

DRAFT Somerset Council **Code of Conduct Investigation and Hearing Procedures**

Background

This guide sets out the procedure that will be followed where the Monitoring Officer or Standards Committee decides that a complaint, that a Member of Somerset Council or a Town/Parish in Somerset has breached their Code of conduct, merits investigation. This guide sets out how the investigation will be conducted and what will happen once the officer responsible for the investigation has reached their conclusions.

It also explains the process for holding a "Hearing" where the investigation concludes that there has been a breach of the relevant authority's Code of Conduct.

Investigations

Where a matter is referred for investigation, the following parties will be informed:-

- The Subject Member
- The Complainant
- The Clerk of the relevant town or parish council where the Subject Member is a town or parish councillor

The Investigating Officer

The Monitoring Officer will appoint an external Investigator to conduct the investigation and reach a conclusion as to whether there has been a breach of the relevant Code of Conduct.

The Monitoring Officer will advise the Subject Member and the Complainant of the appointment of the Investigating Officer. The appointment will set out the responsibilities delegated by the Monitoring Officer to the Investigating Officer. The Monitoring Officer will maintain the function of overseeing the investigation.

When conducting an investigation the Investigating Officer will have the power to make enquiries of any person they think necessary. However, there is no obligation on any individual to respond. Although it should be noted that Members who are subject to the LGA Model Code of Conduct have committed in the Code to co-operating with any Code of Conduct investigation and/or determination. Interviews

Commented [SH1]: AH: Why is the The Clerk of the relevant town or parish council where the Subject Member is a town or parish councillor informed if the complaint relates to the Subject Member's alleged breach of the Code of Conduct in relation to his/her actions as a Member of Somerset Council and not the town of parish council?

SH response: The Town or Parish Council clerk is notified if the investigation relates to their capacity as a Town or Parish Member. The procedure states:

'Investigations
Where a matter is referred for investigation, the following parties will be informed

...
• The Clerk of the relevant town or parish council where the Subject Member is a town or parish councillor'

will be conducted either in person or by telephone. Where the Subject Member requests an interview in person, this will be accommodated wherever possible.

Statements will be prepared and agreed with each person interviewed during an investigation, including the Subject Member. The Subject Member will be advised that he/she may be accompanied by a professional representative or advisor, a Group colleague or friend during the interview. Any other person interviewed may be accompanied by a friend or representative if they so wish.

Referring cases back to the Monitoring Officer

During the investigation the Investigating Officer may uncover evidence of conduct by the Subject Member that breaches the relevant Code of Conduct, but extends beyond the scope of the investigation referred to them. In these circumstances, the Investigating Officer may refer the matter back to the Monitoring Officer/Standards Committee so that they can decide, in consultation with the Independent Person, whether this new evidence should also be investigated and combined into the Investigation.

The Investigating Officer may also refer the matter back to the Monitoring Officer if at any time during the Investigation circumstances arise that they consider may make it appropriate not to continue with the investigation. These circumstances may include the following situations, although this list is not exhaustive and there may be other reasons why it is not appropriate to continue with the investigation:-

- Evidence is uncovered suggesting a case is more or less serious than seemed apparent originally
- The subject member has died, is seriously ill or has resigned from the authority

In those circumstances the Monitoring Officer or Standards Committee, in consultation with the Independent Person, will decide whether it is appropriate to continue with the investigation and that decision shall be final.

Deferring an investigation

An investigation should be deferred when any of the following conditions are met:-

- There are on-going criminal proceedings or a police investigation into the member's conduct.

Commented [SH2]:

FN: The Investigating Officer may also refer the matter back to the Monitoring Officer if at any time during the Investigation circumstances arise that they consider may make it **appropriate not to continue with the investigation**. These circumstances may include the following situations, although this list is not exhaustive and there may be other reasons why it is not appropriate to continue with the investigation:-

- Evidence is uncovered suggesting a case is **more** or less **serious** than seemed apparent originally

My highlighting. Why would an investigation not be continued if evidence is uncovered suggesting the case is more serious? (I can see it might be deferred but this is covered in the next section.)

SH response: The complaint may disclose evidence of failure to disclose a DPI which is a criminal offence and in such circumstances the investigation would have to be stopped and the matter referred to the Police.

- The investigation may prejudice another investigation or court proceeding.
- Because of the serious illness of a key party
- Due to the genuine unavailability of a key party.

Any deferral must be with the agreement of the Monitoring Officer or the Standards Committee

Confidentiality

The Investigating Officer must treat the information they gather during the investigation as confidential. The Investigating Officer will also ask the people they interview to maintain confidentiality.

Any draft report that is issued will be marked as confidential. This is to preserve the integrity of any further investigation that the Investigating Officer needs to undertake.

Timescales for an Investigation

The Investigating Officer will complete the investigation within a reasonable period of time according to the nature of the complaint and the extent of the investigation required. There are many factors that can affect the time it takes to complete an investigation. However, most investigations should be carried out and a report on the investigation completed, within 4 months of the Monitoring Officers/Standards Committee's decision to investigate.

The Investigation Report

When the Investigating Officer has concluded their investigation, they will prepare a draft report to the Subject Member and the Complainant for review and comment. The report should cover the issues set out in the report template at Appendix A. Any draft report will indicate that it does not necessarily represent the Investigating Officer's final finding.

The draft report will be issued to the Subject Member and Complainant for review and comment. The draft will not be sent to other witnesses or parties involved but the Investigating Officer will seek confirmation of their evidence from them before issuing the report.

Commented [SH3]: AH: Last paragraph's statement about any referral being subject to the agreement of the Monitoring Officer or the Standards Committee. If the agreement has to be by the Standards Committee does this mean a formal meeting of the Committee? Could that be a decision of the Chair and/or Vice-Chair?

SH response: Committee currently

Commented [SH4]:

FN: Deferring an investigation. Last para. 'Monitoring Offer or the Standards Committee'. As written this means that either one or other could agree the deferral even if the other doesn't agree. Is that what is intended? If not, then what is the intended meaning? And if both have to agree but there is a difference of view, what happens then?

SH response: gives the MO the option to refer the decision to the Committee depending on the circumstances The reality is that where referred to the Committee for decision, the MO will not override that

Commented [SH5]: AH: First paragraph, second sentence. This might read better as follows "All people (or persons) interviewed as part of the investigation will be expected to maintain confidentiality." As it currently reads, the Investigating Officer will ask for confidentiality – it should be an expectation!

SH Response: Persons interviewed will not likely have read the procedure so won't know its confidential unless the IO tells actually tells them

At this stage the Subject Member or Complainant may comment on the draft report. The Investigating Officer may then decide to redraft the report based on the comments received. Once the Investigating Officer has considered whether the responses add anything of substance to the investigation, they will make their final conclusions and recommendations and issue a Final Report.

