

DRAFT

Procedure for local determination of allegations about the conduct of Council members following a Local Investigation

Introduction

1. The local determination of complaints by the Standards Committee of Medway Council, where a local investigation has been completed, will be governed by this procedure. It applies to complaints about the conduct of signatories to Medway Council's Code of Conduct for Council Members; such signatories include elected members and co-opted members with voting rights. The procedure will apply to breaches of the Planning and Employee/Member relations code of practice by elected members. The procedure will also cover hearings following local investigations of Parish councillors.
2. The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member.

Investigation Process

3. The investigation will be conducted in accordance with the Committees adopted procedures and an investigating officer will be appointed under those procedures.
4. The Monitoring Officer's main role is to advise the Standards Committee. However, where the Monitoring Officer takes on the role of the Investigating Officer, he must arrange for a separate legal adviser to the Standards Committee in respect of the allegation.

Notifying the Member and Complainant

5. Within five working days of the Investigating Officer's final report by the Monitoring Officer (or within 5 days of completion of the report if the Monitoring officer is also the Investigation Officer) or where the Standards Committee considers a matter should be considered at a formal hearing, the Council Office shall send a copy of the report to the Standards Committee, the Member and, where possible, the Complainant, if necessary making the provision of the report conditional upon an appropriate undertaking of confidentiality.
6. At the same time the Council Office shall ask for a written response from the member, within fifteen working days, stating whether or not he/she:

- disagrees with any of the findings of fact in the report including the reasons for any disagreements
 - wants to be represented, at their own expense, at the hearing by a solicitor, barrister or any other person
 - wants to give evidence to the Standards Committee, either verbally or in writing
 - wants to call relevant witnesses to give evidence to the Standards Committee
 - wants any part of the hearing to be held in private
 - wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public
7. The Member's response will be provided to the Investigation Officer. The Council Office will also inform the member that if, at the meeting of the Hearing Panel established under paragraphs 14-17 below, he/she seeks to dispute any matter contained in the final report, without having previously notified the Head of Council Office of their intention to do so, the Hearing Panel may either adjourn the meeting to enable the Investigating Officer to provide a response, or refuse to allow the disputed matter to be raised.
8. The Member's response (if any) shall be forwarded to the Investigating Officer. Further responses from either the Investigating Officer or the Member will be circulated in the same way.
9. The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chair of the Hearing Panel may limit the number of witnesses, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Hearing Panel to reach its decision.
10. Nothing in this procedure shall limit the Chair of the Hearing Panel from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Hearing Panel to reach its decision.
11. The Chair of the Hearing Panel, in consultation with the Panel's legal advisor will then
- confirm a date, time and place for the hearing, which must be no earlier than 14 days and no later than three months from the date that the Investigating Officer's final report was received.
 - confirm the main facts of the case that are agreed
 - confirm the main facts that are not agreed

- confirm which witnesses will give evidence
 - outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private and
 - request the Council office to provide this information, with the Agenda, to everyone involved in the hearing at least two weeks before the proposed date of the hearing
12. Where appropriate, the Head of Council Office shall arrange for support for an unrepresented Member who wishes to make an oral representation to the Hearing Panel.

The Hearing Panel

13. A sub-committee of the Standards Committee (“the Hearing Panel”) shall be formed to consider the complaint and the report
14. The Hearing Panel shall be chaired by an Independent Member selected by the Chair of the Standards Committee.
15. The Hearing Panel shall be composed of members of the Standards Committee chosen by the Chair of the Hearing Panel to consist of a majority of independent members.
16. The Hearing Panel will usually be composed of either three or five members. Medway councillors will be selected in accordance with the committees procedures agreed from time to time. When the report relates to a Parish Councillor then at least one member of the Panel must be a parish councillor.
17. Where a member of the Hearing Panel is unable to attend a meeting of the Panel a substitute member of the Standards Committee may attend the meeting.
18. The Hearing Panel shall decide, on the balance of probability, whether the grounds of the complaint are upheld. It shall do so by considering the Investigating Officer’s report and, any, written or oral representations made by the Member or the Complainant.
19. Each hearing panel member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. Abstentions shall not be permitted.
20. Administration for the hearing shall be carried out by the Council Office
21. The meeting of the Hearing Panel will be open to the public and press unless confidential information or exempt information under Schedule 12A of the Local Government Act 1972 and regulations is likely to be disclosed.

