



## **Procedural Guidance**

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# **Appeal against the Decision of a Standards Committee**

### **Procedures Relating to Appeals against a Determination by a Local Authority Standards Committee**

**(This note is a guide only to the procedures that will be adopted and may, subject to compliance with the requirements of the relevant legislation, be varied at the discretion of the President of the Adjudication Panel and/or the Chairperson of the relevant appeal tribunal).**

#### **Introduction**

1. The Adjudication Panel for Wales (“the Adjudication Panel”) is an independent body established under Part III of the Local Government Act 2000 (“the 2000 Act”). One of the functions of the Adjudication Panel is to form tribunals to consider appeals against the determinations of local authority standards committees relating to a member’s failure to comply with his/her authority’s code of conduct.
2. Statutory provisions relating to the investigation and determination, by monitoring officers and standards committees, of allegations of breaches of the local government code of conduct are contained in the ‘Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (SI 2001 No. 2281) as amended by The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) Regulations 2016 (SI 2016 No.85 W.39) (“the Regulations”). A local authority member who is found by a Standards Committee, under paragraph 9(1) of the Regulations, to have failed to comply with the code of conduct, may appeal against the determination to the Adjudication Panel for Wales. Under paragraph 8(6) of the Regulations, any period of suspension imposed by a standards committee is held in abeyance pending the outcome of the appeal.
3. Under paragraph 12 of the Regulations, where an appeals tribunal upholds the determination of a standards committee that there has been a breach of the code of conduct, it can either endorse the penalty imposed or refer the matter back to the committee with a recommendation that a different penalty be imposed.

#### **Action Prior to the Hearing**

4. An appeal against the decision of a standards committee must be made by giving written notice within 21 days of receiving notification of the standard committee’s

determination. An appeal that is not made within time will not be accepted. The notice of appeal must specify:

- the grounds for appeal, and
- whether or not the person giving notice of appeal consents to the appeal being conducted by way of written representations.

A form for this purpose is available from the Adjudication Panel web-site (<https://adjudicationpanel.gov.wales>), or by contacting the Adjudication Panel at the address at the end of this guidance. Failure to use the form or to provide all the information requested therein could lead to a delay in processing the appeal.

5. With effect from 1 May 2016, the President of the Adjudication Panel for Wales must give permission for the appeal to be heard by a tribunal. A decision must be made within 21 days of receipt of the Notice whether or not to give permission for the appeal. The legal test is whether or not the appeal has a reasonable prospect of success. It is likely the President will ask for further information before making a decision, such as the monitoring officer's report and the decision of the standards committee. If further information is requested, it must be provided within 14 days of the request. The President will have a further 14 days to decide whether or not to give permission for the appeal from when the further information is received by the Registrar.
6. If the President decides there is no reasonable prospect of success, reasons will be given but the appeal will not proceed. The Registrar to the Adjudication Panel will acknowledge receipt of the appeal and enter particulars of it into the register held for the purpose.
7. If permission is given, the Registrar to the Adjudication Panel will acknowledge receipt of the appeal and enter particulars of it into the register held for the purpose. The acknowledgement will identify a 4-week listing window during which it is intended that the hearing, if any, should take place. At the President of the Adjudication Panel's discretion, further time may be granted for an appellant to provide any clarification required by the Adjudication Panel of the grounds for appeal if not clearly stated at the outset.
8. In order to consider the appeal, additional information to that specified at paragraph 4 above may be required by the appeal tribunal. Where the appellant has not provided the full information requested in the form, he/she will be asked to provide such further information as the Adjudication Panel may require within 14 days.

## **Written Representations**

9. An appeal tribunal will normally be conducted by way of an oral hearing, unless every person who has given notice of appeal consents to it being conducted by way of written representations. An appellant who does not wish to attend or be represented at the hearing may submit written representations to be taken into consideration by the tribunal before it reaches a decision on the appeal. In these circumstances, following its initial consideration of the case papers, the tribunal will send to the member concerned a list of the relevant facts that it will take into account in reaching

its decision. The member will be invited to submit any further written representations in light of the facts identified before the tribunal meets.

