

BLACKBURN WITH DARWEN BOROUGH COUNCIL STANDARDS COMMITTEE – HEARINGS PANEL PROCEDURE

Part 1 - The Pre-Hearing Process

The Pre-Hearing Process will only deal with procedural issues. It may be conducted in writing.

The Pre-Hearing Process exists to:-

- identify whether the Subject Member or the Independent Person disagrees with any findings of fact contained in the Investigation Officer's report;
- decide whether or not those disagreements are significant to the Hearing;
- decide whether or not to hear evidence about those disagreements during the Hearing;
- decide whether or not there are any parts of the Hearing that should be held in private, and
- decide whether or not any parts of the Investigation Officer's report, or other documents should be withheld from the public.

Stage One

An officer from Democratic Services will be appointed to provide administrative support to the Hearing Panel.

The Independent Person will have been provided with a draft of the Investigation Officer's report upon which to comment. The final version of the Investigation Officer's report will incorporate any comments made by the Independent Person.

The Democratic Services officer will write to the Subject Member and provide him/her with a copy of the final report, a copy of this procedure and propose a date for the Hearing. The officer will also ask for a written response from the Subject Member within [14] days to find out whether he/she:-

- disagrees with any of the findings of fact contained in the Investigation Officer's report and the reasons for such disagreements and/or provide details of any other evidence they consider relevant to the allegation;
- wants to be represented at the Hearing by either a solicitor, barrister or some other person (the Hearings Panel may refuse permission for non-lawyers if that person is directly involved in the matter to be determined);
- wants to give evidence either verbally or in writing;
- wants to call relevant witnesses to give evidence to the Hearings Panel and provide details of those witnesses;
- can attend the Hearing on the proposed date;
- wants to request any part of the Hearing to be held in private and the reasons for doing so, and/or
- wants to request any part of the Investigation Officer's report or any relevant background papers to be withheld from the public and the reasons for doing so.

The Democratic Services officer will also ask the Investigation Officer to confirm whether he/she:-

- wants to call relevant witnesses to give evidence to the Hearings Panel;
- wants to request any part of the Hearing to be held in private and the reasons for doing so, and/or
- wants to request any part of his/her report or any relevant background papers to be held from the public and the reasons for doing so.

Stage Two

The Democratic Services officer will then produce a covering report detailing the responses received from the Subject Member and the Investigation Officer, and provide a list of any witnesses whom the parties have indicated that they wish to call before the Hearings Panel.

Prior to the hearing the Hearings Panel may meet privately to review documentation to be presented and agree the main lines of enquiry. They will also consider any requests made by the Subject Member and the Investigation Officer in Stage One above. The Hearings Panel may seek legal advice from Monitoring Officer or the nominated Legal Advisor to the panel.

A copy of the agenda and papers, including:

- the procedure to be followed at the Hearing;
- the Investigation Officer's final report; and
- any responses received from the Subject Member;

will be provided to the Complainant], the Subject Member, the members of the Hearings Panel and the Independent Person at least 14 days before the Hearing.

Where the allegation relates to the conduct of a parish/town councillor, a copy of the agenda and papers will also be made available to the parish/town council clerk.

Copies of the agenda and papers will be made available to members of the press and public in accordance with access to information requirements and Schedule 12A Local Government Act 1972. Any information that is of a confidential or exempt nature will not be made publicly available.

Part 2 Hearings Panel: Procedure

1. General

1.1 Definitions:

“Complainant”	The party who has made an allegation that a Member has failed to comply with the Members’ Code of Conduct.
“Independent Person”	A person appointed by the Council in relation to the investigation in accordance with Section 28 (7) of the Localism Act 2011.
“Interested Parties”	Covers the Complainant, the Subject Member and the Investigation Officer.
“Investigation Officer”	The Monitoring Officer or the person appointed by the Monitoring Officer to undertake the investigation. The investigation officer may be another officer of the Council, an officer of another authority or an external investigator.
“Legal Advisor”	The officer responsible for providing legal advice to the Hearings Panel. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
“Subject Member”	The Member against whom the allegation has been made of a failure to comply with the Code of Conduct.

