

## **SOUTH LAKELAND DISTRICT COUNCIL**

### **PROCEDURE FOR LOCAL HEARING OF ALLEGATIONS ABOUT THE PERSONAL CONDUCT OF COUNCIL MEMBERS**

#### **INTRODUCTION**

1. Where there is no local resolution of complaints following evidence of a failure to comply with the Code of Conduct, the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.
2. The person[s] making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member. The allegation will be heard by the Standards Committee or a Sub-Committee or Hearings Panel of the Standards Committee.

#### **PRE-HEARING PROCESS**

3. Upon receipt of the final report of the Investigating Officer including a finding that the Member failed to comply with the Code of Conduct for Members and it is considered that a local resolution is not possible and that the matter should be considered at a formal hearing the Monitoring Officer shall arrange for the Hearings Panel to consider the matter.
4. Where the Monitoring Officer is the Investigating Officer he/she must arrange for a separate legal advisor to the Panel to be appointed in respect of the allegation.

#### **NOTIFYING THE MEMBER AND COMPLAINANT**

5. Within five working days of the receipt of the Investigating Officer's report the Monitoring Officer shall send a copy of the report to the Member and the Complainant, making the provision of the report conditional upon any appropriate undertaking of confidentiality. The Chairman of the Standards Committee and Independent Person shall be informed of the allegation by the Monitoring Officer, as well as any Parish or Town Council Clerk where the allegation relates to conduct of a Member in his/her capacity as a member of a Parish or Town Council.
6. The Member shall be asked for a written response, within fifteen working days of the receipt of the report. The response shall set out the reply to the Investigating Officer's report and state whether or not he/she:
  - i. disagrees with any of the findings of fact in the Investigating Officer's report, including the reasons for any disagreement;
  - ii. wants to be represented, at his/her own expense, at the hearing by any other person;
  - iii. wants to give evidence to the Hearings Panel, either verbally or in writing;
  - iv. wants to call relevant witnesses to give evidence to the Hearings Panel;
  - v. wants any part of the hearing to be held in private;

- vi. wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
7. The Member shall be informed that if, at the meeting of the Panel, he/she seeks to dispute any matter contained in the Investigating Officer's report without having previously notified the Monitoring Officer of the intention to do so the Committee may either [a] adjourn the meeting to enable the Investigating Officer to provide a response, or [b] refuse to allow the disputed matter to be raised.
8. Upon receipt, the Monitoring Officer shall invite the relevant Investigating Officer to comment, within ten working days, on the Member's response, and to say whether or not he/she:
  - i. wants to be represented or be present at the hearing;
  - ii. wants to call relevant witnesses to give evidence or submit written or other evidence to the Panel;
  - iii. wants any part of the hearing to be held in private;
  - iv. wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
9. Upon receipt of the Investigating Officer's response, the Monitoring Officer will consider the responses of the Member and the Investigating Officer and request the Monitoring Officer to set a date for the hearing in consultation with the Chairman and all Members.
10. The Members and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chairman of the Hearing may limit the number of witnesses to be called, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Committee to reach its decision.
11. Nothing in this procedure shall limit the Chairman of the Hearing from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Committee to reach its decision.
12. The Monitoring Officer, in consultation with the Chairman and Independent Person, will:
  - i. confirm a date, time and place for the Hearing, which must be within three months from the date of the Investigating Officer's report was received;
  - ii. confirm the main facts of the case that are agreed;
  - iii. confirm the main facts that are not agreed;
  - iv. provide copies of any written evidence to the relevant parties;
  - v. confirm which witnesses will be called by the parties;
  - vi. provide the parties with a copy of the proposed procedure for the Hearing, specifying which parts of the matter, if any, may be considered in private; and

- vii. ensure the appropriate information, with the agenda, is provided to everyone involved in the Hearing at least two weeks before the proposed date of the Hearing.

## **THE HEARING**

13. The Hearings Panel shall decide, on a balance of probabilities, whether the complaint[s] is or are upheld upon the evidence presented to it.
14. Each Panel Member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. If there are equal numbers of votes for and against, the Chairman shall have the second and casting vote.
15. The meeting of the Panel will be open to the public and press unless confidential information or exempt information is likely to be disclosed.

## **PROCEDURE AT THE HEARING**

16. The initial order of business at the meeting shall be as follows:-
  - i. Establishing whether the Panel is quorate;
  - ii. Declarations of interest;
  - iii. Introductions
  - iv. Consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present;
  - v. Consideration of any procedural issues and, in particular, any representation from the Investigating Officer and/or the Member as to reasons why the Committee should exclude the press and public and determination as to whether to exclude the press and public.
17. The purpose of the Hearing is to determine the facts at issue and what action, if any, should be taken. An inquisitorial approach will be adopted by the Panel members in seeking information and clarifying facts and issues. The Chairman will control the procedure and evidence presented at the Hearing, including the questioning of witnesses.
18. The Panel members may at any time seek legal advice from their advisor. [Such advice will be notified to the public in the presence of the Investigation Officer and the Member.]
19. The procedure will be as follows, subject to the Chairman being able to make changes as he or she thinks fit in order to ensure a fair and efficient hearing.

