



**MILTON KEYNES
COUNCIL**

STANDARDS SUB- COMMITTEE

14 SEPTEMBER 2006

3.30 PM

**ROOM 4
CIVIC OFFICES,
CENTRAL MILTON KEYNES**

A G E N D A

Mr C Fogden (Chair)
Parish Councillor A Richards and Ms E Watson

If you have any enquiries about this agenda please contact: Lesley Sung (Senior Committee Manager) - Tel: (01908) 252325 e-mail: lesley.sung@milton-keynes.gov.uk

AGENDA

1. Apologies for Absence

2. Disclosure of Interests

Members to disclose any interests in the business to be transacted.

3. Introductions

- (a) The Chair to introduce Sub-Committee Members and to invite other participants at the Hearing to introduce themselves.
- (b) The Chair to outline the procedure as set out in the agenda and confirm that it is understood by all those present.

4. Exclusion of the Public and Press

To consider representations from the Ethical Standards Officer (or his or her representative) and/or the Member as to reasons why the Hearing should exclude the public and the press.

The Hearing will normally be held in public apart from the following two situations:

- Where 'confidential information' is to be revealed, the Hearing Panel must hold such parts of a meeting in private. Confidential information is information provided by a government department under the condition that it must not be revealed, and information that cannot be revealed under any legislation or by a court order; or
- Where 'exempt information' is to be revealed, the Hearing may exercise its discretion in deciding whether or not to exclude the public. The categories of exempt information are set out in Schedule 12A to the Local Government Act 1972 regulations and referred to in the standard procedure attached.

5. Determination of Allegations Against Parish Councillor Bowen-Williams (Bletchley and Fenny Stratford Town Council)

Please note that, subject to the determination under item 4 (above), full copies of the paperwork will be made available at the meeting.

Monitoring Officer's Report

- (i) To receive the report of the Monitoring Officer, including referring to the following;
 - Report of an investigation under S59 of the Local Government Act 2000 by Steven Kingston, Ethical Standards Officer (Ref. SBE13980.06)
 - Response to that report by the Member concerned

- Response of Ethical Standards Officer to Member's comments
- (ii) To receive the Monitoring Officer's verbal report and advice on any matters which have come to light since the Monitoring Officer's report was prepared.
- (iii) The Sub-Committee to conduct proceeding in accordance with the proposed procedure for this meeting (**Pages 4 to 16**).

6. General Recommendations to Bletchley and Fenny Stratford Town Council

Having sought views on the matter, the Chair to announce if the Committee is to make recommendations to the Parish Council or any other relevant authority in the light of any evidence or submissions that have been made at the Hearing.

PROCEDURE FOR THIS HEARING

The purpose of the hearing is to test the robustness of the report of the investigation produced by the Ethical Standards Officer (ESO), by examining the reasoning contained within the report and the quality of the evidence relied upon, and come to a determination upon the allegations referred.

This calls for an inquisitorial approach by the Hearing, based on seeking information in order to identify potential flaws in the report and to clarify issues.

The Chair will control the procedure and evidence presented at the hearing, including the questioning of any witnesses.

The Member or the ethical standards officer/investigator may be represented or accompanied during the meeting by a solicitor, barrister or, with the permission of the committee, another person. The Hearing may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the ESO (or his or her representative present) and the Member.

The procedure at the hearing will be as set out in the Procedure adopted by the Committee and enclosed as Appendix 1, subject to the Chair being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting.

The Chair is to confirm that the procedure to be followed is understood by all those present.

Pre-Hearing Process

To note the relevant contents the Monitoring Officer's report and to endorse those decisions taken by the Monitoring Officer, some or all of which will have been taken in consultation with the Chair, as part of the pre-hearing process.

Findings of Fact

(i) The Chair to invite submissions on any disagreement as to the facts of the case, in accordance with the procedure referred to at Appendix 1.

(ii) **EXCLUSION OF PUBLIC AND PRESS**

To consider excluding the public and press representatives from the meeting by virtue of Paragraph 7(c) (deliberations of a standards committee or sub-committee) of Part 1 of Schedule 12A of the Local Government Act 1972, in order that the Hearing may consider the following matter:

(iii) To deliberate upon the written and oral representations before the Hearing and to make findings of fact.

THE COMMITTEE TO RETURN INTO PUBLIC SESSION

(iv) The Chair to announce the Findings of Fact.

Determination of any Breach of the Code of Conduct

- (i) The Chair to invite submissions on whether the findings of fact amount to a breach of the Code of Conduct of Bletchley and Fenny Stratford Town Council, in accordance with the procedure referred to at Appendix 1.

