



milton keynes council



**Milton Keynes Council Standards Committee
Hearing Procedure**

INTRODUCTION TO STANDARDS COMMITTEE HEARINGS

This Hearing Procedure sets out how the Council deals with Standards Sub-Committee hearings. It has been updated to include changes brought about by the Localism Act 2011, for example, in relation to sanctions.

There is specific terminology used in relation to this Council function and therefore **Appendix 1** gives definitions of the main terminology used in the procedure.

Both the Councillor who is the subject of a complaint, and the person making the complaint will have been informed if it has been decided that the complaint should be investigated.

Once the Investigating Officer has carried out their investigation, the subject of the complaint and the complainant will receive a copy of the draft report and will have the opportunity to make comments. The Investigating Officer will update their report accordingly and issue the final report. The Investigator's Report may find that:

- There has been a breach of the Code of Conduct.
- There has been no breach of the Code of Conduct.

Monitoring Officer to consider the Investigation Report in Consultation with the Standards Committee Chair and Vice-Chairs

The Monitoring Officer will receive the Investigating Officer's report and make a decision as to whether to accept its findings in consultation with the Chair and Vice-Chairs of the Standards Committee. The Monitoring Officer can decide to:

- Accept a finding of no breach of the Code.
- Find that the matter should be considered at a hearing of a Standards Sub-Committee.

The Monitoring Officer will also seek the view of the Independent Personal before making a decision.

If the Monitoring Officer decides that the matter should go to a hearing then the pre-hearing process is started.

Pre-Hearing Process

This process is designed to ensure that matters at the hearing are dealt with fairly and efficiently. A letter will be sent to the subject of the complaint, proposing an initial date for the hearing (not normally more than three months after the Monitoring Officer has considered the Investigation Report).

The Subject Member is asked to indicate any needs they may have on the day of the hearing, whether they would wish to have the matter heard in private and how many witnesses they would like to call. The pre-hearing process is also used to identify

disagreements in the evidence presented in the Investigating Officers report, any other evidence the Subject Member wishes the Standards Sub-Committee to take into account and any factors that the Subject Member believes should be taken into account as mitigation, if they are found to have breached the Code.

A meeting may then be convened with the Chair of the Sub-Committee. At this stage, information from both the Subject Member and the Investigating Officer are considered. The Chair will make decision as to the witnesses to be called, the administrative arrangements to be made and the date of the final hearing.

All of the information submitted during this process assists the formulation of the agenda for the hearing. This agenda and the covering letter are then sent to the Subject Member, the complainant and the witnesses.

At this stage the hearing agenda is confidential. The Sub-Committee will then make a decision on the day of the hearing as to whether the hearing should be carried out in public or in private. If the hearing is carried out in public, the papers will be made openly available at this stage.

Standards Committee Hearings

The purpose of the Standards Sub-Committee is to allow the Sub-Committee to consider the evidence supplied by both the Subject Member and the Investigating Officer and make a decision as to:

- The findings of fact.
- Whether the Subject Member has breached the Code of Conduct; and
- Any sanction if it is found that the Subject Member has breached the Code of Conduct.

In order to hear the matter, a Sub-Committee is formed. This Sub-Committee will comprise of 3-5 members of the Milton Keynes Council Standards Committee and, if the matter is concerned with a Parish Council, one Parish member will be invited to sit on the Sub-Committee. An Independent Person will also attend to give their view on the matter before the Sub-Committee make their final decision and upon any sanctions, as appropriate.

1. Preliminary Items - Opening the Meeting of the Sub-Committee

There are a number of preliminary items which will be considered when the meeting is opened. Some of these items are standard items which are found on Sub-Committee agendas and some are unique to the hearing process

1a. Apologies and Disclosures of Interest

At the beginning of the meeting the Chair of the Sub-Committee will ask for any apologies and will ask members of the Sub-Committee to disclose the

existence and nature of any personal or prejudicial interests which they have in the case, and to withdraw from consideration of the case if so required.

1b. Quorum

The Chair will then check that the meeting is quorate to ensure that the correct members are sitting on the Sub-Committee before the hearing is commenced.

