

# ARRANGEMENTS FOR DEALING WITH MEMBER COMPLAINTS



---

## 1. Context

These “Arrangements” set out how a Complainant may make a complaint that an elected or co-opted Member of Rother District Council or of a Parish or Town Council within the District 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.

Under Section 28(6) and (7) of the Localism Act 2011, (“The Act”) the District Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the authority or of a Parish or Town Council within the District, 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.

The District Council has appointed three Independent Persons, the view of one of which must be sought by the authority before it makes a decision on an allegation which it has decided shall be investigated. Their views may be sought by the authority at any other stage, or by a Subject Member, or a Member or co-opted Member of a Parish or Town Council within the District, against whom an allegation has been made that they have breached the Code of Conduct.

## 2. The Code of Conduct

The District Council has adopted a Code of Conduct for Members, which is attached as Appendix 1 to these arrangements and is available for inspection on the District Council’s website and on request from the Community Help Points at Bexhill, Battle and Rye.

Each Parish or Town Council within the District is also required to adopt a Code of Conduct and, if they have a website, to publish it there. If the Complainant wishes to inspect a Parish or Town Council’s Code of Conduct, the Complainant should inspect the website operated by the Parish/Town Council or request the Parish/Town Clerk to allow the Complainant to inspect the Parish or Town Council’s Code of Conduct document.

## 3. Making a complaint

If a Complainant wishes to make a complaint, they must complete the Members’ Code of Conduct Complaint Form which is available on request from the Council’s Community Help Points or can be found on our website at: <http://www.rother.gov.uk/article/369/Members-Code-of-Conduct>

and send to:

The Monitoring Officer  
Rother District Council  
Town Hall  
Bexhill-on-Sea  
East Sussex  
TN39 3JX

or: [standards@rother.gov.uk](mailto:standards@rother.gov.uk)

The Monitoring Officer has statutory responsibility for maintaining the Register of Members' Interests and is responsible for administering the system in respect of complaints of Member misconduct for both District and Parish and Town Councillors. Copies of Members' Register of Interests are available on the District Council's website and the Parish and Town Council websites where they have one.

In order to ensure that we have all the information which we need to be able to process their complaint, the Complainant must complete and send us the Complaint Form, which can be downloaded from the District Council's website, next to the Code of Conduct, and is available on request from the Council's Community Help Points.

The Complainant must provide their name and a contact address or email address, so that we can acknowledge receipt of their complaint and keep them informed of its progress. If the Complainant wishes to keep their name and address confidential, they must indicate this in the space provided on the complaint form, in which case we will not disclose their name and address to the person against whom they are making the complaint (the "Subject Member"), without their prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of a complaint within five working days of receiving it, and will keep the Complainant informed of the progress of the complaint. The Monitoring Officer will also let the Subject Member know that a complaint has been received against them and the nature of the complaint.

#### 4. **Will the complaint be investigated?**

The Monitoring Officer will review every complaint received and, after consultation with one of the Independent Persons, make a decision as to whether it merits formal investigation. This decision will normally be made within 10 working days of receipt of a complaint. The Monitoring Officer will decide a complaint does not merit investigation if:

- It is about someone who is no longer a Member of the Council, or
- There has been a delay of more than six months since the matter complained of occurred (unless the Monitoring Officer is of the view that exceptional circumstances exist to allow an extension of time), or
- The complaint appears to be minor, politically motivated, vexatious and malicious or it is not otherwise appropriate to warrant further action.

This list is not intended to be exhaustive and the Monitoring Officer may decide that a complaint does not merit formal investigation for any other reason which appears to them to be appropriate.

The Monitoring Officer retains the discretion to refer the decision as to whether a complaint merits an investigation to the Audit and Standards Committee if it appears appropriate to do so.

When the Monitoring Officer or the Audit and Standards Committee has made a decision, the Monitoring Officer will inform the Complainant of the decision and the reasons for it.

Where the Monitoring Officer requires additional information in order to come to a decision, they may revert to the Complainant for such information. The Monitoring Officer may also request information from the Member against whom the complaint is directed. Where a complaint relates to a Parish or Town Councillor or co-opted member, the Monitoring Officer may also inform the Parish or Town Council of that complaint and seek the views of the Parish or Town Council before deciding whether the complaint merits formal investigation.

Where it appears appropriate to do, the Monitoring Officer may seek to resolve a complaint informally, without the need for a formal investigation. Such informal resolutions may involve the Subject Member admitting that their conduct was unacceptable and offering an apology, or other remedial action being taken by the authority to resolve the complaint. Subject Members are required to respond to the Monitoring Officer within five working days of receiving a suggested local resolution. Where the Subject Member or the authority makes a reasonable offer of local resolution, but the Complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If the complaint identifies criminal or regulatory misconduct by the Subject Member, or any other person, the Monitoring Officer may, without further reference to the Complainant, call in the Police or other regulatory agencies.

## **5. How is the investigation conducted?**

The District Council has adopted a procedure for the investigation of complaints that the Code of Conduct has been breached, which is attached as Appendix 2 to these Arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. It is the responsibility of the Monitoring Officer to oversee the work of the Investigating Officer and to ensure that the investigation is carried out fairly and efficiently. The Investigating Officer will decide whether it is necessary to meet or speak to the Complainant in order to understand the nature of the complaint. They may do so in order that the Complainant can explain their understanding of events and make representations as to what documents the Investigating Officer may wish to see, and who the Investigating Officer may wish to interview.