This report must be sent to:-

- The Subject Member
- The Complainant
- The Independent Person

The report must make one of the following findings:-

- That there has been a failure to comply with the relevant Code of Conduct
- That there has not been a failure to comply with the relevant Code of Conduct

If the Investigating Officer concludes that there has been no breach of the Code, the Monitoring Officer will write to the Subject Member and Complainant and advise that that is the conclusion and that that is the end of the matter.

If the Investigating Officer concludes that there has been a breach of the Code, the Monitoring Officer will, in consultation with the Independent Person decide whether no further action is needed, the matter should be resolved in a way other than by a hearing or that the matter should be referred to a hearing.

If the Subject Member is also a town/parish councillor, the Clerk to the Town/Parish Council will also be notified of the outcome of the investigation.

Commented [SH6]: AH: Last paragraph – as with the comment of P13 why is the Town/Parish Clerk advised of the outcome if the complaint is not about the Subject Member's conduct within that council?

Consideration of the Final Report where it concludes there has been a breach of the Code of Conduct and the Monitoring Officer decides that it should proceed to a hearing

Where the Report concludes that there has been a breach of the Code of Conduct, and the Monitoring Officer decides that the matter should proceed to a hearing, it will be referred to the Hearing Committee (a Sub-Committee of the Standards Committee) that the complaint will be referred to for determination.

The role of the Committee is to decide, based on the facts in the report, whether it agrees that the Code of Conduct has been breached and if so, whether a sanction should be imposed, and if so, what the sanction should be.

Commented [SH7]:

FN: The words 'and if so, what the sanction should be' should be added before the full stop.

SH response: amend as suggested

Timing of the hearing

The Committee will usually hear a complaint within three months of the date on which the Investigating Officer's report was completed. However there may be some occasions where due to the particular circumstances, it may not be possible to hear the complaint within this timescale.

The hearing will take place at least 14 days after the Subject Member receives a copy of the report from the Monitoring Officer.

The Committee may consider the report in the Subject Member's absence if the Subject Member does not go to the hearing. If the Committee is satisfied with the Subject Member's reasons for not being able to come to the hearing, it should arrange for the hearing to be held on another date.

Scheduling a hearing

Except in the most complicated cases, the Committee should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. Late night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to important matters being forgotten.

The pre-hearing process

The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself. Other than in very straightforward cases, the council will use a pre-hearing process to:

- identify whether the Subject Member disagrees with any of the findings of fact in the investigation report
- identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
- identify whether evidence about those disagreements will need to be heard during the hearing

- decide whether there are any parts of the hearing that are likely to be held in private
- decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material

The pre-hearing process should usually be carried out in writing. However, occasionally a meeting between the Chairman of the Committee, the relevant parties and their representatives may be necessary or just between the Monitoring Officer and the Committee Chair for expediency.

Some matters in the pre-hearing process may be decided only by the Committee. Therefore, if it is necessary for the Committee to meet, they will have to do so formally as with any other council committee meeting. However, it is usually more appropriate for the majority of the pre-hearing process to be dealt with by the Monitoring Officer or other suitable officer.

Key points for the pre-hearing process

The officer providing administrative support to the Committee should write to the Subject Member proposing a date for the hearing, and they should do this in consultation with the Chairman of the Committee. They should also outline the hearing procedure, the Subject Member's rights and they should additionally ask for a written response from the Subject Member within a set time. This is to find out whether the Subject Member:

- wants to be represented at their own expense at the hearing by a solicitor, barrister or any other person
- disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements
- wants to give evidence to the Committee, either verbally or in writing
- wants to call relevant witnesses to give evidence to the Committee
- wants any part of the hearing to be held in private
- wants any part of the investigation report or other relevant documents to be withheld from the public
- can attend the hearing

A critical part of the pre-hearing process is to attempt to focus the relevant parties' attention on isolating all relevant disputes of facts between them. This is because attention to the factual issues will save valuable time later on at the hearing.

Commented [SH8]: AH: First main paragraph and first paragraph under "Key Points for the pre-hearing process" suddenly refer to a "Chairman". Somerset Council uses the title "Chair".

SH response: Amend as suggested

Commented [SH9]: AH: First bullet point refers to the Subject Member being able to be represented by "...any other person". On P20 that is qualified by the words "must obtain the consent of the Committee." If the attendance of a representative other than a legal representative is subject to the consent of the Committee, this should be spelt out in both places.

SH response: The bullet point does not refer to the Member being able to be represented by any other person. It simply sets out that one of the purposes of the pre-hearing procedure is to find out whether they wish to be represented by a solicitor, barrister or any other person

Commented [SH10]:

FN: bullet point add the words in quotation marks
• wants to be represented 'at their own expense' at the hearing by a solicitor, barrister or any other person

SH response: amend as suggested

The Standards Committee has approved Pre-hearing process forms that will be used to try and narrow the issues. These forms help the Subject Member respond to the Committee.

Form A helps the Subject Member identify any disagreements about the findings of fact in the investigation report.

Form B helps the Subject Member set out any other evidence that is relevant to the complaint made about them.

Form C helps the Subject Member set out any representations the committee should take account of if the Subject Member is found to have broken the Code of Conduct.

Forms D and E cover details of the hearing and the witnesses who will give evidence.

Form F is a checklist of details for the pre-hearing process summary which is outlined below.

Copies of these Forms are attached at Appendix B.

Pre-hearing process summary

The Committee's clerk should consult with the Committee's legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks before the hearing or as soon as the Committee has received responses from the Subject Member and from the Investigating Officer. The pre-hearing process summary should:

- set the date, time and place for the hearing
- summarise the allegation
- outline the main facts of the case that are agreed
- outline the main facts which are not agreed
- note whether the Subject Member or investigating officer will go to the hearing or be represented at the hearing
- list those witnesses, if any, who will be asked to give evidence, subject to the power of the Committee to make a ruling on this at the hearing
- outline the proposed procedure for the hearing

The Hearing

A hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities. The Committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings.

The Committee should bear in mind the need to maintain public confidence in the Council's ethical standards. This requires that the Committee's decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the Subject Member, the council and the public.

Representatives

The Subject Member may choose to be represented by counsel, a solicitor, or by any other person they wish. Even if represented, the Member must still personally answer any questions posed through the **Chairman**. If the Subject Member concerned wants to have a non-legal representative, the Subject Member must obtain the consent of the Committee **(which consent shall not be unreasonable withheld)**. The Committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Subject Members are responsible for meeting the cost of any representation at a Committee hearing.

