

## **LONDON BOROUGH OF HARROW**

### **Dealing with the local determination of allegations made about Council members and co-optees under the Code of Conduct.**

#### **Procedure for the Standards Committee Hearing Panel**

##### **1. Introduction**

This procedure will only apply to determinations made by the Standards Committee Hearing Panel where an investigation has been completed by an Ethical Standards Officer (ESO) of the Standards Board for England (SBE) and referred to the Standards Committee.

The procedure applies to complaints about the conduct of anyone who is required to sign up to and comply with the Code of Conduct as set out in Part 4 of the Council's Constitution. This includes all councillors, co-optees with voting rights and the independent members of the Standards Committee.

Where an investigation is referred to the Standards Committee by an ESO, the Monitoring Officer must ensure that the Standards Committee considers the report. The Standards Committee will meet to decide what action to take as a result of the report by way of a formal Hearing Panel which follows this procedure. Any departure from the procedure will only be possible if the legal adviser to the Hearing Panel has notified the Member who is the subject of the report of the proposed changes and the reasons for them.

For the purposes of this procedure, the person who makes the complaint about a Councillor or co-optee will be described as the 'Complainant', and the person about whom the complaint is made will be referred to as 'the Member'.

There are a number of legal officer roles, which are required to assist the Hearing Panel to determine the matter referred by the ESO. These roles are:

##### **1.2 The Monitoring Officer**

The Monitoring Officer will ensure that the overall conduct of the matter is dealt with effectively in the interests of all parties concerned. The Monitoring Officer may also adopt the role of Reporting Officer or legal adviser to the Hearing Panel. If the Monitoring Officer assigns himself as Reporting Officer, he will ensure that the deputy Monitoring Officer takes responsibility for ensuring the effective overall conduct of the matter and that an appropriate officer is appointed as legal adviser to the Hearing Panel.

Where appropriate, the Monitoring Officer may arrange for procedural advice to be given to a Member who wishes to make an oral representation to the Panel.

### 1.3 The Reporting Officer

The Reporting Officer is, in effect, the 'prosecutor' at the Hearing Panel. The Monitoring Officer may choose to be the Reporting Officer in any particular case, and if so, he will ensure that all other legal roles are delegated to an appropriate officer and that the Deputy Monitoring Officer takes responsibility for ensuring the effective overall conduct of the matter .

The Reporting Officer may, where appropriate, make representations to the Panel on behalf of the Complainant.

### 1.4 The legal adviser to the Hearing Panel

This role of this person is to

- make sure the Standards Committee understand their powers and procedures;
- make sure that the determination procedure is fair and will allow the allegation to be dealt with as efficiently and effectively as possible;
- make sure that the Member understands the procedures that the Committee will follow;
- provide advice to the Committee during the hearing and their deliberations; and
- help the Committee produce a written decision and a summary of that decision.

The Monitoring Officer may be the legal adviser to the Hearing Panel, but if so he cannot be the Reporting Officer.

## 2. Appointment of a Reporting Officer on receipt of the ESO's report

Upon receipt of the ESO's report, the Monitoring Officer will appoint a Reporting Officer. The Reporting Officer will be responsible for taking charge of providing the evidence against the Member to the Hearing Panel.

The Reporting Officer may be the Monitoring Officer, or another appropriate officer. The Reporting Officer will, if at all possible, be a Harrow Council Officer, but in appropriate circumstances the Monitoring Officer may appoint an officer of another authority, or an independent consultant with appropriate qualifications.

## 3. Notifying the Member and the Complainant.

Within 5 working days of receiving the ESO's report, the Monitoring Officer will send a copy of the report to all Members of the Standards Committee, the Member and where possible and appropriate, to the Complainant. The report will, at this stage, be provided on a confidential basis, and an undertaking of confidentiality will be obtained from the Complainant, the Member, and where needed, the Standards Committee.

## 4. Preparing for the hearing

### 4.1 Obtaining a response from the Member

When notifying the Member of the complaint against him or her and providing them with the report under Rule 3, the legal adviser to the Hearing Panel will ask the Member for a written response, within fifteen working days, stating whether he or she:

- disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;
- wants to be represented, at their own expense, at the hearing by a barrister, solicitor or any other person;
- wants to give evidence to the Hearing Panel, either verbally or in writing;
- wants to call any relevant witnesses to give evidence to the Hearing Panel, and if so, who they are;
- wants any part of the hearing to be held in private, explaining the reasons;
- wants any part of the ESO's report or other relevant documents to be withheld from the public, explaining the reasons.

