

Public Document Pack

West Surrey Shadow Authority Constitution Sub Committee – Supplementary Agenda

<u>Date and Time</u>	<u>Place</u>	<u>Contact</u>
Thursday, 6 August 2026 at 4.00 pm	Guildford Borough Council	Democratic Services committeeservices@spelthorne.gov.uk

Membership	
Name	Ward
Councillor Jane Austin	Waverley Eastern Villages
Councillor Jonathan Hulley	Thorpe, Longcross & Ottershaw
Councillor Louise Morales	Woking South
Councillor Rory O'Brien	Sunbury Common & Ashford Common
Councillor Joanne Shaw	Guildford East
Councillor Sally Shorthose	Farnham South
Councillor Richard Wilson	Bagshot, Windlesham & Chobham Ward

SUPPLEMENTARY AGENDA

Page nos.

8. Member Conduct Complaints Procedure

1 - 28

To consider suggested arrangements for dealing with allegations of member misconduct under the Code of Conduct, for adoption into the Constitution.

West Surrey Shadow Authority		
Report title: Arrangements for Dealing with Allegations of Misconduct by Councillors and Co-Opted Members		
Report to: Constitution Sub-Committee		
Date: 6 August 2026		
Executive Portfolio Holder: Cllr. Victoria Kiehl Contact Email: Victoria.Kiehl@westsurrey.gov.uk		
Report of Statutory Officer: Susan Sale, Interim Monitoring Officer Contact Email: Susan.Sale@westsurrey.gov.uk		
Report author(s): Deborah Davies, Joint Head of Governance – Guildford & Waverley Borough Councils Contact Email: Deborah.Davies@guildford.gov.uk		
Wards affected: All Ward councillors informed: Yes		
Exempt from publication: No		
Key Decision: No	If a Key Decision, date registered on Forward Plan: N/A	
Report cleared for publication by:		
People Workstream	N/A	N/A
Equalities Impact Assessment complete	N/A	N/A
Senior Responsible Officer (or their delegate)	N/A	N/A
S151 Officer	Susan Sale on behalf of Vicky Radford	3 Aug 26
Monitoring Officer	Susan Sale	3 Aug 26
Executive Portfolio Holder consultation	Cllr Kiehl	3 Aug 26
Committee Chair consultation	Cllr Wilson	3 Aug 26
Head of Paid Service	Susan Sale on behalf of Andy Brown	3 Aug 26

1. Executive Summary

- 1.1** This report sets out suggested arrangements for dealing with allegations of member misconduct under the Code of Conduct, for adoption into the Constitution.
- 1.2** If the revised arrangements are accepted, they will replace the current Part 4:5 Part A: Arrangements for Dealing with Allegations and Determinations of Complaints Under Section 28(6) Localism Act 2011 and Appendix 1 - Sub Committee Hearing Procedure for determination of allegations about the Member Code of Conduct.

2 Recommendations:

- 2.1** That the Constitution Sub-Committee resolves to recommend that the Standards Committee:

Recommend to the Shadow Authority that the revised Standards Arrangements set out in Appendix One and Appendix Two to this report are agreed and that the Constitution be amended accordingly.

That the Standards Committee resolves to recommend that the Shadow Authority resolves to:

Adopt the revised Standards Arrangements set out in Appendix 1 and Appendix Two to this report into the Constitution with immediate effect.

3 Reason(s) for recommendation:

- 3.1** Having published Standards Arrangements will make the process clear for residents, members and officers, promote consistency in decision making, support the efficient and proportionate resolution of complaints and provide greater transparency in how allegations are handled.
- 3.2** The Localism Act 2011 requires Councils to have arrangements under which allegations can be investigated and decisions made. Although the Act does not expressly require those arrangements to be in the Constitution, the constitution is intended to describe how the shadow Authority operates and how decisions are made. Having the arrangements in the Constitution and showing the decision making, supports the overall purpose of the Constitution.
- 3.3** The revised arrangements are more operationally detailed and set out timescales and procedures rather than just the framework.

4 Next steps

- 4.1** If this report is approved by the Constitution Sub-Committee, then it will be considered by the Standards Committee who will decide whether to recommend the changes to the Shadow Authority at its next meeting.

