



Walsall Council

Standards Committee

Standards Committee

2nd April 2012

Draft Model Arrangements for Investigating Complaints under the Council's Code of Conduct

Summary of Report

The purpose of the report is to provide information to the Standards Committee concerning arrangements for managing complaints about alleged member breaching the Council's code of conduct, when the new standards regime comes into effect on 1 July 2012.

Recommendations

- (1) That the content of the report be noted.

Background

Chapter 7, Section 27 of the Localism Act 2011, requires the local authority to promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty the authority must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. Section 28(7) of the Localism Act 2011 requires a local authority to put in place arrangements under which allegations about a breach the code of conduct can be investigated. To date there is no published secondary legislation providing guidance as to what is expected in relation to such arrangements; therefore the authority has drafted its own arrangements to deal with complaints which are the subject of consultation with a working group of elected members. Any such arrangements will be taken to Council for approval prior to being adopted.

Recommendations

- (1) That the content of the report be noted.

Resource Considerations:

Financial:

None arising from this report

Legal:

Under the Localism Act 2011 the Council must put in place arrangements for dealing with allegations of misconduct by elected members under the Council's code of conduct.

Staffing:

None arising from this report

Citizen Impact:

The Council will have to have arrangements in place to deal with complaints about elected members conduct in order to ensure that citizens retain confidence in the democratic process, and standards of conduct in public life.

Community Safety:

None arising from this report

Environmental:

None arising from this report

**Performance and Risk Management:
Risk:**

None arising from this report

Performance Management:

None arising from this report

Equality Implications:

This report complies fully with the Council's policies on equality and diversity

Consultation:

The Council will continue to consult with elected members, and members of the public in relation to any proposed code of conduct, and arrangements for dealing with complaints about behaviour that may potentially breach the code when adopted.

Background papers

All published

Signed:

Tony Cox
Head of Legal & Constitutional Services & Monitoring Officer

Date:

Contact Officer

Jo Whitehouse
Senior Constitutional Services Officer

(01922 652025

* whitehousejl@walsall.gov.uk

Appendix 1: Model Arrangements for the investigation of complaints

Appendix 2: Draft procedure for Investigations

Appendix 3: Draft procedure for hearings

Arrangements for dealing with standards allegations under the Localism Act 2011

1 Context

Section 28(6) and (7) of the Localism Act 2011, provides that the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member against whom an allegation as been made.

The “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and available for inspection on the authority’s website and on request from Reception at the Civic Offices.

3 Making a complaint

If you wish to make a complaint, please write or email to –

“The Monitoring Officer”
Legal and Democratic Services
Walsall Metropolitan Borough Council
Town Hall
Darwall Street
Walsall
WS1 1TP

Or –

monitoringofficer@walsall.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from Reception at the Civic Offices.

- You will need to provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress.
- The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.
- The authority will not investigate anonymous complaints, unless there is a clear public interest in doing so.
- It is a requirement of the Act that any complaint or allegation that an elected member has failed to comply with the Council's code of conduct must be in writing.
- There is a presumption that a complainant will not be allowed to claim confidentiality unless exceptional circumstances exist. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 10 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and/or other regulatory agencies.

5 How is the investigation conducted?

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix Two to these arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak with you to understand the nature of your complaint. It will also allow you to explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview. However the conduct of the investigation is in the total discretion of the Investigating Officer.

The Investigating Officer will normally write to the elected member against whom you have complained and provide him/her with a copy of your complaint. He will ask the elected member to provide his/her explanation of events, and to identify what documents if any he needs to see, and who he needs to interview.

In exceptional cases, where it is appropriate to keep your identity confidential, or where disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the elected member, or delay notifying the elected member until the investigation has progressed sufficiently. The Monitoring Officer shall keep the issue of confidentiality under review throughout the complaints process.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned. This will allow you and the elected member an opportunity to identify any matter in the draft report which you disagree with, or which you consider requires more consideration.

Having received and taken into account any comments which are made on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the elected member concerned, notifying you that he is satisfied that no further action is required, providing you both with a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or is insufficient to determine the complaint, he may ask the Investigating Officer to reconsider his/her report.

