

Agenda Item 35.

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| TITLE | Revised Process for Dealing with Misconduct Complaints |
| FOR CONSIDERATION BY | Standards Committee on 2 April 2015 |
| WARD | None Specific |
| DIRECTOR | Andrew Moulton, Head of Governance and Improvement Services |

OUTCOME / BENEFITS TO THE COMMUNITY

A more effective, clear and robust process for the consideration of Misconduct Complaints against Councillors which will help support high standards of ethical governance.

RECOMMENDATION

That the Standards Committee request that the Constitution Review Working Group recommend the revised process for the dealing with misconduct complaints to Council.

SUMMARY OF REPORT

Appendix B sets out a proposed revised process for the consideration of misconduct complaints against Councillors.

Background

Section 9.1.12.1 of the Council's Constitution sets out the process for dealing with misconduct complaints against Councillors. It is followed in respect of complaints made against members of Wokingham Borough Council and complaints made against members of the town or parish councils within the Borough.

Analysis of Issues

Appendix A is a copy of the **existing** complaints process.

Appendix B is a copy of the **proposed** revised complaints process.

1. The new draft is now in a chronological order in terms of what must be done upon receipt of the complaint, the Monitoring Officer consultation process, and then on to the investigation and hearing by the Hearings Panel. There are some changes to make the paragraphs easier to read. There is a clearer and more logical difference about what to do when a Subject Member has been found to be in breach of the code (where action can be taken) and when a Subject Member has been found not to be in breach of the code (where no action can be taken).
2. The member who is the subject of the complaint is now referred to as the 'Subject Member'. The rules about seeking comments from the Subject Member, and from the Town or Parish Clerk (if applicable) are the same. The rules about anonymous complainants are also the same.
3. There are more details about what the Monitoring Officer can decide to do at the Consultation Meeting with the Chairman of the Standards Committee and Independent Person, (see 9.1.13.4 of new process. Compare 9.1.13 of old process). The old rules did not specify what 'resolving informally' meant. This is stated more clearly in the new rules. In addition, mediation can only be requested if both parties are willing to do so, so this was also clarified. Another clarification is about letters of apology. In the past, occasionally apology letters by Subject Members were done in a way which appeared not to be genuine. There is now a new caveat that such letters should be acceptable to the Monitoring Officer and the Chairman of the Standards Committee. In addition, the Monitoring Officer could suggest a number of these options, instead of just one of them. For example there may be a situation where a letter of apology would be acceptable, but that further training would be required too. There is a new time by which the Monitoring Officer should make a decision, previously 14 working days, now 10 working days.
4. The rules about finding on investigation are changed. Where an investigation concludes that there has been no breach, the Monitoring Officer simply has delegated authority not to take any further action. (see 9.1.14 old process and 9.1.14.1 of new process). Previously the Monitoring Officer also had delegated authority to refer the matter to the Standards Committee if he/she feels that it would be appropriate. However, if the investigation finds no evidence of a breach, it was felt that there was nothing that the Standards Committee could add to this. *Is this acceptable to Members?* The Standards Committee will however receive a summary of these 'no breach' investigation reports. The rules

about advising the Town and Parish clerk, as appropriate, are the same, as is the rule about not disclosing the name of the Subject Member if they were found not to be in breach of the Code.