1c. Introductions

1(c(i)) At the start of the hearing, the Chair will introduce each of the members of the Sub-Committee, the Member, the Independent Person, the Investigator, the Legal Advisor, the Committee Support Officer and any other officers present.

1(c(ii)) The Investigating Officer or the Subject Member may choose to be represented by a solicitor or barrister during the hearing, or with the permission of the Sub-Committee, another person. It must be noted that the Member must bear the cost of such representation unless the Sub-Committee has agreed to meet all or part of that cost.

1d. The Role of the Legal Advisor

The Chair will then explain the role of the Legal Advisor. The Sub-Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the matters put before them in private. The substance of any legal advice given to the Sub-Committee at any stage in the proceedings will be shared with the parties present.

1e. Outline of the Hearing Procedure

1(e(i)) The Chair will confirm that all present know the procedure which the Sub-Committee will follow in determining the case. The Chair will remind the Sub-Committee that although this is a formal meeting, it is not judicial and evidence is not given under oath. The standard of proof to be met is on the 'balance of probabilities', as in civil proceedings and not 'beyond all reasonable doubt', as in criminal proceedings. The Chair will then ask the hearing if there are any questions, before continuing.

1(e(ii)) At this stage the Sub-Committee will resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

1(e(iii)) The Chair will consider whether or not there are opportunities for conciliation that would be beneficial to the process. The Chair may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

1(e(iv)) If the Subject Member is not present at the start of the hearing and has not indicated his/her wish to proceed regardless:

- (a) The Chair will ask the Legal advisor whether the Member has indicated his/her intention not to attend the hearing.
- (b) The Sub-Committee will then consider any reasons which the Subject Member has provided for not attending the hearing and will decide whether it is satisfied that there is sufficient reason for a failure to attend.
- (c) If the Sub-Committee is satisfied with the reasons it will adjourn the hearing to another date.
- (d) If the Sub-Committee is not satisfied with the reasons, or if the Subject Member has not given any reasons, the Sub-Committee will decide whether to consider the case and make a determination in the absence of the Subject Member or adjourn the hearing to another date.

1f. Exclusion of the Press and Public

The Chair will ask the Member, the Investigator and the Legal advisor 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 do so request, the Chair will ask them to put forward reasons for so doing and ask for responses from the others and the Sub-Committee will then determine whether to exclude the press and public from all or any part of the hearing. Further details are set out at **Appendix 2**.

1g. Presentation of the Monitoring Officer's Report

At the end of the preliminary matters, the Monitoring Officer (usually also acting as the Legal Advisor to the hearing) will present their report. This report will summarise the pre-hearing process which has taken place, and outline whether or not the Subject Member has disagreed with any of the findings of fact in the Investigating Officer's report.

- (a) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigator's report, the Sub-Committee may then make a determination that the Member has failed to comply with the Code of Conduct in the manner described in the Investigator's report and proceed directly to consider whether any action should be taken.
- (b) If the Member identifies additional points of difference, the Chair will ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she will then ask the Investigator (if present) whether he/she 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 Sub-Committee is not satisfied with the Member's reasons 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 which are set out in the Investigator's report but which the Member did not identify as a point of difference as part of 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.

The Monitoring Officer will then ask the Sub-Committee to endorse the pre-hearing directions.

CONDUCTING THE HEARING

2. Findings of Fact - Are there Disputes?

Introduction

This section is concerned with agreeing the findings of fact. Any facts which are disputed by the Subject Member must normally have been stated during the pre-hearing process.

If the Subject Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the Sub-Committee will consider whether it would be in the public interest to continue in their absence. After considering the member's explanation for not raising the issue at an earlier stage, the Sub-Committee may then:

- **Disagree with the Subject Members explanation, accept the facts as they are presented in the Investigating Officer's report and continue with step three of the hearing.**
- **allow the Subject Member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary.**
- **postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if they are not already.**

If there is no disagreement about the facts, the Sub-Committee can move on to the next stage of the hearing; **3. On the facts, has the Code been breached?**

2a Investigator's Representations (and witnesses, if appropriate)

If there is a disagreement on the findings of fact the Investigator, if present, should 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 Subject Member an opportunity

to challenge any evidence put forward by any witness called by the Investigator.

