

Standards Committee – 25 January 2016

Draft guidance for members of the public on how complaints and Code of Conduct investigations are undertaken

1. Summary of report

This report sets out the information available to members of the public on how complaints and Code of Conduct investigations are undertaken.

2. Recommendation

That the report be noted.

3. Report detail

- 3.1 The Localism Act 2011 abolished the Standards Board regime and instead required local authorities to draw up their own codes. The arrangements for dealing with complaints are set out in the Appendix to the report and can be found in the Council's Constitution at Part 5.1.
- 3.2 In place of the old prescriptive regime the Act imposed a general duty on local authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. In 2011 Act also introduced a new criminal offence of failing to register a pecuniary interest.
- 3.3. A major change was the abolition of the obligation on local authorities to have Standards Committees chaired by an independent person. Under the 2011 Act relevant authorities are required to include in their procedures for determining allegations, provision for the appointment of at least one "independent person" and the authority must seek, and take into account, the views of that person before it makes its decision on an allegation that it has decided to investigate, and it may seek his or her views in other circumstances. However, the role of the independent person is undefined.
- 3.4 Although the general nature of this provision was of concern before the Act came into force it is now the general opinion that the role of the independent person has been one of the more successful aspects of the new regime.

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Arrangements for dealing with Standards Complaints under the Localism Act 2011

1 Background

Section 28(6) and (7) of the Localism Act 2011, provides that the Council must have in place "Arrangements" under which allegations that an elected member or co-opted member of the authority, or of a Committee or Sub-Committee of the Council, has failed to comply with the Council's Member Code of Conduct can be determined.

The arrangements require the Council to appoint at least one Independent Person, whose views must be sought before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage of the process, or by an elected 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 the Council has failed to comply with the Council's Member Code of Conduct, and sets out how the Council will deal with allegations of a breach of the Council's Member Code of Conduct.

2 The Code of Conduct

The Council has adopted a Code of Conduct for elected members.

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
West Midlands
WS1 1TP

or:

monitoringofficer@walsall.gov.uk

The Monitoring Officer has statutory responsibility for maintaining the register of elected members' disclosable pecuniary interests, and is responsible for administering the system for managing complaints about elected member conduct.

In order to ensure that the Council has all of the relevant information required 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.

- You will need to provide us with your name, contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of 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 request that your name and address be kept confidential, please indicate this in the space provided on the complaint form. If appropriate we will not disclose your name and address to the elected member against whom you made your complaint, without prior consent if there are found to be exceptional circumstances to justify confidentiality.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received, and after consultation with the Independent Person, will take a decision as to whether or not the complaint merits formal investigation. This decision will normally be made within 20 working days of receipt of your complaint. Where the Monitoring Officer has made this decision, he/she will inform you of this and the reasons for the same.

The elected member will be informed of the complaint made against them, and will be asked for information or an explanation about the complaint. Where the Monitoring Officer requires additional information in order to reach a decision, he/she may request further information from you or the elected member.

The Monitoring Officer may seek to resolve the complaint informally at this stage, without the need for a formal investigation. Such informal resolution may involve the elected member accepting that his/her conduct was unacceptable and offering an apology, or other appropriate remedial action suggested by the Council. Where the elected member or Council make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer may take this into account in deciding whether or not the complaint merits formal investigation. The Monitoring Officer will also consider the cost and the potential outcome of the complaint if it is proven there has been a breach of the Code of Conduct prior to a formal investigation being commenced.

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 to investigate the matter.

5 How is the investigation conducted?

The Council has adopted a procedure for the investigation of elected member conduct complaints.

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigator, who may be another senior officer of the Council, or if appropriate an external investigator. The Investigator will decide whether he/she needs to meet or speak with you further to

understand the nature of your complaint, and to determine what evidence you feel is relevant to the investigation. The conduct of the investigation will be in the total discretion of the Investigator who will determine what evidence he requires to investigate the complaint.

The Investigator will normally write to the elected member you have complained about by way of introduction, also setting out the terms of the investigation. He will ask the elected member to provide his/her explanation of events, and to identify what evidence they feel may be relevant to the investigation.

In exceptional cases, where it has been decided to keep your identity confidential, or where disclosure of details of the complaint to the elected 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 to avoid any prejudice. The Monitoring Officer, in conjunction with the Investigator will keep the issue of confidentiality under review throughout the complaints process.

At the end of his/her investigation, the Investigator will produce a draft report and will send copies of that draft report, in confidence, to you and to the elected 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 further consideration. The Investigator has total discretion as to whether or not to amend his report based on any representations.

After taking into account any comments which are made on the draft report, the Investigator will then send his/her final report to the Monitoring Officer.

