
Code of conduct: arrangements for processing code of conduct complaints

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DEFINITIONS

This procedure uses the following terms throughout:

Complainant(s)	The person/people making the complaint.
Complaints panel	A complaints panel consists of three members of the Audit and Corporate Governance <u>Sub</u> -Committee.
Hearing	A meeting of the complaints panel at which the panel considers whether the councillor or co-optee has breached the code of conduct.
Independent person	The independent person is a member of the public who has applied for such a post following advertisement of the vacancy. They are not a member of the council but their appointment is approved by a majority of councillors. Their views are sought before decisions are taken to investigate a complaint or at any other time.
Investigator	The person appointed by the monitoring officer to undertake a formal investigation. This may involve the appointment of an investigating officer, who may be another senior officer of the council, an officer of another council or an external investigator.
Legal advisor	The officer responsible for providing legal advice to the complaints panel. This may be the monitoring officer, another legally qualified officer, or someone appointed for this purpose from outside the council.
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 of councillor misconduct.
Subject of the complaint	The councillor, co-optee, parish or town councillor against whom an allegation has been made.

INTRODUCTION

1. This procedure sets out the arrangements that the council has in place on receipt of an allegation that a councillor may have failed to comply with the code of conduct.

GENERAL INFORMATION

CONFLICTS OF INTEREST

2. The monitoring officer, the independent person and councillors will not have any involvement in a complaint if they decide that they have a conflict of interest in the complaint and particularly if they are:
 - associated with the complainant or the subject of the complaint;
 - a potential witness or victim relating to the complaint.

CONFIDENTIALITY

3. As a matter of fairness and natural justice, the subject of the complaint should know who has complained about them. However, in exceptional circumstances the monitoring officer or the complaints panel may grant confidentiality if they are satisfied that the complainant:
 - has reasonable grounds for believing that they will be at risk of physical harm or other victimisation or harassment;
 - is an officer who works closely with the subject of the complaint and they are afraid of the consequences to their employment or losing their job if their identity is disclosed (the council's whistleblowing policy provides more information for employees);
 - has medical risks (supported by medical evidence) associated with the disclosure of their identity.
4. The monitoring officer or the complaints panel will also take into account whether they can deal with the complaint without making the complainant's identity known, and in particular whether investigation of the complaint would require the complainant's participation.
5. If the monitoring officer or the complaints panel decides to refuse a request for confidentiality, they may offer the complainant the option to withdraw rather than proceed with the complaint and disclose their identity. More information on withdrawing complaints appears below.
6. The monitoring officer will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have their identity withheld from the subject of the complaint.
7. If a complainant requests confidentiality, the monitoring officer or a complaints panel will deal with that request as a preliminary issue before taking any further action on the complaint.

WITHDRAWING COMPLAINTS

8. If a complainant asks to withdraw the complaint prior to the monitoring officer or the complaints panel making a decision on it the monitoring officer or the

complaints panel will decide whether to grant the request. In making a decision, consideration will be given as to whether:

- the public interest in taking some action on the complaint outweighs the complainant's wish to withdraw it;
- the complaint is such that action can be taken on it without the complainant's participation;
- an identifiable underlying reason exists for the request to withdraw the complaint, and in particular whether evidence exists that the subject of the complaint or another person has put pressure on the complainant to withdraw the complaint.

MULTIPLE COMPLAINTS

9. If the monitoring officer receives a number of complaints about the same matter they may consider the complaints at the same time. If the monitoring officer refers them to the complaints panel, they may present one report that draws together all the relevant information and will highlight any substantively different or contradictory information. If the complaint is about a number of councillors, the monitoring officer or the panel must reach a decision on each individual complaint and follow the notification procedure for each complaint.

UNIDENTIFIED COMPLAINANTS

10 Where an individual/group of individuals alleges that they are making the complaint on behalf of another person/other people, the individual/group of people will be asked to confirm the identity of the additional complainant(s).

11. If the individual/group of individuals state that they cannot divulge the identity of the other complainant(s), the individual/ group of individuals who submitted the complaint will be informed that the monitoring officer will accept the complaint as being from those individuals identified and no reference will be made to additional complainants.

12. If the individual/group of individuals do not wish the complaint to progress under these circumstances, the monitoring officer will give them the opportunity to withdraw the complaint or to request confidentiality at which time paragraphs 3 to 7-8 in the council's procedure will apply.