### **Directions in Preparation for a Hearing**

10. The tribunal may at any time, on the application of the appellant or of its own motion, give directions to enable the appellant to prepare for the hearing or to assist the tribunal to determine the issues. An application for directions should be made in writing to the Registrar.
11. The tribunal may give directions requiring any person to provide such particulars as may be reasonably required for the determination of the appeal. The tribunal may also give directions requiring any person to provide any document or other material which the tribunal requires and which it is in the power of that person to deliver.

### **Varying or Setting Aside Directions**

12. Where a person to whom a direction (including any summons) is addressed had no opportunity of objecting to the direction, he/she may apply to the tribunal to vary it or set it aside. The tribunal will not take such action without first notifying the person who applied for the direction and considering any representations made by him/her.

### **Calling/Summoning of Witnesses**

13. The tribunal may request any person to attend as a witness at the hearing and to answer any questions or produce any documents or other material in his/her custody or control which relate to any matter in question in the appeal.
14. Unless a person accepts a lesser period, any person required to attend in response to a summons will be given at least 14 days notice of the hearing.
15. No person, other than the appellant, shall be required to attend a hearing or to produce any document in response to a summons, unless the necessary expenses of his/her attendance are paid. Expenses are also paid to those witnesses who attend without a summons.
16. Witnesses can give evidence as to the material facts. These witnesses will be heard during the first stage of the hearing. Separately, witnesses can be called to give evidence about the appellant's good character if the tribunal needs to consider what sanction is appropriate, following a finding that there has been a breach of the code of conduct. Such witnesses will be heard in the third stage of the hearing. The tribunal will also accept references and testimonials at this stage.
17. The tribunal decides which witnesses it wishes to hear and can limit the number of witnesses who are called to evidence. The listing direction prepared by the tribunal will list the witnesses to be heard regarding the material facts. It can also list the witnesses who will give evidence about the appellant's character if the appellant supplies information about such witnesses in APW05 Notice of Appeal.

## **Attendance of the Public Services Ombudsman for Wales**

18. The Ombudsman is entitled to attend, or a tribunal may request (but not require) the Ombudsman to attend, a hearing for the purposes of:
  - Presenting the Ombudsman’s report and/or explaining any of the matters in it; and
  - Otherwise playing such part or assisting the tribunal at the hearing as the tribunal considers appropriate.
19. The Ombudsman does not have to attend a hearing personally, but may delegate his attendance to a member, or members, of his staff utilising powers in the Public Services Ombudsman (Wales) Act 2005. The Ombudsman may also be represented at a hearing by counsel or a solicitor
20. A request by a tribunal for the Ombudsman to attend must not be unreasonably refused and, if such request is refused, the Ombudsman must give reasons in writing.

## **Role of the Ombudsman at a Hearing**

21. It is for the tribunal to determine the role of the Ombudsman at a hearing in light of the circumstances of the case before it. This may include:
  - Making submissions and producing evidence in support of the findings in the report;
  - Responding to submissions or evidence produced by the appellant or his/her representative in preparation for, or at, the hearing;
  - Questioning those appearing before the tribunal at the hearing i.e. the appellant or any witnesses; and
  - Where a breach of the code of conduct is found, drawing to the tribunal’s attention any factors that should be taken into account in reaching its decision on sanction, such as previous breaches or other aggravating factors.

## **Attendance and Role of the Monitoring Officer**

22. An appeal to the Adjudication Panel may stem from an investigation by the Ombudsman or the relevant authority’s monitoring officer. If the latter, the monitoring officer will assume the role described above.
23. If the investigation is conducted by the Ombudsman, the monitoring officer (or a representative) of the relevant authority concerned is anyway entitled to attend a tribunal hearing whether the hearing is held in private or not. In practice, it is intended that the tribunal will request the attendance of the monitoring officer and will afford him/her opportunities to provide any relevant clarification or information to assist the tribunal.

