

## **STRATFORD ON-AVON DISTRICT COUNCIL**

### **MEMBERS' CODE OF CONDUCT**

### **DETERMINATION PROCEDURES**

#### **LEGAL STATUS AND SCOPE OF THESE PROCEDURES**

1. Section 28 of the Localism Act 2011 requires the Council to have arrangements in place under which decisions on allegations relating to the Member's Code of Conduct can be made. A separate document entitled "Arrangements for Dealing with Complaints of Councillor Misconduct" provides an overview of the whole process.
2. These Procedures apply where a hearing becomes necessary under the Arrangements document. If any discrepancy arises between the Arrangements document and these Procedures, these Procedures take precedence. These Procedures are divided into the following main sections:-
  - Definitions and general principles
  - The Pre-hearing Process-including pre-hearing meetings
  - The Hearing Process
  - Forms and templates

#### **DEFINITIONS AND GENERAL PRINCIPLES**

3. Terms used in this document in the masculine form apply equally to the feminine form and words in the singular form include the plural form where the context allows. The following terms are defined for the purposes of this document:-
4. "Authority" or "The Council" means SDC or a Parish Council within the district of Stratford, whichever is the council whose code of conduct is alleged to have been breached by the Member.
5. "Code of Conduct" means the code of conduct applicable to the Authority at the material time in relation to allegation.
6. "Eligible Member" means a member or co-opted member of the Audit and Standards Committee who has completed a code of conduct training session provided or facilitated by the Monitoring Officer within the previous 12 months of being selected as a member of the Panel and who has attended a briefing on the Determination Procedures prior to attending the relevant hearing.
7. "Member" means the member or co-opted member who is the subject of the allegation being considered by the Panel, and the term also includes the member's nominated representative.

8. "Monitoring Officer" means the person appointed by SDC under section 5 of the Local Government and Housing Act 1989, and includes any person designated by him to perform any functions under these procedures.
9. "Independent Person" means one of the two persons appointed by SDC under section 28 of the Localism Act 2011 and who will be invited to attend the Hearing to provide advice to the Panel.
10. "Investigating Officer" means the person commissioned by the Monitoring Officer to investigate the allegation, and the term includes the Investigating Officer's nominated representative.
11. "Panel" refers to a panel of three Eligible Members established as a sub-committee of the Audit and Standards Committee of SDC to hear and determine the allegation, the composition of which will be determined by the Monitoring Officer, in consultation with the Independent Person. In the case of a complaint against a District Councillor a minimum of one District Councillor shall be included as a member of the Panel.
12. "PCM" means the two co-opted Parish Council members of the Audit and Standards Committee, both of whom shall be eligible for selection as a member of the Panel, and in the case of a complaint against a Parish Councillor a minimum of one PCM shall be included as a member of the Panel.
13. "Legal advisor" means the officer responsible for providing legal advice to the Panel. This may be the Monitoring Officer, another legally qualified officer of SDC, or someone appointed for this purpose from outside SDC.
14. "SDC" means Stratford on-Avon District Council.
15. If a member or prospective member of a Determination Panel has a personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint. Any conflicts identified during the course of a matter will be managed appropriately by the Monitoring Officer.
16. The Hearing should normally take place within three months of the date when the Monitoring Officer has approved the investigation report of the Investigating Officer.
17. The investigation report and relevant documentary evidence will remain exempt from publication unless and until it has been decided to the contrary by the Monitoring Officer or, where the Member disputes the decision of the Monitoring Officer, by the Panel.
18. The Monitoring Officer shall act as the legal advisor to the Panel, except in any case where he has investigated the complaint. The Monitoring Officer will administer the pre-hearing process, determine whether a pre-hearing meeting of the Panel is necessary and fix the date of the Hearing.
19. The pre-hearing process will usually be carried out in writing. However, in certain circumstances a pre-hearing meeting of the Panel may be necessary.

In particular, only the Panel will decide whether to limit the number of witnesses giving evidence on behalf of the Member, whether to release documents into the public domain (where disputed), or whether to hold any part of the hearing in private.

## **THE PRE-HEARING PROCESS**

### **Step One**

20. The Monitoring Officer will provide the Member with a copy of the investigation report and a copy of these Procedures, including copies of the forms and templates listed below.

