

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 ir authority’s Code of Conduct, and sets out how the Rother District Council (“the Council”) authority will deal with allegations of a failure to comply with the relevant 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 two Independent Persons, the view of one of which must be sought by the Council authority before it makes a decision on an allegation which it has decided shall be investigated. Their views may be sought by the Council 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, in cases when the complaint has been referred for an investigation only.

2. The Code of Conduct

The District Council has adopted a Code of Conduct for Members, which is attached as Appendix 1 [NOT INCLUDED HERE] 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 can either 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

Complainants can also email their complaint direct to the email address above or use the on-line complaint form at the following link:

<https://www.rother.gov.uk/accessing-council-services/members-code-of-conduct/>

The Monitoring Officer has a 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 ~~the Council we~~ have all the relevant information ~~which we need to be able to process a their~~ complaint, ~~the~~ Complainants are advised to 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. Failure to provide all the relevant information may result in a delay in processing the complaint.

The Complainant must provide their name and a contact address or email address, so that ~~the Council 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, and if it is agreed, in which case the Council 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, by whom 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 relevant 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 Clerk 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 Chair~~man~~ 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 Chair~~man~~ 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 Chair~~man~~ 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 two 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 same Independent Person will be used throughout each case to ensure consistency and knowledge of the complaint at each stage of the process, as necessary. – The role of the Independent Person is to represent the public interest and not to provide advice to or represent the Subject Member.–The Independent Persons may also assist the Council by acting as a broker between parties in cases where there is dissatisfaction on one or both sides to a complaint, where an attempt has been made to resolve a complaint by a local resolution.

The District Council has appointed two 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 In the case of a District Councillor ~~R~~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 Chair~~man~~ 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 Chair~~man~~ 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 Chair~~man~~ 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's 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 complainants ~~you~~ feel that the ~~C~~council has failed to deal with any aspect of the complaint properly, ~~they~~you may make a complaint to the Local Government and Social Care Ombudsman.

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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, [remote meeting platforms](#) 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 [Council 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 Chair~~man~~ on this point and should do so, via the Monitoring Officer, in good time prior to the hearing. The Chair~~man~~ 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. ~~The One of the Independent Persons who has been involved with the earlier stages of the complaint 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 Chair~~man~~, 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 Chair~~man~~ 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 Chair~~man~~ of the Hearing Panel. The Chair~~man~~ may, at any time, seek advice from the Monitoring Officer.
23. Subject to the exercise of the Chair~~man~~'s discretion to manage the hearing, the Subject Member is entitled to present their case as they see fit.
24. Where the Chair~~man~~ of the Hearing Panel may consider exercising their discretion as to the management of the proceedings the Chair~~man~~ 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 Chair~~man~~ may exercise their discretion to proceed without hearing that ~~person's~~person's evidence. Alternatively, the hearing may be adjourned.
27. Subject to the Chair~~man~~ 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 Chair~~man~~.

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 Chair~~man~~ 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 Chair~~man~~ may issue directions) and throughout the hearing. By applying the test of relevance, the Chair~~man~~ 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 Chair~~man~~ 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~~or~~ members of the Hearing Panel may vote. If necessary, the Chair~~man~~ 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 Chair~~man~~ 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 Chair~~man~~ 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 Chair~~man~~ 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 Chair~~man~~ in drafting a short document containing the reasons for the relevant decision, to be announced by the Chair~~man~~ 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.

- In the case of a District Councillor 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.