

**Hastings Borough Council  
Code of Conduct Hearings Procedure**

**Appendix 2**

The following process will be followed when a decision has been taken that a public hearing as to whether a councillor has breached the Code of Conduct is required. This would normally follow a private sub-assessment hearing where members of Standards Committee will consider if a public hearing is necessary. The sub-assessment committee can decide if the complaint warrants further investigation, that there is a technical breach that does not warrant a full hearing or that no further action is needed for whatever reason.

**Pre Hearing Process**

The Monitoring Officer (or Deputy Monitoring Officer) will, where possible, arrange for the Standards Committee to meet to hear the complaint within 3 months of receiving the complaint or an Investigating Officer's report. All relevant parties can attend. Sufficient notice of the hearing date must be given. The hearing will be arranged for one day or consecutive days where possible to avoid the need to have gaps between sittings or lengthy days.

The Standards Committee are subject to the normal requirements on confidential and exempt information as any other Committee under ss100 A to K and Schedule 12A of the Local Government Act 1972. The Monitoring Officer (or Deputy Monitoring Officer) will consider whether these provisions apply in advance of the hearing and may consult any person for their views.

The Monitoring Officer (or Deputy Monitoring Officer) will require the councillor to give their response to the Investigating Officer's report in order to identify what it is likely to be agreed and what is likely to be in contention at the hearing.

Any evidence to be relied upon by any party should have been provided as part of the investigation process. If there is further evidence that any relevant party wishes to rely on they must obtain permission from the Monitoring Officer (or Deputy Monitoring Officer) as soon as possible but in any event at least 5 clear working say before the hearing. The Standards Committee will not allow new arguments or evidence to be presented at the hearing.

The Monitoring Officer (or Deputy Monitoring Officer) will decide what evidence will need to be heard and what written evidence can be read at the hearing after taking account of the views of the relevant parties. If needed the Monitoring Officer (or Deputy Monitoring Officer) can ask the Chair of the Standards Committee (or Vice-Chair in his / her absence) to issue Directions for the hearing.

The Monitoring Officer (or Deputy Monitoring Officer) will gather all the relevant facts agreed or in dispute within her report.

One of the Independent Persons can act as a point of contact for the councillor.

The Council may pay the reasonable expenses of witnesses needed to attend the hearing.

## The Hearing

The hearing will generally take place in public.

One of the Independent Persons (who has not supported the councillor) will be present to comment.

If the councillor does not attend the hearing the Committee may adjourn the hearing or may continue to reach a decision on the basis of the investigating Officer's report and any evidence they hear.

Whilst the hearing is a meeting of the authority, it is not a court of law. It does not hear evidence under oath. The rules of natural justice should nevertheless be carefully followed and the Standards Committee will have due regard to the seriousness of the proceedings for those involved, the council and the public.

The Committee will decide disputed issues and whether the councillor has breached the Code of Conduct on the balance of probabilities.

The Committee can ask any person being disruptive during the hearing to leave.

In certain circumstances the hearing could be arranged to be heard by another local authority's Standards Committee.

## Representation

The councillor may choose to be represented by a Solicitor, Barrister or any other person. They will have to bear the cost of being represented.

The Legal advisor to the Standards Committee will discuss with relevant parties as to order of evidence and whether opening and closing arguments would be helpful.

## Evidence

The Committee will control the procedure and evidence presented at a hearing including the number of witnesses and the way they are questioned. All matters relating to the evidence and procedure are within their discretion on the advice of the legal advisor.

The legal advisor will provide a procedure note to assist the Chair of the Standards Committee (or Vice-Chair in his / her absence) for each hearing.

## At the Hearing

The Monitoring Officer (or Deputy Monitoring Officer) will present her/his report. The Investigating Officer will present his/her report. The Councillor will make his/her submission. Relevant parties may ask each other questions as per the procedure.

## Decision

The Committee must consult the Independent Person in reaching their decision.

The Committee will retire to consider their decision. The legal advisor may assist them in constructing the reasons for their decision.

The Committee will reach a decision as to whether the subject member has breached the Code of Conduct. If they decide that the Councillor has not breached the Code of Conduct they will take no further action. If they decide that the Councillor has breached the Code of Conduct they should go on to decide what sanction, if any, is appropriate.

### Sanctions

The Committee must consult the Independent Person before imposing any sanction and give the Councillor the opportunity to make representations.

The Committee should consider all mitigating and aggravating circumstances that appear to them to be relevant. For example, they may wish to consider:

- What were the actual and potential consequences of the breach?
- How serious was the breach?
- What is the attitude of the councillor now? Have they apologised?
- Has the councillor previously been dealt with for a breach of the Code of Conduct?

The following are examples of mitigating and aggravating factors (lists not to be regarded as exhaustive)

### Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the Code of Conduct.
- A previous record of good service.
- Evidence of ill health at the time of the breach.

### Aggravating Factors

- Dishonesty.
- Continuing to deny the facts or blaming other people.
- Evidence of a failure to follow advice or warnings.

The priority of the Committee should be to ensure that there are no further breaches of the code and that public confidence is maintained.

### Sanctions

The sanctions available to the Committee are:

- Publish its findings in respect of the councillor's conduct.
- Write a formal letter to the councillor found to have breached the Code of Conduct.
- Report its findings to Council for information.
- Seek formal censure by motion.
- Recommend to the Councillor's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he or she be removed from any or all Committees of the Council.
- Recommend to the Leader of the Council that the councillor be removed from the Cabinet or removed from particular Portfolio responsibilities.

- Instruct the Monitoring Officer (or Deputy Monitoring Officer) to arrange training, mediation or other appropriate remedy, for the member.

Notice of decision

As soon as is reasonably practicable after the hearing the legal advisor shall prepare a formal decision notice reflecting the Committees reasons for their decision. Copies will be sent to all relevant parties and published as part of the minutes of the meeting.