COMPLAINTS ABOUT MEMBERS OF MORE THAN ONE COUNCIL

13. When the monitoring officer receives a complaint about a district, parish or town councillor who is known to be a member of another authority, for example the county council, the monitoring officer will establish whether a similar allegation has been made to the other authority. In light of information from and in co-operation with the other authority, the monitoring officer will consider which authority should deal with the complaint.

MATTERS CONSIDERED BY A COMPLAINTS PANEL

14. Matters considered by complaints panels are subject to the requirements on confidential and exempt information in accordance with access to information.

legislation and in accordance with the procedure rules and provisions within the council's constitution.

THE ROLE OF THE INDEPENDENT PERSON

15. The monitoring officer or the complaints panel may seek the views of the independent person before deciding whether to investigate a complaint or at any other stage. They must seek their views and take them into account before deciding what action to take on a complaint, which they have decided to investigate.

16. The subject of a complaint may seek the views of the independent person at any stage.

THE ROLES OF THE MONITORING OFFICER AND THE COMPLAINTS PANEL

17. Either the monitoring officer will decide what action to take on a complaint or, if the monitoring officer thinks it inappropriate for officers to deal with the complaint, they will refer it to a complaints panel.

The monitoring officer

18. The monitoring officer will review every complaint received and decide whether it merits formal investigation.

19. Before doing so the monitoring officer may:

- liaise with the police if the complaint indicates a failure to declare or register a disclosable pecuniary interest;
- contact the complainant to obtain additional information to come to a decision;
- request information from the councillor against whom the complaint is directed;
- contact the town or parish council (if applicable) for information.

ACKNOWLEDGING RECEIPT OF COMPLAINTS

20. The monitoring officer will write to the complainant to acknowledge receipt of the complaint and to inform the complainant what will happen next and when.

TELLING THE SUBJECT OF THE COMPLAINT

21. The monitoring officer will decide whether and when to inform the subject of the complaint about the allegations (unless the complainant has asked for their identity to remain confidential and the monitoring officer or complaints panel has agreed to the request).

22. The letter acknowledging receipt of the complaint will generally name

the complainant unless the complainant has requested confidentiality.

INITIAL TESTS: COMPLAINTS THE MONITORING OFFICER WILL NOT CONSIDER

23. The monitoring officer will ascertain whether a complaint meets the criteria for consideration as a code of conduct complaint. Those complaints that the monitoring officer will not consider include:

- (a) complaints where a councillor or co-optee is not named;
- (b) complaints that are not in writing;
- (c) complaints that the monitoring officer believes have been subject to a determination before;
- (d) incidents or actions that are not covered by the code of conduct;
- (e) incidents that are about a fault in the way the council has or has not done something or matters relating to the policies or performance of the council generally (these are more appropriately considered through the council's comments and complaint procedure);
- (f) complaints about employees;
- (g) incidents that happened before a councillor or co-optee was elected or co-opted.

24. The monitoring officer will then consider whether:

- (a) the complaint is about the conduct of one or more named councillors or co-optees covered by the current or previous code of conduct;
- (b) the councillor or co-optee was in office at the time of the alleged conduct;
- (c) the code of conduct was in force at the time;
- (d) the complaint, if proven, could result in a breach of the code of conduct under which the councillor or co-optee was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests the monitoring officer will decide to take no further action on the complaint.

INITIAL TESTS: COMPLAINTS THE MONITORING OFFICER MAY DECIDE NOT TO CONSIDER

25. In addition the monitoring officer may not take action if the complaint meets any of the following criteria:

- **ANONYMOUS COMPLAINTS**

- (a) The monitoring officer will only consider anonymous complaints if they include documentary or photographic evidence indicating an exceptionally serious or significant matter.



 • VEXATIOUS PERSISTENT, MALICIOUS OR TIT-FOR-TAT COMPLAINTS

(b) The monitoring officer will consider whether the complaint has the characteristics of a vexatious, persistent, malicious or tit-for-tat complaint that lacks substance. Such a complaint may be identifiable:

- through repeated allegations making the same, or broadly similar, complaints against the same councillor(s) or co-optee(s) about the same alleged incident;
- as intending to cause annoyance, frustration, or worry to the other party (generally vexatious complaints);
- through use of aggressive or repetitive language of an obsessive nature;
- through repeated complaints that disclose no potential breach of the code (generally persistent complaints);
- where it seems clear that there is an ulterior motive for a complaint or complaints;
- from counter allegations against a councillor that previously made a complaint (generally tit-for-tat complaints);
- where a complainant refuses to let the matter rest once they have exhausted the complaints process.