Evidence

The Committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned. In many cases, **the Committee** may not need to consider any evidence other than the investigation report and any other supporting documents. However, the Committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report. The Committee can allow questions from the Subject Member, the Investigating Officer, the Monitoring Officer or any representative. However, the Committee will ask that these questions be directed through the **Chairman**. The Committee can also question witnesses directly.

Witnesses

Commented [SH11]:

AH: "Chairman" should read "Chair".

SH response: Amend as suggested

AH: On page 27 there is a comment about the expenses of representation. That should be moved to this page.

SH response: Amend as suggested.

Commented [SH12]:

FN: and wherever else this point comes up the words 'which shall not be unreasonably withheld' should be added to 'is subject to the consent of the Committee'

SH response: amend as suggested

Commented [SH13]:

AH: Third line "The Committee" should read "the Committee".

SH response: Amend as suggested

Commented [SH14]:

AH: Last mine "Chairman" should read "Chair"

SH response: Amend as suggested

Generally, the Subject Member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. The Subject Member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing. The Committee has the right to govern its own procedures as long as it acts fairly. For this reason, the Committee may limit the number of witnesses if the number is unreasonable. The Committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be asked questions. Witnesses as to the character of the Subject Member, if required, regularly present their evidence in writing and may or may not actually attend the hearing. Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect. Witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

Commented [SH15]:
FN: suggest 'usually' or 'frequently' would be better than 'regularly'
SH response: Committee to decide wording

The Independent Person

It is not a legal requirement that the Independent Person attend the hearing, but it is best practice and the Committee must have regard to their views when reaching a decision. If the Independent Person does not attend, a mechanism will be agreed for receiving their views.

Sanctions

If the committee finds that a Subject Member has failed to follow the Code of Conduct and that they should be sanctioned, it may impose any one or a combination of the following:

- Report its findings to Council or Town/Parish Council for information;
- Issue (or recommend to the city, town or parish council) a formal censure;
- Recommend to the Subject Member's Group Leader (or in the case of ungrouped councillors, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council (or recommend such action to the city, town or parish council);

- Recommending to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
- Instructing (or recommending to the city, town or Parish Council) that the Monitoring Officer arrange training for the Subject Member;
- Removing (or recommending removal to the Town/Parish Council) from all outside appointments to which he/she has been appointed or nominated by the authority;
- Withdrawing facilities (or recommending withdrawal to a city, Town/Parish Council) provided to the Subject Member by the Council, such as a computer, website and/or email and Internet access;
- Restricting contact (or recommending to the city, Town/Parish Council restriction on contact-) to named officers or requiring contact be through named officers; or
- Excluding (or recommending exclusion to city, Town/Parish Council's) the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- if relevant recommend to Council that the Subject Member be removed from their role as leader of the authority
- if relevant recommend to the secretary or appropriate official of a political group that the Subject Member be removed as group leader or other position of responsibility.

Commented [SH16]:

AH: Second, third and fifth bullet points – parish (or Parish) council should read “town or parish council”.

SH response: Amend as suggested

Fourth, seventh and ninth bullet points – “member” should read “Subject Member”

SH response: Amend as suggested

Considering the sanction

When deciding on a sanction, the Committee should ensure that it is reasonable and proportionate to the Subject Member's behaviour. Before deciding what sanction to issue, the Committee should consider the following questions, along with any other relevant circumstances:

- What was the Subject Member's intention?

Commented [SH17]:

FN: The bullet points should all follow the same grammatical form. Suggest using the imperative form of the verb as in bullet points 1, 2, 3, and 10 and 11. The other bullet points use the present participle which doesn't feel so comfortable.

SH response; amend as suggested

- Did the Subject Member know that they were failing to follow the Code of Conduct?
- Did the Subject Member 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 of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept they were at fault?
- Did the Subject Member apologise to the relevant people?
- Has the Subject Member previously been warned or reprimanded for similar misconduct?
- Has the Subject Member failed to follow the Code of Conduct before?
- Is the Subject Member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a Subject Member has repeatedly or blatantly misused the authority's information technology resources, the Committee may consider withdrawing those resources from the Subject Member.

Commented [SH18]:

AH: Penultimate bullet point – the word “mediation” appears for the first time in this document without explanation of what might be involved. Suggest its removal!

SH response: Mediation is a potential ‘sanction’ but would suggest that we delete so that it now reads ‘How will the sanction be carried out? For example, who will provide the training or mediation?’

Sanctions involving restricting access to an authority's premises or equipment should not unnecessarily restrict the Subject Member's ability to carry out their responsibilities as an elected representative or co-opted member.

The following are examples of aggravating and mitigating factors that Members may take into account when assessing an appropriate sanction:

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 Subject Member's previous record of good service.
- Substantiated evidence that the Subject 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 Subject 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.

Commented [SH19]:

AH: Second, third and fourth bullet points refer to "member" but should refer to "Subject Member".

SH response: Amend as suggested

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

- Dishonesty or breaches of trust.
- Trying to gain an advantage or disadvantage for themselves or others;
- Bullying;
- 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.

In deciding what action to take, the Committee should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Committee should be designed both to discourage or prevent the Subject Member from any future non-compliance and also to discourage similar action by others.

The Committee should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

Notice of the Committee's findings

The Committee will announce its decision at the end of the hearing. A short written decision will be made available on the day of the hearing and a full written decision will be prepared before people's memories fade. The officer providing administrative support to the Committee will also draft minutes of the meeting. The Committee must give its full written decision to the relevant parties as soon as possible after the hearing. Wherever possible this will be within two weeks of the hearing.

The relevant parties are:

- the Subject Member
- the Complainant
- the standards committees of any other authorities concerned
- any parish or town councils concerned
- the Investigating Officer
- the Independent Person

Making the findings public

~~The Committee will arrange for a summary of the decision and reasons for it to be published on the Council's website and a press release issued. A summary of the decision may also be published in any other publication if the Committee considers it appropriate.~~

Commented [SH20]:

AH: First bullet point at top of page and first bullet point in next section "member" but should refer to "Subject Member".

SH response: Amend as suggested

Formatted: Strikethrough

If the Committee finds that the Subject Member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding. In such cases, the Subject Member is also entitled to decide that no summary of the decision should be published.

