

Manchester City Council Report for Resolution

Report to: Standards Committee – 16 March 2017

Subject: Review of the Procedure for the Hearing of Allegations of Breaches of the Council's Code of Conduct for Members

Report of: City Solicitor

Purpose of the Report

To ask the Committee to consider the proposed revised Procedure for the Hearing of Allegations of Breaches of the Council's Code of Conduct for Members.

Recommendations

That the Standards Committee considers the proposed revised Procedure for the Hearing of Allegations of Breaches of the Council's Code of Conduct for Members ('the Procedure') and approves, with or without modifications, the revised Procedure set out in Appendix 1.

Wards Affected: All

Financial Consequences for Revenue Budget

None directly.

Financial Consequences for the Capital Budget

None directly.

Implications for:

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

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Background documents (available for public inspection):

Report to Standards Committee dated 22 October 2015
Consultation responses from the Council's Independent Persons and Independent Members.

1.0 Background

1.1 The Committee approved (subject to the making of minor changes delegated to the City Solicitor in consultation with the Chair of the Standards Committee) the current version of the Hearing Procedure at its meeting on 22 October 2015. The revised Hearing Procedure was subsequently circulated to all members of the Committee on 3 December 2016 as requested by the Committee.

1.2 The starting point for the current procedure was the hearing procedure that had been in place prior to the changes to the standards regime that were brought about by the Localism Act 2011. The procedure was used for the first time for a hearing that took place on 22 September 2016. Following that hearing the City Solicitor has reviewed the Procedure with a view to :

- simplifying the procedure considerably by moving a lot of information about the contents of letters which are to be sent as part of the process from the main body of the document to Appendices .
- clarify the Complainant's role
- simplify the decision process primarily to try to minimise the number of times the Member and Investigating officer might be requested to leave the room whilst the Panel is making its deliberations .

1.3 The aim was also to take on board lessons learnt from the last Hearing Panel Meeting . In this regard the complainant when this procedure was last used (which was also the first time this procedure was used) was contacted to ask if he felt able to assist with any proposals on what procedural improvements to the process might be considered. At the time of the request he indicated that he was not sure if he would have time to think of suggestions other than to have a process for acknowledging and tracking complaints (which is in place - although possibly this is an area where further improvements could be made).

1.4 Suggestions for improvements were also sought from the Independent Members of Standards Committee and from the Council's Independent persons as well the Council Team responsible for organising Employee Appeals and School appeals. The revised procedure is attached at Appendix 1 and incorporates any feedback received from these consultees. The views of the Committee are sought on the revised Procedure.

2.0 Recommendation

The recommendation is set out at the start of this report.



MANCHESTER
CITY COUNCIL

**PROCEDURE FOR THE HEARING OF ALLEGATIONS
OF BREACHES OF THE COUNCIL'S CODE OF
CONDUCT FOR MEMBERS**

Introduction

1. Any hearing of an allegation of a breach of the Code of Conduct for Members (“the Code”) will be in accordance with this procedure.
2. The circumstances in which a referral for a hearing may be made by the Monitoring Officer are set out in the Arrangements for dealing with complaints that Council Members have failed to comply with Council’s Code of Conduct for Members (“the Arrangements”).
3. The person against whom the complaint is made will be referred to in this procedure as “the Member”. The person making the complaint will be referred to as “the Complainant” .References in this document to ”the parties” means the Member and the Investigating Officer.
4. The role of the Complainant within the hearing process is not that of a party to the proceedings. However, the Complainant may be called as witness; if they are not called as a witness they may submit a statement to the hearing in accordance with paragraph 16 below.
5. A hearing will be undertaken by a Hearing Panel. A Hearing Panel is a sub-Committee (the Standards (Hearing) Sub-Committee) of the Council’s Standards Committee that has been constituted in accordance with the Arrangements for the purpose of carrying out a hearing of a complaint and as such is subject to the usual rules relating to public access to meetings and documents (as detailed in Appendix 1). The Hearing Panel shall be chaired by an independent member of the Standards Committee. In the event that, exceptionally, the Standards Committee itself undertakes the hearing of a complaint, any references in the procedure below to a Hearing Panel should be construed as a reference to the Standards Committee.
6. If, after the Monitoring Officer’s decision to refer the matter for a hearing but before the date of the hearing, the Member ceases to be a member of the Council, the Monitoring Officer may (having consulted with the Chair of the Hearing Panel and the Independent Person) decide that the matter should not in that event proceed to a hearing.
7. The Monitoring Officer will be the legal adviser to the Hearing Panel. The Monitoring Officer’s role is to:
 - ensure that members of the Hearing Panel understand its powers and procedures;
 - ensure that the hearing procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible;

- make sure that the Member understands the procedures the Hearing Panel will follow;
- provide advice to the Hearing Panel during the hearing and their deliberations; and
- assist the Hearing Panel in producing a full written decision and a summary of that decision.

