

LOCAL DETERMINATION OF COMPLAINTS ABOUT MEMBERS

Guidance for Members

The Corporate Governance and Standards Committee's responsibilities

The need for a hearing

1. The Corporate Governance and Standards Committee will seek to hold a hearing in relation to an allegation within three months of receiving the Investigation Report. The hearing will be conducted by a Sub-Committee of the Corporate Governance and Standards Committee known as the Hearings Sub-Committee.

Before the hearing

The pre-hearing process

2. The Corporate Governance and Standards Committee will use a written pre-hearing process in order to allow the hearing to proceed fairly and efficiently.
3. The Subject Member will be asked to provide the following information to the Monitoring Officer:
 - 3.1 to identify those paragraphs in the Investigating Officer's Report which the Subject Member agrees with and those paragraphs in the Report that the Subject Member disagrees with and the reasons for such disagreement;
 - 3.2 to identify any further documentary evidence which the Subject Member would like to rely upon at the hearing;
 - 3.3 to ascertain if they are going to attend the hearing and if they are going to represent themselves or whether they are going to employ someone to represent them in which case they should provide the details of their representative prior to the hearing;
 - 3.4 to give reasons whether the whole or any part of the hearing should be held in private and whether any of the documentation supplied to the Hearings Sub-Committee should be withheld from the public.
4. The Investigating Officer will also be asked to comment on the Subject Member's response within a set time to say whether or not he or she :
 - 4.1 will be represented at the hearing
 - 4.2 wants to call witnesses to give evidence to the sub-co~~90~~mmitee
 - 4.3 wants any part of the hearing conducted in private and why
 - 4.4 wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public and why.

5. The Monitoring Officer will endeavour to accommodate the availability of the parties attending the hearing before notifying the parties of the date, time and place for the hearing.

The Hearing

Preliminary

6. The members of the sub-committee will be selected by the Monitoring Officer after having consulted the Chairman of the Corporate Governance and Standards Committee.

The Order of Business

7. The order of business will be as follows, subject to the Chairman exercising discretion and amending 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:
 - 7.1 Appointment of a Chairman.
 - 7.2 Apologies for absence.
 - 7.3 Declarations of interests.
 - 7.4 The Chairman shall confirm that the Hearings Sub-Committee is quorate.
 - 7.5 In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing.
 - 7.6 Introduction by the Chairman, of Members of the Hearings Sub-Committee, the Independent Person, [the Parish Member \(if the complaint involves a parish councillor\)](#), the Monitoring Officer or Legal Advisor to the Sub-Committee, Investigating Officer, Complainant(s) and the Subject Member and their representative (if appointed).
 - 7.7 To receive representations from the Monitoring Officer, [the Investigating Officer](#) and ~~or~~ Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press (subject to Schedule 12A Local Government Act 1972 (as amended)).
 - 7.8 To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.
- 4.8 The Hearings Sub-Committee may adjourn the hearing at any time.

Presentation of the Complaint

8. The Investigating Officer presents their report including any documentary evidence or other material and calls any complainant witnesses.
9. The Hearings Sub-Committee will give the Subject Member the opportunity to ask any questions regarding the evidence presented through the Chair.
10. The Hearings Sub-Committee may question the Investigating Officer upon the content of his or her report and any complainant witnesses.

Presentation of the Subject Member’s case

11. The Subject Member or their representative presents their case and calls their witnesses.
12. The Hearings Sub-Committee will give the Investigating Officer the opportunity to ask any questions regarding the evidence presented through the Chair.

13. The Hearings sub-committee may question the Subject Member upon the contents of their case and any subject Member witnesses.

Summing up

14. The Investigating Officer sums up the complaint.

15. The Subject Member or their representative sums up their case.

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Views/Submissions of the Independent Person/Parish ~~Member~~Representative

16. The Chairman will invite the Independent Person, and the Parish ~~Member~~Representative if the Subject Member is a Parish Councillor, to express their view on whether they consider that on the facts presented to the Hearings Sub-Committee, there has been a breach of the Code of Conduct or no breach as the case may be. The Independent Person, and the Parish ~~Member~~Representative may comment at this stage whether any sanctions may be appropriate.

