

Rushcliffe Borough Council: Councillor Code of Conduct Complaint Hearing Panel Procedure

This protocol has been developed to set out the procedure that will be followed where a Council Code of Conduct complaint is referred to a Hearing Panel, a Sub-Committee of the Council's Standard Committee, for determination.

Pre-Hearing

Once a date has been set for a hearing, a private pre-hearing may be convened. The purpose of a pre-hearing is to allow matters at the hearing to be dealt with more fairly and economically by alerting parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself.

At the pre-hearing the Panel should:

- Decide on a Chair to be appointed at the Hearing if the Chair of the Committee is not a member of the Panel.
- Decide whether any of the findings of fact in the investigation report are in dispute and, if so, how relevant they are likely to be at the hearing.
- Consider any additional evidence it considers is required at the hearing.
- Decide if witnesses which the Subject Member or Investigator may want to call are relevant bearing in mind the nature of the issue and the need for proportionality.
- Consider whether there are any parts of the hearing that are likely to be held in private or 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 presumption should be to hold a public hearing unless there is specific exempt or confidential information as defined by Part VA of the Local Government Act 1972 so identifying that at the pre-hearing will have some bearing on publication of any relevant papers.
- Identify any potential conflicts of interest. The Monitoring Officer will advise if any conflicts mean that a councillor should stand down from the Panel.

The Panel will not discuss or debate the merits of the case.

Panel Hearing

1. The Chair will be appointed and then open the meeting, introduce all parties present, and briefly outline the process for the meeting.
2. The Investigator will be invited to present a summary of their report, call any witnesses (if applicable) and present their conclusions. The Subject Member or their representative, if present, can then ask questions of the Investigator

and any witnesses, if called to give evidence to the Panel. The Panel may also wish to ask questions.

3. The Subject Member or their representative, if present, will then present their case, including calling any witnesses (if applicable). The Investigator may wish to ask questions. The Panel may also wish to ask questions.
4. The Chair will invite comments of the Independent Person.
5. At the end of this process the Panel will ask the parties to leave whilst it considers the facts and decides whether there has been a breach of the code on the balance of probabilities. The Monitoring Officer or representative will retire with the Panel to advise on matters of procedure and law. Any advice will be conveyed back publicly to the meeting.
6. The parties will then be asked to return and the Chair will announce the decision of the Panel. If the Panel find that breach has been found, the Subject Member or their representative, if present, will be asked to make representations on what sanctions should be imposed. The Panel may seek the advice of the Monitoring Officer or their representative on sanctions available to them. If a breach is not found, the process will continue from paragraph 9.
7. The parties will be asked to leave room whilst the Panel sits in private to decide appropriate sanctions. The Monitoring Officer or their representative will retire with the Panel to advise on matters of procedure and law. Any advice will be conveyed back publicly to the meeting.
8. The parties will then be asked to return and Chair will advise the parties of the Panel's decision on appropriate sanctions.
9. The Chair will close the meeting.
10. The decision(s) of the Panel will be confirmed in writing following conclusion of the Hearing. This should be done as soon as reasonably practical and should be done within one week of the Hearing.
11. There is no right of appeal against the decision of the Panel.
12. The Chair shall have discretion to depart from this procedure for the smooth running of the Hearing but at all times must follow the rules of natural justice and proportionality. The Monitoring Officer or their representative will advise as necessary.
13. Although there are no formal time limits imposed on presentations to the Panel, the Chair will have the right to curtail excessive presentations. The Panel will concentrate on those areas of the investigation that are in dispute and all parties are asked to be as succinct as possible and ensure all information presented is relevant.

Roles at a Panel Hearing

Panel

Members of the Standards Committee appointed to determine a complaint at a Panel Hearing. The Panel shall consist of at least three members of the Standards Committee and its composition shall be determined by the Monitoring Officer. Independent representatives or parish representatives sitting on Standards Committee do not have voting rights by law and may not sit on a Panel Hearing.

The Panel should work at all times in a demonstrably fair, independent and politically impartial way to ensure that members of the public, and councillors, have confidence in its procedures and findings. Decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the local authority and the public. For the subject member, an adverse decision by the committee can result in significant reputational damage.

Subject Member

The elected councillor subject to the complaint.

Subject Member Representative

The Subject Member may, at their discretion, choose to be represented by counsel, a solicitor, or by any other person they wish. This should be notified to the Panel prior to the Hearing and if the Panel has any concern about the person chosen to represent the Subject Member, they should have made that clear beforehand. The Panel has the right to withdraw its permission to allow a representative if that representative disrupts the Hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Monitoring Officer

The Panel will be supported by the Monitoring Officer or other legal advisor as their nominee/representative.

The Monitoring Officer or their representative's role in advising the Panel is to:

- make sure that members of the Panel understand procedures and their powers
- make sure that the procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible
- make sure that the Subject Member understands the procedures the Panel will follow
- provide advice to the Panel during the hearing and their deliberations.
- help the Panel produce a written decision and a summary of that decision.

Independent Person

OFFICIAL

The Council's appointed Independent Person is a consultative role and supports the Panel by providing their view to the Panel. These views should be given in the open session so that all sides can have a chance to challenge them as necessary.