However, the monitoring officer will consider new allegations as they may contain a complaint that requires some action.

FURTHER TESTS

26. The monitoring officer may decide not to take action if the complaint meets any of the following criteria:

- (a) is not significant enough to justify spending public money and/or officer or councillor time on conducting an investigation¹;
- (b) appears to be a relatively minor usually when considered in the context of a) above
- (c) is a politically motivated complaint;
- (d) is about something that happened so long ago that there would be little benefit in taking action now;
- (e) has already been the subject of an investigation relating to the code of conduct or has been the subject of an investigation by other regulatory authorities;
- (f) contains insufficient information to satisfy the monitoring officer that an investigation is merited;
- (g) is about someone who is no longer a member of the council but is a member of another council or authority, e.g. the county council. If so, the monitoring officer may decide to refer the complaint to the monitoring officer of that council or authority.

27. Having considered the above points the monitoring officer will decide what action to take on the complaint.

¹ Investigation of a complaint can cost upwards of £5000 excluding officer and councillor time.

SEEKING FURTHER INFORMATION

28. The monitoring officer may seek further information to help reach a decision on the complaint, which may include:

- minutes of meetings;
- a copy of the subject of the complaint's:
 - declaration of acceptance of office;
 - undertaking to observe the code of conduct;
 - entry in the register of interests;
- information from Companies House or the Land Registry;
- any clarification obtained from the complainant if the complaint was unclear;
- other easily obtainable documents.

DECIDING TO CONVENE A COMPLAINTS PANEL

29. The monitoring officer may convene a complaints panel to decide what action to take on the complaint, for example when the monitoring officer decides that it is inappropriate for officers to consider the complaint.

The complaints panel

30. The monitoring officer may convene a complaints panel.

31. In advance of the meeting, the monitoring officer will send a report to panel members setting out the potentially relevant paragraphs of the code of conduct and a summary of the key aspects of the complaint. In referring to potentially relevant paragraphs of the code of conduct, the monitoring officer will include those paragraphs that could apply even if the complainant has not referred to the paragraphs.

32. Members of any panel will not discuss complaints with fellow members of the Audit and ~~Corporate~~ Governance Sub-Committee if they are not a member of the panel.

33. The monitoring officer, deputy monitoring officer or another legal officer will advise the panel. An officer from democratic services will attend the meeting to take notes.

THE DECISION OF THE MONITORING OFFICER OR THE COMPLAINTS PANEL

34. The consideration of a complaint by the monitoring officer or a complaints panel aims to determine whether it shows that the subject of the complaint may have failed to comply with the code of conduct. The monitoring officer or the complaints panel will not make any findings of fact. The monitoring officer or the panel can decide:

- (a) to take no action in respect of the complaint;
- (b) that seeking a local resolution to the complaint is more appropriate;
- (c) that the complaint should be subject to a formal investigation.

Decision to take no action

35. If the monitoring officer, or the complaints panel, decides to take no action on the complaint the monitoring officer will write to confirm the decision and the reasons for it. The decision will also be set out in the minutes if a complaints panel decided what action to take on the complaint.
36. The monitoring officer will send the letter to the complainant, the subject of the complaint, and the clerk of any town or parish council (if applicable).
37. The council aims to do this within five working days of the decision.

Local resolution of complaints

38. Whilst formal investigation is sometimes necessary the monitoring officer, or the complaints panel, may seek a way to reach a local resolution on a complaint to avoid a formal, costly investigation and to deal more rapidly and effectively with the complaint to the satisfaction of the complainant and the subject of the complaint. In addition the monitoring officer may decide to seek local resolution after an investigation has taken place and there was evidence of a failure to comply with the code of conduct.
39. The monitoring officer will seek to agree what the complainant considers will result in a fair resolution and also to help ensure higher standards of conduct for the future.
40. Local resolution may include the councillor accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the council of which the councillor is a member.
41. The monitoring officer will seek the agreement of the subject of the complaint for local resolution. Notwithstanding that agreement local resolution may be the decision of the monitoring officer. The monitoring officer will write to the subject of the complaint and the complainant confirming the decision.

