



## **Guidance on Member Code of Conduct Complaints Handling**

### **1. Introduction**

Under Section 28 of the Localism Act 2011, local authorities (other than parish and town councils) must have in place 'arrangements' under which allegations that an elected or co-opted Councillor, has failed to comply with the Council's Code of Conduct, can be considered and decisions made on such allegations. This guidance sets out the Borough Council's 'arrangements'.

This guidance is directed towards those who are considering making or who have made a Code of Conduct complaint, but is equally intended to be used by Subject Members for their reference.

#### **1.1 Explanation of Roles:**

**Borough Council:** Borough Council of King's Lynn and West Norfolk

**Complainant:** if you make a Code of Conduct complaint, you will be the Complainant.

**Council:** means the Borough Council or Parish Council, as the context requires

**Councillor:** means an elected Member of the Borough Council or a Parish Council, as the context requires (a "Councillor" and a "Member" are the same thing.)

**Independent Persons (IPs):** are people who are neither Councillors nor officers of the Council but are appointed under Section 28 of the Localism Act 2011 to work with the Council to support them with Code of Conduct complaints and standards issues. Under the Localism Act their views must be sought and taken into account on any matter under investigation, the Subject Member may seek their views at any stage and the Council may also seek their views at any other stage of the process.

**Monitoring Officer:** is the officer employed by the Borough Council who has the responsibility for contributing to the promotion and maintenance of high standards of conduct by Councillors and has overall responsibility for the operation of the Code of Conduct regime

**Subject Member:** is a reference to the Councillor who is the subject of the allegation (a "Councillor" and a "Member" are the same thing.)

**Parish Council:** means any parish or town council in the Borough of King's Lynn and West Norfolk

## **1.2 Who you can complain about**

- Any Borough Councillor
- A Councillor of any Parish or Town Council in the Borough

## **1.3 Monitoring Officer Contact Details**

**Email:** [monitoring.officer@west-norfolk.gov.uk](mailto:monitoring.officer@west-norfolk.gov.uk)

**Address:** Monitoring Officer, Legal Services King's Court Chapel Street King's Lynn Norfolk PE30 1EX

**Tel:** (01553) 616200

## **2. Initial assessment of complaints**

### **2.1 Preliminary reporting to the Monitoring Officer**

If you wish to seek preliminary advice about your complaint from the Monitoring Officer in advance of making a formal written complaint, you can contact the Monitoring Officer using the contact details in section 1.3.

The Monitoring Officer will not provide a verbal conclusion to your complaint at this preliminary stage, for the sake of impartiality and fairness, however the Monitoring Officer will be able to discuss the generalities of the requirements of the Code of Conduct and how these are assessed.

An option to consider at this preliminary stage is whether any 'Informal Resolution' (see section 3) could be explored by agreement of the parties and without the need to commence the formal written Code of Conduct complaint process set out below.

If you remain dissatisfied, you will be advised to make a written Code of Conduct complaint (the Localism Act 2011 requires that formal complaints are made in writing).

Please note that where serious allegations against a Councillor are reported using this preliminary route, the Monitoring Officer may need to share the content of the allegation with other authorities or with the Council/Councillor concerned. The source of the allegation would not be shared unless the Monitoring Officer was compelled to do so by an order or rule of law.

### **2.2 Considerations before submitting your Code of Conduct complaint**

- If you have decided to progress with a written complaint, we ask that your complaint be made using the Councillors' Code of Conduct Complaint Form. The form can be found on the Borough Council's website at [https://www.west-norfolk.gov.uk/downloads/download/38/complaints\\_against\\_councillors\\_form](https://www.west-norfolk.gov.uk/downloads/download/38/complaints_against_councillors_form)

