

Appendix B – Tracked Changes Version

4.0 Order of proceedings for Standards Sub-committee hearings

4.1 'Subject Member' means the Member of the Authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Member's nominated representative.

4.2 'Independent Person'

The Independent Person is any person who has been appointed by the Council under Section 28 of the Localism Act 2011.

The Council has access to a pool of Independent Persons which will provide resilience in the event a particular Independent Person is unable to act.

The Independent Person is invited to attend the Hearing and their views must be sought and taken into consideration before the Committee takes any decision on whether the Subject 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.

4.32 'Investigator' means the Monitoring Officer or external investigator appointed by the Monitoring Officer and includes his or her nominated representative.

4.43 'Committee' ~~refers to~~means the Standards Sub-Committee.

4.54 'Legal adviser' 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.

4.6 'Written Representations'

The parties to the hearing shall provide any written representations to the Council and notification of any witnesses attending and representation in writing to the Council offices or by emailing democracy@melton.gov.uk ~~10~~ten clear days before the date of the hearing. Written representations shall be provided to the other parties. No written material shall be considered at the hearing unless it has been submitted in accordance with this rule. or where due to exceptional circumstances, a party has been unable to provide their representations ten clear days before the hearing, the Committee consider that is in the interests of all parties to consider those representations. In deciding whether to allow late written representations:

(a) the party who requests to rely on representations which have been provided late must prove to the Committee's satisfaction that the failure to submit them on time was due to exceptional circumstances;

(b) the Committee will consider any potential injustice to the other parties and may seek those parties' view on why there may be injustice;

- (c) if the Committee allow late representations they shall also consider whether the proceedings should be adjourned to allow the other parties to consider the content to enable them to comment on that content during the hearing; and,
(d) where a hearing is adjourned under this rule, there shall be no further right for the parties to submit written representations.

In this rule 'clear days' means working days, excluding only Saturdays, Sundays and bank holidays.

4.75 Representation

The Subject Member may be represented or accompanied during the meeting by a solicitor, counsel, or, with the permission of the Committee, another person. The representative may take any steps which the Subject Member could take under these rules however, any questions should be answered by the Subject Member.

4.86 Legal advice

The Committee may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The member and the investigator if they are present should be advised of the substance of any legal advice given by the legal adviser in the absence of the parties.

The Chair of the Committee shall undertake introductions.

4.97 The Chair will ensure the parties understand the procedure to be followed.

4.108 The Committee will decide whether part or all of the hearing should be held in private but may only do so where because the public interest in doing so outweighs the public interest in holding the meeting or that part of the meeting in public in accordance with the Access to Information Procedure Rules. The Committee will keep this matter under review and may decide to exclude the public at any time during the meeting where it is in the public interest to do so or, if the public have been excluded, may decide to re-admit them to the hearing.

4.119 The Committee will decide what action to take if a party does not attend the hearing.

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

~~4.11 The Role of the Independent Person~~

~~The Independent Person is invited to attend the Hearing and their views must be sought and taken into consideration before the Committee takes any decision on whether the Subject 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.~~

~~4.12 Stage One- Preliminary procedural issues The Committee should resolve any procedural issues which have not been resolved during the prehearing process.~~

~~4.13 Stage Two- Making findings of fact The Committee shall consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.~~

~~4.14 If there is no disagreement about the facts, the Committee shall move on to the next stage of the hearing.~~

~~4.15 If there is a disagreement, the Investigator, if present, shall be invited to make any necessary representations to support the relevant findings of fact in the report.~~

~~4.16 With the Committee's permission, the Investigator 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 Investigator.~~

~~4.17 The Subject Member shall have the opportunity to make representations to support his/her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.~~

~~4.18 At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Subject Member.~~

~~4.19 The parties will leave the room to allow the Committee to consider the representations and evidence in private. On their return, the Chair will announce the Committee's findings of fact.~~

4.13 At the hearing:

14.13.1 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 Subject Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the Complainant to attend and give evidence to the Committee.

14.13.2 The Subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

14.13.3 The Committee can allow witnesses to be questioned and/or cross examined by the Subject Member, the Monitoring Officer, the Investigating Officer (or their representative(s)) directly or through the Chair.

14.13.4 The Committee can also question witnesses. The Independent Person will be invited to attend to observe but will not participate in the hearing [process set out in paragraphs 14.13.1 to 14.13.3 above.](#)

14.13.5 The Committee will seek the views of the Independent Person/Legal Adviser and take those views into account before making its decision.