## **Experts**

24. Where the tribunal considers that any question arises on which it would be desirable to have the assistance of an expert, it may make arrangements for a suitably qualified person to enquire into and report on the matter and, if necessary, to attend the hearing and to give evidence.
25. A copy of the expert's report will be supplied to each appellant before the hearing or any resumed hearing.

## **Pre-hearing Review**

26. Where it appears to the tribunal that an appeal would be facilitated by the holding of a pre-hearing review, it may of its own motion or on the application of the appellant, give directions for such a review to be held. The Registrar will give each appellant at least 14 days notice of the time and place of the review.
27. The review will be held in private, unless the tribunal directs otherwise, and any appellant may appear and be represented by any other person.
28. On a review:
  - a. the tribunal, or the Registrar, shall give all such directions as appear to be necessary or desirable to secure the just, expeditious and economical conduct of the appeal;
  - b. the tribunal, or the Registrar, shall endeavour to secure that any accused person makes all such admissions and agreements as ought to be made in relation to the appeal; and
  - c. the tribunal may, if every accused person agrees, determine the appeal on the documents and statements then before it without any further hearing.

Any direction given by the Registrar under a. and b. above will be in accordance with the directions of the tribunal and may be set aside or varied by the tribunal of its own motion or on the application of an appellant.

## **Notice of Place and Time of a Tribunal Hearing**

29. The Registrar will fix the date, time and venue for the hearing and, not less than 21 days before that date, will advise the appellant of the hearing arrangements. It is the Adjudication panel's practice, where possible, to hold tribunal hearings in the area of the authority of which the accused person is a member. This is to facilitate the attendance of members of the public and other interested parties who may wish to observe the proceedings.
30. Included with the notice of the hearing will be:
  - a. information and guidance as to attendance at the hearing of witnesses, the bringing of documents and the right of representation by another person; and

- b. a statement explaining the possible consequences of non-attendance and of the right of any appellant who has delivered a reply but who does not attend and is not represented to make representations in writing.
31. The tribunal may postpone a hearing and the Registrar will give the appellant not less than 7 days notice of such a postponement.
32. The tribunal may from time to time adjourn a hearing and, if the time and place of the reconvened hearing is announced before the adjournment takes place, no further notice shall be required.

### **Public Notice of Hearings**

33. A list of all hearings giving details of the date, time and venue will be available for public inspection at the offices of the Adjudication Panel Support Unit, by arrangement with the Registrar. Details will also be published on the Adjudication Panel's web-site.

### **Determination of an Appeal without a Hearing**

34. If the appellant agrees in writing, the tribunal may determine an appeal, or any particular issue, without a hearing.

### **Hearings to be Public**

35. All hearings by a tribunal will be held in public except where the tribunal considers that publicity would prejudice the interests of justice or threaten the personal safety/security of any parties involved in a case.
36. The tribunal will require convincing evidence of substantial harm to either the individuals involved in the hearing or to the public interest generally before holding a hearing in private. In many cases, the tribunal may be able to devise practical means of protecting sensitive information or vulnerable people by, for example, taking evidence from a vulnerable witness in private or directing the use of pseudonyms.
37. The following persons will be entitled to attend a hearing whether or not it is in private:
- a. the president and members of the Adjudication Panel for Wales (whether or not they constitute the tribunal convened for the hearing);
  - b. the Ombudsman or his/her representative
  - c. the monitoring officer or his/her representative of an authority of which the appellant is a member or co-opted member.
38. The tribunal may permit any other person to attend a hearing, which is held in private.
39. The tribunal can exclude from a hearing, or any part of it, any person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing.

## **Failure of Parties to Attend a Hearing**

40. If an appellant fails to attend or be represented at a hearing of which he/she has been notified, the tribunal may:
  - a. determine the appeal in that person's absence, unless it is satisfied that there is good reason for the absence; or
  - b. adjourn the hearing.
41. Before deciding to determine an appeal in the absence of an appellant, the tribunal will consider any written representations submitted by that person in submitting his/her appeal or in response to the notice of the hearing. For this purpose, any reply shall be treated as a representation in writing.
42. Where an appellant fails to attend a hearing, the tribunal may make an order as to costs and expenses as it thinks fit.