If the Subject Member disagrees with most of the facts, it may make sense for the Investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

2b. Subject Member's Representations (and witnesses if appropriate)

The Subject Member should then have the opportunity to make representations to support their version of the facts and, with the Sub-Committee's permission, to call any necessary witnesses to give evidence.

Both the Subject Member and Investigating Officer will then have an opportunity to 'sum-up' the main points of the argument.

At any time, the Sub-Committee may question any of the people involved or any witnesses. The Investigator may be given an opportunity to challenge any evidence put forward by witnesses called by the Subject Member.

2c. Sub -Committee's Decision

The Sub-Committee will usually move to another room to consider the representations and evidence in private. On their return, the Chair will announce the Hearing Sub-Committee's findings of fact.

The Sub-Committee will take its decision on the balance of probability based on the evidence which it has received at the hearing.

The Sub-Committee's function is to make a determination on the findings of fact. It will do this by way of majority voting. It 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 or on behalf of the 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 Sub-Committee.

3. On the Facts, has the Code been Breached?

Introduction

The Sub-Committee then needs to consider whether, based on the facts it has found, the Subject Member has failed to follow the Code. The Sub-Committee may, at any time, question anyone involved on any point they raise in their representations.

3a. Investigator's Representations (and witnesses, if appropriate)

The Sub-Committee should then consider any representations on whether the Code has been breached from the Investigator.

The Investigating Officer may also, at this point, call witnesses if permission is granted by the Sub-Committee.

The Subject Member may be given an opportunity to challenge any evidence put forward by any witness called by the Investigator.

3b. Subject Member's Representations (and witnesses, if appropriate)

The Subject Member will be invited by the Chair to give relevant reasons why the Sub-Committee should decide that they have not failed to follow the Code.

The Subject Member may, at this point also call witnesses if permission is granted by the Sub-Committee. The Investigator may be given an opportunity to challenge any evidence put forward by witnesses called by the Subject Member

Both the Subject Member and the Investigating Officer will then have an opportunity to 'sum up' the main points of the argument.

3c. Sub-Committee's Decision

At the conclusion of the Member's response, the Chair will ensure that each member of the Sub-Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigator's report.

The Sub-Committee will then move to another room to consider the representations. On their return, the Chair will announce the Sub-Committee's decision as to whether the Subject Member has failed to follow the Code.

The Sub-Committee will take its decision on the balance of probability based on the evidence which it has received at the hearing.

The Sub-Committee's function is to make a determination on whether the Member has breached the Code of Conduct. It will do this by way of majority voting. It 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 or on behalf of the 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 Sub-Committee.

If the Sub-Committee decides that the Code has not been breached, it will inform the Subject Member and the Sub-Committee will then consider recommendations to the Council (section 5).

4. Sanctions

Introduction

If the Sub-Committee decide that there has been a breach of the Code of Conduct by the Member concerned, they will then go on to consider sanctions.

The sanctions available to the Sub-Committee can be found at **Appendix 3**. Factors to be taken into account when considering what sanction may be applicable are set out at **Appendix 4**. Mitigating factors are set out at **Appendix 5**.

4a. Investigator's Representations

The Sub-Committee will consider any verbal or written representations from the Investigating Officer as to:

- whether the Hearing Sub-Committee should apply a sanction; or
- what form any sanction should take.

4b. Subject Member's Representations (and character witnesses, if appropriate)

The Subject Member may introduce agreed character witnesses to make a statement in support of the Subject Member.

The Sub-Committee will consider any verbal or written representations from the Subject Member as to:

- whether the Sub-Committee should apply a sanction; or
- what form any sanction should take

Both the Subject Member and the Investigating Officer will then have an opportunity to 'sum up' the main points of the argument.