Procedure at the Hearing

22. The initial order of business at the meeting shall be as follows:
 - quorum for the Hearing Panel shall be three with a majority of independent members. The panel cannot comprise an even number of members.
 - declarations of interest
 - consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present.
 - introductions
 - Any representation from the Investigating Officer and/or the Member as to reasons why the Hearing Panel should exclude the press and public and determination as to whether to exclude the press and public. Where the Hearing Panel decides that it will not exclude press and public copies of the agenda and reports will be provided to any members of the press and public who are present.
23. The purpose of the hearing is to determine whether the Member has failed to comply with the code of conduct or a Local protocol in the manner set out in the Investigating Officer's report. The Hearing Panel will control the procedure and evidence presented at the hearing, including the questioning of witnesses.
24. The Hearing Panel must have regard to any guidance issued by the Standards Board and may at any time seek legal advice from its legal adviser. Such advice will generally be given in the presence of the Reporting Officer and the Member.
25. The subsequent procedure at the hearing will be as follows, subject to the Chair of the Panel being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting.
26. The Chairman shall ask the Councillor to confirm that he/she maintains the position as set out in the pre-hearing summary.
27. If the Councillor admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Standards Committee may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken

Presenting the Investigating Officer's report

28. If the Investigating Officer is present, the Chairman will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Councillor and why he/she concluded, on the basis of his/her findings of fact, that the Councillor had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
29. If the Investigating Officer is not present, the Standards Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Standards Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witness's attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
30. Cross-examination shall usually not be permitted but, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chairman shall ask the Member if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer or the witness.

The Councillor's response

31. The Chairman shall then invite the Councillor to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
32. Cross-examination shall usually not be permitted but, at the conclusion of the Councillor's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigating Officer if there are any matters upon which the Standards Committee should seek the advice of the Councillor or the witness.
33. Where the Member seeks to dispute any matter in the Investigating officer's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Investigating Officer shall draw this to the attention of the Hearing Panel. The Hearing Panel may then decide
 - not to admit such dispute but to proceed to a decision
 - to admit the dispute, but to invite the Reporting Officer to respond
 - to adjourn the meeting to enable the Reporting Officer to investigate and report on the dispute

Witnesses

- 34 The Standards Committee shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.
- 35 Questions may be asked by the Panel of the Investigating Officer, the member or a witness at any point
- 36 At the conclusion of the evidence, the Chairman shall check with the members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.
- 37 If the Standards Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Standards Committee may (on not more than one occasions) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee

Reference back to the Ethical Standards Officer

- 38 If, at any time before the Standards Committee has determined upon any appropriate sanction, the Standards Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Standards Committee, the Standards Committee may instruct the Monitoring Officer to request the Monitoring Officer to resume responsibility for the conduct of the matter, and may adjourn the hearing until the Monitoring Officer advises the Standards Committee of the Ethical standards Officer's response to such a request.

Decision by the Hearing Panel

39. The Hearing Panel will consider in private session which of the following findings to adopt:
 - That there is no evidence of any failure to comply with the Code of Conduct or protocol as set out in the Investigating officer's report.
 - That the Member has failed to comply with the Code of Conduct or protocol as set out in the Investigating officer's report

If the matter is a complicated one, where the complaint has a number of aspects, the Hearing Panel can decide to consider the evidence and reach a finding on each aspect separately.

