

SWINDON BOROUGH COUNCIL

Arrangements for dealing with Member Code of Conduct Complaints

1. Introduction

- 1.1 This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Member has or may have failed to comply with the Code of Conduct for Members.
- 1.2 The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as the “Respondent.”
- 1.3 No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

2. Making a Complaint

- 2.1 A complaint must be made in writing by post or email to: –

Mr Stephen Taylor, Monitoring Officer,
Swindon Borough Council, Civic Offices
Euclid Street, Swindon, SN1 2 JH
Tel: 01793 463012
Fax: 01793 463366
email: staylor@swindon.gov.uk
- 2.2 The standard complaint form should be used, which can be obtained from the Monitoring Officer or can be downloaded on the Council's website, in order that all required information is included.
- 2.3 The Monitoring Officer will normally acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Respondent (and in the case of a complaint about a Town / Parish Councillor to the Clerk of the Town / Parish Council as well) with a summary of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer).
- 2.4 The Respondent may, within 5 working days of receipt of details of the complaint unless otherwise agreed with the Monitoring Officer, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Assessment Panel has issued its Initial Assessment.

3. Initial Assessment Decision

- 3.1 The Assessment Panel is a Sub-Committee of the Swindon Borough Council's ('the Council's') Standards Committee. This will be drawn from

and comprise up to 4 Members of the Standards Committee. This will normally include 2 elected members and at least 1 of the Lay Members co-opted to the Standards Committee. Where the complaint is about a Parish Member, the Panel will normally include at least 1 of the Parish Members co-opted to the Standards Committee. The co-opted members will sit as assessors without a vote. The Assessment Panel will review the complaint and, after consultation with an Independent Person appointed by the Council if it considers it appropriate, take a decision (an Initial Assessment Decision) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint and will normally be sent in writing to the Complainant and the Respondent within 5 working days of the decision being made.

- 3.2 The decision process to be followed by the Assessment Panel is summarised in the flowchart attached at Annex 'A'.
- 3.3 If the complaint fails one or more of the following tests, it will be rejected:
- The complaint is against one or more named Members or co-opted Members of the Council or a Town / Parish Council within the Borough.
 - The Respondent was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
 - The complaint, if proven, would be a breach of the Code of Conduct under which the Respondent was operating at the time of the alleged misconduct.
- 3.4 If appropriate, the Assessment Panel will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, for other action, dealt with informally, or rejected:
- Sufficiency of Information – Is there sufficient information or evidence provided with the allegation? If it is clear that substantiating evidence may be available, but has not been provided, the Assessment Panel may ask for that additional evidence, but the onus is on the complainant to ensure all relevant information is included.
 - Seriousness of the Complaint – Is the complaint Trivial, vexatious, malicious, politically motivated or 'tit for tat'? Are the resources / cost involved in investigating and determining the complaint wholly disproportionate to the allegations?
 - Duplication – Is the complaint substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority?

If a single event gives rise to similar complaints from a number of different complainants, wherever possible these complaints will be

considered at the same meeting of the Assessment Panel, but will be determined individually.

- Length of Time – Did the events or behaviour to which the complaint relates take place more than 6 months old? Does the time lapse involved mean that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now? Such allegations are only likely to be considered in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated.
- Public Interest - Would the public interest or any public benefit be served in referring the complaint for investigation or other action? For example, it may be not in the public interest which the member has died, resigned or is seriously ill. Similarly, if the member has offered an apology or other remedial action. If it is clear that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error, and the matter would not warrant a more serious sanction.
- Anonymous- Is it anonymous? Such complaints will not normally be entertained unless there is additional documentary evidence to support the complaint and it is sufficiently serious to consider.
- Other Action – Whether the complaint can be dealt with best by informal resolution, including training or conciliation.
- Wider Application – Does the complaint have wider applications, such as suggesting a wider problem throughout the Authority or Town / Parish Council?

4. Additional Information

- 4.1 The Assessment Panel may require additional information to come to a decision and may request information from the Respondent. Where the complaint relates to a Town / Parish Councillor, the Assessment Panel may also inform the Clerk of the Town / Parish Council of the complaint and seek the views of the Clerk of the Town / Parish Council before deciding whether the complaint merits formal investigation or other action.
- 4.2 In appropriate cases, the Assessment Panel may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Respondent accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Respondent or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the Assessment Panel will take account of this in deciding whether the complaint merits formal investigation.

