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**ROCHDALE**  
METROPOLITAN BOROUGH  
**COUNCIL**

## **CORPORATE SERVICES**

**Linda Fisher**  
**Deputy Chief Executive**

### **GOVERNANCE AND COMMITTEE SERVICES TEAM**

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Date: 2<sup>nd</sup> August 2013

To: All Members of the Hearing Sub-  
Committee

Dear Councillor

### **HEARING SUB-COMMITTEE**

You are requested to attend the meeting of the Hearing Sub-Committee to be held in Training and Conference Suite, First Floor, Number One Riverside, Smith Street, Rochdale, OL16 1XU on Monday, 12<sup>th</sup> August 2013 commencing at 2.00 pm.

The agenda and supporting papers are attached.

If you require advice on any agenda item involving a possible Declaration of Interest which could affect your right to speak and/or vote, please contact staff in the Governance and Committee Services Team at least 24 hours in advance of the meeting.

Yours Faithfully

**Linda Fisher**  
**Deputy Chief Executive**

#### Hearing Sub-Committee Membership 2013/14

Councillor Daalat Ali

Councillor Robert Clegg

Councillor Andy Kelly

Ann Taylor (Independent Person)

Andrew Underdown (Independent Person)

**ROCHDALE METROPOLITAN BOROUGH COUNCIL**

**HEARING SUB-COMMITTEE**

**Monday, 12<sup>th</sup> August 2013 at 2.00 pm**

**Training and Conference Suite, First Floor, Number One Riverside, Smith  
Street, Rochdale, OL16 1XU**

**A G E N D A**

Apologies for Absence

1. Exclusion of Press and Public

To consider excluding the press and public from the meeting during consideration of the following item of business in accordance with the provisions of Section 100A (4) of the Local Government Act 1972, as amended.

2. Complaint against a Named Councillor

(a) Submitted Complaint

(b) Procedure for Hearing Sub-Committee

(c) Rochdale MBC Code of Conduct for Elected Members

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

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# Agenda Item 2b

## ROCHDALE METROPOLITAN BOROUGH COUNCIL

### STANDARDS SUB-COMMITTEE HEARING PROCEDURE

#### **PROCEDURE**

1. The Chair of the 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 interests of fairness.

#### **PRE-MEETING**

2. **The Advisor to the Hearing Panel will arrange a pre-meeting with the Chair of the Panel to ensure that all necessary preparations for the hearing have been made and to identify any particular procedural issues relating to the hearing.**

#### **REPRESENTATION**

- 3.. The Subject Member may be legally represented, or with the permission of the Sub-Committee, by another person. It is the responsibility of the Subject Member to arrange for their own representation.

#### **LEGAL ADVICE**

- 4.. The Sub-Committee may take legal or procedural advice from its Legal Adviser (who may be the Monitoring Officer) at any time during the Hearing or during the Sub-Committee's deliberations. The substance of any advice given to the Sub-Committee will be shared with the Subject Member and Investigating Officer (IO) if they are present at the Hearing.

#### **INTRODUCTIONS AND SETTING THE SCENE**

- 5.. At the start of the Hearing, the Chair of the Panel shall introduce each of the members of the Sub-Committee, the Subject Member (if present), the IO (if present), and the Legal Adviser. The Chair will confirm that all present have received a copy of the relevant documents including a copy of the Investigating Officer's Report. The Chair will then explain the procedure, which the Sub-Committee will follow.

#### **THE ROLE OF THE INDEPENDENT PERSON**

6. The Independent Person is invited to attend the Hearing and their views must be sought and taken into consideration before the Panel takes any decision on whether the subject member's conduct constitutes a failure to comply with the

Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **PRELIMINARY PROCEDURAL ISSUES**

7. The Sub-Committee shall deal with the following preliminary procedural matters:

### **a) Disclosures of interest**

The Chair shall ask members of the Sub-Committee to disclose the existence and nature of any personal and/or prejudicial 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.