The Investigating Officer will contact the Subject Member against whom a complaint has been made and provide them with a copy of the complaint. They will ask the Subject Member to provide their explanation of events and to identify the documents which are available to the Subject Member which the Investigating Officer may wish to see and who they may wish to interview. In exceptional cases, where it is appropriate to keep the Complainant's identity confidential or disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Monitoring Officer may delete the Complainant's name and address from the papers given to the Subject Member, or delay notifying the Subject Member until the investigation has progressed to a point where it is appropriate to do so.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Complainant and the Subject Member concerned, to give both an opportunity to identify and make representations on any matter in the draft report which they disagree with or which they believe requires more consideration.

Having received and considered any comments which the Complainant and Subject Member may make on the draft report, the Investigating Officer will send their 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 they are satisfied that the Investigating Officer's report identifies and addresses all relevant issues relating to the complaint, the Monitoring Officer will write to the Complainant and the Subject Member concerned (and to the Parish or Town Council, where the complaint relates to a Parish or Town Councillor), notifying them that they are satisfied that no further action is required and give them both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly they may ask the Investigating Officer to reconsider their report or make other arrangements to review the investigation.

**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, after consulting the Independent Person, either seek local resolution or refer the matter to the District Council's Hearing Panel.

**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, they will consult with the Independent Person and the Complainant and seek to agree fair resolution and which also ensures high standards of conduct for the future. Such resolution may include the Subject Member accepting that their conduct was in breach of the Code of Conduct and, for example, offering an apology, and/or agreeing to other remedial action – such as training, mentoring or mediation. If the Subject Member complies with the suggested resolution, the Monitoring Officer

will report the matter to the Audit and Standards Committee (and, where appropriate, to the Parish or Town Council for information), but will take no further action. However, if the Complainant tells the Monitoring Officer that they do not consider any suggested resolution would be adequate, the Monitoring Officer may decide to refer the matter for a local hearing.

## 7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the Complainant is not satisfied by the result of the attempt at Local Resolution and the Monitoring Officer agrees with the Complainant's representations, or the Subject Member concerned is not prepared to undertake the proposed remedial action, then the Monitoring Officer will refer the Investigating Officer's report to the Hearings Panel – which will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether and what action to take (if any) in respect of the non-compliance of the Subject Member.

The District Council has agreed a procedure for local hearings, which is attached as Appendix 3 to these arrangements.

In summary, the Monitoring Officer will conduct a “pre-hearing process”, requiring the Subject Member to give their 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. In conjunction with the Monitoring Officer the Chairman of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

Where a hearing is considered necessary, the Investigating Officer will present their report, call such witnesses as they may consider necessary and make representations to support their conclusion that the Subject Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the Complainant, and their witnesses, to attend and give evidence to the Hearings Panel. The Subject Member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Panel as to why they believe that they have not failed to comply with the Code of Conduct.

Having heard evidence the members of the Hearing Panel may consider their view in public or retire to do so privately. During such deliberations the voting members of the Hearing Panel will consult with and seek the view of the Independent Person (and, where the Subject Member is a member of a Parish or Town council, with the Parish/Town Council representative on the Hearing Panel).

If the Hearing Panel concludes that the Subject Member did not fail to comply with the Code of Conduct, they will dismiss the complaint. Alternatively, if the Hearing Panel concludes that the Subject Member breached the Code of Conduct, the Chairman will inform the Subject Member of this finding and the Hearing Panel will then consider what, if

any, action, the Hearings Panel should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing so the Chairman will give the Investigating Officer and Subject Member an opportunity to make representations to the Hearing Panel. When considering what, if any, further action will be taken, the voting members of the Hearing Panel will consult with and take the view of the Independent Person into account (and, where the Subject Member is a member of a Parish or Town Council, with the Parish/Town Council representative on the Hearing Panel).

## **8. Membership of the Hearing Panel**

The Hearing Panel is a Sub-Committee of the Council's Audit and Standards Committee. It will generally consist of three District Councillors. The full Audit and Standards Committee also includes three Independent Persons. Under the terms of the Act, there is a mandatory requirement for the Monitoring Officer to consult one of the Independent Persons when considering whether a complaint will be investigated – as detailed at paragraph 4. Additionally, the Independent Person who sits on the Hearing Panel does not have a right to vote on decisions made at the Hearing, their views will be sought and taken into account both when the Hearing Panel makes a decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. The full Audit and Standards Committee also includes two Parish/Town Council representatives. Where the Hearing Panel is dealing with a complaint against a Parish or Town Councillor one of the Parish/Town Council members of the Audit and Standards Committee will also be present. Although the Parish/Town Council representative does not have a right to vote on decisions made by the Hearing Panel, their views will be sought in a similar way to those of the Independent Person.

## **9. Who are the Independent Persons?**

The Act requires the Council to appoint at least one Independent Person to assist the Monitoring Officer, as a consultee, during the pre-investigation, investigation, pre-hearing and hearing process. The role of the Independent Person is to represent the public interest. The District Council has appointed three such Independent Persons in order that the business of the Audit and Standards Committee can be dealt with efficiently and to reduce the likelihood of a conflict of interest causing delay. Such Independent Persons applied for the post following public advertisement of the vacancy, and have been appointed by a positive vote from a majority of all the Members of the District Council. The current term of office of an Independent Person is four years.

