

**CHELTENHAM BOROUGH COUNCIL  
STANDARDS (DETERMINATION OF COMPLAINTS) COMMITTEE**

**Procedure for the holding of a Hearing to determine complaints referred to the  
Standards (Determination of Complaints) Sub-Committee**

**Interpretation**

1. 'Councillor' means the member of the authority who is the subject of the allegation being considered by the Standards (Determination) Sub-Committee, unless stated otherwise. It also includes the Councillor's nominated representative.
2. 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the authority or an Investigating Officer appointed by the Monitoring Officer, and includes his or her nominated representative.
3. 'Legal adviser' means the officer responsible for providing legal advice to the Standards (Determination of Complaints) Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

**Representation**

4. The Councillor may be represented or accompanied during the hearing by a Solicitor, Counsel or, with the permission of the Sub-Committee, another person.

**Legal Advice**

5. The Sub-Committee may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Sub-Committee should be shared with the Councillor and the Investigator if they are present.

**Setting the scene**

6. The Chairman of the Sub-Committee will introduce him/herself and then introduce the other Members of the Sub-Committee, the Councillor and his/her representatives, the Investigator and any witnesses.
7. The Chairman will then outline the procedure which will be adopted at the hearing.

**Preliminary procedural issues**

8. The Sub-Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

**Making findings of fact**

9. After dealing with any preliminary issues, the Sub-Committee should then move on to consider whether or not there are any significant disagreements

about the facts contained in the Investigator's report.

10. If there is no disagreement about the facts, the Sub-Committee can move on to the next stage of the hearing.
11. If there is a disagreement, the Investigator, if present, will be invited to make any necessary representations to support the relevant findings of fact in the report. With the Sub-Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Sub-Committee may give the Councillor an opportunity to challenge any evidence put forward by any witness called by the Investigator.
12. The Councillor will then have the opportunity to make representations to support his or her version of the facts and, with the Sub-Committee's permission, to call any necessary witnesses to give evidence.
13. At any time, the Sub-Committee may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Councillor.
14. If the Councillor disagrees with most of the facts, the Sub-Committee may invite the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
15. If the Councillor disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the Sub-Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the Sub-Committee may then:
  - a. continue with the hearing, relying on the information in the investigator's report;
  - b. allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
  - c. postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.
16. The Sub-Committee will usually move to another room to consider the representations and evidence in private.
17. On the Sub-Committee's return, the Chair will announce the Sub-Committee's findings of fact.

**Did the member fail to follow the Code?**

18. The Sub-Committee then needs to consider whether or not, based on the facts it has found, the Councillor has failed to follow the Code of Conduct.
19. The Councillor should be invited to give relevant reasons why the Sub-Committee should not decide that he or she has failed to follow the Code.

20. The Sub-Committee should then consider any verbal or written representations from the Investigator.
21. The Sub-Committee may, at any time, question anyone involved on any point they raise in their representations.
22. The Councillor should be invited to make any final relevant points.
23. The Sub-Committee will then move to another room to consider the representations.
24. On the Sub-Committee's return, the Chair will announce the Sub-Committee's decision as to whether or not the Councillor has failed to follow the Code of Conduct.

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

25. If the Sub-Committee decides that the member has not failed to follow the Code of Conduct, the Sub-Committee will move on to consider whether it should make any recommendations to the authority.

#### **If the member has failed to follow the Code**

26. If the Sub-Committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the Councillor as to:
  - a. whether or not the Sub-Committee should impose a sanction; and
  - b. what form any sanction should take.
27. The Sub-Committee may question the Investigator and Councillor and take legal advice, to make sure they have the information they need in order to make an informed decision.
28. The Sub-Committee will then move to another room to consider whether or not to impose a sanction on the Councillor and, if so, what the sanction should be.
29. On the Sub-Committee's return, the Chair will announce the Sub-Committee's decision.

#### **Recommendations to the authority**

30. After considering any verbal or written representations from the Investigator, the Sub-Committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

#### **The written decision**

31. The Sub-Committee will announce its decision on the day and provide a short written decision on that day. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.
32. A full written decision will be issued within 14 days of the hearing.

33. The full decision will be drafted immediately after the conclusion of the hearing.