

Hearings Procedure

APPENDIX 4

The following process will be followed when a decision has been taken that a hearing, as to whether a Member has breached the code of conduct, is required.

1. Pre-hearing process

1.1 The Monitoring Officer will, where possible, arrange for the Standards Committee/Hearing Sub-Committee to meet to hear the complaint within 3 months (or as soon as practical thereafter) of receiving the Investigating Officer's report. The Monitoring Officer should aim to arrange a hearing which can take place in one day or consecutive days without the need to have gaps between sittings or lengthy days.

1.2 The Standards Committee and the Hearings Sub-Committee are subject to the normal requirements on confidential and exempt information as any other Committee under s100 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.

1.3 The Monitoring Officer will require the Subject Member to give his/her response to the Investigating Officer's report in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. This may, at the discretion of the Monitoring Officer, take the form of a pre-hearing questionnaire.

1.4 If the Subject Member wishes to rely on evidence, including witnesses, at the hearing, they should provide the evidence and names of any witnesses, to the Monitoring Officer as soon as possible. The Investigating Officer may have taken a witness statement from them or set out their comments in their report but if the Subject Member wishes to add to what the Investigating Officer has written they should provide a witness statement to the Monitoring Officer as soon as possible.

1.5 The Committee/Sub-Committee will not allow new arguments or evidence to be presented at the hearing.

1.6 The Monitoring Officer will decide what evidence will need to be heard, and what written evidence can be read at the hearing. The Monitoring Officer should take account of the views of the witnesses and the Subject Member in reaching such decisions.

1.7 The Monitoring Officer can consult the Chair of the Committee if he/she feels their guidance would assist and ask the Chair to issue directions in relation to the pre-hearing process.

1.8 The Monitoring Officer may wish to offer to cover the expenses of witnesses associated with their attendance at the hearing.

1.9 The Monitoring Officer will consider whether it is appropriate to hear two complaints together, for example if they relate to the same Member, or relate to the same incident or occasion.

1.10 The Subject Member should be provided with the Investigating Officer's report and any evidence which will be heard at the hearing.

1.11 The Monitoring Officer should provide the members of the Committee/Sub-Committee with all the evidence in advance of the hearing so that they can read it to identify any potential conflicts of interest.

1.12 The Monitoring Officer will provide the Committee/Sub-Committee with a report which summarises the allegation. This may include a list of agreed facts and disputed issues and outline the proposed procedure for the hearing.

1.13 The Monitoring Officer will act as a point of contact for the Subject Member, the complainant, the Independent Person and any witnesses who will give evidence.

2. The Hearing

2.1 An Independent Person will be invited to attend the hearing and will be given the opportunity comment during the Hearing if the Committee/Sub-Committee considers it appropriate and will be asked for their views prior to a final decision being made.

2.2 If the Subject Member does not attend the hearing, the Committee/Sub-Committee may adjourn the hearing or may continue to reach a decision on the basis of the Investigating Officer's report and any evidence they hear, if they decide to hear evidence.

2.3 Whilst the hearing is a meeting of the authority, it is not a court of law. It does not hear evidence under oath. The rules of natural justice should nevertheless be followed and the Committee/Sub-Committee will have due regard to the seriousness of the proceedings for those involved, the Council and the public.

2.4 The Committee/Sub-Committee will decide disputed issues and whether the Subject Member has breached the code on the balance of probabilities.

3. Representation

3.1 The Subject Member may choose to be represented by any person they wish. They will have to bear any cost of being represented. The Committee/Sub-Committee may refuse to allow a representative to remain at the hearing if they are disruptive. The Committee/Sub-Committee will have the discretion to hear opening or closing arguments from the Subject Member and

the Investigating Officer if they feel it would assist them in reaching a decision.

4. Evidence

4.1 The Committee/Sub-Committee will control the procedure and evidence presented at a hearing, including the number of witnesses and the way they are questioned. All matters relating to the evidence and procedure are within their discretion.

4.2 Generally (and subject to paragraph 4.1 above) the Subject Member will be entitled to present their case as they see fit.

