



## **PRE-HEARING PROCESS STANDARDS COMMITTEE**

### **1. Pre-amble**

The pre-hearing process will be used to:

- identify whether the subject member disagrees with any findings of fact in the investigation report
- identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
- identify whether evidence about those disagreements will need to be heard during the hearing
- decide whether there are any parts of the hearing that are likely to be held in private; and
- decide whether any parts of the Investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material.

**The pre-hearing process should usually be carried out in writing, although occasionally a meeting between the Sub-Committee, the relevant parties and their representatives may be necessary.**

### **2. Procedure**

2.1 The Council Secretary and Solicitor will give a copy of the Investigation report to the member who the allegation has been made about as soon as practicable.

**(See Document 1)**

2.2 Member Services, in consultation with the Chairman of the Local Determination/Investigation Hearings Sub-Committee, will:

- provide a copy of the Sub-Committee's pre-hearing and hearing procedures to the subject member
- outline the subject member's rights and responsibilities;

- propose a date for the hearing;
- ask for a written response from the subject member by a set time to find out whether they:
  - disagree with any of the findings of fact in the Investigation report, including the reasons for disagreement;
  - want to be represented at the hearing by a solicitor, barrister or any other person, noting that the Sub-Committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined;
  - want to give evidence to the Sub-Committee, either verbally or in writing;
  - want to call relevant witnesses to give evidence to the Sub-Committee;
  - can attend the hearing on the proposed date;
  - want any part of the hearing to be held in private
  - want any part of the Investigation report or other relevant documents to be withheld from the public

**(See Document 2)**

- send a copy of the subject member's response to the Investigator and invite the Investigator to say by a set time whether they want:
  - to be represented at the hearing;
  - to call relevant witnesses to give evidence to the Sub-Committee;
  - any part of the hearing to be held in private;
  - any part of the Investigation report or other relevant documents to be withheld from the public;
  - to invite any other witnesses the Sub-Committee feels are appropriate.

**(See Document 3)**

- 2.4 Member Services in consultation with the Chairman and the legal advisor will prepare and distribute to everyone involved at least two weeks before the proposed date of the hearing an agenda for the hearing meeting **(See Document 4)** which will
- confirm the date, time and place for the hearing;
  - contain the proposed procedure for the hearing;

- contain the Pre-Hearing Process Summary (See Document 4) which will include:
  - The name of the authority
  - The name of the subject member
  - The name of the complainant (unless there are good reasons to keep their identity confidential)
  - Case reference numbers of the principal authority or the Standards Board for England
  - The name of the Standards Committee member who will chair the hearing
  - The name of the investigator
  - The name of the Legal Adviser
  - The name of the administrative officer
  - The date the pre-hearing process summary was produced
  - A summary of the allegation
  - The relevant section or sections of the Code of Conduct
  - The findings of fact in the investigation report that are agreed
  - The findings of fact that are not agreed
  - Whether the subject member or the investigator will attend or be represented
  - The names of any witnesses who will be asked to give evidence





## **HEARING PROCEDURE – STANDARDS COMMITTEE**

### **CHAIRMAN’S INTRODUCTION**

The purpose of the Sub-Committee’s hearing is to decide whether or not (Parish) Councillor ..... has failed to follow the Code of Conduct for .....Council and, if so, to decide whether or not any penalty should be applied and what form any penalty should take.

All of those present will introduce themselves.

The Chairman will advise that the hearing will be conducted using the Hearing Procedure enclosed with the agenda.

The Sub-Committee will run the hearing as set out in this document.

*(If the subject member is not in attendance, the Sub-Committee can consider the Investigation report in their absence. If the Sub-Committee is satisfied with the subject member’s reason for not being able to attend, another date should be arranged for the hearing.)*

The Chairman shall ask the Councillor, the Investigating Officer and the Legal Adviser to the Sub-Committee whether they wish to exclude the Press or public from all or any part of the hearing.

*(If any of them so request, the Chairman shall ask them to put forward reasons for doing so and ask for responses from the others and the Sub-Committee shall then determine whether to exclude press and public from all or any part of the hearing.*

*Where the Sub-Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall be made available to the press and public.)*

### **Preliminary Procedural Issues**

Any issues or disagreements about how the hearing should continue should be resolved at this stage.

## Stage 1 – Findings of fact

1. The Chairman will refer to the pre-hearing process summary to see if there are any significant disagreements with the facts contained in the Investigator's report?

If no, move to Stage 2.

If yes,

the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. (If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representation on all the relevant facts, instead of discussing each fact individually.)

2. With the Sub-Committee's permission, the investigator may call any necessary supporting witnesses to give evidence.
3. The Sub-Committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.
4. The subject member will then make representations to support their version of the facts and, with the Sub-Committee's permission, call any necessary witnesses to give evidence.

*(At any time, the Sub-Committee may question any of the people involved or any of the witnesses and may allow the investigator to challenge any evidence put forward by witnesses called by the member)*

5. If the subject member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the sub-committee will consider whether it would be in the public interest to continue in their absence.
6. After considering the member's explanation for not raising the issue at an earlier stage, the sub-committee may then:
  - (a) continue with the hearing, relying on the information in the Investigator's report;
  - (b) allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary;
  - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.
7. The sub-committee, the Member Services officer and the Legal Adviser will move to another room to consider the representations and evidence in private.
8. On their return, the Chairman will announce the Sub-Committee's findings of fact.