5 Exemption from publication

- 5.1** This report is not exempt from publication.

6 Background and Proposal

- 6.1** In order to support Councils, the Local Government Association (LGA) produced a Model Code of Conduct in December 2020, for Councils to adopt in whole and/or with local variations. They keep this Code under annual review to ensure it continues to be fit- for-purpose, incorporating advances in technology, social media and changes in legislation.
- 6.2** West Surrey Council adopted its Code of Conduct at its meeting on 21 May 2026, and the Code is based on the LGA model code.
- 6.3** To accompany the Code, the LGA have produced extensive guidance and procedures for Monitoring Officers on how to investigate complaints, deal with informal resolutions and other matters. The revised Standards Arrangements have taken the LGA guidance into account, as they help to bring consistency for members and complainants.
- 6.4** The Council already has an adopted set of Standards Arrangements at 4.5 of the Constitution and the proposed revisions in the Appendices are a more developed and operational version rather than a fundamentally different procedure. The main differences are:-

Area	Current Constitution	Proposal
Level of Detail	High level procedure setting out powers and principles	Comprehensive operational procedure with step by step process for complainants and members

Initial Assessment	More concise with greater discretion over the procedure	Sets out the tests to be followed, public interest consideration and detailed rejection criteria
Timescales	Fewer timescales	Deadlines specified for all stages
Confidentiality	Core constitutional procedures	Detailed provisions on anonymity, confidentiality requests and disclosure
Informal resolution	Refers to this but in less detail	Extensive process including consultation, compliance and escalation
Investigations	Provides the framework	Full process including appointment reports and consultation with Independent Person
Hearings	Establishes Sub-Committee and its powers	Detailed hearing procedure including pre-hearing, witnesses, evidence, representation and deliberation
Sanctions	Lists available powers	Comprehensive list with aggravating and mitigating factors

7 Consultation

- 7.1 The portfolio holder has been consulted and her comments will be reported to the Sub-Committee.

8 Key Risks

- 8.1 There is a risk of a lack of transparency if the Council does not have a published set of arrangements. There is also a risk that complaints are not raised because members of the public are not aware of what happens to

them or have concerns about the process. The revised set of Arrangements sets out in more detail how the process will operate for both complaints and hearings.

9 Options

- 9.1** Not to agree any revision to the published arrangements.
- 9.2** To agree a revised set of arrangements. The Sub-Committee could recommend changes to the proposed arrangements.
- 9.3** To agree the proposed arrangements set out in Appendix One and Two. This is the preferred option as they are in line with recommended good practice and they support the LGA Code of Conduct.

10 Issues for consideration

10.1 Financial Implications

- 10.1.1 There are no financial implications to this report.

10.2 Section 151 Officer Commentary

- 10.2.1 There is nothing to add to the report

10.3 Legal Implications

- 10.3.1 Local authorities, including parish councils, have a duty, under s.27 Localism Act 2011 (the Act), to promote and maintain high standards of conduct by their members and co-opted members. These standards arrangements will support the Monitoring Officer to ensure consistency.

10.4 Monitoring Officer Commentary

- 10.4.1 The arrangements will support the Monitoring Officer and any designated deputy in carrying out their statutory duties.

10.5 People/Human Resources Implications

- 10.5.1 There are no HR implications.

10.6 Equality and Diversity Implications

- 10.6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 10.6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 10.6.3 The Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.
- 10.6.4 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report.

10.7 Climate Change and Sustainability Implications

- 10.7.1 There are no implications arising from this report.

10.8 Stakeholders Implications

- 10.8.1 The arrangements for the shadow Authority will not apply to Parish Councils as these are still subject to the Sovereign Council's jurisdiction.

11 Overview & Scrutiny Comments

- 11.1 N/A

12 List of Appendices

12.1 Appendix 1 – Revisions to Part 4:5 Part A: Arrangements for Dealing with Allegations and Determinations of Complaints Under Section 28(6) Localism Act 2011

12.2 Appendix 2 - Revisions to Part 4:5 Appendix 1- Sub Committee Hearing Procedure for determination of allegations about the Member Code of Conduct.