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

The Monitoring Officer will review the Investigator's report and, if he is satisfied that the Investigator's report is sufficient, will write to you and to the elected member concerned, notifying you that he is satisfied that no further action is required and providing you both with a copy of the Investigator'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 Investigator to reconsider his/her report.

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

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

7.1 Local Resolution

Where the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing. He/she will consult with the Independent Person and the complainant and try to agree a fair resolution which will maintain high standards of elected member conduct in the future. Such resolution may include the elected member accepting that his/her conduct was unacceptable and offering an apology, and/or any other remedial action suggested by the Council. If the elected 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 agreement on local resolution cannot be reached 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 local resolution cannot be agreed, then the Monitoring Officer will refer the matter to a Hearing Panel, who will conduct a local hearing before deciding whether the elected member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the elected member's breach.

The Council has agreed a procedure for local hearings.

Essentially, the Monitoring Officer, or his nominee will conduct a "pre-hearing process", requiring the elected member to give his/her response to the Investigator's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Monitoring Officer in consultation with the Chair of the Hearing Panel will give directions as to the manner in which the hearing will be conducted. At the hearing, the Investigator 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 Council Member Code of Conduct. For this purpose, the Investigator may ask you as the complainant to attend and give evidence at the Hearing Panel. The elected 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 Hearing Panel, with **the** benefit of any representations from the Independent Person, concludes that the elected member did not fail to comply with the Code of Conduct, the complaint will be dismissed.

If the Hearing Panel concludes that the elected member did fail to comply with the Council Code of Conduct, the Chair will inform the elected member of this finding and the Hearing Panel will then consider what action, if any, it should take as a result of the elected member's breach of the Code of Conduct. The Hearing Panel will provide the elected member an opportunity to make representations to the Panel prior to any sanction being imposed and will consult the Independent Person. A sanction will then be imposed.

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

The Council has delegated to the Hearing Panel such of its powers to take action in respect of individual elected 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 elected member's conduct;
- 8.2 Report its findings to Council for information;
- 8.3 Recommend to the elected 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 elected member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to arrange training for the elected member;
- 8.6 Remove the elected member from all outside appointments to which he/she has been appointed or nominated by the authority;
- 8.7 Withdraw facilities provided to the elected member by the Council, such as a computer, website and/or email and Internet access; or
- 8.8 Exclude the elected 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 Hearing 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 Hearing Panel as to whether the elected member failed to comply with the Code of Conduct and announce the sanction imposed for the breach of the Code of Conduct.

As soon as reasonably practicable thereafter, the Monitoring Officer, or nominee, shall prepare a formal decision notice in consultation with the Chair of the Hearing Panel, and send a copy to you, the elected member. The decision notice will be made available for public inspection and report the decision for information to the next convenient meeting of full Council.

10 Who are the Hearings Panel?

The Hearing Panel is a Sub-Committee of the Council's Standards Committee. The Council has determined that it will comprise of a minimum of four members of the Standards Committee, which will reflect the Council's political balance.

The Independent Person will be required to attend all meetings of the Hearing Panel and his/her views must be taken into consideration before the Hearing Panel takes any decision on whether the elected member's conduct constitutes a failure to comply with the Code of Conduct, and if it does what sanction should be imposed.

11 What is an Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy. They are 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;
- 11.2.6 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 elected member against a decision of the Monitoring Officer or of the Hearings Panel. If you feel that the council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Walsall Metropolitan Borough Council

Procedure for conduct of Standards Investigations

The purpose of this procedure is to ensure that code of conduct investigations are carried out as quickly and thoroughly as possible whilst adhering to the principles of natural justice, and the right to a fair trial contained in Article 6 of the European Convention of Human Rights. Whilst there are many factors that can affect the time it takes to complete an investigation, it is important that there are realistic targets for the completion of an investigation. Most investigations should be carried out, and a report on the investigation completed, within six months of the original complaint being received by the Monitoring Officer. Furthermore, the timescale for holding a hearing to consider the outcome of an investigation should normally be no longer than three months from completion of the investigation. The Monitoring Officer will maintain the function of overseeing the investigation.

