

REPORT OF THE CLERK

THE ADJUDICATION PANEL FOR ENGLAND

1 Purpose of Report

To provide Members of the Standards Committee with information regarding the work of the Adjudication Panel for England.

2 Recommendations

Members are asked to note the contents of the report.

3 Background

The Adjudication Panel for England is an Independent judicial tribunal, which is established under Part III, Chapter IV of the Local Government Act 2000 to hear and adjudicate on matters concerning the conduct of local authority members. The information with regard to the work of the Adjudication Panel is provided following a request from this Committee.

4 The Adjudication Panel for England

At the last meeting of the Standards Committee on 26 April the discussion of an item in relation to the West Mercia Independent Members' Forum led to reference being made by the Committee to the work of the Adjudication Panel for England. The Committee wished to obtain more information as to the work undertaken by the Panel and the Clerk undertook to provide a report setting out further information.

As Members of the Committee will be aware, the Adjudication Panel for England consider hearings in relation to alleged breaches of the Code of Conduct by Members either as a result of an investigation undertaken by an Ethical Standards Officer, or by way of an appeal against a determination made by a local Standards Committee.

The Adjudication Panel consists of a President and Members appointed by the Lord Chancellor. The current President is David Laverick.



Attached at Appendix A are details of the appeals process and at Appendix B are details of the Case Tribunal procedures.

Further information with regard to the work undertaken by the Adjudication Panel, together with transcripts of Adjudication Panel decisions (which from 2003 to date amount to 239) can be obtained by visiting the Adjudication Panel website at

www.adjudicationpanel.co.uk .

5 Financial Implications

There are no financial implications arising from this report.

6 Legal Comment

The legal comment is contained within the background section and appendices of this report.

7 Appendices

Appendix A Adjudication Panel for England Appeals Process Booklet

Appendix B Adjudication Panel for England Case Tribunal Procedures

8 Background Papers

There are no background papers associated with this report.

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	*
Capacity		Member Involvement	
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Equality and Diversity		Retained	
Efficiency Savings		Risk and Insurance	
Environmental		Staff	
Financial		Strategic Planning	
Fire Control/Fire Link		West Midlands Regional Management Board	

For further information about this report please contact Matt Cumberbatch, Group Solicitor, on 01952 203068 or Sue Kembrey, Clerk and Monitoring Officer, on 01952 202461.



The Appeal Process

This note describes the procedures to be followed in making an appeal against the decision of a Standards Committee on a matter referred to the Standards Committee by an Ethical Standards Officer. The note does not have the force of law and the procedures on which it is based may be changed from time to time.

Making an appeal

A member, who is the subject of a finding (under Regulation 7(1)) by a Standards Committee, may seek permission to appeal against that decision.

The request for permission to appeal has to be made within 21 days of the member's receipt of the Standards Committee's written decision and be addressed to the President of the Adjudication Panel. A proforma is available from the Adjudication Panel website for this purpose or can be obtained by contacting the Office of the Adjudication Panel.

The proforma requires that the member provides the following information:

- His or her name and address
- The name of the Local Authority or body of which he/she is a member
- The date of the Standards Committee's decision*
- Whether or not the member disputes the Standards Committee's decision that there has been a failure to comply with the Code of Conduct and if so for what reason(s)
- Whether or not the member wishes to appeal against the sanction imposed by the Standards Committee
- Whether or not, if permission to appeal is granted, the member agrees to the appeal being determined by written representations (i.e. a paper hearing)

* The member is also required to send, with the proforma, a copy of the Standards Committee decision, which is giving rise to the appeal.

The President (or Deputy President) will make a decision as to whether permission to appeal is to be granted. Unless there are exceptional circumstances this decision will be made without any hearing. The Regulations require the President to notify the Member of the decision within 21 days (starting from the day the request for permission was received). Also notified of this decision are:

- The Ethical Standards Officer Concerned
- The Standards Committee of the authorities concerned
- Any Parish Councils concerned
- Any person who made an allegation that gave rise to the investigation

The Standards Committee will be asked to provide names and addresses of the above recipients of the President's decision.

