

## **B. Arrangements for Dealing with Standards allegations under the Localism Act 2011**

### **1. Context**

These Arrangements set out how you may make a complaint that an elected or co-opted member of this Council (or of a Parish Council within its area) has failed to comply with the Council's Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Code.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a member or co-opted member of the Council (or of a Parish Council within its area), or of a Committee or Sub-Committee of the Council, has failed to comply with the Council's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member (or a member or co-opted member of a Parish Council) against whom an allegation has been made.

### **2. The Code of Conduct**

The Council has adopted a Code of Conduct for members, which is available for inspection on the authority's website and on request from Reception or the Complaints Officer at the Council Offices.

Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council's Code of Conduct, you should ask the parish clerk to provide you with a copy of that Parish's Code of Conduct, or make arrangements to inspect it.

### **3. Making a complaint**

If you wish to make a complaint, please write to:

Complaints Officer  
Wycombe District Council  
Queen Victoria Road  
High Wycombe  
Bucks HP11 1BB

Or email: [complaints@wycombe.gov.uk](mailto:complaints@wycombe.gov.uk), heading your email "Complaint about Councillor(s)"

The Monitoring Officer has statutory responsibility for maintaining the register of members' interests and is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the authority's website, and is available on request from the Complaints Officer at the Council Offices, as well as the Code of Conduct for the relevant Council.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the

space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

We will acknowledge receipt of your complaint within seven working days of receiving it, and we will keep you informed of the progress of your complaint. Not every complaint that falls under the Code will be referred for investigation. A decision will be made using the referral criteria below.

Complaints should be summarised as much as possible. Any complaints over 20 pages in length may require an extended period of time for consideration by the Monitoring Officer.

#### 4. What happens next?

In certain straightforward circumstances, the Monitoring Officer is entitled to dismiss your complaint at the outset. This will happen if:

- (a) the person you are complaining about is no longer a councillor;
- (b) the conduct you are complaining about happened more than 6 months before you complained;
- (c) the conduct you are complaining about happened in the councillor's private life, not when they were acting as a councillor;
- (d) the complaint is essentially against the action of the council as a whole and cannot properly be directed against individual member(s);
- (e) the complaint is made anonymously;
- (f) there is no prima facie evidence that the Code has been breached or there is not enough information to take the matter further;
- (g) the same, or substantially the same issue has been the subject of a previous Code of Conduct allegation **or service complaint** and there is nothing further to be gained.

**(h) the subject matter of the complaint reveals any manifesto and/or obvious discriminatory motive on the part of the Complainant within the meaning of the Equality Act 2010 in making the complaint.**

If your complaint is not dismissed for any of these reasons, it will then be considered in 3 stages – the aim being to reach a satisfactory resolution.

Under Stages One and Two only the details contained on your complaint form will be considered. Therefore it is very important that you set your complaint out concisely, clearly and provide at the outset all the information you wish to be considered. The information provided should only be relevant to the alleged breaches of the Code, as the Monitoring Officer cannot consider any other subject of complaint. Please identify clearly the paragraphs of the Code you believe may have been breached by the councillor(s) and under each one provide the reason why you believe it has been breached.

**The Head of Democratic Legal and Policy Services may nominate a “member contact” officer who has no direct involvement in the complaints process and whom members can contact for support and advice on the process.**

## 5. Stage One

We will tell the Member that you are complaining about that we have received a complaint and provide them with a copy, unless you have completed section 5 of the form requesting confidentiality.

The Member will be invited to respond **as soon as possible but** within **a maximum of** 20 working days, including in his or her response any suggestion to resolve the complaint.

This response will be made available to you and you will be asked if you are satisfied with it, or whether you wish your complaint to be considered further under Stage Two. If you are satisfied with the response, no further action will be taken, or the action proposed by the Member will proceed.

## 6. Stage Two

Your complaint will then be considered by the Council's Monitoring Officer in consultation with a duly appointed Independent Person whose views will be taken into account. The Monitoring Officer will decide whether your complaint should be referred for investigation. This will normally happen within 20 working days of the date of the commencement of Stage Two.

