



Standards Committee Hearing Panel

Date **Tuesday 17 September 2019**

Time **10.00 am**

Venue **County Hall, Durham**

Business

1. Election of Chair
2. Declarations of Interest
3. To conduct a hearing into allegations of breaches of Ferryhill Town Council's Code of Conduct (Pages 3 - 338)
 - a) To consider **RESOLVING** that in accordance with Section 100A(4) of the Local Government Act 1972, as amended by the Local Government (Access to Information) Variation Order 2006, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information, as defined in paragraph 1 of Part 1 of Schedule 12A of the Act
 - b) To consider the report of the Investigating Officer

Helen Lynch
Head of Legal and Democratic Services

County Hall
Durham
9 September 2019

To: **The Members of the Standards Committee Hearing Panel**

Councillors T Batson, B Kellett and D Stoker
Town Councillor T Batson

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Standards Committee Hearing Panel

17 September 2019

COM 211-213, 223 and 236



Report of Helen Lynch

Monitoring Officer and Head of Legal and Democratic Services

Electoral division(s) affected:

Ferryhill

Purpose of the Report

1. This report summarises the issues for the Panel to determine at the Standards Committee Hearing Panel on 17 September 2019.

Executive summary

2. The Monitoring Officer has received five complaints against Councillor David Farry (the Member) of Ferryhill Town Council. Following initial assessment and investigation of the complaints, these have been referred for consideration and determination by a Standards Committee Hearing Panel.
3. Three out of the five complaints relate to a single event in November 2018.

Recommendation

4. The Panel is recommended to consider the investigator's report and reach decisions on:
 - i. Factual findings;
 - ii. Whether, and if so how, the Code has been breached by the Councillor; and
 - iii. If there has been a breach of the Code what action, if any, is required.

Background

5. The Monitoring Officer received five complaints relating to the conduct of Councillor David Farry (the Member) of Ferryhill Town Council. The complaints are dated, 11.11.18 (COM 211), 12.11.18 (COM 212), 13.11.18 (COM 213), 06.01.19 (COM 223) and 15.02.19 (COM 236). The allegations relate to the time when the Member was the Mayor of the Town Council. The Member's term of office as Mayor came to an end in May 2019 and he remains at the time of this report a Councillor for Ferryhill Town Council.
6. The complaints made against the Member were considered accordance with the Local Assessment Procedure and were referred for investigation. The complaints were referred for investigation on 03.01.19 (COM 211-213), 06.02.19 (COM 223) and 13.03.19 (COM 236).
7. The Monitoring Officer appointed Matt Lewin of Cornerstone Chambers as the Investigating Officer. The investigation was carried out and a final report was produced which is shown at Appendix 2 of this report.

Complaints

8. A summary of each of the complaints to be considered by the Standards Hearing Panel are set out below.
9. It is alleged that the Member has breached the following paragraphs of the Ferryhill Town Council code of conduct:

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations:

1. *He/she shall behave in such a way that a reasonable person would regard as respectful.*
2. *He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.*
6. *You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.*

COM 211 – 213

10. Three allegations were made in relation to the Members conduct at the Lighting of the Beacon of Hope Service at Ferryhill Town Hall which was held on 11 November 2018.
11. In COM 211 it is alleged that the Member attended the event under the influence of alcohol and showed no response thought the service. It is alleged that the Member displayed unprofessional conduct and that he did not fully complete his Mayoral duties as detailed in the Order of Service nor was he wearing his Mayoral Chains of Office.

12. In COM 212 it is alleged that the Member displayed appalling behaviour during the service, it is alleged that the Member talked with his party and appeared under the influence of alcohol. The Complainant states that this behaviour was totally inappropriate and disgraceful, that she would expect more of someone who hold public office. The Complainant notes that the Mayor or a representative of the Town Council featured in the Order of Service, but this duty was not fulfilled which she found to be unprofessional.
13. In respect of COM 213 it is accepted that the Complainant did not attend the service but has reported the complaints made to him. He reports that the service began at 6:45pm, the Member had been asked to attend the Town Hall for 6:40pm. The Member arrived late at 6:50pm and it was reported that he was unsure of his feet and incapable of talking properly because of the excessive drinking. A member of staff leaned the member against the garden wall and asked the service to proceed. The photographer asked the Member where his Chain of Office was and was told it was in the car. The staff who were in attendance deemed it too dangerous to ask the Member to light the beacon and instead this was carried out by an officer. The Complainant finds the conduct totally unacceptable, that the Member showed a total lack of respect, shamed the people of Ferryhill and brought the Council into disrepute.
14. The Investigating Officer recommends that the Standards Hearing Panel make a finding that paragraphs 1 and 6 of the Code have been breached. The Investigating Officers reasons are set out paragraphs 16 to 26 of his report at Appendix 2.

COM 223

15. It is alleged that on 4 January 2019 the Complainant received a call from the Member, during the call he enquired why he had not been informed about the working arrangements of an Officer of the Council. The complainant explained that it was not her responsibility to keep him informed about the arrangements, it alleged that the Member became very aggressive stating that he had been told that it was the Complainants duty to keep him informed. It is alleged that the member counted to be very verbally aggressive, say that he would "make sure that the complainant has no further contact with HR. The Complainant believes that the Member was implying that she was stupid. The complaint ended the call and states that she was left shaken by the aggressive manner of the Member of Paragraphs 1 and 2
16. The Investigating Officer recommends that the Standards Hearing Panel makes a finding that paragraph 1 of the Code has been breached. The Investigating Officers reasons are set out at paragraphs 27 to 33 of the report at Appendix 2.

COM 236

17. The Complainant is the Clerk to the Town Council and the Member subject to the complaint is the Chairman and Mayor of the Town Council. The Complainant alleges that he has been subject to harassment, bullying, discrimination and victimisation by the Member. The Complainant reports that he feels there have been clear signs that the Member is out to destroy him as a person by making malicious and unjustified statements that have caused harm to his reputation.
18. The Complainant states that the actions of the Member have caused him serious humiliation, harassment, disruption and at times he considers to be a form of bullying. The Complainant reports that the alleged behaviour has been witnessed at meetings of the Council by other Councillors, members of the public, press and officers of the Council. This was an alleged breach of paragraph 1, 2 and 6 of the code of conduct.
19. The Investigating Officer recommends that the Standards Hearing Panel makes a finding that there has been a breach of paragraph 2 of the Code for the reasons set out in paragraphs 34 to 42 of his report.

ROLE OF THE PANEL

20. The role of the Panel is to consider each of the complaints and allegations separately. The Panel will need to consider the evidence presented by the investigator and the Member.
21. The Member was able to comment on the draft report and has been provided with a copy of the final report on which he has also commented, the responses to the Member are shown in the hearing bundle. Additionally, the Investigating Officer provided a covering letter to the Committee to accompany the final report which outlines his response to the Member's representations on the draft report.
22. The pre-hearing process has been followed with a view to limiting the issues for decision by the Panel.
23. Having heard from the Investigating Officer and the Member, it is the role of the Panel to make findings of fact in relation to the conduct complained of and determine whether or not they consider that the Member has breached the Code of Conduct. The Panel is entitled to reach a different conclusion to the Investigating Officer. Before reaching a decision on the allegations, the Panel must consider representations from the Independent Person as to whether or not there has been a breach of the Code.
24. If the Panel conclude that there has been a breach of the Code of Conduct it must decide what action, if any, should be taken. The Panel will consider representations from the Investigating Officer, Member and Independent Person on the issue of sanctions.