All decisions will be made in accordance with the following principles:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome, including consideration as to cost);
- (b) due consultation and taking of professional advice;
- (c) a presumption in favour of openness;
- (d) clarity of aims and desired outcomes; and
- (e) explaining the options considered and the reasons for the decision taken;
- (f) due regard to the Members' Code of Conduct

Procedure for Code of Conduct Investigations

1. Written Complaint received by Monitoring Officer (MO)
2. Monitoring Officer acknowledges receipt of complaint within 5 working days, and notifies relevant Group Leader, and Member of receipt of complaint and detail of complaint.
3. MO decides whether or not further detail of complaint is required. If further information or detail is required the timescale for completion of the review may be extended. Both parties to complaint will be notified of this.
4. Monitoring Officer (MO) carries out the review of complaint and will consult with Independent Person (IP) within 20 working days.
5. Three outcomes of a review
 - (a)
 - No case to answer, elected member and complainant notified of the reviewing writing.
 - No appeal against this decision.
 - (b)
 - Informal Resolution of Complaint - The MO following consultation with the IP may seek to resolve the complaint informally.

- MO will contact Complainant and Elected Member and discuss proposal to resolve complaint informally.
- If both parties to the complaint accept informal resolution the MO will confirm this in writing to both parties, with the proposal for informal resolution.
- If the Complainant refuses a reasonable offer of informal resolution the MO may take this into account in deciding whether or not the complaint merits formal investigation. The MO may choose to dismiss the complaint.
- If the Elected Member agrees to informal resolution, and subsequently fails to comply with any agreed action required to informally resolve the matter, the MO may refer the matter to a Hearing Panel of the Authority.
- The MO will write to both parties to confirm the outcome of the agreed informal resolution, thereby concluding the complaint.

(c)

- The MO determines following consultation with IP that the matter requires formal investigation.
- MO will write to both parties to confirm this decision. There is no right of appeal against this decision.
- The MO will appoint an Investigator - who may be another senior officer of the Authority, or an external investigator.
- The Investigator will write to the Complainant and the Elected Member providing them with contact details, confirming the scope of his investigation, including proposed timescales for conclusion of his investigation, which witnesses he will be interviewing, and what documents he requires. Whilst the investigator may consult with the Elected Member and Complainant about the investigation, the Investigator has sole discretion as to how he conducts his investigation, and concludes his investigation report.
- At the conclusion of his investigation the Investigator will produce a draft report, which he will forward to the Complainant, Elected Member and MO.
- The Complainant and Elected Member will have an opportunity to comment on the draft report, and identify aspects of the report they disagree with. However the Investigator has sole discretion as to whether or not he amends or alters his report as a result of any comments made. They will have 10 working days to provide comments to the Investigator following receipt of the Investigating Officers report The Investigator will forward the MO a copy of the report with any amendments following his/her consideration of the parties' comments.

- The MO will review the Investigator's report and will determine whether or not the report is sufficient. The MO will have 10 working days to reach his decision on whether or not the report is sufficient following receipt of the same or 10 working days following receipt of an amended report, should the Investigator choose to amend the report following comments of the parties. If the report is insufficient in the opinion of the MO he will ask the Investigator to reconsider the same.
- If the report is sufficient the MO will send a final copy of the report to all the parties, with a covering letter indicating the course of action that he will take in relation to the complaint.
- The courses of action will be as follows:
 - a. The report discloses no breach of the "code of conduct". MO will write to the parties stating the matter is concluded.
 - b. The report discloses a potential breach of the "code of conduct" MO will write to the parties confirming the same and propose one of the two following options:
 - (i) Informal Resolution - following consultation with the Independent Person. In which case the procedure in paragraph 4(b) above will apply.
 - (ii) Local Hearing - the MO will refer the matter for Local Hearing.

General Guidance on Investigations

Conflicts of Interest

Standards Committees and Monitoring Officers are at the heart of the standards framework. They promote, educate and support elected members in following the highest standards of conduct and ensuring that those standards are fully owned locally.

Under the Code of Conduct, elected members must have regard to the advice of the Monitoring Officer when it is given as part of the Monitoring Officer's statutory duties. Monitoring Officers will advise their Council and the standards committee on the adoption and promotion of high ethical standards including their authority's code.

Monitoring Officers have four main roles in relation to the Code of Conduct:

- They provide advice to the Standards Committee
- They advise subject members
- They deal with cases of alleged conduct referred to them.

- They advise members about conduct issues.

An investigation could create a potential conflict-of-interest between these roles. For example, it is likely that a conflict-of-interest would arise if the MO were asked to investigate allegations against an elected member if the MO had advised them on the same issue. In such situations, the MO should delegate the investigation to somebody else.

Advising Standards Committees

The MO should act as the main adviser to the Standards Committee. However, he/she should not do so if they have an interest in the matter that would prevent them from performing the roll independently.

It is vital that Standards Committees have access to appropriate advice on cases that have been referred to them for hearing. The MO will need to ensure that there is someone able to advise the Standards Committee.

The MO should not conduct an investigation and advise a Hearing Panel about the same case. The Monitoring Officer will therefore need to consider whether it is more important to investigate the matter and delegate the role advising standards committee, or to delegate investigative role.

