

Constitution, Part 5 – Codes of Conduct
Code of Conduct for Councillors
Appendix 1

Arrangements for dealing with Code of Conduct complaints

1. The Code of Conduct

- 1.1 The Localism Act 2011 requires all local authorities to adopt a code of conduct setting out the standards of behaviour expected from local Councillors. City of Wolverhampton Council has adopted a Code of Conduct for Councillors which can be found [here](#).
- 1.2 The Localism Act 2011 also requires local authorities to have in place “arrangements” under which allegations that an elected or co-opted Councillor has failed to comply with the relevant Code of Conduct can be investigated and decisions made on such allegations. These arrangements set out:
- a. How to make a complaint about the conduct of an elected or co-opted member of City of Wolverhampton Council.
 - b. How these complaints will be deal with.
- 1.3 In complying with any such arrangements including the making of any decisions the Monitoring Officer and anyone they choose to instruct or consult should comply with Local Government Association’s Guidance on Member Model Code of Conduct Complaints Handling, unless there is good reason to depart from it.

2. How to make a complaint

- 2.1 Complaints must be made on the [Code of Conduct complaint form](#) (attached as Annex 3) and must be sent to City of Wolverhampton Council’s Monitoring Officer via post or email:

David Pattison
Chief Operating Officer and Monitoring Officer
City of Wolverhampton Council
Civic Centre
St Peter’s Square
Wolverhampton
WV1 1SH
email: Monitoring.Officer@wolverhampton.gov.uk

- 2.2 The Monitoring Officer will not normally consider a complaint unless it is in writing and a completed complaint form has been received. This is to ensure that all relevant information is provided and, where necessary, consent to share information has been obtained so that the complaint can be processed.
- 2.3 In line with equalities legislation reasonable adjustments can be made to assist anyone who has a disability that prevents them from making a complaint in writing. Help is also available via the Monitoring Officer if English is not a potential Complainant's first language, or for any other reason.
- 2.4 Anonymous complaints will not normally be investigated, unless there is clear public interest in doing so and the Monitoring Officer considers that a fair Investigation can be carried out.
- 2.5 Requests from Complainants for the Monitoring Officer to keep their name and identifying details confidential, and to not disclose them to the Councillor complained about, will not automatically be granted. In the interests of fairness and in compliance with the rules of natural justice, Councillors who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against them. Therefore, identifying information is likely to be disclosed unless there is good reason to believe it should not be, for example: the Complainant believes they may be victimised or harassed by the Councillor(s) against whom they are submitting a written complaint (or by a person associated with them); or they believe they may receive less favourable treatment from the Council because of the seniority or status of the Councillor against whom they have complained.

3. The complaint process

- 3.1 Once a valid written complaint relating to an alleged breach of the Code of Conduct has been submitted to the Monitoring Officer it will be dealt with in accordance with the arrangements approved by City of Wolverhampton Council. The Monitoring Officer will acknowledge receipt of the complaint within 5 working days.
- 3.2 All parties are encouraged to respond promptly to any correspondence in relation to the complaint. All parties will be kept updated as to how the complaint is progressing. If at any stage in the complaint process the Complainant fails to respond within the time specified, the complaint may be treated as withdrawn; if the Subject Member fails to respond, the complaint will be determined on the basis of the information available.
- 3.3 The following expressions are used within this document, its annexures and throughout the complaint process including during the Hearing:

Appointed Representative	The Subject Member's representative who may be a solicitor or barrister, or other legally qualified person or, with the permission of the Hearing Panel, any other person.
Complainant(s)	The person/people making the complaint.
Hearing	The meeting to consider whether the Subject Member has breached the relevant Code of Conduct for Councillors.
Hearing Panel	At least three members of the Hearing Sub-Committee of the Governance & Ethics Committee, who will make a determination at the Hearing.
Independent person	The Council must appoint at least one Independent Person and seek that person's views before it makes a decision on a complaint that it has decided to investigate. The Independent Person's views can also be sought on any other issue in the complaints handling process.
Informal Resolution	Arrangements made where a complaint is not suitable or sufficiently serious to justify formal investigation.
Initial Review and Investigation	The two separate stages of decision-making in relation to the nature and seriousness of the complaint, and any action to be taken.
Investigator	The Monitoring Officer or their Deputy, or a person appointed by the Monitoring Officer to undertake a formal Investigation. This may be another officer of the council, an officer of another council or a person external to the Council.
Legal Advisor	The officer responsible for providing legal advice to the Hearing Panel. This may be the Monitoring Officer or their Deputy, another legally qualified officer, or someone appointed for this purpose from outside the Council.
Local Resolution	Arrangements made where a complaint has been formally investigated, and it has been determined that it is not suitable for or sufficiently serious to justify proceeding to a Hearing.
Monitoring Officer	The Monitoring Officer is a senior officer of the council who has statutory responsibility for maintaining the register of Councillors interests and who is responsible for administering the system in respect of complaints about Councillor misconduct. The Monitoring Officer may arrange for the Deputy Monitoring Officer to act in their place.
Subject Member	The City Councillor or co-optee against whom an allegation has been made.

3.4 The following should also be read with and are annexed to this document:

Annex 1	Flow chart providing a diagrammatic overview of the complaint process
Annex 2	Procedure to be followed by the Governance & Ethics Committee's Hearing Sub-Committee ("Hearing Panel")
Annex 3	Complaint form

4. Will the complaint be investigated?

4.1 The Monitoring Officer will review every complaint received and, where appropriate, after consultation with an Independent Person (either in person or electronically) may take a decision as to the following:

- a. That no further action should be taken.
- b. Refer the complaint for Informal Resolution (which might involve an apology or training or some other form of mediation).
- c. Refer the complaint for Investigation.

4.2 This is known as the Initial Review stage and its purpose is to establish if there are valid grounds to investigate the complaint.

4.3 When reviewing Code of Conduct complaints, the Monitoring Officer will have regard to the following assessment criteria:

- a. 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 Monitoring Officer may ask for that additional evidence, but the onus is on the Complainant to ensure they submit all relevant information.
- b. 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?
- c. Duplication – Is the complaint substantially similar to an allegation previously made to the Monitoring Officer or the Governance and Ethics Committee, or has the complaint 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, but will be determined individually
- d. Length of Time – Did the events or behaviour to which the complaint relates take place more than 6 months ago? Does the time that has elapsed mean that

those involved are unlikely to remember it clearly enough to provide credible evidence, or mean 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.

- e. Public Interest - Public interest considerations are at the heart of this process. The Monitoring Officer must balance the appropriate use of public resource in dealing with complaints with the extent to which it may be in the public interest to take further action, and what that further action should be. Would the public interest or any public benefit be served in referring the complaint for investigation or other action? It would not be in the public interest, for example, where:
- The Subject Member has died, resigned or is seriously ill.
 - The Subject Member has already offered a suitable apology or other remedial action.
 - If it is clear that the subject of the allegation is relatively inexperienced as a Councillor, or has admitted making an error, and the matter would not warrant a more serious sanction.
- f. Other Action – Can the complaint be dealt with best by informal resolution, including training or conciliation?
- g. Wider Application – Does the complaint have wider application, such as suggesting a wider problem throughout the Council?

4.4 The Monitoring Officer will be entitled to dismiss the complaint at the outset if:

- a. The complaint is not made against a named Subject Member or the person complained about is no longer a Councillor.
- b. The complaint is made anonymously.
- c. The same, or substantially the same issue has been the subject of a previous Code of Conduct allegation and there is nothing further to be gained.
- d. The complaint is essentially against the action of the council as a whole and cannot properly be directed against individual Subject Member(s).
- e. The complaint does not relate to the conduct of a Subject Member in their capacity as a Councillor.
- f. The complaint is about a Council service or other matter.
- g. The complaint is against an officer of the Council.
- h. The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.

