

Hearings Panel: Rules of Procedure

1. General:

1.1 Definitions:

“Complainant”	The party who has made an allegation that a Member has failed to comply with the Members’ Code of Conduct.
“Independent Person”	A person who is not a Member, co-opted Member or officer of the Council and who has been appointed to the role of Independent Person and whose views must be sought by the Council 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 investigation, or by a Member or co-opted Member against whom an allegation has been made.
“Investigation Officer”	The person appointed by the Monitoring Officer to undertake the investigation. The investigation officer may be another officer of the Council, an officer of another authority or an external investigator.
“Subject Member”	The Member against whom the allegation has been made of a failure to comply with the Code of Conduct.

1.2 The Hearings Panel consists of three voting elected Members drawn from the Ethics Committee. The Council Solicitor, Director of Democratic and Legal Services shall have delegated power to constitute a Hearings Panel as and when a local hearing is required under the arrangements adopted by the Council.

1.3 If the Chairman of the Ethics Committee is not a Member of the Hearings Panel, one of the Members of the Hearings Panel shall be elected as Chairman, otherwise the Chairman of the Ethics Committee shall chair the Hearings Panel.

1.4 The quorum for a meeting of the Hearings Panel is three elected Members and all three Members must be present throughout the hearing.

1.5 The hearing will be attended by a Legal Officer and a Democratic Services Officer who shall act as the clerk. The officers are present to provide advice and are not Parties to the hearing. The Investigation

Officer may also attend the hearing to present their report to Members but is not a Party to the matter.

- 1.6 The role of the Legal Officer is to provide legal advice relating to the application and submissions. Any legal advice that may be given to the Hearings Panel in private shall be repeated when the Hearings Panel returns in open session.
- 1.7 The role of the Clerk is to record the hearing and the decisions of the Hearings Panel, and to ensure efficient administration.
- 1.8 The Independent Person's views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Members' Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Members' Code of Conduct. The Independent Person should normally be present throughout the Hearings Panel meeting (but not during the deliberations of the Hearings Panel in private) but in the event that this is not possible, may submit their views on the complaint to the Hearings Panel in writing instead.
- 1.9 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearings Panel. Schedule 12A Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Hearings Panel where it is likely that confidential or exempt information will be disclosed.
- 1.10 The Hearings Panel may retire to consider the representations and evidence in private. Upon the Hearings Panel's return, the Chairman will announce the Hearings Panel's findings of fact and invite the Legal Officer to relay any legal advice given to Members during private session.
- 1.11 All matters/issues before the Hearings Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 1.12 The Hearings Panel will consider all matters on the papers, without hearing oral evidence or receiving oral representations, unless exceptional circumstances exist which make an oral hearing necessary, proportionate and in the public interest. Should the Hearings Panel determine that an oral hearing is necessary, proportionate and in the public interest, it shall adjourn the consideration of the matter to allow the Oral Hearings Procedure to be followed. The procedure is set out at section 3 hereto.
- 1.13 The papers shall comprise the investigation report along with written representations from the Subject Member and Complainant concerned

and any additional comments of the Investigating Officer. If the independent person is not able to attend the Hearings Panel, the written comments of the Independent Person, including where the Independent Person has indicated that they have no comments, shall also be included as part of the papers.

- 1.14 If an oral hearing is undertaken, the procedure set out in section 3 below shall apply. The Chairman of the Hearings Panel shall however have the discretion to issue such further directions as are necessary for the conduct of the matter, including in relation to the manner in which the oral hearing will be conducted, the time frame, the calling of witnesses and representations by the Subject Member.
- 1.15 Where the Hearings Panel determines the matter on the papers neither the Subject Member nor the Complainant are required to attend, although they may do so. Where the Hearings Panel undertakes an oral hearing of the matter, and the Subject Member and/or Complainant is not in attendance, having been notified of the hearing date, the hearing may proceed in their absence and a determination may be made on the matter.
- 1.16 Subject to paragraph 1.17 below, the order of business will be as follows:
 - (a) Elect a Chairman if the Chairman of the Ethics Committee is not a Member of the Hearings Panel for that hearing;
 - (b) Apologies for absence;
 - (c) Disclosure of interests;
 - (d) Urgent business (if any)
 - (e) Exempt items – to confirm allocation of business between Part A and Part B
 - (f) Introduction by the Chairman, of Members of the Hearings Panel the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, the Complainant and the Subject Member and their representative;
 - (g) Consideration of the allegation regarding failure to comply with the Code of Conduct.
- 1.17 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.
- 1.18 The Hearings Panel may adjourn the hearing at any time.

