

## ANNEX 5

### Arrangements for dealing with code of conduct complaints against councillors: Local Hearing Panel Procedure



#### Introduction

Where the Monitoring Officer considers that it is in the public interest for a complaint to be considered by the Standards Committee, a Local Hearing Panel will be convened to determine whether the Subject Councillor has failed to comply with the code of conduct.

The Monitoring Officer will seek to convene the Local Hearing Panel within 25 working days of receipt of the final Investigator's report.

The Local Hearing Panel will comprise a minimum of three elected members of the Standards Committee plus an Independent Person. The Monitoring Officer will select the membership of each Local Hearing Panel.

#### Definitions

|                          |                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Complainant(s)           | The person/people making the complaint.                                                                                                                                                                                                                                                                                                                                                                      |
| Subject Councillor       | The councillor, co-optee, or parish councillor against whom an allegation has been made.                                                                                                                                                                                                                                                                                                                     |
| Appointed Representative | The Subject Councillor may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the Local Hearing, another person.                                                                                                                                                                                                                                            |
| Local Hearing Panel      | A meeting of a panel of three members of the Standards Committee at which they consider whether the "Subject Councillor" has breached the code of conduct.                                                                                                                                                                                                                                                   |
| Independent person       | An Independent Person will be invited by the Monitoring Officer to attend a Local Hearing Panel and their views are sought and taken into consideration before the Local Hearing takes any decision on whether the Subject Councillor's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. |
| Investigator             | The person appointed by the Monitoring Officer to undertake a formal investigation. This may involve the appointment of an investigating officer, who may be another officer of the council, an officer of another council or an external investigator.                                                                                                                                                      |
| Legal advisor            | The officer responsible for providing legal advice to the Local Hearing Panel. This may be the Monitoring Officer, another legally qualified officer, or someone appointed for this purpose from outside the council.                                                                                                                                                                                        |

## **Pre-hearing processes**

The Monitoring Officer will invite the Subject Councillor to give his/her response in writing to Investigator's report. This is done to establish what is likely to be agreed and what is likely to be in dispute at the hearing.

The Local Hearing Panel, taking account of the advice of the Monitoring Officer, may issue directions about the way in which the Local Hearing will be conducted, for example agreeing the number and identity of witnesses. Such directions may be given either before or at the Local Hearing Panel, and may be decided at a meeting or by correspondence involving all members of the panel. Any meeting to deal with pre-hearing process issues will be held in private without the Complainant or the Subject Councillor present.

## **Documentation**

Local Hearing Panel meetings of the Standards Committee are subject to the normal rules for publication of council agendas and access to information.

The agenda papers for the Local Hearing Panel will include:

- Monitoring Officer report
- Complaint form and documentation
- Investigator's report
- Subject Councillor's written response
- For reference: Code of Conduct, Standards Committee Local Hearing Panel procedure

The agenda and documents will be published under the Council's rules for exempt information. Prior to the Local Hearing Panel, any documentation issued or exchanged during the process must be treated by all recipients as confidential unless and until the Local Hearing Panel agrees that the press and public should not be excluded from the meeting at which the allegations are going to be heard.

If the Local Hearing Panel agrees that the meeting should be held in public, the investigator's report will be made available to the press and public in attendance at the meeting.

## **Local Hearing Panel procedure**

The Local Hearing Panel will follow normal committee procedures for apologies, selection of a Chair for that meeting and declarations of interest.

At the Local Hearing Panel, the Monitoring Officer or Legal Adviser will introduce the case that the Subject Councillor has failed to comply with the code of conduct.

The Investigator will present his/her report, call such witnesses as necessary (which may include the Complainant) and make representations to substantiate the conclusion that the Councillor has failed to comply with the Code of Conduct.

The Subject Councillor (or appointed representative) will then have an opportunity to give his/her evidence, to call witnesses and to make

representations about why he/she considers that he/she did not fail to comply with the code of conduct.

Normal hearing rules will apply in terms of providing opportunities to question witnesses and test evidence, subject to the principles of natural justice.

If the Subject Councillor (or appointed representative) is not present, then the Local Hearing Panel will consider whether to proceed to hear the case and make a decision in absence, or whether to adjourn the hearing to another time or date. If the Subject Councillor has indicated that the hearing should carry on without him/her this will normally happen.

The Local Hearing Panel may take legal advice from its legal advisor at any time during the meeting or while they are considering the outcome. The substance of any legal advice given to the Local Hearing Panel would be shared in the public domain with the Subject Councillor and the Investigator if they are attending the hearing.

The Local Hearing Panel will request that all persons leave the room while they consider whether or not there has been a breach of the code of conduct.

### **If there is no evidence of a failure to comply with the Code of Conduct**

If the Local Hearing Panel concludes that the Subject Councillor did not fail to comply with the code of conduct it will dismiss the complaint and no further action will be taken.

In that event, the Local Hearing Panel may still make general recommendations to the Council or Parish Council on any remedial actions if considers necessary to address the issues raised.

### **If there is evidence of a failure to comply with the Code of Conduct**

If the Local Hearing Panel determines that the Subject Councillor has failed to comply with the code of conduct, the Chair will inform the Subject Councillor of this finding. The Independent Person will give his/her views on the matter, which will be recorded in the minutes of the meeting. The Chair of the Local Hearing Panel will explain the reasons why any advice from the Independent Person has or has not been followed in giving its decision.

The Local Hearing Panel will then consider what action, if any, it should take as a result. The Local Hearing Panel will give the Subject Councillor an opportunity to make representations about that and will consult the Independent Person deciding what action, if any, to take.

The Local Hearing Panel will request that all persons leave the room while they consider whether or not to impose a sanction on the Subject Councillor and, if so, what the sanction should be.

### **Remedies**

The Council has delegated to the Standards Committee powers to take action in respect of individual councillors as may be necessary to promote and maintain high standards of conduct. Accordingly the Local Hearing Panel may:

- Censure or reprimand the Subject Councillor;
- Recommend to the Subject Councillor's group leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committee or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Subject Councillor be removed from the City Executive Board, or removed from particular portfolio responsibilities;
- Recommend to Council that the Subject Councillor be replaced as Executive Leader;
- Instruct the Monitoring Officer to, or recommend that a Parish Council, arrange training for the Subject Councillor.
- Publish its findings in respect of the Subject Councillor's conduct;
- Report its findings to Council, or to a Parish Council, for information;

The Local Hearing Panel has no power to suspend or disqualify the member or to withdraw or suspend allowances or restrict access to or use of Council facilities.

### **Recommendations to the Council / Parish Council**

The Local Hearing Panel will consider whether it should make any recommendations to the City or Parish Council with a view to promoting high standards of conduct among councillors.

### **The Decision**

The Monitoring Officer will, within 10 working days of the Local Hearing Panel, prepare a formal decision notice, in consultation with the Chair of the Local Hearing Panel, and send a copy to the Complainant, to the Subject Councillor (and to the Parish Council if appropriate).

The decision notice will be published as part of the minutes of the Standards Committee Local Hearing Panel meeting and will be placed on the Council's website unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.

The Monitoring Officer will be responsible for the implementation of the decision of the Local Hearing Panel. The findings and recommendations of the Local Hearing Panel (as implemented by the Monitoring Officer) are final.

### **Departure from these arrangements**

The Chair of the Standards Committee or the Chair of the Local Hearing Panel has the right to depart from this procedure, in consultation with the Monitoring Officer or Legal Advisor, at any hearing where he/she considers that it is sensible to do so to deal with the case fairly and effectively.