(ii) ***EXCLUSION OF PUBLIC AND PRESS***

To consider excluding the public and press representatives from the meeting by virtue of Paragraph 7(c) (deliberations of a standards committee or sub-committee) of Part 1 of Schedule 12A of the Local Government Act 1972, in order that the Hearing may consider the following matter:

- (iii) To deliberate upon the written and oral representations before the Hearing and to make findings as to whether there has been a breach of the Code of Conduct.

THE COMMITTEE TO RETURN INTO PUBLIC SESSION

- (iv) The Chair to announce the determination(s) made as to whether or not the Member has failed to comply with the Code of Conduct

Determination of any Sanctions to be Imposed

- (i) If (iv) above has resulted in a finding that:

- there has been no failure to comply with the Code of Conduct, to continue with the agenda at item 6.
- the Member has failed to comply with the Code of Conduct, the Chair to invite submissions on whether any sanction should be imposed on the Member and, if so, what it should be in accordance with the procedure referred to at Appendix 1.

(ii) ***EXCLUSION OF PUBLIC AND PRESS***

To consider excluding the public and press representatives from the meeting by virtue of Paragraph 7(c) (deliberations of a standards committee or sub-committee) of Part 1 of Schedule 12A of the Local Government Act 1972, in order that the Hearing may consider the following matter:

- (iii) To deliberate upon the written and oral representations before the Hearing and to determine whether any sanction should be imposed on the Member and, if so, what it should be.

THE COMMITTEE TO RETURN INTO PUBLIC SESSION

- (iv) The Chair to announce the sanction, if any, imposed on the Member.

STANDARDS COMMITTEE

PROCEDURE FOR LOCAL STANDARDS HEARINGS

1 Interpretation

- (a) 'Member' means the member of the authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the member's nominated representative.
- (b) '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 cases that have been referred for local investigation, references to the investigator mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).
- (c) "The Case" is the subject case of the investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) "The Committee Support Officer" means an officer of the authority responsible for supporting the Committee's discharge of its functions and recording the decisions of the Committee.
- (f) 'Legal advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) "The Chair" refers to the person presiding at the hearing.

2 Modification of Procedure

The Chair will consider whether or not there are opportunities for conciliation that would be beneficial to the process. The Chair may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

3 Representation

The member may be represented or accompanied during the meeting by a solicitor, barrister or, with the permission of the committee, another person. Note that the member must meet the cost of such representation, unless the Committee has expressly agreed to meet all or any part of that cost.

4 Legal Advice

The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the parties present.

5 Setting the Scene

At the start of the hearing, the Chair will introduce each of the members of the Committee, the member (if present), the investigator (if present) and any other officers present, and will then explain the procedure which the Committee will follow.

6 Preliminary procedural issues

The Committee will then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chair will ask members of the Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the case, and to withdraw from consideration of the case if so required.

(b) Quorum

The Chair will confirm that the Committee is quorate¹

(c) Hearing procedure

The Chair will confirm that all present know the procedure which the Committee will follow in determining the case.

(d) Proceeding in the absence of the member

If the member is not present at the start of the hearing and has not indicated his or her wish for the panel to proceed regardless:

¹ A meeting of the Committee is not quorate unless at least three members of the Committee are present for the duration of the meeting. The three members must include at least one Independent member, unless an Independent member would have been present but was precluded from participating in any of the business of the Committee in consequence of a prejudicial interest under the Council's Code of Conduct.

If the Committee is responsible for Parish Council cases, it must include at least one Parish Council representative amongst its members, but the meeting is not inquorate if the parish representative is unable to attend, even if the meeting is dealing with a Parish Council case.

[The Relevant Authorities (Standards Committee) Regulations 2001, Regulations 3 and 6. SI 2001 No. 2812.]

- (i) the Chair will ask the Monitoring Officer whether the member has indicated his/her intention not to attend the hearing;
 - (ii) the Committee will then consider any reasons which the member has provided for not attending the hearing and will decide whether it is satisfied that there is sufficient reason for such failure to attend;
 - (iii) if the Committee is satisfied with the reasons, it will adjourn the hearing to another date;
 - (iv) if the Committee is not satisfied with the reasons, or if the member has not given any reasons, the Committee will decide whether to consider the case and make a determination in the absence of the member or to adjourn the hearing to another date.
- (e) Exclusion of Press and Public

The Chair will ask the member, the investigator and the legal adviser to the Committee whether they wish to ask the Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chair will ask them to put forward reasons for so doing and ask for responses from the others and the Committee will then determine whether to exclude the press and public from all or any part of the hearing. Notes on the other issues the Committee should take into account are set out at **Schedule 1** below.