## **PROCEEDING IN THE ABSENCE OF THE MEMBER**

20. If the Member is not present at the start of the Hearing:
  - i. The Chairman will ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the Hearing;
  - ii. The Hearings Panel shall then consider any reasons which the Member has provided for not attending the Hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
  - iii. If the Panel is satisfied with such reasons, it shall adjourn the Hearing to another date;
  - iv. If the Panel is not satisfied with such reasons, or if the Member has not given any such reasons, the Panel shall decide whether to consider the matter and make a determination in the absence of the member or to adjourn the Hearing to another date.
  
21. **Presentation by the Investigating Officer**
  - 21.1 The Investigating Officer will present the evidence which is relevant to the matter. The Investigating Officer may introduce any witness required to substantiate any matter contained in the report which has been disputed and present any other relevant evidence.
  - 21.2 The Member or his/her representative may ask questions of the Investigating Officer or any witness.
  - 21.3 The Panel members or Independent Person may ask questions of the Investigating Officer or any witness.
  
22. **Presentation by the Member**
  - 22.1 The Member or his/her representative will present the evidence which is relevant to the matter. The Member or his/her representative may introduce witnesses or present any other relevant evidence.
  - 22.2 The Investigating Officer may ask questions of the Member, or any witness.
  - 22.3 The Panel members or Independent Person may ask questions of the Member or any witness.
  - 22.4 The Investigating Officer and then the Member or his/her representative will be given the opportunity to sum up.
  
23. **Decision by the Hearings Panel**
  - 23.1 The Panel will consider in private, with the Independent Person, all the evidence which it has heard in order to establish its findings of fact.

- 23.2 At any stage in the consideration of the matter the Panel may return to ask further questions of the Investigating Officer or the Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.
- 23.3 The Panel may seek legal advice at any time. Such advice may be given in the presence of the Investigating Officer and the Member if appropriate.
- 23.4 At the conclusion of their deliberations, the Chairman will advise the Member and the Investigating Officer of their findings and whether the Code of Conduct has been breached.
- 23.5 If the Panel concludes that the Member has acted in breach of the Code representations will be invited from the Investigating Officer and the Member as to what action, if any, it should take. The Panel may ask questions of the Member and the Investigating Officer.
24. The Panel, having heard any representations, will consider what actions, if any, to take.

The findings that the Panel may make are:

- a) That there has been no breach of the Code;
- b) That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken;
- c) That the Member has failed to comply with the Code of Conduct and the Panel will:
  - ❖ Publish its findings in respect of the Member's conduct;
  - ❖ Send a formal letter to the Member
  - ❖ Report its findings to the Council or Parish Council for information;
  - ❖ Recommend to the member's Group Leader (or in the case on an ungrouped member(s), recommend to Council or Committees) that he/she 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 Executive or removed from particular Portfolio responsibilities;
  - ❖ Instruct the Monitoring Officer to recommend that the Parish Council arrange training for the member;
  - ❖ Remove or recommend to the Parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
  - ❖ Withdraw or recommend to the Parish Council that it withdraws certain facilities provided to the member by the Council; 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, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

25. In deciding what penalty to set, the Committee will consider all relevant circumstances.
26. The Chairman will announce the decision of the Committee, the action, if any, it is proposed to take and the reasons for the decision.
27. The Committee will then consider in open session whether there are any recommendations which should be made to any Authority concerned arising from the consideration of the allegation.

## **APPEAL**

28. There is no right of appeal against the decision of the Hearing Panel.

## **NOTICE OF FINDINGS**

29. A full written decision in draft [including the reasons for it] will be prepared as soon as practicable. The draft decision will be forwarded to the Chairman of the Committee for approval.
30. Once approved and as soon as reasonably practicable after the Hearing the full written decision will be forwarded to the Member, the Independent Person, the Complainant, the Investigating Officer and any other Authority concerned.
31. If the Hearing Panel wishes to publish its finding, the Monitoring Officer, subject to paragraph 32, shall arrange for a summary of the findings to be published in such manner as the Hearings Panel may determine.
32. Where the Panel determines that there has not been a breach of the Code of Conduct, the notice shall:
  - i. State that the Panel found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
  - ii. Not be published in the local newspaper if the Member so requests.
33. Where the Panel determines that there has been a failure to comply with the Code of Code but no action is required, the notice shall:
  - i. State that the Panel found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
  - ii. Specify the details of the failure;
  - iii. Give reasons for the decision reached; and
34. Where the Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:
  - i. State that the Panel found that the Member had failed to comply with the Code of Conduct;

- ii. Specify the details of the failure;
  - iii. Give reasons for the decision reached;
  - iv. Specify the sanction imposed;
35. Copies of the agenda, reports and minutes of a Hearing, as well as any background papers, apart from sections of documents relating to parts of the Hearing that were held in private, shall be available for public inspection for six years after the Hearing.