

**2 At the Hearing**

- 2.1 The Sub-committee's quorum is three. Substitute Sub-committee members may be appointed where the original member cannot attend a scheduled Hearing. Sub-committee decisions will be made by simple majority with the Chairman having a casting vote in the case of equality.
- 2.2 The standard of proof to be applied is the balance of probabilities in any findings against the Member.
- 2.3 The Sub-committee may take advice from the Monitoring Officer at any time during the Hearing or while they are considering the outcome. This advice may be taken in private.
- 2.4 The Member may be represented or accompanied by a solicitor, counsel or, with the permission of the Sub-committee, another person.

**Commencement of the Hearing**

- 2.5 Seats will be reserved for the relevant parties and their witnesses. A separate seat will be provided for a witness when giving evidence.

**Delay at start of Hearing**

- 2.6 The Hearing shall commence on the date and at the time stipulated in the notice convening the meeting but the start may be delayed by the Chairman for a reasonable period if, having had regard to the advice of the officers present and any representations received from or on behalf of the parties he or she considers such delay to be reasonable in the circumstances. The Chairman will take into account the effect the delay may have on the likelihood of the Hearing being concluded in the one session.

**Absent Member**

- 2.7 If the Member is not present at the time the Hearing is due to start, the Chairman will ask the Monitoring Officer whether the Member has provided any reasons for his or her non-attendance. If the Sub-committee is satisfied with such reasons, it shall adjourn to another date. If the Sub-committee is satisfied that the Member received adequate notice of the Hearing and either no reasons for the Member's non-attendance were given or the Sub-committee considers the reasons given to be inadequate, then the Sub-Committee shall decide whether to proceed with the Hearing in his or her absence or adjourn to another date.

**Chairman to deal with preliminary matters**

- 2.8 At the start of the Hearing, the Chairman will deal with the following preliminary matters:
  - Introductions of all persons present.
  - Declarations of interest.

- Whether the parties have received a note of the procedure to be followed at the Hearing.
- An explanation of the procedure to be followed (the Chairman may invite the Monitoring Officer to explain the procedure) and whether the procedure that will be followed is different to the procedure described in this Procedure Note (again, the Chairman may invite the Monitoring Officer to address this issue). Any questions on the procedure will also be dealt with.
- Whether there are any outstanding issues or disagreements on the Pre-Hearing Summary and whether they have already been raised by the Member with the Monitoring Officer prior to the Hearing and whether there was any attempt at resolving them.

## 2.9 **The Committee will then determine:**

- whether the Member is entitled to be represented by the person nominated by him or her (if not a barrister or solicitor).
- whether all or any part of the Hearing should be conducted in private
- whether, acting reasonably, a limit should be placed on the number of witnesses which the Member or the Investigator will be entitled to call and if so, how many. This may be, for example, if the Sub-committee considers that witnesses will simply repeat earlier evidence or if their evidence is not relevant.

### **Explanation of Pre-Hearing Summary**

- 2.10 The Chairman will ask the Monitoring Officer to present the Pre-Hearing Summary. As a copy would have already been sent to the parties this requirement can be dispensed with if the Sub-committee agrees.

### **Written Representations**

- 2.11 In the event that the Member or the Investigator has submitted written representations prior to the Hearing, then they shall stand as read.

### **Findings of Fact**

- 2.12 The Chairman will ask the Monitoring Officer to explain the findings of fact and those in respect of which the Member has given notice of dispute, if any.
- 2.13 If there is no dispute on the findings of fact the Chairman will, subject to the following paragraphs, move on to address whether there has been a breach of the Code of Conduct and in so doing will move onto the next stage in the process.