The legal adviser to the Hearing Panel will also ask the Member to advise him or her, in their response, of all those matters within the ESO's report which he or she disputes. The legal adviser to the Hearing Panel will notify the Member that the Panel has the power to refuse to hear any new areas of dispute raised at the hearing but not notified prior to it, or may adjourn the hearing to enable the Reporting Officer to respond to them.

#### 4.2 Upon receipt of a response from the Member

The response of the Member shall be sent to the Reporting Officer as soon as the legal adviser to the Hearing Panel receives it. The Reporting Officer will forward the response of the Member to the relevant ESO, who will be invited to comment upon it within 15 working days, and specifically say whether or not he or she:

- wants to attend the hearing;
- wants to call relevant witnesses to give evidence at the hearing;
- wants any part of the hearing to be held in private (by virtue of Part VA of the Local Government Act 1972), and the reasons for this;
- wants any part of their report or other relevant document to be withheld from the public (by virtue of Part VA of the Local Government Act 1972) and the reasons for this.

#### 5. Calling a meeting of the Standards Committee Hearing Panel

Upon receipt of the ESO's response from the Reporting Officer, the legal Adviser to the Hearing Panel will forward the responses of the Member and the ESO to the Chair of the Hearing Panel.

Although the Member, the ESO and the Reporting Officer are entitled to request that any witness be called to give evidence, the Chair of the Hearing Panel may limit the number of witnesses if he or she believes the requests of any party are unreasonable and/or that some witnesses will be repeating evidence which will be given by earlier witnesses and/or will not provide any evidence at all to help the Panel reach a decision. The Chair may also call any

additional witnesses who he or she believes would assist the Hearing Panel in reaching a decision.

The Chair of the Hearing Panel will, in consultation with the legal adviser to the Panel:

- confirm the main facts of the case that are agreed between the ESO and the Member;
- confirm the main facts of the case that are not agreed between the ESO and the Member;
- confirm which witnesses will give evidence;
- outline the proposed procedure for the hearing, specifying which parts of the hearing, if any, will take place in private with reasons; and
- request the Committee Administrator to provide this information and, subject to paragraph 5.2 below, the Agenda to everyone involved in the hearing at least 8 clear working days before the date of the hearing. (Confidentiality undertakings for receipt of the papers will be obtained from any recipients for whom the Chair considers this appropriate.)

The Agenda papers will include the following information:

- the date, time and place of the hearing;
- the summary of the allegation;
- a list of the main facts of the case which are agreed;
- a list of the main facts of the case which are not agreed;
- a note about whether the Member and/or the ESO will attend the hearing and give evidence;
- a list of witnesses, if any, who will attend the hearing and give evidence; and
- an outline of the proposed procedure for the hearing (i.e. a set of these rules)

## 5.2 Excluding the press and public from the Hearing Panel

The meeting of the Hearing Panel will be open to the press and public unless confidential information under Part VA of the Local Government Act 1972 and Regulations is likely to be disclosed.

The Hearing Panel has discretion to decide whether or not to exclude the press and public from the meeting if exempt information as defined in Part VA of the LGA 1972 and regulations will be discussed. Where the legal adviser to the Hearing Panel, in consultation with the Chair of the Panel, considers that the ESO's report and/or any of the written statements in response are likely to disclose exempt information and as a result it is likely that the hearing Panel will, when considering these papers, not be open to the press and public, he or she shall instruct the Committee Administrator not to provide copies of these papers to the press and public, and not to allow their inspection prior to the meeting.

## 6. Convening the Hearing Panel

When the initial report is received from the ESO, the legal adviser to the Hearing Panel will request that the committee administrator for the Standards Committee arrange for a meeting of the Panel, and, following consultation with the Chair of the Panel, indicate the preferred

time, place and date of the meeting. The meeting must take place within three months from the date that the authority receives the ESO's report. Where possible, the Hearing Panel will meet during the day and will aim to complete the hearing in one sitting (i.e. avoiding the need to reconvene on another date part way through hearing the evidence).