- If you do not have access to the online form, a hardcopy form may be obtained by contacting the Borough Council Legal Services team on (01553) 616200.
  - If a disability prevents you from making your complaint in writing you may contact the Monitoring Officer for assistance.
  - If you have any questions about the form, please contact the Monitoring Officer in writing.
  - If you do not wish to use the Code of Conduct complaint form, complaints can be accepted in writing if, at a minimum, the following information is provided:
    - your name, address and any other contact details for you e.g. email address, mobile number;
    - who the complaint is about and the Council that the Councillor belongs to;
    - details of the alleged misconduct including, where possible, dates, witness details and other supporting information; and
    - whether you wish your identity to remain confidential, or whether you want any part of your complaint to be confidential \*see below
- \* Please note that only in exceptional circumstances would a Complainant be granted confidentiality and that as a matter of fairness the Complainant's identity would normally be disclosed to the Subject Member (see section 2.4 below on confidentiality).
- If you wish to remain anonymous in the complaints process, then you can still report your complaint to the Monitoring Officer, and the Monitoring Officer will consider whether exceptional circumstances exist for you to remain anonymous as part of the Code of Conduct complaint process, or whether another route is available to address your complaint, for example by the Monitoring Officer using the Borough Council's Whistleblowing Complaint process.
  - If you cannot write your complaint in English, we can arrange to have the complaint translated for you.
  - If there are aspects of your complaint that you wish to remain confidential then you must specify these. Please note, however, that it is unlikely that we will be able to address these confidential aspects within decisions about the complaint if the Subject Member has not had an opportunity to respond to them.

## 2.3 Submission

Please submit your completed complaint form/written details of your complaint together any documents/evidence that supports your complaint using one of the following methods:

- Email: [monitoring.officer@west-norfolk.gov.uk](mailto:monitoring.officer@west-norfolk.gov.uk)
- Address: Monitoring Officer, Legal Services King's Court Chapel Street King's Lynn Norfolk PE30 1EX
- Deliver in person to the above address.

If there is a reason you cannot submit your complaint using one of the above methods, please contact the Monitoring Officer to explain the reason. Reasonable adjustments will be made where necessary.

## **2.4 Anonymity & Confidentially**

Please note that anonymity and confidentiality are different concepts. Anonymity means the Complainant is not known whereas confidentiality means that the Complainant is known to the Borough Council but their identity has been withheld for a specific reason.

As set out above, only in exceptional circumstances would a Complainant be granted confidentiality and that as a matter of fairness the Complainant's identity would normally be disclosed to the Subject Member.

In the interests of fairness and natural justice, Members who are complained about have a right to know who has made the complaint. They have a right to be provided with a full copy of the complaint. We are unlikely therefore to withhold your identity or the details of your complaint unless the Monitoring Officer is of the opinion that it is in the public interest to do so. For example, where the disclosure of your personal details may result in the evidence being compromised or destroyed by the Subject Member or if there is a real possibility of intimidation of the Complainant or witnesses by the Subject Member.

There may be exceptional compelling reasons why an anonymous complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the Complainant. For example, if an anonymous Complainant submitted a video showing the Councillor acting inappropriately, it may be considered that the public interest in investigating the allegation outweighed the issue of anonymity.

If there are aspects of your complaint that you wish to remain confidential then you must specify these. Please note, however, that it is unlikely that we will be able to address these confidential aspects within decisions about the complaint if the Subject Member has not had an opportunity to respond to them.

## **2.5 Other Agencies**

Complaints which identify criminal conduct or a breach of other regulations by any person may be referred to the police or any other relevant regulatory agency for consideration. In such cases the Borough Council will consider pausing the assessment of the complaint pending action by the other body.

## **2.6 Data Protection**

The impact of the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR) will be considered to ensure that any personal data is processed fairly and lawfully at every stage of the process. Reasonable expectations of privacy need to be balanced against the public interest.

## **2.7 Acknowledging receipt of a complaint**

When your complaint is received, you will receive an acknowledgment along with a copy of this Guidance and a date by which the next step is to be taken.

## **2.8 First-Step Criteria**

The first step is to assess your complaint against the following jurisdictional criteria:

- a. the complaint is against one or more named Councillors of the Borough Council or of a Parish Council;
- b. the named Councillor was a Councillor at the time of the alleged conduct, and is still a serving Councillor;
- c. the complaint relates to matters where the Councillor was acting as a Councillor or representative of the Council and it is not a private matter (i.e. the Subject Member must have been acting in their official capacity);
- d. the complaint is, in substance, about the conduct of the named Councillor(s) and not dissatisfaction with a decision of the Borough Council or Parish Council
- e. the complaint, if proven, could be a breach of the Code under which the Subject Member was operating.