- 4.5 If the complaint identifies criminal conduct (including a failure to register disclosable pecuniary interests) or breach of other regulations by any person, the Monitoring Officer will refer the complaint to the police or other regulatory agencies. No further action will be taken in relation to such complaints until any related criminal/regulatory Investigation, proceedings or processes have been concluded.
- 4.6 Before reaching a decision, the Monitoring Officer may request further information from the Complainant and the Subject Member or obtain information which is readily available such as minutes of Council meetings. This will extend the timescale for dealing with the complaint.
- 4.7 The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal Investigation. If the Subject Member makes a reasonable offer to settle the complaint informally, 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.
- 4.8 The Monitoring Officer will normally reach an assessment within 25 working days of receipt of the complaint, however, in some instances this may take longer.
- 4.9 If the Monitoring Officer decides not to investigate the complaint, they will explain why. That will be the end of the matter.

5. **How is the Investigation conducted?**

- 5.1 If the Monitoring Officer decides that a complaint merits Investigation, they will appoint an Investigator. The Investigator will usually need to speak to the Complainant to discuss the complaint and may need to see relevant documents or interview other witnesses. The Complainant may be able to suggest what documents, and which witnesses the Investigator should consider seeing.
- 5.2 The Investigator will also normally see the Subject Member and provide them with the same opportunity to identify sources of evidence and witnesses.
- 5.3 At the end of their Investigation, the Investigator will produce a draft report which will be sent, in confidence, to the Monitoring Officer. If the Monitoring Officer is satisfied that the investigation is of an acceptable standard and the scope of the investigation has been met, copies will be sent to the Subject Member and the Independent Person for comment. If the Monitoring Officer is not satisfied that the Investigation has been conducted properly, they may ask the Investigator to reconsider their report.
- 5.4 The Investigator will consider any comments received before finalizing their report which will include on the balance of probabilities whether there have been one or

more breaches of the Code of Conduct. The Monitoring Officer will then decide on the action to be taken.

5.5 The Monitoring Officer may decide to share copies of the draft and/or final reports with the Complainant.

6. What happens if the Investigator concludes that there is no evidence of a failure to comply with the Code of Conduct?

6.1 The Monitoring Officer will write to the Complainant and to the Subject Member, confirming that they are satisfied that no further action is required. A copy of the Investigator's final report will be provided to the Subject Member and that will be the end of the matter.

6.2 The Monitoring Officer may nonetheless consider that there are "learning points" which should be shared with the Subject Member or the Governance & Ethics Committee.

7. What happens if the Investigator concludes that there is evidence of a failure to comply with the Code of Conduct?

7.1 The Monitoring Officer will review the Investigator's report and after consulting an Independent Person will then either seek Local Resolution or send the matter for Hearing before the Governance & Ethics Committee (Hearing sub-committee).

8. Local Resolution

8.1 If the Monitoring Officer thinks that the complaint can reasonably be resolved without the need for a hearing they may consult with an Independent Person and the Complainant and seek to agree a fair resolution. It is important though that any resolution also helps to ensure higher standards of conduct for the future. Possible local resolutions may include the Subject Member accepting that their conduct was unacceptable and offering an apology. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the outcome to the Governance & Ethics Committee but will take no further action. That will be the end of the matter.

9. Hearing Panel

9.1 If the complaint is not resolved through Informal Resolution, the Monitoring Officer will refer the Investigator's report to the Governance & Ethics Committee which will convene a Hearing Panel to determine whether the Code of Conduct was breached.