13 List of Background papers

13.1 LGA – Guidance on Member Model Code of Conduct Complaints Handling

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APPENDIX 1

Part 4:5 Part A: Arrangements for Dealing with Allegations and Determinations of Complaints Under Section 28(6) Localism Act 2011

1. Introduction

- 1.1. This procedure applies when a complaint is received that a member, or co-opted member, of West Surrey Shadow Authority has or may have failed to comply with the adopted Code of Conduct for members.
- 1.2. A complaint is confidential and remains so until the complaint is resolved.

2. Code of Conduct

- 2.1. The Shadow Authority is required under the Surrey (Structural Changes) Order 2026 (Para 14) to have regard to s27 Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging that duty, the Council must adopt a code dealing with the conduct and standards of behaviour that is expected of its members and co-opted members when they are acting in that capacity.

A copy of the West Surrey Shadow Authority Code of Conduct can be found here [\[insert link\]](#).

- 2.2. The Code applies to all councillors when they are acting in their capacity as a councillor.

3. Making a complaint

- 3.1. If you consider that a councillor has breached the Code of Conduct for the Shadow Authority, you may make a complaint. The Shadow Authority can only accept complaints which are in written form. We have a form which is available to complete [\[insert link\]](#) or on request by contacting us. If you have problems in completing the complaints form then you (or someone else on your behalf) can ask the Shadow Authority for assistance by contacting the Monitoring Officer, by email at Monitoring.Officer@westsurrey.gov.uk. If you prefer to write a letter, then you should ensure that your complaint contains all relevant information

including which part of the code of conduct you think has been breached, the outcome you are seeking and your contact details.

- 3.2. Complaints must be submitted in writing, by post or email to:

The Monitoring Officer, West Surrey Shadow Authority c/o Guildford Borough Council, Millmead House, Millmead, Surrey, GU2 4BB

Email: Monitoring.Officer@westsurrey.gov.uk

- 3.3. The Shadow Authority's Monitoring Officer is the appointed officer who has responsibility for managing code of conduct complaints on behalf of the Shadow Authority.
- 3.4. If your complaint is in relation to a member of the West Surrey Shadow Authority who is also a member of another Council, then you should note that we can only accept complaints in respect of conduct directly relating to the Shadow Authority and we may pass your complaint to the Monitoring Officer of the relevant Council if we consider that we are not the correct Authority.

4. Acknowledging the complaint

- 4.1. The Monitoring Officer (or an officer acting on their behalf) will normally acknowledge receipt of the complaint within five clear working days and advise the complainant that the complaint will be assessed, to consider whether it is within the Monitoring Officer's jurisdiction and meets the initial assessment criteria. Where we consider there is insufficient information to identify a possible breach of the Code of Conduct, we may request further information.

5. Confidentiality

- 5.1. If a complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Initial Assessment stage.
- 5.2. As a matter of fairness and natural justice, the subject member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if, on request from the complainant, they are satisfied that the complainant has evidence and reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of actual harm, or their employment may be jeopardised if their identity is disclosed, or there is a risk that evidence would be compromised and/or that the investigation would be prejudiced.

- 5.3. If the Monitoring Officer decides to anonymise the complainants' details, this will be kept under continuous review.
- 5.4. If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint.
- 5.5. The Monitoring Officer will advise the Chief Executive, Chief Finance Officer and relevant Group Leader that a complaint has been received against the named councillor but will not disclose the substance of the complaint.

6. Anonymous complaints

- 6.1. The Monitoring Officer will not normally allow anonymous complaints as they are against the principles of transparency and fairness and make matters much more difficult to investigate. However, the Monitoring Officer may accept an anonymous complaint where they consider that there may be exceptional compelling reasons why the complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the complainant. For example, if an anonymous complainant submitted a video showing the councillor acting inappropriately or sent in documentation disclosing an undeclared directorship in a matter relating to local authority business, it may be considered that the public interest in investigating the allegation would outweigh the issue of anonymity.

7. Conflicts of Interest

- 7.1. If at any time the Monitoring Officer considers that they have an actual or potential conflict of interest, then they will instruct a Deputy Monitoring Officer to act in their place.