***If* Permission is granted for the appeal to be heard by way of Written Representations**

The Appellant can agree to the appeal being conducted by written representations. The appeal will only proceed on this basis if the President is in agreement. The Appellant will be notified of this decision.

A copy of the appeal will be sent to the Ethical Standards Officer concerned and to the relevant Standards Committee. The ESO and Standards Committee are asked to provide representations (if any) within 14 days.

The appellant will be sent a copy of those representations and will be allowed a further 14 days in which to comment.

The papers will then be referred to an Appeals Tribunal who will determine the matter after considering only the written representations. The Appeals Tribunal may refer the matter to a full oral hearing if it considers that it is not appropriate to make a determination on the written evidence available. If this should happen reasons will be provided for this decision and a date arranged when the appeal can be heard at an Oral Hearing.

***If* Permission to Appeal is granted and an Oral Hearing is to be held**

The member (the Appellant) will be notified of this decision and advised of the date on which an Appeals Tribunal will consider the appeal. At this time the Appellant is asked to complete a form relating to any accessibility requirements or special needs, whether the Appellant proposes to bring witnesses to the hearing etc.

A copy of the appeal will be sent to the Ethical Standards Officer concerned and to the relevant Standards Committee. They will also be advised of the date of the tribunal. The ESO and Standards Committee are asked to provide representations (if any) within 14 days and are asked to name any witnesses they feel should be heard and identify any accessibility issues.

A Notice of Hearing will also be circulated to the parties at least 14 days before the hearing. This will give the names of the Panel Members appointed to sit on the Appeals Tribunal, the date, time and venue of an Oral Hearing. The Notice will be accompanied by a set of papers and will be sent to the ESO, the Standards Committee concerned and the Appellant as well, of course, as to the members of the Appeals Tribunal.

ANY SANCTION IMPOSED BY A STANDARDS COMMITTEE IS NOT SUSPENDED PENDING THE OUTCOME OF AN APPEAL

The Oral Hearing

An Appeals Tribunal will consist of not less than three members appointed by the President (or the Deputy President) of the Adjudication Panel. At least one of those present will be a legal member and will chair the tribunal.

Attendance

The Appellant, ESO and Standards Committee will be invited to attend. If any of these parties do not wish to attend, the Appeals Tribunal may, unless it is satisfied that there is sufficient reason for absence, determine the appeal in their absence. It may also decide that such an absence requires an adjournment.

The Appeals Tribunal (Oral Hearing) will be open to the Public unless the Chairman/woman has received and assented to a request for the hearing to be held in private or the Appeals Tribunal decides on the day that there are issues from which the public should be excluded.

Representation

An Appellant, ESO, Standards Committee may appear before the Appeals Tribunal in person, or may be represented by Council, a solicitor or, subject to the prior consent of the tribunal, any person whom he/she desires to represent them.

Recordings

The proceedings of an Appeals Tribunal may be recorded using audio equipment.

Procedures at an Oral Hearing

There are three possible stages depending on whether

- There is a factual dispute
- There is a dispute as to whether the facts as determined by the Standards Committee justify a finding that there has been a failure to follow the provisions of the Code of Conduct
- There is a dispute about the action which is proposed to be taken following a finding that there has been a failure to follow the Code of Conduct.

Many appellants may not dispute the finding that they have failed to comply with the Code of Conduct. They may instead be appealing only against the sanction imposed by the Standards Committee. The procedures at an Appeals Tribunal will reflect this and therefore if the appeal is only in relation to the sanction then stages one and two of the following procedure are not relevant.

Similarly appellants may not wish to dispute the facts which occurred but may wish to argue that those facts do not justify a finding that they have failed to follow the provisions of the Code of Conduct. For that kind of appeal there would be no need for the Appeal Tribunal to follow the first stage of the following procedure

In any event the Appeal Tribunal will usually begin by the Chairman identifying the procedure to be followed and dealing with any procedural submissions which parties wish to make at the outset.

Subject to the above the usual procedure is:

Stage One

The Appeals Tribunal will hear submissions and evidence about the disputed facts and then form its own view on such disputes. That view will be announced to the parties.

Stage Two

Once the facts have been established (stage one) the Appeals Tribunal will hear submissions as to whether, on those facts, there has or has not been a failure to comply with the relevant Code of Conduct. After hearing these submissions the Appeals Tribunal will reach its decision and announce it to the parties.