4.3 The Committee/Sub-Committee will usually have regard to submissions from the Subject Member if they are considering whether to hear particular evidence.

4.4 Witnesses of facts that are disputed would normally be expected to attend to be questioned. Character witnesses will normally provide written evidence which can be read at the hearing.

4.5 Witnesses should be treated with courtesy throughout the pre-hearing stage and at the hearing.

4.6 Witnesses may be questioned by the Committee/Sub-Committee, the Monitoring Officer and the Subject Member. This discretion should generally be unfettered by the Committee/Sub-Committee unless there is good reason to do so.

4.7 The onus is on the Subject Member to ensure the attendance of witnesses who they would like to give evidence to assist them. The Committee/Sub-Committee can limit the number of witnesses or the issues which can be covered by them.

4.8 Neither the Committee/Sub-Committee nor the Subject Member will have any power to compel witnesses to give evidence.

5. At the Hearing (the procedure to be followed at the hearing will be at the discretion of the Chair.

5.1 At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. The Investigating Officer may be asked about their report or any matters relating to their involvement.

5.2 The Subject Member must have the opportunity at the hearing to present evidence and make representations orally or in writing either

personally, by counsel, a solicitor or, with the Sub-Committee's consent, by any other representative

6. Role of Monitoring Officer

6.1 References to the Monitoring Officer should be read to include any representative of the Monitoring Officer.

6.2 The Monitoring Officer has a key role in ensuring the smooth running of the pre-hearing and hearing process. They will remain neutral throughout and will provide independent advice to the Committee/Sub-Committee

7. Role of the complainant

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

8. Decision

8.1 The Committee/Sub-Committee must consult the Independent Person in reaching their decision.

8.2 The Committee/Sub-Committee may wish to retire to consider their decision. The Monitoring Officer may assist them in constructing the reasons for their decision. The Monitoring Officer will not express any view on the evidence heard or the decision to be reached.

8.3 The Committee/Sub-Committee will reach a decision as to whether the Subject Member has breached the code of conduct. If they decide that the Subject Member has not breached the code of conduct they will take no further action. If they decide that the Subject Member has breached the code of conduct they should go on to decide what sanction, if any, is appropriate.

9. Sanctions

9.1 The Committee/Sub-Committee must consult the Independent Person before imposing any sanction and give the Subject Member the opportunity to make representations.

9.2 The Committee/Sub-Committee should consider all the mitigating and aggravating circumstances that appear to them to be relevant. For example, they may wish to consider:

- What were the actual and potential consequences of the breach?
- How serious was the breach?
- What is the attitude of the Subject Member now? Have they apologised?
- Has the Subject Member previously been dealt with for a breach of the code?

9.3 The following are example of mitigating and aggravating factors but these lists should not be regarded as exhaustive.

10. Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the code
- A previous record of good service
- Evidence that they were suffering from ill health at the time of the breach

11. Aggravating Factors

- Dishonesty
- Continuing to deny the facts or blaming other people
- Evidence of a failure to follow advice or warnings

The priority of the Committee/Sub-Committee should be to ensure that there are no further breaches of the code and that public confidence is maintained.

12. Sanctions

12.1 The sanctions available to the Committee/Sub-Committee include:

- Publish its findings in respect of the Member's conduct,
- Write a formal letter to the councillor found to have breached the code,
- Report its findings to Council for information,
- Seek formal censure of the Subject Member,
- Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council,
- Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities,
- Recommend that the Member is removed from outside body appointments to which they have been appointed or nominated by the Council or the Executive,
- Instruct the Monitoring Officer to arrange training, mediation or other appropriate remedy, for the Member including an apology in a form specified by the Committee/Sub-Committee.

13. Notice of decision

13.1 As soon as is reasonably practicable after the hearing, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Committee/Sub-Committee. The decision notice will be sent to the Subject Member and the Sub-Committee will consider whether the decision notice, or a summary of the decision reached, should be sent to the complainant and whether it should be available for public inspection