25. The Localism Act provides the following sanctions for current Councillors which are set out in Appendix Four of the Local Determination Procedure:
- i. Censure of the Member;
 - ii. Recommending to Full Council, or to the Town or Parish Council that the Member be removed from any or all Committees or Sub-Committees;
 - iii. Recommending to Full Council, or to the Town or Parish Council, that the Member be removed from all outside appointments to which s/he has been appointed or nominated by the authority;
 - iv. Recommending to Full Council, or to the Town or Parish Council, that the Member's access and use of resources of the Authority be restricted for a maximum period of six months, provided that any such restrictions imposed upon the Member:
 - v. are reasonable and proportionate to the nature of the breach; and
 - vi. do not unduly restrict the Member's ability to perform his functions and duties as a Member;
 - vii. A requirement that the Member submit a written apology.
 - viii. A requirement that that Member undertake training as specified by the Hearing Panel.
 - ix. A requirement that that Member undertake conciliation as specified by the Hearing Panel;
26. The Hearing Panel will announce its decision and the end of the Hearing and as soon as practicable after the hearing the Hearing Panel provide a written decision notice, which will be sent to the Complainants, the Member, the Clerk to the Town Council and published on the Council's website.

Background Papers

- Local Determination Procedure (July 2016)
<https://democracy.durham.gov.uk/documents/s63981/Local%20Determination%20Procedure.pdf>
- Hearing bundle

Contact:

Helen Lynch

Tel: 03000 269729

Appendix 1: Implications

Legal Implications

The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles.

Finance

None.

Consultation

None.

Equality and Diversity / Public Sector Equality Duty

None.

Human Rights

None.

Crime and Disorder

None.

Staffing

None.

Accommodation

None.

Risk

None.

Procurement

None.

COMPLAINTS AGAINST CLLR DAVID FARRY

INVESTIGATOR'S REPORT

Introduction

1. I have been appointed as the Investigating Officer by Durham County Council's Monitoring Officer to carry out an investigation into five complaints that Cllr David Farry, Mayor of Ferryhill Town Council ("the Council"), has failed to comply with the Council's Code of Conduct ("the Code").
2. I am a self-employed barrister, with a specialism in local government law, and was one of the co-authors of the leading textbook on the subject of local government standards, *Cornerstone on Councillors' Conduct* (Bloomsbury Professional, 2015).

The complaints

Complaints of Simone Devine, Angela Devine and Brian Gibson (COM 211, 212, 213)

3. These three separate complaints all relate to Cllr Farry's attendance at the beacon-lighting ceremony hosted by the Council on the evening of 11 November 2018 to commemorate the centenary of the end of the First World War.
4. In summary, all three complainants alleged that Cllr Farry had attended the ceremony while drunk. The Devines also alleged that Cllr Farry had been talking with others during the ceremony. All three described being "*disgusted*" or "*appalled*" by Cllr Farry's alleged behaviour at the ceremony and felt that it showed a lack of respect to those being honoured in the commemorations.
5. Cllr Farry, when given an opportunity to respond by the County Council's Governance Solicitor, accepted he was present at the ceremony, denied that he was there in any official capacity and completely denied the allegations of inappropriate behaviour, which he described as "*vexatious*" and "*politically motivated*". The Governance Solicitor carried out an initial assessment on 3 January 2019 and decided to refer the complaints for external investigation to establish whether Cllr Farry had breached paragraphs 1 and 6 of the Code.

Complaint of Cllr Carole Atkinson (COM 223)

6. Cllr Atkinson is a member of the Council. Her complaint was submitted on 6 January 2019. It relates to a phone call between her and Cllr Farry around lunchtime on Friday 4 January 2019. Cllr Atkinson alleged that Cllr Farry had been “*very verbally aggressive*” towards her and had implied she was stupid. She described Cllr Farry’s alleged behaviour as “*a clear example of male to female bullying which in my opinion seems to be quite acceptable today at our council...*”.
7. Cllr Farry accepted that the phone call had taken place but completely denied the allegations and in turn alleged that he had been on the receiving end of a “*continued verbal assault*” from Cllr Atkinson.
8. The Governance Solicitor decided to refer this complaint also for external investigation to establish whether Cllr Farry had breached paragraphs 1 and 2 of the Code.

Complaint of Derek Snowball (COM 236)

9. Mr Derek Snowball is the Clerk of the Council. His complaint was submitted on 15 February 2019. Mr Snowball alleged that Cllr Farry had harassed, bullied and victimised him; that Cllr Farry had made Council business negative and destructive; and that Cllr Farry was out to destroy him personally. Cllr Farry completely denied the allegations. The Governance Solicitor decided that this complaint should be investigated along with the complaints already referred for investigation.

The Code

10. The Council has adopted its own Code of Conduct (“the Code”), pursuant to section 27(2) of the Localism Act 2011. Insofar as material, the Code provides:

Member obligations

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations.

1. *He/she shall behave in such a way that a reasonable person would regard as respectful.*
2. *He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.*

6. *You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.*
11. The Code does not apply to everything a councillor does; it will only apply when they are acting, claiming to act or giving the impression of acting as a representative of the Council. A more concise way of expressing this concept is that a councillor is subject to the Code whenever he or she is acting in their “official capacity”.
12. Cllr Farry and I spent some time discussing the concept of “official capacity”. He suggested that, in the case of the Mayor, there was a “chains on/chains off” rule, such that the Mayor will only be acting in his official capacity when he is wearing his ceremonial badge of office. That is wrong. There is no special rule for the Mayor; he will be subject to the Code whenever he is acting in his official capacity, no matter how he is dressed.

Investigation

13. I personally interviewed: Angela Devine (complainant); Simone Devine (complainant; by phone); Brian Gibson (complainant); Cllr Atkinson (complainant; member of the Council); Derek Snowball (complainant; Town Clerk); [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] and Cllr Farry. I also received letters from [REDACTED] and [REDACTED]. Both Mr Snowball and Cllr Farry provided a large number of emails and other documents for me to read. I have listened to recordings of the Council’s meetings on 11 May 2018 and 18 July 2018 and of a meeting between Cllr Farry, [REDACTED] and Mr Snowball on 22 March 2019. I have also considered a number of Council policies as well as agendas and minutes for a number of Council and committee meetings between 2017-19. I have carefully considered all of this evidence.

Cllr Farry

14. Cllr Farry is an experienced local government councillor, having served at parish, district and county level over the years. He was elected to the Council in May 2017. He was appointed the Mayor of the Council for the remainder of the civic year 2018/19 at its meeting on 18 July 2018.