- 2.14 If there are any disputes on the findings of fact which have been notified to the Monitoring Officer, the Chairman will invite the Member or his or her representative to briefly outline the findings of fact which he or she disagrees with.
- 2.14 Except in exceptional circumstances, and except with the permission of the Sub-committee, the Member will not be entitled to raise any disputes on any findings of fact other than those in respect of which notice has already been given to the Monitoring Officer in response to the Questionnaire. If the Sub-committee do give permission, then it may be necessary to adjourn the hearing.
- 2.15 Once the Member or his or her representative has briefly outlined the findings of fact with which the Member disagrees, the Investigator will be invited to make submissions to support the relevant finding(s) of fact in the report which are disagreed and may, with the Sub-committee's permission, call any necessary supporting witnesses to give evidence.
- 2.16 The Chairman may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator. All challenges will be put through the Chairman of the Sub-Committee.
- 2.17 The Chairman will then give the Member an opportunity to make submissions to support his or her version of the facts and, with the Chairman's permission, to call witnesses to give relevant evidence.
- 2.18 The Chairman may give the Investigator an opportunity to challenge any of the evidence put forward by the Member or witnesses called by the Member or his representative. All challenges will be put through the Chairman of the Sub-Committee
- 2.19 At any time the members of the Sub-Committee and the Monitoring Officer may, with the permission of the Chairman, question any of the people involved or any of the witnesses.

### **Deliberations on Findings of Fact**

- 3.1 The Sub-Committee will retire to deliberate in private with assistance from the Monitoring Officer or other officer in order to decide on the findings of fact.
- 3.2 The Sub-Committee will then reconvene and the Chairman will announce the Sub-committee's findings of fact.

### **Deliberations on whether there was a Breach of the Code of Conduct**

- 4.1 Once the Chairman has announced the findings of fact, the Sub-Committee will go on to consider whether or not, based on the facts, the Member has breached the Code of Conduct.
- 4.2 The Chairman will invite the Member to make submissions on the reasons why, if any, he or she does not consider there to have been a breach of the Code of Conduct.

- 4.3 The Chairman will then invite the Investigator to respond to the Member's submission, and to identify which sections of the code, they consider that the Member has breached.
- 4.4 Members of the Sub-committee and the Monitoring Officer may at any time, but with permission of the Chairman, question anyone involved on any point raised in their submissions.
- 4.5 The Chairman will then invite the Member to make any final relevant points.
- 4.6 The Sub-committee will then retire to consider the submissions in private with assistance from the Monitoring Officer.
- 4.7 Once the Sub-committee has made its decision, the Sub-Committee will reconvene and the Chairman will announce the Sub-Committee's decision as to whether or not the Member has breached the Code of Conduct.
- 4.8 In reaching its decision the Sub-committee shall make one of the following findings:
  - (a) that the Member had not failed to comply with the Code of Conduct;
  - (b) that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of the matters which were considered by the Sub-Committee;
  - (c) that the Member had failed to comply with the Code of Conduct and that a sanction should be imposed.

#### **Finding of No Breach of Code or No Further Action**

- 4.9 If the Sub-committee finds no evidence of any breach of the Code of Conduct or if it finds that there is a breach but no further action is required to be taken, then no further action shall be taken save that the Chairman may set out any recommendations which the Sub-Committee considers should be made to the authority or to all or any of its members with a view to promoting high standards of conduct. The Chairman will seek the views of the Member, the Investigator and the Monitoring Officer before the Sub-committee makes any such recommendations.
- 4.10 Where there is a finding that the Member has not failed to comply with the code of conduct, the Chairman will if the Member is present ask him whether he wishes the decision of the Sub-committee to be published in the local paper and, if not, then no notice shall be published.

#### **Deliberations following Finding of Breach of Code**

- 4.11 If the Sub-committee finds that the Member did breach the Code of Conduct, the Chairman will invite the Monitoring Officer to explain to those present what sanctions are available to the Sub-committee. The Monitoring Officer may where appropriate describe what sanctions have been imposed by Sub-committees at previous Hearings and any sanctions imposed specifically in relation to the Member concerned. The sanctions which are available to the Sub-committee are set out below.

**The sanctions (all or any of the following):**

- (a) Censuring or reprimanding the member or recommending the Council to do so;
- (b) Reporting its findings to Council;
- (c) Recommending to the Member that he or she make an apology to the complainant if they have not already done so.
- (d) Recommending to the appropriate person or body that the member be removed from any or all Committees or Sub-Committees of the Council or the Cabinet;
- (e) Requesting the Monitoring Officer to arrange training for the Member;
- (f) Recommending to the appropriate person or body that the Member be removed from all outside appointments to which the member has been appointed or nominated by the Authority;
- (g) Withdrawing facilities provided to the Member by the Council e.g. photocopying facilities if that facility was previously abused by the member concerned;
- (h) Excluding the member from the Councils offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- (i) recommending to the appropriate person or body that a Member's membership of one or more committees or other bodies should be suspended such time as he or she submits a written apology in a form specified by the Sub-Committee;
- (j) a recommending to the appropriate person or body that a Member's membership of one or more committees or other bodies should be suspended for a period up to a maximum of six months or until such time as he or she undertakes such training or conciliation as the Sub-Committee may specify;

'the appropriate person' includes, where relevant, the Leader of the Member's political group.

