

## **BEDFORD BOROUGH COUNCIL**

### **APPROVED PROCEDURE FOR HEARINGS INTO ALLEGATIONS OF BREACHES OF THE COUNCIL'S CODE OF CONDUCT FOR MEMBERS**

#### **1 Interpretation**

- (a) 'Member' means the Member of a Council who is the subject of the allegation being considered by the Panel , unless stated otherwise. It also includes the Member's nominated representative.
- (b) 'Investigator' means the Investigating Officer instructed by the Monitoring Officer to investigate the allegation that the Member concerned has breached their Council's Code of Conduct and includes his/her nominated representatives.
- (c) 'The Matter' is the subject matter of the Investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Hearings Panel to which the conduct of the hearing has been delegated.
- (e) 'The Committee Support Officer' means an officer of the Borough Council responsible for supporting the Committee's discharge of its functions and recording the decisions of the Committee.
- (f) '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 authority, or someone appointed for this purpose from outside the authority.
- (g) 'The Chair' refers to the person presiding at the hearing.

#### **2 Modification of Procedure**

The Chair may agree to vary this procedure in any particular instance where s/he is of the opinion that such a variation is necessary in the interests of fairness.

#### **3 Representation**

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

The Council has agreed to provide an indemnity/insurance under Regulations under Section 101 of the Local Government Act 2000 to Borough Council Members, including co-opted Members to meet the costs which they may incur in respect of investigations, hearings or other proceedings relating to alleged breaches of the Council's Code of Conduct for Members. This is on the basis that any such indemnity or insurance would be subject to a requirement (to

which the Member must unconditionally agree in advance) to repay any sums received in the event that the Member is found to have failed to comply with the Code of Conduct.

#### **4     Legal Advice**

The Panel 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 Panel should be shared with the Member and the Investigator if they are present.

#### **5     Setting the Scene**

At the start of the hearing, the Chair shall ensure that each of the Members of the Panel, the Member (if present), the Investigator (if present) and any other Officers present are introduced, and shall then explain the procedure which the Panel will follow in the conduct of the hearing.

#### **6     Preliminary Procedural Issues**

The Panel will then deal with the following preliminary procedural matters in the following order:

(a)     Disclosures of Interest

The Chairman shall ask Members of the Committee to disclose the existence and nature of any interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b)     Quorum

The Chair shall confirm that the meeting is quorate.

(c)     Hearing Procedure

The Chair shall confirm that all present know the procedure which the Panel will follow in determining the matter.

(d)     Proceeding in the Absence of the Member

If the Member is not present at the start of the hearing:

- (i)     the Chair will ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing;
- (ii)    the Panel will then consider any reasons which the Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;

- (iii) if the Panel is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iv) if the Panel is not satisfied with such reasons, or if the Member has not given any such reasons, the Panel shall decide whether to consider the matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Panel may exclude the press and public from its consideration of a matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

Where it appears that exempt or confidential information will be disclosed in the course of the consideration, the Chairman shall ask the Member, the Investigator and the legal advisor to the Panel whether they wish to ask the Panel to exclude the press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons why they consider exclusion to be in the public interest and ask for responses from the others and the Panel shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Panel does not resolve to exclude the press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

## 7 Making Findings of Fact

The Panel will then address the issue of whether or not there are any significant disagreements about the facts contained in the Investigator's report so that it can accept any facts in the Investigator's report agreed by the Member and make findings with regard to those facts not agreed.

- (a) The Chair shall ask the Member to confirm that s/he maintains the position on any finding of fact in the Investigator's report as set out during the pre-hearing process. If there is:
  - (i) No disagreement about any facts, the Panel can move on to the next stage of the hearing, to consider whether there has been a failure to comply with the Code of Conduct under 8 below.
  - (ii) Disagreement about the facts, the Panel will consider the position set out in the Pre-Hearing Process Summary.

(b) Pre-Hearing Process Summary

- (i) The Chair will ask the legal advisor or the Committee Support Officer to present his/her report, highlighting any points of difference identified in the Pre-Hearing Process Summary in respect of which the Member has stated that s/he disagrees with any finding of fact in the Investigator's report. The Chair will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which s/he disagrees with any finding of fact in the Investigator's report.
- (ii) If the Member identifies additional finding(s) of fact in the Investigator's report with which s/he disagrees, the Chair shall ask the Member to explain why s/he did not identify these points as part of the pre-hearing process. The Chair shall then ask the Investigator (if present) whether s/he is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Panel is not satisfied with the Member's reason for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Member to challenge the veracity of those findings of fact in the Investigator's report which the Member did not identify a point of difference in the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.

(c) Presenting the Investigator's Report

- (i) If the Investigator is present, the Chair will then ask the Investigator to present his/her report, having particular regard to any relevant points of difference in the facts identified by the Member and why the Investigator reached his/her findings of fact. The Investigator may call witnesses as necessary to address any points of difference.
- (ii) If the Investigator is not present, the Panel shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any relevant points of difference can be satisfactorily resolved in the absence of the Investigator. In the absence of the Investigator, the Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chair shall draw the witnesses' attention to any relevant section of the Investigator's report and ask the witness to confirm or correct the report and to provide any relevant evidence.

- (iii) Cross-examination shall be permitted, at the conclusion of the Investigator's report and/or of the evidence of each witness, following which the Chair will ask Members of the Panel whether they have any questions of the Investigator or witness as appropriate.

