

## **Arrangements paper - appendix 3**

### **STANDARDS HEARING SUB- COMMITTEE GUIDANCE**

#### **The need for a hearing**

The Standards Hearing Sub-Committee (Sub-Committee) will seek to hold a hearing in relation to an allegation within one month of receiving the Investigation Report.

#### **Before the hearing**

The pre-hearing process – Lead by the Monitoring Officer

The Subject Member will be asked to provide the following information to the Monitoring Officer:

- to identify those paragraphs in the Investigating Officer's Report which the Subject Member agrees with and those paragraphs in the Report that the Subject Member disagrees with and the reasons for such disagreement;
- to identify any further documentary evidence which the Subject Member would like to rely upon at the hearing;
- to ascertain if they are going to attend the Sub-Committee and if they are going to represent themselves or whether they are going to employ someone to represent them in which case they should provide the details of their representative prior to the hearing;
- to give reasons whether the whole or any part of the Sub-Committee should be held in private and whether any of the documentation supplied to the Standards Sub- Committee should be withheld from the public.

The Investigating Officer will also be asked to comment on the Subject Member's response within a set time to say whether or not he or she:

- will be represented at the Sub-Committee;
- wants to call witnesses to give evidence to the Sub-Committee;
- wants any part of the Sub-Committee conducted in private and why;
- wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public and why.
- The Monitoring Officer will endeavour to accommodate the availability of the parties attending the hearing before notifying the parties of the date, time and place for the hearing.

The Complainant will be asked to provide the following information to the Monitoring Officer:

- the Investigator's report forms basis of the case that the Code of Conduct has been breached. The Complainant asked to identify those paragraphs in the Investigating Officer's Report which the Complainant agrees with and those paragraphs in the Report that the Complainant disagrees with and the reasons for such disagreement.
- to ascertain if they wish to attend the Sub-Committee and whether or not they wish to make representations to the Sub-Committee (the Investigating Officer shall advocate that the Code of Conduct has been breached);
- to give reasons whether the whole or any part of the hearing should be held in private and whether any of the documentation supplied to the Standards Hearing Sub-Committee should be withheld from the public.

## **The Hearing**

The Sub-Committee will use a written pre-hearing process in order to allow the hearing to proceed fairly and efficiently.

### **The Order of *Business***

The order of business will be as follows, subject to the Chairman exercising discretion and amending the order of business where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter:

- Appointment of a Chairman/Vice Chairman.
- Apologies for absence.
- Declarations of interests.
- The Chairman shall confirm that the Standards Hearing Sub-Committee is quorate.
- In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing.
- Introduction by the Chairman, of Members of the Standards Hearing Sub-Committee, the Independent Person, the Monitoring Officer or Legal Advisor to the Sub-Committee, Investigating Officer, Complainant(s) and the Subject Member and their representative (if appointed).
- To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.
- Conduct of the Hearing. The Standards Hearing Sub-Committee may adjourn the hearing at any time.

### ***Presentation of the Complaint***

The Investigating Officer presents their report including any documentary evidence or other material and calls any complainant witnesses.

The Standards Hearing Sub-Committee will give the Subject Member the opportunity to ask any questions regarding the evidence presented through the Chair.

The Standards Hearing Sub-Committee may question the Investigating Officer upon the content of his or her report and any complainant witnesses.

### ***Presentation of the Subject Member's case***

The Subject Member or their representative presents their case and calls their witnesses.

The Standards Hearing Sub-Committee will give the Investigating Officer the opportunity to ask any questions regarding the evidence presented through the Chair.

The Standards Hearing Sub-Committee may question the Subject Member upon the contents of their case and any Subject Member witnesses.

### **Summing up**

The Investigating Officer sums up the complaint.

At the discretion of the Chairman of the Sub-Committee, the Complainant may have the opportunity to rebut any matters raised within the Sub-Committee to which they disagree.

The Subject Member or their representative sums up their case.

### ***Views/Submissions of the Independent Person***

The Chairman will invite the Independent Person, to express their view on whether they consider that on the facts presented to the Standards Hearing Sub-Committee there has been a breach of the Code of Conduct or no breach as the case may be.

### ***Deliberations of the Sub-Committee***

The Sub-Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether on the facts found, the Subject Member has failed to

comply with the Code of Conduct. Where the legal adviser assists on matters of law an explanation of this will be provided when the Sub-Committee reconvenes in public.

The Sub-Committee may, at any time, come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Sub-Committee cannot be presented, then the Sub-Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.

The Sub-Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.

Where the complaint has a number of aspects, the Sub-Committee may reach a finding, apply a sanction and /or make a recommendation on each aspect separately.

Having deliberated on its decision the Sub-Committee will reconvene the hearing in public and the Chairman will announce that, on the facts presented, the Sub-Committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.

If the Sub-Committee considers that there has been **no breach of the Code of Conduct** the Sub-Committee will set out the principal reasons for the decision. The Chairman will also announce that the Sub-Committee's full decision and reasons will be issued by the Monitoring Officer, in writing within approximately 10 working days following the close of the hearing.