Where he/she requires additional information in order to come to a decision, he/ she may come back to you for such information, and may request information from the member against whom your complaint is directed. Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

### Referral Criteria

Whilst each allegation will be considered on its individual merits, the following Referral Criteria will be considered in taking the decision either to accept a complaint for investigation or to take no further action:

- the public benefit in investigating the alleged complaint
- taking into account the nature of the allegation, whether using public funds to examine the matter further would be disproportionate
- whether the information submitted is sufficient to make a decision as to whether to refer for investigation
- whether the complaint is the same or substantially the same as a previous complaint and in that case, whether there is anything further to be gained
- whether the complaint involves conduct too trivial to warrant further action
- whether the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member
- whether the complaint appears to be vexatious, malicious, politically motivated or a 'tit for tat' retaliation or made by a persistent complainant
- whether the matter complained of is an individual act or part of a continuous pattern of behaviour which should be cumulatively considered

- whether any steps have been taken or proposed to remedy the action complained of, for example, an apology has already been made by the member concerned
- the complainant's view of the action taken or proposed.
- where the member or the authority has made a reasonable offer of local resolution, but the complainant is not willing to accept that offer, this may be taken into account in deciding whether the complaint merits formal investigation
- whether the complainant has requested that their identity as complainant be withheld from the member, and the matter cannot reasonably be taken further in these circumstances

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

After the decision is made by the Monitoring Officer in consultation with an Independent Person, and the parties have been informed, the Monitoring Officer may inform the Chairman and Vice Chairman of the Standards Committee of the existence of the complaint, the parties, and the decision.

## **7. Stage Three**

If the Monitoring Officer decides that a complaint merits formal investigation, he/ she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/ she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/ her with a copy of your complaint, and ask the member to provide his/ her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where the Monitoring Officer and Independent Person consider it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer may delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/ her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

### **7.1 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned (and to the Parish Council, where your complaint relates to a Parish Councillor), notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/ her report.

## **7.2 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

### **(a) Local Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/ she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/ or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee (and the Parish Council) for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

### **(b) Local Hearing**

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as an Appendix to these arrangements.

The Monitoring Officer will conduct a pre-hearing process, requiring the member to give his/ her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chairman of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/ her report, call such witnesses as he/ she considers necessary and make representations to substantiate his/ her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/ her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/ she considers that he/ she did not fail to comply with the Code of Conduct.

The Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the

Independent Person, but will then decide what action, if any, to take in respect of the matter.

### **7.3 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?**

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may take the following actions, as it considers appropriate:

#### **District Councillor:**

- 7.3.1 Censure or reprimand the member;
- 7.3.2 Publish its findings in respect of the member's conduct;
- 7.3.3 Report its findings to Council for information;
- 7.3.4 Recommend to the member's Group Leader (or in the case of independent members, recommend to Council or to Committees) that he/ she be removed from any or all Committees or Sub-Committees of the Council;
- 7.3.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 7.3.6 Recommend to Council that the member be replaced as Executive Leader;
- 7.3.7 Instruct the Monitoring Officer to arrange training for the member;
- 7.3.8 Remove from all outside appointments to which he/ she has been appointed or nominated by the authority or by the Parish Council;
- 7.3.9 Withdraw facilities provided to the member by the Council, such as a computer, website and/ or email and Internet access; or
- 7.3.10 Exclude the 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.

#### **Parish Councillor:**

- 7.3.11 Censure or reprimand the member;
- 7.3.12 Publish its findings in respect of the member's conduct;
- 7.3.13 Report its findings to the Parish Council for information;
- 7.3.14 Recommend that the Parish Council arranges training for the member;
- 7.3.15 Recommend to the Parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
- 7.3.16 Recommend to the Parish Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 7.3.17 Recommend that the Parish Council excludes the 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.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' basic or special responsibility allowances.

#### **7.4 What happens at the end of the hearing?**

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member (and to the Parish Council), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

#### **8. Who are the Hearings Panel?**

The Hearings Panel is a sub-committee of the Council's Standards Committee. The Standards Committee has decided that it will comprise a maximum of five members of the Committee, including not more than one member of the authority's Executive and comprising members drawn from at least two different political parties.

