

Guidance on Applying the Appropriate Sanction when a Member has breached the Code of Conduct

Introduction

- 1 There is a general requirement to impose sanctions that are fair and reasonable and there is a need to consider proportionality in each case. A sanction that is not proportionate to the breach may be considered a breach of a Member's human rights.
- 2 A sanction may only be imposed in relation to the facts which the Standards Committee has found to be true or which are admitted by the Member.
- 3 The Standards Committee will have regard to guidance issued from time to time by the Standards Board for England (the Board).

Penalties

- 4 The Standards Committee can impose one, or any combination of the following:
 - Censure the Member
 - restrict the member's access to the premises and resources of the relevant authority for up to six months (three months for complaints received by the Board before 8th May 2008), ensuring that any restrictions are proportionate to the nature of the breach and do not unduly restrict the Member's ability to perform his or her duties as a Member;
 - order the Member to submit a written apology in a form satisfactory to the Standards Committee;
 - order the Member to undertake training specified by the Standards Committee;
 - order the Member to participate in a conciliation process specified by the Standards Committee;
 - suspend, or partially suspend, the Member for up to six months (three months for complaints received by the Board before 8th May 2008);
 - suspend, or partially suspend, the Member for up to six months (three months for complaints received by the Board before 8th May 2008), or until such time as the Member submits a written apology that is accepted by the Standards Committee;
 - suspend, or partially suspend, the Member for up to six months (three months for complaints received by the Board before 8th May 2008), or until such time as the Member undertakes any training or conciliation ordered by the Standards Committee.

- 5 Any, sanction, other than censure, may be ordered to start at a date up to 6 months hence. This may be appropriate if the penalty would otherwise have little effect on the Member such as in the case of a suspension or partial suspension, if there are no authority or committee meetings which the Member would normally go to in the period following the conclusion of the hearing.
- 6 Even though the Committee decides that an allegation is well founded, it is not obliged to impose a sanction and can decide not to take any further action if it is satisfied that such a decision is appropriate.
- 7 When deciding on an appropriate sanction the Committee should consider any mitigating factors and whether there are any aggravating factors.

Considering the Sanction

- 8 Before deciding what sanction to issue, the Standards Committee should consider the following questions, along with any other relevant circumstances:
 - What was the Member's intention? Did the Member know that they were failing to follow the Code of Conduct?
 - Did the Member get advice from officers before the incident and was the advice acted on or ignored in good faith?
 - Has there been a breach of trust?
 - Has there been financial impropriety?
 - What was the result of failing to follow the Code of Conduct?
 - What were the potential results of the failure to follow the Code of Conduct?
 - How serious was the incident?
 - Does the Member accept they were 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?
 - How will the sanction be carried out? For example, who will provide the training or mediation?
 - Are there any resource or funding implications? 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.

Mitigating Factors

9 Although this does not constitute an exhaustive list the following factors are examples of the types of factors that the Committee may wish to take into account when considering imposing an appropriate sanction:

- An honestly held view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct particularly where such a view has been formed after taking appropriate advice.
- An open and frank admission at an early stage
- A Member's previous record of good service
- A single isolated incident
- Co-operation in rectifying the effects of a breach
- Self reporting of the breach by the Member
- An apology to the complainant
- Compliance with the Code since the events giving rise to the breach
- No actual harm resulting from the breach
- Whether the breach has involved any beneficial effects for the public
- Time lapse since the incident
- Efforts to avoid such behaviour recurring
- Proposed changes to the Code of Conduct
- Substantial evidence that the Member's actions had been affected by ill-health.

Aggravating Factors

10 Although this does not constitute an exhaustive list the following factors are examples of the types of matters that the Committee may wish to consider when assessing an appropriate sanction:

- Disregard to previous censures
- Dishonesty
- Disregard of written and or oral advice from the Monitoring Officer
- Blatant disregard for the Ethical Framework
- Continuing to deny the facts despite clear contrary evidence
- Seeking unfairly to blame other people
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

Decision Not to Impose a Sanction

- 11 Circumstances where it may not be appropriate to impose any sanction could include:
- A wholly inadvertent failure to abide by the Code
 - Despite the lack of a sanction there is not likely to be any future failure to comply with the Code
 - The absence of any harm having been caused or the potential for such harm as a result of the failure to comply with the Code
 - The imposition of a sanction will not be a deterrent to other Members
 - The Member got advice from officers before the incident and the advice was acted upon in good faith.

Suspension

- 12 Suspension is appropriate where the circumstances are not so serious as to justify disqualification but sufficiently serious to give rise to the need for the public to be reassured and to impress upon the member the seriousness of the matter and the need to avoid a future breach. Suspension sends out a clear message to the Member and to the public about what is regarded as acceptable behaviour.
- 13 Suspension also has the effect of preventing a Member from carrying out his or her elected functions during the period of suspension. In addition suspension can have some financial impact on a Member who may be denied payment of allowances during the period of suspension.

Partial Suspension

- 14 This sanction may be appropriate where there is concern that the member appears not to understand or accept the requirements of the Code of Conduct in relation to a particular matter or area of activity but the difficulty does not affect the Member's ability to act properly in relation to other matters. Suspending the Member from exercising some particular function or having particular responsibilities such as being the holder of a particular office or a member of a particular Committee may provide a sufficient safeguard against a future breach whilst leaving the Member able to make an effective contribution to the other work of the Council.

Apology, Conciliation or Training

- 15 Such sanctions combined with suspension or partial suspension can help to encourage good conduct in the future.

Censure

- 16 Where it is decided that a period of suspension is not warranted, a censure is an available sanction. This is the lowest sanction that can be applied. This may be appropriate where the breach is at the lower end of the spectrum of misconduct but the Committee wishes to mark the fact that the behaviour was unacceptable and must not happen again.

- 17 This form of sanction may be the only sanction available where the person is no longer a serving Member.

Financial Implications

- 18 It is important that the Standards Committee strives to make consistent decisions that can be justified as fair and reasonable as well as proportionate in each case thus avoiding the cost consequences of a successful High Court challenge

Conclusion

- 19 When deciding on an appropriate sanction for breaches of the Code of Conduct it is recommended that the general guidance contained herein be adopted to help achieve consistency and fairness in the decision making process.

Equalities

Sevenoaks District Council aims to eliminate discrimination in respect of sex, colour, race, nationality, ethnic groups, regional or national origin, age, marital status, disability, political or religious belief, sexuality or class. The Procedure is free from bias or discrimination and the aim is that those involved in the process are treated fairly and with respect.