The definition in the Act of an Independent Person is anyone who is not currently:

- (i) a Member, co-opted Member or officer of the authority,
- (ii) a Member, co-opted Member or officer of a Parish or Town Council of which the authority is the principal authority, or
- (iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii) above.

10. **What action can the Hearing Panel take where it has found that the Subject Member has failed to comply with the Code of Conduct?**

The District Council has delegated to the Hearing Panel its powers to take action in respect of complaints against individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearing Panel may:

- 10.1 Publish its findings in respect of the Subject Member's conduct.
- 10.2 Write a formal letter to the Subject Member found to have breached the Code.
- 10.3 Report its findings to the District Council or to the Parish or Town Council for information.
- 10.4 Seek formal censure by motion.
- 10.5 Recommend to the Subject Member's Group Leader (or in the case of Subject Members who do not belong to a political group recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council.
- 10.6 Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
- 10.7 Instruct the Monitoring Officer to, or recommend that the Parish or Town Council arrange mentoring, training, mediation or other appropriate remedy, for the Subject Member.

The Hearing Panel has no power to suspend or disqualify the Subject Member from office or to withdraw their Basic or any Special Responsibility Allowances.

11. **What happens at the end of the Hearing?**

Having heard all the evidence, the Chairman will state the decision of the Hearing Panel as to whether the Subject Member has been found to have failed to comply with the Code of Conduct. If such a finding has been made, and having heard representations from the Investigating Officer and the Subject Member, the Chairman will state the actions which the Hearing Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal Decision Notice, to be signed by the Chairman of the Hearing Panel. The Monitoring Officer will send a copy to the Complainant, Subject Member and, where applicable, to the Parish or Town Council. The Monitoring Officer will also make the Decision Notice available for public inspection and report the decision to the next meeting of the District Council Audit and Standards Committee.

12. **Appeals**

There is no right of appeal for the Complainant or for the Subject Member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the council has failed to deal with any aspect of the complaint properly, you may make a complaint to the Local Government Ombudsman.

Reviewed/Approved: December 2015



# CODE OF CONDUCT FOR MEMBERS

---

The Code of Conduct, adopted by Rother District Council on 8 July 2019 is set out below. It is made under Chapter 7 of the Localism Act 2011. It includes, as standing orders made under Chapter 7 of that Act and Schedule 12 of the Local Government Act 1972, provisions which require Members to leave meetings in appropriate circumstances, while matters in which they have a personal and prejudicial or disclosable pecuniary interest are being considered.

## PART 1

### GENERAL PROVISIONS

#### Introduction and Interpretation

1. (1) The Code applies to **you** as a Member of the authority, when acting in that capacity.
- (2) This Code is based upon seven principles fundamental to public service which are set out in Appendix 1. You should have regard to these principles they will help you to comply with the Code.
- (3) If you need guidance on any matter under this Code you should seek it from the authority's Monitoring Officer or your own legal advisor – but it is entirely your responsibility to comply with the provisions of this Code.
- (4) It is a criminal offence to fail to notify the authority's Monitoring Officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have a disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly provide false or misleading information to the authority's Monitoring Officer.
- (5) Any written allegation received by the authority that you have failed to comply with this Code will be dealt with by the authority under the arrangements which it has adopted for such purposes. If it is found that you have failed to comply with the Code, the authority has the right to have regard to this failure in deciding;
  - (a) whether to take action in relation to you; and
  - (b) what action to take.
- (6) In this Code –

“authority” means Rother District Council

“Code” means this Code of Conduct

“co-opted member” means a person who is not a member of the authority but who –

- (a) is a member of any committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority.

and who is entitled to vote on any questions to be decided at any meetings of that committee or sub-committee.

“meeting” means any meeting of

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member.

“register of members’ interest” means the authorities’ register of members’ pecuniary and other interests established and maintained by the authority’s Monitoring Officer under section 29 of the Localism Act 2011.

## Scope

2. (1) Subject to sub-paragraphs (2) and (3), you must comply with the Code whenever you –
- (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - (b) act, claim to act or give the impression you are acting as a representative of your authority.

and references to your official capacity are construed accordingly.

- (2) this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) Where you act as a representative of your authority –
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with your authority’s code of conduct, except and insofar

as it conflicts with any other lawful obligations to which that other body may be subject.

### General Obligations

3. (1) You must treat others with respect.
  - (2) You must not –
    - (a) do anything which may cause your authority to breach any of its equality duties (in particular set out in the Equality Act 2010);
    - (b) bully or harass any person; bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual;
    - (c) intimidate or attempt to intimidate any person who is or is likely to be –
      - (i) a complainant;
      - (ii) a witness, or
      - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with his or her authority's code of conduct; or
    - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
4. You must not –
    - (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –
      - (i) you have the consent of the person authorised to give it;
      - (ii) you are required by law to do so;
      - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
      - (iv) the disclosure is –

- (a) reasonable and in the public interest; and
  - (b) made in good faith and in compliance with the reasonable requirements of the authority; or
  - (c) prevent another person from gaining access to information to which that person is entitled by law.
- 5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- 6. You –
  - (1) must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
  - (2) must, when using or authorising the use by others of the resources of your authority –
    - (a) act in accordance with your authority's reasonable requirements;
    - (b) ensure that such resources are not used improperly for political purposes (including party political purposes);
  - (3) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986; and
  - (4) must comply with any request regarding the provision of information in relation to a complaint alleging a breach of the Code of Conduct and must comply with any formal standards investigation.
- 7. (1) When reaching decisions on any matters you must have regard to any relevant advice provided to you by –
  - (a) your authority's Chief Finance Officer; or
  - (b) your authority's Monitoring Officer,where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## **PART 2**

### **INTERESTS**

#### **Personal Interests**

- 8. (1) The interests described in paragraphs 8(3) are your personal interests and the interests in paragraph 8(5) are your pecuniary interests which are disclosable pecuniary interests as defined by section 30 of the Localism Act 2011.