9.2 The Hearing procedure is shown at Annex 2.

- 9.3 The Hearing Panel will comprise a minimum of three members of the Governance & Ethics Committee. The Monitoring Officer will select the membership of each Hearing Panel.
- 9.4 On hearing all the evidence, the Hearing Panel may conclude that the Subject Member did not fail to comply with the Code of Conduct, and so dismiss the complaint. That will be an end of the matter.
- 9.5 If the Hearing Panel concludes that the Subject Member did fail to comply with the Code of Conduct, the Chair will inform the Subject Member of this findings and what action, if any, it should take as a result of that failure.
- 9.6 The Hearing Panel may:
- a. Censure or reprimand the Subject Member.
 - b. Recommend to the Subject Member's group leader (or in the case of ungrouped Councillors, recommend to Council) that they be removed from any or all Committee, Sub-Committees or Panels of the Council.
 - c. Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet or removed from particular portfolio responsibilities.
 - d. Recommend to Council that the Subject Member be replaced as Leader.
 - e. Instruct the Monitoring Officer to arrange training for the Subject Member.
 - f. Publish its findings in respect of the Subject Member's conduct.
 - g. Report its findings to the Governance & Ethics Committee for information.
- 9.7 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw or suspend allowances or restrict access to or use of Council facilities.

10. Timescales

- 10.1 The timescales quoted below are indicative. They are not guaranteed and are included here to illustrate the likely duration of the complaints process. Actual timescales may be significantly shorter or longer depending on the complexity and content of the complaint.

Stage in complaints process	Indicative timescales
Acknowledge receipt of complaint or dismissal of invalid complaints	Within 5 working days of receipt of complaint
Assessment stage decision	Issued to Subject Member and Complainant within 25 working days of receipt of complaint
Investigation	A formal Investigation normally takes around 8 - 12 weeks from the appointment of an appropriate Investigator

Hearing	<p>Within 25 working days of receipt of the final investigation report – which includes:</p> <ul style="list-style-type: none"> • 10 working days to prepare Hearing papers and hold any pre-hearing meetings • 10 working days for Subject Member to submit a response to the Investigator’s report and Hearing papers • 5 working days for agenda publication
Decision Notice	Issued to Subject Member and Complainant and published within 10 working days of the Hearing

11. Appeals

11.1 The Localism Act 2011 provides no right of appeal against a determination following Initial Review, Investigation or Hearing. However, if a Subject Member is unhappy with an outcome, they may wish to seek legal advice about making a Judicial Review claim through the courts.

11.2 If a Subject Member believes there is a fault in the way a decision was reached, and that has caused injustice, they may wish to contact the Local Government and Social Care Ombudsman. The Ombudsman cannot question whether a decision was right or wrong, only whether there was fault in the way a decision was reached. The service can be contacted via www.lgo.org.uk or 0300 061 0614.

