

# HEARINGS PROCEDURE



1. Where an Investigating Officer has concluded that there is evidence that the Subject Member has failed to comply with the Code of Conduct, and following consultation with one of the Independent Persons, the Monitoring Officer may decide that the matter should be dealt with before a Hearing Panel. The procedures for doing so are as follows:

## **Pre-Hearing Process**

2. The Monitoring Officer will, arrange for a Sub-Committee of the Audit and Standards Committee – known as the Hearing Panel to meet to hear the complaint, in accordance with the agreed Arrangements for Dealing with Member Complaints. The Hearing Panel will deal with the matter as soon as is reasonably convenient for all parties and, subject to exceptional circumstances arising, will aim to do so within three months of receiving the Investigating Officer's report. After the Monitoring Officer has consulted with the Independent Person and taken the view that a Hearing Panel should be convened the Monitoring Officer will contact all parties and seek to establish a convenient date for the hearing. All parties will be expected to respond promptly (and in no more than 14 days) to the Monitoring Officers' request – in order that the date the Hearing Panel sits can be arranged promptly and at the convenience of all parties.
3. As soon as a suitable date has been identified all parties will be notified of it. Where a Hearing Panel may sit for more than one day, the Monitoring Officer will aim to arrange sittings on consecutive days. If a party becomes unavailable to attend the Hearing Panel after the date of the hearing has been fixed, the Monitoring Officer will expect to receive prompt notification and brief reasons for the unavailability. Based on that information the Monitoring Officer will exercise their discretion as to whether the date the Hearing Panel sits should be re-arranged.
4. The Audit and Standards Committee are subject to the normal requirements on confidential and exempt information as apply to any other Committee under ss100 A to K and Schedule 12A of the Local Government Act 1972. The Monitoring Officer will consider whether these provisions apply in advance of the hearing and may consult one of the Independent Persons, the Chairman of the Hearing Panel and any other party involved in the Hearing Panel for their views.
5. The Monitoring Officer will request that the Subject Member gives their response to the Investigating Officer's report promptly – in order to identify areas of agreement between the parties and matters that are likely to be contentious well in advance of the date that the Hearing Panel sits. If the Subject Member unreasonably delays or withholds their response the Hearing

Panel may take that lack of co-operation into account when considering the matters before them.

6. If the Subject Member wishes to rely on new evidence at the hearing that has not been considered by the Investigating Officer, for example, documents or information that have not previously been referred to or by calling new witnesses, the Subject Member will be expected to give the Monitoring Officer reasonable notice and provide the Monitoring Officer with a copy of that new material or a summary of the evidence that the new witness is likely to give.
7. Subject to the above, on the exercise of the Chairman's discretion the Hearing Panel may decline to allow such new arguments, witnesses or evidence to be presented at the hearing.
8. It is the responsibility of the Monitoring Officer to oversee the work of the Investigating Officer during the evidence gathering process and the Monitoring Officer will collate and consider all the evidence available prior to placing it before the Hearing Panel. During this process the Monitoring Officer will, where they consider it necessary to do so, consult with, and take account of, the view of the Independent Person.
9. The Chairman of the Hearing Panel is responsible for the conduct of the hearing. Where the Monitoring Officer considers it appropriate to do so, the Monitoring Officer may consult with the Chairman of the Hearing Panel (and, if appropriate, with one of the Independent Persons), with a view to assisting the Chairman in issuing pre-hearing directions to the parties involved in the hearing. The purpose of doing so is to identify relevant issues and to ensure that the business of the Hearing Panel is dealt with efficiently. The decision as to whether directions are issued is, ultimately, a matter for the Chairman.
10. The Monitoring Officer may, at their discretion, agree that the authority pay the reasonable expenses of the Complainant, Subject member and witnesses, associated with their attendance at the hearing.
11. The Monitoring Officer will consider whether it is appropriate to hear two or more complaints together. This may occur, for example, if they relate to the same Subject Member, or arise from the same or a similar set of facts or from the same incident, or have some other connection by which the Monitoring Officer considers that it is proper to link one or more complaints.
12. The Monitoring Officer will provide the Complainant, Subject Member and all members of the Hearing Panel with a copy of the Investigating Officer's final report at least two weeks after the decision has been made to refer the matter to the Hearing Panel
13. In order to assist the Hearing Panel, following the decision to refer the matter for a hearing, the Monitoring Officer will also provide all members of the Hearing Panel with a briefing note which summarises the allegation, details the agreed and disputed facts and identifies the evidence which the Complainant, Subject Member and their witnesses are expected to give. The briefing note will be prepared as soon as reasonably practicable following the decision to refer the matter to the Hearing Panel and may also contain, for example, a chronology and copies of documents the Monitoring Officer considers may be relevant.