- (2) If you fail to observe Parts 2 and 3 of the Code in relation to your personal interests-
- (a) the authority may deal with the matter as mentioned in paragraph 1(5).
  - (b) if the failure is related to a disclosable pecuniary interest, you may also become subject to criminal proceedings as mentioned in paragraph 1(4).
- (3) You have a personal interest in any business of your authority where either –
- (a) it relates to or is likely to affect –
    - (i) any body of which you are a member or in the position of general control or management and to which you are appointed or nominated by the authority;
    - (ii) any body –
      - (a) exercising functions of a public nature;
      - (b) directed to charitable purposes; or
      - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or are in a position of general control or management;
    - (iii) any employment or business carried on by you;
    - (iv) any person or body who employs or has appointed you;
    - (v) any person or body, other than a relevant authority who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
    - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
    - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of a description specified in paragraph (vi);
    - (viii) the interest of any person from whom you have received a gift or hospitality with an estimated value of at least £50;

- (ix) any land in your authority's area in which you have a beneficial interest;
  - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
- (4) In sub-paragraph 8(3)(b), a relevant person is –
- (a) a member of your family or a [close] friend; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of a type described in sub-paragraph (3)(a)(i) or (ii).
- (5) Subject to sub-paragraphs (6) and (7), you have a personal interest which is also a disclosable pecuniary interest as defined by section 30 of the Localism Act 2011 in any business of your authority which concerns any of the following for (i) you or (ii) your partner-

Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.  This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(1).
Contracts	Any contract which is made between you (or a body in which you have a beneficial interest) and the relevant authority—  (a) under which goods or services are to be

	provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to your knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which you have a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to your knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the I have a beneficial interest exceeds one hundredth of the total issued share capital of the class.

- (6) In sub-paragraph (5), your partner means –
- (a) your spouse or civil partner,
  - (b) a person with whom you are living as husband or wife, or
  - (c) a person with whom you are living as if you were civil partners,
- (7) In sub-paragraph (5), any interest which your partner may have is only treated as your interest if you are aware that your partner has the interest.

### **Disclosure of Personal Interests (See also Part 3)**

9. (1) Subject to sub-paragraphs (2) to (6), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which any matter relating to the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

- (2) If the personal interest is entered on the authority's register there is no requirement for you to disclose the interest to that meeting, but you should do so if you wish a disclosure to be recorded in the minutes of the meeting.
- (3) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (4) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest and, if also applicable, that it is a disclosable pecuniary interest, but need not disclose the sensitive information to the meeting.
- (5) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision on any matter in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (6) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

### **Prejudicial Interest Generally**

10. (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where either –
  - (a) the interest is a disclosable pecuniary interest as described in paragraph 8(5), or
  - (b) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) For the purposes of sub-paragraph (1)(b), you do not have a prejudicial interest in any business of the authority where that business –
  - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
  - (c) relates to the functions of your authority in respect of –
    - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;



- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting Council Tax or a precept under the Local Government Finance Act 1992.

### **Interests arising in relation to Overview and Scrutiny Committees**

11. You also have a personal interest in any business before an Overview and Scrutiny Committee of your authority (or of a sub-committee of such a committee) where –
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority’s executive or another of your authority’s committees, sub-committees, joint committees or joint sub-committees; and
  - (b) at the time the decision was made or action was taken, you were a Member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

### **Effect of Prejudicial and Pecuniary Interests on Participation**

12. (1) Subject to sub-paragraph (2) and (3), where you have a prejudicial and disclosable pecuniary in any matter in relation to the business of your authority –
- (a) you must not participate, or participate further, in any discussion of the matter at any meeting, or participate in any vote, or further vote, taken on the matter at the meeting and must withdraw from the room or chamber where the meeting considering the matter is being held –
    - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
    - (ii) in any other case, whenever it becomes apparent that the matter is being considered at that meeting;

unless you have obtained a dispensation from your authority’s Monitoring Officer or Standards Committee;

- (b) you must not exercise executive functions in relation to that matter; and
  - (c) you must not seek improperly to influence a decision about that matter.
- (2) Where you have a prejudicial interest in any business of your authority which is not a disclosable pecuniary interest as described in paragraph 8(5), you may attend a meeting (including a meeting of the Overview and Scrutiny Committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- (3) Where you can have a prejudicial interest which is not a disclosable pecuniary interest as described in paragraph 8(5), arising solely from membership of any body described in 8(3)(a)(i) or 8(3)(a)(ii)(a) then you do not have to withdraw from the room or chamber and may make representations to the committee but may not participate in the vote.

## **PART 3**

### **REGISTRATION OF INTERESTS**

#### **Registration of Members' Interests**

- 13.** (1) Subject to paragraph 14, you must, within 28 days of-
- (a) this Code being adopted by the authority; or
  - (b) your election or appointment to office (where that is later), register in the Register of Members' Interests details of –
    - (i) your personal interests where they fall within a category mentioned in paragraph 8(3)(a) and
    - (ii) your personal interests which are also disclosable pecuniary interests where they fall within a category mentioned in paragraph 8(5)
- by providing written notification to your authority's Monitoring Officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest falling within sub-paragraphs (1)(i) or (1)(ii) or any change to any personal interest registered under sub-paragraphs (1)(i) or (1)(ii), register details of that new personal interest or change by providing written notification to your authority's Monitoring Officer.

