



Proposed Sub Committee Hearing Procedure for determination of allegations about the Member Code of Conduct

Introduction

1. The determination of complaints by the Standards and Constitution Committee (or Sub Committee thereof) following an investigation and referral by the Monitoring Officer, will be governed by this procedure.
2. The person[s] making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member. The allegation will be heard by the Standards and Constitution Committee or the Standards and Constitution Hearing Sub Committee.

The Sub Committee Hearing

3. The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chair of the Sub Committee may limit the number of witnesses to be called, if they believe the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Sub Committee to reach its decision.
4. Nothing in this procedure shall limit the Chair of the Sub Committee from requesting the attendance of any additional witnesses whose evidence they consider would assist the Sub Committee to reach its decision.
5. The Sub Committee shall decide, on a balance of probabilities, whether the complaint[s] is or are upheld upon the evidence presented to it.
6. 14. Each Sub Committee Member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. If there are equal numbers of votes for and against, the Chair will have second or casting vote.
7. The meeting of the Sub Committee will be open to the public and press unless confidential information or exempt information is likely to be disclosed.

Procedure at the Sub Committee Hearing

8. The initial order of business at the meeting shall be as follows:-

- a) Establishing whether the Sub Committee is quorate
 - b) Declarations of interest
 - c) Introductions
 - d) Confirming the procedure [this document or amendments to it] to be adopted for the determination of the Sub Committee's business
 - e) Consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present
 - f) Consideration of any procedural issues and, in particular, any representation from the Investigating Officer and/or the Member as to reasons why the Sub Committee should exclude the press and public and determination as to whether to exclude the press and public.
9. The purpose of the Sub Committee Hearing is to determine the facts at issue and what action, if any, should be taken. An inquisitorial approach will be adopted by the Sub Committee members in seeking information and clarifying facts and issues. The Chair will control the procedure and evidence presented at the Sub Committee, including the questioning of witnesses.
10. The Sub Committee members may at any time seek legal advice from their advisor. [Such advice will be notified to the public in the presence of the Investigation Officer and the Member.]
11. The procedure will be as follows, subject to the Chair being able to make changes as they think fit in order to ensure a fair and efficient hearing.

Proceeding in the absence of the Member

12. If the Member is not present at the start of the Sub Committee Hearing:
- a) The Chair will ask the Monitoring Officer (Deputy Monitoring Officer/Legal Advisor to the Panel) whether the Member has indicated their intention not to attend the Sub Committee Hearing
 - b) The Sub Committee shall then consider any reasons which the Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend
 - c) If the Sub Committee is satisfied with such reasons, it shall adjourn the hearing to another date
 - d) If the Sub Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Sub Committee shall decide whether to consider the matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

Presentation by the Investigating Officer

13. The Investigating Officer will present the evidence which is relevant to the matter. The Investigating Officer may introduce any witness required to substantiate any matter contained in the report which has been disputed and present any other relevant evidence.
14. The Member or their representative may ask questions of the Investigating Officer or any witness.
15. The Sub Committee members may ask questions of the Investigating Officer or any witness.

Presentation by the Member

16. The Member or their representative will present the evidence which is relevant to the matter. The Member or their representative may introduce witnesses or present any other relevant evidence.
17. The Investigating Officer may ask questions of the Member, or any witness.
18. The Sub Committee members may ask questions of the Member or any witness.

Summing Up

19. The Investigating Officer and then the Member or their representative will be given the opportunity to sum up.

Power to Adjourn

20. If the Sub Committee at any time prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter the Sub Committee may (on not more than one occasion) adjourn the hearing and make a request to the Monitoring Officer (Deputy Monitoring Officer/Legal Advisor to the Panel) to seek and provide such additional evidence and to undertake further investigation on any point specified by the Sub Committee.

