

hearings

Timing of the standards committee hearing

Under Regulation 18 of the regulations, a standards committee must hear a complaint within three months of the date on which the monitoring officer's report was completed. If the investigation was carried out by an ethical standards officer, the standards committee must hear the complaint within three months of the date that the monitoring officer received the ethical standards officer's report.

As with a meeting to consider a monitoring officer or ethical standards officer's report, when the standards committee is convened for a hearing under Regulation 18 it is also subject to Regulation 8(6).

When assessing whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information, monitoring officers similarly need to consider the effect of Regulation 20(2). This allows the subject member to prohibit normal publication of the committee's notice of the finding of no failure to comply with the Code of Conduct.

As before, despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a hearing. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the hearing. In most cases, the public interest in transparent decision-making by the standards committee will outweigh the subject member's interest in

limiting publication of an unproven allegation that has not yet been determined.

In most cases all parties will agree that the hearing should take place in public. It is sensible to seek the views of the relevant parties as early as possible to allow for legal advice to be sought if required.

If the standards committee decides that a hearing is appropriate they should give a copy of the report to:

- the subject member
- the clerk of any relevant town or parish council
- the standards committees of any other authorities concerned

The hearing must take place at least 14 days after the subject member receives a copy of the report from the monitoring officer. However, the hearing can be held sooner than 14 days after the member receives a copy of the report if the subject member agrees.

The standards committee may consider the report in the subject member's absence if the subject member does not go to the hearing. If the standards committee is satisfied with the subject member's reasons for not being able to come to the hearing, it should arrange for the hearing to be held on another date.

If the standards committee does not hear the matter within three months of receiving the completed report, it must ensure that the matter is heard as soon as possible after that.

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Scheduling a hearing

Except in the most complicated cases, standards committees should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

When scheduling hearings, standards committees should bear in mind that late-night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to important matters being forgotten.

The pre-hearing process

The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself.

Other than in very straightforward cases, authorities should use a pre-hearing process to:

- identify whether the subject member disagrees with any of the findings of fact in the investigation report
- identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
- identify whether evidence about those disagreements will need to be heard during the hearing
- decide whether there are any parts of the hearing that are likely to be held in private
- decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material

The pre-hearing process should usually be carried out in writing. However, occasionally a meeting between the standards committee, the relevant parties and their representatives may be necessary. It is important for the monitoring officer advising the standards committee to consider pre-hearing matters carefully.

Some matters in the pre-hearing process may be decided only by the standards committee or consideration and hearing sub-committee (if one is appointed). Therefore, if it is necessary for the standards committee to meet, they will have to do so formally as with any other council committee meeting. However, it is usually more appropriate for the majority of the pre-hearing process to be dealt with by the monitoring officer or other suitable officer.

Key points for the pre-hearing process

The officer providing administrative support to the standards committee should write to the subject member proposing a date for the hearing, and they should do this in consultation with the chair of the standards committee.

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They should also outline the hearing procedure, the member's rights and they should additionally ask for a written response from the subject member within a set time. This is to find out whether the subject member:

- wants to be represented at the hearing by a solicitor, barrister or any other person
- disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements
- wants to give evidence to the standards committee, either verbally or in writing
- wants to call relevant witnesses to give evidence to the standards committee
- wants any part of the hearing to be held in private
- wants any part of the investigation report or other relevant documents to be withheld from the public
- can attend the hearing

It is important for standards committee members involved in the pre-hearing process to bear in mind the distinction between the essential facts of the case and any inferences based on those facts. A critical part of 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.

The standards committee should start this process by requesting that the subject member makes clear precisely what findings of fact in the report it disagrees with and why.

It should invite the monitoring officer or ethical standards officer to comment on the subject member's response within a set time period. This is to ensure that all parties are clear about the remaining factual disputes and can prepare to deal with those issues on the appointed day.

The standards committee should also ask the relevant parties to provide outlines or statements of the evidence their witnesses intend to give. This will allow the standards committee to decide how many witnesses may reasonably be needed and to identify the issues they will be dealing with at the hearing.

It should only allow the relevant parties to raise new disagreements over factual matters in the investigation report at the hearing in exceptional circumstances, such as new evidence becoming available that the parties could not have produced before. The standards committee should make clear to the subject member that unless they comply with the above procedure, it may rule that it will not allow the new evidence to be presented at the hearing.

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Members of the standards committee should consider the evidence provided to them before the hearing to identify any potential conflicts of interest.

In addition they should consider the evidence to identify any connection with the people involved or any other doubts they have over the integrity of the hearing. If they have such concerns, they should seek advice from the monitoring officer as soon as possible. For example, they may know a witness who will be giving controversial evidence or they may have an interest in an important element of the case.

The determinations toolkit features model forms that can help the member respond to the standards committee. It includes a form to identify any findings of fact that the member disagrees with – **Form A**. It also includes a form to outline any further evidence for the standards committee – **Form B**.

The standards committee may also arrange for any other witnesses to be present who they feel may help in determining the case. This may include the complainant. However, the standards committee cannot order witnesses to appear or give evidence.

Pre-hearing process summary

The standards committee's clerk should consult with the committee's legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks before the hearing. This should be done after the standards

committee has received responses from the subject member and from the investigating officer. The pre-hearing process summary should:

- 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

You can find a checklist for this pre-hearing process summary document in the toolkit – **Form F**.

The hearing

Members should bear in mind that a standards committee 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.