#### **Sensitive Information**

- 14.** (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's

Monitoring Officer agrees, the Monitoring Officer shall not include details of the interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.

- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's Monitoring Officer asking that the information be included in the Register of Members' Interests.
- (3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

## Dispensations

15. (1) The Monitoring Officer may, on a written request made to the Monitoring Officer of the authority by a Member, grant a dispensation relieving the Member from either or both of the restrictions in paragraph 12(1)(a) (restrictions on participating in discussions and in voting), in cases described in the dispensation.
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Monitoring Officer –
  - (a) considers that without the dispensation the number of persons prohibited by paragraph 12 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
  - (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
  - (c) considers that granting the dispensation is in the interests of persons living in the authority's area;
  - (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each Member of the authority's executive would be prohibited by paragraph 12 from participating in any particular business to be transacted by the authority's executive; or
  - (e) considers that it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

- (4) Paragraph 12 does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

## Appendix 1

### The 7 Principles of Public Life

The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

#### Selflessness

1. Holders of public office should act solely in terms of the public interest.

#### Integrity

2. Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

#### Objectivity

3. Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### Accountability

4. Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

#### Openness

5. Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.

#### Honesty

6. Holders of public office should be truthful.

#### Leadership

7. Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

# INVESTIGATIONS PROCEDURE

---

## Introduction

1. This document sets out the procedure which will be followed once a decision has been taken that an allegation of misconduct by a Member (the “Subject Member”) should be investigated.

## Appointment of the Investigating Officer

2. Upon deciding to refer an allegation for investigation, the Monitoring Officer will appoint an Investigating Officer and instruct them to conduct an investigation into the allegation and report on it. The Monitoring Officer may appoint a replacement if the Investigating Officer is unable to complete the investigation. The Investigating Officer may be an Officer of the District Council or another authority or an external Investigating Officer. Although the Monitoring Officer is responsible for overseeing and ensuring the fairness and effectiveness of the Investigating Officers work, the Investigating Officer is responsible for the day to day management of the investigation. The Investigating Officer will remain independent of the Monitoring Officer and the Audit and Standards Committee throughout the investigation.

## The Role of the Investigating Officer

3. The role of the Investigating Officer is to ensure, as far as reasonably possible, that all the information which is relevant to the allegation is identified, reviewed and presented in their report.
4. Subject to the agreement of the Monitoring Officer, the Investigating Officer may appoint a person(s) to assist them in the conduct of their functions and may obtain such professional advice as may be necessary for the proper conduct of the investigation.

## Notification Requirements

5. Following the appointment of an Investigating Officer, the Monitoring Officer will notify the Complainant and Subject Member that the matter has been referred for investigation and inform them who is conducting the investigation. The Monitoring Officer will also advise the Complainant and Subject Member that they, and their witnesses, may be contacted by the Investigating Officer in relation to the investigation process.

## Conduct of the Investigation

6. The Investigating Officer has a broad discretion as to how they conduct the investigation.
7. The Investigating Officer may request that the Subject Member and the Complainant provide them with information and/or documents which are relevant to the investigation. They may request them to provide details of

witnesses or other persons who may be able to assist with the investigation. If such requests are not complied with the Investigating Officer may seek further instructions from the Monitoring Officer. If the Subject Member fails to co-operate and the matter is subsequently referred to a Hearing Panel, the Hearing Panel may take that lack of co-operation into account when considering the matters before them.

8. It may assist the Investigating Officer to set out a plan for how they are going to conduct the investigation. The Investigating Officer may consult the Monitoring Officer at any stage of the investigation on any matter that the Investigating Officer considers to be relevant to the proper conduct of the investigation.
9. The Investigating Officer may request any party connected to the investigation to attend for interview with them, or arrangements to obtain information – including by telephone conference and/or for any party to provide them with documents or other material relevant to the investigation.
10. Any person who is interviewed by the Investigating Officer may arrange to have a friend or qualified legal representative attend with them – provided they are not connected to the matter under investigation.
11. The Investigating Officer will take a note of any interviews that they conduct.
12. The Monitoring Officer may, at their discretion, agree that the authority may pay such reasonable expenses, fees or allowances to any persons connected to the investigation who provides documents, information, advice or explanation, or who travels to see the Investigating Officer, as they consider appropriate.

### **Referral to the Monitoring Officer**

13. The Investigating Officer may refer the matter under investigation back to the Monitoring Officer for review if it appears to them appropriate to do so. For example, if the Complainant, Subject Member or a witness is seriously ill or it is appropriate to re-consider the investigation in the light of new evidence.

### **Deferral of Investigation**

14. The Monitoring Officer has discretion to defer the investigation if it appears appropriate to do so. For example, if there is a criminal investigation taking place, or one of the parties involved is so unwell that the progress of the investigation is likely to be significantly delayed.

### **Confidentiality**

15. The Investigating Officer will request that any party involved in the investigation treat the matter as confidential, in order to maintain the integrity of the process. Should the matter be referred to a Hearing Panel the failure of any party to do so will be brought to the attention of the Hearing Panel.