21. The Monitoring Officer will ask the Member to complete and return the relevant forms, usually within 14 days, to establish whether the Member:-

- disagrees with any of the findings of fact in the Investigating Officers report, including the reasons for any disagreements
- wants to be represented at the hearing by a solicitor, barrister or any other person, noting that the Panel will normally give permission for Members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined
- wants to give evidence at the Hearing, either verbally or in writing
- wants to call relevant witnesses to give evidence at the Hearing
- wants any part of the Hearing to be held in private
- wants any part of the Investigating Officer's report or relevant documentary evidence to be withheld from the public.

### **Step Two**

22. On receipt of the Member's response the Monitoring Officer will send a copy of the completed forms to the Investigating Officer and invite the Investigating Officer to confirm in writing by a set time, usually within 14 days, whether the Investigating Officer:-

- wants to be represented at the Hearing
- wants to call relevant witnesses to give evidence at the Hearing
- wants any part of the Hearing to be held in private
- wants any part of the Investigating Officer's report or relevant documentary evidence to be withheld from the public.

### **Step Three**

23. On receipt of the Investigating Officer's response the Monitoring Officer will decide whether any disagreements about findings of fact are significant to the Hearing and if so whether or not to hear evidence about those disagreements during the Hearing or otherwise.
24. The Monitoring Officer will decide whether or not there are any parts of the Hearing that should be held in private and whether or not any parts of the Investigating Officer's report or relevant documentary evidence should be withheld from the public and he will advise the Member and the Investigating Officer accordingly. If either party objects then the Monitoring Officer will convene a pre-hearing meeting of the Panel to determine the issue. The Monitoring Officer may also convene a pre-hearing meeting for any other reason in his absolute discretion.

### **Step Four (if appropriate)**

25. Should a pre-hearing meeting be necessary the Monitoring Officer will confirm to the Member and the Investigating Officer the date for the pre-hearing meeting and the matters to be determined at the meeting. The Member and the Investigating Officer will have a right to attend the pre-hearing meeting.
26. The Panel will regulate its own procedures for the pre-hearing meeting but shall consider written or verbal representations from both parties. The pre-hearing meeting will be held in private where a matter for determination by the Panel is whether some or all of the Hearing is to be conducted in private or some or all relevant documentary evidence is to be exempted.

### **Step Five**

27. The Monitoring Officer will provide the following information to the Member, the Investigating Officer and the Panel usually at least two weeks before the proposed date of the Hearing:-
- The date, time and place for the Hearing
  - The main facts of the case that are agreed
  - The main facts that are not agreed
  - The identity of witnesses who will give evidence
  - Any directions given by the Panel at a pre-hearing meeting
  - Any proposed amendments to the process for the Hearing as set out below

## **THE HEARING PROCESS**

### **Introduction**

28. The Hearing should usually be heard in public to ensure transparency and fairness. There may be exceptions if information is confidential or exempt under Schedule 12A of the Local Government Act 1972.

29. The Panel will appoint one of its members to act as Chairman of the Panel.

### **Representation**

30. The Member may be represented or accompanied during the Hearing by a Solicitor, Counsel or, with the permission of the Panel, another person.

### **Legal Advice**

31. The Panel may take legal advice from its Legal Advisor at any time during the Hearing or while it is considering the outcome. The substance of any legal advice given to the Panel should be shared with the Member and the Investigating Officer if they are present.

### **Preliminary Issues**

32. After all the members of the Panel and everyone involved have been formally introduced, the Panel Chairman will explain how the Panel is going to run the Hearing.

33. The Panel should resolve any issues or disagreements about how the Hearing should continue, which have not been resolved during the pre-hearing process.

### **Findings of Fact**

34. After dealing with any preliminary issues, the Panel should consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report.

35. If there is no disagreement about the facts, the Panel should move on to consider whether there has been a breach of the code.

36. If there is a disagreement about the facts, the Investigating Officer, if present, should be invited to make representations to support the relevant findings of fact in his report. With the Panel's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Panel will give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.

37. The Member will have the opportunity to make representations to support his version of the facts and, with the Panel's permission, to call any necessary witnesses to give evidence.