Decision by the Sub Committee

21. The Sub Committee will consider in private all the evidence which it has heard in order to establish its findings of fact.
22. At any stage in the consideration of the matter the Sub Committee may return to ask further questions of the Investigating Officer or the Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

23. The Sub Committee may seek legal advice at any time. Such advice may be given in the presence of the Investigating Officer and the Member if appropriate.
24. At the conclusion of their deliberations, the Chair will advise the Member and the Investigating Officer of the Sub Committee's findings and whether the Code of Conduct has been breached.
25. If the Sub Committee concludes that the Member has acted in breach of the Code representations will be invited from the Investigating Officer and the Member as to what action, if any, it should take. The Sub Committee may ask questions of the Member and the Investigating Officer.

Determining the Matter

26. The Sub Committee, having heard any representations, will consider what actions, if any, to take. The findings that the Sub Committee may make are:
 - a) That there has been no breach of the Code
 - b) That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken
 - c) That the Member has failed to comply with the Code of Conduct and the Sub Committee may impose one or more of the following sanction(s):
 - A formal censure of the Subject Member
 - A recommendation to the Authority that the Subject Member should be censured
 - Publication of the Sub Committee's findings in respect of the Member's conduct on the Authority's website
 - Report its findings to the Council for information
 - Recommend to the Member's Group Leader (or in the case of an ungrouped Member(s), recommend to Council or Committees) that they be removed from any or all Committees or Sub Committees of the Council
 - Instruct the Monitoring Officer (Deputy Monitoring Officer/Legal Advisor to the Panel) to arrange training for the Member
 - A direction to the Member that they submit a written apology in a form approved by the Monitoring Officer (Deputy Monitoring Officer/Legal Advisor to the Panel).
 - Require that the Member takes part in conciliation or mediation as specified and detailed

- Recommend to Council that the Member be removed from all outside appointments to which they have been appointed or nominated by the council
 - Recommend to Council that it withdraws facilities provided to the Member of the council for a specified period, such as a computer, website and/or email and internet access (save as necessary for democratic duties)
 - Recommend to Council that it excludes the member from the council's offices or other premises for a specified period except for meeting rooms as necessary for attending council, Committee and Sub Committee meetings and/or restricts contact with officers to named officers only
 - If relevant, recommend to the Council that the Member be removed from their role as leader of the Council, or if relevant recommend to the appropriate official of a political group that the councillor be removed as a group leader or other position of responsibility.
 - Any other sanction which in consultation with the Independent Person is considered appropriate.
27. In deciding what penalty to set, the Sub Committee will consider all relevant circumstances.
28. The Chair will announce the decision of the Sub Committee, the action, if any, it will take and the reasons for the decision.
29. The Sub Committee will then consider in open session whether there are any recommendations which should be made to any Authority concerned arising from the consideration of the allegation.

Appeal

30. There is no right of appeal against the decision of the Standards Sub Committee.
31. If a Complainant or Subject Member considers that the Authority has failed to deal with an allegation properly, they may refer the matter to the Local Government and Social Care Ombudsman.

Notice of findings

32. A formal decision notice in draft will be prepared as soon as practicable. The draft decision will be forwarded to the Chair of the Sub Committee for approval.

33. Once approved and as soon as reasonably practicable after the Sub Committee the full written decision will be forwarded to the Subject Member and the Complainant [where possible].
34. If the Standards Sub Committee wishes to publish its finding(s), the Monitoring Officer (as recognised by the Legal Advisor to the Panel), shall arrange for a summary of the findings to be published on the Council website in such manner as the Sub Committee may determine (for example, by reporting the matter to Council for information).
35. Where the Sub Committee determines that there has not been a breach of the Code of Conduct, the notice shall:
 - a) State that the Sub Committee found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
 - b) Not be published in the local newspaper if the Member so requests.
36. Where the Sub Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice shall:
 - a) State that the Sub Committee found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure
 - b) Specify the details of the failure
 - c) Give reasons for the decision reached
37. Where the Sub Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall include a brief statement of the facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision maker and any sanction applied.
38. Copies of the agenda, reports and minutes of a Sub Committee, as well as any background papers, apart from sections of documents relating to parts of the Sub Committee that were held in private, shall be available for public inspection for six years after the Sub Committee.