

## HEARING PROCEDURES

### Prior to the Hearing (Pre-hearing process)

1. Before the cycle of pre-meetings takes place, consideration needs to be given as to whether the hearing should be held in public or private. The views of the Subject Member can be considered as part of this process but the decision whether to hold a private hearing should be based on the exceptions provided by Schedule 12A of the Local Government Act 1972.
2. The Subject Member is required to set out, prior to the hearing, which of the facts s/he disagrees with and why. If the Subject Member is intending to introduce new evidence at the hearing they are required to set out what the evidence is and why they are introducing it now and why it was not introduced during the investigation. The Investigator should be given the opportunity to comment on new evidence prior to the hearing. If this is not done and the new evidence goes to the heart of a finding of fact the Investigator would be allowed to ask the Hearing Panel to adjourn the hearing until the new evidence can be properly investigated.
3. A copy of the report that is prepared for the hearing is sent to the Subject Member, the Members of the Hearing Panel, the Independent Person and the person who is clerking the meeting. The complainant does not automatically receive a copy of the report, and is not automatically invited to the meeting, or called as a witness, but they can be sent a copy of the report prepared for the Hearing Panel.
4. The Hearing Panel may wish to undertake a pre-hearing process to:
  - Identify if the Subject Member is to be represented;
  - Identify if the Subject Member disagrees with any of the findings, and if so why;
  - Identify if the Subject Member wishes to introduce new evidence, and if so why;
  - If the Subject Member is to introduce new evidence, identify if the Investigator has been given an opportunity to consider this;
  - Identify if any witnesses are to be called and if so why;
  - Decide if there are any parts of the hearing that should be held in private.
5. The pre-hearing process can be carried out in writing with Panel Members after asking the Investigating Officer to provide a final report and asking the Subject Member what facts they object to, if they are to introduce new evidence and if they wish to call any witnesses. Note: One character witness would be allowed.
6. The pre-hearing process is a useful time for the Members of the Hearing Panel to focus on the facts of the matter and to consider what facts are clearly established facts (even if the Subject Member may disagree with them) and what are the facts that may need to be further established.
7. In considering the facts the Hearing Panel is required to make an objective decision on the balance of probabilities; that is would a reasonable person, in possession of all of the facts, consider it more likely than not when looking at the facts objectively that the Code had been breached.

8. The Hearing Panel should also consider, if a request to bring witnesses is made, what value each witness will bring to the hearing. Witnesses are not required to give evidence under oath and therefore the Panel must be satisfied that each witness can provide indisputable evidence relating to the disputed facts. In this respect, there are good grounds for asking that written witness statements be provided for the pre-hearing. A character witness is allowed.
9. Guidance issued by the former Standards Board for England set out that; *the Hearing Panel should only allow the relevant parties to raise new disagreements over factual matters at the hearing in exceptional circumstances, such as new evidence becoming available that was unavailable before. The Hearing Panel needs to make it clear to the Subject Member that unless they comply with the established procedure it may rule that it will not allow new evidence to be presented at the hearing.*
10. The Hearing Panel should ensure that, once the hearing commences, no doubts can be cast upon the integrity of the hearing by ensuring that there are no conflicts arising from those attending the hearing and the pre-hearing process is a useful step to resolve any conflicts there may be.

### The hearing

11. The hearing is a formal meeting of the Authority but it is not a court of law and it does not hear evidence under oath. Facts at the hearing are decided on the balance of probabilities and not beyond reasonable doubt.
12. The Subject Member can ask to be represented at the hearing.
13. The Subject Member should be allowed to present to the hearing in a manner in which they wish. If witnesses are to attend it is for the Subject Member to ensure they are at the venue at the right time. If the hearing is held in closed session witnesses will only be allowed into the hearing to give their evidence.
14. The procedure at the hearing should be;
  - The Hearing Panel should deal with preliminary issues such as housing keeping etc.
  - The Hearing Panel then consider whether there are any significant disagreements with the facts and the breaches of the Code in the investigation report;
  - If there is no disagreement the hearing panel can move onto the next stage of the hearing;
  - If there is disagreement the Investigator should be invited to make representations to support the facts in their report which has lead to the consideration that the Code has been breached. The Investigator may, with the Panel's approval call witnesses to give evidence.
  - The Subject Member may be given the opportunity to challenge any evidence put forwards by a witness called by the Investigator. This may be done directly, or with questions submitted via the Chair;
  - The Subject Member should then have the opportunity to make representations on the Investigation report to support their version of the facts, set out why this is not a breach of the Code and with the Panel's approval call witnesses to give evidence;
  - The Investigator may be given the opportunity to challenge any evidence put forwards by a witness called by the Subject Member. This can be done directly, or via the Chair;

- At any point in the proceedings the Panel may question any of the people involved or any witnesses;
  - If the Subject Member disagrees with any facts and breaches found and/or provides new evidence at the hearing without having given prior notice of the disagreement and/or the new evidence, the Panel will need to determine whether:
    - the Subject Member is invited to present on the disputed facts/breaches and/or present the new evidence and invite the Investigator to respond; or
    - whether to postpone the hearing to allow the disputed facts to be further assessed and/or the new evidence to be investigated.
15. At the end of the presentations both the Subject Member and Investigator will be asked to leave the room to enable the Panel to consider the facts in private.
16. The Panel needs to first consider which of the facts presented it feels are proven (on the balance of probabilities) and whether, based on these facts, the Subject Member breached the Code of Conduct. In reaching this decision, the Panel must seek and take account of the views of the Independent Person.
17. If the Panel considers that, based on the facts and following consultation with the Independent Person, the Subject Member has not breached the Code the panel can then move on to consider if it may wish to make any recommendations to the Authority, such as further training for all Members.
18. If the Panel considers, based on the facts and following consultation with the Independent Person, that the Subject Member has breached the Code;
- The Panel should reconvene and set out to those present the facts it considers are found and the breaches of the Code that have arisen from these facts.
  - The Panel should consider any representations from the Investigator as to whether sanctions should be imposed and if so what form the sanctions should take. The Panel may question the Investigator and seek other advice (e.g. from the Monitoring Officer) on the question of sanctions. The type of advice sought could include (but is not limited to) the range of sanctions available to the Panel;
  - The Subject Member should be offered the opportunity to make a submission in mitigation.
  - The Panel will deliberate in private on whether to impose sanctions, and if so what the sanctions should be;
  - The Panel must also seek and take account of the views of the Independent Person on whether any sanction(s) should be imposed and if so what the sanction(s) should be;
  - The Chair of the panel will then announce the Panel's decision on sanctions.
19. The decision of the Panel will be made verbally on the day. A written Decision Notice will be produced as soon as practical after the hearing. The Decision Notice is will be published on the Authority's website. The Decision Notice will specify the breach(es) of the Code, the facts upon which the breach(es) was/were established (subject to no confidential information being disclosed) and any sanctions imposed. The Decision Notice will also record the views of the Independent Person on these matters.