

Doncaster Metropolitan Borough Council

**Audit Committee -
Hearings Sub-Committee**

Hearings Procedure

1. Interpretation

- (a) '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) 'Investigator' 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 Matter' is the subject matter of the Investigator's report.
- (d) 'The Sub-Committee' refers to the Audit Committee's Hearings Sub-Committee.
- (e) 'The Committee Clerk' means an officer of the authority responsible for supporting the Sub-Committee's discharge of its function and recording the decisions of the Sub-Committee.
- (f) '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.
- (g) 'The Chair' refers to the person presiding at the hearing.
- (h) The 'Independent Person' means the person appointed under the Localism Act 2011 to assist the Monitoring Officer in dealing with complaints against Members.

2. Modification of Procedure

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.

3. Representation

The Member may be represented or accompanied during the meeting by a solicitor, counsel, or, with the permission of the Sub-Committee, another person.

4. **Legal Advice**

The Sub-Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome.

5. **Setting the Scene**

At the start of the hearing, the Chair shall introduce each of the members of the Sub-Committee, the Member (if present), the Complainant(s) (if present) the Investigator (if present) the Independent Person (if present) and any other officers present, and shall then explain the procedure which the Sub-Committee will follow in the conduct of the hearing.

6. **Preliminary Procedural Issues**

The Sub-Committee shall then deal with the following preliminary procedural matters in the following order: -

(a) Disclosures of Interests

The Chair shall ask members of the Sub-Committee to disclose the existence and nature of any interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chair shall confirm that the Sub-Committee is quorate (minimum of 3 voting Members must be present throughout the hearing to form a quorum).

(c) Hearing Procedure

The Chair shall confirm that all present know the procedure which the Sub-Committee will follow in determining the matter.

(d) Proceeding in the absence of the Member

In the event that the Member is not present at the start of the hearing, the Sub-Committee shall consider the matter and make a determination in their absence, unless the Monitoring Officer and Chair are satisfied that the Member has provided sound and valid reasons for their absence, in which case the Sub-Committee shall have the option of adjourning the hearing to another date.

(e) Exclusion of Press and Public

The press and public may be excluded in accordance with Schedule 12A of the Local Government Act 1972 (as amended) whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be discussed.

(f) Adjournment of Hearing

Where the Sub-Committee in the course of and prior to the conclusion of the hearing feels it needs additional evidence in order to come to determination of the matter, the Sub-Committee may adjourn the matter and request the Monitoring Officer to provide such further information or undertake further investigation. The Sub-Committee shall adjourn only once on this basis on any one matter.

The Complaint and Investigator's Findings

7. After dealing with any preliminary issues, the Chair shall invite the Investigator to present their report, including any documentary evidence or other material, and, with the Sub-Committee's permission, to call any supporting witnesses they require. This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.
8. The Sub-Committee may give the Member an opportunity to question the Investigator on the content of their report or any witness called by the Investigator about the evidence they have provided.

[NOTE: This is the Member's opportunity to ask questions arising from the Investigator's Report only and not to make a statement.]

9. Members of the Sub-Committee may question the Investigator on the content of their report and comments made to the Sub-Committee as well as any witnesses present.

The Member's Case

10. The Member or their representative may present their case and, with the Sub-Committee's permission, call any necessary witnesses in support.

[NOTE: Only evidence related to the information in the Investigator's Report will be allowed, not new evidence or issues.]

11. The Investigator may question the Member or witnesses.
12. Members of the Sub-Committee may question the Member or witnesses.

Summing Up

13. The Investigator may sum up the complaint.
14. The Member or their representative may sum up their case.

The Decision

15. All parties (with the exception of the Independent Person, the Legal Advisor/Monitoring Officer and the Committee Clerk) will be asked to leave the room while the Sub-Committee considers the representations and evidence in consultation with the Independent Person.

16. If the Sub-Committee decides that the Member **has not** failed to follow the Code of Conduct, the Sub-Committee can move on to consider whether it should make any recommendations to the Parish/Town/Borough Council or relevant Group Leader as appropriate.
17. If the Sub-Committee decides that the Member **has** failed to follow the Code of Conduct, it will decide:
 - whether or not to impose (or recommend) a sanction; and if so
 - what form any sanction should take; and
 - Whether any recommendations should be made to the Parish/Town/Borough Council as applicable with a view to promoting high standards of conduct amongst Councillors.

A list of possible sanctions is attached at **Appendix A**.

[NOTE: Where the Member is a Parish or Town Councillor, the Sub-Committee can only make recommendations to the Parish or Town Council as to the action it feels appropriate.]

18. The Sub-Committee may, at any time, question the Investigator, Complainant and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision. If it so wishes, the Sub-Committee may also invite the relevant parties to make any verbal representations as to imposing/recommending appropriate sanctions and what form these should take.
19. All parties will then be re-admitted into the room and the Chair will announce the Sub-Committee's decision and give reasons for its decision.
20. The close of the Hearing and Written Decision:
 - (a) The Sub-Committee will orally announce its decision on the day of the hearing together with a brief statement of its reasons.
 - (b) The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing.
 - (c) Formal notification of the decision, including reasons, will be communicated to all parties including the Member, the Complainant(s) and the Parish Clerk (where applicable) within 7 working days of the conclusion of the Hearing. Minutes of the hearing will be subsequently published on the Council's website and submitted to the next available meeting of the Audit Committee for information.

Appeals

21. There is no right of appeal for the Complainant or for the Member against a decision of the Sub-Committee.
22. If the Complainant or Member feels that the Council has failed to deal with the complaint properly and that this failure has caused injustice, they can make a complaint to the Local Government Ombudsman.

APPENDIX A

In the event of a finding of a breach of the Code, the Sub-Committee will have the option of imposing (or recommending) a sanction against the Member concerned. This can include:-

- (1) Censuring or reprimanding the Councillor;
- (2) Publishing its findings in respect of the Councillor's conduct;
- (3) Reporting its findings to Council [or to the respective Parish/Town Council if appropriate], for information;
- (4) Recommending to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommending to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- (5) Recommending to the Elected Mayor that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (6) Instructing the Monitoring Officer to *[or recommending that the Parish/Town Council]* arrange training for the Councillor;
- (7) Removing *[or recommending to the Parish/Town Council that it removes]* the Councillor from all outside appointments to which he/she has been appointed or nominated by the Council *[or by the Parish/Town Council]*;
- (8) Withdrawing *[or recommending to the Parish/Town Council that it withdraws]* facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or
- (9) Excluding *[or recommending that the Parish Council exclude]* the Councillor from the Council's offices or other premises for a defined period of time, with the exception of meeting rooms as necessary for attending meetings of the Authority of which they are a member.

The Hearings Sub-Committee has no power to suspend or disqualify the Councillor or to withdraw Members' Allowances (including Special Responsibility Allowances).