Decision to investigate the complaint

42. If the monitoring officer or the complaints panel, having consulted the independent person, decides to investigate the complaint the monitoring officer will write to confirm the decision and the reasons for it.

43. The monitoring officer will send the letter to the complainant and the subject of the complaint². If the allegation involves a parish or town councillor, the monitoring officer will send the letter to the parish or town clerk³. The decision will also be set out in the minutes if it was a complaints panel that decided what action to take on the complaint.

44. The council aims to send out its decision within five working days.

45. The monitoring officer may decide not to give the subject of the complaint details of the complaint if they consider that doing so would be against the public interest or would prejudice any future investigation. This could arise if the subject of the complaint may intimidate the complainant or any witnesses involved or if early disclosure of the complaint may lead to evidence being compromised or destroyed. The monitoring officer will balance whether the risk of prejudicing the case outweighs the fairness of notifying the subject of the complaint. The monitoring officer will review the decision to withhold the notification as the investigation progresses.

Dissatisfaction with the decision on the complaint

46. There is no right of appeal against the monitoring officer's or a complaints panel's decision on what action to take on a complaint.

47. Parties to a complaint may use the council's corporate complaints procedure if they believe the council has not followed the proper process in dealing with the code of conduct complaint but it is unlikely the council will consider the complaint if the matter complained of relates to the decision of the monitoring officer or panel about what action to take on the complaint.

INVESTIGATING THE COMPLAINT

48. The monitoring officer will determine the procedure to adopt if they or the complaints panel, in consultation with the independent person, decide to undertake a formal investigation.

49. Investigation will involve the appointment of an investigator, who may be another senior officer of the council, an officer of another council or an external investigator.

50. At the end of the investigation, the investigator will prepare a report for the monitoring officer to consider.

² Dependent upon whether the monitoring officer has decided to tell the subject of the complaint about the complaint.

³ Unless the clerk is involved in the complaint, then the notice will be sent to the chairman of the parish or town council.



AFTER THE INVESTIGATION

51. On completion of a code of conduct investigation, the investigator may make the following findings:

- (a) There was no evidence that the councillor failed to comply with the code of conduct, or
- (b) There was evidence that the councillor failed to comply with the code of conduct, or
- (c) There was evidence that the councillor failed to comply with the code of conduct relating to some allegations and did not fail to comply relating to other allegations within the complaint.

NO EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

52. The monitoring officer will review the investigating officer's report. If they agree with the finding that there was no failure to comply with the code of conduct they will consult the independent person.

53. If the independent person is satisfied that the report is sufficient and no further action is required, the monitoring officer will confirm this in writing to the complainant and the subject of the complaint with a final copy of the investigator's report. The monitoring officer may ask the investigator to review the findings if there are concerns about the investigation.

EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

54. The monitoring officer will review the investigating officer's report. If they agree with the finding that there was evidence of a failure to comply with the code of conduct will consult the independent person.

55. The monitoring officer will then either send the matter for local hearing before a panel of councillors of the Audit and ~~Corporate Governance~~ Sub-Committee (the complaints panel) or seek local resolution as set out in ~~36-38~~ 39-41 above.

LOCAL HEARING

56. Following an investigation of allegations that relate to serious misconduct, the monitoring officer may decide that local resolution is not appropriate. After consulting the independent person, the monitoring officer will then report the matter to a panel of the Audit and ~~Corporate Governance~~ Sub-Committee (the complaints panel). The chairman of the complaints panel (or sub-committee) can decide that the full sub-committee should consider the matter.

57. The complaints panel will conduct a local hearing to consider whether the councillor has failed to comply with the code of conduct and, if so, whether to recommend action in respect of the councillor.

58. The following sets out procedures for the process leading up to the local hearing and the local hearing itself.

Pre-hearing process

59. The monitoring officer will ensure that the complainant and the subject of the complaint have a copy of any investigation report.

60. If the subject of the complaint is a member of another authority, the monitoring officer will send a copy of the report to the other authority if they request it.