7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before a Hearings Panel or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will refer the Investigating Officer's report to the Hearings Panel who will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as Appendix Three to these arrangements.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

- 8.1 Publish its findings in respect of the member's conduct;
- 8.2 Report its findings to Council for information;
- 8.3 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to arrange training for the member;
- 8.6 Remove the member from all outside appointments to which he/she has been appointed or nominated by the authority;
- 8.7 Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 8.8 Exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

9 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10 Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Standards Committee has decided that it will comprise a maximum of five members of the Council, including not more than one member of the authority's Executive and comprising members drawn from at least 2 different political parties. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

The Independent Person is invited to attend all meetings of the Hearings Panel and his views are sought and taken into consideration before the Hearings Panel takes any decision on whether the 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.

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 11.2 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, “relative” means –
 - 11.2.1 Spouse or civil partner;
 - 11.2.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.2.3 Grandparent of the other person;
 - 11.2.4 A lineal descendent of a grandparent of the other person;
 - 11.2.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.2.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.2.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Appendix One	The Authority’s Code of Conduct
Appendix Two	Procedure for Investigations
Appendix Three	Procedure for Hearings

General Guidance on Report Writing for the Investigating Officers

The investigation report must make one of the following findings:

- That there has been a failure to comply with the Council's code of conduct (a finding of failure)
- That there has not been a failure to comply with the Council's code of conduct (a finding of no failure)

If the Investigating Officer finds there has been no breach of the code, they should explain this in the report.

The investigation report should contain the following information listed below:

- A "confidential" marking
- A "draft" or "final" marking
- The date
- A summary of the complaint(s)
- The relevant sections of the councils code of conduct
- Evidence
- Findings of fact
- Reasoning
- A finding as to whether or not there has been a failure to comply with the Council's code of conduct

The level of detail required will vary for each report, depending on the complexity of information to be considered and presented.

The report will contain documents that you have relied on in reaching your conclusions. These may include:

- A chronology of events
- Records of telephone conversations, letters and notes of interviews with witnesses.

Drafting the report

When the Investigating Officer has concluded the investigation they will need to write up their findings in a report to the Monitoring Officer. The report should contain the following information:

Title page

This must state:

- Who the report is for

- Who the report is by
- The date of the report

Executive summary

This must state:

- The full allegation and who it was made by
- The provisions of the code of conduct that were considered
- A conclusion as to whether there has been a failure to comply with the code
- The finding

Member X's official details

This must state:

- When the member was elected
- The members term of office
- Any other relevant authorities they are a member of
- Details of any committees on which the member serves or has served
- The date a member ceased to be a member, where relevant
- The date the member signed an undertaking to abide by the code of conduct
- Full details of any training the member has received on the code of conduct

Relevant legislation and protocols

This must state:

- Any relevant extracts from the code
- Any relevant extracts from any other legislation or protocols considered in the report

Evidence gathered and the investigators consideration of it.

When gathering and considering evidence you may wish to follow this procedure:

1. Start by summarising who you have obtained information from.
2. Outline chronologically the facts that you have established.
3. Set out undisputed facts as facts. Do not summarise them or preface them with "he said" or "the minute state". If they are undisputed just state them as fact.
4. Where there is a dispute in fact, outline the different views and your conclusion on them. You need to form a conclusion based on the balance of probabilities. Also state why you have reached this conclusion. For example:
 - The clerk, Councillor Jones and Councillor Smith met at Councillor Jones's house on Y date at X time.
 - At interview the clerk stated that Councillor Jones said...
 - At interview Councillor Smith stated that Councillor Jones told the clerk...
 - At interview Councillor Jones stated that he told the clerk...
 - I have considered the following issues when deciding what Councillor Jones said to the clerk... I consider that on the balance of probabilities Councillor Jones told the clerk... because...
5. Include all the relevant evidence you have gathered even if it does not support the conclusions you have reached.
6. Include any mitigating or aggravating factors, such as a state of mind of those involved.
7. When you refer the report to material in the evidence bundle, identify the document referred to.

Summary of the material facts

- Summarise the facts needed to confirm the conclusions you have reached.
- Where there was a disputed fact, you will only need to include the conclusion you came to.

The subject member's additional submissions

- Outline information or opinions submitted by the subject member, which you did not consider relevant to the case.
- Outline why you do not deem information or opinions submitted by the subject member to be relevant.