- 4.12 The Chairman may invite the Investigator to make any submissions that they wish to make about the sanction that he or she considers would be reasonable to impose and the date when it should take effect.
- 4.13 The Chairman will invite the Member to respond to the comments from the Investigator (if any) and to make submissions on the sanction to be imposed,

the time when it should run from and any mitigating circumstances he or she believes may exist.

- 4.14 The Sub-Committee shall then retire once more to decide in private with assistance from the Monitoring Officer or Legal Adviser:
- i whether to impose a sanction
  - ii where a sanction is to be imposed -
    - (a) what that sanction should be; and
    - (b) when that sanction should commence, how long it should be for, whether the sanction should be suspended and, if so, in what circumstances; and
  - iii. any recommendations the Sub-committee considers it should make to the authority or any other person or body.
- 4.15 In determining the sanction to be imposed, the Sub-committee should consider all relevant information, including the factors listed in the following section of this guidance.
- 4.16 A sanction will normally commence forthwith but the Sub-Committee can direct or recommend that it commence on any date within a period of six months after the imposition of the sanction. For example, if there are no meetings which the Member would otherwise attend in the next few months the imposition of an immediate sanction would in practice have little impact and it may therefore be appropriate for the Sub-Committee to delay the imposition of the sanction.

### **Written decision of Findings**

- 4.17 The Monitoring Officer shall in conjunction with the Chairman prepare a short written notice of the decision and the reasons for that decision and he or she shall send a copy to the Member, the Complainant and the members of the Sub-committee as soon as possible after the close of the Hearing. In the case of a suspended sanction, it will include an explanation of the steps which need to be taken by the Member if he or she is to avoid the sanction coming into effect.
- 4.18 Within two weeks after the close of the Hearing, the Monitoring Officer shall prepare a full written decision of the Sub-committee and shall send it to the following people:
- the Member
  - the Investigator.

- the members of the Sub-committee
  - the Audit, Governance and Standards Committee (or equivalent) of any other authority involved
  - the person(s) who made the allegation.
- 4.19 Where the Sub-committee finds that there has not been a failure to comply with the Code of Conduct then the full report shall state that fact and shall state the reasons for that finding.
- 4.20 Where the Sub-committee finds that there has been a failure to comply with the Code of Conduct but that no action needs to be taken in respect of that failure then the full report shall state that fact and shall also state the details of the failure and the reasons for the Sub-committee's finding.
- 4.21 Where the Sub-committee finds that there has been a failure to comply with the Code of Conduct then the full report shall state that fact and shall also state the details of the failure, the reasons for the Sub-committee's finding and the sanction to be imposed.
- 4.22 The Monitoring Officer shall arrange for the decision to be published on the Council's website unless there has been no breach, in which case the decision shall only be published by the Monitoring Officer if the Member concerned wishes the decision to be published.

## Annex 3

### Guidance on Appropriate Sanctions

1. When deciding what sanction to impose, the Sub-committee should make sure that it is reasonable and in proportion to the Member's behaviour. Before deciding what penalty to set, the Sub-committee should consider the following issues:
  - What were the consequences of the failure to follow the Code of Conduct for the Member, the Council and others?
  - How serious was the incident?
  - Did the Member know (or should reasonably have known) that he or she was failing to follow the Code of Conduct?
  - Did the Member get advice from officers before the incident? Was that advice acted upon in good faith?
  - Has there been a breach of trust?
  - Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
  - Does the Member accept he or she was at fault?
  - Did the Member apologise to the relevant people?
  - Did the Member agree to attend conciliation or training?
  - Has the Member previously been warned or reprimanded for similar misconduct and/or been found to be in breach of the Code on a previous occasion?
  - Is the Member likely to do the same thing again?
  - Are there any other factors that need to be considered?
  - Are there any cost implications for the Council e.g. the cost of arranging training or conciliation?
  - What is fair, reasonable and proportionate in all the circumstances?