15. I am aware that he has been subject to a number of previous complaints to the County Council and I have read the various decision notices issued by the County Council. My approach has been to consider these new complaints before me on their own merits and to test for myself the evidence which has been presented to me. I have given no weight to these previous complaints.

Findings

The beacon-lighting ceremony (COM 211, 212, 213)

16. The beacon lighting ceremony was an official event in the Council's civic calendar. Indeed, Cllr Farry told me that hosting the event had been his idea; he had suggested it be added to the agenda of the Events Management Sub-Committee for its meeting on 5 September 2018. Cllr Farry chaired that Sub-Committee and the meeting at which the proposal was formally approved.
17. On 24 October 2018, the Council issued a press release announcing the beacon lighting ceremony and inviting residents to attend. It is worth quoting that press release more or less in full:

**"THE BATTLE'S OVER – A NATIONS TRIBUTE
FERRYHILL COMMEMORATES 100 YEARS OF REMEMBRANCE**

Ferryhill Town Council is honoured to be joining more than 800 organisations taking part in a WWI Beacons of Light Ceremony on Remembrance Sunday, 11th November 2018.

A short service will be held in the Town Hall gardens by St. Luke's Church at 6.40pm and will be followed by a speech by the Town's Mayor, Councillor David Farry.

To complete the tribute and in synchronising with other organisations taking part in the commemorations the Mayor will then light Ferryhill's beacon at 7pm.

All residents of Ferryhill are invited to attend this fitting tribute which will be followed by light refreshments in the upstairs room of Ferryhill Town Hall.

Mayor of Ferryhill, Councillor David Farry said 'Ferryhill Town Council is honoured to take part in this tribute to commemorate 100 years of Remembrance, and are

pleased to invite residents of the Town to join in the commemorations.”

(emphasis added)

18. That press release is unequivocal: Cllr Farry would attend the ceremony in his official capacity in order to give a speech and light the beacon. It is consistent with what I was told by [REDACTED] who was in charge of organising the event on behalf of the Council. [REDACTED] told me that Cllr Farry had agreed to both light the beacon and give a speech, though he had later changed his mind about the speech. On the evening in question, [REDACTED] was expecting Cllr Farry to attend on time, wearing his chains, in order to perform this official function. This is further corroborated by the order of service distributed on the day which explicitly states that the Mayor would be in attendance (to give a speech). Similarly, [REDACTED] described how [REDACTED] had talked Cllr Farry through the process of lighting the beacon a few days before the ceremony.
19. Cllr Farry denied that this was the plan. He said he did not agree to give a speech. He also denied agreeing to light the beacon and went as far as to say he had never been asked. He said that, on the day, he had made a conscious decision *not* to attend the ceremony and instead to go out for a meal with his partner. He accepted that he did not tell anyone at the Council of this change of plan.
20. Cllr Farry's account flies in the face of public statements issued by the Council and the accounts given by the two Council staff most closely involved in the event's organisation. This ceremony was a significant event in the Council's civic calendar which residents would expect the Mayor to attend on behalf of the Council.
21. Taking all of the evidence into account, I find Cllr Farry's account to be implausible and I cannot accept it. I find that Cllr Farry was supposed to have attended the ceremony in his official capacity as Mayor of Ferryhill in order to light the beacon.
22. Everyone, including Cllr Farry himself, agreed that Cllr Farry did actually attend the ceremony, albeit he arrived after it had already started. Nor was there any dispute that Cllr Farry neither lit the beacon (it was lit by [REDACTED]) nor gave a speech. Angela and Simone Devine, Cllr Atkinson and [REDACTED] all gave descriptions of Cllr Farry stumbling or staggering and all formed the opinion that he was drunk. [REDACTED] said [REDACTED] did not see Cllr Farry stumbling but [REDACTED] said it was clear he had been drinking. [REDACTED] said that [REDACTED] had been asked by [REDACTED], at the last minute, and unexpectedly, to light the beacon because Cllr Farry was “*not fit*” to do it himself.

23. So was Cllr Farry drunk? Cllr Farry, [REDACTED] and [REDACTED] all categorically denied that he was. So did the authors of the letters provided to me by Cllr Farry. However, on the balance of probabilities, I find that Cllr Farry was drunk when he attended the beacon lighting ceremony. My reasons are as follows:

- (a) he accepted (and so did [REDACTED], who was with him throughout) that he had spent the afternoon (between the last official ceremony of the morning and the beacon-lighting ceremony in the evening) at the Ferryhill Workmen's Club and then at the Greyhound pub – and that during that period he had consumed alcohol;
- (b) the behaviour described by five separate witnesses is consistent with him being drunk and, having questioned them personally, I can see no reason to doubt their credibility. In particular, there is no evidence to support Cllr Farry's assertion that the complainants have conspired in some way for political reasons; and
- (c) it provides the most obvious explanation as to why Cllr Farry did not attend the ceremony in accordance with the agreed plan and, in particular, why he did not light the beacon.

24. I find that Cllr Farry attended the ceremony in his official capacity. He knew full well that he was expected to light the beacon on the Council's behalf and had agreed to do so. He arrived late and was prevented from lighting the beacon because he was drunk. He cannot escape responsibility for his official functions simply because, as he told me, his mayoral chains were locked in the glove-box of his car.

25. For completeness, I should add that I make no separate finding that Cllr Farry was talking during the ceremony. The witnesses gave contradictory accounts about this. In any case, it hardly adds to my findings above. I will also add that, without meaning any disrespect to him, I have not placed any weight on Brian Gibson's evidence: not only was he not in attendance (he was at commemoration events in London), his information was third-hand.

26. Having found that Cllr Farry attended the beacon-lighting ceremony drunk while in his official capacity, I recommend that there should be a finding that he has breached:

- (a) **paragraph 1 of the Code** because such behaviour is quite obviously disrespectful, above all, to the servicemen and women who are commemorated on Remembrance Sunday. It is also disrespectful to the residents of Ferryhill who had attended a solemn act of remembrance. Finally it is disrespectful to all of those who worked hard to put on the ceremony;

(b) **paragraph 6 of the Code** because such behaviour clearly brings the office of Mayor into disrepute. This was an official civic event at which the Mayor would be the public face of the Council and would perform a symbolic act of remembrance. I am hardly surprised that the complainants described themselves as being “*appalled*” by what had happened or, as one witness put it to me, that it was embarrassing for the town. For this reason, it seems to me that Cllr Farry brought not just his office but the Council as a whole into disrepute.

