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## Standards Hearings Sub-Committee Procedure Rules

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These procedure rules apply to meetings of the Standards Hearings Sub-Committee, or the Audit and Governance Committee, when sitting to hear and determine a member code of conduct complaint referred to it by the Monitoring Officer.

### 1.0 DEFINITIONS

Complainant(s)	The person/people making the complaint.
Subject Member	The Councillor, co-optee, or Town or Parish Councillor against whom an allegation has been made.
Appointed representative	The Subject Member may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the Standards Hearings Sub-Committee Members, another person.
Standards Hearings Sub-Committee	A Sub-Committee of the Audit and Governance Committee in accordance with the provisions of the Local Government Act 1972. A meeting of the Standards Hearings Sub-Committee will consider whether the Subject Member has breached the Code of Conduct. Comprising 3 members of the Audit and Governance Committee, appointed by the Audit and Governance Committee.
Independent Person	An Independent Person will be invited by the Monitoring Officer to attend the Standards Hearings Sub-Committee as a Member of the Sub-Committee. Their views are sought and taken into consideration before the Sub-Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct, in accordance with the provisions of the Localism Act 2011, and as to any action to be taken following a finding of failure to comply with the Code of Conduct
Investigating Officer	The person appointed by the Monitoring Officer to undertake a formal investigation on behalf of the Monitoring Officer. This person may be another Officer of the Council, an Officer of another Council or an external third party investigator appointed for the purpose.
Investigating Officer's report	The report of the Investigating Officer to the Monitoring Officer, setting out their findings and recommendations in respect of the allegation.
Legal Advisor	The Officer responsible for providing legal advice to the Standards Hearings Sub-Committee. This may be the Monitoring Officer, another legally qualified Officer, or an external third party legal advisor appointed for the purpose.

Chair	The Chair of the Standards Hearings Sub-Committee elected by that Sub-Committee to chair meetings for the municipal year. If this person is not available, the Sub-Committee will elect a Chair.
Code	The Members' Code of Conduct for the relevant Authority formally adopted by it at the relevant time.
The Monitoring Officer	The Officer designated as such by West Oxfordshire District Council in accordance with section 5 of the Local Government and Housing Act 1989.
Exempt Information	As defined in Section 100A and Schedule 12A to the Local Government Act 1972

## **2.0 INTRODUCTION**

- 2.1 Where the Monitoring Officer considers that it is in the public interest for a complaint to be considered by the Standards Hearings Sub-Committee, a Sub-Committee meeting will be convened, to determine whether the Subject Member has failed to comply with the Code of Conduct.
- 2.2 The Monitoring Officer will seek to convene the Sub-Committee meeting within a maximum of 25 working days of receipt of the final Investigator's report or as soon as practicably possible thereafter. The Standards Hearings Sub-Committee will comprise 3 members appointed to that Sub-Committee by the Audit and Governance Committee, plus an Independent Person allocated to each meeting on a case by case basis by the Monitoring Officer, to act as a co-opted member of that Sub-Committee. For a meeting of the Standards Hearings Sub-Committee to be quorate and proceed, three elected members of the Standards Hearings Sub-Committee plus an Independent Person must be present.
- 2.3 Where there is more than one Subject Member in relation to a single complaint, the Monitoring Officer may agree that the complaints can be heard at a single hearing. In such instances the Sub-Committee will stick to the Determination Hearing Procedure (Section 5) as closely as possible while allowing for the complaints to be heard together.

## **3.0 PRE-HEARING PROCESS**

- 3.1 The Monitoring Officer may invite the Subject Member to give a response in writing to the Investigator's report.
- 3.2 This is done to establish what is likely to be agreed and what is likely to be in dispute at the hearing.
- 3.3 The Standards Hearings Sub-Committee, taking account of the advice of the Monitoring Officer, may issue directions about the way in which a Determination Hearing will be conducted, for example agreeing the number and identity of witnesses. Such directions may be given either before or at the Sub-Committee meeting, and may be decided at a pre-meeting or by correspondence involving all members of the Standards Hearings Sub-Committee.
- 3.4 Any pre-meeting to deal with pre-hearing process issues will be held in private without the Complainant or the Subject Member present.

## **4.0 DOCUMENTATION**

- 4.1 Standards Hearings Sub-Committee meetings are subject to the normal rules for publication of Council Agendas and Access to Information.
- 4.2 The Agenda papers for the Standards Hearings Sub-Committee will include:
- Complaint form and documentation
  - Subject Member's written response
  - Investigating Officer's report
  - Monitoring Officer report
  - For reference: Code of Conduct, Standards Hearings Sub-Committee Procedure Rules
- 4.3 The Agenda and documents will be published under the Council's rules for exempt information,. Prior to the publication of the agenda, the Sub-Committee, on advice of the Monitoring Officer will decide whether or not any documentation will be treated as exempt and therefore confidential as in Section 100A and Schedule 12A to the Local Government Act 1972. Prior to this decision, any documentation must be treated as confidential.