### **c) Exclusion of Press and Public**

The Chair shall ask the Subject Member, the Investigator and the Legal Adviser to the Sub-Committee whether they wish to ask the Sub-Committee to exclude the Press or Public from all or any part of the Hearing. If any of them so request, the Chair shall ask them to put forward reasons for so doing and ask for responses from the others and the Sub-Committee shall then determine whether to exclude the press and public from all or any part of the Hearing.

### **d) Hearing procedure**

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

8. If the Subject Member is not present at the start of the hearing:

- The Chair will ask the Legal Adviser whether the Subject Member has indicated his/her intention not to attend the hearing;
- The Sub-Committee shall then consider any reasons which the Subject Member has provided for not attending the hearing;
- If it is not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Sub-Committee shall decide whether to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the hearing to another date.

## **STAGE 1:**

## **MAKING FINDINGS OF FACT**

- 9.. The Sub-Committee must first consider whether or not there are any significant disagreements about the facts contained in the IO's report. If there is no disagreement about the facts, the committee can move on to stage 2 of the hearing.
- 10 If there is disagreement, the IO will present the evidence which is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The Subject Member and the Sub-Committee members may ask questions of the IO or any witness.
- 11 The Subject Member or his/her representative will then present the evidence which is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The IO and the Sub-Committee members may ask questions of the Subject Member or any witnesses.
12. At any time, the Sub-Committee may question any of the people involved or any witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Subject Member.
13. If the Subject Member disagrees with most of the facts, the Investigator will make representations on all the relevant facts, instead of discussing each fact individually.
14. If the Subject Member disagrees with any relevant fact in the report without having given prior notice, he or she must give good reasons for not mentioning it before the hearing. After considering the Subject member's explanation, the Sub-Committee may continue with the hearing, relying on the information in the report; may allow the Subject Member to make representations about the issue and invite the IO to respond and call witnesses as necessary, or may postpone the hearing to arrange for appropriate witnesses to be present.
15. At any stage in the consideration of the matter, the Sub-Committee may ask further questions of the IO or the Subject Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

## **STAGE 2:**

### **DID THE SUBJECT MEMBER FAIL TO FOLLOW THE CODE OF CONDUCT?**

- 16 The Sub-Committee will then consider whether, based on it's findings of fact, the subject member has failed to follow the Code.

17. The Subject Member will be invited to give relevant reasons why the Sub-Committee should decide that they have not failed to follow the Code.
18. The Sub-Committee will then consider any verbal or written representations from the Investigator.
19. The Sub-Committee may, at any time, question anyone involved on any point they raise on their representations.

### **STAGE 3**

#### **IF THE SUBJECT MEMBER HAS FAILED TO FOLLOW THE CODE OF CONDUCT WHAT, IF ANY, SANCTION SHOULD BE IMPOSED?**

20. The Sub-Committee will consider any relevant verbal or written representations from the Investigator and the Subject Member and determine whether in the event of a finding that there has been a breach of the Code of Conduct:
  - the Sub-Committee should apply a sanction
  - what form any sanction should take
21. The Sub-Committee may ask questions of the Subject Member and the IO and take legal advice, to make sure they have the information they need in order to make an informed decision.

#### **AVAILABLE SANCTIONS**

22. The Sub-Committee may impose any of the following sanctions:
  - Publish its findings in respect of the Member's conduct;
  - Report its finding to Council for information;
  - Recommend to Council that the Member be censured;
  - Recommend to the Members 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 Member be removed from the Executive, or removed from their portfolio responsibilities;
  - Instruct the Monitoring Officer to arrange training for the Member;

- Recommend to Council that the Member be removed from all outside bodies, appointments to which they have been appointed or nominated by the Council;
- Withdraw facilities provided to the Member by the Council such as a computer, website and/or e-mail and internet access; or
- Placing such restrictions on Members 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 member from carrying out their duties as a Councillor

### **DECISION**

23. The Sub-Committee shall then consider in private it's decisions with regard to stages 1,2 and 3 above (as appropriate).
24. The Chair will announce the decision of the Sub-Committee. Written notice of the findings of the Sub-Committee with reasons will be given as soon as it is reasonably practicable to the Subject Member and any person who made an allegation that gave rise to the investigation.

