

PROCEDURE FOR HEARINGS

Pre-Hearing Process

The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself.

Other than in very straightforward cases, the City Council will use a pre-hearing process to:

- Identify whether the subject member disagrees with any of the findings of fact in the investigation report.
- Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide.
- Identify whether evidence about those disagreements will need to be heard during the hearing.
- Decide whether there are any parts of the hearing that are likely to be held in private.
- Decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material.

The pre-hearing process will normally be dealt with by the Monitoring Officer, although he/she may refer particular matters to the Hearings Panel for decision. The process will usually be carried out in writing, although it may sometimes be appropriate for the relevant parties and their representatives to meet in advance of the hearing.

Key Points

Prior to the hearing, the subject member will be provided with an outline of the hearing procedure and also be asked for his/her written response to the following points. The intention is to find out whether the subject member:

- Wants to be represented at the hearing by a solicitor, barrister or any other person.
- Disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements.
- Wants to give evidence to the Hearings Panel, either verbally or in writing.
- Wants to call relevant witnesses to give evidence to the Hearings Panel.
- Wants any part of the hearing to be held in private.
- Wants any part of the investigation, report or other relevant documents to be withheld from the public.
- Can attend the hearing.

A critical part of the pre-hearing process should be an attempt to focus the relevant parties' attention on isolating all relevant disputes of fact between them. This is because attention to the factual issues will save valuable time later on in the determination process.

Having received the subject member's response, the investigating officer will then be requested to comment. This is to ensure that all parties are clear about the remaining factual disputes and can prepare to deal with those issues on the appointed day.

The relevant parties will not be allowed to raise new disagreements over factual matters in the investigation report at the hearing except in exceptional circumstances, such as new evidence becoming available that the parties could not have produced before. It will be made clear to the subject member that unless he/she complies with the above procedure, the Panel may rule that it will not allow the new evidence to be presented at the hearing.

A number of standard forms will be sent to the subject member well in advance of the hearing, which will direct his/her attention to the relevant matters (as outlined above).

Pre-Hearing Process Summary

A pre-hearing process summary will be sent to everyone involved in the complaint at least 5 clear working days before the hearing. This will be done after responses have been received from the subject member and the investigating officer. The Pre-Hearing process summary will:

- Set the date, time and place for the hearing.
- Summarise the allegation/s.
- Outline the main facts of the case that are agreed.
- Outline the main facts that are not agreed.
- Note whether the subject member or investigating officer will go to the hearing or be represented at the hearing.
- List those witnesses, if any, who will be asked to give evidence, subject to the power of the Panel to make a ruling on this at the hearing.
- Outline the proposed procedure for the hearing.

The Hearing

A hearing by the Panel is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The Panel will work at all times in a demonstrably fair, independent and politically impartial way so that members of the public, and members of the authority, have confidence in its procedure and findings. The Panel will bear in mind the need to maintain public confidence in the Council's ethical standards. This requires that the Panel's decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect.

The subject member may choose to be represented by a solicitor, a barrister or by any other person. If that other person is a non-legal representative the subject member must obtain the consent of the Panel.

The Panel may choose to withdraw its permission to allow a representative if that representative disrupts the hearing.

The Panel controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned. In many cases, the Panel may not need to consider any evidence other than the investigation report and any other supporting documents. However, the Panel may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report. The Panel can allow witnesses to be questioned and cross-examined by the subject member, the Monitoring Officer or their representatives. The Panel can also question witnesses directly.

Generally, the subject member is entitled to present his/her case as he/she sees fit, which includes calling the witnesses required and relevant to the matters to be heard. The Panel has the right to govern its own procedures as long as it acts fairly. For this reason, the Panel may limit the number of witnesses if the number is unreasonable.

Witnesses as to facts that are disputed will normally attend the hearing and should be prepared to be cross-examined. Witnesses as to the character of the subject member, if required, may present their evidence in writing and may or may not actually attend the hearing.

Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect.

A document setting out the procedure for the hearing will be distributed to the parties and the members of the Panel in advance.

The Decision

The Panel will announce its decision at the end of the hearing. The Panel will give its full written decision to the relevant parties as soon as possible after the hearing. In most cases this will be within two weeks of the hearing.

For consistency and thoroughness, the Panel will use the following format for their full written decisions.

The front cover of the Panel's full written decision will include the name of the:

- Authority.
- Subject member.
- Complainant.
- Standards committee member who chaired the hearing.
- Standards committee members who took part in the hearing
- Monitoring officer.
- Local investigator.
- Clerk of the hearing.
- Case reference number.
- Date of the hearing.
- Date of the report.

The Panel's full written decision will include:

- A summary of the complaint.
- The relevant paragraph or paragraphs of the Code of Conduct.
- A summary of the evidence considered and representations made.
- The findings of fact, including the reasons for them.
- The finding as to whether the member failed to follow the Code, including the reasons for that finding.
- The recommendations, if any, as to further action to be taken in respect of the subject member.

(Note: whilst this procedure will normally apply, the Panel will be free to depart from it in response to the circumstances of any particular case, provided that this does not result in any unfairness to the parties, or anyone else involved).