- 4.3 The Respondent whose behaviour is the subject of the complaint may seek the views of an Independent Person appointed by the Council.

5. Criminal Conduct

- 5.1 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

6. Confidentiality

- 6.1 If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Panel at the Initial Assessment stage.
- 6.2 Unless the Assessment Panel otherwise agrees, the Respondent will be given a summary of the complaint but will not normally be told the identity of the Complainant at the Initial Assessment stage. The identity may subsequently be released in the event of an investigation, however, in exceptional circumstances, the Assessment Panel may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
- 6.3 If the Assessment Panel decides to refuse a request by a Complainant for confidentiality, they may offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed.

7. Investigation

- 7.1 The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer of another Council, or an external investigator.
- 7.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.
- 7.3 The Investigating Officer will ensure that the Respondent receives a copy of the complaint subject to the Assessment Panel's decision on Confidentiality.
- 7.4 At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Respondent for comments, which should normally be submitted within 5 working days of receipt of the draft report. The

Investigating Officer will take such comments into account, before issuing the final report to the Monitoring Officer.

8. Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct

8.1 The Assessment Panel in consultation with an Independent Person, will review the Investigating Officer's report. If they are satisfied that the Investigating Officer's report is satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

8.2 The Monitoring Officer will write to the Complainant and the Respondent (and to the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.

8.3 If the Assessment Panel are not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion.

9. Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

9.1 The Assessment Panel will review the Investigating Officer's report and will then after consulting an Independent Person **either** seek a Local Resolution **or** refer the matter for a Hearing.

10. Local Resolution

10.1 If the Assessment Panel considers that the matter can reasonably be resolved without the need for a hearing, it will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action.

10.2 If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Town / Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Respondent refuses Local Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Hearing without further reference to the Complainant or the Respondent.

11. Hearing

11.1 Where, in the opinion of the Assessment Panel, Local Resolution is not appropriate or the Complainant and/or Respondent refuse to co-operate in any Local Resolution, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a Hearing before deciding whether the Member has failed to comply with

the Code of Conduct and, if so, whether to take any action in respect of the Member.

12. Pre-Hearing Procedure

- 12.1 Prior to the convening of a Hearing Panel the Monitoring Officer will issue the forms annexed to these Arrangements (Annex B) to the Complainant and Respondent for completion by them to facilitate the pre-hearing process and the preparation for the Hearing. The Monitoring Officer will then ask the Investigating officer to comment on the responses. The Hearing Panel will then be convened to consider the responses, and any comment from the Investigating Officer, and finalise the arrangements for the Hearing.

13. Constitution of the Hearings Panel

- 13.1 The Hearings Panel is a Sub-Committee of the Council's Standards Committee. This will comprise at least 5 Members of the Standards Committee. This will normally include at least 1 of the Lay Members co-opted to the Standards Committee, and where the complaint is about a Parish Member, the Hearings Panel will normally include at least 1 of the Parish Members co-opted to the Standards Committee. The co-opted members will sit as assessors without a vote.
- 13.2 The Independent Person may be invited to attend all meetings of the Hearings Panel and his or her views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Respondent'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.

14. The Hearing

- 14.1 The Hearing will be conducted in accordance with the 'Practical Arrangements for the hearing of the Standards Committee' attached as Annex C.

15. Right to Representation

- 15.1 The Complainant and the Respondent may be represented or accompanied during the hearing by a solicitor, barrister, or (with the permission of the Panel) another person.
- 15.2 The Complainant and Respondent should meet their own costs of such representation, unless the Council has otherwise agreed.

16. Legal Advice

- 16.1 The Panel may take legal advice from its Legal Advisor at any time during the hearing or while it is considering the outcome. The substance of any legal advice given to the Panel should be shared with the Complainant and the Respondent, and the Investigator, if they are present at the hearing.

