

# APPENDIX B

## **Procedure Rules for Local Determination Hearings into allegations of breach of the Members' Code of Conduct to be undertaken by the Standards Committee or a Hearing Panel**

### **Interpretation**

1. "Subject Member" means the member of the Council who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the subject member's nominated representative. Where the hearing involves a complaint against more than one member then this includes all the subject members.
2. "Investigator" means the Monitoring Officer (MO) who referred the investigator's report to the Committee, and includes the MO's nominated representative or an officer acting on their behalf. In the case of matters that have been referred to the MO or the Committee by an Ethical Standards Officer (ESO), the "investigator" mean the ESO or other appointed investigating officer, and his/her nominated representative.
3. "Committee" means the Standards Committee and includes a Hearing Panel or Sub-Committee of the Standards Committee appointed to conduct a hearing. When it is necessary or desirable to amend, simplify or amplify these Procedure Rules, the Committee will take into account representations from the parties and its legal advisor but the Committee will determine all questions relating to procedure and the admission of evidence. Action taken by the Chair shall be deemed to be authorised by the Committee unless the Committee by majority vote determines otherwise at any time.
4. "Legal advisor" means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Council, or a lawyer appointed for this purpose from outside the Council.
5. "Committee Clerk" means the officer nominated by the Head of Local Democracy and Member Services to assist the effective running of the hearing and the keeping of a record of the proceedings.

### **Preliminary Matters**

#### **Date for Hearing**

5. The date and time for the hearing shall be determined by an officer appointed by the Head of Local Democracy and Member Services in consultation with the Committee members, the subject member and the investigator. In the event that agreement between these persons cannot be reached within a reasonable time, the officer shall determine the date and time in consultation with the Chair of the Committee.

#### **Attendance**

6. If the subject member or the investigator fails to attend the Committee at the date and time fixed for the hearing, the Committee shall decide whether to proceed in their absence or whether to adjourn to another date having regard to any representations made by, or on behalf of, the absent party and any party present and any advice from the

legal advisor. There will be a presumption that the hearing should proceed in the absence of a party who has had reasonable prior written notice of the date and time unless there are exceptional circumstances.

#### **Representation**

7. The subject member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another non-legally-qualified person.

#### **Two or more Subject Members**

8. If there are two or more subject members, then the Committee will agree such modifications to this procedure as will allow each subject member to be separately represented, if he/she so wishes, and to be given a separate opportunity to make representations and ask questions of witnesses. Any representations and evidence specific to one/some subject members, but not other subject members, shall be properly and separately considered.

#### **Legal advice**

9. The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the subject member and the investigator if they are present.

#### **Setting the scene**

10. After all the members of the Committee and everyone involved have been formally introduced, the Chair should explain how the Committee is going to run the hearing.

#### **Preliminary procedural issues**

11. The Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

#### **Making findings of fact**

12. After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

13. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.

14. If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The Committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.

15. The subject member should then have the opportunity to make representations to support his/her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.

**16.** At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the subject member.

**17.** If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

**18.** If the subject member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he/she must give good reasons for not mentioning it before the hearing. After considering the subject member's explanation for not raising the issue at an earlier stage, the Committee may then:

**a)** continue with the hearing, relying on the information in the investigator's report;

**b)** allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or

**c)** postpone the hearing to arrange for appropriate witnesses to be present.

**19.** The Committee will usually move to another room to consider the representations and evidence in private.

**20.** On their return, the Chair will announce the Committee's findings of fact.

#### **Did the Subject Member fail to follow the Code?**

**21.** The Committee then needs to consider whether or not, based on the facts it has found, the subject member has failed to follow the Code of Conduct.

**22.** The subject member should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.

**23.** The Committee should then consider any verbal or written representations from the investigator.

**24.** The Committee may, at any time, question anyone involved on any point they raise in their representations.

**25.** The subject member should be invited to make any final relevant points.

**26.** The Committee will then move to another room to consider the representations.

**27.** On their return, the Chair will announce the Committee's decision as to whether or not the subject member has failed to follow the Code of Conduct.

### **If the Subject Member has not failed to follow the Code of Conduct**

**28.** If the Committee decides that the subject member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the Council.

### **If the Subject Member has failed to follow the Code**

**29.** If the Committee decides that the subject member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the subject member as to:

- a) whether or not the Committee should set a penalty; and
- b) what form any penalty should take.

**30.** The Committee may question the investigator and subject member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

**31.** The Committee will then move to another room to consider whether or not to impose a penalty on the subject member and, if so, what the penalty should be.

**32.** On their return, the Chair will announce the Committee's decision.

### **Recommendations to the Council**

**33.** After considering any verbal or written representations from the investigator, the Committee will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among members.

### **The written decision**

**34.** The Committee will announce its decision on the day of the hearing and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft as soon as practicable after the hearing before memories fade.