

**Report of:** The Monitoring Officer

**To:** The Standards Committee

**Date:** 7 December 2007

**Item No:** 8

**Title of Report :** CODE OF CONDUCT INVESTIGATIONS –  
SUSPENSION OF MEMBERS - CONSEQUENCES

### Summary and Recommendations

**Purpose of report:** To inform the Committee of the practical implications for Members who have been fully/partially suspended from office for breach of the Members' Code of Conduct.

**Key decision:** No

**Portfolio Holder:** N/A

**Scrutiny Responsibility:** N/A

**Ward(s) affected:** All

#### Report Approved by

**Legal:** Jeremy Thomas, Head of Legal and Democratic Services

**Finance:** Sarah Fogden, Business Manager, Finance and Asset Management

**Policy Framework:** N/A

**Recommendation(s):** That the Committee notes the report.

## **Background**

1. Section 79(4)(a) of the Local Government Act 2000 provides that where a Member has failed to comply with the Members' Code of Conduct, the member may be suspended or partially suspended from being a Member or co-opted Member of the relevant authority.
2. At its last meeting on 7 September 2007 (minute 14(4) refers), the Committee raised a number of questions regarding the implications for Members who have been suspended from office. This report sets out what effect a suspension has on a Member in relation to attending meetings, access to resources and Members' Allowances.

## **Conducting business of the authority**

3. A Member who receives a full suspension must not take part in the formal business of the authority for the duration of the suspension. This means that they must not participate as a Member in any committee or sub-committee of the authority. The Council's procedure rules allow Members to appoint substitutes to attend committees on their behalf. It follows that if a Member is suspended from participating in a committee they are not permitted to appoint a substitute for the duration of the suspension.
4. Fully suspended Members must not undertake any official duties such as attending meetings of full Council in their capacity as a Member, or meeting with officers to conduct council business. However, they can work with officers to ensure that arrangements are made for other Ward Members/neighbouring Ward Members to conduct their constituency work.
5. A Member who is partially suspended is only prevented from carrying out certain official duties to which the suspension relates. For example, a Member may be suspended from acting on a particular committee, fulfilling a role of special responsibility or working with particular officers for a specified period of time.
6. Members who are suspended/partially suspended may attend meetings as members of the public. Under the previous Code of Conduct, the Standards Board for England advised that if a Member had a prejudicial interest in a particular matter, the Member could not attend a meeting where that matter was being discussed, even as a member of the public.
7. It remains unclear what effect the new provisions under paragraph 12(2) of the new Code will have on this guidance. However, it seems likely that a suspended Member with a prejudicial interest in a matter being discussed at a meeting may attend but may not participate to a greater extent than any other member of the public.

## **Use of Council resources**

8. Standards Board Guidance states that Members should only use authority resources in order "to facilitate or be conducive to the discharge of the functions of the authority or office to which a Member has been elected or appointed."
9. Therefore, if a fully suspended Member cannot, for the period of the suspension, conduct the business of the authority, it follows that the member is not permitted to use the authority's resources. Similarly, Members subject to a partial suspension should only have access to resources to enable them to perform the duties that they are permitted to carry out.

## **Members Allowances**

10. The Local Authorities (Members Allowances) Regulations 2003 provide that local authorities may specify in their Members' Allowance Schemes that where a Member is suspended, their basic allowance may also be suspended for the period of the suspension. In the case of a partial suspension, local authorities may provide that a relevant proportion of the allowance may be suspended.
11. Whilst the Regulations leave it to the individual authorities to decide whether allowances should be paid to suspended Members, the Standards Board recommends that allowances should be withheld for the period of suspension.
12. Accordingly, Oxford City Council's Members' Allowance scheme provides that the basic allowance will not be paid to a Member who is suspended and special responsibility allowances will not be paid to Members whilst they are suspended from holding the position of special responsibility.

## **Suspensions that coincide with an election period**

13. In the case of Hathaway v Ethical Standards Officer, the High Court found that case tribunals should consider the impact of electoral cycles where the sanction of disqualification is imposed. However, the fact that the electoral cycle will prevent a person from returning to that office for longer than the period of suspension is not in itself a ground for concluding that the tribunal's decision to impose the sanction was unreasonable.
14. Whilst the Hathaway case looked at disqualification over an electoral period, the principles are the same for suspensions.

## **Section 85, Local Government Act 1972**

15. Section 85 of the Local Government Act 1972 provides that if a Member fails to attend any meeting of the authority for a period of 6 consecutive months for a reason, which has not been approved by the authority, they will cease to be a Member of that authority.
16. Section 85 (3A) provides that any period during which a Member of a local authority is suspended/partially suspended shall not be taken into account when calculating absence for the period of 6 consecutive months referred to above.

## **Conclusion**

17. The Standards Board for England is currently revising its guidance relating to the suspension of Members following the introduction of the new Code of Conduct. Guidance on Standards Committees' responsibilities for assessing allegations and sanctioning breaches of the Code is also expected following the Local Government and Public Involvement in Health Bill, which received Royal Assent on 30 October 2007. Once this guidance is published, it will be circulated to the Committee.

## **Recommendation**

18. That the Standards Committee notes the report.

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**Background papers:** None.