#### 7. The composition and method of the Hearing Panel

The Hearing Panel shall be chaired by an independent member of the Standards Committee selected by the Standards Committee, or if none is appointed, by the Chair of the Standards Committee.

The Hearing Panel shall comprise 5 members of the Standards Committee, and shall include both independent members. The remaining 3 places shall be filled by a member of the Standards Committee from each of the three main political groups selected by the Chair.

The quorum for the Panel shall be 3, and must include at least one independent member.

Where a member selected to sit on the Hearing Panel cannot attend, a reserve shall be approved by the Chair of the Panel. The reserve member shall be fully briefed about the complaint under consideration by the legal adviser to the Panel.

The Hearing Panel shall decide whether the grounds for complaint are upheld on the balance of probabilities i.e. on the evidence presented to the Panel in writing and orally (if any), it is more likely than not that the Member is in breach of the Code of Conduct.

Each member of the panel shall have one vote and abstentions will not be permitted.

The purpose of the Hearing Panel is to examine and test the evidence produced by the ESO in their report. This requires an inquisitorial approach by the Hearing Panel i.e. the need to seek information in order to establish whether or not the Member is in breach of the Code of Conduct by examining all the written evidence and questioning any relevant witnesses.

The Hearing Panel may at any time seek legal advice from the legal adviser to the Panel. Such advice will be given in the presence of the Reporting Officer and the Member, though the press, public and others present at the hearing may be excluded while this advice is given.

#### 8. Agenda for and procedure at the Hearing Panel

The Agenda for the Meeting shall be as follows:

- Quorum
- Introductions
- Declarations of interest
- Consideration of whether to adjourn or proceed in the absence of the Member if they are not present

- Representations with reasons from the Reporting Officer and/or the Member if either consider that the hearing or any part of it should exclude the press and public under Part VA of the Local Government Act 1972, and determination of this by the Panel.
- Explanation of how the hearing will be run.

Where the panel decides that it will not exclude the press and public, the Committee administrator shall at that point provide copies of the agenda and reports to any press and public that are present.

The procedure for dealing with the report about the Member shall be as follows, subject to the Chair of the Panel being able to make any change to it that he or she thinks appropriate to enable a fair and effective hearing:

- Examination of the reports and written representations

The Panel will examine the ESO's written report, the Member's response to it and any further response from the ESO. The Panel may ask the Reporting Officer and/or the Member questions about the contents of their reports.

If there is no disagreement about the facts, the Committee can move on to consider its findings (paragraph 9 refers).

- Examination of oral evidence

Where the facts of the case are not agreed, the Reporting Officer will be asked to make any representations to support the findings of fact in the report relevant to the areas of disagreement, by calling witnesses as agreed by the Chair of the Panel (Rule 5 refers)

Questions may be asked of the Reporting Officer at any point. The Member, the Complainant or their representatives may challenge the oral evidence being presented by directing their questions through the Chair (i.e. they may not ask questions of the Reporting Officer directly).

The Member will then be asked to make any representations to support his or her version of the disputed facts in the ESOs report, calling supporting witnesses as agreed by the Chair of the Hearing Panel (Rule 5 refers).

Questions may be asked of the Member at any point. The Complainant, the Reporting Officer or their representatives may challenge the oral evidence being presented by directing their questions through the Chair (i.e. they may not ask questions of the Member direct).

Where the Member disputes any matter in the ESO's report but which he or she has not given prior notice of his or her intention to dispute, the Reporting Officer must draw this to the attention of the Panel. The Panel may then decide:

- not to hear the fact(s) in dispute;
- to hear the fact(s) in dispute but invite the Reporting Officer to respond; or
- to adjourn the meeting to enable the Reporting Officer to investigate and report on the disputed fact(s).

- Representations on sanctions

The Member will have an opportunity to make a statement in mitigation of any sanction which the Hearing Panel may impose in the event that they find the complaint to be made out.

## 9. The decision of the Hearing Panel

The Hearing Panel will retire into private session to consider their findings. At any time they may return to ask for questions of the Reporting Officer or the Member, or to seek legal advice. They may find one of the following:

- That there is no evidence of any failure by the Member to comply with the Code of Conduct;
- That the Member has failed to comply with the Code of Conduct but that no action needs to be taken;
- That the Member has failed to comply with the Code of Conduct and should be:
  - censured; or
  - have his or her access to council premises and resources restricted for a period up to a maximum of three months<sup>1</sup>;
  - be suspended or partially suspended for a maximum of three months; or
  - be suspended or partially suspended for a maximum period of three months or until such time as the Member submits a written apology or undertakes any training or conciliation specified by the Panel.