17. Action the Hearings Panel may take where a Member has failed to comply with the Code of Conduct

17.1 Where a Hearings Panel find that a Member has failed to comply with the Code of Conduct, the Hearings Panel may impose any one or a combination of the following sanctions:-

- censure the Respondent;
- request the Respondent to submit a written apology in a form specified by the Panel;
- request the Respondent to undertake such training as the Panel may specify;
- request that the Respondent participates in such conciliation as the Panel may specify;
- report to the relevant Council on the outcome of the hearing with an appropriate recommendation;
- advise the Leader of the Council and/or Leader of the Political Group to which the person belongs, of the outcome of the hearing in order that they can consider what appropriate disciplinary or other action should be taken, taking into account any relevant case law, which could include:
 - Formal letter of censure from them;
 - Formal censure of members e.g. through a motion at Council or Committee of the Council;
 - Securing the removal of a member from cabinet / committees;
 - Issuing a press release setting out the outcome of the hearing;
 - The withdrawal of facilities
- such other sanction as may be permitted under the law.

18. Revision of these arrangements

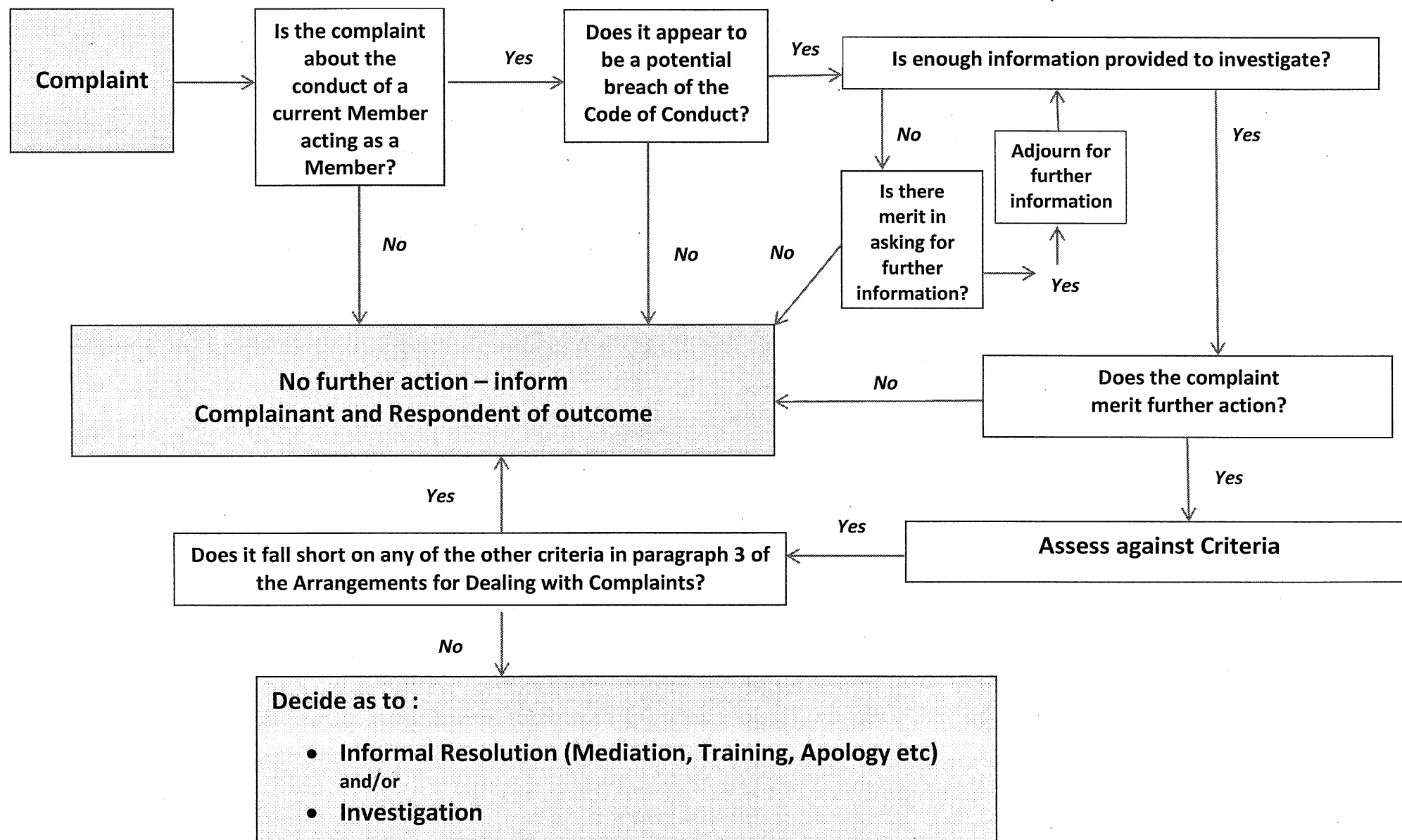
18.1 The Monitoring Officer may amend or depart from these arrangements where s/he considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

19. Appeals

19.1 There is no right of appeal available against a decision on a Code of Conduct complaint, except through the courts by way of judicial challenge.

