

MEMBERS' CODE OF CONDUCT HEARING SUB-COMMITTEE – HEARING PROCEDURE

1. Pre-hearing procedure

- 1.1 Any pre-hearing process must aim to begin within 3 months of the date of the Investigator's report. The purpose of the process is to:
 - a. Identify the agreed facts and any factual disputes the subject member has with the findings in the report.
 - b. Identify the witnesses and documents relevant to the hearing.
 - c. Give directions about the way in which the hearing will be conducted.
- 1.2 The subject member will be asked by the Monitoring Officer to identify, within 21 days of the request, any factual disputes that member has with the content of the Investigator's report using the form appended to this document – form A. The subject member will also be asked by the Monitoring Officer within the same timescale to identify any witnesses he/she proposes to call at the hearing and give a brief summary of the evidence each witness would give.
- 1.3 The Investigator will be invited to comment on that information within 14 days of receiving it from the Monitoring Officer.
- 1.4 The Chairman of the sub-committee will issue such directions as appear necessary or expedient about the way in which the hearing will be conducted. Such directions may relate to any aspect of the hearing including the documentation to be produced in evidence, the witnesses the sub-committee would wish to hear from and the timescale within which specified actions are to be taken.

2. Date of Hearing

- 2.1 The Monitoring Officer will arrange a convenient time and date for the sub-committee to meet and determine the matter. It is anticipated that a hearing will be dealt with on a single day. In any event, the hearing must **aim to** take place within three months of receipt of the Investigating Officer's report by the Monitoring Officer.
- 2.2 At least five clear working days before the hearing, the subject member and Investigator shall be notified of the date, time and place of meeting.
- 2.3 At least five clear working days before the hearing, the Monitoring Officer will send to each member of the sub-committee, the subject member and the Investigator:
 - The agenda for the meeting; and
 - A copy of the investigation report.

2.4 The documentation sent out must be treated by all recipients as confidential information until such time (if any) as the report is made available to the press and public or the sub-committee agrees that the press and public should not be excluded from the meeting at which the allegations are heard.

2.5 The date of the meeting and the outline agenda ~~will be~~ is published on the Council's website.

3. Representation

3.1 The subject member may be represented or accompanied during the hearing by another person as long as the sub-committee or its intended Chairman has given prior consent.

3.2 The subject member may make representations (orally or in writing) or present evidence in accordance with this procedure either personally or through his or her representative. The sub-committee will not normally permit the subject member and his or her representative to both make representations, although the subject member may present evidence him or herself whether or not represented.

4. Legal Advice

4.1 The sub-committee may take legal or procedural advice at any time during the hearing or its deliberations. The substance of any such advice should generally be shared with the subject member and/or his representative and the Investigator if they are present.

5. Introductions at the Hearing

5.1 The Chairman will introduce each of the members of the sub-committee, and shall also introduce any of the officers present. The subject member, his or her representative, the Independent Person, and the Investigator shall introduce themselves.

6. Procedural Issues

6.1 Disclosure of Interests

The Chairman shall ask members of the sub-committee to disclose the existence and nature of any interests which they have in relation to any items on the agenda. Members are required to disclose any such items under the terms of the Council's Code of Conduct.

6.2 The Chairman will then explain the procedure which the sub-committee intends to follow and resolve any issues or disagreements over how the hearing will be run, calling upon the Monitoring Officer to assist if appropriate.

6.3 Quorum

At least three members of the sub-committee together with an Independent Person must be present for the duration of the hearing.

The members of the sub-committee are all elected members of Cheshire East Borough Council, (drawn from a pool of 15 members constituted on a politically proportionate basis, which includes the 10 members of the Audit and Governance Committee).

- 6.4 The Chairman will satisfy him/herself that the sub-committee is quorate before proceeding.

6.5 Absences

If the subject member is not present, then the sub-committee shall consider whether or not to proceed. If the sub-committee is not satisfied that there is sufficient reason for the subject member's absence, it may either proceed to consider the matter and make a determination in the absence of the subject member, or adjourn the hearing to another time or date. If the sub-committee is satisfied there is sufficient reason, it shall adjourn the hearing to another date unless the subject member has indicated that the hearing should proceed in his or her absence.

- 6.6 Should the subject member's representative not be present, then the sub-committee may proceed or adjourn as it considers appropriate in the particular circumstances.

- 6.7 The sub-committee and the Monitoring Officer must in any event ensure that the hearing is held within three months from the date when the Monitoring Officer received the investigation report from the Investigator.

6.8 Exclusion of Press and Public

Hearings should normally be held in public unless there are proper reasons to exclude the press and public from all or any part of the hearing in accordance with the Council's Access to Information Rules. The Chairman will ask the parties present for their views and take any appropriate advice from the Monitoring Officer and/or Independent Person. The sub-committee will then decide whether to exclude the press and public from all or any part of the hearing. The sub-committee may reconsider this issue at any point in the hearing.

7. **Hearing the Matter**

- 7.1 The sub-committee will consider whether the member failed to comply with the Code of Conduct as set out in the Investigator's report. The sub-committee will adopt as far as reasonably practicable an inquisitorial approach to the hearing rather than permit an adversarial or hostile approach to develop.

