time limit is not adhered to the Standards Committee will be failing in its legal duty and may face judicial review proceedings.

## Role of the Monitoring Officer

This section is reproduced entirely from Standards Board for England “Standards Committee determinations Guidance for monitoring officers and Standards Committees” pp19-20

*“Monitoring officers need to be aware of the potential conflicts involved in advising the Standards Committee and advising members*

### **Advising the Standards Committee**

*It is important that Standards Committees receive high quality, independent advice. For this reason we recommend that a Monitoring Officer should be the main advisor to the Standards Committee, unless they have an interest in the matter that would prevent them from performing this role independently. If this situation arises, a Monitoring Officer should arrange for another appropriately qualified officer to advise the Standards Committee.*

*In advising the Standards Committee, the Monitoring Officer or other legal advisor’s role is to:*

- *Make sure that members of the standards committee understand their powers and procedures;*
- *Make sure that the determination procedure is fair and will allow the allegation to be dealt with as efficiently and effectively as possible;*
- *Make sure that the member who the allegation has been made about understands the procedures the Standards Committee will follow;*
- *Provide advice to the Standards Committee during the hearing and their deliberations; and*
- *Help the Standards Committee produce a written decision and a summary of that decision.*

### **Advising members**

*Monitoring officers play an important role in advising their members on a day-to-day basis. When performing this role monitoring officers need to be aware of the potential conflicts of interest that can arise, as these conflicts could prevent them from advising the Standards Committee at a later stage. However, conflicts of interest are not likely to arise simply from informal discussions between members and monitoring officers.*

*We recommend that monitoring officers consider options for reducing the likelihood of such conflicts, including:*

- *Arranging for another officer to advise members; or*
- *Continuing to advise members, identifying possible scenarios that may lead to future conflicts, and reassuring themselves that if their advice could be material to an investigation, they have another appropriately experienced officer who is prepared to support the Standards Committee in its hearings and deliberations.*

*Smaller authorities in particular may find it useful to make arrangements with neighbouring authorities to make sure that when a conflict arises, an appropriately experienced officer is available to advise the Standards Committee.”*

The Authority’s Monitoring Officer is the Chief Executive. In such a small organisation as the Police Authority it will be necessary to work with local authorities and public organisations who maintain Standards Committees in Devon, Cornwall and the Isles of Scilly and other Police Authorities, throughout the region and possibly the country, to ensure that appropriately experienced officers are available either to conduct investigations or advise the Standards Committee.

## The Pre-Hearing Process

The pre hearing process will only deal with procedural issues.

The pre hearing process should be used to:

- Identify whether the Member about whom the allegation has been made disagrees with any of the findings of fact from the Ethical Standards Officer / Investigating Officer's report;
- Decide whether or not those disagreements are significant to the hearing;
- Decide whether or not to hear evidence about those disagreements during the hearing;
- Decide whether or not there are any parts of the hearing that should be held in private; and
- Decide whether or not any parts of the investigative report or other documents should be withheld from the public.

The pre-hearing process will usually be carried out in writing (this includes postal correspondence, fax and email) although occasionally a face-to face meeting between the Chair, the people involved and their representatives may be appropriate.

### Step 1

- (A) The Officer providing the administrative support to the Hearing Panel (the Administrator) following consultation with the Chair of the Standards Committee will ascertain the members of the Hearing Panel.
- (B) The Administrator following consultation with the Chair of the Hearing Panel will ensure that the person who submitted the original allegation and any other relevant Standards Committees and Authorities are kept informed of the hearing progress, arrangements and outcome.
- (C) The Administrator, following consultation with the Chair of the Hearing Panel will write to the Member concerned to propose a date for the hearing, outline the hearing procedure and the Member's rights.

Enclosed with the letter **must** be:

- a copy of the Ethical Standards Officer / Investigating Officer's report
- details of the Member's rights and responsibilities

The letter should ask for the details listed below to be made in a written response from the Member within a set time; it should be suggested that the Member could provide all the required responses by completing the relevant forms.

