

APPENDIX 2

Appendix 2 - Sub Committee Hearing Procedure for determination of allegations about the Member Code of Conduct.

1. Hearings Panel

- 1.1. Where the Monitoring Officer has decided that the matter should be referred to a Hearings Panel, this will be set up as soon as possible but not less than 20 working days after the final report is issued.
- 1.2. Once a date has been set for a Hearing, the Monitoring Officer will notify:
 - the subject member;
 - the investigator;
 - the relevant Independent Person;
 - the complainant if appropriate;
 - the clerk of any relevant town or parish council, where the subject member is a town/parish councillor. Whether they want to be represented at the Hearing;
- 1.3. The Monitoring Officer will outline the hearing procedure, the subject member's rights and ask for a written response from the subject member in respect of the following:-
 - a) Whether they disagree with any findings of fact and their reasons if so;
 - b) Whether they want to give written or verbal evidence;
 - c) Whether they want to call any witnesses
 - d) Whether they wish to request any part of the Hearing be held in private, and their reasons;
 - e) Whether they wish to request that any part of the investigation report of other documents be withheld from the public, and their reasons.

The Investigator will also be asked if they wish to call any witnesses.

- 1.4. If the subject member is unable to make the specified date the Panel may arrange for the hearing to be held on a different date, provided that they are satisfied that the subject member has given an acceptable reason to the Monitoring Officer. Where the subject member does not give an acceptable reason to the Monitoring Officer or does not reply within a specified time, the Panel will proceed with the date and may consider the report in the subject

member's absence if the subject member does not go to the hearing. The subject member should not be able to evade having the case heard simply by refusing to cooperate and the Shadow Authority's Code of Conduct makes failure to cooperate a potential breach. The Panel will make clear at the start of the hearing that they have considered whether they can proceed in the absence of the subject member and should record their reasons.

- 1.5. If one or more witnesses are unavailable on the given date the Panel, as part of the pre-hearing process, will decide how material should be presented to the Hearing and whether another date needs to be looked for. Witnesses will be kept promptly informed of the relevant dates, times and location of the hearing, but it is the responsibility of the subject member to make sure their witnesses are available to attend.
- 1.6. Except in the most complicated cases, the Panel will aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

2. Advice to the Panel

- 2.1. The Monitoring Officer will usually be the main adviser to the Panel, unless they have an interest in the matter that would prevent them from performing this role independently. This may be because they have carried out the investigation or have another conflict. If this situation arises, the Monitoring Officer will arrange for the Deputy Monitoring Officer or another appropriately qualified officer to advise the Panel.
- 2.2. The Monitoring Officer or other legal adviser's role in advising the Panel is to:
 - make sure that members of the Panel understand their powers and procedures.
 - make sure that the procedure is fair and allows the complaint to be dealt with as efficiently and effectively as possible.
 - make sure that the subject member understands the procedures the Panel will follow.
 - provide advice to the Panel during the Hearing and their deliberations.
 - help the Panel produce a written decision and a summary of that decision.

3. Composition of the Panel

- 3.1. The Panel will comprise three Councillors from the Standards Committee, appointed by the Monitoring Officer. The Panel will be politically balanced where possible. Any Councillor appointed will have had appropriate training.
- 3.2. The Independent Person who has provided views to the Monitoring Officer will also be asked to attend the Hearing. If they are unable to do so, the Shadow Authority will seek their written views prior to the Hearing.

4. Holding a Pre-Hearing

- 4.1. As soon as a date has been set for a hearing, the Monitoring Officer will arrange a pre-hearing with the Panel. The purpose of the pre-hearing is to allow matters at the Hearing to be dealt with more fairly and quickly and to alert parties to any difficulties to allow them to be resolved before the Hearing. The pre-hearing will also decide on the chair of the Panel. A pre-hearing may be dealt with by written correspondence, virtual meeting or in person meeting, depending on the complexity of the case.
- 4.2. At the pre-hearing, the Panel will not debate the merits of the case. They will consider:
 - Whether any findings of fact in the investigation report are in dispute and, if so, how the Panel would satisfy itself how it could resolve that difference at the Hearing.
 - Whether it considers any additional evidence is required at the hearing.
 - What witnesses it thinks it would want to hear from.
 - Whether the witnesses to be called are relevant bearing in mind the nature of the issue and the need for proportionality.
 - Whether there are any parts of the hearing that are likely to be held in private or 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 though the final decision will rest with the Panel on the day.
 - Identify any potential conflicts of interest.
- 4.3. A pre-hearing is not a formal meeting and is not open to the press or public, or to any councillors other than those on the Hearings Panel.
- 4.4. Following the pre-hearing, the Monitoring Officer will write to all those involved at least 14 days prior to the Hearing to confirm who will be asked to give evidence, set out any representation, and outline the procedure for the Hearing.

5. The Hearing

- 5.1. The Panel will always work in a demonstrably fair, independent and politically impartial way. The Panel will decide factual evidence on the balance of probabilities.
- 5.2. The rules on access to information apply to the Hearings Panel. The Hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters, and the Panel will take account of any advice received from the Monitoring Officer.

6. Representation

- 20.1 The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. If they consulted an Independent Person, they may in addition ask them to attend. This will be agreed at the pre-Hearing and if the Panel has any concern about the person chosen to represent the subject member, it will be made clear at that stage. The Panel does, however, have the right to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will normally be given before permission is withdrawn.