61. The officer providing administrative support to the complaints panel will:

- a. provide a copy of the pre-hearing and hearing procedures set out below to the subject of the complaint;
- b. outline to the subject of the complaint their rights and responsibilities;
- c. propose a date for the hearing;
- d. use hearings procedure forms A to F⁴, asking for a written response from the subject of the complaint to find out whether they:

- disagree with any of the findings of fact in the investigation report, including the reasons for disagreement;
- want a solicitor, barrister or any other person to represent them at the hearing;

Note: the complaints panel will normally give permission for people who are not lawyers to represent the subject of the complaint but may refuse permission if the representative is directly involved in the matter that the panel will determine.

- want to give evidence to the complaints panel, either verbally or in writing;
- want to call relevant witnesses to give evidence to the complaints panel;
- can attend the hearing on the proposed date;
- want any part of the hearing held in private;
- want any part of the investigation report or other relevant documents withheld from the public.

- e. send a copy of the subject of the complaint's response to the monitoring officer or investigator and invite the monitoring officer or investigator to say by a set time whether they want:

⁴ **Forms A to F are:**

- A: Response of the subject of the complaint to the evidence set out in the investigation report
- B: Other evidence relevant to the complaint
- C: Representations to consider on findings of failure to comply with code
- D: Arrangements for the [Audit and Governance Committee complaints panel](#)
- E: Details of proposed witnesses to be called
- F: Checklist and summary for the pre-hearing process

- to be represented at the hearing;
- to call relevant witnesses to give evidence to the complaints panel;
- any part of the hearing held in private;
- any part of the investigation report or other relevant documents withheld from the public;
- to invite any other witnesses the complaints panel feels are appropriate.

62. The monitoring officer or legal adviser to the complaints panel should then prepare a report for the complaints panel, which sets out the key points of the investigation report and also:

- confirms a date, time and place for the hearing;
- confirms the main facts of the case that are agreed;
- confirms the main facts, which are not agreed;
- confirms which witnesses will give evidence;
- outlines the proposed procedure for the hearing.

63. The monitoring officer will:

- provide the information set out in paragraph 59-61 above to:
 - all members of the complaints panel who will conduct the hearing;
 - the subject of the complaint;
 - the complainant;
 - the investigator who will make any necessary arrangements with witnesses;
 - anyone representing the subject of the complaint.
- if applicable, notify any relevant parish or town council of the matter and of the date, time and place of the hearing.

Guiding and advising the subject of the complaint

64. The officer providing administrative support to the complaints panel, ~~in consultation with the chairman of the panel, will~~ will make sure that the subject of the complaint is aware of the points below.

65. The subject of the complaint has the right to:

- go to the hearing and present their case;
- call a reasonable number of witnesses to give relevant evidence to the complaints panel;
- representation at the hearing by a solicitor, barrister or any other person.

66. The complaints panel will normally give permission for the subject of the complaint to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined. The subject of the complaint must meet the cost of any representation.

67. The subject of the complaint must raise any disagreements with the finding of facts in the investigation report during the pre hearing process. The complaints panel will not consider any new disagreements about the investigation's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.

68. The subject of the complaint does not have to go to the hearing or have representation. If the subject of the complaint chooses not to go to the hearing, the complaints panel may make a determination in their absence.

Procedures for the hearing

SETTING THE SCENE

69. After all the panel members, officers, subject of the complaint and investigating officer have been formally introduced, the chairman should explain how the complaints panel will conduct the hearing. In particular, the chairman will explain that:

- the hearing is a formal process, not an open discussion;
- the complaints panel can only decide on the evidence before it;
- no new issues can be introduced;
- cross examination does not form part of the complaints panel's procedures.

ATTENDANCE BY THE INDEPENDENT PERSON

70. -The independent person will attend a complaints panel meeting when the panel considers code of conduct complaints. Their views may be sought and taken into consideration before the complaints panel reaches any conclusion on whether the councillor's conduct constitutes a failure to comply with the code of conduct. The independent person's views may also sought before the panel makes recommendations to the monitoring officer for action following a finding of failure to comply with the code of conduct.

LEGAL ADVICE

71. The complaints panel may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while considering the outcome. The complaints panel should share the substance of any legal advice given with the subject of the complaint and the investigator if they are present⁵.

⁵ In the interests of openness, the complaints panel may prefer to receive any advice in the hearing room in the presence of the investigating officer and the subject of the complaint. Where this is not practicable, the legal advisor should repeat in the presence of the investigating officer and the member the advice, which he/she has tendered.

 PRELIMINARY PROCEDURAL ISSUES

72. The complaints panel should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process. The chairman will clarify that all present know the procedure that the complaints panel will follow in determining the matter.