The Monitoring Officer in consultation with the Chair of Standards Committee may take whatever steps they deem appropriate to enable the process to be dealt with efficiently.

8. Where there is a conflict of interest preventing the Monitoring Officer from performing their role independently (or where the Monitoring Officer is unable to act), the Deputy Monitoring Officer, or another appropriate officer appointed by the Monitoring Officer shall perform those functions in respect of which the conflict exists (or act during the period while the Monitoring Officer is unable to do so). In such circumstances, the relevant references in this procedure to the Monitoring Officer shall be read as referring to the Deputy Monitoring Officer or other officer appointed to perform the functions in question.
9. This procedure is subject to an overarching requirement that any hearing must be conducted in a manner compatible with the right to a fair hearing, including as provided for by Article 6 of the European Convention on Human Rights.
10. References in this procedure to 'days' unless otherwise indicated means calendar days.

The Pre-Hearing Process

Preliminary Matters

11. Where, following the completion of an investigation, a decision is made to refer the matter for a hearing, the Monitoring Officer shall within 14 days of the issue of the decision provide the information in paragraph 12 to
- a) the Member;
 - b) the Independent Person who was assigned to assist with the complaint; and
 - c) the Investigating Officer.
12. The information that is to be provided is as follows:
- a) a copy of the Investigating Officer's final report;
 - b) a report from the Monitoring Officer setting out why, having received the Investigating Officer's final report and having consulted with the Independent Person, a decision was made to refer the matter for a hearing;
 - c) a copy of this hearing procedure; and
 - d) a covering letter ('the preliminary letter') explaining what will happen next in the hearing process (the contents of this letter will vary depending upon the intended recipient, as further detailed in Appendix 2 below).

Witness Management

13. Where the Member or the Investigating Officer wishes to call a particular witness, it will be the responsibility of the Member or the Investigating Officer, as the case may be, to notify the witness of the hearing date, request their attendance and ensure that the witness submits a brief written statement setting out their evidence not less than 14 days ahead of the hearing. In the event that both the Member and the Investigating Officer wish to call the same witness, the Investigating Officer will be responsible for the witness management matters referred to in this paragraph.
14. The Monitoring Officer, having consulted with the Chair of Hearing Panel, may arrange for the attendance of any additional witnesses at the hearing whose evidence may assist the Hearing Panel in reaching its decision. In such cases the Monitoring Officer will be responsible for the procedural matters relating to witnesses management referred to in paragraph 13 above.

Convening the Hearing Panel

15. Following receipt of the Member's and the Investigating Officer's written responses to the preliminary letters referred to in paragraph 12 (d) above or, if one or both response(s) is not received, by the end of the 21 day period specified in Appendix 2 , the Monitoring Officer, having consulted with the Chair of the Hearing Panel, will arrange for a meeting of the Hearing Panel to be convened and then write to the Member, the members of the Hearing Panel, the Investigating Officer and the Independent Person at least 28 days before the hearing with the information specified in Appendix 3 below ('the prehearing letter').
16. If the Complainant has not been invited to attend the hearing as a witness, the Monitoring Officer, at the same time as the prehearing letter is sent will write to the Complainant notifying them of the hearing and inviting them to submit a written statement by no later than 14 days in advance of the Hearing date.