12. Document retention

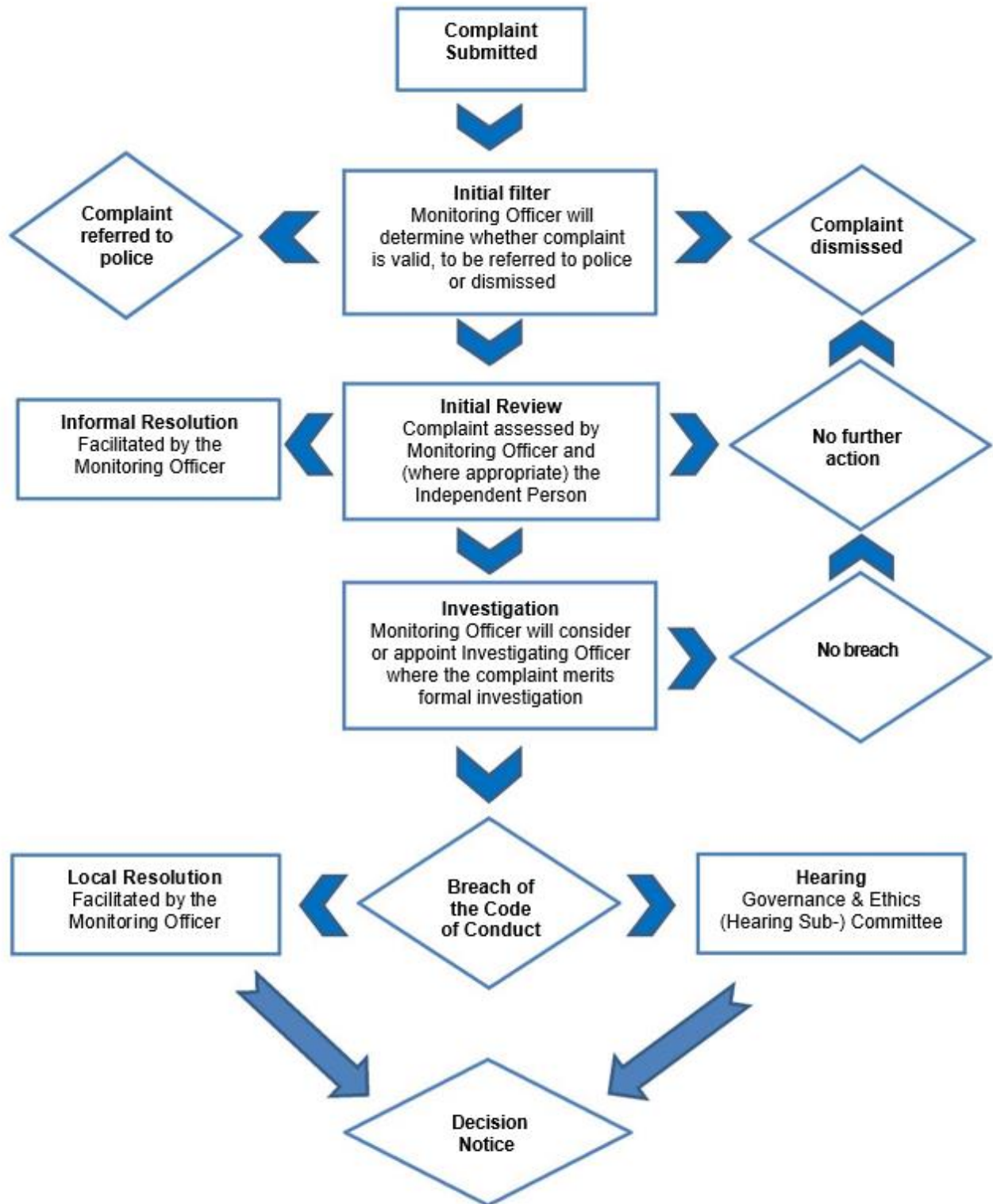
12.1 The documentation relating to a complaint will be retained in accordance with the relevant Council’s records retention and disposal schedule irrespective of the outcome of the complaint.

13. Revision of these arrangements

13.1 The Chair of the Governance & Ethics Committee or the Hearing Panel, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so to secure the effective and fair consideration of any matter.

**Arrangements for dealing with Code of Conduct complaints
Annex 1**

Procedure flow chart



Arrangements for dealing with Code of Conduct complaints Annex 2

Hearing Procedures

1. If the Monitoring Officer or their Deputy determines that a complaint should be considered by the Governance & Ethics Committee's Hearing Sub-Committee ("Hearing Panel"), a hearing will be arranged within 25 working days of their receipt of the final Investigation report.
2. The terminology used in this part is as per Arrangements for Dealing with Code of Conduct Complaints to which this document is annexed.

The Hearing Panel

3. The Hearing Panel will comprise a minimum of 3 elected members of the Governance & Ethics Committee, one of whom will be appointed Chair. The Monitoring Officer or their Deputy will select the membership of each Hearing Panel.
4. The Hearing Panel may ask clarifying questions of anyone in attendance at the Hearing, at any time.
5. The Hearing is not a court or tribunal, but to be fair to everyone, formalities are followed so that a proper decision can be reached.

Attendance

6. The Monitoring Officer or their Deputy and Investigator will attend the hearing. If considered necessary the Legal Adviser, Independent Person and hearing support officers will also be present.
7. The Subject Member is expected to attend. They may present their own case or be represented or accompanied during the hearing by a solicitor, barrister, or other legally qualified person or, with the permission of the Hearing Panel, any other person. If the Subject Member does not attend, the Hearing Panel may adjourn to consider the reasons for non-attendance (if known) and if they are satisfied that there is insufficient reason for the failure to attend, may decide to proceed in that person's absence. Where the hearing proceeds in the Subject Member's absence the order of giving evidence (detailed below) will be amended to exclude their participation.
8. If the Monitoring Officer or their Deputy agrees that it is appropriate or necessary the Complainant may attend to make a statement, ask questions and to be questioned. Where this is the case the order of giving evidence (detailed below) will be amended to include their participation.