Cllr Atkinson's complaint (COM 223)

27. The background to this complaint concerns the long term sickness absence of the Council's Clerk (Derek Snowball) and a decision that was made at a meeting attended by Mr Snowball, the County Council's HR officers and Cllr Atkinson, in late December 2018, that Mr Snowball would begin a phased return to work starting on Monday 7 January 2019.
28. It appears, for one reason or another, that the decision was not promptly reported back to Cllr Farry and the Personnel Sub-Committee, which he chaired. The problem – from Cllr Farry's perspective – is that formal responsibility for making that decision rested with the Personnel Sub-Committee and that Cllr Atkinson (on the Council's behalf) had approved the arrangements for Mr Snowball's return without delegated authority. Cllr Farry called Cllr Atkinson around lunchtime on 4 January 2019 to discuss this and it is this conversation which is the subject of her complaint.
29. I acknowledge that Cllr Farry is probably correct that the Personnel Sub-Committee ought formally to have approved the arrangements for Mr Snowball's return to work. I would add that the Council's Sickness Absence Policy does not deal with what happens when the Clerk is unwell and that the arrangements for managing his absence were not clear – a point with which Cllr Farry agreed. I would also add that I have found no evidence of bad faith on the part of Cllr Atkinson and conclude that she was doing what she honestly believed she was required and permitted to do in the best interests of both the Council and Mr Snowball.
30. However, what I am actually concerned with is whether Cllr Farry behaved disrespectfully, or was bullying or intimidatory, towards Cllr Atkinson on the phone. Cllr Farry not only described this as “*rubbish*” and politically-motivated, he told me that Cllr Atkinson was screaming at him during the phone call and that he could barely get a word in edgeways.

31. On balance, I find that Cllr Farry did behave disrespectfully towards Cllr Atkinson on the phone. My reasons are as follows:

- (a) by the end of her meeting with me, having described the conversation and its background in some detail, Cllr Atkinson was in tears. She appeared to me to be a sincere and honest witness and I accept her account of the phone call. In particular, I consider it highly unlikely that she was screaming at Cllr Farry as he alleged;
- (b) [REDACTED] (County Council HR officer) told me that [REDACTED] colleague had been called by Cllr Atkinson not long after the phone call with Cllr Farry and that Cllr Atkinson had sounded shaken, which [REDACTED] thought was uncharacteristic of Cllr Atkinson;
- (c) Cllr Atkinson was acting in good faith and in what she considered to be the best interests of the Council and Mr Snowball; and
- (d) it is consistent with the follow-up email which Cllr Farry sent to Cllr Atkinson on or around 6 January 2019, which I find to be unnecessarily condescending in tone.

32. Having found that Cllr Farry behaved disrespectfully towards Cllr Atkinson on the phone, I would recommend that there should be a finding that he has breached **paragraph 1 of the Code**. While Cllr Farry *may* have had a good reason for his belief that the proper procedure had not been followed, this cannot justify behaving disrespectfully towards a fellow elected member. This is especially the case where they are dealing with personnel issues and not some contentious issue of policy.

33. Having only been asked to consider this one incident in isolation, I have concluded that the evidence cannot support a finding of bullying or intimidation. Therefore I do *not* find that Cllr Farry breached paragraph 2 of the Code.

Mr Snowball's complaint (COM 236)

34. Mr Snowball has been Clerk to the Council since 2013 and has served under a number of previous Mayors. His formal letter of complaint has six discrete elements to it but really boils down to a complaint of bullying.

35. "Bullying" refers to an attempt to undermine an individual in a way that is detrimental to their confidence and capability and which may harm their health.¹ I have borne in mind that, as

¹ *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), [126-127]

the clerk, Mr Snowball is the most senior officer of the Council and therefore it is important that members are able to scrutinise and, where justified, criticise his conduct.

36. The background to the complaint is long and complex. It would appear that the relationship between Mr Snowball and Cllr Farry began to break down at least as early as June 2017 when Mr Snowball apparently accused Cllr Farry of having made defamatory statements at a Council meeting of the same date. He later retracted these accusations. It is clear from the increasingly bad-tempered email exchanges between them that their relationship steadily deteriorated until July 2018 when Mr Snowball went on sick leave. That correspondence contains numerous disputes over matters of Council procedure, typically where Cllr Farry has proposed something and Mr Snowball has resisted the proposal. It is clear that Cllr Farry has become increasingly frustrated at what he perceives to be obstruction on the part of Mr Snowball. Mr Snowball, in turn, believes his position as Clerk is being undermined by Cllr Farry's unwillingness to accept his advice and decisions on matters of procedure. Mr Snowball told me that Cllr Farry routinely creates conflict between the two of them and that he felt constantly attacked by Cllr Farry to the extent that his confidence had been destroyed.
37. It is difficult from the outside to get a real sense of what was going on, especially when most of the surviving evidence is in the form of emails. I have reviewed the evidence leading up to July 2018, when Mr Snowball first went on leave, but I am satisfied that this clearly shows evidence of bullying by Cllr Farry. There are several incidents of petty disputes between the two in which Cllr Farry could have adopted a more polite or constructive tone but these are equally consistent with a member robustly challenging decisions made by the clerk.
38. However, things changed in July 2018. Mr Snowball was signed off work due to stress and began a period of long term sickness absence on or around 18 July. He attributed the breakdown in his mental health to Cllr Farry's behaviour towards him. Cllr Farry cannot have been unaware of that fact. Firstly, he chaired the Personnel Sub-Committee which was overseeing Mr Snowball's absence. Secondly, for precisely this reason, he had agreed that Cllr Atkinson (and, before her, [REDACTED]) should attend Mr Snowball's meetings with County Council HR officers to represent the Council, rather than Cllr Farry himself. Thirdly, he was kept updated (albeit in general terms, with no specific details due to confidentiality) by the County Council about these meetings and the plan for a phased return to work.
39. In the period from July 2018, the following incidents stand out.
40. Firstly, notwithstanding their earlier relationship of conflict, or the fact that Mr Snowball blamed Cllr Farry for a breakdown in his mental health, Cllr Farry insisted on directly

managing Mr Snowball's absence and return to work: he insisted on making the decision to approve his return (via the Personnel Sub-Committee, which he chaired); and rejected advice by County Council HR officers to continue to involve Cllr Atkinson in managing Mr Snowball's return. This is despite the obvious potential for further conflict inherent in that arrangement.

41. Secondly, having learned that a date had been agreed for Mr Snowball's return to work (see paragraphs 27-28 above), Cllr Farry personally intervened to postpone it – ostensibly so that the decision could be formally taken by the Personnel Sub-Committee. This is clear from an email sent by [REDACTED] to Cllr Farry on 4 January 2019 which records Cllr Farry's objection and insistence that the date be postponed until a Personnel Sub-Committee meeting could be arranged. Cllr Farry would have been aware that this decision could distress an employee preparing to return to work after a long period of sickness absence – especially when it was made by the very person the employee blames for their need to be on sick leave. I find this intervention to be oppressive and note that it stands in stark contrast to Cllr Farry's later decision, made without any resolution of the Personnel Sub-Committee, to place Mr Snowball on gardening leave (as to which, see paragraph 45 below).
42. Thirdly, Cllr Farry has not made a sincere effort to support Mr Snowball on his return to work. Both of the factors described in paragraphs 40 and 41 above have obviously contributed to a hostile environment for Mr Snowball to return to. Cllr Farry accepts that he and Mr Snowball are barely on speaking terms, outside of formal meetings. As the employer, the onus is on Cllr Farry to be supportive. He has not been supportive. A clear example of Cllr Farry's unsupportive attitude towards Mr Snowball can be found in one of the very first emails he sent to Mr Snowball following his return, on 7 February 2019:

"Dear Derek

Can I thank you for your email and also welcome you back to your roll as Town Clerk after your long absence.