The Hearing

17. The hearing shall take place once the elements of the pre-hearing process referred to in paragraphs 11-16 above have been completed and (subject to availability of the parties and their witnesses) by no later than three months from the date of the preliminary letter.
18. The Hearing Panel may, at its discretion, consider any new evidence submitted by the Member.
19. The Hearing Panel may, at any time prior to the conclusion of the hearing, decide that it needs additional information in order to reach a decision, and, before adjourning, may ask the Monitoring Officer to obtain further information or undertake further investigation. The Hearing Panel will then reconvene at a later date to continue the hearing of the complaint.
20. The Hearing Panel may at any time seek legal advice from the Monitoring Officer.
21. The Hearing Panel shall decide, on the balance of probability, whether the grounds of the complaint are upheld.
22. Each Hearing Panel member, aside from any independent member, shall have one vote, and all matters shall be decided by a simple majority of votes cast. In accordance with the Council's constitution, independent members of the Hearing Panel do not have voting rights.
23. The meeting of the Hearing Panel, as it is a meeting of a Council sub-committee, will be open to the public unless confidential information or exempt information is likely to be disclosed (see Appendix 1).

Preliminary Hearing Matters

24. The initial order of business at a hearing shall be as follows:
 - a) The ordinary preliminary matters for a meeting of a Council sub-committee (including declarations of interests and consideration of submissions that the public should be excluded).
 - b) Where the Member is not present at the hearing, to decide whether to determine case in the Member's absence or to accept the Member's reason for absence (if any has been given) and adjourn the hearing to a later date
 - c) The Member is to be asked to confirm that the only facts in the Investigating Officer's final report that they dispute are those that they have given notice of during the pre-hearing process. If the Member indicates at this point (or at any later stage of the hearing) that they wish to dispute additional facts contained in

the final report the Chair will ask them to provide good reasons for not giving prior notice. After considering the Member's explanation, the Hearing Panel will decide whether to:

- continue with the hearing, relying on the information in the final report;
- allow the Member, at an appropriate point in the hearing, to make representations about the issue, and invite the Investigating Officer to respond and call relevant witnesses (if present);
- adjourn the hearing to enable witnesses to be called or to enable the Investigating Officer to attend and respond, if they are not present

The Main Hearing Process

25. The Chair of the Hearing Panel will determine the procedure during the hearing, subject to the overarching requirement for fairness as set out at paragraph 9 above . The anticipated stages of the substantive part of the hearing are as follows:

- The Investigating Officer will present their report and may call (and ask questions of) witnesses in support of the report's conclusions.
- The Member (or their representative) may ask, via the Chair, questions of the Investigating Officer and/or witnesses called by the Investigating Officer.
- The Panel may ask questions of the Investigating Officer and/or witnesses called by the Investigating Officer.
- The Member (or their representative) will present their case and may call (and ask questions of) witnesses in support of their case.
- The Investigating Officer may ask, via the Chair, questions of the Member and/or witnesses called by the Member.
- The Panel may ask questions of the Member and/or witnesses called by the Member.
- The Independent Person may make any comments they have.
- Closing submissions may be made by the Investigating Officer (including in relation to the sanction, if any, that they consider should be imposed in the event that the Hearing Panel determines that there has been a breach of the Code).

- Closing submissions may be made by the Member (including in relation to the sanction, if any, that they consider should be imposed in the event that the Hearing Panel determines that there has been a breach of the Code).
- Where facts are disputed the Hearing Panel may decide to deliberate privately on the finding of facts before hearing representations on whether there has been a breach of the code.

26. The Hearing Panel will deliberate (in private where it deems this to be appropriate and consistent with the rules concerning the exclusion of the public set out in Appendix 1) on the representations and evidence presented, following which the Chair will announce:

- a) their findings of fact at the hearing;
- b) whether or not, on the determined facts, the Member has breached the Code;
- c) if a breach of the Code by the Member is found, whether a sanction (beyond publication of the summary decision notice of the Hearing Panel's findings) should be imposed and, if so, what that sanction should be (having considered Appendix 4, below); and
- d) whether the Hearing Panel wishes to make any recommendations to the Standards Committee or to the Council concerning any wider issues (not directly concerning the particular conduct of the Member) that arise from the hearing.

27. If the Hearing Panel finds that the Member should be sanctioned they may decide that, in addition to the publication under paragraph 33 of a summary of the Hearing Panel's findings, one or any combination of the following sanctions should be imposed:

- Reporting the Hearing Panel's findings to Council (or to Ringway Parish Council) for information;
- Recommending to Council that the Member be censured;
- Recommending to the Member's group leader (or if the Member is not part of a group, recommend to Council) that he/she be removed from any or all committees or subcommittees of the Council for a recommended period;
- Recommending to the Leader of the Council that the Member be removed from the Executive, or removed from their portfolio responsibilities;

- Instructing the Monitoring Officer (or recommending to Ringway Parish Council) to arrange training for the Member;
- Recommending to Council (or to Ringway Parish Council) that the Member be removed from all outside appointments to which they have been appointed or nominated by the Council (or by Ringway Parish Council);
- Withdrawing (or recommending to Ringway Parish Council that it withdraws) facilities provided to the Member by the Council such as a computer, website and/or e-mail and internet access; or
- Place such restrictions on the Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.

