

**ROSSENDALE BOROUGH COUNCIL
PRE-HEARING AND HEARING PROCEDURE**

INTERPRETATION

- 1) 'Subject Member' means the Member of the Authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.
- 2) 'Investigating Officer' means the Monitoring Officer or Ethical Standards Officer and includes their nominated representative.
- 3) 'The Matter' is the subject matter of the investigator's report.
- 4) 'Committee' also refers to a Sub-Committee.
- 5) 'Legal Adviser' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the Authority, or someone delegated by the Monitoring Officer to so advise
- 6) 'The Committee Support Officer' means an officer of the authority responsible for supporting the Standards Committee discharge of its functions and recording the decisions of the Standards Committee.
- 7) 'The Chairman' refers to the person presiding at the Hearing.

PRE-HEARING STAGE

THE PRE-HEARING PROCESS TO BE CARRIED OUT IN WRITING UNLESS THE CASE IS VERY COMPLICATED AND THE CHAIR OF THE STANDARDS COMMITTEE AND LEGAL ADVISER AGREE THAT A PRE-HEARING SUB-COMMITTEE SHOULD BE ORGANISED , THAT DECISION TO BE MADE AT STAGE 5 BELOW

1. A Consideration, Pre-Hearing and Hearing Sub-Committee shall be convened with a composition in accordance with the principles set out below.
2. The Subject Member will be asked for a written response to the Investigating Officer (IO's) report within fifteen working days and shall state whether he/she
 - disagrees with any of the findings of fact in the report, giving the reasons for any disagreement;
 - wishes to detail other evidence relevant to the complaint
 - wishes to be legally represented or by any other person;

- wishes to give evidence to the Sub-Committee, either orally or in writing;
 - confirm if any party has specific needs (e.g. access requirements)
 - confirm they are attending the Hearing
 - wishes to call relevant witnesses to give evidence to the Sub-Committee (and to outline that evidence);
 - wishes any part of the Hearing to be held in private;
 - wishes any part of the IO's report or other relevant documents to be withheld from the public;
 - wishes to outline any representations to be taken into account if the Subject Member is found to be in breach.
3. The Subject Member shall be informed that if, at the meeting of the Sub-Committee, he/she seeks to dispute any matter contained in the IO's report without having previously notified the intention to do so, the Sub-Committee may refuse to allow the disputed matters to be raised unless satisfied that there are good reasons why they have not been raised beforehand.
 4. The IO shall be invited to comment on the Subject Member's response within ten working days of receipt, and shall state whether or not he/she
 - wishes to call relevant witnesses to give evidence or submit written or other evidence to the Sub-Committee;
 - wishes any part of the Hearing to be held in private;
 - wishes any part of the report or other relevant documents to be withheld from the public;
 5. Witnesses may only give evidence with the express approval of the Chair of the Sub Committee.
 6. The Subject Member and the IO are entitled to request the Chair's approval for the attendance of such witnesses as are necessary. However, in consultation with the Monitoring Officer, the Chair may limit the witnesses to be called, if he/she believes the number requested for the relevant party is unreasonable or that the relevant witnesses will be repeating the evidence of other witnesses to be called, or else not likely to provide such relevant evidence that will assist the Sub-Committee to reach its decision.
 7. The Chairman may request the attendance of any additional witnesses whose evidence he/she considers would assist the Sub-Committee to reach its decision.
 8. The Monitoring Officer or the Legal Adviser (who must not be the IO), in consultation with the Chair of the Sub Committee, will write to the

Subject Member and the IO to:

- confirm a date, time and place for the Hearing, which must be within three months from the date on which the IO's report was completed and not less than fourteen working days after the report was sent to the Subject Member
- confirm the main facts of the case that are agreed
- confirm the main facts that are not agreed
- provide copies of any written evidence to the relevant parties
- confirm which witnesses will be called by the parties
- provide the parties with copies of the proposed procedure for the Hearing, specifying which parts of the proceedings, if any, may be considered in private

The Monitoring Officer will also write to update the complainant.

CONSIDERATION, PRE-HEARING AND HEARING SUB-COMMITTEE PROCEDURE FOR A HEARING

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

REPRESENTATION

2. The Subject Member may be legally represented, or with the permission of the Sub-Committee, by another person. It is the responsibility of the Subject Member to arrange for their own representation.

LEGAL ADVICE

3. The Sub-Committee may take legal or procedural advice from its Legal Adviser (who may be the Monitoring Officer) at any time during the Hearing or during the Sub-Committee's deliberations. The substance of any advice given to the Sub-Committee will be shared with the Subject Member and Investigating Officer (IO) if they are present at the Hearing.

INTRODUCTIONS AND SETTING THE SCENE

4. At the start of the Hearing, the Chairman shall introduce each of the members of the Sub-Committee, the Subject Member (if present), the IO (if present), and the Legal Adviser, and shall then explain the procedure, which the Sub-Committee will follow.

PRELIMINARY PROCEDURAL ISSUES

5. The Sub-Committee shall deal with the following preliminary procedural matters:

a) Disclosures of interest

The Chairman shall ask members of the Sub-Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

b) Quorum

The Chairman shall confirm that the Sub-Committee is quorate.

c) Exclusion of Press and Public

The Chairman shall ask the Subject Member, the Investigator and the Legal Adviser to the Sub-Committee whether they wish to ask the Sub-Committee 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 for so

doing and ask for responses from the others and the Sub-Committee shall then determine whether to exclude the press and public from all or any part of the Hearing.

d) Hearing procedure

The Chairman shall confirm that all present know the procedure which the Sub-Committee will follow in determining the matter.

e) If the Subject Member is not present at the start of the hearing:

- The Chairman will ask the Legal Adviser whether the Subject Member has indicated his/her intention not to attend the hearing;
- The Sub-Committee shall then consider any reasons which the Subject Member has provided for not attending the hearing;
- If it is not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Sub-Committee shall decide whether to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the hearing to another date.