8. Initial Assessment

- 8.1. A complaint can only be accepted if: -
 - it is made against one or more named Members or co-opted Members of the Shadow Authority, and
 - the Subject Member held office at the time of the alleged misconduct; and
 - the complaint relates to matters where the councillor was acting as a councillor or representative of the Shadow Authority (not any other Council) and it is not a private matter;

- the complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.
- 8.2. If the above criteria are not met, then the complaint will be automatically rejected, as the Monitoring Officer is not able to deal with the complaint. This is known as the 'Jurisdiction Test'.
- 8.3. If a complaint is about a Council service, rather than misconduct by a councillor, then the complainant will be referred to the complaints team at the relevant Council which the Monitoring Officer considers is responsible for the service, and the complainant will be advised accordingly.
- 8.4. The Monitoring Officer will usually advise the subject member of the complaint and ask them for comment at this stage. They will allow 10 working days for comment.
- 8.5. The initial assessment is made against the following criteria:
1. Whether the complaint is trivial, malicious, vexatious, politically motivated, or 'tit for tat';
 2. Whether an investigation would be in the public interest or the matter, if proven, would be serious enough to warrant any sanction;
 3. Whether a substantially similar complaint has been considered, and no material evidence has been submitted;
 4. Whether a substantially similar complaint been submitted and accepted;
 5. Whether the complaint relates to conduct that took place more than 6 months ago;
 6. Whether the behaviour has already been dealt with, e.g. the subject member has apologised for making an error and the matter would not warrant a more serious sanction;
 7. Whether the complaint relates to dissatisfaction with a local authority decision rather than conduct;
 8. Whether the complaint is about someone who is seriously ill; and
 9. Whether the complaint is so serious that it should be reported to the Police.
 10. Whether there has been a delay of over 30 days between the incident complained of and the complaint (the matter will not ordinarily be considered further unless there are very good reasons).

Depending on the outcome of assessment against these criteria, the complaint could be rejected at this stage.

- 8.6. The complainant and the subject member will be notified of the outcome of the assessment within 20 working days of the acknowledgement of the complaint, and what further action (if any) will be taken. This can be:-

- (a) That no further action should be taken, with reasons given.
- (b) That the allegation should be referred for informal resolution.
- (c) That the allegation should be referred for formal investigation.
- (d) That the allegation should be referred to the police or another regulatory body.

9. Independent Person

- 9.1. The Shadow Authority must appoint at least one Independent Person under S28 Localism Act 2011. An Independent Person must not be a councillor or a member of staff. The Act sets out criteria on who can be an 'Independent Person' and their views must be sought and taken into account before the Monitoring Officer makes their decision on whether to investigate an allegation. The Monitoring Officer may choose whether to seek their views on rejecting a complaint for lack of jurisdiction or other reasons. The Monitoring Officer may also seek their views at any other time.
- 9.2. The views of an Independent Person may also be sought by a subject member at any time. To avoid any conflicts of interest, the Shadow Authority has a pool of Independent Persons.
- 9.3. If an Independent Person has been consulted by a subject member at any time, then they may not provide their views to the Monitoring Officer or be consulted by them, to avoid any potential conflict of interest. They must notify the Monitoring Officer of any contact with the subject member, although they should not disclose the content.

10. Rejection of the Complaint

- 10.1. If the complaint is so serious that it should be reported to the Police or another agency, then the Monitoring Officer may refer the matter themselves or advise the complainant that they should contact the Police or other agency direct. The Monitoring Officer may decide not to advise the subject member of the complaint in these circumstances and consideration of the complaint will be deferred until the outcome of any Police investigation.
- 10.2. If the complaint is rejected, the complainant will be provided with a notification of the rejection of the complaint, and the reasons for this. If the Independent Person was consulted on the decision to reject, then the notification will make it clear whether they agreed with the decision. If they did not agree, then the Monitoring Officer will explain how they took account of the Independent Person's views in reaching a different decision.

- 10.3. If the subject member resigns at any point before the Monitoring Officer has issued a decision, then the Monitoring Officer will consider whether the matter should be closed, having regard to the public interest test and the resources required. The Monitoring Officer will consult the Independent Person before making their decision.