28. In exceptional circumstances, such as where it would lead to a manifest injustice or a risk of harm to the Member, the Complainant or others, the Hearing Panel may direct when reaching its decision that a summary decision should not be published.

The Decision Notices

Full Written Decision Notice

29. The Monitoring Officer will prepare on behalf of the Hearing Panel, and in consultation with the Chair of the Hearing Panel, a full written decision outlining whether or not the Member has breached the Code, any sanction imposed, any recommendations made to Standards Committee or the Council, and detailing the Hearing Panel's reasons for its decision.
30. As soon as is reasonably practicable, the Monitoring Officer will circulate on behalf of the Hearing Panel the full written decision notice to:
- the Member;
 - the Independent Person; and
 - the complainant .

Summary Decision Notice

31. The Monitoring Officer shall at the same time prepare, in consultation with the Chair of the Hearing Panel, a Summary Decision Notice and (except as provided in paragraph 34 below) arrange for it to be published on the Council's website excluding from the notice where possible, information that would identify the Complainant.

32 If the Hearing Panel's finding is that the Member did not breach the Code, the public Summary Decision Notice shall:

- state this and give reasons for reaching that finding; and
- describe any recommendations made to the Standards Committee or to the Council concerning any wider issues (not directly concerning the particular conduct of the Member) that arose from the hearing.

33. If the Hearing Panel finds that the Member breached the Code, the Summary Decision Notice shall:

- state that the Member breached the Code;
- specify the details of the breach;
- explain what sanction, in any, has been imposed;

- describe any recommendations made to the Standards Committee or to the Council concerning any wider issues (not directly concerning the particular conduct of the Member) that arose from the hearing; and

- give reasons for the Hearing Panel's findings.

34. Where the Hearing Panel find that the Member did not breach the Code, if the Member so requests a Summary Decision Notice shall not be published.

Appendix 1 – Public Access to Hearings and Documents

A hearing under this procedure, as it is a meeting of a Council sub-committee, is subject to the ordinary rules pertaining to committee meetings and will be held in public apart from where the exclusion of the public from all or part of the hearing:

- is necessary to prevent confidential information being revealed (confidential information is information that has been provided by a Government department under the condition that it must not be revealed or information that cannot be revealed by virtue of any legislation or court order); or
- is necessary to prevent a category of 'exempt information' being disclosed and the public interest in that information not being disclosed outweighs the public interest in disclosure (exempt information is defined in Schedule 12A of the Local Government Act 1972).

The agenda and reports for a meeting of the Hearing Panel shall be made available to the public before the meeting unless the Monitoring Officer exercises the power to prevent all or any part of a report being made public if it relates to a part of the meeting which, in their opinion, is likely to be held in private for one of the reasons given above. After a hearing, sections of the committee's reports and minutes of the meeting which relate to parts of the hearing held in private will not be made available for public inspection.

Copies of the agenda, reports and minutes of a hearing, apart from sections of documents relating to parts of the hearing that were held in private, will be made available for public inspection for six years after the hearing.

Appendix 2 - Contents of preliminary letters

Preliminary letter to Member

The Member will be asked in the letter referred to at paragraph 12 (d) above to submit a written response that provides, within 21 days of the date of the letter, the following information:

a) Whether they disagree with any of the findings of fact in the Investigating Officer's final report and, if so, the reason(s) for any such disagreement (as the Member will not be allowed to raise new disagreement(s) of fact at the hearing unless the Hearing Panel agrees there are good reasons to permit this).

b) Whether they want to attend the hearing.

c) Whether they want to be represented at the hearing (at their own expense) by a solicitor, barrister or any other person. (The letter issued under paragraph 12 (d) above will inform the Member that while a request to be represented by someone other than a solicitor or barrister will normally be allowed, permission may be refused at the hearing by the Chair of the Hearing Panel if it appears that the non-legal representative is directly involved in the matter being determined by the hearing.)