The Independent Person is invited to attend all meetings of the Hearings Panel and his or her views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

#### **9. Who is the Independent Person?**

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/ she:

- 9.1 Is, or has been within the past five years, a member, co-opted member or officer of the authority, ~~with the exception that former Independent Members of Standards Committees can be appointed as Independent Persons for the period up to 1st July 2013;~~
- 9.2 Is or has been within the past five years, a member, co-opted member or officer of a parish council within the authority's area, or
- 9.3 Is a relative, or close friend, of a person within paragraph 9.1 or 9.2 above. For this purpose, "relative" means:
  - 9.3.1 Spouse or civil partner;
  - 9.3.2 Living with the other person as husband and wife or as if they were civil partners;
  - 9.3.3 Grandparent of the other person;
  - 9.3.4 A lineal descendant of a grandparent of the other person;
  - 9.3.5 A parent, sibling or child of a person within paragraphs 9.3.1 or 9.3.2;
  - 9.3.6 A spouse or civil partner of a person within paragraphs 9.3.3, 9.3.4 or 9.3.5; or



9.3.7 Living with a person within paragraphs 9.3.3, 9.3.4 or 9.3.5 as husband and wife or as if they were civil partners.

#### **10. Revision of these arrangements**

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where he/ she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

#### **11. Can I withdraw my complaint?**

Complaints can be withdrawn by the complainant by agreement with Monitoring Officer at any stage in the process.

#### **12 Appeals**

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman. Decisions which have been properly made according to the Council's procedure will not be overturned unless the decision making process was faulty. Please note that with regard to actions taken by this Council in respect of alleged breaches of the Code of Conduct, the Ombudsman can only consider complaints made by members of the public or those made on their behalf - this does not include complaints made by town, parish or district councillors.

#### **Appendix - Procedure for Local Standards Hearings**

## **APPENDIX**

### **PROCEDURE FOR LOCAL STANDARDS HEARINGS**

#### **1. Interpretation**

- (a) "Councillor" means the member of the authority who is the subject of the allegation being considered by the Panel, unless stated otherwise. It also includes the Councillor's nominated representative.
- (b) "Investigating Officer" means the person appointed by the Monitoring Officer to undertake the investigation (which may include the Monitoring Officer and his or her nominated representative).
- (c) "The matter" is the subject matter of the Investigating Officer's report.
- (d) "The Panel" means the Local Standards Hearing Panel which is a Sub Committee of the Council's Standards Committee to which the Standards Committee has delegated the conduct of the hearing.
- (e) "The Committee Support Officer" means an officer of the authority responsible for supporting the Panel's discharge of its functions and recording the decisions of the Panel.
- (f) "Legal Advisor" means the officer responsible for providing legal advice to the Panel. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) "The Chairman" refers to the person presiding at the hearing.
- (h) "The Independent Person" is the person appointed by the Council under Section 28 of the Localism Act 2012, who is invited to attend all meetings of the Hearings Panel and whose views are to be sought, and taken into account, by the Panel before a decision is made on whether the member's conduct amounts to a failure to comply with the Code of Conduct and as to any action to be taken.

#### **2. Modification of Procedure**

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, or expediency in circumstances where fairness is not compromised.

#### **3. Representation**

The Councillor may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Standards Committee, another person.

#### **4. Pre-Hearing Process (Local Investigation)**

Where the Monitoring Officer has considered the Investigating Officer's report and decided to refer the report to the Hearings Panel the Monitoring Officer shall:

- (a) Arrange a date for the Panel hearing;
- (b) Send a copy of the report to the Councillor, advise the Councillor of his decision to refer the report to the Hearings Panel, and advise the Councillor of the date, time and place for the hearing;
- (c) Send a copy of the report to the Complainant, advise the Complainant of his decision to refer the report to the Hearings Panel, and of the date, time and place for the hearing;

- (d) Notify the Parish or Town Council (as appropriate) of the Panel's initial decision and of the date, time and place of the hearing;
- (e) Request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E within 14 days of receipt;
- (f) In the light of any Pre-Hearing Forms returned by the Councillor, determine whether the Panel will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (g) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and high-lighting the issues which the Panel will need to address, and
- (h) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
  - (i) All members of the Panel who will conduct the hearing;
  - (ii) The Councillor;
  - (iii) The Complainant and
  - (iv) The Investigating Officer.