73. The complaints panel will aim to conclude a hearing in one sitting and will consider adjournment in only the most complicated cases or when good reasons exist.

74. The complaints panel will then deal with preliminary procedural matters in the following order:

a) Quorum

The chairman confirms that the complaints panel is quorate (if the full audit and governance sub-committee is considering the case this is three-four councillors, otherwise a panel of three members (who must all attend) can consider the case)

b) Declarations of interest

The chairman will ask complaints panel members if they have disclosable pecuniary interests or connections with any party to the complaint and to act accordingly if they make a declaration.

c) Proceeding in the absence of the councillor

If the councillor is not present at the start of the hearing:

- the chairman shall ask the legal advisor whether the councillor has indicated his/her intention not to attend the hearing;
- the complaints panel will then consider any reasons that the councillor has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend, and
 - i. if satisfied with the reasons for non attendance, it shall adjourn the hearing to another date;
 - ii. if not satisfied, or if the councillor has not given any such reasons, the complaints panel shall decide whether to consider the matter and make a determination in the absence of the councillor or to adjourn the hearing to another date.

d) Exclusion of press and public

The chairman should ask the councillor, the investigating officer and the legal advisor to the complaints panel whether they wish to ask the complaints panel to exclude the press or public from all or any part of the hearing. In the event of a request, the chairman will ask them to put forward the reasons for their request, seeking responses from other parties. The complaints panel will then decide whether to exclude the press and public from all or any part of the hearing.

Where the complaints panel does not resolve to exclude the press and public, the agenda and any documents, which may have been withheld from the press and public in advance of the meeting, can then be accessed by the press and public.

MODIFICATION OF PROCEDURE

75. The chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

76. The complaints panel will embark on a two-stage process to consider the investigator's report. The first part of the process will be to consider the findings of fact. If the complaints panel decides to consider whether the councillor failed to comply with the code of conduct, it will proceed to the second part of the hearing.

MAKING FINDINGS OF FACT

77. After dealing with any preliminary issues, the complaints panel should then move on to hear and consider the report of the legal adviser to the complaints panel, which sets out whether there are any significant disagreements about the facts contained in the investigator's report.

78. If there is no disagreement about the facts, the complaints panel can move on to the next stage of the hearing.

79. If there is a disagreement the chairman should invite the investigator, if present, to make any necessary representations to support the relevant findings of fact in the report. With the complaints panel's permission, the investigator may call any necessary supporting witnesses to give evidence. The complaints panel may give the subject of the complaint an opportunity to challenge any evidence put forward by any witness called by the investigator.

80. The subject of the complaint should then have the opportunity to make representations to support their version of the facts, make suggestions to the complaints panel upon which it should seek advice from the investigating officer and, with the complaints panel's permission, to call any necessary witnesses to give evidence.

81. At any time, the complaints panel may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the subject of the complaint.

82. If the subject of the complaint disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

83. If the subject of the complaint disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the complaints panel will consider whether it would be in the public interest to continue in their absence.

84. After considering the subject of the complaint's explanation for not raising the issue at an earlier stage, the complaints panel may then:

- continue with the hearing, relying on the information in the investigator's report;
- allow the subject of the complaint to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary;
- postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already

85. The chairman may allow the complainant to make a representation to the complaints panel if he/she believes that such a variation in procedure is necessary in the interests of fairness.

86. The chairman may invite the independent persons to make any representations.

87. On hearing the representations, the chairman will check that members of the complaints panel are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

88. The complaints panel will usually move to another room to consider the representations and evidence in private.

89. On their return, the chairman will announce the complaints panel's findings of fact and whether the complaints panel will progress with a hearing.

MAKING FINDINGS ON THE CODE OF CONDUCT

90. The complaints panel then needs to consider whether, based on the facts it has found, the subject of the complaint has failed to follow the code⁶. This will include considering the reports of the legal adviser to the complaints panel and the investigator.

⁶ If the investigating officer is not present, the complaints panel should only conduct a hearing if it is satisfied that there are no substantial points of dispute, or that the points of dispute can be satisfactorily resolved in the absence of the investigating officer. In the absence of the Investigating Officer, the complaints panel shall determine on the advice of the Legal Advisor which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' 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.