11. Complaints which have been accepted

- 11.1. If the complaint is accepted, the Monitoring Officer will consult with the Independent Person and will take their views into account before deciding on one of the following outcomes:
- a) The matter should be dealt with through a process of informal resolution in the first instance; or
 - b) The matter should be referred for a formal investigation.
- 11.2. There is no legal requirement for a decision notice to be published at this stage, but the Monitoring Officer will consider whether an assessment notice should be published in the public interest.
- 11.3. The Monitoring Officer may discontinue a complaint or terminate an investigation at any time if they consider it to be in the public interest, following consultation with the Independent Person. Where a complaint is discontinued or terminated, the Monitoring Officer will advise the complainant and subject member within five working days of the decision, setting out reasons.

12. Informal Resolution

- 12.1. Wherever possible, the Monitoring Officer will resolve complaints informally. An informal resolution is a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. Informal resolution does not mean that a subject member has been found to have breached the Code of Conduct, because the matter has not been investigated at this stage and the purpose is to address any underlying causes.
- 12.2. Informal resolution can take a wide variety of forms, and may include:
- arranging training for the subject member
 - requesting that the subject member apologise
 - suggesting a mediation meeting between the subject member and the complainant
 - any other action capable of resolving the complaint.

- 12.3. Where a complaint concerns an issue between two Councillors, the Monitoring Officer may choose to refer the matter to the appropriate Group Leader(s) to resolve amongst themselves, if possible.
- 12.4. If the Monitoring Officer considers, after consultation with the Independent Person, that the complaint could be dealt with through informal resolution then the subject member and the complainant will be informed of this proposal and given 10 working days to comment before the Monitoring Officer reaches a final decision. The purpose of this is to establish how successful the resolution might be. It does not give either party the right of veto.
- 12.5. Both parties will be informed by the Monitoring Officer of the action to be taken and the time scales in which it will be undertaken.
- 12.6. The Monitoring Officer will seek confirmation that the suggested resolution has been complied with, within the timescales, and if it has then the Monitoring Officer will notify both parties that the matter is then closed.
- 12.7. Where a subject member or the complainant disagrees with or refuses to comply with the proposed resolution, fails to co-operate or has taken inadequate action, then the Monitoring Officer will consider whether a formal investigation is needed, having regard to the public interest test and the resources required. The Monitoring Officer will consult the Independent Person before making a decision whether to commence a formal investigation. The Monitoring Officer may consider that no further action is required even where the resolution has not been complied with.

13. Formal investigation

- 13.1. If the Monitoring Officer considers that the matter should proceed by way of formal investigation, they will make arrangements (within 10 working days of the decision being made) for the complaint to be formally investigated and may appoint an Investigator to investigate the complaint, gather further evidence and prepare a report.
- 13.2. The Investigator may be the Deputy Monitoring Officer, a suitably qualified member of staff or an external investigator. The Monitoring Officer will advise the subject member and complainant of their appointment, so that they know who is dealing with the case, the scope of the investigation and what will happen next. A copy of the complaint will be provided to the subject member if they have not already received this.

- 13.3. The subject member will also be informed that they have the right to seek the views of an Independent Person and be accompanied at any interviews with the Investigator.
- 13.4. The scope of the delegation of the investigation will be kept in writing, and there will be agreed timelines for delivery of the report, usually within two months. Any extension of time will be agreed by the Monitoring Officer.
- 13.5. The Investigator may make enquiries of any person they think necessary, however there is no obligation for such persons to respond. This will not delay the investigation, but it will be made clear in the Investigator's report where there have been unreasonable delays or lack of responses.
- 13.6. During the investigation, there may be evidence of further breaches which extend beyond the scope of the investigation. These cannot be investigated and should be the subject of a separate complaint to the Shadow Authority if necessary.
- 13.7. The Investigator can refer the investigation back to the Monitoring Officer in the event that circumstances change during the investigation, and it will be for the Monitoring Officer to decide whether the investigation should continue, after consulting with the Independent Person.
- 13.8. All information gathered will be kept confidential and all those being interviewed will be asked to maintain confidentiality. Any draft report will be marked as confidential and all requests for information will be dealt with having regard to the relevant legislation.
- 13.9. The draft report will be shared with the Monitoring Officer and the Independent Person so that they can be satisfied that the investigation is of an acceptable standard and met the scope of the complaint. The draft report will contain the agreed and disputed facts, the Investigator's view on whether there has been a breach of the Code and their reasons for their conclusion.
- 13.10. Once the Monitoring Officer is satisfied with the report, it will be sent by the Investigator to the relevant parties requesting comments within 10 working days. The Investigator is under no obligation to accept any comments from the parties, but where they do not, then they will make a note explaining why.
- 13.11. The final report will contain a finding on the balance of probabilities as to whether there has been any failure to comply with the Code of Conduct. The final report will be sent by the Investigator to the Monitoring Officer and the

Independent Person, and the investigation will be regarded as complete if the Monitoring Officer receives the final report and agrees that no further investigation is necessary.

