

## **MEMBERS' STANDARDS – LOCAL HEARING PROCEDURE**

### **1 The procedure for hearings before a Hearing Panel of the Governance Committee**

- 1.1 Formal hearings will be conducted by a panel of three councillors, drawn from membership of the Governance Committee on the basis of availability, plus the Independent Person.
- 1.2 A member of the Governance Committee, against whom a Code of Conduct complaint has been made, shall not be selected as a member of a Hearings Panel until consideration of the complaint has been concluded.
- 1.3 Agendas for hearings panels shall be published and hearings panels shall be held in public unless:
  - 1.3.1 This would involve disclosure of exempt information as defined by Schedule 12A, Local Government Act, 1972; and
  - 1.3.2 In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 1.4 Before a hearing panel meets, the Monitoring Officer shall write to the member and to the complainant, asking each:
  - 1.4.1 Whether they accept the finding in the report
  - 1.4.2 Whether they dispute any factual part of the report, identifying any areas of dispute.
  - 1.4.3 Whether they wish to call any witnesses at the hearing. (Only witnesses identified to the Investigating Officer by the complainant or by the member may be called as witnesses. In law, witnesses do not have to attend a hearing panel.)
  - 1.4.4 Whether the complainant wishes to be present at the hearing. (The complainant shall be invited, but is not obliged, to attend the hearing. If the complainant is not present, the procedure below shall be adapted accordingly.)
  - 1.4.5 Whether they wish to be accompanied at the hearing.
- 1.5 In advance of a meeting of a Hearing Panel its members shall seek to agree who will chair the hearing. The Chair may issue directions about the conduct of the hearing. A member of a Hearing Panel shall not act as Chair unless they have received relevant training.
- 1.6 Subject to the discretion of the Chair, the hearing shall be conducted as follows:
  - 1.6.1 The Investigating Officer will be invited to present their report and to call witnesses. The complainant, the member and the Panel (including the Independent Person), in that order, may ask questions or seek clarification both of the Investigating Officer and any witnesses.

- 1.6.2 The complainant will be invited to comment on the report and its findings and to call witnesses. The Investigating Officer, the member and the Panel, in that order, may ask questions or seek clarification both of the complainant and any witnesses.
- 1.6.3 The member will be invited to comment on the report and its findings and to call any witnesses. The Investigating Officer, the complainant and the Panel, in that order, may ask questions or seek clarification both of the member and any witnesses.
- 1.6.4 The Investigating Officer, the complainant and the member will be invited, in that order, to make brief concluding remarks.
- 1.7 The Chair and Panel, including the Independent Person, may ask for advice at any stage from the Monitoring Officer.
- 1.8 Once the hearing has been concluded, the Hearing Panel, with the Independent Person, will retire to consider its decision. It may call on the Monitoring Officer to provide advice and guidance. The Hearings Panel is required to do the following:
  - 1.8.1 to decide on the facts,
  - 1.8.2 to decide on whether these facts constitute a breach of the Code of Conduct, and
  - 1.8.3 to decide on the appropriate sanction.
- 1.9 In deciding whether or not to uphold the complaint the Hearing Panel must apply, as the standard of proof, the balance of probability, with the burden of proof resting on the Investigating Officer. The Hearing panel may only make an adverse finding if satisfied, on this basis, that the member has breached the Code of Conduct.
- 1.10 The Hearing Panel will then return and announce its findings on whether there has been a breach of the Code, with reasons.
- 1.11 Following announcement of the Hearing Panel's findings, the complainant and the member will be invited to make submissions, if necessary, regarding remedies or sanctions.
- 1.12 The Hearing Panel will then consider what, if any, sanction it wishes to impose. It shall retire whilst it considers this. It will then announce its decision and give reasons.
- 1.13 Following the hearing, the Monitoring Officer shall draft a record of the decision for approval by the Hearing Panel. Once the record of decision has been settled, a copy shall be sent to each of the parties.

## **2 Appealing a Decision about a Complaint**

- 2.1 There is no right of appeal against a decision on a Code of Conduct complaint. If the complainant or the member considers that the complaint has not been considered properly by North Devon Council,

they may be able to complain to the Local Government Ombudsman or seek permission for judicial review.

### **3 Sanctions available to a Hearings Panel**

- 3.1 The Hearings Panel has powers to take action in respect of individual councillors as necessary to promote and maintain high standards of conduct.
- 3.2 The Hearings Panel may do one, or a combination, of the following:
  - 3.2.1 Issue a formal Censure or Reprimand to the Member.
  - 3.2.2 Report its findings to Council (or to the Parish or Town Council) for information.
  - 3.2.3 Recommend the Member's Group Leader (or in the case of ungrouped members, recommend the Council or Committees) to remove the Member from appointments to Committees or Sub-Committees of the Council.
  - 3.2.4 Recommend the Leader of the Council to remove the Member from particular Lead Member responsibilities.
  - 3.2.5 Instruct the Monitoring Officer to (or recommend that the Parish or Town Council) arrange training for the Member.
  - 3.2.6 Recommend to Full Council, or to the Parish or Town Council, that all outside appointments to which the Member has been appointed or nominated by that council are removed.
  - 3.2.7 Exclude (or recommend that the Parish or Town Council exclude), the Member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
  - 3.2.8 If relevant, recommend that the Council removes the Member from the post of Leader of the Council.
  - 3.2.9 Publish its findings in respect of the Member's conduct.
- 3.3 When deciding on a sanction, the panel should ensure that it is reasonable, proportionate and relevant to the subject member's behaviour. Before deciding what sanction to issue, the panel should consider the following questions, along with any other relevant circumstances:
  - 3.3.1 What was the subject member's intention?
  - 3.3.2 Did the subject member know that they were failing to follow the Code of Conduct?
  - 3.3.3 Did the subject member get advice from officers before the incident? Was that advice acted on or ignored?
  - 3.3.4 Has there been a breach of trust?
  - 3.3.5 Has there been financial impropriety, for example improper expense claims or procedural irregularities?
  - 3.3.6 What was the result or potential result of failing to follow the Code of Conduct?
  - 3.3.7 How serious was the incident?
  - 3.3.8 Does the subject member accept they were at fault?
  - 3.3.9 Did the subject member apologise to the relevant people?

- 3.3.10 Has the subject member previously been warned or reprimanded for similar misconduct or failed to follow the Code of Conduct before?
- 3.3.11 Is the subject member likely to do the same thing again?
- 3.3.12 How will the sanction impact on the subject member's ability to carry out their role?
  
- 3.4 Sanctions involving restricting access to an authority's premises or equipment or contact with officers should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.
  
- 3.5 Mitigating factors the Hearings Panel should consider may include:
  - 3.5.1 an honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice;
  - 3.5.2 a councillor's previous record of good service;
  - 3.5.3 substantiated evidence that the councillor's actions have been affected by ill-health;
  - 3.5.4 recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the councillor;
  - 3.5.5 compliance with the Code since the events giving rise to the complaint.
  
- 3.6 Aggravating factors the Hearings Panel should consider may include:
  - 3.6.1 dishonesty or breaches of trust;
  - 3.6.2 trying to gain an advantage or disadvantage for themselves or others;
  - 3.6.3 bullying;
  - 3.6.4 continuing to deny the facts despite clear contrary evidence;
  - 3.6.5 seeking unfairly to blame other people;
  - 3.6.6 failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code;
  - 3.6.7 persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.
  
- 3.7 In cases where a Hearings Panel makes an adverse finding against a Member, its decision will be published on the Council's website. This includes decisions relating to members of Town or Parish councils.