

GUIDANCE ON ACTION TO BE TAKEN BY A CASE TRIBUNAL WHERE A RESPONDENT HAS BEEN FOUND TO HAVE FAILED TO COMPLY WITH A CODE OF CONDUCT

Introduction

1. The powers available to the Case Tribunal are set out in Section 79(4) of the Local Government Act 2000 and in essence are:
 - 1.1. To disqualify the Respondent
 - 1.2. To suspend the Respondent
 - 1.3. Partially to suspend the Respondent
2. Although not expressly provided for by the Statute, if the Case Tribunal decides not to suspend or disqualify a Respondent it might reprimand him or her and warn the Respondent as to future conduct.
3. In the case of a suspension or disqualification the Case tribunal will also need to consider the period over which such a sanction should apply:
 - 3.1. A period of disqualification must not exceed 5 years
 - 3.2. A period of suspension or partial suspension must not exceed one year or the remainder of the Respondent's term of office if shorter.
4. In the case of a partial suspension the Case Tribunal will need to decide from what activity the Respondent is to be suspended.

The aims of the Case Tribunal

5. The action on which the Case Tribunal decides will be directed toward upholding and improving the Standards of Conduct expected of Members of the various bodies to which the Codes of Conduct apply. Thus, the action will be designed both to discourage or prevent the particular Respondent from any future non-compliance but also to discourage similar action by others.

Disqualification

6. Disqualification is the most severe of the options open to the Case Tribunal. Factors which may lead to this option include one or more of the following:
 - 6.1. The Respondent having deliberately sought personal gain (for either himself or some other person) at the public expense by exploiting his membership of the body subject to the Code of Conduct.
 - 6.2. Repeated breaches of the Code of Conduct by the Respondent.
 - 6.3. Misusing power within the Authority or use of public funds for political gain.

There may be other factors not listed above which also merit disqualification. Nor will disqualification always be appropriate even if the listed factors are present.

7. In deciding the length of any disqualification the Case Tribunal will not usually take into account the electoral cycle of the particular body.
8. The Case Tribunal is not likely to disqualify a Respondent for less than one year.

Suspension

9. Suspension is appropriate where the circumstances are not so serious as to merit disqualification but sufficiently grave to reassure the public and impress upon the Respondent the severity of the matter and the need to avoid repetition.
10. Factors which may lead to this option include:
 - 10.1. Concern that the Respondent's actions have brought the body on which he or she serves, or the public service generally into disrepute.
 - 10.2. Concern as to the likelihood of further failures to comply with the Code of Conduct by the Respondent. (If there were such failures to comply after a period of suspension then it is highly likely that a future case tribunal faced with a reference about that further breach will opt to disqualify the Respondent.)

Partial Suspension

11. This option might be appropriate where there is a concern that the Respondent is judged to have difficulty in understanding or accepting the limitation placed on his or her actions by the Code of Conduct in relation to a particular matter or area of activity but the difficulty does not affect the Respondent's ability to act properly in relation to other matters. Suspending the Respondent from exercising some particular function or having particular responsibilities (such as being a member of a particular committee or sub committee) may in the view of the Case Tribunal provide an adequate safeguard against such a future breach whilst leaving the Respondent able to make an effective contribution to the other work of the body.
12. The option may also be seen as an effective sanction in respect of an Respondent exercising executive functions for the body to which the Code of conduct applies.

A decision not to impose Disqualification, Suspension or Partial Suspension

13. Circumstances where such a decision may be appropriate include:
 - 13.1. An inadvertent failure to abide by the Code of Conduct.
 - 13.2. An acceptance that despite the lack of suspension or partial suspension, there is not likely to be any further failure to comply on the part of the Respondent.