

Hearing Panel Procedure

1. Pre Hearing Procedure

1.1 In order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre-hearing procedure to:-

- Identify which facts in the investigation report are agreed and which are in dispute.
- Determine whether there is any fresh evidence not mentioned in the investigation report which will be put before the hearing.
- Determine whether there is documentary evidence which a party intends to put before the hearing is admissible.
- Establish whether the parties intend to attend; whether the parties intend to be represented in accordance with paragraph 2 and, if so, by whom; and the number and identity of witnesses to be called.
- Determine whether the subject member wants the whole or any part of the hearing to be held in private.
- Determine whether the subject member wants the whole or any part of the investigation report or other relevant documents to be withheld from the public.

1.2 The Monitoring Officer will notify the parties of the date, time and place for the hearing.

2. Rules of procedure

2.1 The Hearing Panel consists of three voting elected Members drawn from the Standards Committee, one of whom shall be elected as Chairman

2.2 The quorum for a meeting of the Hearing Panel is three elected Members.

2.3 The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.

2.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Panel. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied to exclude the public and press from meetings of the Hearing Panel where it is likely that confidential or exempt information will be disclosed.

- 2.5 Once a hearing has started, the District Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 2.6 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 2.7 Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.¹

3. Right to be accompanied by a representative

- 3.1 The Subject Member may choose to be accompanied and/or represented at the Hearing Panel by a fellow councillor, friend or colleague.

4. The conduct of the hearing

- 4.1 Subject to paragraph 4.2 below, the order of business will be as follows:

- (a) elect a Chairman;
- (b) apologies for absence;
- (c) declarations of interests;
- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.11 above);
- (e) introduction by the Chairman, of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- (f) to receive representations from the Monitoring 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;
- (g) 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.

- 4.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

- 4.3 The Hearing Panel may adjourn the hearing at any time.

4.4 Presentation of the complaint

- (a) The Monitoring Officer, legal advisor or chairman may each make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed.

¹ Janik v Standards Board for England & Adjudication Panel for England (2007)

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

4.5 Presentation of the Subject Member's case

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

4.6 Summing up

- (a) The Investigating Officer sums up the complaint;
- (b) The Subject Member or their representative sums up their case.

Views/Submissions of the Independent Person

- 4.7 The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

4.8 Deliberations of the Hearing Panel

Deliberation in private

- (a) The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

Announcing decision on facts found

- 4.9 (a) The Hearing Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct.
- (b) Where the Hearing Panel considers that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take.

- (c) When deciding whether to apply one or more sanctions, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
- (i) What was the Subject Member's intention and did they know that they were failing to follow the District or Parish Council's Code of Conduct?
 - (ii) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
 - (iii) Has there been a breach of trust?
 - (iv) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
 - (v) What was the result/impact of failing to follow the District or Parish Council's Code of Conduct?
 - (vi) How serious was the incident?
 - (vii) Does the Subject Member accept that they were at fault?
 - (viii) Did the Subject Member apologise to the relevant persons?
 - (ix) Has the Subject Member previously been reprimanded or warned for similar misconduct?
 - (x) Has the Subject Member previously breached of the District or Parish Council's Code of Conduct?
 - (xi) Is there likely to be a repetition of the incident?
- (d) Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will adjourn and deliberate in private.
- (e) If evidence presented to the Hearing Panel highlights other potential breaches of the District or Parish Council's Code of Conduct, then the Chairman will outline the Hearing Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

Final Decision

- 4.10 (a) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Hearing Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- (c) Having taken into account the Independent Person, the Subject Member and the Monitoring Officer's representations on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce:
- (i) the Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
 - (ii) the sanctions (if any) to be applied;
 - (iii) the recommendations (if any) to be made to the District or Parish Council or Monitoring Officer;
 - (iv) that there is no right of appeal against the Panel's decision and/or recommendations.

5. Range of possible sanctions

5.1 ~~Subject to paragraph 4.4 below, w~~Where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended:

Comment [HR]: This related to a list of criteria to be taken into account imposing a sanction which was abandoned at an early stage of the prperation of the suite of documents

- (a) Recommending to the District or Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
- (b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of a ungrouped Subject Member, to the District or Parish Council that they be removed from committees or sub-committees of the Council;
- (c) Recommending to the Leader of the District Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- (d) Instructing the Monitoring Officer [or recommendation to the Parish Council] to arrange training for the Subject Member;
- (e) Recommending to the District or Parish Council that the Subject Member be removed from one or more outside appointments to which they have been appointed or nominated by the District or Parish Council;
- (f) Recommending to the District or Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
- (g) Recommending to the District or Parish Council the exclusion of the Subject Member from the District of Parish Council's offices or other premises, with the exception of meeting rooms as necessary for attending District or Parish Council committee and sub- committee meetings;
- (h) Reporting the Panel's findings to the District or Parish Council for information;
- (i) Instructing the Monitoring Officer to apply the informal resolution process;
- (j) Sending a formal letter to the Subject Member;
- (k) Recommending to the District Parish Council to issue a press release or other form of publicity;
- (l) Publishing its findings in respect of the Subject Member's conduct in such manner as the Panel considers appropriate.

5.2 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

5.3 The Hearing Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

6. Publication and notification of the Hearing Panel's decision and recommendations

6.1 Within 20 working days {substitute preferred number of days} of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the District Council's website.

6.2 Within 20 working days {substitute preferred number of days} of the announcement of the Hearing Panel's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:

- (a) the Subject Member;
- (b) the Complainant;
- (c) [the Clerk to the Parish Council;]
- (d) Kent County Council's Standards Committee (*applicable only where the Subject Member is serving at both District and County level*);
- (e) District Council's Standards Committee (*applicable only where the Subject Member is serving at both District and County level*).

6.3 The Monitoring Officer will report the Hearing Panel's decision and recommendations to a meeting of the Standards Committee for information.

TEMPLATE – DECISION NOTICE (of Hearing Panel)

Complaint No: xxxx

On [insert date], the Hearing Panel of Dover District Council considered a report of an investigation into the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

Complaint summary

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel]

Consultation with Independent Person

[Summarise the Independent Person's views in numbered paragraphs]

Findings

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Hearing Panel reached the following decision(s):

[Summarise the finding of facts and the Hearing Panel's decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel, but substitute the Investigating Officer for the Hearing Panel. Please note that the Hearing Panel's findings may differ from that of the Investigating Officer]

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

Sanctions applied

The breach of the [insert authority name] Code of Conduct warrants a [detail sanctions applied].

Appeal

There is no right of appeal against the Hearing Panel's decision.

Notification of decision

This decision notice is sent to the:

- Councillor [name of councillor]
- Complainant
- Monitoring Officer
- [Clerk to the xxxx Parish/Town Council];
- Kent County Council's Monitoring Officer *[applicable only where the Councillor is serving at both District and County level]*

Additional help

If you need additional support in relation to this decision notice or future contact with the District Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on [insert telephone number] or email [insert email address].

Signed:

Date

Print name:

Chairman of the Hearing Panel
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