- There is any disagreement with any of findings of fact contained in the investigative report and the reason for the disagreement; (Form A)
- Whether or not the Member intends to be represented / accompanied at the hearing and by whom; (Form D) It should be pointed out that the Hearing Panel may refuse permission for Members to be represented by people who are directly involved in the matter being determined.
- Whether or not the Member wishes to give evidence to the Hearing Panel either orally or in writing; (Form B)
- Whether or not the Member wishes to call relevant witnesses to give evidence to the Hearing Panel and give the names and relevance of the persons named;(Form E)
- If the Member feels any part of the hearing should be held in private and why;(Form D)
- If the Member feels any part of the investigative report or any other relevant document should be withheld from the public;(Form D)
- The Member should confirm that they can attend the hearing. (Form D)

Appendices 1, 2, 3 and 4(Forms A ,B, C and D) should be included with the letter for the Member's use.

(B) The Administrator following consultation with the Chair of the Hearing Panel will write to the Ethical Standards Officer / Investigating Officer concerned to give the proposed date for the hearing. The letter should ask for the details below to be given in a written response from the officer within a set time:

- Whether or not the officer wants to attend the meeting; (Form D)
- Whether or not the officer wishes to call relevant witnesses to give evidence to the hearing Panel and give the names and relevance of the persons named; (Form E)
- If the officer feels any part of the hearing should be held in private and why; (Form D)
- If the officer feels any part of the investigative report or any other relevant document should be withheld from the public; (Form D)

### **Step 2**

When the responses are received from both the Member and the Ethical Standards Officer / Investigating Officer the Administrator will consult with the Chair of the Hearing Panel to agree if they wish to invite any other witnesses to attend the hearing. (Other than those witnesses already notified by the Member and the Ethical Standards Officer / Investigating Officer). The Hearing Panel can request witnesses to be present but it cannot compel them to appear or give evidence.

### **Step 3**

The meeting to

At least 2 weeks before the date of the hearing, the Administrator will write on behalf of the Hearing Panel Chair, (following consultation with the Committee's legal advisor where appropriate) to everyone involved i.e. members of the committee the Member against whom the allegation has been made, the Ethical Standards Officer/Investigating Officer, witnesses and the complainant.

The letter must include a pre hearing process summary which contains the following information:

- The name of the authority
- The name of the Member about whom the allegation has been made;
- The name of the person making the allegation (unless there are good reasons for the information being confidential)
- The case reference numbers of the Authority and the Standards Board for England
- The names of the Standards Committee members who will be present at the hearing and the name of the individual who will be chairing the hearing
- The name of the Monitoring Officer
- The name of the Ethical Standards Officer / Investigating Officer
- The name of the person providing the administrative support to the Standards Committee
- The date the pre-hearing process summary was produced
- The date, time and place for the hearing
- A summary of the allegation
- The relevant sections of the Code of Conduct
- The main facts of the case that are agreed
- The main facts of the case that are not agreed
- A list of who will be attending the meeting
- Outline of the hearing procedure
- Which parts of the meeting all parties have suggested be held in closed session and why
- Which documents it has been suggested should be withheld from the public and why.

### **Step 4**

The Administrator should consult with the Chair of the Hearing Panel regarding the administrative arrangements.

- Room layout – seats for those involved, where will the press and public be seated
- Refreshment breaks
- “waiting rooms” – rooms for witnesses, panel members etc
- media strategy - will there be a press briefing (s), who may talk to the press, drafting a press release – who will authorise it and to whom should it be sent? Should information be posted on the Authority’s website?
- How will Members of the Authority and staff be made aware of the hearing outcome?

The Hearing Panel meeting must be treated in the same way as any other Committee meeting with an agenda published within the relevant time limits and minutes taken at the meeting. The reports used by the meeting and the minutes should be available for public inspection for six years after the hearing.