Stage Three

If the Appeals Tribunal concludes that there has been a failure to comply with the Code of Conduct (or if the appeal is limited to an appeal against the sanction imposed on the Appellant) then the Appeals Tribunal will consider what action should be taken. Parties will be allowed to make submissions about this. The Appeals Tribunal will make its decision and it will be announced to the parties.

Action after the hearing

The Appeals Tribunal can only impose the sanction(s) which were available to the Standards Committee i.e.

- No further action needed
- Censure
- Restrict access to premises or use of resources
- Partial Suspension
- Suspension

The Appeals Tribunal can:

- Approve the sanction originally imposed by the Standards Committee
- Require a different sanction to be imposed
- Dismiss the findings of the Standards Committee

If a different sanction is imposed this is done by the Appeals Tribunal issuing a direction to the Standards Committee concerned.

Where the Appeals Tribunal dismisses the findings of a Standards Committee the Standards Committee's decision ceases to have effect from the date of the Appeals Tribunal's decision.

The Decision

The Decision of the Appeals Tribunal will be announced on the day, if an Oral Hearing, and sent out in writing as soon as practicable after the decision has been made.

The Standards Committee concerned must comply with any decision of the Appeals Tribunal.

A copy of the decision will appear on the Adjudication Panel website. A summary of the decision will also appear in a local newspaper.

The regulations do not provide any right of appeal against the decision of the Appeals Tribunals.

Those who will receive a written copy of the decision are:

- The Appellant
- The Ethical Standards Officer concerned
- The relevant Standards Committee
- Any person who made an allegation that gave rise to the investigation

CASE TRIBUNAL PROCEDURES

(The legislation setting up the Adjudication Panel includes power for the Secretary of State to make Rules governing the procedures of Case Tribunals. No such Rules have yet been made. The procedures which follow may need amendment to take account of Rules made by the Secretary of State and are at that stage likely to be replaced by Directions made under Section 77 of the Local Government Act 2000)

1. Action prior to the Hearing

- 1.1. A reference to the Adjudication Panel by an Ethical Standards Officer will be made in writing by sending to the President of the Adjudication Panel the report produced in accordance with section 64 of the Local Government Act 2000. Transmission of the reference by electronic means will be regarded as being in writing.
- 1.2. The reference should include:
 - 1.2.1. Identifying details (Reference number, Name and address of the Respondent, Name of Relevant Authority, Name and address of the Ethical Standards Officer's (ESO) representative and name and address of original complainant (if applicable);
 - 1.2.2. The ESO's recital of the facts giving rise to the reference;
 - 1.2.3. The ESO's reasoning as to why the facts set out in (b) might be regarded as a failure to comply with the Code of Conduct of the Relevant Authority.
- 1.3. The Ethical Standards Officer is required by section 64(6) of the Act to inform the Respondent and the person who made the allegation of the reference.
- 1.4. The Adjudication Panel will notify the ESO and the Respondent of receipt of the reference. The notification will include a provisional date when the matter is likely to be considered by a Case Tribunal.
- 1.5. The notification to the respondent will include a copy of the reference and will invite the Respondent to respond within 30 days of the date of the notification from the Adjudication Panel.
 - 1.5.1. indicating whether or not a failure to comply with the Code of Conduct is accepted.
 - 1.5.2. indicating whether any of the facts set out in the reference are disputed.
 - 1.5.3. providing the Respondent's reasons for disputing any such facts.