9. The Hearing will be held in private except where the Hearing Panel decide otherwise.

Witnesses

10. The Subject Member or the Complainant may bring witnesses (of a number the Hearing Panel considers reasonable) in which case written statements from the witness must be lodged with the Monitoring Officer or their Deputy at least **8** working days before the hearing.
11. The Hearing Panel will determine the amount of time witnesses can speak.
12. "Character witnesses" who cannot provide evidence on the matter complained about will not be permitted.
13. The cost of any attendance/representation must be borne by the party concerned.

Written evidence

14. The Subject Member will be provided with a copy of the Investigator's report and will be invited to submit a written response within **10** working days.
15. Within **5** working days before the hearing, all evidence including the Subject Member's pre-hearing written response, will be circulated by the Monitoring Officer or their Deputy to all those attending the hearing together with an agenda. The Monitoring Officer or their Deputy may decide to share the papers with other interested parties, such as a non-attending Complainant, if it is considered appropriate to do so.
16. Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with the contents.
17. Prior to the Hearing, any documentation issued or exchanged during the process must be treated by all recipients as confidential unless and until the Hearing Panel agrees that the press and public should not be excluded from the meeting at which the allegations are going to be heard.

Legal advice

18. The Hearing Panel may take legal advice in private, if necessary, from its Legal Adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Hearing Panel should be shared with the Subject Member and the Investigator if they are present.

19. The Legal Adviser can speak at any time to advise the Panel on technical matters or ask questions of any party.

Directions

20. The Hearing Panel, taking account of the advice of the Legal Adviser, may issue directions about the way in which the hearing will be conducted, for example agreeing the number and identity of witnesses. Such directions may be determined either before or at the Hearing and may be decided at a meeting or by correspondence involving all members of the Hearing Panel. Any meeting considered necessary to address pre-hearing process issues will be held in private.

Available sanctions

21. The Hearing Panel has the power to impose the following sanctions, as appropriate, in accordance with their findings:

- Censure or reprimand the Subject Member.
- Recommend to the Subject Member's party group leader (or in the case of ungrouped members, recommend to Council) that they be removed from any or all Committee or Sub-Committees of the Council.
- Recommend to the Leader of the Council that the Subject Member be removed from particular portfolio responsibilities.
- Recommend to Council that the Subject Member be replaced as Leader.
- Instruct the Monitoring Officer or their Deputy to arrange training for the Subject Member.
- Publish its findings in respect of the Subject Member's conduct.
- Report its findings to Council for information or with a view to promoting high standards of conduct among Councillors.

22. The Hearing Panel has no power to suspend or disqualify the member, or to withdraw or suspend allowances, or restrict access to or use of Council facilities.

Order at the hearing

23. Normal hearing rules will apply in terms of providing opportunities to question witnesses and test evidence, subject to the rules of natural justice. The hearing will follow the order below:

20.1. **Formal Introductions of those present**

- a. Hearing Panel members introduced.
- b. Hearing Officers introduced – Monitoring Officer or their Deputy (MO), Investigator, Independent Person (as relevant).
- c. Subject Member introduced.
- d. Anyone else in attendance introduced.

20.2 **Preliminary Issues**

- e. Confirm all Members interests are disclosed in accordance with Code of Conduct (if relevant).
- f. Confirm meeting is quorate.
- g. Elect Chair.
- h. If the Subject Member is not present, decide whether to proceed.
- i. Determine whether the Complainant or any witnesses are present.
- j. Determine whether witnesses will be allowed to speak and if necessary for how long.
- k. Determine and resolve any issues or disagreements about the hearing.
- l. Set out the hearing procedures to be adopted.
- m. Remind everyone present that the Hearing Panel may ask clarifying questions of anyone in attendance at any point during the hearing.