## The Hearing Procedure

This procedure is taken from the Standards Board for England “Standards Committee Determinations Guidance for monitoring officers and Standards Committees” and are based a model developed by Peter Keith-Lucas of Wragge and Co Solicitors. Adaptations have been made to suit the requirements of Devon and Cornwall Police Authority.

### Interpretation

- ‘Member’ means the member of the authority who is the subject of the allegation being considered by the Hearing Panel , unless stated otherwise. It also includes the member’s nominated representative.
- ‘Investigator’ means the Ethical Standards Officer (ESO) who referred the report to the Authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigator mean the Monitoring Officer or other investigating officer, and his or her nominated representative.
- ‘Legal Advisor’ means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, or any other person appointed for this purpose.
- ‘Authority’ means the Devon and Cornwall Police Authority

### General Information

1. Representation. The Member may be represented or accompanied during the hearing by an appropriate person as notified during the pre-hearing process. The Member is responsible for meeting any costs involved in their own representation.
2. Legal advice. The committee may take legal advice from its legal advisor at any time during the hearing or whilst the outcome is being discussed and considered. The substance of any legal advice given to the committee should be shared with the Member and the Investigator (or their representatives) if they are present.
3. The hearing should be held in public and the documents submitted for consideration made publicly available, except where the pre hearing process has identified areas that should be held in private or discussions at the hearing develop in such a way that legal advice needs to be taken.  
*“There are two circumstances in which hearings (or parts of hearings) can or should be held in private.*
  1. *a hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.*
  2. *The law also gives the Standards Committee the power to hold a private meeting to prevent ‘exempt information’ being revealed to the public. The categories of ‘exempt information’ are those set out in Schedule 12 to the Local Government Act 1972 (see Appendix 6). However the regulations (Statutory Instrument 2004 No 2617) also provide for four other categories of ‘exempt information’.*
    - a. *Information relating to the personal circumstances of any person*
    - b. *Information which must be kept confidential, for example under a contract.*

- c. *Information relating to national security*
- d. *The deliberations of the Standards Committee when hearing matters referred by an ESO*" (p14 Standards Board for England "Standards Committee determinations, Guidance for monitoring officers and Standards Committees.)

4. Sufficient time must be planned for the hearing and if possible it should be concluded on one day and if that is not possible the hearing should reconvene at the earliest possible opportunity – preferably the next consecutive day. For this reason it is best to avoid scheduling a hearing for a Friday.

### **The Hearing Procedure**

The hearing process is essentially in 3 parts:

- making Findings of Fact
- deciding if the Authority's Code of Conduct has been breached;
- deciding on the imposition of any penalty and making any recommendations to the Authority.

The outline procedure is as follows:

1. The Chair introduces everyone present who will be participating in the meeting.
2. The Chair will outline any relevant 'housekeeping' arrangements.
3. The Chair will explain how the hearing will operate.
4. At any time throughout the hearing process, panel members (through the Chair) may question any of the people involved or any of the witnesses.
5. Any issues or disagreements regarding procedural issues that have not been resolved during the pre-hearing process should be discussed and a way forward agreed.
6. The Panel should then consider whether there are any significant disagreements about the facts contained in the Investigator's report as identified during the pre hearing process. If there is disagreement:
  - the Investigator should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Panel's permission, the Investigator may call any necessary supporting witnesses to give evidence as notified during the pre-hearing process. If there is disagreement with most of the facts it may make sense for the Investigator to start by making representations on all the relevant facts instead of discussing each fact individually.
  - The Member may be given the opportunity to challenge the information put forward by the Investigator and the witnesses.
  - The Member should 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 supporting witnesses to give evidence as notified during the pre-hearing process.
  - The Investigator may be given the opportunity to challenge the information put forward by the Member and the witnesses.
7. If the Member disagrees with any relevant fact in the Investigator's report, without having identified and given prior notice of the disagreement during the pre hearing process he or she must give the committee good reasons for not mentioning it before the hearing. If the Investigator is not present, the committee will consider whether or not it would be in the public interest to continue in his/her

absence. After considering the Member's explanation for not raising the issue at an earlier stage, the committee may then:

- a) continue with the hearing, relying on the information in the Investigator's report;
- b) allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses as necessary; or
- c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already.