- 1.5.4. providing the Respondent's reasons for arguing that there has not been a failure to comply with the Code of Conduct either (1) on the basis of the facts found by the Ethical Standards Officer or (2) on the basis of the facts put forward by the respondent in response to the reference.
- 1.5.5. indicating any factors which the Respondent would wish the Case Tribunal to take into account should the Tribunal find that there has been a failure to comply with the Code of Conduct.
- 1.5.6. providing the name and address of the representative of the Respondent, together with an indication of whether the Respondent wishes further communications to be sent directly to himself or herself or whether such communications should be sent to the nominated representative.
- 1.5.7. providing the names of any witnesses which the Respondent would wish to appear before the Case Tribunal together with a summary of the evidence which it is proposed to be given by such witnesses.
- 1.5.8. providing a copy of any documentary material which the Respondent would wish the Case Tribunal to consider (see also paragraph 1.8)
- 1.5.9. indicating any reasons why the Case Tribunal should not take place on the date provisionally indicated and offering alternative dates if such reasons are advanced.
- 1.6. The Adjudication Panel will within 7 days of receipt of the Respondent's Response to the Reference send a copy to the Ethical Standards Officer.
- 1.7. The Ethical Standards Officer shall within 14 days of receipt of the notification of the Response provide the President of the Adjudication Panel with;
 - 1.7.1. the names of any witnesses which the Ethical Standards Officer would wish to call before the Case Tribunal and supply a summary of the evidence which it is proposed to be given by such witnesses.
 - 1.7.2. copies of any documentary evidence which the Ethical Standards Officer would wish the Case Tribunal to consider (see also paragraph 1.8).
- 1.8. If any report or other document on which either party relies contains any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence, or considerations of national security are involved, and for that reason the party seeks to restrict its disclosure, he will inform the President of the Adjudication Panel of that fact and of his reasons for seeking such a restriction.

After the expiry of the time periods set out above, or after the completion of the steps set out above if that is earlier, The President of the Adjudication Panel or an authorised member of the Panel acting on his behalf will review the reference and list the matter for hearing by a Case Tribunal. A listing direction may deal with but is not limited to the following matters:

- whether the hearing is to involve the hearing of witnesses.
 - whether the Case Tribunal is likely to decline to hear evidence from any of the witnesses notified by the parties and, if so will give reasons for that view. It will be open to the parties at the outset of the hearing before the Case Tribunal to contest such a view provided that that such a party has indicated at least 14 days before the date listed that the party intends so to do.
 - the date, time and place of the hearing.
 - requiring any party to provide such particulars, supplementary statement or access to documents as may be reasonably required for the determination of the reference.
- 1.9. The listing direction will inform the parties of the time and place of the hearing of the matter. The listed date will be at least 21 days from the date of the direction. The listing direction will identify the members of the Adjudication Panel who have been appointed as the particular Case Tribunal and will also indicate which member has been appointed as the Chairman of the Case Tribunal. The President of the Adjudication Panel may by later direction vary the composition of the Case Tribunal if circumstances so require.
- 1.10. The Listing Direction will be accompanied by a bundle of documents to be considered by the Case Tribunal. That bundle will indicate whether any documents should be excluded from further disclosure in accordance with a request made in accordance with paragraph 1.8. The Case Tribunal will provide the parties with an opportunity for making further submissions if it is minded (as it has power to do) to set aside this direction.
- 1.11. Parties are asked to inform the Adjudication Panel at least 14 days before the hearing whether they intend to appear at the hearing, whether they will be represented and if so by whom.
- 1.12. Either party may apply in writing to the Adjudication Panel to give directions as to any matter relating to the hearing of the case. If made prior to the Listing Direction, such applications will be determined by the President of the Adjudication Panel. If made after the direction such applications will be determined by the appointed Chairman of the Case Tribunal. Applications made under this provision may include:
- a request for further particulars of the reference or of the reply by the Respondent or any matter stated therein;
 - a request for a determination of any question as a preliminary issue;
 - a request for an early hearing of the reference or of any question arising out of the reference;
 - a request for extensions of time or for adjournments of the proposed hearings.

Unless an application for directions is accompanied by the written consent of all the parties, it will be served by the President of the Adjudication Panel on

any other party who might be affected by such directions and that party will be given a reasonable opportunity for making representations which will be taken into account by the President of the Adjudication Panel or Chairman of the Case Tribunal before a decision is made on whether to make a direction.