## **Procedure at the Hearing**

43. A tribunal will comprise at least 3 people drawn from the Adjudication Panel. At the beginning of the hearing the Chairperson will explain the order of the proceedings that the tribunal proposes to adopt. The procedure to be followed is at the discretion of the tribunal, which will aim to conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the appeal. The tribunal will, as far as possible, try to avoid formality in its proceedings. Tribunal hearings will be recorded at the tribunal's discretion.
44. The hearing may be conducted in either English or Welsh as directed by the tribunal. The tribunal will take account of and, so far as is reasonably practicable, give effect to any preference stated by an appellant. In either case, an instantaneous translation service will be provided for any person attending and participating at the hearing and who requests it. The tribunal will seek to establish the language preference of each participant prior to the hearing.
45. The appellant will be entitled to give evidence, call witnesses, question any witnesses and address the tribunal both on the evidence and generally on the subject matter of the appeal.
46. The tribunal may limit the number of witnesses called by the appellant where, in the tribunal's opinion, this is conducive to the efficient and judicious hearing of the appeal. The circumstances in which a tribunal may impose such a limitation include, for example, where it appears to the tribunal that such witnesses will not be presenting significant new evidence or facts, or where an excessive number of witnesses are being called by the appellant to give character testimony.
47. Witnesses will not be allowed to sit in the public gallery prior to being called to give evidence by the tribunal. A designated waiting area will be available for witnesses until they are called.

48. Evidence before the tribunal may be given orally or, if the tribunal orders it, by affidavit or written statement. At any stage during the proceedings the tribunal can require the attendance of any person making a written statement.
49. The tribunal can receive evidence of any fact that appears to it to be relevant even though such evidence would be inadmissible in proceedings before a court of law. The tribunal shall not refuse to admit any evidence that is admissible at law and is relevant.
50. The appellant and witnesses may be required to give evidence on oath or affirmation. Witnesses may be released with the agreement of the appellant of his/her representative after giving evidence.
51. An appeal hearing may have up to 3 possible stages depending on whether the appellant disputes:
  - any of the facts that led to the finding of the standards committee that there was a breach of the code of conduct;
  - that the facts as determined by the standards committee justify a finding that there was a breach of the code of conduct;
  - the sanction applied by the standards committee following a breach;
  - two or more of the above.

Subject to the above, the usual procedure to be followed is set out in the following paragraphs, but the tribunal is free to depart from that procedure where it considers it appropriate to do so. For example, where an appellant does not dispute that there has been a breach, but appeals against the sanction imposed, stages 1 and 2 of the following procedure are not relevant.

## **Preliminary Issues**

52. After the Chairperson has explained the order of proceedings, the tribunal will first seek to resolve any procedural issues or disputes arising from any "Listing Direction" that may have been given.

## **Stage 1 of the Hearing – Findings of Fact**

53. The tribunal will next seek to resolve any remaining disputes of fact that have been identified in the pre-hearing procedures.
54. Where several matters of fact are in dispute, the tribunal may consider that it is more convenient to consider all such matters together rather than for the hearing to proceed on a fact-by-fact basis.
55. The tribunal may, at its discretion, adjourn to deliberate on the submissions and evidence presented, after which it will announce its findings of fact.

## **Stage 2 of the Hearing - Determination**

56. The tribunal will next seek to establish whether or not the facts do lead to the conclusion that there has been a failure to comply with the relevant authority's code of conduct, if that has not been admitted by the appellant.
57. The tribunal may, at its discretion, adjourn at this stage to consider whether there has been a failure to comply with the relevant authority's code of conduct.
58. If the tribunal finds that there has not been a failure to comply with the code of conduct, it must overturn the determination of the relevant authority's standards committee.