5. Where an investigation concludes that there has been a breach of the Code, the new rules simply mirror what the Monitoring Officer's choices are at the consultation meeting. (see 9.1.15 of the old process and 9.1.14.2 of new process). This is because the situation is the same (i.e. clear evidence of breach of the Code of Conduct), the difference being that an investigation has been carried out because, at the time of the complaint, there was lack of evidence. However, the rule about not disclosing the Subject Member's name when a decision is made to take an informal resolution is now gone, in other words, disclosure of his or her name can be made,. *Members are asked for their view here – should his or her name be published in the same way as when the Hearings panel make a decision that the Subject Member has breached the code?*
6. The procedure for local hearings is the same as the old procedure, but with the addition of explicit reference to the statutory role of the Independent Person in giving their views on the complaint, (para 9.1.15.3 (j) of the new process).
7. Paras 9.1.16.2 and 9.1.16.3 of the new process sets out the procedure around the findings of the hearings panel and publicising the decision when a decision has been made that the Subject Member is in breach of the Code of Conduct. This has been amended to clarify that when a decision is reported to a Wokingham Borough Council meeting it will not be the subject of discussion or debate. Please note the statement that the Subject Member has no right of appeal against a decision of the Monitoring Officer or the Hearings Panel. There never has been a provision for appeal by a Subject Member, therefore it was felt that this should be clarified. *Members are asked for their view on this.*
8. Guidance is being drafted for the Investigation Officer, giving more details on interviewing witnesses, and providing draft reports to the Subject Member for his or her comment before it is finalised. This is part of the investigation process, and not considered to be part of the formal complaints process. Guidance will be shown to the next Standards Committee for their information, and comments.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

| | How much will it Cost/ (Save) | Is there sufficient funding – if not quantify the Shortfall | Revenue or Capital? |
|---------------------------------|-------------------------------|---|---------------------|
| Current Financial Year (Year 1) | £0 | Yes | R |
| Next Financial Year (Year 2) | £0 | Yes | R |

| | | | |
|-----------------------------------|----|-----|---|
| Following Financial Year (Year 3) | £0 | Yes | R |
|-----------------------------------|----|-----|---|

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| Other financial information relevant to the Recommendation/Decision |
| N/A |

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| Reasons for considering the report in Part 2 |
| None |

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| List of Background Papers |
| Attached. |

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| Date 25 March 2015 | Version No. 1.00 |

EXISTING COMPLAINTS PROCESS

9.1.12 Process for Dealing with Misconduct Complaints

9.1.12.1

The Localism Act 2011 requires the Council to adopt arrangements for dealing with complaints of breaches of the Code of Conduct by either Borough Council Members, Town/Parish Council Members or co-opted members of any of these bodies and such complaints can only be dealt with in accordance with such arrangements.

9.1.12.2

The following is the process that will be followed for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct.

9.1.13 Receipt of Complaint

On receipt of a complaint the Monitoring Officer shall, subject to consultation with the Independent Person and the Chair of the Standards Committee, have delegated authority to decide whether the complaint:

- a) can be resolved informally i.e. by mediation with the two parties before making a decision on whether the complaint merits formal investigation;
- b) requires investigation;
- c) should be referred to the Standards Committee;
- d) no further action should be taken.

9.1.13.1

The Monitoring Officer will inform the complainant, normally within 14 working days of receipt of a complaint, of how the complaint will be dealt with and the reason for that decision.

9.1.13.2

Following receipt of a complaint the Monitoring Officer will inform the relevant Member that a complaint has been received about them and the nature of that complaint as soon as reasonably practical. The relevant Member's initial comments in response to the complaint will be sought by the Monitoring Officer.

The name of the complainant will be disclosed to the Member who is the subject of the complaint unless the complaint was made anonymously to the Monitoring Officer or the complainant has requested anonymity. A request for anonymity will only be agreed by the Monitoring Officer if they are satisfied that to do so is overwhelmingly in the public interest and after the view of the Independent Person and the Chair of the Standards Committee have been obtained.

Once a decision has been taken by the Monitoring Officer in consultation with the Independent Person and Chairman of the Standards Committee on what action to take

regarding the complaint, the Member and the complainant will be informed of the outcome as soon as possible by the Monitoring Officer in writing.

9.1.13.3 Anonymous Complaints

Anonymous complaints will not usually be considered. However it is recognised that in some exceptional circumstances some individuals may feel unable to reveal their identity. In these situations individuals can report their concerns regarding a Member anonymously, but should be aware that these concerns will carry less weight. Also the disclosure may not be sufficiently detailed to provide a successful investigation.