8. Presenting the Investigator's Report

- 8.1 The Investigator, if present, will be asked to present his or her investigation report, paying particular regard to any points in dispute identified by the subject member and why the Investigator considers that the subject member had failed to comply with the Code of Conduct.
- 8.2 Should the Investigator not be present, the sub-committee will consider whether it is appropriate in all circumstances to proceed with the hearing. The Investigator may, with the consent of the Chairman, call such witnesses as he/she considers necessary.
- 8.3 No cross-examination of the Investigator or any witness shall be permitted, but at the conclusion of the Investigator's presentation of his or her report and at the conclusion of the evidence of any witness, the Chairman may permit the Independent Person, subject member or his or her representative to ask appropriate questions through the Chairman in order to clarify evidence or conclusions.

9. The Subject Member's Reply

- 9.1 The subject member (or his or her representative) will then be invited to make representations on the matter. The subject member may, with the consent of the Chairman, call such witnesses as he/she considers necessary.
- 9.2 No cross-examination of the subject member or witness shall be permitted, but at the conclusion of the subject member's presentation of his or her representations and at the conclusion of the evidence of any witness, the Chairman may permit the Investigator and Independent Person to ask appropriate questions through the Chairman in order to clarify evidence or conclusions.

10. Evidence

- 10.1 The sub-committee may decide not to hear any evidence if it is not satisfied that the evidence will assist its decision making.
- 10.2 The sub-committee may at any time seek or accept additional evidence or comment from the Investigator, the subject member, or any other person. The sub-committee may at any time arrange for the attendance of such witnesses as it considers appropriate and if necessary may adjourn the hearing to allow this to happen.
- 10.3 Members of the sub-committee may ask questions of any persons present at any point in the proceedings. The sub-committee is entitled to rely upon hearsay evidence but will give such weight to it as it deems appropriate.

11. Determination of the Matter

- 11.1 At the conclusion of the subject member's reply and any questions, the Chairman may ask the Investigator and/or subject member if they wish to make any brief concluding remarks. The Chairman will check that Members of the sub-committee are satisfied that they have sufficient information to enable them to determine whether or not there has been a failure to comply with the Code of Conduct as set out in the Investigator's report. If not, then each member of the sub-committee may ask further questions to gather sufficient information.
- 11.2 Unless the subject member has accepted there was a failure to comply with the Code of Conduct as set out in the Investigator's report, the sub-committee shall retire with the Monitoring Officer to determine in private whether or not there was such a failure on the balance of probabilities. The sub-committee will seek the views of the Independent Person before making its determination.

12. Decision

- 12.1 Having made its determination, the sub-committee shall return and the Chairman will state the sub-committee's principal findings on matters in dispute and its decision on whether there has been a failure to comply with the Code of Conduct.

12.2 No Failure to Comply with the Code of Conduct

If the sub-committee decides that the subject member has not failed to comply with the Code of Conduct as set out in the investigation report, the hearing is concluded - on the basis of no breach of the Code of Conduct and no case to answer. However if the sub-committee considers that there has been no breach of the Code of Conduct but still has some concerns it will issue a finding of no breach of the Code of Conduct, but may then proceed to consider whether it should make any general recommendations. This would include bringing to the attention of the Council, town or parish council or its members any learning points and recommendations for training to the Council, town or parish council, or its Members, with a view to promoting high standards of conduct in the light of concerns raised.

12.3 Failure to Comply with the Code of Conduct

If the sub-committee decides that the member has failed to comply with the Code of Conduct, the sub-committee has to decide either that:

12.3.1 No action needs to be taken in respect of the matter; or

12.3.2 A sanction be imposed

- 12.4 Before deciding whether to impose a sanction, the sub-committee will consider any representations from firstly the Investigator and then the subject member. They will also consider any officer advice and the views of the Independent Person as to:

12.4.1 Whether or not the sub-committee should impose any sanction; and

12.4.2 What form any sanction should take from those available;

- (a) Censure or reprimand the member;
- (b) Publish its findings in respect of the member's conduct.
- (c) Report its findings to Council or the town or parish council for information and make any recommendations ;
- (d) Recommending to the member's Group Leader (or in the case of ungrouped members, recommending to Council or to committees) that he/she be removed from any or all committees or sub-committees of the Council;
- (e) Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular portfolio responsibilities.
- (f) Instruct the Monitoring Officer to, or recommend that the town or parish Council arrange training for the member;
- (g) ~~Remove or~~ Recommend to Council, or the town or parish council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the Council or by the town or parish council;
- (h) Withdraw, or recommend to the Council or town or parish council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access if relevant to the subject matter of the complaint; or
- (i) Exclude the 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 if relevant to the subject matter of the complaint.

12.5 Members of the sub-committee may ask questions of the Investigator and subject member or any other relevant person and take any necessary advice to make sure they have sufficient information in order to make an informed decision.

12.6 The sub-committee shall then retire with the Monitoring Officer to determine in private whether to impose one or more sanctions and, if so, what and when it will take effect. It may also consider whether it should make any recommendations to the Council or members with a view to promoting high standards of conduct and highlight any learning points for the future.

12.7 The sub-committee will then return, and as far as is practicable, the Chairman will announce the sub-committee's decision to the parties on the day and provide a short written confirmation. The sub-committee will issue a formal written decision together with supporting reasons as soon as practicable after the end of the hearing and in any event within ten working days.

13. Public interest test

- 13.1 If at any point during the hearing process, the subject member resigns, loses their seat, is seriously ill or has died, the sub-committee will only refer the matter for a hearing, or continue with a hearing which is already underway, if it considers it is in the public interest to do so.