91. The complaints panel may, at any time, question anyone involved on any point raised during their representations.

92. The chairman will invite the subject of the complaint to give relevant reasons why the complaints panel should decide that they have not failed to follow the code.

93. The complaints panel should then consider any verbal or written representations from the investigator.

94. The chairman will invite the subject of the complaint to make any final relevant points.

95. The chairman may invite the independent persons to make any representations.

96. On hearing the representations, the chairman will check that members of the complaints panel are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

97. The complaints panel will then move to another room to consider the representations.

98. The complaints panel will make a decision on the balance of probability based on the evidence that it received at the hearing.

99. The complaints panel may at any time return to the main hearing room in order to seek additional evidence from the investigating officer or the subject of the complaint.

100. On the complaints panel's return, the chairman will announce the complaints panel's decision as to whether the subject of the complaint has failed to follow the code or not.

NO FAILURE TO FOLLOW THE CODE OF CONDUCT

101. If the complaints panel decides that the subject of the complaint has not failed to follow the code, the complaints panel can move on to consider whether it should make any recommendations to the council of which the subject of the complaint is a member.

FAILURE TO FOLLOW THE CODE OF CONDUCT AND CONSIDERATION OF SANCTIONS

102. If the complaints panel decides that the subject of the complaint has failed to follow the code, it will consider any verbal or written representations from the investigator and the subject of the complaint as to:

- whether the complaints panel should apply a sanction;
- what form any sanction should take.



103. The complaints panel may question the investigator and subject of the complaint, and take legal advice, to make sure they have the information they need in order to make an informed decision.

104. On hearing the representations, the chairman will check that members of the complaints panel are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

105. The complaints panel will then deliberate in private to consider whether to impose a sanction on the subject of the complaint and, if so, the nature of the sanction.

106. If the complaints panel decides that the subject of the complaint has failed to follow the code of conduct and that it should impose a sanction, it may do any one or a combination of the following:

- censure or reprimand the councillor;
- publish its findings in respect of the councillor's conduct;
- report its findings to council or to the parish council for information;
- recommend the councillor's group leader (if applicable) to remove the councillor from any or all committees or sub-committees of the council;
- recommend the leader of the council to remove the councillor from the cabinet, or remove them from particular portfolio responsibilities;
- recommend council to replace the councillor as leader of the council;
- instruct the monitoring officer to, or recommend ~~that~~ the parish council, to ~~arranges~~ training for the councillor;
- withdraw facilities provided to the councillor by the council, such as a computer, website and/or email and internet access for a specified period, or
- exclude the councillor from the council's offices or other premises, with the exception of meeting rooms as necessary for attending council or committee meetings for a specified period.

107 The monitoring officer, the complaints panel and the Audit and ~~Corporate~~ Governance Sub-Committee have no power to suspend or disqualify the councillor, to withdraw a councillor's basic or special responsibility allowances, or to recommend other outcomes.

RECOMMENDATIONS TO THE COUNCIL

108. After considering any verbal or written representations from the investigator, the complaints panel will consider whether it should make any recommendations to the council of which the subject of the complaint is a member, with a view to promoting high standards of conduct among members.

CLOSING THE HEARING

109. At the end of the hearing, the chairman will state the conclusion of the complaints panel as to whether the councillor failed to comply with the code of conduct and the actions that the complaints panel wishes to recommend.

110. Before making any recommendations the chairman will provide a further opportunity to the councillor to make further representations and may hear further from the independent person before making a recommendation on action that the monitoring officer will take.

AFTER THE LOCAL HEARING

Written decision

111. As soon as reasonably practicable after the local hearing, the monitoring officer shall prepare a formal decision notice and send it to:

- the subject of the complaint;
- the monitoring officer of any other authority concerned;
- any parish council concerned; and
- the complainant(s).

112. The Audit and ~~Corporate~~ Governance Sub-Committee will consider the minutes of the complaints panel at its next convenient meeting.

RECORDS RETENTION

113. The council will retain records relating to code of conduct complaints in accordance with its records management and retention policy.

REPORTING PROCEDURES

114. The monitoring officer will provide a summary of activities on code of conduct complaints within the annual governance statement.

REVIEW OF PROCEDURES

115. The monitoring officer may make minor amendments to these procedures. The Joint Audit and ~~Corporate~~ Governance Committee and the Audit and Governance Sub-Committees will review the procedure in 2015–2019 unless significant changes to the code of conduct framework require a new procedure.