(d) The Member's Response

- (i) The Chairman shall then invite the Member to respond and to present his/her version of the facts in the Investigator's report and to call any witnesses as necessary to address any points of difference.
- (ii) Cross-examination shall be permitted, at the conclusion of the Member's evidence and/or of the evidence of each witness, following which the Chairman will ask Members of the Panel whether they have any questions of the Member or witness as appropriate.

(e) Witnesses

- (i) The Panel shall be entitled to refuse to hear evidence from the Investigator, the Member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine the findings as to the relevant facts within the Investigator's report.
- (ii) Any Member of the Panel may address questions to the Investigator, to the Member or to any witness.

(f) Additional Evidence

At the conclusion of the evidence, the Chair shall check with the Members of the Panel that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

- (g) If the Panel at any stage prior to determining the findings of fact as set out in the Investigator's report are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Panel may (on not more than one occasion) adjourn the hearing and make a request to seek and provide such additional evidence and to undertake further investigation on any point specified by the Panel.

(h) Determination as to Finding(s) of Fact

- (i) At the conclusion of the Member's response, the Chair shall ensure that each Member of the Panel is satisfied that s/he has sufficient information to enable him/her to determine findings of fact.

- (ii) The Panel shall then retire to another room to consider in private its findings as to the facts as set out in the Investigator's report.
- (iii) The Panel shall take its decision on its findings as to the facts on the balance of probability based on the evidence it has received at the hearing.
- (iv) In carrying out its function to make a finding on the facts, the Committee may at any time, return to the main hearing room in order to seek additional evidence from the Investigator, the Member or a witness, or to seek the legal advice from its legal advisor. If it requires any further information, it may adjourn and instruct an officer or request the Member to produce such further evidence to the Panel.
- (v) The Panel shall then return to the main hearing room and the Chair will state the Panel's principal findings with regard to the facts as set out in the Investigator's report.

## **8 Whether the Member has failed to follow the Code of Conduct?**

The Panel will then address the issue of whether or not, on the basis of the facts it has established, the Member has failed to follow the Code of Conduct in the manner set out in the Investigator's report:

- (a) The Chair will invite the Member to give relevant reasons why the Panel should not decide that the Member has failed to follow the Code of Conduct.
- (b) The Chairman will then invite the investigator if present to respond and to give relevant reasons why the Panel should decide that the Member has failed to follow the Code of Conduct.
- (c) The Panel may, at any time, question anyone involved on any point they have raised in their representations.
- (d) The Chair will then invite the Member to make any final relevant points for the Panel to consider in making its determination on whether the Member has failed to follow the Code of Conduct.
- (e) The Chair will then ensure that each Member of the Panel is satisfied that s/he has sufficient information to enable him/her to take an informed decision on whether or not, on the basis of the facts it has established, the Member has failed to follow the Code of Conduct in the manner set out in the Investigator's report.
- (f) The Panel will then retire to another room to consider in private the representations made and determine its findings on the balance of probability whether the Member has failed to follow the Code of Conduct. The Panel may, at any time, return to the main hearing room

in order to seek additional representations from the investigator, the Member or a witness, or to seek legal advice from its legal advisor.

- (g) At the conclusion of the Panel's consideration, the Panel will consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
- (h) The Panel shall then return to the main hearing room and the Chair will state the Panel's principal findings of fact and their determination as to whether the Member failed to comply with the Code of Conduct as set out in the investigator's report.

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

If the Panel determines that the Member has not failed to follow the Code of Conduct in the manner set out in the investigator's report:

- (a) If the Panel apprehends, from the evidence which they have received during the hearing, that a Member has failed to comply with the Code of Conduct (other than the matter which the Panel has just determined), the Chair shall outline the Panel's concerns and state that the Panel has referred this additional or alternative failure to the Monitoring Officer for consideration as to whether that matter should be investigated.
- (b) The Chair should then set out any recommendations which the Panel is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the investigator and the legal advisor before the Panel finalises any such recommendations.

## **10 Action consequent upon a failure to comply with the Code of Conduct**

- (a) The Chair shall ask the Investigator (if present) whether, in his/her opinion the Member's failure to comply with the Code of Conduct is such that the Panel should impose or recommend a sanction and, if so, what would be the appropriate sanction.
- (b) The Chair will then ask the Member to respond to the investigator's advice.
- (c) The Chair will then ensure that each Member of the Panel is satisfied that s/he has sufficient information to enable him/her to take an informed decision as to whether to impose or recommend a sanction and (if appropriate) as to the form of the sanction.
- (d) Any Member of the Panel may address questions to the investigator or to the Member as necessary to enable him/her to take such an informed decision.

- (e) The Chair should then set out any recommendations the Committee is minded to make to the Council with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigator and the legal advisor.

The Panel shall then retire to another room to consider in private whether to impose or recommend a sanction, (where a sanction is to be imposed or recommended) what sanction to impose or recommend.

*(Note: the sanctions available to the Panel are set out in the annex to this Procedure).*

- (g) shall return to the main hearing room and the Chairman shall state the Panel's decisions as to whether to impose/recommend a sanction and (where a sanction is to be imposed or recommended) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions.

## **11 The Close of the Hearing**

- (a) The will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Member as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing.
- (c) Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Committee's determination and shall arrange for the distribution and publication of that notice