13.12. The Monitoring Officer will review the Investigating Officer's report within 10 working days, and will consult with the Independent Person before deciding whether:

- a) there has been no breach and no further action will be taken;
- b) there have been one or more breaches, but no further action is needed;
- c) there have been one or more breaches, but the matters should be resolved in a way other than by a hearing (see informal resolution above); or
- d) that the matters be referred to a hearing (see hearings procedure set out in Appendix 1)

13.13. The final report will be issued to the subject member and the complainant, and others as the Monitoring Officer considers appropriate including members of the Standards Committee.

13.14. The Monitoring Officer will give their decision when sending out the report and will also make it clear whether any of the report is confidential.

14. Publicising the findings

14.1. In all cases where there has been an investigation, whether or not any further action is taken, then the Monitoring Officer will arrange for a decision notice to be published on the Shadow Authority's website.

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APPENDIX 2

Appendix 2 - Sub Committee Hearing Procedure for determination of allegations about the Member Code of Conduct.

1. Hearings Panel

- 1.1. Where the Monitoring Officer has decided that the matter should be referred to a Hearings Panel, this will be set up as soon as possible but not less than 20 working days after the final report is issued.
- 1.2. Once a date has been set for a Hearing, the Monitoring Officer will notify:
 - the subject member;
 - the investigator;
 - the relevant Independent Person;
 - the complainant if appropriate;
 - the clerk of any relevant town or parish council, where the subject member is a town/parish councillor. Whether they want to be represented at the Hearing;
- 1.3. The Monitoring Officer will outline the hearing procedure, the subject member's rights and ask for a written response from the subject member in respect of the following:-
 - a) Whether they disagree with any findings of fact and their reasons if so;
 - b) Whether they want to give written or verbal evidence;
 - c) Whether they want to call any witnesses
 - d) Whether they wish to request any part of the Hearing be held in private, and their reasons;
 - e) Whether they wish to request that any part of the investigation report of other documents be withheld from the public, and their reasons.

The Investigator will also be asked if they wish to call any witnesses.

- 1.4. If the subject member is unable to make the specified date the Panel may arrange for the hearing to be held on a different date, provided that they are satisfied that the subject member has given an acceptable reason to the Monitoring Officer. Where the subject member does not give an acceptable reason to the Monitoring Officer or does not reply within a specified time, the Panel will proceed with the date and may consider the report in the subject

member's absence if the subject member does not go to the hearing. The subject member should not be able to evade having the case heard simply by refusing to cooperate and the Shadow Authority's Code of Conduct makes failure to cooperate a potential breach. The Panel will make clear at the start of the hearing that they have considered whether they can proceed in the absence of the subject member and should record their reasons.

- 1.5. If one or more witnesses are unavailable on the given date the Panel, as part of the pre-hearing process, will decide how material should be presented to the Hearing and whether another date needs to be looked for. Witnesses will be kept promptly informed of the relevant dates, times and location of the hearing, but it is the responsibility of the subject member to make sure their witnesses are available to attend.
- 1.6. Except in the most complicated cases, the Panel will aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

2. Advice to the Panel

- 2.1. The Monitoring Officer will usually be the main adviser to the Panel, unless they have an interest in the matter that would prevent them from performing this role independently. This may be because they have carried out the investigation or have another conflict. If this situation arises, the Monitoring Officer will arrange for the Deputy Monitoring Officer or another appropriately qualified officer to advise the Panel.
- 2.2. The Monitoring Officer or other legal adviser's role in advising the Panel is to:
 - make sure that members of the Panel understand their powers and procedures.
 - make sure that the procedure is fair and allows the complaint to be dealt with as efficiently and effectively as possible.
 - make sure that the subject member understands the procedures the Panel will follow.
 - provide advice to the Panel during the Hearing and their deliberations.
 - help the Panel produce a written decision and a summary of that decision.