In deciding what penalty to set the Panel will consider all relevant circumstances including the mitigation statement of the Member and any guidance produced by the Standards Board for England.

The Hearing Panel will return from private session to enable the Chair to announce the decision of the Panel and the reasons for it.

A suspension or partial suspension will take effect immediately unless the Panel decides that it should take effect on some future date, for example to avoid the penalty spanning the summer recess. The starting date for the penalty must commence within six months of the hearing.

The Hearing Panel will then consider in open session whether any action needs to be taken by the authority as a result of the finding, for example reviewing any decision, policy or practice of the authority which was the subject of the breach of the Code of Conduct; any action needed to prevent or deter further breaches of the Code of Conduct or providing recompense to any person who has suffered detriment as a result of the breach.

### 9.1 Costs

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<sup>1</sup> When setting this penalty the Panel must ensure that such restrictions will not unnecessarily restrict the Member's ability to carry out his or her responsibilities as an elected or co-opted member.

The Hearing Panel will not award costs of any kind to a member who successfully defends a complaint. The law does not currently give the Council the power to award costs.

#### 10. Confidentiality and the disclosure of information

No member of the authority shall disclose any information he or she has obtained in the course of an investigation or as a result of this procedure unless:

- the disclosure is made to enable the Reporting Officer to carry out his or her functions, or to enable the Standards Committee to carry out its functions in relation to the matter;
- the disclosure is made to enable the appeal tribunal of the Adjudication Panel to discharge its functions;
- the person to whom the information relates has consented to the disclosure;
- the disclosure is made following receipt of a statutory requirement for disclosure;
- the information has previously and lawfully been disclosed to the public;
- the disclosure is made to the district auditor or the Audit Commission in relation to any function specified in the Audit Commission Act 198; or
- the disclosure is made in consequence of criminal proceedings

#### 11. Appealing the decision of the Hearing Panel

Where the Hearing Panel has determined that the Member has failed to comply with the Code of Conduct, the Legal Adviser to the Panel shall inform the Member of his or her right to apply for permission to appeal against the finding to an appeal tribunal of the Adjudication Panel (of the Standards Board for England). The Legal Adviser to the Panel will also advise the Member of the deadline for submitting an appeal, along with any other relevant information.

#### 12. Notice of findings

The legal adviser to the Hearing Panel will make a short written statement of the decision available on the day of the hearing, or if the hearing commences after 7.30pm, on the morning following the hearing.

A full written draft of the decision will be prepared on the day following the hearing, finalised in consultation with the Chair of the Hearing Panel and circulated to the Member, the Complainant (where appropriate), the relevant ESO, the Council's Standards Committee and any other authority concerned within two weeks of the hearing. The decision will follow the format recommended by the Standards Board for England.

At the same time, the Legal Adviser to the Panel Hearing shall arrange for a summary of the findings to be published in two newspapers circulating in the Council's area and on the Council's web site.



12.1 Where the Hearing Panel decide that there has been no breach of the Code of Conduct, the notice specified above shall:

- state that the Hearing Panel found the Member had not failed to comply with the Code of Conduct and shall give reasons for that finding; and
- not be published in local newspapers if the Member requests it.

12.2 Where the Hearing Panel decide that the Member has not complied with the Code of Conduct, but also decides that no action should be taken, the notice shall:

- state that the Hearing Panel found that the Member had failed to comply with the Code of Conduct, but that no action need be taken in respect of that failure;
- specify the details of the failure;
- give reasons for the decision reached; and
- state that the Member concerned may apply for permission to appeal against the determination to the President of the Adjudication Panel.

12.3 Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice specified above shall:

- state that the Hearing Panel found that the Member had failed to comply with the Code of Conduct;
- specify the details of the failure;
- give reasons for the decision reached;
- specify the sanction imposed; and
- state that the Member concerned may apply for permission to appeal against the determination to the President of the Adjudication Panel.

Copies of the agenda, reports and minutes of the hearing as well as any background papers, apart from any documents or parts of documents which relate to parts of the hearing which were held in private, will be available for public inspection for six years after the hearing.