MAKING FINDINGS OF FACT

6. After the preliminary procedures, the Sub-Committee will consider whether or not there are any significant disagreements about the facts contained in the IO's report.

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

7. If there is disagreement, the IO will present the evidence which is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The Subject Member and the Sub-Committee members may ask questions of the IO or any witness.
8. The Subject Member or his/her representative will then present the evidence which is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The IO and the Sub-Committee members may ask questions of the Subject Member or any witnesses.
9. At any time, the Sub-Committee may question any of the people involved or any witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Subject Member.
10. If the Subject Member disagrees with most of the facts, the Investigator will make representations on all the relevant facts, instead of discussing each fact individually.

11. If the Subject Member disagrees with any relevant fact in the report without having given prior notice, he or she must give good reasons for not mentioning it before the hearing. After considering the Subject member's explanation, the Sub-Committee may continue with the hearing, relying on the information in the report; may allow the Subject Member to make representations about the issue and invite the IO to respond and call witnesses as necessary, or may postpone the hearing to arrange for appropriate witnesses to be present.
12. The Sub-Committee will consider in private all the evidence which has been heard or received as written evidence first, to establish its findings of fact.
13. On their return, the Chairman will announce the Sub-Committee's findings of fact.
14. At any stage in the consideration of the matter, the Sub-Committee may return to ask further questions of the IO or the Subject Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

DID THE SUBJECT MEMBER FAIL TO FOLLOW THE CODE OF CONDUCT

15. The Sub-Committee will then consider whether, based on the facts it has found, the subject member has failed to follow the Code.
16. The Subject Member will be invited to give relevant reasons why the Sub-Committee should decide that they have not failed to follow the Code.
17. The Sub-Committee will then consider any verbal or written representations from the Investigator.
18. The Sub-Committee may, at any time, question anyone involved on any point they raise on their representations.
19. The Subject Member will then be invited to make any final relevant points.
20. The Sub-Committee will consider in private the representations.
21. On their return, the Chairman will announce the Sub-Committee's decision as to whether the Subject Member has failed to follow the Code.

IF THE SUBJECT MEMBER HAS NOT FAILED TO FOLLOW THE CODE OF CONDUCT

22. If the Sub-Committee decides that the subject member has not failed to follow the Code, the committee can move on to consider whether it should make any recommendations to the Authority.

IF THE SUBJECT MEMBER HAS FAILED TO FOLLOW THE CODE OF CONDUCT

23. If the Sub-Committee concludes that the Subject Member has failed to comply with the Code of Conduct, the Sub-Committee will consider any verbal or written representations from the Investigator and the Subject Member as to:
- Whether the Sub-Committee should apply a sanction
 - What form any sanction should take
24. The Sub-Committee may ask questions of the Subject Member and the IO and take legal advice, to make sure they have the information they need in order to make an informed decision.
25. The Sub-Committee shall then consider in private whether to impose a Sanction on the Subject Member, and, if so, what sanction to impose and when that sanction should take effect.
26. The sanctions open to the Sub-Committee are:
- censure (to express formal disapproval or formally rebuke the actions and/or behaviour) of the Subject Member (suitable for members who are no longer members of the authority);
 - restriction for a period not exceeding six months of the Subject Member's access to the premises of the authority or use of the resources of the authority, provided that those restrictions are reasonable and proportionate to the nature of the breach and do not unduly restrict the person's ability to perform the functions of a member;
 - partial suspension of the Subject Member for a period not exceeding six months;
 - suspension of the Subject Member for a period not exceeding six months;
 - require the Subject Member to submit a written apology in a form specified by the Sub-Committee;
 - require the Subject Member to undertake such training as the Sub-Committee specifies;

- partial suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member submits a written apology in a form specified by the Sub-Committee;
 - partial suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies;
 - suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has submitted a written apology in a form specified by the Sub-Committee;
 - suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies;
 - any combination of the above sanctions.
27. Any sanction imposed by the Sub-Committee shall commence immediately unless the Sub-Committee directs that a sanction shall commence on another date within six months from the imposition of the sanction.
28. In deciding to impose a sanction, the Sub-Committee shall consider all the relevant circumstances and shall have regard to any relevant Guidance issued by the Standards Board.
29. If the Sub-Committee has determined that the action which it could itself take (if there were a finding that there had been a failure to follow the provisions of the Code) would be insufficient then it may decide to refer the matter to the Adjudication Panel for determination. The reference itself can be made only if the President or Deputy President has agreed to accept it.
30. The Chairman will announce the decision of the Sub-Committee. Written notice of the findings of the Sub-Committee will be given as soon as it is reasonably practicable to the Subject Member, the Standards Board, the Standards Committee of any other authority concerned, any parish council concerned, and any person who made an allegation that gave rise to the investigation. Public notices shall be given in accordance with the Regulations.

31. Where the Sub-Committee determines that the Subject Member has failed to comply with the Code of Conduct, the Chairman shall inform the Subject Member of the right to seek permission to appeal against the Sub-Committee's findings or any sanction imposed by sending a notice in writing to:

**The President of the Adjudication Panel for England at
23 Victoria Avenue, Harrogate, HG1 5RD**

within 21 days of receipt of the written notice of findings.

RECOMMENDATIONS TO THE AUTHORITY

32. The Sub-Committee may consider making recommendations with a view to promoting higher standards of conduct among members.