

COMPLAINTS AGAINST MEMBERS

HEARINGS PROCEDURE

In accordance with the Protocol for dealing with complaints the Constitution and Ethics Committee will only meet where

- A request for dispensation has been made to vote on a matter in which a Councillor has a disclosable pecuniary interest
- The Constitution and Ethics Committee receives a referral from the Monitoring Officer for a decision as to whether a matter ought to be referred for investigation
- an investigation has been conducted following a complaint which has concluded that the Code of Conduct has been breached and alternative/informal resolution is not possible.

This is a guidance note setting out how a panel of three members of the Constitution and Ethics (Hearings Panel) will hear complaints that the Code of Conduct has been breached. The purpose of a hearing will be to determine if the panel agrees with the findings of the investigation.

1. Following receipt of the investigation report the Monitoring Officer will write to the complainant and the member complained of (the “subject member”) and advise them of the intention to refer the investigation report to the Hearings Panel for a decision.
2. The Monitoring Officer will contact the council’s Independent Person advising them of the referral of the complaint to the Hearings Panel and invite the Independent Person to provide written report on the complaint for referral to the Panel.
3. Once notified of the date of the hearing the complainant and the subject member must submit any further evidence and/or witness statements to the Monitoring Officer at least 14 days in advance of the hearing date.
4. All paperwork submitted to the Monitoring Officer will be collated into a report for the Hearings Panel and issued in accordance with the statutory requirements for access to information.
5. The hearing will usually be held in public. Should the complainant or subject member want the hearing to be held in private, they should provide reasons why the information is confidential at least 21 days prior to the hearing so that the Monitoring Officer can consider whether the report should be marked confidential.
6. The decision regarding confidentiality is at the discretion of the Monitoring Officer. If the Monitoring Officer decides that the papers are confidential that decision will be subject to review by the Panel before they go into private (exempt) session to decide the matter.

7. The hearing will be before a panel of 3 members drawn from the Constitution and Ethics Committee who have received hearings training.
8. One of the members present will be elected Chairman.
9. The Independent Person [IP] appointed under section 28 of the Localism Act 2011 will also be present to sit alongside the panel. Their opinion will be taken into account by the Panel, but by law the Independent Person may not vote.
10. The Monitoring Officer or Deputy Monitoring Officer will be present as advisor to the Panel.
11. The investigating officer will attend to present the investigation report and may invite the complainant to appear as a witness or call other witnesses.
12. The subject member will be invited to attend and may present their own case or they may be represented.
13. The subject member may bring witnesses (of a number the Panel considers is reasonable). "Character witnesses" who cannot provide evidence on the matter complained about will not be permitted.
14. The cost of any attendance/representation must be borne by the party concerned.
15. Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.
16. The Monitoring Officer can speak at any time to advise the Panel on technical matters or ask questions of any party.

A procedure note regarding the detailed hearing process is attached at appendix A

Hearing process note: Code of Conduct complaints

HEARING PROCEDURE	
PRELIMINARY MATTERS	
1	The Chairman of the Panel will introduce the members of the Panel, the Independent Person, officers, the councillor, the investigating officer and the complainant if present.
2.	The Chairman will explain the reason for the meeting and outline the procedure to be followed. The Chairman may choose to vary this procedure if they are of the opinion that such a variation is necessary in the interests of fairness.
3.	The Chairman will also explain that the hearing will normally be held in public unless the Panel exercises its discretion to exclude the public from all or part of the hearing in accordance with the Local Government Act 1972.
4.	The Monitoring Officer will confirm whether there has been a request for the hearing, or any part of it to be held in private.
5.	The Chairman will then confirm that all those involved understand the procedure to be followed and ask if there are any preliminary procedural issues which anyone wishes to raise before the Hearing begins
6.	If any procedural issues are raised, the Panel will hear representations on them and determine them before beginning the hearing.
7.	If the Councillor is not present at the start of the hearing, the Panel will consider any reasons given by them for their nonattendance. If the Panel is satisfied that there is good reason for their non-attendance, it may adjourn to another date, or proceed if it has been requested to do so by the Councillor.
8.	If the Panel is not satisfied that there is good reason for the Councillor's non-attendance, or if the Councillor failed to give any reason for his/her non-attendance, the Panel can decide: <ul style="list-style-type: none"> • whether to consider the matter and make a determination in the absence of the Councillor, or • to adjourn the Hearing to another date.
HEARING	
9	The Investigator will be invited to summarise his/her report and findings and make any representations about any pre-hearing submission of the

	Councillor. The Investigator may call any witnesses, including the complainant.
10.	The Councillor will then be invited to make representations in support of the facts concerned. The Councillor may call any witnesses in support of the facts. Character witnesses will not be permitted.
11.	The Panel has the discretion to question any of the parties as they see fit.
12.	The Independent Person or the Monitoring Officer may question any of the parties at the discretion of the Chair.
12.	The councillor and the investigator/complainant will be given the opportunity to make closing statements if they wish to do so.
13.	The Panel and the Independent Person will retire to consider the matter in private. The Monitoring Officer may be called to give legal advice or clarify any of the evidence as required.
THE DECISION	
14.	The Chairman will then announce to all present at the Hearing the Panel's decision as to whether or not the Councillor has failed to comply with the Code of Conduct, whilst setting out the facts upon which the conclusions have been reached.
15.	If the Panel decides that the Councillor has not failed to follow the Code of Conduct, the hearing will be concluded.
16.	If the Panel decides that the Councillor has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigator, the Monitoring Officer, and the Councillor as to: (a) whether or not the Panel should impose a sanction and/or recommend to Council that a sanction be imposed; and (b) what form of sanction(s) is/are appropriate.
17.	The Panel may retire to consider these representations in private
18.	The Panel will announce its decision in public at the conclusion of the hearing and will issue a full written decision including reasons within 10 working days of the hearing.

SANCTIONS

Under the Protocol for dealing with complaints, the Council has decided that the Hearings Panel may issue the following sanctions:-

- a. Publish its findings in respect of the member's conduct;
- b. Report its findings to Council for information;
- c. Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- d. Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- e. Recommend to Council to remove the member from all outside appointments to which they have been appointed or nominated by the authority;
- f. Recommend to Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- g. Recommend to Council that it excludes 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.