If the Sub-Committee decides that there has been **a breach of the Code of Conduct**, the Chairman will announce the principal reasons for the decision.

The Chairman will then invite the Investigating Officer and the Subject Member, to make their representations as to whether any sanction(s) or recommendations should be applied and what form any sanction(s) or recommendation(s) should take.

In reaching its decision the Sub-Committee may make any recommendations it considers may facilitate and enhance ethical standards within the relevant authority. The Independent Person will then be invited to express their view on any sanction(s) or recommendation(s).

Having heard the representation/views, the Sub-Committee will adjourn and deliberate in private.

Having deliberated on the suggested sanctions and/or recommendations(s) and the application of any sanctions(s), and having taken into account the Independent Person's views the Sub-Committee will reconvene the hearing in public and the Chairman will announce:

- whether any sanctions are to be applied
- Whether any recommendations will be made to the Council or the Monitoring Officer.
- That the Sub-Committee's full decision and reasons will be issued by the Monitoring Officer, in writing within approximately 10 working days following the close of the hearing.
- That the decision will be published on the Borough Council's website; and
- That there is no internal right of appeal against the Standards Hearing Sub-Committee decision(s) and/or recommendations(s).

### ***Range of Possible Sanctions***

The Sub-Committee may:

- Publish and report its findings in respect of the Subject Member's conduct to
- a meeting of the full Council
- Recommend to Council that the Subject
- Member be requested to apologise;
- Recommend to the Subject Member's political group leader (or in the case of

- an un-grouped Subject Member, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council for a specified period;
- Recommend to the Leader of the Council, in the case of an Executive Subject Member, that the Subject Member be removed from the Executive, or removed from particular portfolio responsibilities;
- Recommend to Council that the Subject Member be requested to participate in appropriate training or participation in conciliation or mediation;
- Recommend to Council or the relevant Parish Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council for a specified period;
- Withdraw withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and internet access for a specified period;
- Exclude the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings;
- Issue a formal letter to the Subject Member;
- Issue a formal reprimand to the Subject Member.

The Sub-Committee cannot suspend a Subject Member, withdraw a Subject Member's allowance, impose financial penalties, award compensation or make an award of costs.

### ***Matters to Consider when Applying a Sanction***

When deciding whether to apply one or more sanctions referred to above the Sub-Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour and that any sanction does not unduly restrict the Subject Member's ability to perform the functions of a councillor. The Sub-Committee will consider the following questions along with any other relevant circumstances raised at the hearing:

- What was the Subject Member's intention and did they know that they were failing to follow the Council's Code of Conduct?
- Did the Subject Member receive relevant advice from officers before the incident and was that advice acted on in good faith?
- Has there been a relevant breach of trust?
- Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- What was the result/impact of failing to follow the Council's Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept that they were at fault?
- Did the Subject Member apologise to the relevant persons?
- Has the Subject Member previously been warned or reprimanded for similar misconduct?
- Has there been a relevant previous breach by the Subject Member of the Council's Code of Conduct?
- Is there likely to be a repetition of the incident?
- Was it a deliberate breach of the code or was it inadvertent (i.e. the Member thought that he/she was acting in a private capacity)? If capacity is an issue the Standards Hearing Sub-Committee will need to give reasons for its decision that the Subject Member was or was not acting publicly.

### ***The written decision***

The Chairman will announce its decision on the day. The Committee will issue a full written decision approximately 10 working days after the end of the hearing to:

- The Subject Member; and
- The Complainant;

### ***Making the findings public***

A summary of the decision and reasons for that decision to be published on the Council's website. The Monitoring Officer and Chairman of the Standards Hearing Sub-Committee shall agree the wording and arrange for the publication as soon as reasonable possible follow the determination of the matter.

If the Sub-Committee finds that a Subject Member did not fail to follow the Council's Code of Conduct, the public summary must say this, and give reasons for this finding.

If the Sub-Committee finds that a Subject Member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the Subject Member failed to follow the Code of Conduct, outline what happened and give reasons for the Sub-Committee's decision not to take any action.

If the Sub-Committee finds that a Subject Member failed to follow the Code of Conduct and it sets a sanction, the public summary must say that the Member failed to follow the Code of Conduct, outline what happened, explain what sanction has been set and give reasons for the decision made by the Sub-Committee.

### **Costs**

Subject Members are responsible for meeting the cost of any representation at a Sub-Committee meeting. The Sub-Committee cannot make orders as to costs. The Council cannot contribute to the Subject Member's costs or the Complainant's costs or indemnify a Subject Member or Complainant against costs which he or she may incur.

### **Appeals**

There is no internal right of appeal for a Member against a finding by the Standards Hearing Sub-Committee following a hearing.

### **Variation**

The Monitoring Officer or the Chairman of the Standards Hearing Sub-Committee may vary this procedure in any particular instance where he or she or they is/are of the opinion that such a variation is desirable and does not conflict with statutory requirements.