- 40 The Hearing Panel's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Councillor or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an officer or request the Councillor to produce such further evidence to the Standards Committee.
- 41 The Hearing Panel shall then return to the main hearing room and the Chairman will state the principal findings of fact and their determination as to whether the Councillor failed to comply with the Code of Conduct as set out in the Investigating Officer's report.
- 42 If the Standards Committee apprehends, from the evidence which they have received during the hearing, that a Councillor has failed to comply with the Code of Conduct (other than the matter which the Standards Committee has just determined), the Chairman shall outline the Standards Committee's concerns and state that the Standards Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- 43 If the Standards Committee determines that the Councillor has failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report: The Chairman shall ask the Investigating Officer (if present, or otherwise the legal advisor) whether, in his/her opinion, the Councillor's failure to comply with the Code of Conduct is such that the Standards Committee should impose a sanction and, if so, what would be the appropriate sanction. The sanctions available include
- censure, or
 - restricted access to the premises and resources of authority for a maximum period of three months (but ensuring that such restrictions will not unnecessarily restrict the Member's ability to carry out his/her responsibilities as an elected or co-opted member
 - suspension or partially suspension for a maximum period of three months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Hearing Panel
- 44 The Chairman will then ask the Councillor to respond to the Investigating Officer's advice.
- 45 The Chairman will then ensure that each member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.

46. In deciding what penalty to set, the Hearing Panel will consider all relevant circumstances including those covered in the Guidance produced by the Standards Board for England.
47. The Hearing Panel will then return and the Chair will announce the decision of the Panel and the reasons for that decision.
48. The Hearing Panel will then consider in open session whether there are any recommendations, which the authority should make arising from consideration of the allegation. For example, providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or related matters; for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct, for rectifying any deficiency in the authority's decision making procedures or for preventing or deterring any further breaches of the Code of Conduct.

Appeal

49. Where the Hearing Panel determines that the Member has failed to comply with the Code of Conduct the Monitoring Officer shall inform the Member of his or her right to appeal against the determination to an appeal tribunal drawn from the Adjudication Panel.

Notice of findings

50. The Head of the Council Office will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared within five working days of the hearing.
51. Within two weeks of the end of the hearing the Council Office will circulate the full written decision in the format recommended by the Standards Board, to the Member, the Complainant (where possible), the ESO concerned, the Standards Committee of Medway Council and any parish council concerned.
52. Subject to paragraph 38 (ii) at the same time the Head of the Council Office shall arrange for a summary of the findings to be published in two newspapers circulating in the area of the Authority [and on the council's web site.
53. Where the Hearing Panel determines that there has not been a breach of the Code of Conduct, the notice specified in paragraph 36 shall:
 - (i) state that the Hearing Panel found that the member had not failed to comply with the code of conduct and shall give its reasons for reaching that finding; and
 - (ii) not be published in local newspapers if the Member so requests.
54. Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice specified in paragraph 36 shall:

- (i) state that the Hearing Panel found that the Member had failed to comply with the code of conduct but that no action needs to be taken in respect of that failure;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached; and
 - (iv) state that Member concerned may apply for permission to appeal against the determination
55. Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice specified in paragraph 36 shall:
- (i) state that the Hearing Panel found that the Member had failed to comply with the code of conduct.
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached;
 - (iv) specify the sanction imposed, and
 - (v) state that the Member concerned may apply for permission to appeal against the determination
56. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for six years after the hearing

Confidentiality and disclosure of information

57. Where the Chair of the Hearing Panel considers that the Investigating officer's report and/or any of the written statements in response is likely to disclose "exempt information" (as defined in Schedule 12A to the LGA 1972 and regulations), and in consequence that it is likely that the Hearing Panel will, during consideration of these papers, not be open to the public, he/she shall instruct the Head of Council office not to provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.
58. The Hearing will be held in public apart from the following two situations:
- Where 'confidential information' is to be revealed, the Hearing Panel must hold such parts of a meeting in private. Confidential information is information provided by a government department under the condition that it must not be revealed, and information that cannot be revealed under any legislation or by a court order.

- Where 'exempt information' is to be revealed the Hearing panel may exercise their discretion in deciding whether or not to exclude the public. The categories of exempt information are set out in Schedule 12A to the LGA 1972 and regulations and include information relating to the personal circumstances of any person.