3. Composition of the Panel

- 3.1. The Panel will comprise three Councillors from the Standards Committee, appointed by the Monitoring Officer. The Panel will be politically balanced where possible. Any Councillor appointed will have had appropriate training.
- 3.2. The Independent Person who has provided views to the Monitoring Officer will also be asked to attend the Hearing. If they are unable to do so, the Shadow Authority will seek their written views prior to the Hearing.

4. Holding a Pre-Hearing

- 4.1. As soon as a date has been set for a hearing, the Monitoring Officer will arrange a pre-hearing with the Panel. The purpose of the pre-hearing is to allow matters at the Hearing to be dealt with more fairly and quickly and to alert parties to any difficulties to allow them to be resolved before the Hearing. The pre-hearing will also decide on the chair of the Panel. A pre-hearing may be dealt with by written correspondence, virtual meeting or in person meeting, depending on the complexity of the case.
- 4.2. At the pre-hearing, the Panel will not debate the merits of the case. They will consider:
 - Whether any findings of fact in the investigation report are in dispute and, if so, how the Panel would satisfy itself how it could resolve that difference at the Hearing.
 - Whether it considers any additional evidence is required at the hearing.
 - What witnesses it thinks it would want to hear from.
 - Whether the witnesses to be called are relevant bearing in mind the nature of the issue and the need for proportionality.
 - Whether there are any parts of the hearing that are likely to be held in private or whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material though the final decision will rest with the Panel on the day.
 - Identify any potential conflicts of interest.
- 4.3. A pre-hearing is not a formal meeting and is not open to the press or public, or to any councillors other than those on the Hearings Panel.
- 4.4. Following the pre-hearing, the Monitoring Officer will write to all those involved at least 14 days prior to the Hearing to confirm who will be asked to give evidence, set out any representation, and outline the procedure for the Hearing.

5. The Hearing

- 5.1. The Panel will always work in a demonstrably fair, independent and politically impartial way. The Panel will decide factual evidence on the balance of probabilities.
- 5.2. The rules on access to information apply to the Hearings Panel. The Hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters, and the Panel will take account of any advice received from the Monitoring Officer.

6. Representation

- 20.1 The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. If they consulted an Independent Person, they may in addition ask them to attend. This will be agreed at the pre-Hearing and if the Panel has any concern about the person chosen to represent the subject member, it will be made clear at that stage. The Panel does, however, have the right to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will normally be given before permission is withdrawn.

7. Evidence

- 7.1. At the hearing, the Investigating Officer may be asked to present their report, or the Panel may agree that it does not need any further evidence from the Investigator on their report if the findings of fact are not disputed.
- 7.2. If the findings of fact are disputed, then the Investigator can call such witnesses as they consider necessary and make representations to substantiate their conclusion that the councillor has failed to comply with the Code of Conduct.
- 7.3. The subject member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearing Panel as to any disputed findings of fact and why they consider that they did not fail to comply with the Code of Conduct.
- 7.4. The Panel will allow witnesses to be questioned by the subject member and the Investigator, or their representatives. The Panel can also question the

Investigator, the subject member and witnesses directly, and can allow the Independent Person to do this.

- 7.5. If the Panel believes that questions are irrelevant, oppressive, or repetitious then the Chair will stop that line of questioning.

8. Making a Finding

- 8.1. Once the Panel has heard all the relevant evidence it will adjourn the Hearing and retire to deliberate.
- 8.2. The Independent Person may be asked to retire with the Panel but will take no part in the decision-making process. They will be asked to give their views to the Panel, and these will be taken into regard when the Panel makes its decision. These views will be conveyed back publicly once the Panel reconvenes.
- 8.3. The Monitoring Officer, or other legal adviser to the Panel, will be asked to retire with the Panel to advise on matters of procedure and law. Any advice given will be conveyed back publicly once the Panel reconvenes and the Panel will make its decision on the balance of probabilities, based on the evidence it has heard.
- 8.4. If the Panel, after retiring, decides that it needs to reconsider certain matters it may reconvene to ask further questions.
- 8.5. Once the Panel has reached its decision it will reconvene the hearing and inform the subject member of its decision with reasons. Where a breach has been found, it will invite representations from the subject member and Investigator as to any aggravating or mitigating factors before retiring again to consider an appropriate sanction. It will then reconvene the hearing and advise the subject member of its decision on any sanction to be imposed.
- 8.6. The Panel will give its full written decision, with reasons, to the relevant parties as soon as possible after the hearing, and in most cases, this will be within five working days of the Hearing Panel.
- 8.7. The full written decision will be provided to the subject member, the complainant and the Independent Person.