38. At any time, the Panel may question any of the people involved or any of the witnesses, and may allow the Investigating Officer to challenge any evidence put forward by witnesses called by the Member.
39. If the Member disagrees with most of the facts, it may make sense for the Investigating Officer to start by making representations on all the relevant facts, instead of discussing each fact individually.
40. If the Member disagrees with any finding of fact in the Investigator's Officer's report without having given prior notice of the disagreement, he must give good reasons for not mentioning it before the Hearing. If the Investigating Officer is not present, the Panel will consider whether or not it would be in the public interest to continue in his absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Panel may then:-
- (a) continue with the Hearing, relying on the information in the Investigating Officer's report;
  - (b) allow the Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
  - (c) postpone the Hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he is not already.
41. The Panel will move to another room with the Independent Person to consider the representations and evidence in private. The Panel must seek and take into account the views of the Independent Person.
42. On its return, the Panel Chairman will announce the Panel's findings of fact.

### **Breach of Code?**

43. The Panel will consider whether or not, based on the facts it has found, the Member has failed to follow the Code of Conduct.
44. The Member will be invited to give relevant reasons why the Panel should not decide that he has failed to follow the Code.
45. The Panel will then consider any verbal or written representations from the Investigating Officer
46. The Panel may, at any time, question anyone involved on any point they raise in their representations.
47. The Member will be invited to make any relevant points in reply to the Investigating Officer
48. The Panel will move to another room with the Independent Person to consider the representations. The Panel must seek and take into account the views of the Independent Person.

49. On its return, the Panel Chairman will announce the Panel's decision as to whether or not the Member has failed to follow the Code of Conduct.

#### **Outcome-No Breach of Code**

50. If the Panel decides that the Member has not failed to follow the Code of Conduct, the Panel will then consider whether it should make any recommendations to the Authority.

#### **Outcome-Breach of Code**

51. If the Panel decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Member as to:

- (a) whether or not sanctions should be applied; and
- (b) what form any sanction should take.

52. The Panel may question the Investigating Officer and the Member and take legal advice, to make sure it has the information it needs in order to make an informed decision.

53. The Panel will move to another room with the Independent Person to consider whether or not to impose a sanction and, if so, what the sanction should be. The Panel must seek and take into account the views of the Independent Person.

54. On its return, the Panel Chairman will announce the Panel's decision.

#### **Available Sanctions**

55. The following sanctions are available:-

- Censure or reprimand the Member;
- Publish its findings in respect of the Member's conduct;
- Report its findings to the Authority for information;
- Recommend to the Member's Group Leader ( or in the case of ungrouped Members, recommend to the Council or to Committees) that he be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Member be removed from The Cabinet, or removed from particular Portfolio responsibilities;
- Recommend to the Council that the Member be replaced as Leader;
- Instruct the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the Member;

- Recommend to the Authority that the Member be removed from all outside appointments to which he has been appointed or nominated by the Authority;
- Withdraw *[or recommend to the Parish Council that it withdraws]* facilities provided to the Member by the Authority, such as a computer, website and/or email and internet access; or
- Exclude *[or recommend that the Parish Council exclude]* the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings.

56. The Panel has no power to suspend or disqualify the Member or to withdraw basic or special responsibility allowances. Sanctions (with the exception of censure) may start immediately or up to six months after the hearing, if the Panel wishes.

57. If the Panel decides to publish its findings, it may do so by placing its findings in one or more newspapers that are independent of the Authority concerned and circulating in the area of that Authority.

### **Authority Recommendations**

58. After considering any verbal or written representations from the Investigating Officer and the Member, the Panel will consider whether or not it should make any recommendations to the Authority, with a view to promoting high standards of conduct among members.

### **Written Decision**

59. The Panel will announce its decision on the day of the hearing and provide a short written decision on that day. It will also issue a full written decision shortly after the end of the hearing and within 2 weeks of its conclusion.

### **Right of Appeal**

60. There is no right of appeal against the Panel's decision, although there may be the right to complain to the Local Government Ombudsman if there is evidence of maladministration.

### **FORMS AND TEMPLATES**

61. Copies of the forms and templates used as part of the process are provided in the following pages comprising:-

Form A - Information for the Member

Form B - Member's response to evidence in investigation report

Form C - Other evidence relevant to the allegation

Form D - Representations in event that the Member is found to have failed to follow the code

Form E - Arrangements for the Panel Hearing

Form F - Details of proposed witnesses to be called