

## CODE OF CONDUCT FOR MEMBERS - HEARING PROCEDURE

### PRE-HEARING PROCEDURE

1. The Monitoring Officer shall write to the Investigating Officer informing them of the date of the hearing, inviting them to attend to present their investigation report and to answer any questions the Panel may have in respect of the investigation and/or the report. The letter will outline the hearing procedure and ask the Investigating Officer:
  - a. Whether the Investigating Officer would like to call any witnesses to give evidence at the hearing and, if so, their reasons for wanting to call each witness ; and
  - b. To provide any representations regarding whether any part of the hearing should be held in private.
2. Where the Investigating Officer wishes to call relevant witnesses to give evidence at the hearing, the Monitoring Officer will consider the request in consultation with the Chairman of the Conduct Advisory Panel and may agree to it, such agreement not to be unreasonably withheld. The Monitoring Officer shall send written notification to the Investigating Officer of their decision.
3. The Monitoring Officer shall write to the member who is the subject of the complaint (“the Subject Member”) informing them of the date of the hearing and inviting them to attend. In doing so, the Monitoring Officer will remind the Subject Member as to their ability to consult an Independent Person at any stage in the investigation. The letter shall outline the hearing procedure, including details of which witnesses will be attending to give evidence, and ask the Subject Member:
  - a. To provide any representations regarding whether any part of the hearing should be held in private; and
  - b. For details of any additional relevant witnesses the Subject Member would like to attend the hearing, giving reasons.
4. Where the Subject Member requests that additional witnesses attend the hearing, the Monitoring Officer will consider the request in consultation with the Chairman of the Conduct Advisory Panel and decide whether to agree to it, such agreement not to be unreasonably withheld. The Monitoring Officer shall send written notification to the Subject Member of their decision.
5. The Monitoring Officer shall write to the Complainant informing them of the date of the hearing and inviting them to attend. The letter shall outline the hearing procedure and shall enquire whether the Complainant wants to make any representations regarding whether any part of the hearing should be held in private.

6. Where either the Subject Member or the Complainant wishes to be represented at the hearing, they must send a written request to the Monitoring Officer, giving their reasons for the request. The Monitoring Officer may, in consultation with the Chairman of the Conduct Advisory Panel agree to a request for representation at the hearing, such agreement not to be unreasonably withheld. The Monitoring Officer shall send written notification of their decision.
  
7. At least 14 calendar days before the hearing, the Monitoring Officer shall prepare a pre-hearing process summary and send it to the Independent Person, the Investigating Officer, the Subject Member and the Complainant. This should summarise the complaint, outline the main facts that are agreed and those which are not agreed, note whether the Subject Member and/or Complainant will attend and outline the procedure to be followed at the Hearing.

## **HEARING PROCEDURE**

### **START OF THE HEARING**

1. At the start of the hearing, the Panel will elect a Chair.
  
2. Once elected, the Chair should:
  - Introduce those present in the hearing.
  - Confirm that all parties have the correct documentation before them.
  - Summarise the procedure for the hearing.
  - Ask the parties if there are any preliminary procedural issues.
  - Make clear to all those present that the Panel may take legal advice, in private if necessary, from the Monitoring Officer at any time during the hearing or while they are considering the outcome.

### **PRELIMINARY PROCEDURAL ISSUES**

3. The Panel will decide whether the hearing should be heard in public or not. Under the County Council's Conduct Arrangements there is a presumption that the hearing will be in public, unless in accordance with Part VA and Schedule 12A of the Local Government Act 1972 the Panel determine otherwise. The Panel will consider any objections to the hearing taking place in public. They may choose to adjourn the meeting if necessary in order to take legal advice from the Monitoring Officer. The Panel will take a vote and once the Panel has made its decision, the Chair will announce the Panel's decision to the meeting.
  
4. The Panel should then resolve any other preliminary procedural issues or disagreements about how the hearing should continue. This is the time when any application to postpone the hearing should be made, except where otherwise provided for by this procedure.