I can clearly understand your guidance notes! However could you please provide me with the LGA and the legal position on declaring an apology for none attendance?

In my own mind I think this is nit picking and none productive to the Council and less then what I would expect from the Town Clerk. As you know as Chair I'm here to discuss any problems/issues you have in your roll as Clerk.

*Your sincerely
Dave Farry Chair Ferryhill Town Council"*

43. Fourthly, Cllr Farry has on several occasions accused Mr Snowball of political bias. This is a damaging accusation to make against the Clerk and undermines his position. Even in our interview, he openly described Mr Snowball's decision to call a meeting in July 2018 to consider a motion of no confidence in the Council's previous Chair (which was presented by the Labour group) as demonstrating Mr Snowball's "*bias and stupidity*". I have found no evidence to substantiate this unwarranted accusation.

44. Finally, the most concerning episode has occurred during the course of my investigation. I was provided with a copy of a letter dated 22 March 2019 which was personally handed on the same date to Mr Snowball by Cllr Farry at a catch-up meeting whic [REDACTED] also attended. That letter informed Mr Snowball that:

"Over the last few weeks some of your behaviour and actions at work have lead myself and other Members to question whether you are medically and mentally fit to undertake your duties, especially as you have only very recently returned from long term sickness absence.

As your employer, the Town Council has a duty of care towards all of its employees and I take that responsibility very seriously. Consequently, I intend to refer you to the Council's Occupational Health Adviser (OHA) who will be asked to advise the Council on whether you are currently fit to attend work.

I will do that as soon as possible and until such time as you have attended an appointment with the OHA and I have received their advice, you are not required to attend work.

I would advise you to also seek the advice of your own Doctor and if you do and are subsequently signed off work as unfit for duty, then this absence will be considered as sickness.

If not then you will be effectively on 'garden leave' from Monday 25 March 2019.

Can I stress that I am taking this action primarily in your own interests to ensure that your attendance at work is not having a detrimental effect upon your health. I am also concerned, of course, to ensure that the Council meets its duty of care responsibilities.

During this period you should not undertake any work from home or visit the Council offices, without my prior agreement.

Yours sincerely

*Cllr David Farry
Chairman
Ferryhill Town Council"*

45. Subsequent to issuing my report in draft, I learned that Cllr Farry had taken advice from the Council's HR advisers, NEREO, and that this letter was copied more or less word-for-word from that advice. Nonetheless, I am troubled by the letter for a number of reasons:

- (a) Cllr Farry had no medical evidence to justify this decision and was not qualified to make any clinical judgment about Mr Snowball's health. I accept that an employer is entitled to raise concerns about an employee's fitness for work. However, as the letter itself acknowledges, no referral to Occupational Health had yet been made;
- (b) in fact, as things turned out, both the Occupational Health adviser and Mr Snowball's GP concluded that he was fit to be at work. Therefore Cllr Farry's concerns were not justified;
- (c) I cannot see evidence that Cllr Farry had formally raised with Mr Snowball the issue of his fitness for work before this letter;
- (d) nor can I see any evidence that Cllr Farry took advice from an occupational health adviser before making this decision. The advice from NEREO was based on whatever information Cllr Farry himself had provided to them – which turned out to be unjustified;
- (e) the decision was made personally by Cllr Farry as he had no authorisation from the Personnel Sub-Committee (authorisation was granted retrospectively). This stands in stark contrast to his insistence that the Personnel Sub-Committee authorise Mr Snowball's return to work.

46. The letter was personally handed to Mr Snowball at a meeting with Cllrs Farry and Cansella. Cllr Farry provided me with a copy of an audio recording of that meeting, which I have listened to. It makes for uncomfortable listening. Mr Snowball appears to have been unaccompanied. During that meeting (which lasted for around 2 hours), the two councillors subjected Mr Snowball to a series of hostile questions and accusations, taunted him, cut him short when trying to speak and were plainly unwilling to listen to his concerns about the lack of support he had received on his return to work.

47. As I observed above, this has not been an easy case to resolve. It is difficult to reconstruct the relationship between Cllr Farry and Mr Snowball from the outside. Therefore the audio recording is perhaps the most revealing evidence of that relationship and it is clear evidence of bullying. I have also considered Cllr Farry's demeanour during his two interviews with me during which he showed a lack of respect and genuine concern for Mr Snowball's wellbeing.
48. Taking all of this evidence into account, I am satisfied that Cllr Farry has embarked on a sustained course of conduct, beginning just before Mr Snowball's return to work and then during his first few months back at work, with the intention of undermining Mr Snowball. I am also satisfied, having spoken with Mr Snowball face to face, that this conduct has caused him considerable upset and distress.
49. For all of these reasons, I would recommend a finding that Cllr Farry has breached **paragraph 2 of the Code** by behaving in a way which a reasonable person would regard as bullying.

Conclusion

50. In summary my findings are as follows:

- (a) COM 211, 212 and 213: Cllr Farry has breached paragraphs 1 and 6 of the Code;
- (b) COM 223: Cllr Farry has breached paragraph 1 of the Code;
- (c) COM 236: Cllr Farry has breached paragraph 2 of the Code.

Matt Lewin

Cornerstone Barristers

25 June 2019

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Local Determination Procedure for Standards Committee Hearings

Report of Colette Longbottom, Head of Legal and Democratic Services

Purpose of the Report

- 1 To present an updated Local Determination Procedure (“Procedure”) for Code of Conduct Complaints for adoption by Council.

Background

- 2 At the Standards Committee meeting held on 9 September 2015, Members adopted a revised Local Assessment Procedure for Code of Conduct complaints, in accordance with the authority delegated to them by Council on 25 July 2012.
- 3 As part of the review of the Council’s procedures governing Standards, which also apply to Town and Parish Councils, the Local Determination Procedure has been reviewed. Standards Committee does not have delegated authority to update the Procedure and changes are required to ensure that the Procedure reflects the Standards provisions contained in the Localism Act 2011.
- 4 Local determination is when a Hearing Panel of the Standards Committee convenes to consider a report by the Monitoring Officer where a failure to comply with the Code of Conduct has been found following an investigation.
- 5 The Procedure at Appendix 2 sets out how the Hearing Panel will be established, the pre-hearing process, the hearing procedure and the sanctions which may be applied if a breach of the code is found by the Hearing Panel.
- 6 Constitution Working Group agreed at its meeting on 17 June 2016 to recommend that Council adopt the updated Procedure subject to the inclusion of a requirement that any member who is the complainant or the subject of the complaint will not participate in the decision making process.
- 7 The sanctions available to the Hearing Panel of the Standards Committee can be found at Appendix 4 to the Procedure. This appendix has been amended since Constitution Working Group to remove duplication and to ensure that it is clear which sanctions may be imposed by the Hearing Panel and where it is appropriate for the

Hearing Panel to make a recommendation to Full Council or to the relevant Town or Parish Council to impose a sanction.