Reasoning as to whether there has been a failure to comply with the code of conduct

- Taking each alleged breach in turn.
- Outline which part of the code of conduct you are considering. Explain the test you are applying when determining if there has been a failure to comply with the code.
- Explain in detail, giving reasons, why you do not consider the conduct constituted a breach of the code.
- Do not introduce any new facts or opinions. You must only refer to evidence or opinions that have been outlined earlier in the report.
- Make sure your explanation of the test you are applying, and the reasons for your conclusions, are detailed and clear enough to understand for a lay person with no legal background.

Finding

You will need to make a finding about each alleged breach of the code.

- Outline in detail the reason for your decision.
- Refer to aggravating or mitigating facts, which must be outlined in the FAQ section earlier in the report.

Schedule

- List the exhibits with the title "Schedule"
- Exhibit all the evidence upon which you have relied when reaching your conclusion.
- In complex cases it may be appropriate to provide a chronology.
- Provide a list of unused material.

Draft report

- If you are issuing a draft report, you should send a copy to the subject member, the complainant, and the Monitoring Officer inviting their comments by specified date. This is helpful if a report is complex or your conclusions are likely to be disputed by either party.
- The draft should not be sent to other witnesses or all parties interviewed, you should seek confirmation of their evidence from them before issuing the report.
- Make sure the draft report is clearly marked as "draft".
- You must state that the report may be subject to change and does not represent the final conclusion.
- If you have found a subject member in breach, you should send them copies of the evidence that you relied upon when reaching this conclusion.
- You must consider whether any of the information in the draft report, or evidence bundle, is confidential information that should not go into the public domain, for example, medical details or personal contact details. Information of this nature should be edited from the draft and final report unless it is essential to the reasoning.
- The draft report can be discussed with a legal representative. The draft report is confidential.

Comments on the draft

- Responses to your draft may reveal the need for further investigation, or they may have nothing of relevance. Occasionally, responses may reveal a need for further investigation and may result in changes to the report. These changes may be significant enough for you to consider issuing a second draft. Once you have considered whether the responses add anything of substance to the investigation, you are to make your final conclusions and recommendations.
- Where comments on the draft are critical of the investigation or the investigator, you may need to consider how to respond to the complaints made. You should not let such criticisms prevent a draft report being finalised unless this is unavoidable. In particular, the investigation process, including writing the report, should not be suspended while a complaint about investigation is dealt with.
- A party may disagree with:
 1. The interpretation of the code or other legislation

2. The analysis of the evidence
3. The analysis of an individual's conduct
4. Conclusions reached in an investigation
5. The scope of the investigation
6. How and who evidence was obtained from

These complaints will normally focus on the draft or final report. They will not usually criticise the actions of a specific individual. However, they may criticise an individual for reaching certain conclusions. The Investigating Officer should avoid getting drawn into lengthy correspondence with the subject member or other interested parties in this situation.

Comments received before the draft is issued

- If the comments are made by the subject member, then you should respond in writing.
- If the subject member does not understand either the code or the investigative process, then you should seek to explain the position to them. Failure to do so may be taken into account at any subsequent hearing. However, you only show that you took all reasonable steps to address the subject member's confusion.
- If comments are made by the complainant or a third party, you can either respond to their comments or ask them to wait until they have read the draft report.

Comments received in response to the draft report

- You should keep a written record of your consideration of any comments received on the draft.
- It is best practice to provide a written response to the party explaining your position or referring them to the relevant paragraph of report. This can be done when they are sent in the final report.
- Add to the bundle of evidence any critical comments received on the draft.

Comments received after the final report has been issued

Write to the party explaining that the investigation is now closed and refer them to the Monitoring Officer of the Council.

The final report

The final report must be sent to the Monitoring Officer.

You must state that the report represents your final findings and may be presented to a local hearing panel. You should consider whether any of the

information in the report or evidence bundle is confidential information that should not go into the public domain. All such information of this nature should be edited from the final report unless it is essential to the reasoning.

Hearing Process

The pre-hearing process will be dealt with by the Monitoring Officer or other suitable officer where the Monitoring Officer is unable to act. The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and efficiently. The pre-hearing process should alert parties to possible areas of difficulty, and to provide an opportunity to resolve such areas prior to the hearing itself.

Other than in very straightforward cases, the authorities should use a pre-hearing process to:

- Identify whether the subject member disagrees with any of the findings of fact in the investigation reports, and agree where possible what evidence will be called, and what documents will be required at the hearing.
- Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide.
- Identify whether evidence about those disagreements will need to be heard during the hearing.
- Determine whether there are any parts of the hearing that are likely to be held in private.
- Decide whether any part of the investigation report of the document should be withheld from the public prior to the hearing, on the grounds that they contain "exempt" material.