8. When the Member and the Investigator have both been given the opportunity to state their case and call their witnesses and the committee have completed their questioning, the Panel will consider the representations and the evidence in private.
9. The Panel will return and the Chair will announce the Panel's findings of fact.
10. Having decided the findings of fact, the Panel then needs to consider whether or not, based the facts it has found, the Member has failed to follow the Authority's Code of Conduct.
  - The Member should be invited to give relevant reasons why the committee should not decide that he or she has failed to follow the Authority's Code of Conduct;
  - The Panel should then consider any oral or written representations from the Investigator.
  - The Member should be invited to make any final relevant points.
11. When the Member and the Investigator have both been given the opportunity to state their case the committee have completed their questioning, the committee will consider the representations the in private.
12. The Panel will return and the Chair will announce the Panel's decision as to whether or not the Member has failed to follow the Code of Conduct.
13. A) If the Panel decides that the Member **has not failed** to follow the Authority's Code of Conduct, the Panel can move on to consider whether it should make any representations to the Authority – see point 17 below.  
  
B) If the Panel decides that the Member **has failed** to follow the Authority's Code of Conduct, it will consider any oral or written representations from the Investigator and the Member as to:
  - a) whether or not the committee should set a penalty; and
  - b) what form any penalty should take.The Panel may question the Investigator and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
14. When the Member and the Investigator have both been given the opportunity to make their representations and the Panel have completed their questioning, the Panel will consider the representations in private.
15. When deciding a penalty the Hearing Panel should make sure that it is reasonable and in proportion to the Member's behaviour. Before deciding what penalty to set, the Hearing Panel should consider the following questions, along with any other relevant circumstances.
  - What was the Member's intention? Did the Member know that he or she was failing to follow the Code of Conduct?
  - Did the Member get advice from officers before the incident? Was that advice acted on in good faith?

- Has there been a breach of trust?
- Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
- What was the result of failing to follow the Authority's Code of Conduct?
- How serious was the incident?
- Does the Member accept he or she was at fault?
- Did the Member apologise to the relevant people?
- Has the Member previously been warned or reprimanded for similar misconduct? Has the Member failed to follow the Code of Conduct before?
- Is the Member likely to do the same thing again?

So, for example, if a Member has repeatedly or blatantly misused the Authority's information technology resources, the Standards Committee may consider withdrawing those resources from the Member.

Suspension may be appropriate for more serious cases, such as those involving:

- Bullying officers
- Trying to gain an advantage or disadvantage for themselves or others; or
- Dishonesty or breaches of trust.

Penalties involving restricting access to an authority's premises or equipment should not unnecessarily restrict a Member's ability to carry out his or her responsibilities as a Member.

There may be other factors, specific to the local environment, that the Hearing Panel may also consider relevant when deciding what penalty to set.

When deciding on an appropriate penalty, the Hearing Panel may want to consider decisions made by other Standards Committees and case tribunals drawn from The Adjudication Panel for England that deal with similar types of cases. To help Standards Committees, appropriate summaries of Standards Committee decisions are posted on the Standards Board website

[www.standardsboard.co.uk](http://www.standardsboard.co.uk)

16. The penalties that the Hearing Panel can impose are set out in the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 - Statutory Instrument 2004 No 2617 , The penalties are reproduced below:

- (i) censure of the member;
- (ii) restriction for a period up to a maximum of three months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that any such restrictions imposed upon the member –
  - (aa) are reasonable and proportionate to the nature of the breach; and
  - (bb) do not unduly restrict the member's ability to perform his functions as a member;
- (iii) partial suspension of that member for a period up to a maximum of three months; (see section 83 (7), (9) and 9100 of the Local Government Act 2000 for the interpretation of partial suspension.)
- (iv) suspension of that member for a period up to a maximum of three months; (see section 83 (9) and (10) of the Local Government Act 2000 for the interpretation of suspension.)