- 1.13. The President of the Adjudication Panel or the appointed Chairman of a Case Tribunal may give directions requiring any party to provide such particulars, supplementary statements, or access to documents as may be reasonably required for the determination of the reference.
- 1.14. Where it appears to the President of the Adjudication Panel or Chairman of a particular Case Tribunal that any proceedings would be facilitated by holding a pre-hearing review, he may, on the application of a party or of his own motion, give directions for such a review to be held. The President of the Adjudication Panel will give the parties not less than 14 days notice, or such shorter notice as the parties agree, of the time and place of the pre-hearing review.
 - 1.14.1. The pre-hearing review will be in private unless the President of the Adjudication Panel or Chairman of the Case Tribunal otherwise directs and the parties may appear and may be represented by counsel or solicitor or by any other person.
 - 1.14.2. On a pre-hearing review the President of the Adjudication Panel or Chairman of the Case Tribunal will give all such directions as appear necessary or desirable for securing the just, expeditious and economical conduct of the matter.
- 1.15. The President of the Adjudication Panel may alter the time and place of any hearing and will wherever practicable give the parties not less than 7 days notice of any such alteration. Any altered hearing date will not (unless the parties agree) be before the date previously notified.

2. Consolidation of proceedings

- 2.1. Where two or more references have been made in respect of the same facts or related facts, or which involve the same or similar issues of the application or interpretation of the general law or the Code of Ethics, or the level of sanction to be imposed, the President of the Adjudication Panel may, on the application of a party to any of the cases or of its own motion, order that the references or any particular issue or matter raised in the cases be consolidated or heard together.
- 2.2. Before making an order under this rule, the President of the Adjudication Panel will give notice to the parties to the relevant references and consider any representations made in consequence of such notice.

3. Procedure at the hearing

- 3.1. At the Case Tribunal hearing, either party may appear in person or be represented by Counsel, Solicitor or any other person. The Case Tribunal may

allow such other person to appear at the hearing as it considers will aid its determination of the matter.

- 3.2. At the beginning of the hearing the Chairman of the Case Tribunal will explain the order of proceedings that the Case Tribunal proposes to adopt. The procedure to be followed lies at the discretion of the Case 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 proceedings. The procedure, which will usually be followed, is set out in the following paragraphs but the Case Tribunal is free to depart from that procedure where it considers it appropriate to do so.
- 3.3. The absence of any listed members on the day of the hearing will not invalidate the proceedings provided that at least three members of the Adjudication Panel are present: the appointment of the case tribunal will empower such members as are appointed and are present on any day to deal with the reference. The tribunal will make their decisions on the basis of a majority decision with the Chairman of the Case Tribunal having a second or casting vote should that be needed.
- 3.4. The Case Tribunal will first seek to resolve any procedural issues or disputes arising from the Listing Directions.
- 3.5. The Case Tribunal will then usually move on to seek to resolve any disputes of fact that have been identified in the pre-hearing procedures. It will be for the ESO to discharge the burden of proof on the balance of probabilities.
 - 3.5.1. The procedure will usually be, in relation to each disputed fact to invite the ESO or his representative to make submissions in support of the finding as set out in the reference and to produce evidence in support of that finding. The Respondent or his representative will have the opportunity of asking questions of any witness called by the ESO. The Respondent or his representative will have the opportunity of making submissions and to produce evidence in support of those submissions. The Tribunal at its discretion may at any time during this stage of the hearing question any of the parties or witnesses and may allow the ESO or the ESO's representative to question witnesses.
 - 3.5.2. In some cases where several matters of fact are being disputed it may be more convenient for the ESO's statement of facts as a whole to be proved rather than for the hearing to proceed on a fact-by-fact basis.
 - 3.5.3. The Case Tribunal will usually adjourn to deliberate on the submissions and evidence presented after which it will announce its decision on the disputed fact(s).
- 3.6. The Case Tribunal will next seek to establish whether the facts do lead to the conclusion that there has been a failure to comply with the Code of Conduct if that has not been admitted by the Respondent.
 - 3.6.1. The Respondent (or his representative) will be invited to make submissions as to why on the facts as found the tribunal should come to the view that no failure to comply with the Code should be found.