In relation to the final bullet point above, the Monitoring Officer will not only consider the parts of the Code of Conduct identified by you but will consider whether any other parts are engaged.

If the complaint fails one or more of the First-Step Criteria above, the complaint will not move onto the next stage of the process. You will be informed that no further action will be taken in respect of the complaint and the Subject Member will be informed that a complaint has been made about them, along with details of the complaint and confirmation that it has been rejected as it did not pass the First-Step Criteria. Unless the anonymity and confidentiality provisions above apply, your name as the Complainant will also be disclosed.

If there is any doubt about whether the First-Step Criteria have been met the complaint should proceed to the next stage. For example, if it is unclear whether the Councillor was acting in an official capacity or not then the complaint should proceed to the next stage.

## **2.9 Notifying the Subject Member**

If your complaint passes the First-Step Criteria, then the full details of your complaint will be sent to the Subject Member and we will invite their comments on it within an identified timescale.

If there are aspects of your complaint that you wish to remain confidential then you must specify these. Please note, however, that it is unlikely that we will be able to address these confidential aspects within decisions about the complaint if the Subject Member has not had an opportunity to respond to them.

## **2.10 Pre-assessment enquiries**

The purpose of this initial assessment is **not** to carry out an investigation. This initial assessment stage is to undertake a 'filtering' exercise to determine whether a full investigation is warranted. Accordingly, we will only be gathering basic information at this stage. It is highly unlikely that we will speak to witnesses.

When we notify the Subject Member that a complaint has been made about them, and seek their comments, the Subject Member will usually be given 10 working days in which to submit their comments. This can be extended or shortened where the circumstances support this, in the view of the Monitoring Officer. The Subject Member will have the right to seek the views of the Independent Person at this stage.

Where a complaint is received about a Parish Councillor, we will also notify the clerk of that Parish Council and may ask for relevant factual information which would help in the assessment of the complaint, subject to the notification of the complaint to the clerk being prejudicial to the consideration of the complaint.

We may contact Complainants for clarification of their complaint if either we or the Subject Member are unable to understand the substance of the complaint made or there are significant facts missing.

We may also carry out preliminary enquiries, for example making checks with Companies House or reviewing the minutes of a meeting(s).

## **2.11 Second-Step Criteria**

We will then assess your complaints against the following Second-Step Criteria:

- a) Does the complaint contain sufficient evidence to demonstrate a reasonable prospect of a breach of the Code, even where further information is sought from the Complainant?
- b) Is the matter serious enough and sufficiently in the public interest to warrant the public resource and expense of an investigation?
- c) Are there alternative, more appropriate, remedies that should be explored first?
- d) Does the complaint, in the view of the Monitoring Officer, appear malicious, politically motivated, or 'tit for tat'?
- e) Whether, even if proven, the complaint would not be serious enough to warrant any sanction (see section 5.1 on sanctions);
- f) Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;
- g) Whether a substantially similar complaint has been submitted and accepted;
- h) Does the complaint relate to conduct in the distant past? This would include consideration of any reason why there had been a delay in making the complaint;
- i) Has the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting;
- j) Is it about someone who is seriously ill, thus impeding their ability to engage in the complaint process?

- k) Had the Subject Member acted on the advice of an officer or the Independent Person in relation to the conduct complained of?
- l) Did the conduct arise from lack of experience or training?
- m) Is the subject matter of the complaint being dealt with through any other complaints, legal or regulatory process.

The above criteria is intended to be indicative rather than prescriptive, and the underlying public interest will always be considered when deciding on whether to take action on a complaint.

## **2.12 Decision**

### **2.12.1 Initial assessment decisions**

The Monitoring Officer will aim to complete their initial assessment of your complaint within 20 working days of receiving the complaint, subject to any extension of time provided to a Subject Member to provide their comments and any further clarifications sought from you.

Where the Subject Member has not commented and they have not provided a reasonable excuse for the delay, attempts will be made to ascertain that the Subject Member has received the correspondence. If after reasonable checks have been made and a response is still not received in a reasonable time, then the initial assessment will be undertaken, accounting for the lack of response and engagement of the Subject Member.

The Independent Person will be invited to give their views as part of the initial assessment, to be confirmed in writing, unless extraordinary circumstances exist, in the view of the Monitoring Officer, that the initial assessment should be undertaken without the views of the Independent Person.