If the Committee finds that the Subject Member failed to follow the Code but no action needs to be taken the summary must:

- say that the Subject Member failed to follow the Code, but that no action needs to be taken
- outline what happened
- give reasons for the Committee's decision not to take any action

If the Committee finds that the Subject Member failed to follow the Code and it imposes a sanction, the public summary must:

- say that the Subject Member failed to follow the Code
- outline what happened
- explain what sanction has been imposed
- give reasons for the decision made by Committee

The committee's reports and minutes should be available for public inspection at the office of Somerset Council for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

The Committee will arrange for a summary of the decision and reasons for it to be prepared.

If the Committee finds that the Subject Member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding.

If the Committee finds that the Subject Member failed to follow the Code but no action needs to be taken the summary must:

- say that the Subject Member failed to follow the Code, but that no action needs to be taken
- outline what happened
- give reasons for the Committee's decision not to take any action

Commented [SH21]:

AH: Last paragraph – why are the committee's reports and minutes only "available for inspection for six years"? I would expect all minutes of all committee to be available for inspection from the start of Somerset County Council albeit one might have to go to the Somerset Records Office.

SH response: Statutory requirement to make them available at the council offices for 6 years.

S100(c) Local Government Act 1972 requires:

'After a meeting of a principal council in England the following documents shall be open to inspection by members of the public at the offices of the council until the expiration of the period of six years beginning with the date of the meeting, namely—
(a) the minutes, or a copy of the minutes, of the meeting...'

Thereafter the minutes will be transferred to the Records Office.

Have added 'at the office of Somerset Council'

Commented [SH22]:

FN: This section doesn't feel to be in the right order. Suggest

The Committee will arrange for a summary of the decision and reasons for it to be prepared.

If the Committee finds that the Subject Member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding.

If the Committee finds that the Subject Member failed to follow the Code but no action needs to be taken the summary must:

- say that the member failed to follow the Code, but that no action needs to be taken
- outline what happened
- give reasons for the Committee's decision not to take any action

If the Committee finds that the member failed to follow the Code and it imposes a sanction, the public summary must:

- say that the member failed to follow the Code
- outline what happened
- explain what sanction has been imposed
- give reasons for the decision made by Committee

If the Committee finds that the Subject Member did not fail to follow the authority's Code of Conduct, the Subject Member is entitled to decide that no summary of the decision should be published.

If the Committee finds that the Subject Member failed to follow the authority's Code of Conduct, or where the Subject Member who did not fail to follow it but has not decided that no summary should be published, The Committee will arrange for the summary to be published on the Council's website and a press release issued. The summary may also be published in any other publication if the Committee considers it appropriate.

The committee's reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

SH response: amend as suggested

Formatted: Strikethrough

Formatted: Strikethrough

If the Committee finds that the member failed to follow the Code and it imposes a sanction, the public summary must:

- say that the Subject Member failed to follow the Code
- outline what happened
- explain what sanction has been imposed
- give reasons for the decision made by the Sub-Committee

If the Committee finds that the Subject Member did not fail to follow the authority's Code of Conduct, the Subject Member is entitled to decide that no summary of the decision should be published.

If the Committee finds that the Subject Member failed to follow the authority's Code of Conduct, or where the Subject Member who did not fail to follow it but has not decided that no summary should be published, the Committee will arrange for the summary to be published on the Council's website and a press release issued. The summary may also be published in any other publication if the Sub-Committee considers it appropriate.

The Sub-Committee's reports and minutes should be available for public inspection at the office of Somerset Council for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

Written decision format

For consistency and thoroughness, the Committee will use the following format for their full written decisions. The front cover of the Committee's full written decision should include the name of the:

- The Authority
- Subject Member
- Complainant
- Committee member who chaired the hearing
- Committee members who took part in the hearing
- Monitoring Officer
- Investigating Officer who investigated the matter (if applicable)
- Clerk of the hearing or other administrative officer
- Case reference number
- Date of the hearing

- Date of the report

The Committee's full written decision will include:

- A summary of the complaint
- The relevant section or sections of the Code of Conduct
- A summary of the evidence considered and representations made
- The findings of fact, including the reasons for them
- The finding as to whether the Subject Member failed to follow the Code, including the reasons for that finding
- the sanctions imposed, if any, including the reasons for any sanctions

~~Subject Members are responsible for meeting the cost of any representation at a Committee hearing.~~

The Role of the Monitoring Officer

It is important that the Committee receives high quality, independent advice. For this reason the Monitoring Officer will be the main adviser to the Committee, unless he/she has an interest in the matter that would prevent them from performing this role independently. If this situation arises, the Monitoring Officer should arrange for another appropriately qualified officer to advise the Committee.

The Monitoring Officer or other legal adviser's role in advising the Standards Committee is to:

- make sure that members of the Committee understand their powers and procedures
- make sure that the determination procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible
- make sure that the Subject Member understands the procedures the Committee will follow
- provide advice to the Committee during the hearing and their deliberations
- help the Committee produce a written decision and a summary of that decision

Model hearing procedures for the Committee

Commented [SH23]:

AH: Third bullet point in page 27 why is it "reason's"? Should be "reasons".

SH response: Typo. Amend as suggested

Commented [SH24]:

AH: Last sentence relating to cost of representation needs to be moved to page 20.

SH: Amend as suggested – moved to p20

Commented [SH25]:

AH: Second paragraph. Whilst the Monitoring Officer is the legal adviser to the Standards Committee, within the context of this document and this paragraph I believe he is adviser to the Hearings Sub-Committee. Interestingly on page 81 of the report, hearings are heard by the Standards Hearing Sub-Committee. Which is it please?

SH response: The MO is advisor to both the Standards Committee and the Hearings Sub-Committee.

Hearings are held by the Standards Hearing Sub-Committee.

The Committee has adopted Model procedures for the conduct of the hearing. These are attached at Appendix C. These may be varied at the discretion of the Committee.

Public or Private Hearings

In most cases hearings should take place in public. The views of the subject Member and the Investigating Officer will be sought as early as possible to allow for legal advice to be obtained if required. In most cases, the public interest in transparent decision-making by the Committee will outweigh the Subject Member's interest in limiting publication of an unproved allegation that has not yet been determined.

Right of Appeal

There is no right of appeal against the decision of the Committee. However, if the Subject Member or the Complainant is unhappy with the outcome, they are still entitled to complain to the Local Government Ombudsman or challenge a decision through the Courts by way of Judicial Review.

Appendix A Investigation Report Template

Appendix B Forms A to F

Appendix C Hearing Procedures

APPENDIX A

TEMPLATE INVESTIGATION REPORT

Case Reference:

Report of an investigation by [insert Investigating Officer name] appointed by the Monitoring Officer for [insert authority name] into an allegation concerning [insert subject member name].