7. Evidence

- 7.1. At the hearing, the Investigating Officer may be asked to present their report, or the Panel may agree that it does not need any further evidence from the Investigator on their report if the findings of fact are not disputed.
- 7.2. If the findings of fact are disputed, then the Investigator can call such witnesses as they consider necessary and make representations to substantiate their conclusion that the councillor has failed to comply with the Code of Conduct.
- 7.3. The subject member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearing Panel as to any disputed findings of fact and why they consider that they did not fail to comply with the Code of Conduct.
- 7.4. The Panel will allow witnesses to be questioned by the subject member and the Investigator, or their representatives. The Panel can also question the

Investigator, the subject member and witnesses directly, and can allow the Independent Person to do this.

- 7.5. If the Panel believes that questions are irrelevant, oppressive, or repetitious then the Chair will stop that line of questioning.

8. Making a Finding

- 8.1. Once the Panel has heard all the relevant evidence it will adjourn the Hearing and retire to deliberate.
- 8.2. The Independent Person may be asked to retire with the Panel but will take no part in the decision-making process. They will be asked to give their views to the Panel, and these will be taken into regard when the Panel makes its decision. These views will be conveyed back publicly once the Panel reconvenes.
- 8.3. The Monitoring Officer, or other legal adviser to the Panel, will be asked to retire with the Panel to advise on matters of procedure and law. Any advice given will be conveyed back publicly once the Panel reconvenes and the Panel will make its decision on the balance of probabilities, based on the evidence it has heard.
- 8.4. If the Panel, after retiring, decides that it needs to reconsider certain matters it may reconvene to ask further questions.
- 8.5. Once the Panel has reached its decision it will reconvene the hearing and inform the subject member of its decision with reasons. Where a breach has been found, it will invite representations from the subject member and Investigator as to any aggravating or mitigating factors before retiring again to consider an appropriate sanction. It will then reconvene the hearing and advise the subject member of its decision on any sanction to be imposed.
- 8.6. The Panel will give its full written decision, with reasons, to the relevant parties as soon as possible after the hearing, and in most cases, this will be within five working days of the Hearing Panel.
- 8.7. The full written decision will be provided to the subject member, the complainant and the Independent Person.

9. Sanctions

9.1. If the Panel finds that a subject member has failed to follow the Code of Conduct, then they are able to impose sanctions which are reasonable and proportionate. Typical sanctions may include one or a combination of the following:

- reporting the findings in respect of the subject member's conduct to the Shadow Authority;
- issue a formal Censure Notice;
- recommend to the subject member's group leader (or to the Shadow Authority) that they be removed from any or all committees or sub-committees of the authority for a specified period;
- recommend to the Shadow Authority that the subject member be removed from positions of responsibility for a specified period;
- instruct the Monitoring Officer to arrange training for the subject member;
- recommend to that the subject member be removed from all outside appointments to which they have been appointed or nominated by the authority;
- recommend to the Shadow Authority that it withdraws facilities provided to the subject member by the authority for a specified period, such as a computer, website and/or email and internet access;
- recommend to council that it excludes the subject member from the authority'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 subject member be removed from their role as leader of the authority; or
- if relevant recommend to the appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.

9.2. When deciding on a sanction, the Panel will ensure that it is reasonable, proportionate, and relevant to the subject member's behaviour. Before deciding what sanction to issue, the 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?
- Has there been a breach of trust?

- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result or potential result of failing 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 or failed to follow the Code of Conduct before?
- Is the subject member likely to do the same thing again?
- How will the sanction impact on the subject member's ability to carry out their role?

9.3. Sanctions involving restricting access to the Shadow Authority's premises or equipment or contact with officers will not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

9.4. The Panel will consider mitigating factors, which may include:

- 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 councillor's previous record of good service;
- substantiated evidence that the councillor'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 councillor;
- compliance with the Code since the events giving rise to the complaint.

9.5. The Panel will also consider aggravating factors, which may include:

- dishonesty or breaches of trust;
- trying to gain an advantage or disadvantage for themselves or others;
- bullying;
- 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.

10. Publicising the findings

- 10.1. The decision notice will be published on the Shadow Authority's website, and anywhere else the Panel considers appropriate.
- 10.2. If the Panel finds that the subject member did not fail to follow the authority's Code of Conduct, the public summary will say this and give reasons for their finding.
- 10.3. If the Panel finds that the subject member failed to follow the Code but that no action is needed, the public summary will:
 - state that the councillor failed to follow the Code, but that no action needs to be taken;
 - outline what happened;
 - give reasons for the Panel's decision not to take any action.
- 10.4. If the Panel finds that a councillor failed to follow the Code and it imposed a sanction, the public summary will:
 - state that the councillor failed to follow the Code;
 - outline what happened;
 - explain what sanction has been imposed;
 - give reasons for the decision made by the Panel.
- 10.5. The Panel's reports and minutes will be available for public inspection in the same way as other local authority committee papers.

11. Appeals

- 11.1. There is no right of appeal against a decision on a Code of Conduct complaint.

12. Variation

The Monitoring Officer, or the Hearings Panel on the advice of the Monitoring Officer, may vary these arrangements in any particular instance where they are of the opinion that such a variation is expedient in order to secure the effective and fair

consideration of any matter, is lawful, and is consistent with the principles of natural justice.