## **5.0 DETERMINATION HEARING PROCEDURE**

- 5.1 The quorum for a Sub-Committee meeting will be 3 elected Members plus an Independent Person. Substitute Members are allowed only from the membership of the Audit and Governance Committee. Members will only be able to sit on the Standards Hearings Sub-Committee if they have undertaken standards training.
- 5.2 The Sub-Committee will be assisted on matters of law and procedure by the Legal Advisor. The Sub-Committee may take legal advice, in private, if necessary, from the Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given should be shared with the Subject Member and the Investigating Officer.
- 5.3 The hearing will normally be held in public. However, the Sub-Committee will consider, having regard to any representations made by the Investigating Officer and/or by the Subject Member and advice from the Monitoring Officer and/or Legal Advisor as to the public interest, whether to hear the matter, after the passing of a resolution to exclude the press and public from the meeting. Any such resolution may only be passed on the grounds set out in Section 100A and Schedule 12A to the Local Government Act 1972.
- 5.4 The Subject Member may be represented or accompanied by Counsel or a Solicitor or, with the permission of the Sub-Committee, any other person.
- 5.5 Normal hearing rules will apply in terms of providing opportunities to question witnesses and test evidence, subject to the principles of natural justice and the Human Rights Act 1998.
- 5.6 If the Subject Member (or their appointed representative) is not present, then the Sub-Committee will consider whether to proceed and hear the case and make a decision in absence, or whether to adjourn the hearing to another time or date. If

the Subject Member has indicated that the hearing should continue in the absence of the Subject Member, this will normally happen.

#### **Preliminary business**

- 5.7 The first item of business at the first Sub-Committee meeting in each civic year is for the Sub-Committee to elect a Chair for the remainder of that civic year. If a Chair has already been elected but is not present at the meeting, the Sub-Committee will elect a Chair for that particular meeting.
- 5.8 The Standards Hearings Sub-Committee will follow usual committee procedures for apologies, and declarations of interests.
- 5.9 The Sub-Committee will consider whether to pass a resolution to exclude the press and public from the meeting. Any such resolution may only be passed on the grounds set out in Section 100A and Schedule 12A to the Local Government Act 1972. If the Sub-Committee determine that the hearing can take place in public session, the papers will be made available to any press and public in attendance
- 5.10 The Chair will introduce the Members of the Sub-Committee, the Independent Person, the Legal Advisor, the Investigating Officer, the Subject Member and any other persons present.
- 5.11 The Legal Advisor will give a brief outline of the allegation before the Sub-Committee, namely that the Subject Member has failed to comply with the Code of Conduct, and outline the procedure to be followed and confirm that those present understand it.

#### **Investigating Officer's case**

- 5.12 The Investigating Officer will present the report into the allegation against the Subject Member including any findings of fact and make representations to substantiate the conclusion that the Subject Member has failed to comply with the Code of Conduct.
- 5.13 The Subject Member (or their representative) may question the Investigating Officer.
- 5.14 The Sub-Committee Members may question the Investigating Officer.
- 5.15 The Independent Person may question the Investigating Officer.
- 5.16 The Investigating Officer may call such witnesses as necessary (which may or may not include the Complainant).
- 5.17 The Subject Member (or their appointed representative) may question any witnesses called by the Investigating Officer.
- 5.18 The Sub-Committee Members may question any witnesses called by the Investigating Officer.
- 5.19 The Independent Person may question any witnesses called by the Investigating Officer.
- 5.20 The Investigating Officer may ask further questions of any witnesses in order to clarify any point brought out in questioning of the witness by the Subject Member or the Sub-Committee.

#### **Subject Member's case**

- 5.21 The Subject Member (or their appointed representative) will present the case in relation to the Investigating Officer's findings and make representations about why the Subject Member considers that they did not fail to comply with the Code of

Conduct. If the Subject Member admits that they breached the Code of Conduct the Sub-Committee may move to paragraph 5.32 below.

- 5.22 The Investigating Officer may question the Subject Member.
- 5.23 The Sub-Committee may question the Subject Member.
- 5.24 The Independent Person may question the Subject Member
- 5.25 The Subject Member may call any witnesses.
- 5.26 The Investigating Officer may question any witness called by the Subject Member.
- 5.27 The Sub-Committee may question any witness called by the Subject Member.
- 5.28 The Independent Person may question any witness called by the Subject Member.
- 5.29 The Subject Member may ask further questions of any witness in order to clarify any point brought out in questioning of the witness by the Investigating Officer or the Standards Hearings Sub-Committee.

#### **Summing up**

- 5.30 The Investigating Officer will sum up the case in relation to the findings in their report.
- 5.31 The Subject Member (or their appointed representative) will sum up the case in relation to the findings in the Investigating Officer's report of whether there has been a breach of the Code.
- 5.32 The Independent Person will give their views to the Sub-Committee and these will be recorded in the Minutes of the meeting.