One of the three following decisions will be reached on an allegation:

- no further action should be taken on the allegation;
- the matter should be dealt with through a process of informal resolution in the first instance (see section on informal resolution) or;
- the matter should be referred for a formal investigation (see section on investigations).

### **2.12.2 Decision to take no action**

We may decide that no further action is required in respect of your complaint.

There is no right of internal appeal against a decision not to take any further action, but you are recommended to seek independent legal advice on judicial review if you wish to challenge the decision.

### **2.12.3 Referral for informal resolution**

Please refer to the separate guidance below on informal resolution at section 3.

### **2.12.4 Referral for investigation**

Please refer to the separate guidance below on investigations at section 4.

### **2.12.5 Notification of assessment decisions**

In all cases, an initial assessment decision notice will be issued to you and the Subject Member.

If the Subject Member is a Parish Councillor and the Borough Council has decided to take no further action with regard to the complaint, this will be confirmed to the clerk.

If the Subject Member is a Parish Councillor and the Borough Council has decided to take some action with regard to the complaint, a copy of the initial assessment decision notice will also be sent to the clerk with your name redacted out if it is not already publicly known that you are the complainant.

There is no legislative requirement for an initial assessment decision notice to be published. Nevertheless, please note that an initial assessment decision notice can be requested under the Freedom of Information Act 2000. Such request will be considered on its merits on a case-by-case basis.

## **3. Informal resolution**

We may decide that some form of 'informal resolution' is the action needed following an initial assessment. We may also decide that informal resolution may be more appropriate than referring a matter to a hearing following completion of an investigation.

You may also request informal resolution at any stage. Any such request will be considered by the Monitoring Officer, in consultation with the Independent Person where deemed necessary.

### **3.1 Why seek an informal resolution?**

An informal resolution can be a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. It should be borne in mind however that dealing with a matter by informal resolution at the initial assessment stage is making no finding of fact (unless the Subject Member accepts the facts).

The following is a non-exhaustive list of the types of situations in which informal resolution may be considered appropriate:

- a. the same particular breach of the Code being committed by several Councillors, indicating poor understanding of the Code and the Council's procedures;
- b. a general breakdown of relationships, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the Council;
- c. misunderstanding of procedures or protocols;
- d. misleading, unclear or misunderstood advice from officers;
- e. lack of experience or training;
- f. interpersonal conflict;
- g. allegations and retaliatory allegations from the same Councillors;
- h. allegations about how formal meetings are conducted;
- i. allegations that may be symptomatic of governance problems within the Council, which are more significant than the allegations in themselves.

### **3.2 Who can be the subject of informal resolution?**

Informal resolution could either be directed at the Subject Member, both the Subject Member and the Complainant, or at the Council more generally.

If the Subject Member refuses to comply with the informal resolution, this may mean that the complaint is referred for investigation.

### **3.3 Examples of informal resolution**

- An apology;
- Training by the Subject Member;
- Policy/protocol change or adoption by the Council;
- Provision of advice from the Monitoring Officer to the Subject Member; or
- Mediation.

## **4. Investigations**

### **4.1 Principles of investigation**

While an investigation under the Localism Act 2011 is not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights as the outcome of any hearing will not impact upon the rights of the Councillor to carry on the role as a Councillor, any investigation must nevertheless abide by the principles of natural justice<sup>1</sup>. That means that the Councillor must know what they are accused of and be given the opportunity to comment on the allegations.

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<sup>1</sup> R (Greenslade) v Devon County Council 2019

Any investigation should therefore bear in mind some key principles:

- **Proportionality.** That is, the investigation should strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or relatively simple, for example where the facts are not in dispute, there may be no need for any formal investigation, but a report can simply be produced. Equally not all of the steps in this guidance need be followed in every instance of a formal investigation – a judgment must be made in each case based on its complexity and contentiousness.
- **Fairness.** The investigation should make sure that the Subject Member knows what they are accused of and has an opportunity to make comments on the investigation, including on a draft report. Again, this may depend on the nature of the complaint – for example, an alleged failure to declare an interest may be largely a factual matter which needs little or no investigation rather than one that needs to involve evidence from other parties.
- **Transparency.** As far as is practical and having regard to an individual's right to confidentiality, investigations should be carried out as transparently as possible – all parties should be kept up to date with progress in the case.
- **Impartiality.** An investigator should not approach an investigation with pre-conceived ideas and should not be involved where they have a conflict of interest.