The Monitoring Officer is authorised, subject to consultation with the Independent Person and the Chair of the Standards Committee, to take any of the actions set out in Rule 9.1.13 in respect of an anonymous complaint.

9.1.13.4 Town/Parish Complaints

If the complaint relates to a Town/Parish Member the Monitoring Officer will also inform the relevant Town/Parish Council clerk of the complaint and seek the views of the Town/Parish Council clerk before deciding whether the complaint merits formal investigation. The Clerk will also be informed of the Monitoring Officer's decision.

9.1.13.5 Report to the Standards Committee

The Monitoring Officer will provide a report to the Standards Committee, on a quarterly basis, which would contain the following: the number and nature of complaints received; progress on any investigations and associated costs; and identify areas where training or other action might avoid further complaints. However the name(s) of the Member(s) will not be disclosed.

9.1.14 No Breach of Code - Finding on Investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct the Monitoring Officer shall have delegated authority to decide not to take any further action. The Monitoring Officer can, following consultation with the Independent Person and the Chair of the Standards Committee, decide to refer the matter to the Standards Committee if he/she feels that it is appropriate.

Once the no breach of Code finding has been reached the Monitoring Officer will advise the complainant, the Member under investigation and the Town/Parish if applicable that he/she is satisfied that no further action is required and will provide a copy of the Investigating Officer's final report.

Copies of all investigation reports will be provided to the Independent Person and the Chair of the Standards Committee and a summary of each such investigation will be provided to the Standards Committee for information.

9.1.15 Breach of Code - Finding on Investigation

Where a formal investigation finds evidence of failure to comply with the Code of Conduct the Monitoring Officer, in consultation with the Independent Person and the Chair of the Standards Committee, can:

- a) decide to seek a local resolution to the complaint eg the relevant Member acknowledging their conduct was unacceptable and offering an apology and/or other remedial action e.g. submitting to training and or mediation. . The Monitoring Officer will provide a summary report on the outcome of the

investigation and the resolution to the Standards Committee for information. However no names will be disclosed; or

- b) refer the Investigating Officer's report to a Hearings Panel, constituted from members of the Standards Committee, which will conduct a local hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, what action, if any, is to be taken in respect of the Member. The procedure that will be followed by the Hearings Panel is set out below.

9.1.16 Procedure for Local Hearings

9.1.16.1 Appointment, Composition and Terms of Reference of the Hearings Panel

The Monitoring Officer is required to establish and/or convene the Hearings Panel from the membership of the Standards Committee as necessary. The Hearings Panel will therefore not have a fixed membership.

The Hearings Panel shall comprise three or five voting members of the Standards Committee.

If the complaint relates to a Town or Parish Member then a co-opted Town or Parish Council member of the Standards Committee will also be part of the Hearings Panel. The Independent Person will be able to attend any Hearings Panel and give advice to it.

The purpose of the Hearings Panel is to review, upon the request of the Monitoring Officer and the Chair of the Standards Committee, a complaint that has been received which alleges that either a Member of the Authority/Member of a Town or Parish Council within the Wokingham Borough Council area has failed to comply with the relevant authority's Code of Conduct. The Hearings Panel will usually hear a complaint within two months of the date that the Monitoring Officer received the final investigation report.

9.1.17 Pre Hearing Process and Date of the Hearing

The date of the hearing will be arranged by the Monitoring Officer in consultation with the members of the Hearings Panel and the subject of the complaint.

Once the date for the Hearings Panel has been arranged the subject of the complaint will be notified and asked if they:

- a) wish to attend the hearing and can do so on the date notified;
- b) wish to be represented at the hearing by a solicitor, barrister or any other person;
- c) wish to provide written evidence to the hearing;
- d) wish to call relevant witnesses to give evidence at the hearing. The Chairman of the Hearings Panel will have the final decision on how many witnesses may reasonably be needed.