1.2 The Hearings Panel is a sub-committee of the Council’s Standards Committee consisting of at least one of the Independent Members co-opted to the Standards Committee and three members of the Committee drawn from at least two different political parties. Where the complaint is about a Town/Parish Council Member, the Hearings Panel will include at least one of Town/Parish Council Members co-opted to the Standards Committee.

1.3 The Chair/Vice Chair of the Standards Committee shall chair the Hearings Panel. If they are unable to sit, the Hearing Panel will agree a chair from the three members of the Committee nominated under paragraph 1.2 above (“the Chair”).

1.4 The quorum for a meeting of the Hearings Panel is three elected members and at least one Independent Member who must be present throughout the hearing.

1.5 The hearing will be attended by the Legal Advisor and a Democratic Services Officer who shall act as the clerk.

- 1.6 The role of the Democratic Services officer is to record the hearing and the decisions of the Hearings Panel, and to ensure efficient administration.
- 1.7 The Independent Person's views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Members' Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Members' Code of Conduct. The Independent Person should normally be present throughout the Hearings Panel meeting (but not during the deliberations of the Hearings Panel in private) but in the event that this is not possible, may submit their views on the complaint to the Hearings Panel in writing instead.
- 1.8 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearings Panel. Schedule 12A Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Hearings Panel where it is likely that confidential or exempt information will be disclosed.
- 1.9 The Hearings Panel may retire to consider the representations and evidence in private. Upon the Hearings Panel's return, the Chairman will announce the Hearings Panel's findings of fact and invite the Legal Advisor to relay any legal advice given during private session.
- 1.10 All matters/issues before the Hearings Panel will be decided by a simple majority of votes cast, with the Chair having a second or casting vote.
- 1.11 The Chair of the Hearings Panel may agree to vary this procedure in any particular instance where he/she is of the opinion that such variation is necessary in the interest of fairness.

2. Representation

The Subject Member may be represented or accompanied during the hearing by a solicitor, barrister or some other person (the Hearings Panel may refuse permission for non-lawyers if that person is directly involved in the matter to be determined). The Chair may choose to withdraw its permission to allow a representative if that representative disrupts the hearing.

3. Legal Advice

The committee may take legal advice from the Legal Adviser at any time during the hearing or while they are considering the outcome. The Subject Member and the Investigation Officer if they are present should be advised of the substance of any legal advice given by the legal adviser in the absence of the parties.

4. Introduction

- 4.1** The Chair will introduce the members of the Hearing Panel, the Investigation Officer and the officers present. The Subject Member will introduce any person who is acting and his/her representative and any witnesses to be called on his/her behalf. The Investigation Officer will introduce any witnesses to be called.
- 4.2** The Chair will outline the procedure to be followed.
- 4.3** The Chair will confirm that the Subject Member and the Independent Person have seen the final report of the Investigation Officer.
- 4.4** The Legal Advisor will confirm whether any part of the hearing will be conducted in 'Part 2'.

5. Preliminary Issues

- 5.1** The Monitoring Officer/Legal Advisor will confirm whether the Pre-Hearing Process has identified any material disagreements about the facts contained in the Investigation Officer's report.
- 5.2** The Hearings Panel will record the agreed facts and establish the facts in dispute which they will be required to rule upon.
- 5.3** The Hearings Panel will then consider and decide on any other preliminary issues which have not been resolved as part of the Pre-Hearing Process (Stage 1). It may adjourn the meeting and move to another room to consider those issues. On its return, the Chair will announce the Hearings Panel's decision.
- 5.4** If a party raises an issue which has not been raised previously then that party shall be required to give a full explanation to the Hearings Panel as to why it was not raised earlier. The Hearings Panel may then:
 - a. Consider whether or not to allow the issue that has been raised to be dealt with at the hearing
 - b. Consider whether the hearing should be adjourned for further investigations to take place.

6. Making Findings of Fact

- 6.1** If there is no disagreement about the facts, the committee can move on to the next stage of the hearing. (Section 7 below).
- 6.2** If there is a disagreement about the facts which the Hearings Panel consider relevant to establishing whether the Code has been breached (or as to the seriousness of the breach), the Investigation Officer should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Hearings Panel's permission, the Investigation Officer may

call any necessary supporting witnesses to give evidence. The Hearings Panel may give the Subject Member an opportunity to challenge any evidence put forward by any witness called by the Investigation Officer.