#### **Determination as to whether there has been a breach of the Code**

- 5.33 The Sub-Committee will then retire with the Legal Advisor. If the hearing has been in public the Committee will need to pass a resolution under Section 100A of the Local Government Act 1972 to exclude the public from the meeting. The Sub-Committee must take into account the views of the Independent Person before reaching a decision. Decisions will be determined by a simple majority of those Members present and voting; the Independent Person does not have a vote. Where there are equal numbers of votes for and against the Chair will have a second casting vote and there is no restriction on how the Chair chooses to exercise a casting vote.
- 5.34 The Sub-Committee will announce their decision as to whether there has been a breach of the Code in the presence of all parties, and, if the press and public was excluded earlier in the meeting, this will normally be after passing a resolution that they should no longer be excluded from the meeting. The Sub-Committee will provide reasons for their decision and will explain any reasons why any advice from the Independent Person has or has not been followed in giving its decision.
- 5.35 If the Sub-Committee decide that the Subject Member has not breached the Code, they shall dismiss the complaint and take no further action. However, they may still make general recommendations to the Council, its Audit and Governance Committee, the Monitoring Officer, or the Town or Parish Council, on any remedial actions, if it considers necessary to address the issues raised.

- 5.36 If the Sub-Committee decide that the Subject Member has breached the Code then the following sub-section on sanctions will apply.

**Determination as to any sanctions to be applied (if applicable)**

- 5.37 The Sub-Committee may request, or allow, the Complainant, whether or not called as a witness, to make a statement in relation to the effect on the Complainant of any conduct of the Subject Member which is the subject of the breach. Such a statement may be made in person to the Sub-Committee or may be submitted in writing, but if submitted in writing, will be shown to both the Investigating Officer, the Subject Member and the Independent Person. A Complainant who makes such a statement may be questioned by the Sub-Committee, but may not be questioned in relation to the statement by the Investigating Officer or the Subject Member without the consent of the Sub-Committee.
- 5.38 The Investigating Officer may make representations as to whether the Sub-Committee should impose a sanction and what form any sanction should take.
- 5.39 The Sub-Committee may question the Investigating Officer in relation to any such representations.
- 5.40 The Subject Member (or their appointed representative) may make representations as to whether the Sub-Committee should impose a sanction and what form any sanction should take and may make representations as to mitigation.
- 5.41 The Sub-Committee may question the Subject Member in relation to any such representations.
- 5.42 The Legal Advisor will then raise any points that need to be addressed before the matter is determined.
- 5.43 The Independent Person will then give their views on the appropriate sanction, if any, to be imposed and their views will be recorded in the Minutes of the meeting.
- 5.44 The Sub-Committee will then retire with the Legal Advisor. If the hearing has been in public the Sub-Committee will need to pass a resolution under Section 100A of the Local Government Act 1972 to exclude the public from the meeting.
- 5.45 The Sub-Committee will come to a decision as to sanctions. Any sanction imposed must be reasonable and proportionate to the breach found and the Legal Advisor may advise the Sub-Committee in this regard. The Sub-Committee has no power to suspend or disqualify the member or to withdraw or suspend allowances. The Sub-Committee may:
- Censure or reprimand the Subject Member;
  - Recommend to the Subject Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she 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 Executive or removed from particular Executive Portfolio responsibilities;
  - Recommend to Council that the Subject Member be replaced as Executive Leader of the Council;

- Instruct the Monitoring Officer to, or recommend that a Town or Parish Council, arrange training for the Subject Member;
- Publish its findings in respect of the Subject Member's conduct;
- Report its findings to Council, or to a Town or Parish Council, for information.

The above is not exhaustive.

- 5.46 The Sub-Committee will announce its decision in the presence of all parties, and this will normally be after passing a resolution that the public should no longer be excluded from the meeting. The Sub-Committee will give reasons for its decision and will explain the reasons why any advice from the Independent Person has or has not been followed in giving its decision.

**Decision notice**

- 5.47 The Monitoring Officer will, within 10 working days of the Sub-Committee meeting prepare a formal Decision Notice, and send a copy to the Complainant, to the Investigating Officer and to the Subject Member (and to the Town or Parish Council if appropriate). The Decision Notice will be published as part of the Minutes of the Sub-Committee meeting and will be placed on the Council's website, regardless of whether the Sub-Committee excluded the press and public for the meeting or not, unless the Monitoring Officer determines that it should remain confidential.
- 5.48 The findings and recommendations of the Sub-Committee are final and there is no right of appeal against the decision of the Standards Hearings Sub-Committee.

**Departing from this procedure**

- 5.49 The Chair of the Sub-Committee has the right to depart from this procedure, in consultation with the Monitoring Officer, or Legal Advisor, at any determination hearing where it is considered it is sensible to do so, to deal with the case fairly, effectively and in the public interest, provided that the principles of natural justice are upheld.

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