DATE: [insert date]

Contents

- 1 Executive summary
- 2 **[Insert member's name]**'s official details
- 3 The relevant legislation and protocols
- 4 The evidence gathered
- 5 Summary of the material facts
- 6 **[Insert member's name]**'s additional submissions
- 7 Reasoning as to whether there have been failures to comply with the Code of Conduct
- 8 Finding

Appendix A Schedule of evidence taken into account and list of unused material

Appendix B Chronology of events

1 Executive summary

1.1 [Insert summary of allegation]

1.2 [Insert summary of Investigation outcome]

2 [Insert member's name]'s official details

2.1 [Insert member's name] was elected to office on [insert date] for a term of [insert number] years. [insert member's name] is also a member of the following other relevant authorities: insert authority names].

2.2 [Insert member's name] currently serves on the following committees: [insert committee names] and has also served on [insert committee names] committees in recent years.

2.3 [If no longer a member, state how the period of office ceased]

2.4 [Insert member's name] gave a written undertaking to observe the Code of Conduct on [insert date].

2.5 [Insert member's name] has received the following training on the Code of Conduct [insert training details].

3 The relevant legislation and protocols

3.1 The council has adopted a Code of Conduct in which the following paragraph[s] is/are included:

- [insert included paragraph]
- [insert included paragraph]
- [insert included paragraph]
- [insert included paragraph]

4 The evidence gathered

4.1 I have taken account of oral evidence from [insert evidence details]

4.2 I have also taken account of documentary evidence obtained from [insert evidence details]

5 Summary of the material facts

5.1 [Insert summary]

6 [Insert member's name]'s additional submissions

6.1 [Insert submissions]

7 Reasoning as to whether there have been failures to comply with the Code of Conduct

7.1 [Insert reasoning]

8 Finding

8.1 [Insert finding]

Appendix A

Schedule of evidence taken into account

Core documents

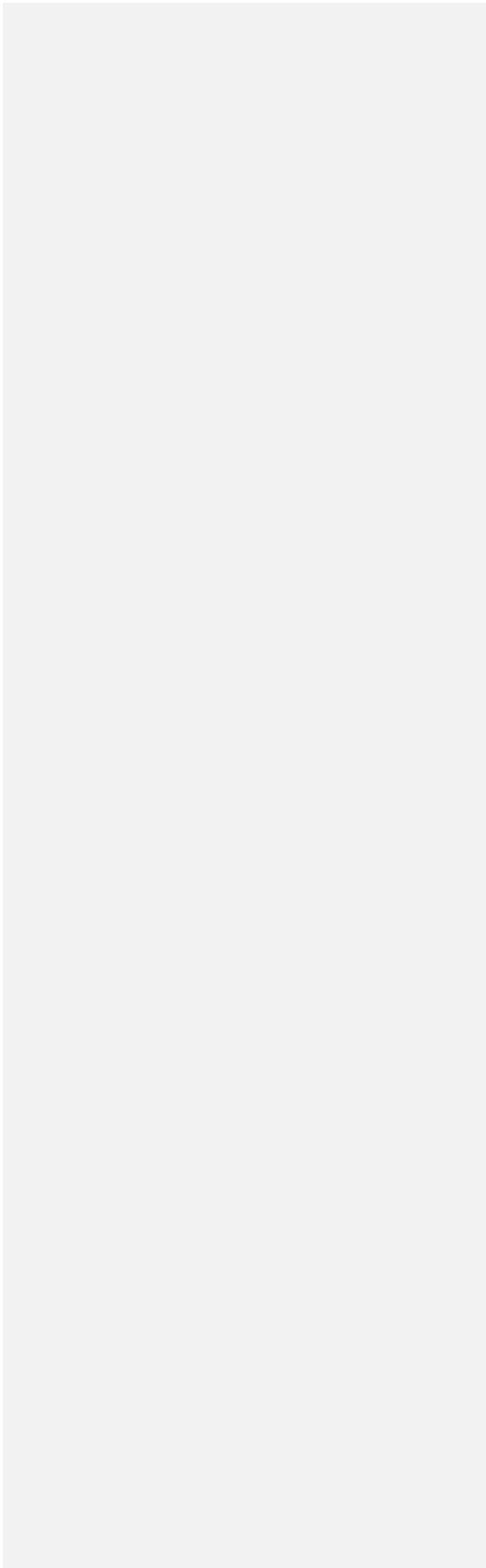
Doc No	Description	Pages
XX123	Complaint	1-

Notes of telephone conversations, letters, and interviews with witnesses

Doc No	Description	Pages

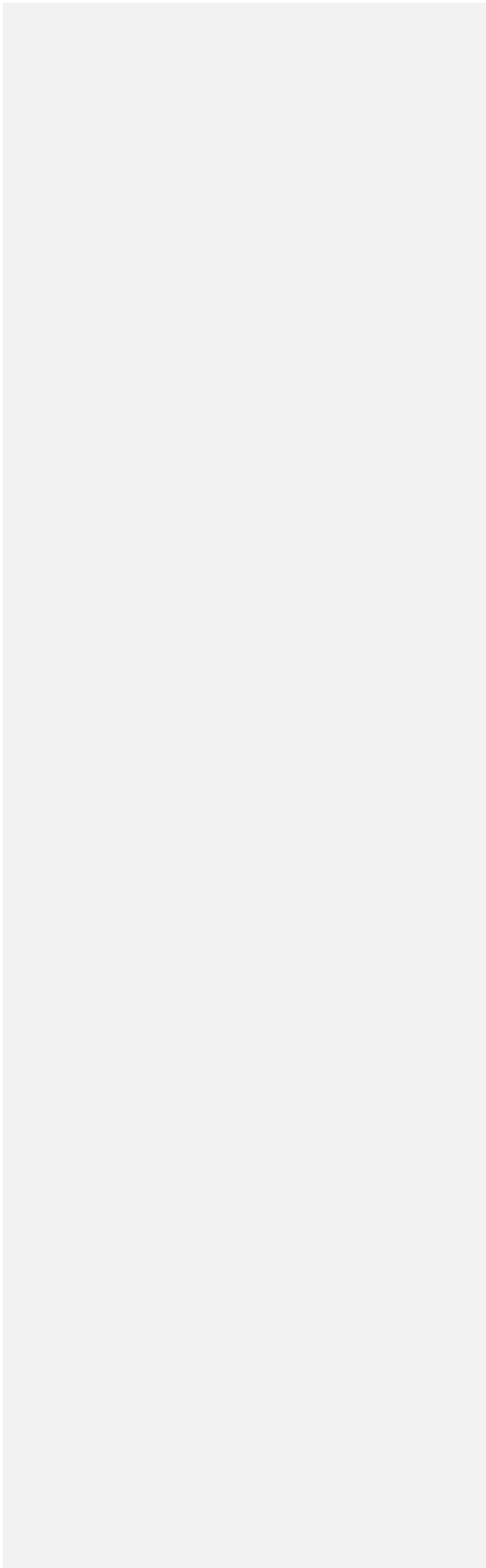
Minutes of meetings and other documentary evidence