Summary of the Main Changes

- 8 The updated Procedure is now in line with current legislation. References to the Standards Board for England and Ethical Standards Officers have been removed as these are no longer in existence. The sanctions which may be applied to members found in breach of the Code of Conduct have been updated to reflect changes in legislation. The role of the Independent Person in the hearing process has been added to the Procedure, to satisfy the requirement in the Localism Act 2011 that their views are sought and taken into account before any decision on an allegation that the Council has decided to investigate is made.

Recommendations and reasons

- 9 Council adopts the updated Procedure.

Contact: Clare Burrows, Governance Solicitor

Tel: 03000 260 548

Appendix 1: Implications

Finance – none specific within this report

Staffing - none specific within this report

Risk - none specific within this report

Equality and Diversity / Public Sector Equality Duty - none specific within this report

Accommodation - none specific within this report

Crime and Disorder - none specific within this report

Human Rights - none specific within this report

Consultation - none specific within this report

Procurement - none specific within this report

Disability Issues - none specific within this report

Legal Implications - the updated Procedure reflects the changes introduced by the Localism Act 2011

Appendix 2: Local Determination Procedure

LOCAL DETERMINATION PROCEDURE

SECTION 1 GUIDE TO MAIN PROVISIONS

Introduction

- 1.1 Under section 28 of the Localism Act 2011 an Authority must have arrangements in place to determine whether or not a Member (including a Co-opted Member) or a member of a Parish Council in its area has failed to follow the relevant Code of Conduct. These arrangements must determine how allegations are investigated and under which decisions on allegations can be made.
- 1.2 The Members' Code of Conduct adopted by the Authority defines the standards of conduct required of all Members of the Authority, including Co-opted Voting Members of the Authority's Standards Committee, when carrying out their duties. The Code represents the standards against which the public, fellow Members, the Monitoring Officer, Investigating Officer and the Authority's Standards Committee will judge a Member's conduct.
- 1.3 This Procedure provides a summary of the process for dealing with allegations of misconduct against Members where an investigation has been completed and the Investigating Officer has found a breach of the Code of Conduct.

Local Determination

- 1.4 Where an investigation finds evidence of a failure to comply with the Code of Conduct and local resolution is not appropriate or possible, the investigation findings will be reported to a Hearing Panel of the Standards Committee for local determination.
- 1.5 The purpose of the hearing is to decide whether or not a Member has failed to follow the Code of Conduct and, if so, to decide whether or not any sanction should be applied and what form any sanction should take.

Scheduling of Hearing

- 1.6 The Hearing Panel shall in the absence of good reason to the contrary hold a hearing in relation to an allegation within the period of three months beginning on the date of completion of the Investigating Officer's report.
- 1.7 The hearing shall not be held until at least fourteen days after the date on which the report was sent to the Member who is the subject of the allegation, unless the Member concerned agrees to the hearing being held earlier.

1.8 Except in complicated cases, the Hearing Panel would aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

Appointment of Hearing Panel

1.9 The Hearing Panel will comprise three Members of the Standards Committee selected by the Monitoring Officer. A quorum of the Hearing Panel will be three Members. Any member who is the complainant or the subject of the complaint will not participate in the decision making process.

Hearing

1.10 The Hearing Panel will act in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member on the balance of the information available to it. The Hearing Panel can commission further investigation or information where it needs to do so in order to come to a decision.

1.11 It is expected that the Hearing Panel will reach a decision by consensus. In the absence of a consensus, each Member of the Hearing Panel will have one vote and all matters/issues will be decided by a simple majority of votes cast.

1.12 Meetings of the Hearing Panel will be open to the public and press unless confidential information or exempt information (within the meaning of Schedule 12A to the Local Government Act 1972) is likely to be disclosed.

Findings

1.13 Following its consideration of the matter, the Hearing Panel can make one of the following findings:

- that the Member has not failed to follow the Code of Conduct; or
- that the Member has failed to follow the Code of Conduct, but no action needs to be taken; or
- that the Member has failed to follow the Code of Conduct and should be sanctioned.

Sanctions

1.14 If the Hearing Panel finds that a Member has failed to follow the Code of Conduct and that he/she should be sanctioned, it may take any one or a combination of the following actions:

- censure the Member (this is the only form of sanction available when dealing with a person who is no longer a Member);
- restriction to the access and use of resources of the Authority for a maximum period of six months, provided that any such restrictions imposed upon the Member: -
 - are reasonable and proportionate to the nature of the breach; and
 - do not unduly restrict the person's ability to perform the functions of a Member.
- a requirement to give a written apology;
- the removal of a member from a committee;
- a requirement to undergo training.

Notice of Findings

- 1.15 The Hearing Panel will announce its decision at the end of the hearing. As soon as practicable after the hearing, the Hearing Panel will give its full written decision to the relevant persons involved.
- 1.16 A summary of the decision and reasons for that decision will be published on the Council's website.

SECTION 2	DESCRIPTION OF TERMS
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Members' Code of Conduct

- 2.1 The Members' Code of Conduct adopted by the Authority defines the standards of conduct required of all Members of the Authority when carrying out their duties.

Complainant(s)

- 2.2 The person(s) making the complaint that a Member has breached the Code of Conduct.

Member

- 2.3 The person against whom the complaint has been made.

Monitoring Officer

- 2.4 The person who oversees investigations into complaints made against Members under the Code of Conduct.

Authority

2.5 The Member's Council at the time of an allegation.

Legal Adviser to the Hearing Panel

2.6 The Monitoring Officer, or in their absence the Deputy Monitoring Officer.

Investigating Officer

2.7 The person appointed by the Monitoring Officer to undertake the investigation of an allegation.

Head of Legal and Democratic Services

2.8 The designated Proper Officer for the determination of "exempt information" as defined in Schedule 12A to the Local Government Act 1972.

Independent Person

2.9 The person who is appointed by the Authority under section 28(7) of the Localism Act 2011 whose views are to be sought, and taken into account, by the Authority before it makes its decision on an allegation that it has decided to investigate.

Administrative Officer

2.10 The Head of Legal and Democratic Services, or their Deputy, and other members of their staff will provide the necessary administrative support to the Hearing Panel.

"Days"

2.11 "Days" include working and weekend days but exclude the day of dispatch and public holidays.

Service Arrangements

2.12 Correspondence and documents for the Member concerned will either be served personally or by recorded delivery.

SECTION 3 PRE-HEARING PROCESS

Notification to Member

3.1 Where a final report of an Investigating Officer which contains a finding of failure to comply with the Code of Conduct has been referred to a Hearing Panel for local determination, the Administrative Officer will write to the Member concerned to:

- (a) propose a date for a meeting of the Hearing Panel,
- (b) outline the hearing procedure,
- (c) outline the Member's rights.