9. Sanctions

9.1. If the Panel finds that a subject member has failed to follow the Code of Conduct, then they are able to impose sanctions which are reasonable and proportionate. Typical sanctions may include one or a combination of the following:

- reporting the findings in respect of the subject member's conduct to the Shadow Authority;
- issue a formal Censure Notice;
- recommend to the subject member's group leader (or to the Shadow Authority) that they be removed from any or all committees or sub-committees of the authority for a specified period;
- recommend to the Shadow Authority that the subject member be removed from positions of responsibility for a specified period;
- instruct the Monitoring Officer to arrange training for the subject member;
- recommend to that the subject member be removed from all outside appointments to which they have been appointed or nominated by the authority;
- recommend to the Shadow Authority that it withdraws facilities provided to the subject member by the authority for a specified period, such as a computer, website and/or email and internet access;
- recommend to council that it excludes the subject member from the authority's offices or other premises for a specified period, except for meeting rooms as necessary for attending council, committee and sub-committee meetings and/or restricts contact with officers to named officers only;
- if relevant recommend to the council that the subject member be removed from their role as leader of the authority; or
- if relevant recommend to the appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.

9.2. When deciding on a sanction, the Panel will ensure that it is reasonable, proportionate, and relevant to the subject member's behaviour. Before deciding what sanction to issue, the Panel will consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention?
- Did the subject member know that they were failing to follow the Code of Conduct?
- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored?
- Has there been a breach of trust?

- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result or potential result of failing to follow the Code of Conduct?
- How serious was the incident?
- Does the subject member accept they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct or failed to follow the Code of Conduct before?
- Is the subject member likely to do the same thing again?
- How will the sanction impact on the subject member's ability to carry out their role?

9.3. Sanctions involving restricting access to the Shadow Authority's premises or equipment or contact with officers will not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

9.4. The Panel will consider mitigating factors, which may include:

- an honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice;
- a councillor's previous record of good service;
- substantiated evidence that the councillor's actions have been affected by ill-health;
- recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the councillor;
- compliance with the Code since the events giving rise to the complaint.

9.5. The Panel will also consider aggravating factors, which may include:

- dishonesty or breaches of trust;
- trying to gain an advantage or disadvantage for themselves or others;
- bullying;
- continuing to deny the facts despite clear contrary evidence;
- seeking unfairly to blame other people;
- failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code;

- persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

10. Publicising the findings

- 10.1. The decision notice will be published on the Shadow Authority's website, and anywhere else the Panel considers appropriate.
- 10.2. If the Panel finds that the subject member did not fail to follow the authority's Code of Conduct, the public summary will say this and give reasons for their finding.
- 10.3. If the Panel finds that the subject member failed to follow the Code but that no action is needed, the public summary will:
 - state that the councillor failed to follow the Code, but that no action needs to be taken;
 - outline what happened;
 - give reasons for the Panel's decision not to take any action.
- 10.4. If the Panel finds that a councillor failed to follow the Code and it imposed a sanction, the public summary will:
 - state that the councillor failed to follow the Code;
 - outline what happened;
 - explain what sanction has been imposed;
 - give reasons for the decision made by the Panel.
- 10.5. The Panel's reports and minutes will be available for public inspection in the same way as other local authority committee papers.

11. Appeals

- 11.1. There is no right of appeal against a decision on a Code of Conduct complaint.

12. Variation

The Monitoring Officer, or the Hearings Panel on the advice of the Monitoring Officer, may vary these arrangements in any particular instance where they are of the opinion that such a variation is expedient in order to secure the effective and fair

consideration of any matter, is lawful, and is consistent with the principles of natural justice.

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