~~Stage Three– Did the Member fail to follow the code The Subject Member shall be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.~~

~~4.20 The Committee shall consider any verbal or written representations from the Investigator.~~

~~4.21 The Committee may, at any time, question anyone involved on any point they raise in their representations.~~

~~4.22 The Member shall be invited to make any final relevant points.~~

4.1423 The Committee will ask the parties to leave the room to allow them to consider the representations. [The legal advisor will remain in the room with the Committee to provide any further advice that is required. The Independent Person \(IP\) will leave the room with the parties however, the Committee may request that the IP joins them for the purpose of clarifying the IP’s view on any issue.](#)

4.1524 On their return, the Chair will announce the Committee’s decision, [together with their reasons for that decision.](#) ~~as to whether or not the Member has failed to follow the Code of Conduct.~~

4.16 The Committee may conclude that the Subject Member did not fail to comply with the Code of Conduct, and if so, will dismiss the complaint.

4.17 If the Committee concludes that the Subject Member did fail to comply with the Code of Conduct, the Chairman will inform the Subject Member of this finding and the Committee will then consider what action, if any, the Committee should take as a result of the Subject Member’s failure to comply with the Code of Conduct. In doing this, the Committee will:

[14.17.1 give the Subject Member an opportunity to make representations to the Committee; and,](#)

[14.17.2 seek the views of the Independent Person; and,](#)

~~[take those representations and views into account before making its decision.](#)~~

[4.17.3 The Committee will ask the parties to leave the room to allow them to consider whether or not to impose a sanction on the Subject Member and, if so, what the sanction should be.](#)

~~4.25 Stage Four – Determination~~

~~4.26 If the Subject Member has not failed to follow the Code of Conduct 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.~~

~~4.27 If the Subject Member has failed to follow the Code of Conduct 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 Investigator and the Subject Member as to:~~

- ~~• whether or not the Committee should apply a sanction; and~~
- ~~• what form any sanction should take.——~~

~~4.28 A sanction may include any one or a combination of the following:~~

- ~~• Publish its findings in respect of the Subject Member's conduct;~~
- ~~• Report its finding to Council for information;~~
- ~~• Recommend to Council that the Subject Member be censured;~~
- ~~• Recommend to the Subject Members' group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;~~
- ~~• Recommend to the Leader of the Council that the Member be removed from the Cabinet or removed from their Portfolio responsibilities;~~
- ~~• Instruct the Monitoring Officer to arrange training for the Member;~~
- ~~• Recommend to Council that the Member be removed from all outside bodies, appointments to which they have been appointed or nominated by the Council;~~
- ~~• Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or~~
- ~~• Place such restrictions on Member's access to staff which may be reasonable in the circumstances and in accordance with the Member/Officer Protocol provided that such restrictions do not impede the member from carrying out their duties as a Councillor.~~

4.18 The Council has delegated to the committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct.

4.19 Accordingly the Committee may do one or a combination of the following:

- Send a formal letter to the Subject Member.
- Issue a formal Censure.
- Publish its findings in respect of the Subject Member's conduct.
- Report its findings to Council (or to the Parish Council) for information.
- Recommend to the Subject Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council.
- Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.

- Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Subject Member.
- Recommend to the Subject Member's Group Leader that he/she is removed (or recommend to the Parish Council that the Subject Member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council).
- In the case of a co-opted Member, recommend to Council (or to the Parish Council) that he/she be removed from the Council or any of its committees, sub-committees or working groups.
- Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Subject Member by the Council (such as a computer, website and/or email and Internet access) for a specified period; or
- Exclude (or recommend that the Parish Council exclude) the Subject Member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

4.20 The Committee currently has no legal power to suspend or disqualify the Subject Member or to withdraw members' or special responsibility allowances. It also has no power to impose a sanction which would fetter the otherwise appropriate activities of a democratically elected representative.

~~4.29 The Committee may question the Investigator and Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.~~

~~4.2130 The Committee will ask the parties to leave the room to allow them to consider whether or not to impose a sanction on the Subject Member and, if so, what the sanction should be.~~

~~4.31 On their return, the Chair will announce the Committee's decision.~~

4.31 At the end of the hearing, the Chair will state the decision of the committee as to whether the Subject Member failed to comply with the Code of Conduct and as to any actions which the Committee resolves to take.

~~4.32 Recommendations to the Authority After considering any verbal or written representations from the Investigator, 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.~~

~~4.33 The written decision The Committee will announce its decision on the day and will issue a full written decision within five working days. A copy of the decision will be circulated to the Subject Member and the Audit and Standards Committee~~

4.22 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Committee.

4.23 The decision notice will include a brief statement of facts, the provisions of the code of conduct engaged by the allegations, the views of the Independent Person, the reasons for the decision and any sanctions applied.

4.24 A copy of the decision notice will be sent to the Complainant, to the Subject Member [and to the Parish Council in the case of a complaint about a Parish Councillor], published on the Council's website and reported to the next convenient meeting of the Standards Committee.

4.25 There is no right of appeal against a decision of the Monitoring Officer or the Committee.

4.26 If the Complainant feels that the Council has failed to deal with the complaint properly, he/she may complain to the Local Government and Social Care Ombudsman.