In addition the Administrative Officer will ask the Member concerned to indicate within 14 days whether or not he/she:

- (a) disagrees with any of the findings of fact in the Investigating Officer's Report, including the reasons for any disagreement,
- (b) will attend the hearing in person,
- (c) wants to be represented at the hearing by a solicitor, barrister or any other person,
- (d) wants to give evidence to the Hearing Panel, either orally or in writing,
- (e) wants to call relevant witnesses to give evidence to the Hearing Panel, and if so, the Member must provide a summary of the evidence to be given by those witnesses,
- (f) wants any part of the hearing to be held in private, giving reasons under the relevant Article of the European Convention on Human rights or category of confidential or exempt information (see Appendices Two and Three)
- (g) wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public, giving reasons under the relevant Article of the European Convention of Human Rights or category of confidential or "exempt information".

Members' Response

3.2 In his/her reply a Member must make clear all of his/her disagreements with the findings of fact in the Investigating Officer's report during this pre-hearing stage. This will allow the Chair of the

Hearing Panel, in consultation with the Monitoring Officer, to decide which witnesses will be needed. A Member will normally not be allowed to raise any new disagreements over findings of fact in the Investigating Officer's report at the Hearing Panel itself, unless there are good reasons for doing so, such as new evidence becoming available.

- 3.3 When the response of the Member concerned has been received, or, if no response is received, once the 14 day period for responding has elapsed, the Chair of the Hearing Panel in consultation with the Monitoring Officer will agree the date, time and place for the hearing.

Advance Notification of Hearing

- 3.4 At least 14 days before the hearing, the Administrative Officer will give notification of the date, time and venue set for the hearing to those involved. He will also inform the Member concerned of the membership of the Panel which will consider the matter.

Agenda for Hearing

- 3.5 At least 7 days before the day of the meeting of the Hearing Panel, the Administrative Officer will send the following papers to each Member of the Panel, to the Member concerned, to the Investigating Officer, to the Monitoring Officer and to the Independent Person:
 - (a) the agenda for the meeting of the Hearing Panel;
 - (b) a copy of the Investigating Officer's report (unless already provided); and
 - (c) where relevant, a copy of any written statement in response to the Investigating Officer's report received from the Member and the Investigating Officer's reply to the Member's response.
- 3.6 The provision of any such papers referred to in paragraph 3.14 may be made conditional upon an appropriate undertaking of confidentiality until such time as they are made available to the press and public or the Hearing Panel agrees at the commencement of the hearing that the press and public shall not be excluded from the meeting.
- 3.7 Any additional documents intended to be relied on and/or referred to at the hearing must be provided to the Administrative Officer at least 3 days before the date of the Hearing.

Public Access to Hearing and Documents

- 3.8 There is a presumption that hearings will be held in public and that reports for the Hearing Panel will be available before and during the

hearing. However, there may be reasons, as detailed in **Appendix One**, which would prevent public access to the hearing (or part of the hearing) and documents (or parts of documents) to be considered by the Hearing Panel.

Confidentiality in advance of Hearing

- 3.9 Where the Head of Legal and Democratic Services considers that the Investigating Officer's report and/or Member's written statement in response to the Investigating Officer's report and/or the Investigating Officer's reply to that response is likely to disclose "exempt information", and in consequence that it is likely that the Hearing Panel will not be open to the public during consideration of these papers, he/she shall not provide copies of these papers' to the press or public or permit inspection thereof by the press or public in advance of the meeting.
- 3.10 Where the Head of Legal and Democratic Services considers that the Investigating Officer's report and/or the Member's written statement in response and/or the Investigating Officer's reply to that response is likely to disclose "exempt information" falling within Schedule 12A to the Local Government Act 1972, he will not provide copies of such papers to, nor permit inspection by any Member of the Authority other than the Members of the Hearing Panel and the Member concerned in advance of the meeting.
- 3.11 "Exempt information" is defined in Schedule 12A of the Local Government Act 1972 as set out in **Appendix Two**.

SECTION 4 HEARING PROCEDURE

Legal Advice

- 4.1 The Hearing Panel may at any time seek legal advice from the Legal Adviser during the hearing or while the Hearing Panel considers the outcome. Such advice will on all occasions be given in the presence of the Investigating Officer and the Member.

Member Attendance or Representation

- 4.2 The Member may arrange to be represented or accompanied at the hearing at his/her own expense by a solicitor, counsel or another person.
- 4.3 If the Member does not attend the hearing, the Hearing Panel may consider the Investigating Officer's report and the Independent Person's views in the Member's absence. If the Hearing Panel is satisfied with the Member's reason for not being able to attend the

hearing, then it may arrange for the hearing to be held on another date.

- 4.4 Where the Hearing Panel proceeds in the absence of the Member, the procedure for the meeting shall be adapted as necessary, giving any representative of the Member who may be present such rights as would otherwise be accorded to the Member concerned.

Order of Business

- 4.5 The order of business at the meeting shall be as follows:

- (a) Disclosures of interest. The Chair will invite Members to declare any interest they may have in the matter.
- (b) Introduction of Members of the Hearing Panel, the Investigating Officer, the Monitoring Officer, the Member against whom a complaint has been made, any representative of the Member, any witnesses and, the Independent Person.
- (c) If the Member is not present, consideration as to whether to adjourn or to proceed in his/her absence.
- (d) Consideration as to whether the press and public should be excluded from the meeting. The Hearing Panel will take into account any representations from the Investigating Officer, the Member concerned or his/her representative and the Independent Person with reasons why the Panel should make such an exclusion.
- (e) A note of the issues which the Hearing Panel will have to consider in deciding whether or not to exclude the press and public is set out in **Appendix Three**.
- (f) The Hearing Panel will then make a determination on whether to exclude the press and public. Where the Panel decides not to exclude the press and public, the Administrative Officer will at this point provide copies of such relevant documentation to any members of the press and public who are present.
- (g) The Investigating Officer will present his/her own reports. The Investigating Officer will address only the issue of whether the Member has acted in breach of the Code of Conduct. The Investigating Officer may introduce any witnesses required to substantiate any matter. Members of the Hearing Panel and the Independent Person may question the Investigating Officer and any witness on any matter within their competence. The Hearing Panel may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer by the cross-examination of the witness

either directly by the Member (or their representative) or through the Chair.