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Deliberations of the Standards Hearings Sub Committee

17. The Hearings Sub- Committee 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. Where the legal adviser assists on matters of law an explanation of this will be provided when the Hearings Sub-committee reconvenes in public.

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~~18. The Hearings Sub- Committee will consider the views expressed by the Independent Person and the Parish Representative (as appropriate) prior to reaching a decision(s) including any views of the Independent Person and the Parish Representative (if appropriate) on sanction(s) to be applied and/or recommendations to the The Hearings Sub- Committee 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~~

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assist the Hearings- Sub Committee cannot be presented, then the Hearings Sub-Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.

Borough or Parish Council or Monitoring Officer.

19. The Hearing Sub -Committee will make its decision on the balance of probability based on the evidence before it during the hearing.

16.

17-20. Where the complaint has a number of aspects, the Hearings Sub -Committee may reach a finding, apply a sanction and /or make a recommendation on each aspect separately.

~~18-19. The Hearing Sub -Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.~~

~~19. The Hearings Sub -Committee 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 Sub Committee cannot be presented, then the Hearings Sub -Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.~~

20-21. Having deliberated on its decision and/or recommendations(s) and the application of any sanction(s), the Hearings Sub-Committee will reconvene the hearing in public and the Chairman will announce that, on the facts presented, the Hearings Sub- Committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.

24-22. If the Hearing Sub- Committee considers that there has been **no breach of the Code of Conduct** the Hearings Sub- Committee will set out the principal reasons for the decision. In reaching its decision the Hearings Sub- Committee may make any recommendations to the authority it considers may facilitate and enhance ethical standards within the authority. The Chairman will also announce that the Sub Committee's full decision and reasons will be issued by the Monitoring Officer, in writing within approximately 10 working days following the close of the hearing.

22-23. If the Hearings Sub- Committee decides that there has been **a breach of the Code of Conduct** , the Chairman will announce the principal reasons for the decision and the sanction(s) the Sub- Committee is minded to apply and/or any recommendation(s) to the Borough or Parish Council and/or the Monitoring Officer.

23-24. The Chairman will invite the Independent Person, the Parish Member (if the complaint involves a parish councillor) , the Investigating Officer and the Subject

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Member, ~~the Monitoring Officer and the Investigating Officer~~ to make their representations as to whether any sanction(s) should be applied and what form any sanction(s) should take. The Independent Person and the Parish ~~Member representative~~ (if appropriate) will be invited to express their view on any recommendation(s) to the Borough or Parish Council or Monitoring Officer.

Having heard the representation/views, the Hearings Sub- Committee will adjourn and deliberate in private.

~~24.25.~~ Having deliberated on the suggested sanctions and/or recommendations(s) and the application of any sanctions(s), and having taken into account the Independent Person's views, the Hearings Sub- Committee will reconvene the hearing in public and the Chairman will announce:

- whether any sanctions are to be applied (sanctions can only be recommended if a Parish Council matter).
- Whether any recommendations will be made to the Borough or Parish Council.
- That the Sub- Committee's full decision and reasons will be issued by the Monitoring Officer, in writing within approximately 10 working days following the close of the hearing.
- That the decision will be published on the Borough Council's website; and
- That there is no right of appeal against the Hearings Sub- Committee decision(s) and/or recommendations(s).