9.1.18 The Hearing

The Hearings Panel will receive a report from the Monitoring Officer which will include a copy of the Investigating Officer's final report.

9.1.18.1

The Hearings Panel will be held in private and this will be confirmed at the hearing.

9.1.18.2

The procedure for the Hearings Panel will be as follows:

- a) Confirm the names and status of those attending. If the subject of the complaint is not present at the start of the hearing, and they had indicated their intention to attend, the Chairman shall ask the Monitoring Officer whether the Member has provided any reasons why they would not be present. From the response the Hearings Panel will decide whether to make a determination in the absence of the Member or adjourn the hearing to another date.
- b) The Investigating Officer, or in his/her absence the Monitoring Officer or their representative, shall present the Investigating Officer's report having particular regard to any points of difference identified by the subject of the complaint and why they have concluded, on the basis of their findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary in order to substantiate his/her findings.
- c) The subject of the complaint will then be given the opportunity to ask the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- d) Members of the Hearings Panel and the Monitoring Officer will then have the opportunity of asking the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- e) The subject of the complaint will then be invited to respond to the Investigating Officer's report and provide evidence, either by calling witnesses or by making representations to the Hearings Panel as to why they consider that they did not fail to comply with the Code of Conduct.
- f) The Investigating Officer will then be given the opportunity to ask the subject of the complaint, and any witnesses, questions relating to the representations made to the Hearings Panel.
- g) Members of the Hearings Panel and the Monitoring Officer will then have the opportunity to ask the subject of the complaint, and any witnesses, questions relating to the representations made to the Hearings Panel.
- h) The Investigating Officer will then be given the opportunity to sum up.
- i) The subject of the complaint will then be given the opportunity to sum up
- j) The Chairman of the Hearings Panel will check with the other members of the Panel whether they are satisfied that they have sufficient evidence to come to

a considered conclusion on the matter. If it is decided that additional evidence is required before a determination can be made then the hearing will be adjourned and the Investigating Officer be asked to either seek and provide such additional evidence and/or undertake further investigation on any point specified by the Hearings Panel.

- k) If the Panel is satisfied that they do have sufficient evidence to make a decision this will conclude the evidence gathering part of the hearing. The Investigating Officer, the subject of the complaint and any witnesses that might be present will be asked to leave at this point, but the Clerk, Independent Person and Monitoring Officer will remain.
- l) The Panel will then determine the complaint on the balance of probabilities test. If the Panel determine that there has been a failure to follow the Code the Chairman shall seek advice from the Monitoring Officer as to what action they believe should be taken against the Member who has failed to follow the Code of Conduct.

9.1.19 Finding of the Hearings Panel

9.1.19.1 Finding of Non Failure to follow the Code of Conduct

If the Hearings Panel determine that the subject of the complaint has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report then the complaint will be dismissed.

The decision notice stating the Hearings Panel's findings, in relation to a non-failure to follow the Code of Conduct, will be provided to the subject of the complaint, the Investigating Officer, the Monitoring Officer, the Independent Person but will not be published on the Council's website or otherwise disclosed.

9.1.19.2 Finding of Failure to follow the Code of Conduct

If the Hearings Panel determine that the subject of the complaint has failed to follow the Code of Conduct then it can decide to take any of the following actions:

- a) Formally censure the relevant Member in writing for their failure to follow the Code of Conduct and/or;
- b) Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committee(s) that he/she be removed from any or all Committees or Sub-Committees of the Council);
- c) Recommend to the Leader of Council that the Member be removed from the Executive, or removed from particular portfolio responsibilities;
- d) Instruct the Monitoring Officer to (or recommend that the relevant Town/Parish Council) arrange training for the Member;
- e) Remove (or recommend to the relevant Town/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 Town/Parish Council);

- f) Withdraw (or recommend to the relevant Town/Parish Council that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or e-mail and internet access;
- g) Exclude (or recommend that the relevant Town/Parish Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee or Sub-Committee meetings; or
- h) Report its findings to the Crown Prosecution Service in respect of a Member that has been found to have committed an offence under Rule 9.2.13.