Where possible the pre-hearing process will be carried out in writing. However where appropriate the Monitoring Officer or other suitable officer may hold a pre-hearing meeting between the relevant parties and their representatives.

The officer providing administrative support to the hearing process will write to the subject member proposing a date for hearing. They will outline the hearing procedure, the member's rights and they will ask for a written response from the subject member within a set time to establish whether the subject member:

- Wants to be represented at the hearing by solicitor, barrister or any other person.
- Disagrees with any of the findings of fact in the investigation report, including reasons for any of those disagreements.
- Wants to give evidence to the hearing committee, either verbally or in writing.

- Wants to call relevant witnesses to give evidence to the hearing committee.
- Wants any part of the hearing to be held in private.
- Wants any part of the investigation report or other relevant documents to be withheld from the public.
- Can attend the hearing.

A critical part of the pre-hearing process will be to focus the relevant parties' attention on isolating all relevant disputes of facts between them. This is because attention to the factual issues will save valuable time later on in the determination process.

The Monitoring Officer or other suitable officer will ask that the relevant parties provide outlines or statements of the evidence that they or their witnesses intend to give at the hearing. This will help identify issues at the hearing and give an indication of how long will be required to determine the matter.

The clerk to the hearing committee will consult with the committee's legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks prior to hearing.

The pre-hearing process summary will:

- Set the date, time and place of the hearing
- Summarise the allegation
- Outline the main facts of the case that are agreed
- Outline the main facts which are not agreed
- Note whether the subject member or investigating officer will go to the hearing and if they will be represented at the hearing
- Lists those witnesses, if any, who will be asked to give evidence
- Outline the post procedure for the hearing

The Hearing

This is a formal meeting of the authority and is not a court of law. The hearing will not hear evidence under oath, but it does decide factual evidence on the balance of probabilities. The hearing committee will work at all times in a demonstrably fair, independent and politically impartial way. To ensure that members of the public, and members of the authority, have confidence in its procedures and findings.

The decision of the hearing committee should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect with regard to the potential seriousness of the outcome, for the subject member, for the Council and the public.

Representatives

The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish.

The committee may choose to withdraw permission to allow 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.

Evidence

The hearing committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the hearing committee may not need to consider any evidence other than the investigation report, and any other supporting documents. However, the hearing committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The hearing committee can allow witnesses to be questioned and cross-examined by the subject member, the Monitoring Officer, or the investigating officer. Alternatively, the hearing committee can ask that those questions be directed through the chair. The hearing committee can also question the witnesses directly.

Witnesses

Generally, the subject member is entitled to present their case as they see fit, which includes calling witnesses they may want and which are relevant to the matters to be heard. The subject member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing.

The hearing committee has the right to govern its own procedures as long as it acts fairly. For this reason, the hearing committee may limit the number of witnesses if the number is unreasonable.

The hearing committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be cross-examined. Witnesses as to the character of the subject member, if required, regularly present their evidence in writing and may or may not actually attend the hearing.

Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect.

Sanctions

If the hearing committee finds that subject member has failed to follow the code of conduct and they should be subsequently sanctioned, it may impose anyone or a combination of the following sanctions, after consulting with the independent person:

Considering the sanction

When deciding on a sanction, the hearing committee should ensure that it is reasonable and proportionate to the subject member's behaviour. Before deciding what sanction to issue, the hearing committee should consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention? Did the subject member know that they were failing to follow the code of conduct?
- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored 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?
- What were the potential results of the failure to follow the code of conduct?
- How serious was the incident?
- Does the subject member except they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct?
- Has the subject member failed to follow the code of conduct before?

- Is the subject member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide training or mediation?
- Are there any resources or funding implications?

Sanctions involving restricting access to an authority's premises or equipment should not necessarily restrict the subject member's ability to carry their responsibilities as an elected representative or co-opted member.