### **RECOMMENDATIONS TO THE AUTHORITY**

25. The Sub-Committee may consider making recommendations with a view to promoting higher standards of conduct among members.

**Linda Fisher**  
**Monitoring Officer**  
 Rochdale MBC

January 2013 revision

## CODE OF CONDUCT FOR COUNCILLORS AND VOTING CO-OPTED MEMBERS

### PART 1: GENERAL PROVISIONS

#### 1. Introduction and interpretation

- 1.1 This Code applies to you as a member of the Council.
- 1.2 It is your responsibility to comply with this Code. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to 5 years. In this Code - “meeting” means any meeting of:
  - (a) the Council;
  - (b) any of the Council’s committees or sub-committees, joint committees or joint sub-committees;
  - (c) the Executive or any committee of the Executive.
- 1.3 “Member” includes a co-opted member and an appointed member.

#### 2. Scope

- 2.1 Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you are acting as a member or co-opted member of the Council or an appointed member of a joint committee, and, references to your official capacity are construed accordingly.
- 2.2 This Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 2.3 Where you act as a representative of the Council—
  - (a) on another relevant authority, including the Greater Manchester Combined Authority, the Greater Manchester Fire & Rescue Authority and the Greater Manchester Waste Disposal Authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

#### 3. General obligations

- 3.1 You must not:
  - (a) Do anything which may knowingly cause the Council to breach the Equality Act 2010;

- (b) Intimidate, bully or be abusive to any person;
- (c) Intimidate or attempt to intimidate any person who is or is likely to be:
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings,

In relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

- (d) Do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

**4.** You must not:

- (a) Disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
  - (i) You have the consent of a person authorised to give it;
  - (ii) You are required by law to do so;
  - (iii) The disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) The disclosure is:
    - (a) Reasonable and in the public interest; and
    - (b) Made in good faith and in compliance with the reasonable requirements of the Council; or
- (b) Prevent another person from gaining access to information to which that person is entitled by law.

**5.** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

**6.** You:

- (a) Must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) Must, when using or authorising the use by others of the resources of your authority:
  - (i) Act in accordance with the Council's reasonable requirements; and

- (ii) Ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - (c) Must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by
- (a) The Council's Chief Finance Officer; or
  - (b) The Council's Monitoring Officer, or
  - (c) Any of the Council's other statutory officers

Where that officer is acting pursuant to his or her personal statutory duties.

- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## Part 2 - Disclosable pecuniary interests

### 8. Notification of disclosable pecuniary interests

- 8.1 Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.
- 8.2 A 'disclosable pecuniary interest' is an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in the table below.
- 8.3 "Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 month period prior to notification of the interest in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation Act) 1992 (a).

Contracts	Any contract which is made between you or your partner (or a body in which you or your partner has a beneficial interest) and the Council - (a) under which goods or services are to be provided or works are to be executed: and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the Rochdale Metropolitan Borough Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the Rochdale Metropolitan Borough Council for a month or longer.
Corporate Tenancies	Any tenancy where (to your knowledge) - (a) the landlord is the Council: and (b) the tenant is a body in which you or your partner has a beneficial interest.
Securities	Any beneficial interest in securities of a body where - (a) that body (to your knowledge) has a place of business or land in the area of the Rochdale Metropolitan Borough Council; and (b) either –  (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you or your partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

8.4 For the purposes of the above

- (a) " a body in which you or your partner has a beneficial interest" means a firm in which you or your partner is a partner or a body corporate of which you or your partner is a director, or in the securities of which you or your partner has a beneficial interest.
- (b) "director" includes a member of the committee of management of an industrial and provident society.