Range of Possible Sanctions

~~264~~ The Corporate Governance and Standards Committee has delegated to the Hearings Sub-Committee such of its powers to take action in respect of the Subject Member as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearings Sub-Committee may:

- ~~264.1~~ Publish and report its findings in respect of the Subject Member's conduct to a meeting of the full Council (or to the relevant Parish Council) for information and recommending that the Subject Member makes a public apology at that meeting.
- ~~264.2~~ Recommend to the Subject Member's political group leader (or in the case of an un-grouped Subject Member, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council for a specified period.
- ~~264.3~~ Recommend to the Leader of the Council, in the case of an ~~Executive lead~~ Subject Member, who is found to have failed to comply with the Code of Conduct, that the Subject Member be removed from the Executive, or removed from particular portfolio responsibilities
- ~~264.4~~ Recommend to Council or to the relevant Parish Council, appropriate training or participation in conciliation or mediation for the Subject Member.
- ~~264.5~~ Recommendation to Council or the relevant Parish Council that the Subject Member be removed from all outside appointments to which they have been

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appointed or nominated by the Council or by the Parish Council for a specified period.

264.6 Withdraw or recommend to the relevant Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and internet access for a specified period.

264.7 Exclude or recommend that the relevant Parish Council excludes the Subject 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.

264.8 ~~The i~~ssuing of a formal letter.

264.9 Issue a formal reprimand of the Subject Member.

264.10

The Hearings Sub-Committee cannot suspend a Subject Member, withdraw a Subject Member's allowance, impose financial penalties, award compensation or make an award of costs.

Matters to Consider when Applying a Sanction

272. When deciding whether to apply one or more sanctions referred to above the Hearings Sub-Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour and that any sanction does not unduly restrict the Subject Member's ability to perform the functions of a councillor. The Hearings-Sub Committee will consider the following questions along with any other relevant circumstances raised at the hearing:

- (a) What was the Subject Member's intention and did they know that they were failing to follow the Borough or Parish Council's Code of Conduct?
- (b) Did the Subject Member receive relevant advice from officers before the incident and was that advice acted on in good faith?
- (c) Has there been a relevant 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 Borough or Parish Council's 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 warned or reprimanded for similar misconduct?
- (j) Has there been a relevant previous breach by the Subject Member of the Borough or Parish Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?

- (l) Was it a deliberate breach of the code or was it inadvertent (i.e. the Member thought that he/she was acting in a private capacity)? If capacity is an issue the Hearings Sub-Committee will need to give reasons for its decision that the Subject Member was or was not acting publicly.

23. The Chairman will announce the Hearings Sub-Committee's decision.

The written decision

24. The Hearings Sub-Committee will announce its decision on the day and provide a short written decision on that day. It will also issue a full written decision approximately 14 days after the end of the hearing to:

24.1 The Subject Member;

24.2 The Complainant;

24.3 The clerk to aAny Parish Council concerned.

Making the findings public

25. The Corporate Governance and Standards Committee will also arrange for a summary of the decision and reasons for that decision to be published on the Council's website.

26. If the Hearings Sub-Committee finds that a Subject Member did not fail to follow the relevant authority's Code of Conduct, the public summary must say this, and give reasons for this finding.

27. If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the Subject Member failed to follow the Code of Conduct, outline what happened and give reasons for the Hearings Sub-Committee's decision not to take any action.

28. If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct and it sets a sanction, the public summary must say that the Member failed to follow the Code of Conduct, outline what happened, explain what sanction has been set and give reasons for the decision made by the Hearings Sub-Committee.

Costs

29. Subject Members are responsible for meeting the cost of any representation at a Hearings Sub-Committee meeting. The Hearings Sub-Committee cannot make orders as to costs. Neither the Borough Council nor a Parish Council can contribute to the Subject Member's costs or the Complainant's costs or indemnify a Subject Member against costs which he or she may incur.

Appeals

30. There is no internal right of appeal for a Member against a finding by the Hearings Sub-Committee following a hearing.

Variation

31. The Monitoring Officer or the Hearings Sub-Committee may vary this procedure in any particular instance where he ~~or~~ she or they is/are of the opinion that such a variation is desirable and does not conflict with statutory requirements.

Note: Human Rights

The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a convention right. The Hearings Sub-Committee will have regard to the Human Rights Act when exercising its hearing functions, with particular reference to the following provisions:

- Article 6 –in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law
- Article 8 – everyone has the right to respect for his/her home and private and family life
- Article 1 – of the first protocol – every person is entitled to the peaceful enjoyment of his/her possessions