

7. STANDARDS HEARING PROCEDURE RULES

1 Introduction

- 1.1 This note sets out the procedures for a Standards Hearing, which may be required by the Monitoring Team following an initial assessment of a complaint that a Member of the Council has failed to comply with the Code of Conduct.

2. Timescales

- 2.1 Where possible, if there has been no prior investigation, the hearing will be held within two months of the initial assessment decision. Where there has been a prior investigation the hearing shall be held within two months of receipt by the Monitoring Officer of the investigator's report.

3. Appointments to the Standards Hearing Panel

- 3.1 The Hearing will be before a Panel of three Members drawn from the Corporate Governance, Audit and Standards Committee.
- 3.2 The Corporate Manager – Democracy is authorised to make appointments to the Hearing Panel from the membership of the Corporate Governance, Audit and Standards Committee. The Chair for a Hearing shall be selected from amongst the Members forming the Hearing Panel.
- 3.3 In addition, the Independent Person appointed under section 28 of the Localism Act 2011 will also be present. His/her views will be requested and taken into account by the Panel, but by law he/she cannot vote.

4. Hearings to be held in Private – Permitted Attendance

- 4.1 The arrangements for permitted attendance are:
- The Monitoring Officer (or deputy) will be present as legal advisor to the Panel and a Democratic Services Officer to provide administrative support to the Panel.
 - Both the Member and the complainant will be invited to appear. They may present their own case or they may be represented.
 - The Member and the complainant may bring witnesses (of a number the Panel considers is reasonable), in which case written statements from the witnesses must be lodged with the Monitoring Officer at least eight working days before the hearing. "Character witnesses" who cannot provide evidence on the matter complained about will not be permitted.
- 4.2 The cost of any attendance/representation must be borne by the party concerned.

5. Arranging the Standards Hearing

- 5.1 Upon receipt of a request from the Monitoring Team, the Corporate Manager – Democracy shall arrange a time and date for the Standards Hearing Panel to meet and consider the matter.
- 5.2 At least five clear working days before the date of the meeting, all written evidence shall be circulated to the Panel, the Independent Person, the Member, and the Complainant.
- 5.3 Where it is considered that any documentation for the hearing and/or the Member's written statement is likely to disclose "exempt information" falling within paragraphs 1,2,4,5, and 7 of Schedule 12A to the Local Government Act 1972, he/she shall not provide copies of these papers to the media or public in advance of the meeting or to any member of the Council other than the members of the Panel and the Member who is the subject of the complaint in advance of the meeting.

6. Procedure at the Hearing

(a) General

- Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.
- The legal advisor can speak at any time to advise the Panel on technical matters or ask questions of any party.
- If the Member is not present at the start of the meeting, the Panel shall adjourn to enable the Member to attend, unless they are satisfied that there is not sufficient reason for the failure of the Member to attend, in which case the Panel may resolve to proceed in the absence of the Member.
- Where the Panel proceeds in the absence of the Member, the procedure for the meeting shall be adapted as necessary, giving any representative of the Member who is present such rights as would otherwise be accorded to the Member.

(b) Order of Proceedings

The order of business at the Hearing shall be as follows:

- (i) Introduction of the Panel
- (ii) Decision as to whether to exclude the press and public from the Hearing in accordance with Appendix below
- (iii) The complainant can address the Panel and call witnesses (if any)
- (iv) The Member can ask the complainant and witnesses questions

- (v) The Panel and Independent Person can ask the complainant and witnesses questions.
- (vi) The Member can address the Panel and call witnesses (if any)
- (vii) The complainant can ask the Member and witnesses questions.
- (viii) The Panel and IP can ask the member and witnesses questions.
- (ix) The complainant can make a closing statement.
- (x) The Member can make a closing statement.
- (xi) All those present except the Panel, the Independent Person, the legal advisor and Administrator will leave the room while the Panel makes its decision.
- (xii) The Panel's decision will be announced orally as soon as possible.

A written report of the hearing and decision, with reasons, will be prepared - usually within five working days. A copy will be sent to all those present at the hearing.

The written report will be available for public inspection.

7. Decisions open to the Panel

The decisions that are open to the Panel are:

- (a) That the Member complied with the Council's Code of Conduct;
- (b) That the Member did fail to comply with the Council's Code of Conduct, and that
 - (i) No action need be taken; or
 - (ii) The Member be censured; and/or
 - (iii) Whatever communication the Panel considers appropriate be given to their findings; and/or
 - (iv) It be recommended to the Council (or to the member's political group where Committee appointments are made by political groups) that the Member be removed from a specific Committee(s), or from any other position to which the Council has appointed him/her.

The Panel may also make any recommendations it considers appropriate to the Council concerned on procedural amendments that might assist members generally to follow the Code of Conduct.

APPENDIX

Exclusion of Press and Public

Issues for Consideration

1. The hearing will consider as a preliminary point whether to exclude the press and public from the meeting, or any part of the meeting.
2. The Committee must act in accordance with Article 6 of the Human Rights Act 1998, which gives a right to a fair and public hearing by an independent and impartial tribunal. Article 6 provides that judgement shall be pronounced publicly, but that the press and public may be excluded from all or part of the “trial” in the interests of:
 - a. morals
 - b. public order
 - c. national security in a democratic society
 - d. where the interests of juveniles or the protection of the private life of the parties so require, or
 - e. in special circumstances where publicity would prejudice the interests of justice.

Accordingly, the presumption is in favour of a public hearing unless either the Councillor or the Reporting Officer can demonstrate over-riding reasons within one of these five headings for the press and public to be excluded.

3. Article 8 of the Human Rights Act 1998 provides that everyone has the right to respect their private and family life, home and correspondence. It provides that there shall be no interference by a public authority (such as the Committee) with the exercise of this right except such as is:
 - (a) in accordance with the law (such as the requirements for publication of the agenda, reports and background papers set out in Section 100A to 100K of the Local Government Act 1972), and
 - (b) necessary in a democratic society in the interests of:
 - i. national security
 - ii. public safety
 - iii. the economic well-being of the country
 - iv. the prevention of crime or disorder
 - v. the protection of health and morals (which would include the protection of standards of conduct in public life), or
 - vi. the protection of the rights and freedoms of others.

There is a clear public interest in promoting the probity of public authorities and public confidence therein, so that the presumption of a public hearing set out in Article 6 would apply. The Member’s Article 8 rights are qualified by

the exception set out in paragraph (b)v which refers to the protection of morals and would include the protection of standards in public life. Therefore, the hearing will be public unless either the Complainant or the Member demonstrates to the Panel's satisfaction that one of the circumstances set out in paragraph 2 apply and should over-ride that public interest. The Panel must give reasons for this decision.

4. Where the Panel concludes that the hearing or any part thereof should not be public, it must then consider whether there would be a disclosure of exempt information pursuant to the Local Government Act 1972. In that case, the Panel has a discretion under Section 100A(4) of the Local Government Act 1972, and would need to resolve whether or not to exclude the press and public.
5. Where the Panel does not resolve to exclude the press and public from the meeting, the Democratic Services officer supporting the Panel will then be required to provide copies of the agenda and reports to the media and public and other Members of the Council, and to permit inspection of the background papers.