## **4.2 Conduct of the investigation**

The Monitoring Officer will decide who conducts the investigation. The appointed investigator will be required to refer to section 5 of the guidance on conducting investigations issued by the Local Government Association available at the following link:

<https://www.local.gov.uk/publications/guidance-member-model-code-conduct-complaints-handling>

You will be informed who is carrying out the investigation and of the timescales for completing the investigation. You will also have an opportunity to provide the investigator with any further information or documents that you consider relevant. You and/or other relevant witnesses may be asked for interview.

## **4.3 Timescales**

There are many factors that can affect the time it takes to complete an investigation. Nevertheless, it is important that there are realistic targets from the outset for the completion of an investigation. This allows the Monitoring Officer to monitor the progress of investigations and explore reasons for any delays.

The aim is that the report on the investigation is completed within a maximum of six months of the original complaint being referred for an investigation.

Refusal by the Subject Member or other relevant party to cooperate, for example by not making themselves available for an interview without good reason, should not be

a reason for delay but should be reflected in the report. If the Subject Member refuses to cooperate that of itself is a potential breach of the Code of Conduct and may be something that any decision maker in a case may want to take account of.

#### **4.4 Starting an investigation**

The investigator will establish the scope of the investigation, including which parts of the Code of Conduct are engaged, and inform you and the Subject Member. If, for any reason, there is a change in the scope of the investigation, you will be notified of this.

If further allegations of breaches of the Code of Conduct are made since the initial submission of the complaint, or evidence is disclosed as part of the investigation of additional potential breaches of the Code of Conduct, then the investigator will consult with the Monitoring Officer in determining the extent to which the further allegations/potential breaches can be included within the scope of the current investigation.

It may be necessary to seek a further written complaint with regards to the additional allegations/potential breaches in order for them to be included in the current investigation.

The Monitoring Officer will determine whether the additional allegations/potential breaches can be included. If the scope of the investigation changes, both the Complainant(s) and Subject Member will be informed.

The Subject Member has the same rights to respond to all additional complaints as the original complaints.

The Subject Member will have the right to seek the views of the Independent Person at this stage and be represented at any interviews with the investigator.

#### **4.5 Deferring an investigation**

An investigation will be deferred when any of the following conditions are met:

- There are ongoing criminal proceedings or a police investigation into the Councillor's conduct, or we are put on notice that this will be commenced;
- We cannot proceed with your investigation without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceeding;
- The investigation might prejudice another investigation or court proceeding.

An investigation may also need to be deferred:

- when there is an ongoing investigation by another regulatory body;
- because of the serious illness of a key party;
- due to the genuine unavailability of a key party.

You will be notified in the event of a need to defer the investigation.

## **4.6 Confidentiality**

We will treat any information we receive during the course of an investigation as confidential to the investigative process until the investigation is completed unless there is a statutory requirement to disclose it. Similarly, you should note the confidential nature of the proceedings.

We treat the information that we gather during the investigation as confidential, for fairness of the process. Maintaining confidentiality reduces the risk of evidence being viewed as biased and preserves the integrity of the investigation.

We will ask the people we interview, and anyone else aware of the investigation, to maintain confidentiality.

Please note that if you decide to publish details around the complaint before its determination, you could be exposed to an action for defamation. This would be brought by the Subject Member in a private capacity and is a matter over which we have no control.

When the complaint has been received by the Borough Council, the Borough Council is then a data controller in respect of the personal data contained within the complaint and also a body subject to the Freedom of Information Act 2000.

## **4.7 Draft and final reports**

The report must make one of the following findings on the balance of probabilities:

- that there have been one or more failures to comply with the Code of Conduct; or
- that there has not been a failure to comply with the Code.

The investigator will produce a draft report to be shared with the Complainant and Subject Member for comment.

The draft report will be shared with the Monitoring Officer for assessment of whether the investigation and report has addressed the scope of the complaints.

The Independent Person's views will be obtained on the draft report and included within the final report.