## **Stage 3 of the Hearing – Action to be Taken**

59. If the tribunal finds that a failure to comply with the code of conduct has occurred, the Chairperson will enquire of the tribunal clerk whether anything is known of previous breaches by the member concerned. The Ombudsman or monitoring officer (as appropriate) will be invited to draw to the tribunal's attention any relevant factors that should be taken into account. The appellant (or his/her representative) will be invited to make submissions on what action the tribunal should take, including any mitigating factors. This may take place at Stage 2 if the tribunal has not already adjourned to consider whether or not there has been a failure to comply with the code of conduct.
60. The tribunal will then adjourn to consider whether a failure to comply with the relevant authority's code of conduct warrants a censure, or the suspension or partial suspension of the member, before announcing its decision. Where the tribunal decides that a sanction is appropriate, it may:
  - a. endorse any penalty imposed by the relevant authority's standards committee; or
  - b. refer the matter back to the standards committee with a recommendation that a different penalty be imposed. The recommendation is not binding upon the committee.
61. A recommendation by an appeals tribunal must reflect the sanctions available to the standards committee under paragraph 9(1) of the Regulations, that is:
  - that no action needs to be taken in respect of the failure;
  - the member should be censured; or
  - the member should be suspended or partially suspended from being a member or co-opted member of the relevant authority concerned for a period not exceeding six months.

## **Decision of the Tribunal**

62. The decision of a tribunal may be taken by a majority, with the Chairperson having a casting vote should that be needed. The decision will record whether it was unanimous or taken by a majority.

63. The decision may be given orally at the end of the hearing or reserved. In any event, whether there has been a hearing or not, the decision will be recorded in a document recording the tribunal's decision and setting out the reasons for its decision. This document will be signed and dated by the tribunal chairperson. Every document will, as soon as possible, be entered in the register held for the purpose.
64. Where a document refers to evidence that has been heard in private, only a summary of the document will be entered in the register, with such material omitted as the tribunal may direct.
65. The decision of the tribunal will be notified to the standards committee of the relevant authority, the person who is the subject of the notice, and the Ombudsman. The tribunal will also take reasonable steps to notify any person who made any allegation that gave rise to the investigation.
66. The Adjudication Panel will publish the appeal tribunal's decision on its web-site.

### **Action to be taken by a Standards Committee following an Appeals Tribunal**

67. Within 14 days of the later of:
  - (a) notification of the appeal tribunal's determination to:
    - (i) endorse any penalty imposed by the standards committee; or
    - (ii) to overturn the determination of the standards committee; or
  - (b) a further determination by the standards committee following a recommendation from the appeals tribunal that a different sanction should be imposed,
68. The standards committee must produce a report on the outcome of the investigation and send a copy to the Ombudsman, the monitoring officer of the relevant authority concerned, any person subject to the investigation and the person who made the original allegation. After making a further determination described in paragraph 67(b) above, the standards committee must also notify the President of the Adjudication Panel.
69. On receipt of the standards committee's report, the monitoring officer of the relevant authority shall:
  - a. for a period of 21 days publish the report on the relevant authority's web-site and make copies available for inspection by members of the public, without charge at all reasonable hours at one or more of the authority's offices;
  - b. supply a copy of the report to any person on request if he/she pays such charge as the relevant authority may reasonably require; and
  - c. not later than 7 days after receipt of the report from the standards committee, publish a notice, in one or more newspapers circulating in the area of the relevant authority, advertising that copies of the report are available as specified in paragraphs a. and b. above.

## Orders for Costs and Expenses

70. Under paragraph 15(2) of the Regulations, the tribunal shall not normally make an order awarding costs or expenses, but may make such an order against a person:
- a. if it is of the opinion that that person had acted frivolously or vexatious, or that his or her conduct in pursuing an appeal had been wholly unreasonable; or
  - b. as a result of the postponement or adjournment of a hearing.
71. Where the tribunal is minded to make an order against a person, that person will first be given an opportunity to make representations against the making of the order.

### For further information please contact

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