- 6.3 The Subject Member should then have the opportunity to make representations to support his or her version of the facts and, with the Hearings Panel's permission, to call any necessary witnesses to give evidence.
- 6.4 At any time, the Hearings Panel may question any of the people involved or any of the witnesses, and may allow the Investigation Officer to challenge any evidence put forward by witnesses called by the Subject Member.
- 6.5 If the Subject Member disagrees with any relevant fact in the Investigation Officer's report, without having given prior notice of the disagreement, he/she must give good reasons for not mentioning it before the hearing. If the Investigation Officer is not present, the Hearings Panel will consider whether or not it would be in the public interest to continue in his/ her absence. After considering the Subject Member's explanation for not raising the issue at an earlier stage, the Hearings Panel may then:
 - a) Continue with the hearing, relying on the information in the Investigation Officer's report;
 - b) allow the Subject Member to make representations about the issue, and invite the Investigation Officer to respond and call any witnesses, as necessary; or
 - c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigation Officer to be present if he or she is not already.
- 6.6 The parties will leave the room to allow the Hearing Panel to consider the representations and evidence in private.
- 6.7 On their return, the Chair will announce the Hearing Panel's findings of fact.

7. Did the Subject Member breach the Code of Conduct?

- 7.1 The Hearings Panels needs to consider whether or not, based on the determined facts it has found, the Subject Member has failed to follow the Code.
- 7.2 The Subject Member should be invited to give relevant reasons why the Hearings Panels should not decide that he/she has failed to follow the Code.
- 7.3 The Hearings Panels should then consider any verbal or written representations from the Investigation Officer.

- 7.4** The Hearings Panels may, at any time, question anyone involved on any point they raise in their representations.
- 7.5** The Subject Member should be invited to make any final relevant points.
- 7.6** The Hearings Panel will then ask the parties to leave the room to allow them to consider the representations.
- 7.7** On their return, the Chair will announce the committee's decision as to whether or not the Subject Member has failed to follow the Code of Conduct.

8. If the Subject Member has not breach the Code of Conduct

If the Hearings Panel decides that the Subject Member has not breached the Code of Conduct, the Hearings Panel can move on to consider whether it should make any recommendations to the Council.

9. If the Subject Member has failed to follow the Code of Conduct

- 9.1** If the Hearings Panel decides that the Subject Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigation Officer and the Subject Member as to:

- (a) whether or not the Hearings Panel should apply a sanction; and
(b) what form any sanction should take.

- A sanction may include any one or a combination of the following
- Publish its findings in respect of the Subject Member's conduct;
- Report its finding to Council (or to the Town/Parish Council) for information;
- Recommend to Council that the Subject Member be censured;
- Recommend to the Subject Member's group leader (or in the case of ungrouped members) recommend to Council) 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 Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer to (or recommend that the Town/Parish Council) arrange training for the Subject Member;
- Recommend to Council (or recommend to the Town/Parish Council) that the Subject Member be removed from all outside bodies, appointments

to which they have been appointed or nominated by the Council (or by the Town/Parish Council);

- Withdraw or recommend to the Town/Parish Council that it withdraws facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or
- Placing such restrictions on Subject Member's access to staff which may be reasonable in the circumstances and in accordance with the Member/Officer Protocol provided that such restrictions do not impede the Subject Member from carrying out their duties as a Councillor

9.2 The Hearings Panel may question the Investigation Officer and the Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

9.3 The Hearings Panel will then ask the parties to leave the room to allow them to consider whether or not to impose a sanction on the member and, if so, what the sanction should be.

9.4 On their return, the Chair will announce the Hearings Panel's decision.

10. Recommendations to the Council

After considering any verbal or written representations from the Investigation Officer, the Hearings Panel will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among Members.

11. The Written Decision

The Hearings Panel will announce its decision on the day and provide a short written decision within one working day. It will issue a full written decision normally within 2 weeks. A copy of both decisions will be circulated to the Subject Member and the full Standards Committee.

12. Appeal

There is no right of appeal or review of the decision of the Hearings Panel. Any party dissatisfied by the outcome may consider whether it is appropriate to make a complaint to the Local Government Ombudsman and/or to take independent legal advice.