14. In addition to assisting in preparing the members of the Hearing Panel for the hearing, the purpose of the briefing note prepared by the Monitoring Officer is to enable members of the Hearing Panel in identifying any conflict of interest or potential conflict of interest that may arise. Members of the Hearing Panel will familiarise themselves with the relevant issues and, where necessary, notify the Monitoring Officer of any conflict of interest or potential conflict of interest, as a matter of priority.
15. The Monitoring Officer will act as a point of contact for the Subject Member, the Complainant, and any witnesses who will give evidence.

## **The Hearing**

16. There is a presumption that the deliberations of the Hearing Panel will take place in public. The parties to the hearing may make representations to the Chairman on this point and should do so, via the Monitoring Officer, in good time prior to the hearing. The Chairman may issue directions in advance on this point or, in the interests of transparency, deal with the issue at the commencement of the Hearing Panel.
17. One of the Independent Persons appointed by the District Council will be invited to attend at the Hearing Panel. Where one of the Independent Persons has already been involved in the pre-hearing process and there is an actual, or potential, conflict of interest, the Monitoring Officer will invite the other Independent Person to attend the Hearing Panel who has not been involved with the pre-hearing process. Where an Independent Person takes part in the Hearing Panel they will be consulted and their view sought during the process and, save that they are not entitled to vote on the decision as to whether there has been a breach of the Code of Conduct and, if so, what action to take, they will be treated as an equal member of the Hearing Panel.
18. If the Subject Member does not attend the hearing, the Hearing Panel may at the discretion of the Chairman, adjourn the hearing or continue to hear evidence and reach a decision on the basis of the Investigating Officer's report and any evidence they may hear.
19. The Hearing Panel sits as a Sub-Committee of the Audit and Standards Committee. As such it is a meeting of the District Council, not a court of law. Where a Hearing Panel sits the burden is on the Complainant, through the Investigating Officer, to prove that there has been a breach of the Code of Conduct. That burden is to the civil standard, the allegation must be proved on the balance of probabilities. Evidence is not heard on oath. However, all parties are expected to have proper regard for the seriousness of the proceedings and the public interest in ensuring the business of the Hearing Panel is conducted fairly and efficiently.
20. In order to assist the Hearing Panel in dealing with matters fairly and efficiently the Chairman of the Hearing Panel may, at their discretion, allow the Investigating Officer and the Subject Member to make opening remarks and/or closing arguments.

## **Representation**

21. The Subject Member may arrange to have a friend or qualified legal representative attend the hearing with them, provided that they are not

connected to the matter under investigation. The Hearing Panel may refuse to allow the friend or representative to remain at the hearing if they are disruptive.

## **Evidence**

22. All matters relating to the evidence and procedure at the hearing are within the discretion of the Chairman of the Hearing Panel. The Chairman may, at any time, seek advice from the Monitoring Officer.
23. Subject to the exercise of the Chairman's discretion to manage the hearing, the Subject Member is entitled to present their case as they see fit.
24. Where the Chairman of the Hearing Panel may consider exercising their discretion as to the management of the proceedings the Chairman will have regard to any relevant submissions made by the Investigating Officer and Subject Member.
25. It will be the general expectation of the Hearing Panel that all witnesses of fact relevant to the disputed issues will attend in person to give their evidence and to be questioned. Less weight may be placed on the evidence of witnesses of fact where they do not attend before the Hearing Panel, because they are not available to be questioned by the other party. It is the expectation that witnesses as to character will normally provide their evidence in writing, such evidence will be read to the Hearing Panel by the party who wishes to rely on that evidence.
26. In addition to the information detailed at paragraph 19 above, it will be the expectation of the Hearing Panel that the Complainant, Subject Member and all witnesses behave courteously both throughout the pre-hearing stage and at the hearing. Parties who behave unreasonably, are rude or who seek to disrupt the hearing will be asked to leave and the Chairman may exercise their discretion to proceed without hearing that persons evidence. Alternatively, the hearing may be adjourned.
27. Subject to the Chairman exercising their discretion, the general procedure at a hearing will be that the Investigating Officer will present their final report, call such witnesses as they consider necessary and make representations to support their conclusions. Following the Investigating Officer calling each witness the Subject Member will be entitled to question that witness. Thereafter the Subject Member will have the opportunity to give their evidence, call witnesses and to make representations to the Hearing Panel as to why they believe they have not failed to comply with the Code of Conduct. The Investigating Officer may question the Subject Member and each of the Subject Member's witnesses, after they have given their evidence. The Complainant, Investigating Officer, Subject Member and all witnesses may be questioned by all members of the Hearing Panel during the proceedings. If it appears to the Monitoring Officer that a relevant question or issue has not been raised by either party the Monitoring Officer may bring that point to the attention of the Chairman.
28. The onus is on the Subject Member to ensure the attendance of all witnesses they wish to call to give evidence on their behalf at the Hearing Panel. The Chairman of the Hearing Panel will consider the relevance of the potential evidence that a witness may give, both in liaison with the Monitoring Officer at

the pre-hearing stage (when the Chairman may issue directions) and throughout the hearing. By applying the test of relevance the Chairman may limit the number of witnesses to be called by either party and/or the issues that may be covered by them.