### **Draft Report**

16. When the Investigating Officer is satisfied that they have sufficient information, or has obtained as much information as is reasonably practicable to obtain, they shall prepare a confidential draft report setting out the details of the allegation, the relevant sections of the Code of Conduct, a summary of the allegation, the response of the Subject Member, the information, documents and evidence taken from all parties during the course of the investigation, a statement of their draft findings, and the Investigating Officer's conclusion as to whether the Subject Member has breached the Code of Conduct.
17. The draft report will be sent to the Monitoring Officer, the Complainant and the Subject Member for their comments. Following liaison with the Monitoring Officer the Investigating Officer may wish to conduct further investigations once they have received those comments, before producing their final report.

### **Final Report**

18. The final report will include the same sections as the draft report and will conclusively confirm the Investigating Officer's view as to whether or not there has been a breach of the Code of Conduct.
19. Where appropriate, to assist the Monitoring Officer, the Investigating Officer may include a chronology, summary of disputed facts and/or to append witness statements or other documents to the final report.

### **Action on Receipt of Final Report**

20. 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 report, consult with the Independent Person, and, if satisfied that the report addresses all relevant issues, will write to the Complainant and the Subject Member notifying them that no further action is to be taken and enclose a copy of the final report.
21. If the Monitoring Officer is not satisfied that the investigation addresses all relevant issues, or fails to deal with the matter comprehensively or has not been conducted properly, they will, following consultation with the Independent Person, ask the Investigating Officer to reconsider their report, or the Monitoring Officer may make other arrangements to review the investigation.
22. If the report concludes that there is evidence of a failure to comply with the Code of Conduct the Monitoring Officer will, after consulting the Independent Person, either seek local resolution or refer the matter to the District Council's Hearing Panel.
23. More information on the local resolution of complaints can be found in the separate document referring to the "Arrangements for dealing with Member Complaints".
24. More information on the Hearing Panel process can be found in the separate document referring to the "Hearing Procedure".





# HEARINGS PROCEDURE

---

1. Where an Investigating Officer has concluded that there is evidence that the Subject Member has failed to comply with the Code of Conduct, and following consultation with one of the Independent Persons, the Monitoring Officer may decide that the matter should be dealt with before a Hearing Panel. The procedures for doing so are as follows:

## **Pre-Hearing Process**

2. The Monitoring Officer will, arrange for a Sub-Committee of the Audit and Standards Committee – known as the Hearing Panel to meet to hear the complaint, in accordance with the agreed Arrangements for Dealing with Member Complaints. The Hearing Panel will deal with the matter as soon as is reasonably convenient for all parties and, subject to exceptional circumstances arising, will aim to do so within three months of receiving the Investigating Officer's report. After the Monitoring Officer has consulted with the Independent Person and taken the view that a Hearing Panel should be convened the Monitoring Officer will contact all parties and seek to establish a convenient date for the hearing. All parties will be expected to respond promptly (and in no more than 14 days) to the Monitoring Officers' request – in order that the date the Hearing Panel sits can be arranged promptly and at the convenience of all parties.
3. As soon as a suitable date has been identified all parties will be notified of it. Where a Hearing Panel may sit for more than one day, the Monitoring Officer will aim to arrange sittings on consecutive days. If a party becomes unavailable to attend the Hearing Panel after the date of the hearing has been fixed, the Monitoring Officer will expect to receive prompt notification and brief reasons for the unavailability. Based on that information the Monitoring Officer will exercise their discretion as to whether the date the Hearing Panel sits should be re-arranged.
4. The Audit and Standards Committee are subject to the normal requirements on confidential and exempt information as apply to any other Committee under ss100 A to K and Schedule 12A of the Local Government Act 1972. The Monitoring Officer will consider whether these provisions apply in advance of the hearing and may consult one of the Independent Persons, the Chairman of the Hearing Panel and any other party involved in the Hearing Panel for their views.
5. The Monitoring Officer will request that the Subject Member gives their response to the Investigating Officer's report promptly – in order to identify areas of agreement between the parties and matters that are likely to be contentious well in advance of the date that the Hearing Panel sits. If the Subject Member unreasonably delays or withholds their response the Hearing

Panel may take that lack of co-operation into account when considering the matters before them.