20.3 **Stage 1 – on the question of whether the Subject Member has acted in breach of the Code of Conduct**

- n. **MO to introduce the case and present their report** (or if the report was prepared by an Independent Investigator, that person's report), and confirm their recommendations. The MO may wish to call witnesses which may include the Complainant.

The Subject Member, Independent Person and Hearing Panel, may ask clarifying questions of the MO and/or Investigator and their witnesses, via the Hearing Panel.

- o. **The Independent Person to present their views** to the Hearing Panel.

Subject Member, MO, and Hearing Panel may ask clarifying questions of the Independent Person.

- p. **Subject Member to be invited to make any additional comments** and ask for their witnesses to speak.

MO, Independent Person, and Panel may cross-examine the Subject Member and witnesses.

- q. **Subject Member may make a closing statement.**

- r. **Hearing Panel will close the meeting to deliberate in private.** They will ask everyone other than their Legal Adviser to leave the room.

- s. **Hearing Panel to retire to consider the evidence.** The Hearing Panel will determine whether or not the Code of Conduct was breached.

- t. **Hearing Panel to deliver findings.** If they conclude that the Subject Member did not fail to comply with the Code of Conduct, the complaint will be dismissed and that will be the end of the matter.

If the Hearing Panel concludes that the Subject Member did fail to comply with the Code of Conduct, the Chair will inform the Subject Member of the reasons for this finding.

20.4 **Stage 2 – on the question of what sanctions should be imposed where there has been a breach**

- u. **Subject Member to be invited to make comments.** The Hearing Panel will also seek a view from the Independent Person.
- v. **Hearing Panel will close the meeting to deliberate in private.** They will ask everyone other than their Legal Adviser to leave the room.
- w. **Hearing Panel to retire to consider the evidence** and determine which of the available sanctions to impose.
- x. **Hearing Panel to deliver findings.** The Chair will also confirm whether a Decision Notice will be placed on the Council's website and be available for public inspection. Where for any reason it is not possible for the Panel to announce their findings at the hearing, the Panel's decision will be announced as soon as possible after the meetings has closed.
- y. **Chair to close the meeting.**

Departure from these arrangements

24. The Chair of the Governance & Ethics Committee or the Hearing Panel has the right to depart from this procedure, in consultation with the Legal Advisor, at any hearing where they consider that it is sensible to do so to deal with the case fairly and effectively.

Post-hearing documents

25. The Monitoring Officer or their Deputy will, within **10** working days of the hearing prepare a formal Decision Notice, in consultation with the Chair of the Hearing Panel, and send a copy to the Subject Member and, if considered appropriate to do so, the Complainant.

26. The Chair may also require the Monitoring Officer or their Deputy to send the Subject Member a more detailed note of the evidence heard at the hearing.

27. A Decision Notice will be reported to and published as part of the minutes of the Governance & Ethics Committee and will be placed on the Council's website unless the Hearing Panel determined that it should remain confidential, or it contains exempt information.
28. The Monitoring Officer or their Deputy will be responsible for the implementation of the decision of the Hearing Panel.

Appeal

29. The Localism Act 2011, under which the Council's Code of Conduct and these Hearing Procedures are made, provides no mechanism for appeal of a decision. However, if a Subject Member is unhappy with the outcome of a hearing they may wish to seek legal advice about taking action through the courts by way of Judicial Review.
30. If a Subject Member believes there is a fault in the way the Hearing Panel's decision was reached, and that has caused injustice, they may wish to contact the Local Government and Social Care Ombudsman. The Ombudsman cannot question whether a decision was right or wrong, only whether there was fault in the way a decision was reached. The service can be contacted via www.lgo.org.uk or 0300 061 0614.

**Arrangements for dealing with Code of Conduct complaints
Annex 3**

Complaint form

The Code of Conduct for Councillors complaint form is [here](#).