

## **Procedure for Hearings**

This guidance is designed to help those who are involved in the determination of complaints that a Councillor may have breached the Code of Conduct.

Any reference in this guidance to a standards committee includes a reference to sub-committees established to consider a Monitoring Officer's investigation report and to consider determination hearings. Any reference to the "subject member" is a reference to the Councillor who is the subject of the complaint that the Code of Conduct may have been breached.

The main purpose of the hearing is to decide whether a member has breached the Code of Conduct and, if so, to decide if any sanctions should be applied and what form the sanction(s) should take.

### **Timing of the standards committee hearing**

Normally a hearing should take place within three months of the date on which the Investigating Officer's report was completed but no earlier than 14 days after the Councillor has been sent a copy of the Investigating Officer's report.

The presumption will be that the hearing should take place in public.

### **Scheduling a hearing**

Except in the most complicated cases, a hearing should be completed in one sitting or in consecutive sittings of no more than one working day in total.

When scheduling hearings, consideration will be given to the fact that late night and very lengthy hearings are not ideal for effective decision-making.

Equally, having long gaps between sittings can lead to important matters being forgotten.

### **The pre-hearing process**

The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself.

The pre-hearing process will normally be carried out through an informal meeting between the Standards Committee Chairman, the Monitoring Officer, the legal officer for the Council, the Investigating Officer and the Councillor (and or their representative) that the complaint is about.

### **Key points for the pre-hearing process**

The officer providing administrative support to the hearing will arrange a mutually convenient date.

If any party declines to be part of this process or is obstructive to it, it will be reported in the Monitoring Officer's report to the Hearing Panel.

Once a date is set for the pre-hearing the officer providing administrative support to the hearing should write to all the relevant parties confirming the time, date and venue and the purpose of the pre-hearing.

The purpose will be to:

- set a date for the hearing;
- confirm the main facts of the case that are agreed;
- confirm the main facts which are not agreed;
- confirm whether the subject member will attend the hearing and/or will be represented at the hearing ;
- confirm those witnesses, if any, who will be asked to give oral evidence, subject to the power of the Standards Committee to make a ruling on this at the hearing;
- confirm any additional written evidence/submissions to be presented and the timescale for their production;
- confirm the arrangements for handling any confidential or exempt information if relevant, and
- confirm the proposed procedure for the hearing.

(NB The subject member may be represented by another person of their choosing whether that person is legally qualified or not. Where the representative is not legally qualified there may be restrictions on the release of confidential or exempt information.)

The purpose of the pre-hearing is to focus the relevant parties' attention on isolating all relevant disputes of facts between them.

Attention to the factual issues will save valuable time later on in the determination process. It is for this reason the subject member makes clear what findings of fact in the report s/he disagrees with and why.

Any witnesses to be invited to attend the hearing will be invited by either the party who wishes them to attend i.e. the Councillor the complaint is against, the Investigating Officer or the Hearing Panel itself.

## **The hearing**

The hearing is not a Court and strict rules of procedure and evidence, do not apply. The hearing will be conducted more along the lines of an inquiry.

The hearing will generally proceed by way of representations on behalf of the, Monitoring Officer and the subject member based on the Investigating Officers report and any written evidence which has been submitted.

The hearing will only hear oral evidence from witnesses of fact where key factual matters are in dispute. Normally, the hearing will allow for up to two character witnesses to give oral evidence.

Evidence will not be given under oath, but the deliberate telling of untrue statements is not acceptable.

The Panel has power to govern its own procedure and may limit the number of witnesses to be called to that specified at the pre-hearing meeting.

Any statement, comment or question must be addressed through the Chair of the Panel. There will be no direct cross-examination by any person of any other person.

The Chair will exercise the right to intervene and interrupt any person if that person is providing evidence that is not relevant to the proceedings, or to the Code of Conduct.

If any person behaves in an unruly, abusive or disruptive manner, the Chair will exercise their right to adjourn the hearing in order to have that person removed from the room.

The order in which evidence is to be given to the Panel is as follows:-

- The Monitoring Officer will present their report to the meeting;
- The Investigating Officer will present their report and may comment on any representations which have been made;
- The Panel and the subject Member may ask questions of the Investigating Officer through the Chair;
- The Investigating Officer can then present any witnesses (which the subject Member and the Panel will have the opportunity to ask questions of through the Chair);
- The subject Member will then be allowed to make their representations to the Panel (the Panel and Investigating Officer will then be provided the opportunity to ask questions of them);
- The subject Member will then be allowed to present witnesses to the Panel (which the Panel and Investigating Officer will be permitted to question through the Chair);
- The Independent Person will then provide their view of the case;
- The Panel will then adjourn (with its Legal Advisor and Clerk to the Panel) and will determine the facts of the case and if there has been a breach of the Code of Conduct;
- The Panel will return and announce its findings and whether there has, been a breach of the Code of Conduct. If there is no breach the meeting closes, if there has been a breach it progresses as follows;
- The Investigating Officer will be asked to make representations on appropriate sanctions;
- The subject Member will be able to make representations regarding sanction and present any character witnesses;
- The Independent Person will make representations on their view of possible sanctions;
- The Panel will then adjourn (with its Legal Advisor and Clerk to the Panel) to determine what sanctions (if any) are appropriate;
- The Panel will return and announce the sanctions (if any) they consider appropriate .

The Panel will have read all the papers in advance of the hearing. All parties are asked to keep to relevant points and avoid unduly lengthy or repetitive statements when making their representations or presenting their evidence to the Panel.

Any person may withdraw any of their representations at this hearing.

The Panel members, may ask questions at any time in the procedure in order to clarify any matter.

The purpose of the Legal Advisor is to advise on law and interpretation and not to make any recommendation as to the determination to be given.

The determination will be formally written and sent by post to all the parties at the hearing, and any other relevant person..

### **Considering the sanction**

When deciding on sanction(s), the Hearing Panel should ensure that it is reasonable and proportionate to the subject member's behaviour. Before deciding what sanction to issue, the Hearing Panel will consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention?
- Did the subject member know that they were failing to follow the Code of Conduct?
- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What are the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the subject member accept they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct?
- Has the subject member failed to follow the Code of Conduct before?
- Is the subject 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 subject member has repeatedly or blatantly misused the Authority's information technology resources, the standards committee may consider withdrawing those resources from the subject member
- If a sanction is to be applied what time limit should be placed upon the Councillor to carry out the required sanction.

### **Examples, but not an exhaustive list, of mitigating factors are:**

- An honestly held, although mistaken, 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.
- A member's previous record of good service.
- Substantiated evidence that the member's actions have been affected by ill-health.

- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

**Examples, but again not an exhaustive list, of aggravating factors are:**

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people.
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.
- Intimidation of the complainant or witnesses.

In deciding what action to take, the Panel should bear in mind the aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy.

Thus, the action taken by the Panel should be designed both to discourage or prevent the particular subject Member from any future non-compliance and also to discourage similar action by others.

Panels should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.