Personal conflicts

The MO should avoid any personal conflict-of-interest. The MO must not participate if they have a direct or indirect interest in an investigation or hearing. For example the Monitoring Officer must not participate if they have a direct financial interest, or a family member or friend is involved. If a personal conflict does exist the MO should notify the Chair of the Standards Committee and take no further part in the process. The Chair of the Standards Committee, will then notify all the parties to the matter explaining:

- That the MO will not take part in the matter
- The nature of the interest declared
- Who will have conduct of the matter in the MO's place

Disclosure of Information

The information that the MO or Investigator obtains during the course of a local investigation is confidential until the investigation is completed. The MO and Investigator must always be aware of their obligations in the Data Protection Act 1998, the Human Rights Act 1998 and other relevant legislation, when carrying out an investigation.

All parties to the investigation will be requested to maintain confidentiality. Elected Members will be reminded of their obligations under the Council's code of conduct in respect of disclosure of information that they receive in confidence.

Information obtained in investigation will not be disclosed unless:

- The Monitoring Officer, Investigator, or party to the investigation, has permission to disclose the information from the person that information relates to.
- The information has already lawfully been made public
- The information is made for the purposes of criminal proceedings in the UK
- There is a requirement to do so by a court or similar body.

Evidence of new breaches

If in the course of the investigation evidence is uncovered of conduct by elected members that may breach of the code of conduct, extending beyond the scope of the investigation already referred to the Investigator, the powers of the Investigator relates only to the allegation that has already been referred to them, If this happens, the Investigator should inform the person they obtain information from that they cannot investigate the possible breach as part of the existing investigation. The Investigator should inform the MO and he should advise the person that they may wish to make a separate complaint in respect of this potential breach. The MO may choose to consolidate this new allegation of a potential breach with the existing investigation.

Deferring an investigation

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

- There are ongoing criminal proceedings or a police investigation into an elected members conduct
- The investigation cannot proceed without investigating similar alleged conduct or needs to come to conclusions of fact about events which are also the subject of some other investigation for court proceedings.
- The investigation might prejudice another investigation or court proceedings.

An investigation may also need to be deferred:

- Where there is an ongoing investigation by another regulatory body
- There is a serious illness of a key party or witness to the investigation
- Due to the genuine unavailability of a key party or witness

When it is clear that there is an ongoing police, or other investigation, or related court proceedings, the MO should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings.

If at any time during the investigation the MO or the Investigator becomes aware of any circumstances that might require the investigation to be deferred, the MO will notify all parties to the investigation of this decision.

The decision to defer an investigation will be taken by the MO after consulting with the Investigator and the Independent Person. The reason for such a deferral should be set out in the investigation file with any supporting documentation attached.

In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another investigation or court proceedings. The Investigator should highlight those areas where investigation may be possible in the investigation plan, after consultation with the MO.

In some cases, it may be possible to investigate the alleged conduct in parallel with another investigation, for example where the Local Government Ombudsman is investigating a Council's decisions and the Investigator is investigating the conduct of an individual elected member involved in the making of the decision. The MO will work closely with the, Investigator and any other organisation, and agree the steps each party will take.

The MO will ask the police or other relevant organisation to keep them informed of the outcome of any police or other investigation, court proceedings or other relevant matter. The MO will note any important dates, for example of committal hearings, in the investigation file.

A deferred investigation should be kept under regular review, in the interests of natural justice.

Once the decision is taken to recommence the investigation the MO will notify in writing:

- The subject elected member
- The complainant
- The Investigator

Hearing Process

The pre-hearing process will be dealt with by the MO or other suitable officer where the MO 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 prehearing process to:

- Identify whether the subject elected member or complainant still disagrees with any of the findings of fact in the investigation report, 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 MO or other suitable officer may hold a pre-hearing meeting between the relevant parties and their representatives, and the Chair of the Hearing Panel.

The officer providing administrative support to the hearing process, in conjunction with the legal advisor and Chair of the Hearing Panel will write to the subject elected member proposing a date, place and time for the hearing. They will confirm the hearing procedure to be followed. They will ask the subject elected member within a specified time to confirm whether the subject elected member:

- Wants to be represented at the hearing by solicitor, barrister or any other person at the hearing, and confirming their attendance at the hearing.
- 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 panel either verbally or in writing.
- Wants to call relevant witnesses to give evidence to the hearing panel.
- 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 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 MO 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 hearing panel's chair and legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks prior to the hearing which will include:

- The hearing process to be followed
- A report summarising the allegation, including the investigation report and any supporting documentation submitted by the parties, as an agreed consolidated hearing bundle.
- A lists the witnesses attending to give evidence

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 will decide factual evidence on the balance of probabilities. The hearing panel will work at all times in a demonstrably fair, independent and politically impartial way. To ensure that members of the public, and elected members of the Council, have confidence in its procedures and findings.