Where reasonably practicable, the agenda, Pre-Hearing Summary Report and other documents referred to above will be sent to those persons at least 14 days in advance of the hearing date. Failing this 5 clear days' notice will be given as provided by Access to Information Legislation unless the matter is genuinely urgent and permitted to be notified later under the relevant legislation.

## 5. **Legal Advice**

The Panel may take advice from its legal advisor at any time during the hearing or while they are deliberating on any aspect of the outcome. The substance of any legal advice given to the Panel should be shared with the member and the Investigating Officer if they are present, whether that advice is given in the hearing room or the separate room where the Panel are deliberating on any aspect of the outcome.

## 6. **Setting the Scene**

At the start of the hearing, the Chairman shall introduce each of the members of the Panel, the Councillor (if present), the Investigating Officer (if present), the Independent Person and any other officers present, and shall then explain the procedure which the Panel will follow in the conduct of the hearing.

## 7. **Preliminary Procedural issues**

The Panel shall then deal with the following preliminary' procedural matters in the following order:

### (a) **Disclosures of interest**

The Chairman shall ask members of the Panel to disclose the existence and nature of any disclosable pecuniary interests which they have in the matter, and to withdraw from consideration of the matter if so required.

### (b) **Quorum**

The Chairman shall confirm that the Panel is quorate (3 members).

### (c) **Hearing procedure**

The Chairman shall confirm that all present know the procedure which the Panel will follow in determining the matter.

**(d) Proceeding in the absence of the member**

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

- (i) The Chairman shall ask the Monitoring Officer whether the Councillor has indicated his/ her intention not to attend the hearing;
- (ii) The Panel shall then consider any reasons which the Councillor has provided for not attending the hearing. If the Panel is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iii) If the Panel is not satisfied with such reasons, or if the Councillor has not given any such reasons, the 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. If the Panel decides to proceed in the absence of the Councillor, references in subsequent paragraphs of this Procedure to the Councillor's participation in the hearing shall be construed accordingly.

**(e) Exclusion of Press and Public**

The Panel may exclude the press and public from its consideration of this matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chairman shall ask the Councillor (if present) the Investigating Officer (if present) and the legal adviser to the Panel whether they wish to ask the Panel to exclude the Press and public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Panel shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Panel does not resolve to exclude the press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

**8. A failure to comply with the Code of Conduct?**

The Panel will then address the issue of whether the Councillor failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report.

- (a) The Chairman shall ask the Councillor to confirm that he/ she maintains the position as set out in the Pre-Hearing summary report.

**(b) The Pre-Hearing Summary Report**

The Chairman will ask the legal advisor to present his/ her report, highlighting any points of difference in respect of which the Councillor has stated that he/ she disagrees with any finding of fact in the Investigating Officer's report. The Chairman will then ask the Councillor to confirm that this is an accurate summary of the issues and ask the Councillor to identify any additional points upon which he/ she disagrees with any finding of fact in the Investigating Officer's report.

- (i) If the Councillor admits that he/ she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Panel may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the

Investigating Officer's report and proceed directly to consider whether any action should be taken (Paragraph 11).

- (ii) If the Councillor identifies additional points of difference, the Chairman shall ask the Councillor to explain why he/ she did not identify these points as part of the pre-hearing process. He/ she shall then ask the Investigating Officer (if present) whether he/ she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Panel is not satisfied with the Councillor's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Councillor to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which the Councillor did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

**(c) Presenting the Investigating Officer's report**

- (i) If the Investigating Officer is present, the Chairman will then ask the Investigating Officer to present his/ her report, having particular regard to any points of difference identified by the Councillor and why he/ she concluded, on the basis of his/ her findings of fact that the Councillor had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
- (ii) If the Investigating Officer is not present, the Panel shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Panel shall determine on the advice of the Monitoring Officer 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.
- (iii) No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/ or of the evidence of each witness, the Chairman shall ask the Councillor if there are any matters upon which the Panel should seek the advice of the Investigating Officer or the witness.