2. Pre –hearing/pre-consideration process:

- 2.1 Prior to convening a Hearings Panel the Monitoring Officer will issue the forms annexed to this Procedure to the Subject Member (Appendices A- E) and Complainant (Appendix A only), as necessary, for completion by them to facilitate the preparation for the Hearing. The Monitoring Officer shall then ask the Investigating Officer to comment

on these responses. The Hearings Panel will then be convened to consider the allegation/s including the investigation report, responses and any comment from the Investigating Officer.

3. Hearings Procedure

The Hearings Panel will consider all matters on the papers, without hearing oral evidence or receiving oral representations, unless exceptional circumstances exist which make an oral hearing necessary, proportionate and in the public interest. In the event that the Hearings Panel determines that an oral hearing is necessary, proportionate and in the public interest, the Oral Hearings Procedure set out below is to be followed. In all other circumstances the procedure set out in section "Hearing on the papers" will be followed.

3A. Oral Hearings:

3.1 Right to be accompanied by a representative

The Subject Member may choose to be accompanied and/or represented at the Hearings Panel by a fellow Member, friend or colleague or such other representative as they may choose.

3.2 The conduct of the oral hearing

3.2.1 Presentation of the Investigating Officer's report

- (a) The Investigating Officer presents their report including any documentary evidence or other material and calls his/her witnesses. No new points will be permitted;
- (b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (c) The Hearings Panel may question the Investigating Officer upon the content of his/her report and any witnesses called by the Investigating Officer.

3.2.2 Presentation of the Subject Member's case

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- (c) The Hearings Panel may question the Subject Member and any witnesses called by the Subject Member.

3.2.3 Summing up

- (a) The Investigating Officer sums up the complaint;

(b) The Subject Member or their representative sums up their case.

3.2.4 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Hearings Panel there has been a failure to comply with the Members' Code of Conduct or no failure to comply with the Members' Code of Conduct as the case may be.

3.2.5 Deliberations of the Hearings Panel

(a) The Hearings Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct.

(b) Prior to reaching a decision, the Hearings Panel will consider the views expressed by the Independent Person.

(c) Where the complaint has a number of aspects, the Hearings Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.

(d) The Hearings Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.

(e) The Hearings Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Hearings Panel cannot be presented, then the Hearings Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

(f) Having deliberated on its decision, the Hearings Panel will reconvene the hearing in public and the Chairman will announce whether, on the facts presented, the Hearings Panel considers that there has been a failure to comply with the Members' Code of Conduct, or whether there has been no failure to comply, as the case may be. The Chairman will also invite the Legal Officer to relay any legal advice given to Members during private session.

3.2.6 Representations on Sanction

(a) The Chairman will remind all parties of the possible sanctions which the Hearings Panel may impose as set out in the Arrangements for dealing with allegations of breach of the Members' Code of Conduct and below at section 4.

(b) The Chairman will then invite the Independent Person and the Subject Member to make their representations as to whether any sanctions should apply and what form they should take.

(c) Having heard the representations/views, the Hearings Panel will adjourn and deliberate in private.

3.2.7 Findings on Sanction

(a) Having deliberated on its decision and/or recommendations and the application of any sanctions, and having taken into account the Independent Person's views, the Hearings Panel will reconvene the hearing in public and the Chairman will announce the sanctions (if any) to be applied and the recommendations (if any) to be made to the Council or Monitoring Officer.

3B. Hearings on the Papers:

The Hearings Panel shall receive the papers in advance of the meeting. The papers shall comprise the investigation report along with written representations from the Subject Member concerned and any additional comments of the Investigating Officer. If the Independent Person is not able to attend the Hearings Panel, the written comments of the Independent Person shall also be included as part of the papers.