9.1.19.3 Publication of the Decision

Within 3 working days, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel. A copy of the decision notice will be sent to the complainant, the Member (and, if applicable, the relevant Town/Parish Council) and the Independent Person. The decision notice will be available for public inspection, and published on the Borough Council's website. If a Borough Member the decision will be reported to the next convenient meeting of the Borough Council. If a Town/Parish Member the relevant Council will be requested to report the decision to its next Council Meeting.

PROPOSED REVISED COMPLAINTS PROCESS

9.1.13 Process for Considering Code of Conduct Complaints

9.1.13.1 Receipt and Acknowledgment of the Complaint

Following receipt of a Councillor Code of Conduct complaint, the Monitoring Officer¹ will write to the complainant to acknowledge receipt of the complaint and provide them with a copy of this complaints process.

The complainant will be told that full details of their complaint, including the parts of the Code of Conduct which have allegedly been breached and their name, will be given to the Councillor they have complained about, (“the Subject Member”), subject to 9.1.13.5 below. (Anonymous complaints).

If the complaint relates to a Parish or Town Councillor, the Clerk to that Council will be informed. In the case of Subject Members who sit on more than one Council, the Monitoring Officer will seek clarification from the complainant if it is unclear which Council the Subject Member was acting for at the time of the alleged breach.

9.1.13.2 Response of the Subject Member

The Subject Member will be asked for initial comments on the complaint. If the Monitoring Officer requires further clarification from the complainant in response to the comments made by the Subject Member, then these comments may be passed back to the complainant for further comment.

9.1.13.3 Response of the Town or Parish Clerk

If the complaint is about a Town or Parish Councillor, the Monitoring Officer shall seek the views of the Town/Parish Clerk about the complaint. Their view will be recorded in the Monitoring Officer’s summary and taken into account when a decision is made, under 9.1.13.4 below.

9.1.13.4 Initial Decision of the Monitoring Officer

The Monitoring Officer shall write a summary of the complaint and then, subject to consultation with an Independent Person and the Chairman² of the Standards Committee, have delegated authority to decide to:

- a) Take no action if there is clear evidence that there has been no breach of the Code of Conduct.
- b) Resolve the matter informally by asking the Subject Member to
 - take part in mediation with the complainant in order to settle the complaint, provided both the Subject Member and the complainant are willing to do so, and/or
 - make a written apology to the complainant which is acceptable to the Monitoring Officer and Chairman of the Standards Committee, and/or
 - attend training and/or

¹¹ Reference to the Monitoring Officer in this document includes the Deputy Monitoring Officer

² Reference to the Chairman of the Standards Committee includes the Vice-Chairman of the Committee

- correct an entry in the Members' Register of Interests or correct a declaration made; OR
- c) Require a formal investigation and a written investigation report by an Investigating Officer. The investigation report shall conclude whether there has been a breach of the Code of Conduct. Copies of the investigation report will be provided in confidence to the Independent Person, the Chair of the Standards Committee, and the Subject Member. OR
- d) Refer the complaint to the Standards Committee for a decision on whether options a), b) and c) above should followed;

The decision by the Monitoring Officer will normally be taken within 10 working days of receipt of the complaint. Once a decision has been made by the Monitoring Officer the complainant, the Subject Member and the Town/Parish Clerk (if applicable) will be informed of the outcome as soon as possible.

9.1.13.5 Anonymous complaints

Anonymous complaints will not usually be considered. However it is recognised that in some exceptional circumstances some individuals may feel unable to reveal their identity. In these situations, complainants wishing to remain anonymous should be aware that their concerns may carry less weight, because the evidence may not be sufficient enough to provide a successful investigation and fair result. The Monitoring Officer is authorised, subject to consultation with the Independent Person and Chair of the Standards Committee to accept or decline an anonymous complaint.