Doc No	Description	Pages

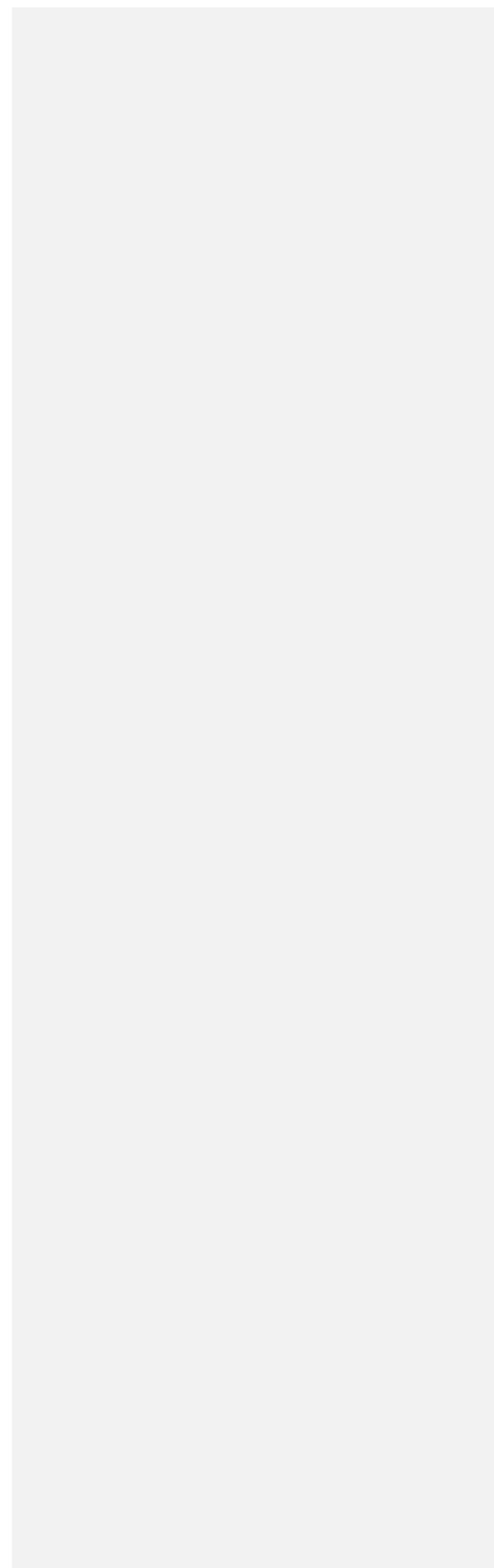


Comments on draft report

Doc No	Description	Pages



List of unused materials



Appendix B

Chronology of events

- [insert event]
- [insert event]
- [insert event]
- [insert event]
- [insert event]

APPENDIX B

FORM A

Subject Member’s response to the evidence set out in the investigation report

Please enter the number of any paragraph in the investigation report where you disagree with the findings of fact, and give your reasons and your suggested alternative.

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

FORM B

Other evidence relevant to the complaint

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

Paragraph number	Details of the evidence
1	
2	
3	

FORM C

Representations to be taken into account if a Subject Member is found to have failed to follow the Code of Conduct and referred for hearing by the Monitoring Officer

Please set out below, using the numbered paragraphs, any factors that the Committee should take into account if it finds that you have failed to follow the Code of Conduct. Please note that no such finding has yet been made.

Paragraph number	Factors for the Committee to take into account when deciding whether to impose a sanction
1	
2	
3	

FORM D

Arrangements for the Committee hearing

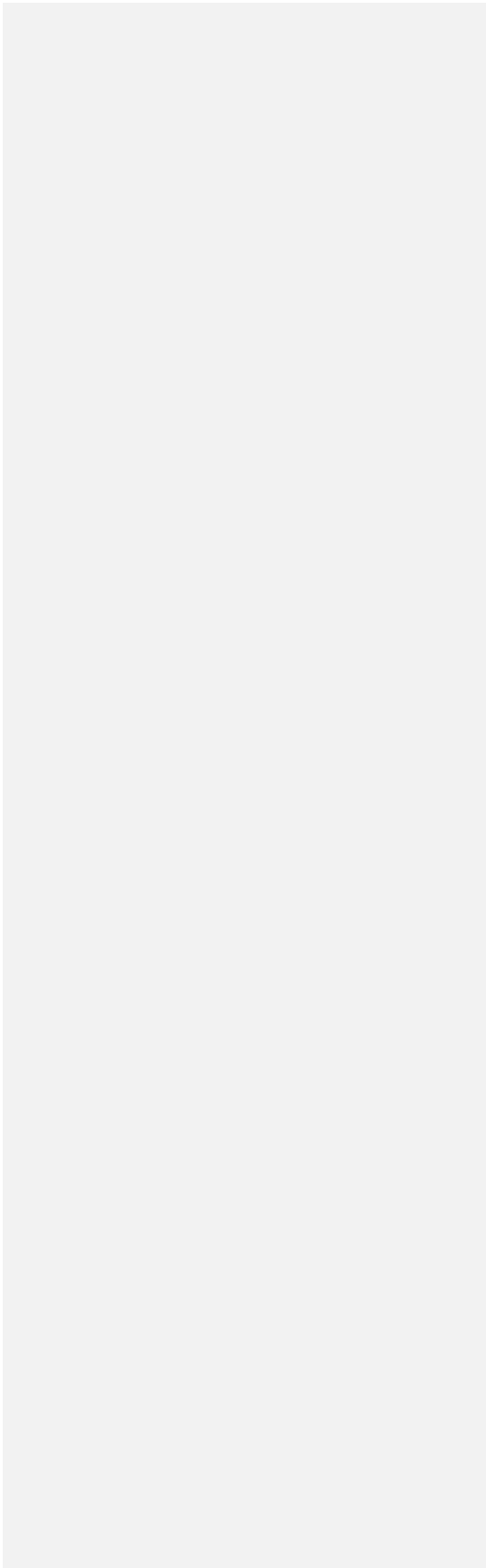
Please tick the relevant boxes.