Where criticism is made of a third party (for example a witness) who will not otherwise have an opportunity to comment on a draft report then a Maxwellisation process<sup>2</sup> should be followed before a draft report is completed.

The final report will be provided by the investigator to the Monitoring Officer. The Monitoring Officer will issue the final report to you, the Subject Member and the Independent Person with details of the next steps (see below).

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<sup>2</sup> Maxwellisation is the process by which people who may be subject to criticism in public reports can comment on those proposed criticisms before the report is published.

The investigation is complete once the final report is issued by the investigator.

#### **4.8 Completion of an investigation**

On completion of an investigation, the Monitoring Officer may decide:

- to take no further action;
- to seek to resolve the matter via informal resolution (see section 3); or
- to refer the matter to a Standards Committee hearing for determination.

In doing so the Monitoring Officer must consult with the relevant Independent Person.

There is no right of internal appeal against the decision on the progression of the complaint after the investigation is concluded. You are recommended to seek independent legal advice on judicial review if you wish to challenge the decision.

### **5. The Hearings Process**

#### **5.1 Constituting a Hearing Panel**

Before a date is set for a hearing, a Hearing Panel will be constituted in accordance with the Borough Council's Constitution. The Hearing Panel will be made up of three elected Members appointed to the Borough Council's Standards Committee, unless due to extraordinary circumstances (such as conflicts of interest), other Members must be appointed.

All Hearing Panel Members must have received training in relation to their role on the Hearing Panel.

#### **5.2 Preliminary Actions**

Once a Hearing Panel has been constituted, the following will be undertaken:

- a. the Hearing Panel Members will receive the draft bundle of documents for the hearing and be provided with the opportunity to review this. A meeting will then be held to discuss the procedural matters around how the hearing will take place.
- b. A set of procedural questions will be issued to the Subject Member for response within a specified time, addressing procedural matters such as:
  - Do they agree or disagree with the findings of fact in the investigation report, including reasons for any of these disagreements
  - Do they agree or disagrees with the findings of fact in the investigation report, including reasons for any of these disagreements
  - Do they want to give evidence to the hearing, either verbally or in writing
  - Do they want to call relevant witnesses to give evidence to the hearing, and if so why and why

- Do they want to request any part of the hearing to be held in private
  - Do they want to be represented at the hearing, and if so by who
- c. The investigator will be asked if they wish to call any witnesses.
- d. Once these responses have been provided, or in the case of a nil response, the deadline has passed for provided responses, the Hearing Panel will be convened again to determine the procedural running order of the hearing.
- e. If one or more Hearing Panel Members believe that key information is missing from the draft bundle that they consider is fundamental to the hearing, the matter will be referred back to the Monitoring Officer to determine the way the appropriate way to address the matter. Reopening the investigation to address the concern will be an option of last resort where no other remedy will suffice.

### **5.3 Convening the Hearing and Procedural Arrangements**

All reasonable efforts will be made to find a suitable date for the hearing, however if the Monitoring Officer, in consultation with the Hearing Panel Members, has reasonable cause to suspect the Subject Member is being deliberately obstructive to the hearing taking place in a reasonable timeframe, it is an option for the hearing to be set on a date that the Subject Member claims they are not able to attend.

Once a date is set, all relevant parties will be informed, including the Independent Person and the clerk of the Parish Council where necessary and be provided with procedural details of the hearing.

Hearings may be held in public or private session. If the hearing is held in open session, you will be entitled to attend the hearing as a member of the public, subject to any requirements of the investigator to ensure a fair hearing (for example the investigator may not want you to hear the evidence of other witnesses before you give your evidence). If the hearing is held in private session, you will not be able to attend.

As a Complainant, you do not have the automatic right to attend the hearing in your capacity as a Complainant. The investigation will be presented to the Standards Committee Panel by the investigator. If you are witness that the investigator wishes to call, you will be notified of this and provided with the relevant details for your attendance at the hearing. It is not automatic that the investigator will require you to be a witness; this is for the investigator to decide.

The Hearing Panel has discretion to determine all questions of procedure arising in advance of the Hearing. This includes how long the parties may give evidence for, and which witnesses the Hearing Panel hears from.