d) Whether they want to give evidence at the hearing, and an indication of how they wish to present this evidence (e.g. orally and/or in writing).

e) Whether they want to call relevant witnesses to give evidence at the hearing and, if so, the identity of each witness and why their evidence is relevant. The letter under paragraph 12(d) above will also inform the Member that the Hearing Panel may decline to hear a witness' evidence where it deems that there is no real likelihood of the evidence being relevant to the matters that the Hearing Panel must determine (including where the evidence solely relates to undisputed facts).

f) Whether they want all or any part of the hearing to be held in private, and the reason(s) for this.

g) Whether they want all or any part of the Investigating Officer's final report or other relevant documents to be withheld from the public, and the reason(s) for this.

h) Any dates within the next 3 months on which they, or the witnesses that they wish to call, would be unable to attend a hearing.

Preliminary Letter to Investigating Officer

(a) The Investigating Officer will be asked in the letter referred to in paragraph 12(d) above to attend the hearing and to submit a written response, within 21 days of the date of the letter, stating whether they want to call relevant witnesses to give evidence at the hearing and, if so, the identity of each witness and why their evidence is relevant.

(b) The letter under paragraph 12(d) will also inform the Investigating Officer that the Hearing Panel may decline to hear a witness' evidence where it deems that there is no real likelihood of the evidence being relevant to the matters that the Hearing Panel must determine (including where the evidence solely relates to undisputed facts).

Preliminary letter to Independent Person.

The Independent Person who was assigned to assist with the complaint will be invited in the letter referred to in paragraph 12(d) above to attend the hearing. The letter will also state that his/her attendance will not be required for the hearing to proceed.

APPENDIX 3 – Prehearing letter

The prehearing letter to the parties, the Independent Person and the members of the Hearing Panel will:

- a) notify them of the date, time and place for the hearing;
- b) outline the main facts of the case as presented in the Investigating Officer's report that, based upon the Member's response to the preliminary letter, the Member is in disagreement with;
- c) name the members of the Hearing Panel and identify which of them is its Chair;
- d) note whether the Member or the Investigating Officer has indicated whether they will attend (or be represented) at the hearing;
- e) state that the Independent Person will be invited to the hearing;
- f) set out the list of witnesses who are to be invited to give evidence at the hearing;
- g) identify those witnesses in the list that it is to be the responsibility of the Member, the Investigating Officer or the Monitoring Officer (as the case may be) to ensure that the witness attends the hearing (and that they submit a brief written statement by no later than 14 days ahead of the hearing);
- h) state that the Member may submit written evidence, but that any written evidence (including any witness statements) is to be submitted by the Member by no later than 14 days ahead of the hearing;
- i) state that any written evidence submitted ahead of the meeting may form part of the report made available to the public ahead of the meeting, subject to the Monitoring Officer exercising their power to exclude all or part of the report as detailed in Appendix 1;
- j) state that, given the nature of the information involved in the hearing of a Member Complaint, it is possible that all or part(s) of the hearing will be conducted in private and/or all or part(s) of documents being considered by the Hearing Panel will be withheld from the public, subject to this being formally decided upon at the hearing by the Hearing Panel (in accordance with the rules governing public access to meetings and documents, as detailed at Appendix 1); and
- k) briefly outline the expected procedure for the hearing.

Appendix 4– Questions to be considered by the Hearing Panel when deciding upon a sanction

When deciding on a sanction, the Hearing Panel should make sure that it is reasonable and in proportion to the Member's behaviour. Before deciding what sanction to impose, the Committee should consider the following questions, along with any other relevant circumstances:

- What was the Member's intention? Did the Member know that he or she was failing to follow the Code of Conduct?
- Did the Member get advice from officers before the incident? Was that advice acted on in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
- What was the result of failing to follow the Code of Conduct? In particular were any individuals detrimentally affected?
- What were the potential results of failing to follow the Code of Conduct?
- How serious was the incident?
- Does the Member accept he or she was at fault?
- Did the Member apologise to the relevant people?
- Has the Member previously been warned or reprimanded for similar misconduct?
- Has the Member breached the Code of Conduct before?
- Is the Member likely to do the same thing again?
- How will the sanction be carried out?
- Are there any resource implications?

There may be other factors, specific to the circumstances of the case, that the Hearing Panel also considers to be relevant when deciding what sanction to impose.