**(d) The Councillor's response**

- (i) The Chairman shall then invite the Councillor to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
- (ii) No cross-examination shall be permitted but, at the conclusion of the Councillor's evidence and/ or of the evidence of each witness, the Chairman shall ask the Investigating Officer if there are any matters upon which the Panel should seek the advice of the Councillor or the witness.

(e) **Witnesses**

- (i) The Panel shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that such persons are likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the Code of Conduct.
- (ii) Any member of the Panel may address questions to the Investigating Officer, to the Councillor or to any witness.

(e) **Additional Evidence**

At the conclusion of the evidence, the Chairman shall check with the members of the Panel that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

- (g) If the Panel at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Panel may (on not more than one occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Panel.
- (h) Determination as to whether there has been a failure to comply with the Code of Conduct.
  - (i) At the conclusion of the Councillor's response, the Chairman shall ensure that each member of the Panel is satisfied that he/ she has sufficient information to enable him/ her to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigating Officer's report.
  - (ii) The Panel shall then retire to another room to consider in private whether the Councillor did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.
  - (iii) The Panel shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
  - (iv) Before taking its decision as to whether there has been a failure to comply with the Code of Conduct, the Panel will seek and take into consideration the views of the Independent Person.
  - (iv) The Panel's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Councillor or a witness, or to seek advice from the Legal Officer and subject to paragraph 5, it may seek such advice whilst in the retirement room. If it requires any further information, it may adjourn and instruct an officer or request the Councillor to produce such further evidence to the Panel.
  - (v) At the conclusion of the Panel's consideration, the Panel shall consider whether it is minded to make any recommendations to the authority concerned with a view to promoting high standards of conduct among councillors.
  - (vi) The Panel shall then return to the main hearing room and the Chairman

will state the Panel's principal findings of fact and their determination as to whether the Councillor failed to comply with the Code of Conduct as set out in the Investigating Officer's report.

**9. If the Councillor has not failed to follow the Code of Conduct**

If the Panel determines that the Councillor has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report:

- (a) If the Panel apprehends, from the evidence which they have received during the hearing, that a Councillor has failed to comply with the Code of Conduct (other than the matter which the Panel has just determined), the Chairman shall outline Panel's concerns and state that the Panel has referred this additional or alternative failure to the Monitoring Officer for further consideration.
- (b) The Chairman should then set out any recommendations which the Panel is minded to make to the relevant authority with a view to promoting high standards of conduct among councillors and seek the views of the Councillor, the Investigating Officer and the Legal Advisor before the Panel finalises any such recommendations.
- (c) Finally, the Chairman should ask the Councillor whether or not he/she wishes the authority to publish a statement of its finding.

**10. Action consequent upon a failure to comply with the Code of Conduct**

- (a) The Chairman shall ask the Investigating Officer (if present, or otherwise the Legal Advisor) whether, in his/ her opinion, the Councillor's failure to comply with the Code of Conduct is such that the Panel should take action if so, what would be the appropriate action that should be taken.
- (b) The Chairman will then ask the Councillor to respond to the Investigating Officer's advice.
- (c) The Chairman will then ensure that each member of the Panel is satisfied that he/she has sufficient information to enable him/ her to take an informed decision as to what action should be taken.
- (d) Any member of the Panel may address questions to the Investigating Officer or to the Councillor as necessary to enable him/ her to take such an informed decision.
- (e) The Chairman should then set out any recommendations which the Panel is minded to make to the authority with a view to promoting high standards of conduct among Councillors and seek the views of the Councillor, the Investigating Officer and the Legal Advisor;
- (f) The Panel will then retire to another room to consider in private whether action should be taken and if so, what action should be taken and when that action should take effect; and any recommendations which the Panel will make to the relevant authority.
- (g) The Panel will consult the Independent Person before deciding whether action should be taken and (where action is to be taken) the nature of that action.

- (h) At the completion of their consideration, the Panel will return to the main hearing room and the Chairman shall state the Panel's decisions as to whether action should be taken and (where action is to be taken) the nature of that action, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Panel will make to the relevant authority.

**11. The close of the hearing**

- (a) The Panel will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Councillor as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Panel's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice, or a summary of that notice.