- (v) a requirement that that member submit a written apology in a form specified by the standards committee
- (vi) a requirement that that member undertake training as specified by the standards committee;
- (vii) a requirement that that member undertake conciliation as specified by the standards committee;
- (viii) partial suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the standards committee;
- (ix) partial suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the standards committee may specify;
- (x) suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the standards committee;
- (xi) suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the standards committee may specify;

A standards committee may direct that a sanction imposed under any of sub paragraphs (ii) to (xi) shall commence on such date, within a period of six months after the imposition of that sanction, as the committee may specify in their direction.

17. The Hearing Panel will return and the Chair will announce the Panel's decision.

18. After considering any oral or written representations from the investigate the Panel will consider whether or not it should make any recommendations to the Authority, with a view to promoting high standards of conduct amongst members.

19. On the day that the Panel announces its decision a short written decision will also be provided. A full written decision will need to be issued shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

## The Written Decision

1. The full written decision should be compiled within 10 working days of the meeting
2. The full written decision should be sent to:
  - the Member who is the subject of the finding;
  - The Ethical Standards Officer / Investigating Officer
  - The Standards Committees of any other authorities concerned;
  - The person who made the original allegation
3. The written decision will follow the Standards Board model shown at Appendix 7  
The front cover should include:
  - The name of the authority;
  - The name of the allegation about whom the allegation has been made
  - The name of the person who made the original allegation (unless there are good reasons for keeping their identity confidential);
  - Case reference numbers of the principal authority and the Standards Board for England;
  - The name of the Standards Committee Member who chaired the hearing;
  - The names of the Standards Committee Members who participated in the hearing;
  - The name of the Monitoring Officer;
  - The name of the Ethical Standards Officer who referred the matter or, the name of the Investigating Officer;
  - The name of the Administrator;
  - The date of the hearing;
  - The date of the report;

The main body of the report should include:

- A summary of the allegation;
  - The relevant section(s) of the Authority's Code of Conduct;
  - A summary of the evidence considered and the representations made; the findings of fact, including the reasons for them;
  - The finding as to whether or not the Member failed to follow the Authority's Code of Conduct; including the reasons for that finding;
  - The penalties applied, if any, including the reasons for any penalties; and
  - the right to appeal, including how the appeal should be made and to whom.
4. **(A)** If the Hearing Panel found that a Member failed to follow the Authority's Code of Conduct a summary of the decision and the reasons for the decision must be published in one or more newspapers that are independent of the Authority and circulate with the area covered by the Devon and Cornwall Police Authority
    - (a) If the Hearing Panel found that a Member failed to follow the Authority's Code of Conduct but that no action is needed, the published summary must say that the Member failed to follow the Code, outline what happened and give reasons for the Hearing Panel's decision not to take any action.
    - (b) If the Hearing Panel found that a Member failed to follow the Authority's Code of Conduct at a penalty was set, the published summary must say that the Member failed to follow the Authority's Code of Conduct, outline what happened, explain what penalty has been set and give reasons for the decision made by the Hearing Panel

**(B)** If the Hearing Panel found that a Member did not fail to follow the Authority's Code of Conduct the published summary must say this, and give the reasons for this finding. However, such a notice will not be published if the Member concerned so requests (Statutory Instrument 2004 No 2617)

### **Appeals against the findings of the Hearing Panel**

The Member who is the subject of a Hearing Panel finding may apply in writing to the President of the Adjudication Panel for England for permission to appeal against that finding. The President must receive the Member's written application within 21 days of the Member receiving the notice of the Hearing Panel's decision.