6. If the Subject Member wishes to rely on new evidence at the hearing that has not been considered by the Investigating Officer, for example, documents or information that have not previously been referred to or by calling new witnesses, the Subject Member will be expected to give the Monitoring Officer reasonable notice and provide the Monitoring Officer with a copy of that new material or a summary of the evidence that the new witness is likely to give.
7. Subject to the above, on the exercise of the Chairman's discretion the Hearing Panel may decline to allow such new arguments, witnesses or evidence to be presented at the hearing.
8. It is the responsibility of the Monitoring Officer to oversee the work of the Investigating Officer during the evidence gathering process and the Monitoring Officer will collate and consider all the evidence available prior to placing it before the Hearing Panel. During this process the Monitoring Officer will, where they consider it necessary to do so, consult with, and take account of, the view of the Independent Person.
9. The Chairman of the Hearing Panel is responsible for the conduct of the hearing. Where the Monitoring Officer considers it appropriate to do so, the Monitoring Officer may consult with the Chairman of the Hearing Panel (and, if appropriate, with one of the Independent Persons), with a view to assisting the Chairman in issuing pre-hearing directions to the parties involved in the hearing. The purpose of doing so is to identify relevant issues and to ensure that the business of the Hearing Panel is dealt with efficiently. The decision as to whether directions are issued is, ultimately, a matter for the Chairman.
10. The Monitoring Officer may, at their discretion, agree that the authority pay the reasonable expenses of the Complainant, Subject member and witnesses, associated with their attendance at the hearing.
11. The Monitoring Officer will consider whether it is appropriate to hear two or more complaints together. This may occur, for example, if they relate to the same Subject Member, or arise from the same or a similar set of facts or from the same incident, or have some other connection by which the Monitoring Officer considers that it is proper to link one or more complaints.
12. The Monitoring Officer will provide the Complainant, Subject Member and all members of the Hearing Panel with a copy of the Investigating Officer's final report at least two weeks after the decision has been made to refer the matter to the Hearing Panel
13. In order to assist the Hearing Panel, following the decision to refer the matter for a hearing, the Monitoring Officer will also provide all members of the Hearing Panel with a briefing note which summarises the allegation, details the agreed and disputed facts and identifies the evidence which the Complainant, Subject Member and their witnesses are expected to give. The briefing note will be prepared as soon as reasonably practicable following the decision to refer the matter to the Hearing Panel and may also contain, for example, a chronology and copies of documents the Monitoring Officer considers may be relevant.

14. In addition to assisting in preparing the members of the Hearing Panel for the hearing, the purpose of the briefing note prepared by the Monitoring Officer is to enable members of the Hearing Panel in identifying any conflict of interest or potential conflict of interest that may arise. Members of the Hearing Panel will familiarise themselves with the relevant issues and, where necessary, notify the Monitoring Officer of any conflict of interest or potential conflict of interest, as a matter of priority.
15. The Monitoring Officer will act as a point of contact for the Subject Member, the Complainant, and any witnesses who will give evidence.

## **The Hearing**

16. There is a presumption that the deliberations of the Hearing Panel will take place in public. The parties to the hearing may make representations to the Chairman on this point and should do so, via the Monitoring Officer, in good time prior to the hearing. The Chairman may issue directions in advance on this point or, in the interests of transparency, deal with the issue at the commencement of the Hearing Panel.
17. One of the Independent Persons appointed by the District Council will be invited to attend at the Hearing Panel. Where one of the Independent Persons has already been involved in the pre-hearing process and there is an actual, or potential, conflict of interest, the Monitoring Officer will invite the other Independent Person to attend the Hearing Panel who has not been involved with the pre-hearing process. Where an Independent Person takes part in the Hearing Panel they will be consulted and their view sought during the process and, save that they are not entitled to vote on the decision as to whether there has been a breach of the Code of Conduct and, if so, what action to take, they will be treated as an equal member of the Hearing Panel.
18. If the Subject Member does not attend the hearing, the Hearing Panel may at the discretion of the Chairman, adjourn the hearing or continue to hear evidence and reach a decision on the basis of the Investigating Officer's report and any evidence they may hear.
19. The Hearing Panel sits as a Sub-Committee of the Audit and Standards Committee. As such it is a meeting of the District Council, not a court of law. Where a Hearing Panel sits the burden is on the Complainant, through the Investigating Officer, to prove that there has been a breach of the Code of Conduct. That burden is to the civil standard, the allegation must be proved on the balance of probabilities. Evidence is not heard on oath. However, all parties are expected to have proper regard for the seriousness of the proceedings and the public interest in ensuring the business of the Hearing Panel is conducted fairly and efficiently.
20. In order to assist the Hearing Panel in dealing with matters fairly and efficiently the Chairman of the Hearing Panel may, at their discretion, allow the Investigating Officer and the Subject Member to make opening remarks and/or closing arguments.

## **Representation**

21. The Subject Member may arrange to have a friend or qualified legal representative attend the hearing with them, provided that they are not connected to the matter under investigation. The Hearing Panel may refuse to allow the friend or representative to remain at the hearing if they are disruptive.

## **Evidence**

22. All matters relating to the evidence and procedure at the hearing are within the discretion of the Chairman of the Hearing Panel. The Chairman may, at any time, seek advice from the Monitoring Officer.
23. Subject to the exercise of the Chairman's discretion to manage the hearing, the Subject Member is entitled to present their case as they see fit.
24. Where the Chairman of the Hearing Panel may consider exercising their discretion as to the management of the proceedings the Chairman will have regard to any relevant submissions made by the Investigating Officer and Subject Member.
25. It will be the general expectation of the Hearing Panel that all witnesses of fact relevant to the disputed issues will attend in person to give their evidence and to be questioned. Less weight may be placed on the evidence of witnesses of fact where they do not attend before the Hearing Panel, because they are not available to be questioned by the other party. It is the expectation that witnesses as to character will normally provide their evidence in writing, such evidence will be read to the Hearing Panel by the party who wishes to rely on that evidence.
26. In addition to the information detailed at paragraph 19 above, it will be the expectation of the Hearing Panel that the Complainant, Subject Member and all witnesses behave courteously both throughout the pre-hearing stage and at the hearing. Parties who behave unreasonably, are rude or who seek to disrupt the hearing will be asked to leave and the Chairman may exercise their discretion to proceed without hearing that persons evidence. Alternatively, the hearing may be adjourned.
27. Subject to the Chairman exercising their discretion, the general procedure at a hearing will be that the Investigating Officer will present their final report, call such witnesses as they consider necessary and make representations to support their conclusions. Following the Investigating Officer calling each witness the Subject Member will be entitled to question that witness. Thereafter the Subject Member will have the opportunity to give their evidence, call witnesses and to make representations to the Hearing Panel as to why they believe they have not failed to comply with the Code of Conduct. The Investigating Officer may question the Subject Member and each of the Subject Member's witnesses, after they have given their evidence. The Complainant, Investigating Officer, Subject Member and all witnesses may be questioned by all members of the Hearing Panel during the proceedings. If it appears to the Monitoring Officer that a relevant question or issue has not been raised by either party the Monitoring Officer may bring that point to the attention of the Chairman.