3.3 Verbal report from Investigating Officer (if necessary)

If they consider it necessary, Members may receive a verbal summary from the Investigating Officer on the investigation report and may ask any questions, in clarification, of the Investigation Officer.

3.4 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Hearings Panel there has been a failure to comply with the Members' Code of Conduct or no failure to comply with the Members' Code of Conduct as the case may be.

3.5 Deliberations of the Hearings Panel

(a) The Hearings Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct.

(b) Prior to reaching a decision, the Hearings Panel will consider the views expressed by the Independent Person.

(c) Where the complaint has a number of aspects, the Hearings Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.

(d) The Hearings Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.

(e) Having deliberated on its decision the Hearings Panel will reconvene the hearing in public and the Chairman will announce whether on the facts presented, the Hearings Panel considers that there has been a failure to comply with the Members' Code of Conduct, or whether there has been no failure to comply, as the case may be. The Chairman will also invite the Legal Officer to relay any legal advice given to Members during private session.

3.6 Representations on Sanction in the event of a finding of failure to comply with the Members' Code of Conduct

(a) Where the Hearings Panel has determined that there has been a failure to comply with the Members' Code of Conduct, they will then receive the papers setting out the written representations from the Investigating Officer and Subject Member regarding whether or not the Hearings Panel should impose a sanction or penalty; and if so, what form any sanction or penalty should take.

(b) The Chairman will remind all parties of the possible sanctions which the Hearings Panel may impose as set out in the Arrangements for dealing with allegations of breach of the Members' Code of Conduct and below at section

(c) The Hearings Panel will adjourn and deliberate in private regarding whether or not the Hearings Panel should impose a sanction or penalty; and if so, what form any sanction or penalty should take.

3.7 Findings on Sanction

Having deliberated on its decision and/or recommendations and the application of any sanctions, and having taken into account the Independent Person's views, the Hearings Panel will reconvene the hearing in public and the Chairman will announce the sanctions (if any) to be applied and the recommendations (if any) to be made to the Council or Monitoring Officer

3.8 Finding of Fact – No failure to comply with the Code

If the Hearings Panel decides that the Subject Member has not failed to comply with the Code it may still consider whether it should provide any feedback to the Council, Leader of the Council or Group Leader where the matter before them has raised an issue of general concern.

4. Range of possible sanctions

4.1 The Hearings Panel may –

- a. Publish its findings in respect of the Subject Member's conduct;
- b. Report its findings to Council for information;

- c. Recommend to the Subject Member's Group Leader (or in the case of un-grouped s, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - d. Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - e. Recommend to full Council or the Leader of the Council as the case may be that the Subject Member be removed from outside appointments to which he/she has been appointed or nominated by the Council ;
 - f. Withdraw facilities provided to the Subject Member by the Council, such as a computer, website and/or email and Internet access;
 - g. Exclude the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings; or
 - h. Request that the Monitoring Officer arrange training for the Subject Member.
- 4.2 The Hearings Panel has no power to suspend or disqualify the Subject Member or to withdraw the Subject Member's basic or special responsibility allowances.
- 4.3 The Hearings Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.
- 4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Hearings Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour.
- 4.5 In considering the nature of the sanction that may be appropriate, the Hearings Panel shall have regard to the relevant circumstances which may include consideration of the following questions:
- (a) What was the Subject Member's intention and did they know that they were failing to follow the Members' Code of Conduct?
 - (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
 - (c) Has there been a breach of trust?
 - (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?

- (e) What was the result/impact of failing to follow the Members' Code of Conduct?
- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant persons?
- (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- (j) Has the Subject Member previously failed to comply with the Members' Code of Conduct?
- (k) Is there likely to be a repetition of the incident?

5. Post hearing procedure

- 5.1 A written minute of the decision will be prepared in consultation with The Chair of the Hearings Panel which will record the outcome and state the Hearings Panel's reasons for the decision. Once approved, this minute will be published on the Council's website.
- 5.2 There is no right of appeal or review from the decision of the Hearings Panel. Any Party aggrieved by the outcome may consider whether it is appropriate to make a complaint to the Local Government Ombudsman and/or take independent legal advice.

Adopted: November 2012