7 A failure to comply with the Code of Conduct?

The Committee will then address the issue of whether the member failed to comply with the Code of Conduct in the manner set out in the investigator's report.²

(a) The Pre-Hearing Process Summary

The Chair will ask the legal advisor or the Committee Support Officer to present his/her report, highlighting any points where the member has stated that he/she disagrees with any finding of fact in the investigator's report. The Chair will then ask the member to confirm that this is an accurate summary of the issues and ask the member to identify any

² the Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the investigator's report. It is possible that, in the course of their consideration, the Committee think that the member may have failed to comply with the Code of Conduct in some other manner (for example that the member's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the member's office or authority into disrespect). Note that it would be unfair to proceed to consider that second case at the hearing into the first alleged failure. Where the Committee do think a possible additional or alternative failure has taken place they should refer the second case to the Monitoring Officer with a view to a separate allegation being made to the Standards Board for England.

additional points upon which he/she disagrees with any finding of fact in the investigator's report.

- (i) If the member admits that he/she has failed to comply with the Code of Conduct in the manner described in the investigator's report, the Committee may then make a determination that the member has failed to comply with the Code of Conduct in the manner described in the investigator's report and proceed directly to consider whether any action should be taken (see paragraph 8)
 - (ii) If the member identifies additional points of difference, the Chair will ask the member to explain why he/she did not identify these points as part of the pre-hearing process. He/she will then ask the Investigator (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Committee is not satisfied with the member's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the member to challenge the veracity of those findings of fact which are set out in the investigator's report but which the member did not identify as a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.
- (b) Presenting the investigator's report
- (i) If the investigator is present, the Chair will then ask the investigator to present his/her report and explain why he/she concluded that the member had failed to comply with the Code of Conduct. The investigator may call witnesses as necessary to address any points of difference.
 - (ii) If the investigator is not present, the Committee will only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the investigator. In the absence of the investigator, the Committee will determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chair will draw the witnesses' attention to any relevant section of the investigator's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
 - (iii) No cross-examination will be permitted but, at the conclusion of the investigator's report and/or of the evidence of each witness, the Chair will ask the member if there are any issues upon which the Committee should seek the advice of the investigator or the witness.

- (c) The member's response
 - (i) The Chair will then invite the member to respond to the investigator's report and to call any witnesses as necessary to address any points of difference.
 - (ii) No cross-examination will be permitted but, at the conclusion of the member's evidence and/or of the evidence of each witness, the Chair will ask the investigator if there are any issues upon which the Committee should seek the advice of the member or the witness.

- (d) Witnesses
 - (i) The Committee will be entitled to refuse to hear evidence from the investigator, the member or a witness unless they are satisfied that person is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.
 - (ii) Any member of the Committee may address questions to the investigator, to the member or to any witness.

- (e) Determination as to whether there was a failure to comply with the Code of Conduct.
 - (i) At the conclusion of the member's response, the Chair will ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the code of conduct as set out in the investigator's report.
 - (ii) Unless the Committee merely confirms the member's admission of a failure to comply with the Code of Conduct the Committee will then retire to consider in private whether the member did fail to comply with the Code of Conduct as set out in the investigator's report.
 - (iii) The Committee will take its decision on the balance of probability based on the evidence which it has received at the hearing.
 - (iv) The Committee's function is to make a determination on the case. This it will do by majority voting. It may, at any time, return to the main hearing room in order to seek additional evidence from the investigator, the member or a witness, or to seek the legal advice from or on behalf of the Legal Advisor. If it requires any further information, it may adjourn and instruct an officer or request the member to produce such further evidence to the Committee.
 - (v) At the conclusion of the Committee's consideration, the Committee will consider whether it is minded to make any

recommendations to the authority with a view to promoting high standards of conduct among members.

- (vi) The Committee will then return to the main hearing room and the Chair will state the Committee's principal findings of fact and their determination as to whether the member failed to comply with the Code of Conduct as set out in the investigator's report.

- (f) If the member has not failed to follow the Code of Conduct

If the Committee determines that the member has not failed to follow the Code of Conduct in the manner set out in the investigator's report then the case may end there. However:

- (i) If the Committee thinks that a member has failed to comply with the Code of Conduct but not as a result of the case which the Committee has just determined, the Chair will outline the Committee's concerns and state that the Committee has referred this alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (ii) The Chair should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among members and seek the views of the member, the investigator and the legal advisor before the Committee finalises any such recommendations;

- (g) If the member has failed to follow the Code**

If the Committee determines that the member has failed to comply with the Code of Conduct in the manner set out in the investigator's report, it will then go on to consider whether it should impose any sanction on the member and, if so, what it should be.

8 Action consequent upon a failure to comply with the Code of Conduct

- (a) The Chair will ask the investigator (if present, or otherwise the legal advisor) whether, in his/her opinion, the member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction. The list of available sanctions is set out at **schedule 2** below.
- (b) The Chair will then ask the member to respond to the investigator's advice.
- (c) The Chair will then ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.

