

# MEMBERS' CODE OF CONDUCT

## Procedure for Hearings



### General Information

Hearings will take place at Phoenix House, Tiverton unless there are exceptional reasons for using an alternative venue.

The Chairman of the Audit Committee will normally preside at a hearing but if he/she is unable to attend then the Vice Chairman of the Committee will do so.

Every effort will be made to ensure that a private room is available for the Subject Member, his representatives and/or his witnesses.

If the Investigating Officer attends the hearing every effort will be made to ensure that a private room is available for him/her and any witnesses he may want to call.

All parties will be expected to conduct themselves in a manner which accords proper respect to the proceedings and everyone present. The Chairman will remind parties and their representatives of this responsibility whenever necessary.

The Committee may take advice from its legal advisor at any time during the hearing or while they are considering what they have heard. The substance of any legal advice given to the Committee will be shared with the Subject Member and the Investigating Officer if they are present.

Hearings will normally be held in public unless the Audit Committee considers it necessary to exclude the public in accordance with Human Rights and Access to Information legislation.

### Definitions

**Subject Member** – a Member of the Council who is the subject of the allegation being considered by the Audit Committee. It also includes the Members nominated representative.

**Investigating Officer** – the person investigating the case, this may well be the Monitoring Officer (or Deputy) or other investigating Officer

**Committee** – includes a sub committee of the Audit Committee

**Legal Advisor** – The officer responsible for providing legal advice to the Audit Committee, this may be the Monitoring Officer, Deputy Monitoring Officer or another legally qualified officer in the authority.

## The Hearing

1. The Chairman will introduce the Members of the Committee and any officers present.
2. The Chairman will ask the parties involved to introduce themselves.
3. The Chairman will explain the reason for the meeting and outline the procedure to be taken.
4. The Chairman will ask whether any party has any issues with the procedure to be followed.
5. The Committee will determine any preliminary procedural issues having heard the representations and asked any necessary questions. The decision of the Committee in this respect will be final.
6. The Chairman will invite the Legal Advisor to outline for Members the facts which are agreed and not agreed as stated in the pre-hearing summary.
7. If the Subject Member disagrees with any relevant fact in the Investigating Officers report but has not given prior notice to that effect (and therefore has not been included in the pre-hearing summary) he/she may raise it at this point. The Subject Member will be requested to explain why this disagreement was not raised in the pre-hearing process.

If the Investigating Officer is not present, the Committee must decide whether it is in the public interest to continue. If the Committee agrees to continue in the absence of the Investigating Officer it may:

- Proceed with the hearing admitting the new disagreement of facts into the process
- Proceed without admitting the new disagreement of facts
- Adjourn the hearing to a later date to enable the parties to address the issues

If the Investigating Officer is present he/she will be given the opportunity to comment on the Subject Member's explanation.

8. Any witnesses called by the Investigating Officer or the Subject Member shall remain outside the room where the hearing is taking place until they are called to give evidence.
9. If present the Investigating Officer will be invited to make representation in support of his /her report and call any witnesses' identified in the pre-hearing summary. The Investigating Officer may also address any matters of evidence identified in the pre-hearing process.

10. The Subject Member may cross-examine any witnesses called by the Investigating Officer
11. The Subject Member will then be given the opportunity to make representation in support of his/her view of the facts concerned and call witnesses as identified in the pre-hearing summary. The Subject Member may also address any matters of evidence identified in the pre-hearing process.
12. The Investigating Officer may cross examine any witnesses called by the Subject Member.
13. At an appropriate time and with the permission of the Chairman, the Investigating Officer or the Subject Member may make further representations.
14. At any time the Committee may question either party or any witness.
15. The Investigating Officer and the Subject Member will be requested to sum up.
16. At the conclusion of the representations and evidence, the Committee will consider what it has heard in private accompanied only by its clerk and legal advisor. When the Committee has reached a conclusion, as to whether the Subject Member has or has not failed to comply with the Code of Conduct the Chairman will announce the Committee's findings to all present at the hearing.
17. If the Committee decide that the Subject Member has **not failed to follow the Code of Conduct** it will then consider whether it should nevertheless make any recommendations to the Authority.
18. If the Committee decides that the Subject Member **has failed to comply with the Code of Conduct** it will consider any verbal or written representations from the Subject Member or the Investigating Officer as to:
  - Whether or not the Committee should impose a penalty; and if so
  - What form any penalty should take
19. The Committee will consider in private, accompanied only by its clerk and Legal Advisor, whether or not to impose a penalty on the Subject Member and if so, what that penalty should be.
20. The Chairman will then announce the Committee's decision to all those present at the hearing and will provide a short written decision at that time.
21. The Committee will issue a full written decision including reasons within 5 working days of the hearing or as soon as practicable thereafter.

22. The Subject Member may lodge an appeal within 21 days of the date of receipt of the full written decision of the Committee.