- 3.6.2. The ESO or his representative will be given the opportunity of responding to those submissions.
- 3.6.3. The Tribunal at its discretion may at any time during this stage of the proceedings question any of the parties.
- 3.6.4. The ESO or his representative may be allowed to question the Respondent or witnesses called by the respondent.
- 3.6.5. The Respondent will be given an opportunity of addressing closing submission to the Case Tribunal as to whether there has been a failure to comply with the Code of Conduct.
- 3.6.6. The Case Tribunal will, after a further adjournment announce its decision on whether there has been a failure to comply with the Code of Conduct.
- 3.7. If the Case Tribunal has found that a failure to comply with of the Code of Conduct has occurred:
 - 3.7.1. The ESO or his representative will be invited to make submissions on what action the Case Tribunal should take.
 - 3.7.2. The Respondent will be invited to make submissions on what action the Case Tribunal should take.
 - 3.7.3. The Case Tribunal will after a further adjournment, announce its decision.
- 3.8. The written decision of the Case Tribunal will set out reasons for the decisions on the matters set out at 3.4, 3.6, and 3.7 above.
- 3.9. Case Tribunals sit in public unless exceptional circumstances make it desirable that some part or all of the hearing should take place in private.
- 3.10. Evidence before the Case Tribunal may be given orally or, so ordered, by written statement, but the Case Tribunal may at any stage of the proceedings require the personal attendance of any maker of a written statement. Witnesses or the Parties may be required to give evidence on oath or affirmation.
- 3.11. Case Tribunals may receive evidence of any fact which appears to the Case Tribunal to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but will not refuse to admit any evidence which is admissible at law and is relevant.
- 3.12. The Case Tribunal may, if it is satisfied that it is just and reasonable to do so, permit a Respondent to rely on grounds not stated in his Response to the reference and to adduce any evidence not presented to the ESO before the reference was made. The ESO or his representative will be given the opportunity of making submissions as to whether such permission should be given and of making submissions in response to any revised grounds. The ESO or his representative will also be given the opportunity of questioning any evidence (or witness providing such evidence) given as a result of this permission. The Case Tribunal will also provide an opportunity for the ESO to

apply to adduce additional evidence to rebut any evidence or grounds on which the Respondent seeks to rely as a result of permission being given under this paragraph.

- 3.13. If a party does not intend to be present or to be represented at the hearing, he or she may submit further written representations to the Case Tribunal. The representations must reach the Adjudication Panel 3 days before the date of the hearing. If a party does not appear at the hearing the matter may be heard and determined in his absence or at the discretion of the Case Tribunal may be adjourned.
- 3.14. Case Tribunals may from time to time adjourn the oral hearing and, if the time and place of the adjourned hearing are announced before the adjournment, no further notice will be required.
- 3.15. When any hearing is adjourned in order that further information or evidence may be obtained, the Case Tribunal or the Chairman of the Case Tribunal or President of the Adjudication Panel may give directions regarding the disclosure of such information or evidence to, and the filing of comments on such information or evidence by, the parties prior to the resumption of the hearing.
- 3.16. The Adjudication Panel provides an internet website for public inspection which lists all scheduled tribunals for the following month and the time and place fixed for the hearing.
- 3.17. Case Tribunals may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Case Tribunal, to disrupt the hearing.

4. Action after the Hearing

- 4.1. A decision of a Case Tribunal will record whether it was unanimous or taken by a majority.
- 4.2. The decision may be given orally at the end of the hearing or reserved and, in any event will be recorded in a document notifying the decision to be signed and dated by the Chairman of the Case Tribunal
- 4.3. The Adjudication Panel will within 14 days of the Case Tribunal's decision send a copy of the decision to the Respondent, the standards committee of the relevant authority, the Standard Board for England, and the person who made the original allegation (if known) and cause within 28 days the decision to be published in a newspaper in accordance with s 79 of the Local Government Act 2000.
- 4.4. Every copy of a document sent to the parties under this rule will be accompanied by a notification of any provision of the Act relating to appeals from the Adjudication Panel and of the time within which and place at which such appeal or any application for leave to appeal will be made.
- 4.5. The Adjudication Panel will also publish the notice on its website (www.adjudicationpanel.co.uk). However, in doing so the Adjudication Panel

may have regard to the need to preserve the confidentiality of any evidence heard in private and for that purpose may make any necessary amendments to the text of the notice.

5. Miscellaneous

- 5.1. The President of the Adjudication Panel and Chairmen of Case Tribunals have power to extend any of the time limits set out in this guidance.