1	Are you planning to attend the Committee hearing on the proposed date in the accompanying letter? 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:

<p>4</p>	<p>Is your representative a practising solicitor or barrister?</p> <p>If 'Yes', please give their legal qualifications. Then go to Question 6.</p> <p>If 'No' please go to Question 5.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Qualifications:</p>
<p>5</p>	<p>Does your representative have any connection with your case?</p> <p>If 'Yes', please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p>6</p>	<p>Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	

<p>7</p>	<p>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 <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p>8</p>	<p>Do you, your representative or witnesses have any special needs?</p> <p>For example, is an interpreter needed?</p> <p>If 'Yes' please give details</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p>9</p>	<p>Do you want any part of the hearing to be held in private?</p> <p>If 'Yes', please give reasons.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reasons:</p>

10	<p>Do you want any part of the relevant documents to be withheld from public inspection?</p> <p>If so, please explain which documents/parts of documents and give reasons for withholding from public inspection.</p> <p>If 'Yes', please give reasons.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reasons:</p>
-----------	---	--	-----------------

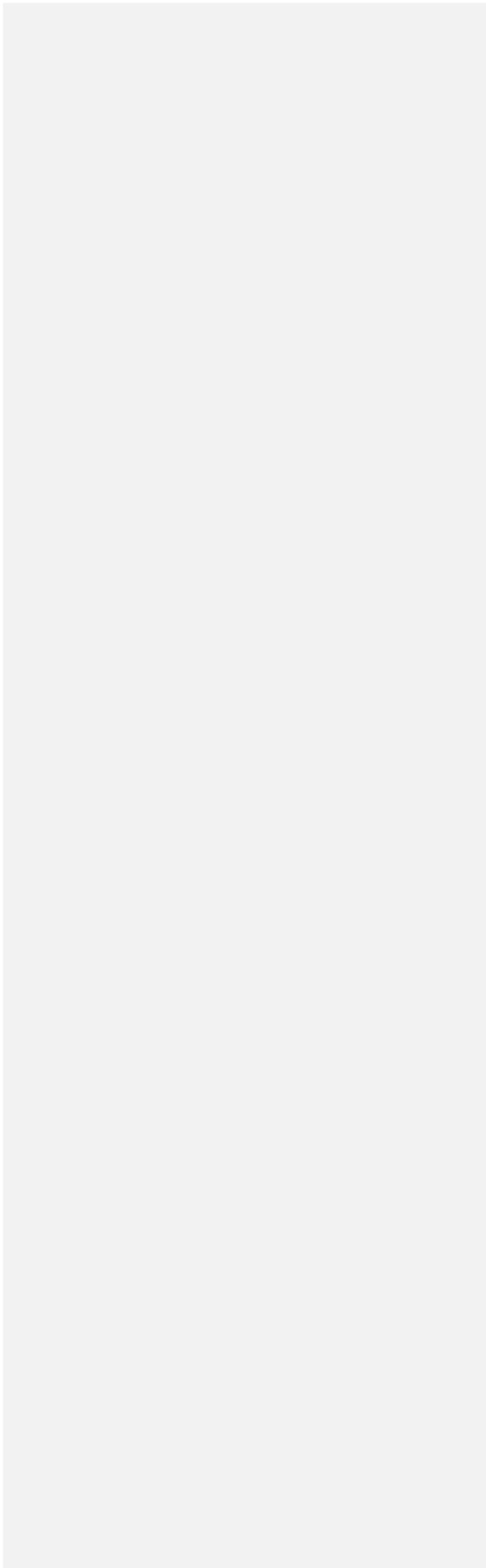


FORM E

Details of proposed witnesses to be called

Name of witness or witnesses	1		
	2		
	3		
Witness 1			
a	<p>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>Yes</p> <input data-bbox="475 1088 517 1124" type="checkbox"/> <p>No</p> <input data-bbox="475 1254 517 1290" type="checkbox"/>	Outline of evidence:

b	<p>Will the witness give evidence about what action the Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p>
----------	---	--	-----------------------------



Witness 2			
a	Will the witness give evidence about the allegation?	Yes <input type="checkbox"/>	Outline of evidence:
	If 'Yes', please provide an outline of the evidence the witness will give.	No <input type="checkbox"/>	
b	Will the witness give evidence about what action the Committee should take if it finds that the Code of Conduct has not been followed?	Yes <input type="checkbox"/>	Outline of evidence:
	If 'Yes', please provide an outline of the evidence the witness will give.	No <input type="checkbox"/>	

Witness 3			
a	Will the witness give evidence about the allegation?	Yes <input type="checkbox"/>	Outline of evidence:
	If 'Yes', please provide an outline of the evidence the witness will give.	No <input type="checkbox"/>	
b	Will the witness give evidence about what action the Committee should take if it finds that the Code of Conduct has not been followed?	Yes <input type="checkbox"/>	Outline of evidence:
	If 'Yes', please provide an outline of the evidence the witness will give.	No <input type="checkbox"/>	

FORM F

Checklist for the pre-hearing process summary

After the Committee has received responses from the Subject Member and the Monitoring Officer, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:

<input type="checkbox"/>	the name of the authority
<input type="checkbox"/>	the name of the subject member
<input type="checkbox"/>	the name of the complainant (unless there are good reasons to keep their identity confidential)
<input type="checkbox"/>	case reference number
<input type="checkbox"/>	the name of the Committee Member who will chair the hearing
<input type="checkbox"/>	the name of the Monitoring Officer
<input type="checkbox"/>	the name of the clerk of the hearing or other administrative officer
<input type="checkbox"/>	The name of the Independent Person
<input type="checkbox"/>	the date the pre-hearing process summary was produced
<input type="checkbox"/>	the date, time and place of the hearing
<input type="checkbox"/>	a summary of the complaint

<input type="checkbox"/>	the relevant section or sections of the Code of Conduct
<input type="checkbox"/>	the findings of fact in the investigation report that are agreed
<input type="checkbox"/>	the findings of fact in the investigation report that are not agreed
<input type="checkbox"/>	whether the Subject Member or the Investigating Officer will attend or be represented
<input type="checkbox"/>	the names of any witnesses who will be asked to give evidence
<input type="checkbox"/>	an outline of the proposed procedure for the hearing

APPENDIX C

MODEL HEARING PROCEDURE FOR THE COMMITTEE

Interpretation

1. 'Subject Member' means the member of the authority who is the subject of the allegation being considered by the Committee or their nominated representative, unless stated otherwise. ~~It also includes the Subject Member's nominated representative.~~
2. 'Investigating Officer' means the Monitoring Officer or other Investigating Officer and his or her nominated representative.
3. 'Committee' refers to the Standards Hearing Sub-Committee, a Sub-Committee of the Standards Committee.
4. 'Legal advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
5. "Independent Person" means the individual appointed by the Council under the Localism Act 2011 whose view will be sought and taken into account by the Committee before it makes a decision on the allegation.