- (d) Any member of the Committee may address questions to the investigator or to the member as necessary to enable him/her to take such an informed decision.
- (e) The Chair should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among members and seek the views of the member, the investigator and the legal advisor;
- (f) The Committee will then retire to consider in private whether to impose a sanction, if so what it should be and when it should take effect, and any recommendations which the Committee will make to the authority.
- (g) At the completion of their consideration, the Committee will return and the Chair will state the Committee's decisions together with the principal reasons for those decisions, and any recommendations which the Committee will make to the authority.

9 The close of the hearing

- (a) The Committee will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the member as soon as practicable after the close of the hearing;
- (b) The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Committee Support officer will agree a formal written notice of the Committee's determination and the Monitoring Officer will arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 8 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.
- (d) The member against whom a finding has been made will be informed by the Monitoring Officer of his or her right to apply for permission to appeal to the president of the Adjudication Panel.

Schedule 1

Admission of Press and Public to Standards Committee Hearings

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private.

- 1 At the hearing, the Committee will consider whether or not the public should be excluded from any part of the hearing. If the Committee considers that 'confidential information' is likely to be revealed during the hearing, the Committee must exclude the public by law. 'Confidential information' is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
- 2 The Committee also has the discretion to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are listed in **the Appendix** to this schedule. The committee should take into account Article 6 of the *European Convention on Human Rights* (see below). The Committee also has a duty to act fairly and within the rules of natural justice.
- 3 Article 6 says that the public may be excluded from all or part of the hearing if it is in the interest of:
 - (a) Morals;
 - (b) public order;
 - (c) justice;
 - (d) national security in a democratic society; or
 - (e) protecting young people under 18 and the private lives of anyone involved.
- 4 There should be a public hearing unless the Committee decides that there is a good reason, which falls within one of the five categories above for the public to be excluded.
- 5 Conflicting rights often have to be balanced against each other. The Committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Committee) may interfere with this right unless it is:-
 - (a) in line with the law; and
 - (b) necessary in a democratic society in the interests of:
 - (i) national security;
 - (ii) public safety;
 - (iii) the economic well-being of the country;

- (iv) preventing crime or disorder;
- (v) protecting people's health and morals (which would include protecting standards of behaviour in public life); or
- (vi) protecting people's rights and freedoms.

There is a clear public interest in promoting public confidence in the integrity and honesty of public authorities. Therefore the hearing should be held in public unless the Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

- 6 The Committee must also consider Article 10 of the *European Convention on Human Rights*, which sets out the right for people to 'receive and impart information and ideas without interference by public authority'. Any restrictions on this right must be 'prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.
- 7 In relation to people's rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be 'necessary' if it meets 'a pressing social need', and any restriction on people's rights must be 'proportionate'.
- 8 The Standards Board for England recommends that a Standards Committee should move to a private room when considering its decisions. We do not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

Exempt Information:

Access to information concerning this procedure is governed by the Relevant Authorities (Standards Committee) Regulations (as amended). This applies Schedule 12A of the Local Government Act 1972 to Standards Committees with a number of modifications. These provisions fall under the following descriptions, all of which are subject to the provision that information may only be exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

1. *Information relating to any individual;*
2. Information which is likely to reveal the identity of an individual;
3. Unless that information is required to be registered under:
 - (a) the Companies Act 1985;
 - (b) the Friendly Societies Act 1974;
 - (c) the Friendly Societies Act 1992;
 - (d) the Industrial and Provident Societies Acts 1965 to 1978;
 - (e) the Building Societies Act 1986; or
 - (f) the Charities Act 1993,information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority;
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
6. Information which reveals that the authority proposes:
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime;
- 7(a) Information which is subject to any obligation of confidentiality;
- 7(b) Information which relates in any way to matters concerning national security.;
- 7(c) The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

Schedule 2

Sanctions

The sanctions which are available to the Committee under the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, Regulation 7, are any, or any combination, of the following:

- “(i) censure of that member;
- (ii) restriction for a maximum period 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 such restrictions imposed upon the member –
 - (1) are reasonable and proportionate to the nature of the breach; and
 - (2) do not unreasonably restrict the member’s ability to perform his functions and duties as a member.
- (iii) partial suspension of that member for a maximum period of three months;
- (iv) partial suspension of that member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the standards committee;
- (v) suspension of that member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the Standards Committee.”

Any sanction imposed will start immediately unless the Committee direct (for any sanction other than censure) that it will start on any date specified by the Committee within six months of the date of the hearing.

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Any persons unable to use the stairs will be assisted to the nearest safe refuge. The yellow call point alarm will be sounded to alert the fire service as to your presence.

Mobile Phones

Please ensure that your mobile phone is switched to silent or is switched off completely during the meeting.

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A form is available online at <http://www.mkweb.co.uk/complaints/home.asp> or is obtainable from the Committee Manager at the meeting.