9.1.14 Finding on Investigation

9.1.14.1 No Breach of Code of Conduct

Where a formal investigation concludes that the Subject Member did not fail to comply with the Code of Conduct, the Monitoring Officer shall have delegated authority to decide not to take any further action.

If the Monitoring Officer makes a decision not to take any further action, he or she will advise the complainant, the Subject Member and the Town/Parish Clerk if applicable.

A summary of all investigations will be provided to the Standards Committee for information. However, where there is a determination that there has been no breach of the Code of Conduct, no names will be disclosed.

9.1.14.2 Breach of Code of Conduct

Where a formal investigation finds evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person and the Chairman of the Standards Committee, shall make a decision to:

- a) Resolve the matter informally by asking the Subject Member to
 - take part in mediation with the complainant in order to settle the complaint, provided both the Subject Member and the complainant are willing to do so, and/or
 - make a written apology to the complainant which is acceptable to the Monitoring Officer and Chairman of the Standards Committee, and/or

- attend training and/or
 - correct an entry in a register or correct a declaration made; OR
- b) refer the Investigating Officer's report to a Standards Committee Hearings Panel, constituted from members of the Standards Committee. The Hearings Panel will conduct a local hearing following the procedure in 9.1.15. below, and make a decision in accordance with 9.1.16.2 below.

The Hearings Panel will usually hear a complaint within two calendar months of the date that the Monitoring Officer received the final investigation report.

9.1.15 Procedure for Local Hearings

9.1.15.1 Appointment, Composition and Terms of Reference of the Hearings Panel

The Monitoring Officer is required to convene a Hearings Panel from the membership of the Standards Committee as necessary. The Hearings Panel will therefore not have a fixed membership.

The Hearings Panel shall comprise three to five voting members of the Standards Committee.

If the complaint relates to a Town or Parish Councillor then a co-opted Town or Parish Council Councillor of the Standards Committee will also be part of the Hearings Panel, but will not have voting rights.

An Independent Person will be asked to attend any Hearings Panel and give advice to it in respect of the complaint as required by s28(7) Localism Act 2011.

9.1.15.2 Pre Hearing Process

The date of the hearing will be arranged by the Monitoring Officer in consultation with the members of the Hearings Panel and the Subject Member.

Once the date for the Hearings Panel has been arranged the Subject Member will be notified and asked if they:

- a) wish to attend the hearing;
- b) wish to be represented at the hearing by a solicitor, barrister or any other person;
- c) wish to submit any written evidence or documentation to be considered by the Panel. This must be sent no later than 3 working days prior to the hearing and will be passed to the complainant and the Investigating Officer for any comment. Additional evidence or documentation not submitted by this deadline may not be accepted by the Panel
- d) wish to call relevant witnesses to give evidence at the hearing. The Chairman of the Hearings Panel appointed at the meeting will have the final decision on how many witnesses may reasonably be needed.

The Hearings Panel will receive a report from the Monitoring Officer which will include a copy of the Investigating Officer's final report.

The Hearings Panel will be held in private and this will be confirmed at the hearing.

9.1.15.3 Procedure for the Hearings Panel

The procedure for the Hearings Panel will be as follows:

- a. Confirm the names and status of those attending. If the Subject Member is not present at the start of the hearing, and they had indicated their intention to attend, the Chairman shall ask the Monitoring Officer whether the Subject Member has provided any reasons why he or she would not be present. From the response the Hearings Panel will decide whether to make a determination in the absence of the Subject Member or adjourn the hearing to another date.
- b. The Investigating Officer, or in his/her absence the Monitoring Officer, shall present the Investigating Officer's report having particular regard to any points of difference identified by the Subject Member and why the Investigating Officer had concluded, on the basis of their findings of fact, that the Subject Member had failed to comply with the Code of Conduct. The Investigating Officer or Monitoring Officer may call witnesses as necessary in order to substantiate his/her findings.
- c. The Subject Member will then be given the opportunity to ask the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- d. Members of the Hearings Panel, the Independent Person and the Monitoring Officer will then have the opportunity of asking the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- e. The Subject Member will then be invited to respond to the Investigating Officer's report and provide evidence, either by calling witnesses or by making representations to the Hearings Panel as to why they consider that they did not fail to comply with the Code of Conduct.
- f. The Investigating Officer will then be given the opportunity to ask the Subject Member and any witnesses, questions relating to the representations made to the Hearings Panel.
- g. Members of the Hearings Panel, the Independent Person and the Monitoring Officer will then have the opportunity to ask the Subject Member, and any witnesses, questions relating to the representations made to the Hearings Panel.
- h. The Investigating Officer will then be given the opportunity to sum up.
- i. The Subject Member will then be given the opportunity to sum up
- j. The Independent Person will then be invited to comment and outline their view in respect of the complaint.
- k. The Chairman of the Hearings Panel will check with the other members of the Panel whether they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter. If it is decided that additional evidence is required before a determination can be made then the hearing will be adjourned

and the Investigating Officer be asked either to seek and provide such additional evidence and/or undertake further investigation on any point specified by the Hearings Panel.

- I. If the Panel is satisfied that they do have sufficient evidence to make a decision this will conclude the evidence gathering part of the hearing. The Investigating Officer, the Subject Member, the Independent Person and any witnesses that might be present will be asked to leave at this point, but the Democratic Services Clerk and Monitoring Officer will remain.
- m. The Panel will then determine the complaint on the balance of probabilities test. If the Panel determine that there has been a failure to follow the Code the Chairman shall seek advice from the Monitoring Officer as to what action they believe should be taken against the Subject Member.

9.1.16 Finding of the Hearings Panel

9.1.16.1 Finding of Non Failure to follow the Code of Conduct

If the Hearings Panel determine that the Subject Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report then the complaint will be dismissed.

The decision notice stating the Hearings Panel's findings, in relation to a non-failure to follow the Code of Conduct, will be provided to the Subject Member, the Investigating Officer, the Monitoring Officer, and the Independent Person on a confidential basis. It will not be published on the Council's website or otherwise disclosed.

9.1.16.2 Finding of Failure to follow the Code of Conduct

If the Hearings Panel determines that the Subject Member has failed to follow the Code of Conduct then it can decide to take any or more of the following actions:

- a) Formally censure the Subject Member in writing for their failure to follow the Code of Conduct;
- b) Recommend to the Subject Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committee(s) that he/she be removed from any or all Committees or Sub-Committees of the Council);
- c) Recommend to the Leader of Council that the Subject Member be removed from the Executive, or removed from particular portfolio responsibilities;
- d) Instruct the Monitoring Officer (or recommend that the relevant Town/Parish Council, as appropriate) to arrange training for the Member;
- e) Remove (or recommend to the relevant Town/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 Town/Parish Council);
- f) Withdraw (or recommend to the relevant Town/Parish Council that it withdraws) facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and internet access;

- g) Exclude (or recommend that the relevant Town/Parish Council exclude) the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee or Sub-Committee meetings; or
- h) Report its findings to the Crown Prosecution Service in respect of a Subject Member that has been found to have committed an offence under Rule 9.2.13.

9.1.16.3 Publication of the Decision on Finding a Breach of the Code of Conduct

Within 3 working days, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel. A copy of the decision notice will be sent to the complainant, the Subject Member (and, if applicable, the relevant Town/Parish Council) and the Independent Person. The decision notice will be available for public inspection, and published on the Borough Council's website.

If the complaint is directed at a Borough Councillor, the decision will be reported to the next convenient meeting of the Borough Council. The report will be noted and there be no discussion on the item. If the complaint is directed at a Town/Parish Councillor, the relevant Council will be requested to report the decision to its next Council Meeting.

The Subject Member has no right of appeal against a decision of the Monitoring Officer or the Hearings Panel.