July 2012

Initial Assessment Complaint Handling Chart



FORM A *Please enter the number of any paragraph where you disagree with the findings of fact in the Investigating Officer's report, and give your reasons and your suggested alternative.*

Response of Complainant / Respondent to the evidence set out in the Investigator's report

Paragraph number from the report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

Please attach separate sheets if necessary.

FORM B

Please set out below, using the numbered paragraphs, any other evidence you feel is relevant to the allegation made about you.

Other evidence relevant to the allegation

Paragraph number	Details of the evidence
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

FORM C

Please set out below, using the numbered paragraphs, any factors that the Hearings Panel should take into account if it finds that the Respondent is in breach of the Code.

Representations to be taken into account if the Respondent is found to have failed to comply with the Code

Please note that no such finding has yet been made.

Paragraph number	Factors for the Hearings Panel to take into account when deciding on sanctions
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

FORM D**Arrangements for the Hearings Panel**

Please tick the relevant boxes

1 The proposed date for the Hearings Panel is given in the accompanying letter. Are you planning to go to the hearing? If 'No', please explain why.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Reason:
2 Are you going to present your own case?	YES <input type="checkbox"/> NO <input type="checkbox"/>	
3 If you are not presenting your own case, will a representative present it for you? If 'Yes', please state the name of your representative.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Name:
4 Is your representative a practising solicitor or barrister? If 'Yes', please give his or her legal qualifications. Then go to question 6. If 'No', please go to question 5.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Qualifications:
5 Does your representative have any connection with the case? If 'Yes', please give details	YES <input type="checkbox"/> NO <input type="checkbox"/>	Details:

<p>6 Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p>	<p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	
<p>7 Do you, your representative or your witnesses have any access difficulties (for example, is wheelchair access needed)?</p> <p>If 'Yes', please give details.</p>	<p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>8 Do you, your representative or witnesses have any special needs (for example, is an interpreter needed)?</p> <p>If 'Yes', please give details.</p>	<p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>9 Do you want any part of the Hearing to be held in private?</p> <p>If 'Yes', please give reasons.</p>	<p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>10 Do you want any part of the relevant documents to be withheld from public inspection?</p> <p>If 'Yes', please give reasons.</p>	<p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

Please attach separate sheets if necessary.

FORM E

Details of proposed witnesses to be called

<p>Name of witness or witnesses</p>	<p>1</p> <p>2</p> <p>3</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>WITNESS 1</p> <p>A Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> <p>B Will the witness give evidence about what action the Standards Committee should take if it finds that there has been a breach of the Code?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p> <p>YES</p> <p><input type="checkbox"/></p> <p>NO</p> <p><input type="checkbox"/></p>	<p>Outline of evidence:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Outline of evidence:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

FORM F**Checklist for the pre-hearing process summary**

After the Hearings Panel has received responses from the Councillor about whom the allegation has been made (Respondent) and from the Investigating Officer, the Monitoring Officer will prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:-

- the name of the authority;
- the name of the respondent;
- the name of the person who made the original complaint (unless there are good reasons to keep his or her identity confidential);
- case reference number of the Council;
- the name of the Standards Committee Member who will chair the Hearings Panel;
- the name of the Monitoring Officer;
- the name of the Investigating Officer who referred the matter;
- the name of the clerk of the hearing or other administrative officer;
- the date, time and place of the hearing;
- a summary of the allegation;
- the relevant section or sections of the Code;
- the findings of fact in the Investigating Officer's report that are agreed;
- the findings of fact in the Investigating Officer's report that are not agreed;
- whether or not the respondent or the Investigating Officer will attend or be represented;
- the names of any witnesses who will be asked to give evidence; and
- an outline of the proposed procedure for the hearing.