*(Note: During the course of a hearing, the Sub-Committee may at any stage prior to the conclusion of the hearing, adjourn the hearing and require the Council Secretary and Solicitor to obtain further information or undertake further investigation on any point specified by it. It can make this request only once per case in accordance with Paragraph 18(8) of the Standards Committee (England) Regulations 2008*

## **Stage 2**

### **Did the member fail to follow the Code?**

1. The Chairman will advise that the Sub-Committee needs to consider whether, based on the facts it has found, the subject member has failed to follow the Code of Conduct.
2. The subject member will be invited to give relevant reasons why the Sub-Committee should decide that they have not failed to follow the Code.
3. The Sub-Committee will then consider any verbal or written representations from the investigator.

*(The Sub-Committee may, at any time, question anyone involved on any point they raise in their representations.)*

4. The subject member will be invited to make any final relevant points.
5. The Sub-Committee, the Member Services officer and the Legal Advisor will then move to another room to consider the representations.
6. On their return, the Chairman will announce the Sub-Committee's decision as to whether the subject member has failed to follow the Code of Conduct.

## **Stage 3**

### **1. If the subject member has not failed to follow the Code of Conduct**

If the sub-committee decides that the subject member has not failed to follow the Code of Conduct: the Sub-Committee can move on to consider whether it should make any recommendations to the authority.

The subject member can at this stage ask to prohibit the publication of a notice, stating that the Sub-Committee has found that there has been no failure to comply with the Code. If the subject member does not do so then this information will be published.

### **2. If the subject member has failed to follow the Code of Conduct**

- 2.1 the Sub-Committee will consider any verbal or written representations first from the investigator and then from the subject member as to:
  - (a) whether the Sub-Committee should apply a sanction
  - (b) what form any sanction should take.

*(The Sub-Committee may question the investigator and the member, and take legal advice, to make sure they have the information they need in order to make an informed decision.)*

2.2 The Sub-Committee, Member Services officer and Legal Adviser will then leave the room to deliberate in private to consider whether to impose a sanction on the subject member and, if so, what sanction it should be.

2.3 **If the Sub-Committee decides that the member has failed to follow the Code of Conduct and that the member should be sanctioned, it may do any one or a combination of the following:**

- Censure the member (This is the only sanction available when dealing with a person who is no longer a member of the authority.)
- Restrict the Member's access to the premises of the authority or the use of resources of the relevant authority for up to six months, provided that those restrictions:
  - (i) are reasonable and proportionate to the nature of the breach; and
  - (ii) do not unduly restrict the person's ability to perform the functions of a member.
- suspend, or partially suspend, the Member for up to six months;
- require the member to submit a written apology in a form specified by the Sub-Committee.
- require the member to undertake training specified by the Sub-Committee.
- require the member to participate in any conciliation specified by the Sub-Committee.
- suspend, or partially suspend, the Member for up to six months on the condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the sub-committee orders them to. Conciliation involves an independent person helping the relevant people to try to reach an agreement on the matter set out by the sub-committee.

*(Notes:*

- (i) Sanctions may start immediately or up to six months after the hearing, if the sub-committee wishes.)*
- (ii) Any conciliation process should have an agreed timeframe for resolution. The process may be of an informal or formal nature, involving elements of training and mediation that will lead to an effective and fair conclusion of the matter. Any decisions reached during the process regarding future behaviour of the Member concerned, and measures to prevent a repetition of the circumstances that gave rise to the initial allegation, should be agreed by all parties.*



- (iii) *The regulations do not provide any powers for the Sub-Committee to award costs.*
- (iv) **Reference back to the Standards Board for England** - *If, at any time before the Sub-Committee has determined upon any sanction, the Sub-Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Sub-Committee, the Sub-Committee may instruct the Council Secretary and Solicitor to request the Standards Board for England, to take responsibility for the conduct of the matter, and may adjourn the hearing until the Council Secretary and Solicitor advises the Sub-Committee of the Standards Board's response to such request.)*

#### **Stage 4 - The Decision**

1. On their return, the Chairman will announce the Sub-Committee's decision.
2. The Sub-Committee will consider any verbal or written representations from the investigator, as to whether it should make any recommendations to the authority, with a view to promoting high standards of conduct among members, which the sub-committee will consider and make a decision.
3. The Chairman will then repeat the decision in respect of the member including the decision in respect of any recommendations to the authority.
4. The Chairman will then advise the attendees
  - (a) that Member Services will provide a short written decision at the end of the day and then produce the sub-committee's full written decision within two weeks of the date of the hearing.
  - (b) that a summary of the Sub-Committee's findings, reasons for its findings and any penalty set, will be published in one or more newspapers that are independent of the authorities concerned and circulated in the area.
  - (c) that the Member who is the subject of a Sub-Committee's finding has the right to apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding within 21 days of receiving the full written decision notice from Member Services.

#### **(NOTE: Interpretation**

1. *'Subject Member' means the member of the authority who is the subject of the allegation being considered by the Sub-Committee, unless stated otherwise. It also includes the Member's nominated representative.*
2. *'Investigator' means the Monitoring Officer or Ethical Standards Officer and includes their nominated representative.*
3. *'Sub-Committee' is the Local Determination/Investigation Hearings Sub-Committee given delegated authority to conduct hearings rather than the main Standards Committee.*

4. *'Legal adviser' means the officer responsible for providing legal advice to the Standards Committee/Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.*

*(The Sub-Committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Sub-Committee should be shared with the subject member and the Investigator if they are present.)*