- (c) "land" excludes an easement, interest or right in or over land which does not carry with it a right for you or your partner (alone or jointly) to occupy the land or receive income, and
- (d) "securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## **9. Non participation in case of disclosable pecuniary interest**

9.1 If you are present at a meeting [of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, or the executive or committee of the executive] and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting,

1. You must not participate in any discussion of the matter at the meeting.
2. You must not participate in any vote taken on the matter at the meeting.
3. If the interest is not registered, you must disclose the interest to the meeting.
4. If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

9.2 Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

## **10. Offences**

10.1 It is a criminal offence to

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest

- As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest
- As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in a matter, taking any steps in relation to such a matter.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

10.2 The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

### **Part 3 - Other interests**

#### **11. Notification of personal interests**

11.1 In addition to the disclosable pecuniary interests notifiable under the Localism Act 2011, you must, within 28 days of -

- (a) this Code being adopted by or applied to your authority; or
  - (b) your election or appointment to office (where that is later),
- notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the categories set out in paragraph 11(2) below for inclusion in the register of interests.

11.2 You have a personal interest in any business of your authority where it relates to or is likely to affect -

- (a) any body of which you are in a position of general control or management and to which you are appointed or nominated by your authority;
- (b) any body -
  - (i) exercising functions of a public nature;
  - (ii) directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are in a position of general control or management;

- (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25.

#### **12. Disclosure of interests**

12.1 Subject to paragraphs 12.4 to 12.7, where you have a personal interest described in paragraph 11.2 above or in paragraph 12.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is

considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

- 12.2 You also have a personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a *relevant person* to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward, affected by the decision;

Paragraph 12.2, a *relevant person* is -

- (a) A member of your family or any person with whom you have a close association; or
- (b) Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower). ; or
- (d) Any body of a type described in paragraph 11.2(a) or (b).

- 12.4 Where you have a personal interest in any business of the Council which relates to or is likely to affect a body described in paragraph 11.2(a) or 11.2(b)(i), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

- 12.5 Where you have a personal interest in any business of the Council of the type mentioned in paragraph 11.2(c), (gifts and hospitality) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

- 12.6 Where you have a personal interest but, by virtue of paragraph 16, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

- 12.7 Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

### **13. Non participation in case of prejudicial interest**

- 13.1 Where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business -

- (a) Affects your financial position or the financial position of a person or body described in paragraph 12.3 ;or
  - (b) Relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 12.3.
- 13.2 Subject to paragraphs 13.3 and 13.4, where you have a prejudicial interest in any business of your authority—
- a) You must not participate in any discussion of the matter at the meeting.
  - b) You must not participate in any vote taken on the matter at the meeting.
  - c) If the interest is not registered, you must disclose the interest to the meeting.
  - d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.
- 13.3 Where you have a prejudicial interest in any business of the Council, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.
- 13.4 Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your authority in respect of—
- (a) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
  - (b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay; and
  - (c) any ceremonial honour given to members.
  - (d) housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
  - (e) an allowance, payment or indemnity given to members;
  - (f) setting council tax or a precept under the Local Government Finance Act 1992.
- 13.5 Where, as an executive member, you may discharge a function alone, and you become aware of a prejudicial interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

**14. Interests arising in relation to overview and scrutiny committees**

In any business before an overview and scrutiny committee of the Council (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by the executive or another of the authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken, you may attend the meeting of the overview and scrutiny committee for the purpose of explaining the reasons for the decision, or answering questions or giving evidence relating to the business, but you cannot participate otherwise in the discussion or in any vote on the matter.

#### **Part 4 - General Matters relating to Parts 2 and 3**

##### **15. Register of interests**

Subject to paragraph 16 any disclosable pecuniary interests or personal interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

##### **16. Sensitive interests**

This paragraph applies where you consider that disclosure of the details of a disclosable pecuniary interest or a personal interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees. In these circumstances, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2) of the Localism Act 2011.

##### **17. Dispensations**

The Council may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest or a prejudicial interest.