The Hearing Panel also has discretion to approve the attendance of the Subject Member's representation or decide whether the Subject Member can be accompanied by a person(s) for moral support. The names of the Subject Member's proposed representative or person(s) attending as moral support should be submitted to the

Monitoring Officer at least 14 days before the hearing for the Panel Hearing's consideration.

#### **5.4 Decisions at the Hearing**

The Hearing Panel has discretion to determine all questions of procedure arising during the hearing itself.

The Panel Hearing is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

Once the panel has heard all the relevant evidence it should adjourn the hearing and retire in private to consider its findings.

Before retiring the Chair should invite the Independent Person to give their views to the Hearing Panel which they must have regard to. These views should be given in the open session so that all sides can have a chance to challenge them as necessary. If the Independent Person retires with the Hearing Panel, they should not take part in any decision making as they are not part of the formal decision-making process. In addition, they should ensure that any views they give to the Panel are repeated publicly when the hearing re-convenes.

The supporting officer(s) retires with Hearing Panel and are there to advise on matters of procedure and law. Any advice given, however, must then be repeated publicly when the hearing re-convenes.

The Hearing Panel will determine whether there has been a breach(es) of the Code of Conduct or not.

#### **5.5 Sanctions**

If the Hearing Panel finds that there has been a breach of the Code of Conduct then it will consider whether any sanctions should be applied or recommended onwards to the body/person that can determine whether to apply them or not.

Available sanctions include one or a combination of the following:

- a. report the findings in respect of the Subject Member's conduct to Full Council (or the relevant parish council);
- b. issue (or recommend to the parish council to issue) a formal censure at Full Council;
- c. request the Subject Member provide a written apology to any identified person and provide a copy of that apology to the Monitoring Officer;
- d. recommend to the Subject Member's group leader (or in the case of un-grouped Councillors, recommend to any group leader that has provided that Councillor with one of that group's seats) that the Subject Member be removed from identified committees or sub-committees of the Council (or recommend such

- action to the Parish Council). Any such identified committee/sub-committee will be its own separate recommended sanction;
- e. recommend to the Leader that the Subject Member be removed from any executive position of the Cabinet or any outside body appointed by Cabinet;
  - f. recommend that the Subject Member be removed from all outside appointments to which they have been appointed or nominated
  - g. require (or recommend that the Parish Council requires) the Subject Member to undergo identified training, to be arranged by the Monitoring Officer or the parish clerk, as required;
  - h. recommend to Full Council (or recommend to the parish council) that the Subject Member be removed from a specified number or all outside appointments to which they have been appointed or nominated by Full Council (or by the parish council);
  - i. recommend to Full Council (or recommend to the Parish Council) that it withdraws facilities provided to the Subject Member by the Council for a specified period, such as a computer, ipad, etc;
  - j. recommend to Full Council (or recommend that the Parish Council) that it excludes the Subject Member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings and/or restricts contact with officers to named officers only;
  - k. if relevant, recommend to Full Council that they resolve to invite the Subject Member to resign any civic role to which they are appointed by Full Council (or recommend that the Parish Council do so);
  - l. if relevant, recommend to Full Council that they resolve to invite the Subject Member to resign any Chair or Vice-Chair appointment to any body which they are appointed to by Full Council (or recommend that the Parish Council do so); and
  - m. if relevant, recommend to Full Council that the Subject Member be removed from their role as Leader.
  - n. recommend that the Subject Member be removed from any other positions of responsibility

Where the Subject Member is a Parish Councillor, the matter is referred back to the Parish Council to confirm that a breach of the Code has been found and with the recommended sanction(s). The Parish Council should then meet to consider whether to impose that sanction. The Parish Council cannot overturn the finding that there has been a breach of the Code or impose a different sanction to that recommended by the hearing panel.

The Parish Council will be asked to report back to the Monitoring Officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled. Please note Parish Councils will be under no obligation to impose the sanctions recommended to them.

Sanctions involving restricting access to a Council's premises or equipment or contact with officers should not unnecessarily restrict the Subject Member's ability to carry out their responsibilities as an elected representative or co-opted member.

## **5.6 Publicising the findings**

A decision notice will be published on the Council's website within 7 working days of the hearing.

## **5.7 Appeals**

There is no internal right of appeal against a decision on a Code of Conduct complaint however we recommend that you seek independent legal advice should you not be happy with the outcome of a hearing.