The hearing committee may wish to take into account when assessing an appropriate sanction the following aggravating or mitigating factors:

Mitigating Factors (this is not an exhaustive list):

- An honestly held, although mistaken view that the action concerned did not constitute a failure to follow the provisions of the code of conduct, particularly where such a view has been formed after taking appropriate advice.
- A member's previous record of good service.
- Substantiated evidence of the members actions have been affected by ill-health.
- Recognition that there has been a failure to follow the code; cooperation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self reporting of the breach by the member.
- Compliance with the code since events giving rise to the determination.
- Some actions, which may have involved the breach of the code, may nevertheless have had some beneficial effects on the public.

Aggravating Factors (this is not an exhaustive list):

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people .
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the code.

In deciding what action to take the hearing committee should bear in mind the aim of holding and improving the standard of conduct expected of members to which the codes of conduct apply as part of the process of fostering public confidence in local democracy.

Notice of the hearing committee's findings

The hearings committee should announce its decision at the end of the hearing, where possible. It is good practice to make a short written decision available on the day of the hearing, and have a full written decision in draft on that day, before people's memories fade. The officer providing administrative support to the hearing committee will normally also draft minutes of the meeting.

The hearing committee must give its full written decision to the relevant parties as soon as possible after the hearing. In most cases it should be within two weeks of the hearing.

The relevant parties are:

- The subject member
- The complainant

The hearing committee's decision will be made public in the same manner that the council make committee decisions public, by publishing them on the council's website. The hearing committee's report and minutes will be available for public inspection for six years following the hearing. However, sections of documents relating to parts of the hearing where an exemption was applied and the access to information regulations will not be made available for public inspection.

Model Hearing procedure for Committee

The procedure is aimed to provide a consistent approach to determining matters. Their aim is to ensure that the hearing committee has an efficient and effective hearing process. This will help the committee deal with all the issues that need to be resolved in a way that is fair to the member.

Interpretation

1. "Subject member" means a member of the authority who is the subject of the allegation being considered by the committee, unless stated otherwise. It also includes the member's nominated representative.
2. "Investigator" - means the Monitoring Officer including their nominated representative or appointed investigator.
3. "Legal adviser" means the officer responsible for providing legal advice to the committee. This may be the Monitoring Officer, or another legally

qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

The subject member may be represented or accompanied during the meeting by a solicitor, Counsel or, with the permission of the committee, another person.

Legal advice

The committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the subject member and the investigator of the present.

Setting the scene

After all the members and everyone involved had been formally introduced, the chair should explain how the committee is going to run the hearing.

Preliminary procedural issues

The committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

After dealing with any preliminary issues, the committee should then move on to consider whether there are any significant disagreements about the facts contained in the investigators report.

If there is no disagreement about the facts, the committee can move onto the next stage of the hearing.

If there is a disagreement, the investigator, if present, should be invited to make any necessary representation to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.

The subject member should then have the opportunity to make representations to support their version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.

At any time, the 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 member.

If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

If the subject member disagrees with any relevant fact in the investigators report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether it would be in the public interest to continue in their absence.

After considering the members explanation for not raising the issue at an early stage, the committee may then:

- Continue at the hearing, relying on the information in the investigators report.
- Allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary.
- Postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already.

The committee will usually move to another room to consider the representations and evidence in private.

On their return, the chair will announce committees finding of fact.

Did the subject member fail to follow the Council's code of conduct?

The committee then needs to consider whether, based on the fact it is found, the subject member has failed to follow the code.

The subject member should be invited to give relevant reasons why the committee should decide that they have not failed to follow the code.

The committee should then consider any verbal or written representations from the investigator.

The Committee may, at any time, question anyone involved on any point they raise on their representations.

The subject member should invite to make any final relevant points.

The committee will then move to another room to consider the representations.

On their return, the chair will announce committee's decision as to whether the subject member has failed to follow the Council's code of conduct.

If the subject member has not failed to follow the Council's code of conduct

If the committee decides that the subject member has not failed to follow the code, the committee can move on to consider whether it should make any recommendations to the authority.

If the subject member has failed to follow the Council's Code of Conduct

If the committee decides that the subject member has failed to follow the code, it will consider any verbal or written representations from the investigator and the subject member as to:

- Whether the committee should apply a sanction
- What form any sanction should take

The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

The committee will then deliberate in private to consider whether to impose a sanction on the subject member and, if so, what sanction it should be.

On their return, the chair will announce the committee's decision.

The committee may decide after considering any verbal or written representations from the investigator, whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to pay the full written decision in draft on the day of the hearing, before people's memories fade.