The decision of the hearing panel should follow the rules of natural justice and be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect.

Representatives

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

The hearing panel may choose to withdraw permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Evidence

The hearing panel, through the Chair controls the procedure and evidence presented at the hearing, including the number of witnesses and the manner in which witnesses are questioned.

In many cases, the hearing panel may not need to consider any evidence other than the investigation report, and any other supporting documents. However, the hearing panel 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 panel may allow witnesses to be questioned and cross-examined by the subject elected their representative, the MO, or the Investigator. Alternatively, the hearing panel can ask that those questions be directed through the Chair. The hearing panel members can also question witnesses directly or through the Chair.

Witnesses

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

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

The hearing panel 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 by the Hearing Panel and parties to the proceedings.

Sanctions

If the hearing panel finds that subject elected member has failed to follow the code of conduct and that they should be subsequently sanctioned, it may impose any one or a combination of the following sanctions, after consulting with the Independent Person:

Considering the sanction

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

- What was the subject elected member's intention? Did the subject elected member know that they were failing to follow the Code of Conduct?
- Did the subject elected member get advice from officers before the incident? Was that advice acted on or ignored in good faith or otherwise?

- 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 elected member except they were at fault?
- Did the subject elected member apologise to the relevant people?
- Has the subject elected member previously been warned or reprimanded for similar misconduct?
- Has the subject elected member failed to follow the code of conduct before?
- Is the subject elected 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 out their responsibilities as an elected representative or co-opted member.

The hearing panel 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.
- An elected member's previous record of good service.
- Substantiated evidence of the elected 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 panel should bear in mind the aim of maintaining and improving the standard of conduct expected of elected members to whom the Code of Conduct applies as part of the process of fostering public confidence in local democracy?

Notice of the hearing committee's findings

The hearing panel 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 produce a full written decision in draft on the same day, before people's memories fade. The officer providing administrative support to the hearing panel will normally also draft minutes of the meeting.

The hearing panel must give a 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 elected member
- The complainant

The hearing panel's decision will be made public in the same manner that the Council make committee decisions public, by publishing them on the Council's CMIS website. The hearing panel'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 under the Access to Information Regulations will not be made available for public inspection.

Model Hearing procedure for Hearing Panel

This procedure is aimed to provide a consistent approach to determining matters. The aim is to ensure that the hearing panel conducts an efficient and effective hearing subject to the rules of natural justice. This will help the pane deal with all the issues that need to be resolved in a way that is fair to all of the parties to the hearing.

Interpretation

1. "Subject elected 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, or 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 elected 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 panel 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 parties to the hearing

Setting the scene

After all the members and everyone involved had been formally introduced, the Chair should explain how the panel is going to manage the hearing.

Preliminary procedural issues

The panel should firstly determine any issues or disagreements about how the hearing should progress, which have not already been resolved during the pre-hearing process.

Making findings of fact

After dealing with any preliminary issues, the panel 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 elected 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 panel's permission, call any relevant witnesses to give evidence. These witnesses in turn may be questioned by the other party or Hearing Panel Members.

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

If the subject elected 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.

After considering the elected member's explanation for not raising the issue at an early stage, the committee may then:

- Continue the hearing, relying on the information in the investigators report.
- Allow the subject elected 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 panel will usually move to another room to consider the representations, any legal advice and evidence in private.

On their return, the chair will announce the panel's finding of fact.

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

The panel will then need to consider whether, based on the facts it has found, the subject elected member has failed to follow the Code of Conduct.

The panel should also consider any verbal or written representations from the Investigator as to whether or not there has been a breach of the Council Code of Conduct as part of their summing up.

The subject elected member should also be invited to make representations as why the panel should decide that they have not breached the Council Code of Conduct as part of their summing up.

The Panel may, at any time, question any point raised as part of their representations.

The Panel will then move to another room to consider the representations made as part of the final summing up. On their return, the chair will announce panel's decision as to whether the subject elected member has failed to follow the Council's code of conduct.

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

If the panel decides that the subject elected member has not failed to follow the code, the matter is concluded.

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

If the panel decides that the subject elected 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 panel may question the investigator and elected member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

The panel will then deliberate in private to consider whether to impose a sanction on the subject elected member, including listening to representations from the Independent Person and, if so, what that sanction should be.

On their return, the Chair will announce the panel's decision.

The written decision

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