5. Any disputes on the Investigator's findings of fact will be determined at the next stage.

### **FAILURE OF THE SUBJECT MEMBER TO ATTEND**

6. If the Subject Member fails to attend a hearing of which he/she has had notice, the Panel may:
  - Unless it is satisfied that there is good reason for such failure, consider the allegation and make a determination in the absence of the Subject Member; or
  - Adjourn the hearing to another date.

### **DETERMINATION OF THE FINDINGS OF FACT**

7. The Investigating Officer will present their report which will include the comments of the Subject Member and the complainant(s) on the report.
8. The Chair should summarise the facts that are agreed and the facts that are in dispute (based on the hearing process summary prepared by the Monitoring Officer) and check with the Subject Member and Investigating Officer that they agree. If there is disagreement, the Chair should clarify which facts are agreed and which are in dispute.
9. If there is no disagreement about the facts, the Panel will record this and move to the next stage of the hearing. If there is a disagreement, the following procedure will apply.
10. The Investigating Officer will be invited to make representations to support the disputed findings of fact.
11. The Subject Member (or their representative) will be given the opportunity to challenge the evidence put forward by the Investigating Officer by asking them questions.
12. The Subject Member (or their representative) will then be given the opportunity to make representations.
13. The Investigating Officer will be given the opportunity to challenge the evidence put forward by the Subject Member by asking them questions.
14. At any time, the Panel and Independent Person may question the Investigating Officer or the Subject Member.
15. The above procedure may include the cross examination of witnesses by the Investigating Officer and/or the Subject Member, if any are called to give evidence.

16. The Investigating Officer will be invited to sum up their investigation and make any concluding representations. The Subject Member will be invited to sum up their case and make any concluding representations.
17. The Panel will adjourn to consider the representations and evidence in private in consultation with the Independent Person. The Panel may choose to take any legal advice, in private, from the Monitoring Officer.
18. The Panel will make its finding of facts in private and should then go on to consider whether, based on the facts it has, on the balance of probabilities found the Member has failed to comply with the Code of Conduct for Members, and if so which Paragraph(s) of the Code. In making its decision the Panel will seek and take account of the views of the Independent Person.

### **DECISION OF PANEL**

19. The hearing will be reconvened, and the Panel's decision as to whether or not the facts amount to a breach(s) of the Code of Conduct for Members, together with its reasons, shall be announced by the Chairman. The Chairman shall in announcing the Panel's decision indicate that in reaching its decision the Panel has sought and taken account of the views of the Independent Person. The decision will include a brief statement of facts, the provisions of the Code of Conduct for Members engaged by the allegation(s), and the reasoning of the decision maker.
20. The Subject Member (or their representative) will be invited to make representations on the decision of the Panel, (should the Panel find that there has been a breach(s) of the Code of Conduct for Members) before the Panel decides any sanction.
21. The Panel may, at any time, question the Subject Member, Investigating Officer or Independent Person on any point raised in the representations.
22. The Subject Member (or their representative) and the Independent Person will be invited to make any final relevant points.
23. The Panel may, should it consider it appropriate to do so, consider any representations in private before announcing its decision as to any sanction. The Panel may choose to take legal advice, in private, from the Monitoring Officer while they are considering the outcome.
24. If the Panel determines that the Member has failed to comply with the Code of Conduct, it will consider:
  - Whether the Panel should apply a sanction; and
  - What form any sanction should take.

Options open to the Panel are set out at Paragraph 12 of the County Council's Conduct Arrangements:

<https://documents.hants.gov.uk/aboutthecouncil/ArrangementsdealingwithMemberComplaints.pdf>

25. Where the Panel decides that the Subject Member has not failed to comply with the Code of Conduct for Members, that is the end of the matter.

### **RECORD OF DECISION**

26. As soon as practicable the Monitoring Officer will prepare a formal decision notice in consultation with the Chair and send a copy to the Complainant and the Subject Member. The decision notice will include a brief statement of facts, the provisions of the Code of Conduct for Members engaged by the allegation(s), the view of the Independent Person, the reasoning of the decision maker and any sanction applied. The decision notice or, where appropriate, a summary of the decision notice will be published on the County Council's website.