4c. Sub-Committee's Decision

The Sub-Committee may question the Investigator and Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

The Sub-Committee will then deliberate in private to consider whether to impose a sanction on the Subject Member and, if so, what sanction it should be.

On their return, the chair will announce the Sub-Committee's decision as to the sanction that the Sub-Committee will recommend.

5. Recommendations to the Authority

Regardless of whether or not the Sub-Committee find that Subject Member has breached the Code of Conduct, the Sub-Committee may make recommendations to the authority, with a view to promoting high standards of conduct among Councillors.

6. Close of the Meeting

The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing.

A short written decision will be agreed by the Sub-Committee and made available on the day of the Sub-Committee.

Within two weeks of the hearing, the Sub-Committee Support officer will agree a formal written notice of the Sub-Committee's determination and the Monitoring Officer will arrange for its publication.

A flowchart of the full hearings process is set out at **Appendix 6**.

Terminology

- (a) 'Subject Member' means the member of the authority who is the subject of the allegation being considered by the Sub-Committee, unless stated otherwise. It also includes the Member's nominated representative.
- (b) 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer and his or her nominated representative).
- (c) "The Case" is the subject case of the Investigator's report.
- (d) "The Sub-Committee Support Officer" means an officer of the authority responsible for supporting the Sub-Committee's discharge of its functions and recording the decisions of the Sub-Committee.
- (e) "The Chair" refers to the person presiding at the hearing.
- (f) "The Sub-Committee" means a Sub-Committee of the Milton Keynes Council Standards Committee appointed to hear the matter.
- (g) 'Legal Advisor' means the officer responsible for providing legal advice to the 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.

Access to Standards Committee Hearings and Exempt Information

1. At the hearing, the Sub-Committee will consider whether or not the public should be excluded from any part of the hearing.
2. The Sub-Committee has the discretion to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The committee should take into account Article 6 of the *European Convention on Human Rights*. The Sub-Committee also has a duty to act fairly and within the rules of natural justice.

There is a clear public interest in promoting public confidence in the integrity and honesty of public authorities. Therefore the hearing should be held in public unless the Sub-Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

Sanctions Available to the Sub-Committee

The sanctions which are available to be recommended by the Sub-Committee to the Council or relevant Parish or Town Council are any, or any combination, of the following:

- (a) Recommendation to censure the Member.
- (b) Recommendation that the Member be removed from a particular Committee, or in the case of an Executive Member, or the Cabinet.
- (c) Recommendation that the Member submits a written apology.
- (d) Recommendation that the Member undertakes such training as the Sub-Committee suggests.
- (e) Recommendation that the member participate in such conciliation as the Sub-Committee suggests;

The Sub-Committee may also make the decision not to impose a sanction on the Subject Member.

Factors to be taken into Account

In considering the sanction the Sub-Committee may take into account the following factors, along with any relevant circumstances:

- (a) What was the Subject Member's intention?
- (b) Did the Subject Member know that they were failing to follow the Code of Conduct?
- (c) Did the Subject Member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- (d) Has there been a breach of trust?
- (e) Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- (f) What was the result of failing to follow the Code of Conduct?
- (g) What were the potential results of the failure to follow the Code of Conduct?
- (h) How serious was the incident?
- (i) Does the Subject Member accept they were at fault?
- (j) Did the Subject Member apologise to the relevant people?
- (k) Has the Subject Member previously been warned or reprimanded for similar misconduct?
- (l) Has the Subject Member failed to follow the Code of Conduct before?
- (m) How will the sanction be carried out? For example, who will provide the training or mediation?
- (n) Are there any resources or funding implications?

Mitigating and Aggravating Factors

Aggravating Factors

- (a) Dishonesty.
- (b) Continuing to deny the facts despite clear contrary evidence.
- (c) Seeking unfairly to blame other people.
- (d) Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- (e) Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

Mitigating Factors

- (a) An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- (b) A Member's previous record of good service.
- (c) Substantiated evidence that the member's actions have been affected by ill-health.
- (d) Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the Member.
- (e) Compliance with the Code since the events giving rise to the determination.
- (f) Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Flow Chart of the Sub-Committee Process