Practical Arrangements for a Hearings Panel of the Standards Committee

Consideration of complaint of a breach of the Members Code of Conduct

Interpretation:

“Respondent” means the person who is the subject of the allegation(s) being considered by a Hearings Panel of the Standards Committee, unless stated otherwise. It also includes the Member’s nominated representative

“Investigator” means the Investigating Officer, and includes his or her nominated representative

1. The elected Chairman will introduce all those present and explain how the Hearings Panel is going to run the hearing

Making Findings of Fact

2. The Investigator will present his case in the presence of the Respondent and may call witnesses to support the relevant findings of fact in the report.
3. The Respondent will have the opportunity to ask questions of any witnesses he or she may call
4. The Hearings Panel may ask questions of the Investigator and witnesses
5. The Respondent will present his or her case in the presence of the Investigator and call such witnesses as he or she wishes to support his or her version of the facts
6. The Investigator will have the opportunity to ask questions of the Respondent and his or her witnesses
7. The Hearings Panel may ask questions of the Respondent and his or her witnesses
8. The Hearings Panel will then retire to consider the representations and evidence in private
9. Upon the Hearings Panel’s return, the Chairman will announce the Hearings Panel’s findings of fact

Post Finding of Fact Procedure 1 - based on the facts found has there been a breach of the Code.

10. The Respondent will be invited to give relevant reasons why the Hearings Panel should not decide that he or she has breached the Code

11. The Hearings Panel will consider any verbal or written representations from the Investigator
12. The Hearings Panel may, at any time, question anyone involved on any point they raise in their representations
13. The Respondent will be invited to make any final relevant points.
14. The Hearings Panel will then retire to consider the representations
15. Upon the Hearings Panel's return, the Chairman will announce the Hearings Panel's decision as to whether or not the Respondent has breached the Code

Post Finding of Fact procedure 2 – recommendations and/or penalty

16. If the Hearings Panel decide that the Respondent **has not** breached the Code, then it can move on to consider whether it should make any recommendations to the Town / Parish / Borough Council, Leader of the Council or Group Leader as appropriate. The Hearings Panel will at this stage consider any further verbal or written representations from the Investigator on whether or not the Hearings Panel should make any recommendations to the relevant authority, with a view to promoting high standards of conduct among members.
17. If the Hearings Panel decide that the Respondent **has** breached the Code, then it will consider any verbal or written representations from the Investigator and the Respondent as to:
 - Whether or not the Hearings Panel should impose a sanction or penalty; and
 - What form any sanction or penalty should take (see Paragraph 17 of the Arrangements for dealing with Member Code of Conduct Complaints lists available sanctions)
18. The Hearings Panel may question the Investigator and Respondent, and take legal advice if appropriate.
19. The Hearings Panel will then retire to consider whether or not to impose a sanction or penalty on the Respondent, and if so, what the penalty should be. *(Appended is a list of considerations for a Panel before deciding on a Sanction)*
20. The Hearings Panel will return and the Chairman will announce the Hearings Panel's decision.

Post hearing procedure

21. A written decision will be issued as soon as practicable following the end of the hearing, which will include full reasons for its decision.

Appeal

22. A Respondent who is the subject of a Standards Hearings Panel finding has no right of appeal other than by judicial challenge

Considerations for the Panel when applying sanctions

When deciding on a penalty or sanction, the Hearings Panel should ensure that it is reasonable and proportionate to the Respondent's behaviour. Before deciding what penalty or sanction would be appropriate, the Hearings Panel should consider the following questions, along with any other relevant circumstances:

- What was the Respondent's intention? Did he or she know that they were failing to follow the Code?
- Did the Respondent get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code?
- What were the potential results of the failure to follow the Code?
- How serious was the incident?
- Does the Respondent accept he or she was at fault?
- Did the Respondent apologise to the relevant people?
- Has the Respondent previously been warned or reprimanded for similar misconduct?
- Has the Respondent failed to follow the Code before?
- Is the Respondent likely to do the same thing again?
- How will the sanction or Penalty be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications?

The Panel may find the following examples of mitigating or aggravating factors to be useful in assessing an appropriate sanction in relation to a breach of the Code of Conduct:

Examples, but not an exhaustive list of mitigating factors, are:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- A member's previous record of good service.
- Substantiated evidence that the member's actions have been affected by ill-health.
- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Examples, but again not an exhaustive list, of aggravating factors are:

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.