29. No party to the proceedings has the power to compel any witness to attend to give evidence before the Hearing Panel.

### **Role of Monitoring Officer at the Hearing**

30. The role of the Monitoring Officer is to ensure that the pre-hearing stage and hearing are conducted efficiently. Although they are responsible for overseeing the work of the Investigating Officer, the Monitoring Officer will remain impartial and, where asked to do so by the Chairman of the Hearing Panel, may give independent advice on legal and procedural matters. The Monitoring Officer is not permitted to make findings of fact regarding any allegation that the Code of Conduct has been breached, this is a matter solely for the Hearing Panel. References to the Monitoring Officer should be read to include any representative of the Monitoring Officer.

### **Role of the Complainant at the Hearing**

31. The role of the complainant will usually be limited to being a witness and they are not a party to the proceedings. However, the Hearing Panel may wish to consult them at any stage in the hearing if they feel their comments would assist them.

### **Decision**

32. Having heard all the evidence, the Hearing Panel must decide whether or not the Subject Member has breached the Code of Conduct and, if so, what, if any, sanctions to impose.
33. The Hearing Panel will generally retire to consider in private whether they conclude that the Subject Member has breached the Code of Conduct. All members of the Hearing Panel may contribute equally to the deliberations, although only the District Council members of the Hearing Panel may vote. If necessary, the Chairman has a casting vote.
34. Having considered whether or not the Subject Member has breached the Code of Conduct, the Hearing Panel will reconvene in public session and the Chairman will advise the Subject Member of the outcome. If the Hearing Panel decides that the Subject Member has not breached the Code of Conduct then the proceedings are concluded immediately. Alternatively, if the Hearing Panel decides that the Code of Conduct has been breached, the Chairman will announce this decision and give brief verbal reasons. The Investigating Officer and Subject Member may then make representations as to what, if any, sanctions are appropriate. The Hearing Panel will generally retire to consider those representations. On returning to public session the Chairman will announce the sanctions, if any, to be imposed and give brief verbal reasons.
35. While the Monitoring Officer may assist the Hearing Panel during its private deliberations by, for example, reviewing the evidence heard or advising on issues of law, the Monitoring Officer is not permitted to express any view on

the merits of the evidence or to attempt to influence the decision making process. Once a decision has been made, either whether or not the Code has been breached or on the imposition of sanctions, the Monitoring Officer may assist the Chairman in drafting a short document containing the reasons for the relevant decision, to be announced by the Chairman at the hearing.

## **Sanctions**

36. The Hearing Panel must consult the Independent Person before imposing any sanction and give the Subject Member the opportunity to make representations.
37. When making its decision on the sanctions that may be imposed the Hearing Panel will consider the seriousness of the breach of the Code of Conduct and its actual and potential consequences. In doing so it will also have regard to any mitigating or aggravating factors, such as:

### Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the Code of Conduct.
- A previous record of good public service.
- An offer to apologise for the breach, particularly if it is made at an early stage in the overall proceedings.
- Evidence of ill health at the time of the breach.

### Aggravating Factors

- Dishonesty.
  - Continuing to deny the breach.
  - An attempt to blame others.
  - Evidence of a failure to follow earlier advice or warnings.
  - Previous breaches – particularly where they are of a similar nature.
38. When imposing sanctions the primary objective of the Hearing Panel will be to ensure that the Subject Member is dealt with in a way that prevents a further breach of the Code of Conduct and maintains public confidence in the General Principles of Public Life and ethical local governance.
  39. The sanctions available to the Hearing Panel are to:
    - Publish its findings in respect of the Subject Member's conduct.
    - Write a formal letter to the Subject Member.
    - Report its findings to Council for information.
    - Seek formal censure by motion.
    - Recommend to the Subject Member's Group Leader (or, in the case of Subject Members who do not belong to a political group, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council.
    - Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
    - Instruct the Monitoring Officer to arrange mentoring, training, mediation or other appropriate remedy for the Subject Member.

## **Notice of Decision**

40. As soon as is reasonably practicable after the hearing the Monitoring Officer will prepare a formal Decision Notice. The Decision Notice will confirm the decision of the Hearing Panel. Where the Code of Conduct has been found to have been breached, and if sanctions have been imposed, the Decision Notice will contain written reasons. A copy of the Decision Notice will be sent to the Complainant and the Subject Member. The Decision Notice will be made available for public inspection and a report of the decision will be made to the relevant Audit and Standards Committee meeting.