28. The onus is on the Subject Member to ensure the attendance of all witnesses they wish to call to give evidence on their behalf at the Hearing Panel. The Chairman of the Hearing Panel will consider the relevance of the potential evidence that a witness may give, both in liaison with the Monitoring Officer at the pre-hearing stage (when the Chairman may issue directions) and throughout the hearing. By applying the test of relevance the Chairman may limit the number of witnesses to be called by either party and/or the issues that may be covered by them.
29. No party to the proceedings has the power to compel any witness to attend to give evidence before the Hearing Panel.

### **Role of Monitoring Officer at the Hearing**

30. The role of the Monitoring Officer is to ensure that the pre-hearing stage and hearing are conducted efficiently. Although they are responsible for overseeing the work of the Investigating Officer, the Monitoring Officer will remain impartial and, where asked to do so by the Chairman of the Hearing Panel, may give independent advice on legal and procedural matters. The Monitoring Officer is not permitted to make findings of fact regarding any allegation that the Code of Conduct has been breached, this is a matter solely for the Hearing Panel. References to the Monitoring Officer should be read to include any representative of the Monitoring Officer.

### **Role of the Complainant at the Hearing**

31. The role of the complainant will usually be limited to being a witness and they are not a party to the proceedings. However, the Hearing Panel may wish to consult them at any stage in the hearing if they feel their comments would assist them.

### **Decision**

32. Having heard all the evidence, the Hearing Panel must decide whether or not the Subject Member has breached the Code of Conduct and, if so, what, if any, sanctions to impose.
33. The Hearing Panel will generally retire to consider in private whether they conclude that the Subject Member has breached the Code of Conduct. All members of the Hearing Panel may contribute equally to the deliberations, although only the District Council members of the Hearing Panel may vote. If necessary, the Chairman has a casting vote.
34. Having considered whether or not the Subject Member has breached the Code of Conduct, the Hearing Panel will reconvene in public session and the Chairman will advise the Subject Member of the outcome. If the Hearing Panel decides that the Subject Member has not breached the Code of Conduct then the proceedings are concluded immediately. Alternatively, if the Hearing Panel decides that the Code of Conduct has been breached, the Chairman will announce this decision and give brief verbal reasons. The Investigating Officer and Subject Member may then make representations as to what, if any, sanctions are appropriate. The Hearing Panel will generally retire to consider those representations. On returning to public session the

Chairman will announce the sanctions, if any, to be imposed and give brief verbal reasons.

35. While the Monitoring Officer may assist the Hearing Panel during its private deliberations by, for example, reviewing the evidence heard or advising on issues of law, the Monitoring Officer is not permitted to express any view on the merits of the evidence or to attempt to influence the decision making process. Once a decision has been made, either whether or not the Code has been breached or on the imposition of sanctions, the Monitoring Officer may assist the Chairman in drafting a short document containing the reasons for the relevant decision, to be announced by the Chairman at the hearing.

## **Sanctions**

36. The Hearing Panel must consult the Independent Person before imposing any sanction and give the Subject Member the opportunity to make representations.
37. When making its decision on the sanctions that may be imposed the Hearing Panel will consider the seriousness of the breach of the Code of Conduct and its actual and potential consequences. In doing so it will also have regard to any mitigating or aggravating factors, such as:

### Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the Code of Conduct.
- A previous record of good public service.
- An offer to apologise for the breach, particularly if it is made at an early stage in the overall proceedings.
- Evidence of ill health at the time of the breach.

### Aggravating Factors

- Dishonesty.
  - Continuing to deny the breach.
  - An attempt to blame others.
  - Evidence of a failure to follow earlier advice or warnings.
  - Previous breaches – particularly where they are of a similar nature.
38. When imposing sanctions the primary objective of the Hearing Panel will be to ensure that the Subject Member is dealt with in a way that prevents a further breach of the Code of Conduct and maintains public confidence in the General Principles of Public Life and ethical local governance.
39. The sanctions available to the Hearing Panel are to:
- Publish its findings in respect of the Subject Member's conduct.
  - Write a formal letter to the Subject Member.
  - Report its findings to Council for information.
  - Seek formal censure by motion.
  - Recommend to the Subject Member's Group Leader (or, in the case of Subject Members who do not belong to a political group, recommend to

Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council.

- Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
- Instruct the Monitoring Officer to arrange mentoring, training, mediation or other appropriate remedy for the Subject Member.

### **Notice of Decision**

40. As soon as is reasonably practicable after the hearing the Monitoring Officer will prepare a formal Decision Notice. The Decision Notice will confirm the decision of the Hearing Panel. Where the Code of Conduct has been found to have been breached, and if sanctions have been imposed, the Decision Notice will contain written reasons. A copy of the Decision Notice will be sent to the Complainant and the Subject Member. The Decision Notice will be made available for public inspection and a report of the decision will be made to the next Audit and Standards Committee meeting.