Representation

6. The Subject Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee ~~(which shall not be unreasonably withheld)~~, another person.

Legal Advice

7. The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Subject Member and the Investigating Officer if they are present.

Setting the scene

8. After all the members and everyone involved have been formally introduced, the Chair~~man~~ should explain how the Committee is going to run the hearing.

Preliminary procedural issues

9. The Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

10. After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disputes agreements about the facts contained in the Investigating Officer's report.

Commented [SH26]:

AH: 1. How can "Subject Member" also include the Subject Member's nominated representative? If it needs to mean that then the words "or his/her nominated representative" needs to come after the word "Committee" in the second line.

SH response: Where a Subject Member has a nominated representative, for example a solicitor, then correspondence etc will be with the solicitor rather than the Subject Member and it will be the representative that makes representations etc at the hearing.

Amend as suggested.

Commented [SH27]:

AH: "Investigating Officer" – on page 13 of the report, the Monitoring Officer will appoint an external Investigating Officer. This definition is, therefore, incorrect.

SH response: The MO may investigate a complaint themselves so could be the Investigating Officer.

Commented [SH28]:

AH: Hearing Committee" should read "Standards Hearing Sub-Committee" – see page 81 of the report

SH response: Amend as suggested

Commented [SH29]:

AH: "with the permission of the Committee" – this can only stand if the changes to pages 18 and/or 20 are accepted.

SH response: See above under 18: The bullet point at 18 does not refer to the Member being able to be represented by any other person. It simply sets out that one of the purposes of the pre-hearing procedure is to find out whether they wish to be represented by a solicitor, barrister or any other person.

If they indicate in Form D that they wish to be represented by 'any other person' then permission to do so would be considered as part of the pre-hearing procedure based on the further information about that person given in Form D.

Change to Sub-Committee?

Commented [SH30]:

FN: add 'which shall not be unreasonably withheld'

SH response: amend as suggested

Commented [SH31]:

FN: PP and 51 I have a real problem with 'disagreeing' with facts. You can't. What you can do is dispute them (pp 18 and 21). You can have disagreements about them (p50) and you can disagree with a finding of fact (p37). 'Dispute' is the shortest form – a single word which is good – so I think it should be used instead of 'disagree' throughout this section. I feel strongly that not to make this change would be real piece of 'persuasive definition' and would be likely to lead to bias.

SH response: amend 'disagreements' to 'disputes' as suggested

Commented [SH32]:

AH: "Investigator's report" should read "Investigating Officer's report"

SH response: Amend as suggested

11. If there is no ~~disagreement-dispute~~ about the facts, the Committee can move on to the next stage of the hearing.

12. If there is a ~~disputeagreement~~, the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee may give the Subject Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.

13. The Subject Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.

14. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigating Officer to challenge any evidence put forward by witnesses called by the Subject Member.

15. If the Subject Member ~~disputesagrees-with~~ most of the facts, it may make sense for the Investigating Officer to start by making representations on all the relevant facts, instead of discussing each fact individually.

16. If the Subject Member ~~disputesagrees-with~~ any relevant fact in the Investigating Officer's report, without having given prior notice of the ~~disputeagreement~~, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Subject Member's explanation for not raising the issue at an earlier stage, the Committee may then:-

- (a) continue with the hearing, relying on the information in the Investigating Officer's report;
- (b) allow the Subject Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
- (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.

17. Cross-examination will not be permitted at the hearing and any questions will be at the discretion of and through the Chairman of the Committee.

18. The Committee will usually move to another room to consider the representations and evidence in private.

19. On their return, the Chairman will announce the Committee's findings of fact.

Did the Subject Member fail to follow the Code?

20. The Committee then needs to consider whether or not, based on the facts it has

Commented [SH33]:

AH: Paragraphs 17, 19, 27 and 32 – "Chairman" to read "Chair"

SH response: Amend as suggested

Commented [SH34]:

AH: paragraph 18 and P31 paragraph 31 – since all the hearing is to be in public, why do these two parts of the "hearing" have to be "in private". I accept that in a jury trial, the jury would consider its verdict in private but could such a "private session" be construed as being unfair?

SH response: There is certainly nothing unfair about the Sub-Committee making its decision in private (a very detailed Decision Notice explaining the decision is published) in the same way that all Judges, Magistrates, Tribunals etc as well as council Licensing Panels, council disciplinary panels etc do so, and indeed not to do so would prejudice the Sub-Committee. The Sub-Committee require the ability to discuss matters freely and frankly in private and for the legal advisor to be able to provide robust privileged legal advice to the Sub-Committee in private.

The LGA Guidance states:

'Once the panel has heard all the relevant evidence it should suspend the hearing and retire in private to consider its finding.'

found, the Subject Member has failed to follow the Code of Conduct.

21. The Subject Member should be invited to give relevant reasons why the Committee should not decide, based on the findings of fact, that he or she has failed to follow the Code.

22. The Committee should then consider any verbal or written representations from the Investigating Officer.

23. The Committee should then consider any verbal or written representations from the Independent Person.

24. The Committee may, at any time, question anyone involved on any point they raised in their representations.

25. The Subject Member should be invited to make any final relevant points.

26. The Committee will then move to another room to consider the representations.

27. On their return, the Chair~~man~~ will announce the Committee's decision as to whether or not the Subject Member has failed to follow the Code of Conduct.

If the Subject Member has not failed to follow the Code of Conduct

28. If the Committee decides that the Subject Member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the authority.

If the Subject Member has failed to follow the Code

29. If the Committee decides that the Subject Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer, the Independent Person and the Subject Member as to:

- (a) Whether or not the Committee should set a penalty; and
- (b) What form any penalty should take

30. The Committee may question the Investigating Officer, Independent Person and Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

31. The Committee will then move to another room to consider whether or not to impose a penalty on the Subject Member and, if so, what the penalty should be.

32. On their return, the Chair~~man~~ will announce the Committee's decision.

Recommendations to the authority

33. After considering any verbal or written representations from the Investigating Officer, the Committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

34. The Committee will announce its decision on the day and provide a short written decision on that day. **It will also issue a full written decision within two weeks of the hearing.** It is good practice to prepare the full written decision in draft on the day of the hearing before people's memories fade.

Commented [SH35]:

AH: paragraph 34 – page 25 of the report states that the full written decision will be issued within two weeks of the hearing **wherever possible**. These words need to be added here.

SH response: The LGA Guidance is that the panel should give its full written decision to the relevant parties 'as soon as possible after the hearing. In most cases this should be within one week of the hearing.'