- (h) Presentation by Member. The Member (or their representative) will address only the issue of whether he/she has acted in breach of the Code of Conduct. The Member (or their representative) may introduce witnesses required to substantiate any matter contained in his/her written statement (where relevant). Members of the Hearing Panel and the Independent Person may question the Member and any witness on their evidence. The Hearing Panel may give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member (or their representative) by the cross-examination of the witness either directly by the Investigating Officer or through the Chair.
- (i) Where the hearing is dealing with an Investigating Officer's report and the Member seeks to dispute any matter in the report where he/she had not given notice of intention to dispute in his/her written statement, the Investigating Officer will draw this to the attention of the Hearing Panel. The Hearing Panel may then decide:
 - (i) not to admit such dispute but to proceed to a decision on the basis of the information contained in the report;
 - (ii) to admit the dispute, but invite the Investigating Officer to respond thereto, recalling any witness as necessary; or
 - (iii) to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.
- (j) Members of the Hearing Panel have to satisfy themselves that they have sufficient information upon which to take that decision, and they may question the Investigating Officer, the Member concerned and any witnesses in order to obtain sufficient information to enable the Hearing Panel to come to a decision on the issue.
- (k) The Independent Person will be asked to provide their view about whether the Member has acted in breach of the Code of Conduct. The Independent Person may request an adjournment of the hearing if they require time to form their view before presenting it to the Hearing Panel.
- (l) The Hearing Panel will adjourn into another room with the Monitoring Officer, where it will consider in private session whether the Member has acted in breach of the Code of

Conduct. At any stage in its consideration they may return to ask any further questions of the Investigating Officer or the Member, or seek legal advice.

- (m) At the conclusion of its consideration, the Hearing Panel will return and the Chair will advise the Investigating Officer and the Member or his/her representative of its decision as to whether the Member has acted in breach of the Code of Conduct, and the reasons for that decision.
- (n) If the Hearing Panel concludes that the Member has acted in breach of the Code of Conduct, it will then hear representations from the Investigating Officer and then the Member or his/her representative as to whether the Hearing Panel should take any action against the Member and what form any action should take. Members of the Panel may ask questions of the Investigating Officer, the Member and the Independent Person and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.
- (o) The Hearing Panel will then adjourn into another room together with the Monitoring Officer where they will consider in private session whether to take any action in respect of the Member and what form any such action should take.

The sanctions available to the Hearing Panel are set out in **Appendix Four**. The Hearing Panel will then return and the Chair will advise the Member of its decision.

Non-Co-operation

- 4.6 Where the Investigating Officer states that any Member or Officer of the Authority has failed to co-operate wholly or in part with the procedure, the Hearing Panel will consider whether to make a formal complaint to the Standards Committee or to the relevant authority, respectively, about such failure to co-operate.

Costs

- 4.7 Where the Investigating Officer secures the attendance of any person to give evidence to the Hearing Panel, the Authority will reimburse any reasonable costs which the person may incur in so attending.

Additional Evidence

- 4.8 A Hearing Panel may at any stage prior to the conclusion of the hearing adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Hearing Panel; but the Hearing Panel shall not

adjourn the hearing on more than one occasion under these provisions.

SECTION 5 NOTICE OF FINDINGS OF HEARING PANEL AND CONFIDENTIALITY OF INFORMATION

Report to Standards Committee

5.1 As soon as reasonably practicable after the Hearing Panel has made its determination in respect of an allegation, the Monitoring Officer will give written notice of that determination and the reasons for such determination to:

- (a) the Member who is the subject of that determination;
- (b) the Investigating Officer;
- (c) the Standards Committee;
- (d) the Independent Person;
- (e) the Standards Committee of any other local authority of which the Member is, or was at the time of the alleged misconduct, a Member; and
- (f) any person who made the allegation that gave rise to the investigation; and

subject to paragraph 5.2 below, arrange for a summary of the finding to be published on the Council's website.

5.2 Where the Hearing Panel determines that there has not been a breach of the Code of Conduct:

- (a) the notice under paragraph 6.1 will state that the Hearing Panel found that the Member concerned had not failed to comply with the Code of Conduct of the and will give its reasons for reaching that finding; and
- (b) if the Member concerned so requests, the Monitoring Officer will not publish a summary of the finding in any local newspaper.

5.3 Where the Hearing Panel determines that there has been a failure to comply with 6.1 the notice will:

- (a) state that the Hearing Panel found that the Member concerned had failed to comply with Code of Conduct of this or another Council but that no action needs to be taken in respect of that failure;

- (b) specify the details of the failure;
 - (c) give reasons for the decision reached by Hearing Panel; and
- 5.4 Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice under paragraph 6.1 will:
- (a) state that the Hearing Panel found that the Member concerned had failed to comply with the Code of Conduct of this or the Code of Conduct of another Council;
 - (b) specify the details of the failure;
 - (c) give reasons for the decision reached by the Hearing Panel;
 - (d) specify the sanction imposed,

Confidentiality

- 5.5 No Member or Officer of the Authority shall disclose any information which he/she has obtained in the course of an investigation or in pursuance of this Procedure except in the circumstances set out below:
- (a) the disclosure is made for the purposes of enabling the Monitoring Officer or Investigating Officer to carry out his/her functions or the Hearing Panel to carry out its functions in relation to the matter;
 - (b) the disclosure is made in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct;
 - (c) the disclosure is made enabling a Standards Committee or sub-committee of a Standards Committee to perform any of its functions in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct;
 - (d) the person to whom the information relates had consented to the disclosure;
 - (e) the disclosure is made in pursuance of a statutory requirement for disclosure;
 - (f) the information has previously been disclosed to the public with lawful authority;

- (g) the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings.

APPENDIX ONE

PUBLIC ACCESS TO HEARINGS AND DOCUMENTS

Hearings will be held in public where possible to make sure that the hearing process is open and fair.

Confidential information and 'exempt information'

- 1 There are two circumstances in which hearings (or parts of hearings) can or should be held in private.
 - (a) A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
 - (b) The law also gives the Hearing Panel the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of 'exempt information' are those set out in Schedule 12A to the *Local Government Act 1972* (see Appendix 2). However, regulations also provide for three additional categories of 'exempt information' in relation to the Hearing Panel.
 - (i) Information which is subject to any obligation of confidentiality.
 - (ii) Information which relates in any way to matters concerning national security.
- 2 The rules about confidential information are different from the rules about 'exempt information'. Hearing Panels must hold some parts of a meeting in private where confidential information is likely to be revealed. However, they have the discretion to decide whether or not to exclude the public if 'exempt information' may be revealed.

Deciding to withhold 'exempt information'

- 3 The Hearing Panel will carefully consider any decision to withhold exempt information from the public. The Hearing Panel will follow Article 6 of the European Convention on Human Rights, as there is an obligation to do so under Section 6(1) of the Human Rights Act 1998. The Hearing Panel has a duty to act fairly and in line with the rules of natural justice.
- 4 Article 6 favours public hearings, except in specific circumstances, for example, in the interests of national security or to protect the private lives of everyone involved.
- 5 If the Hearing Panel decides to exclude the public to prevent 'exempt information' being revealed, it will only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal 'exempt

information', the public will only have to be excluded while that witness is giving evidence.

- 6 If evidence is heard in private, the Chair of the Hearing Panel will warn those present not to mention that evidence during the public parts of the hearing, or outside the hearing. The Hearing Panel may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.

Access to documents

- 7 As a general principle, the agenda and reports to be discussed at a Hearing Panel will be available to the public before and during a hearing. The Investigating Officer's report will be one of the reports before the Hearing Panel.
- 8 However, the Head of Legal and Democratic Services has the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private.
- 9 After a hearing, sections of the Hearing Panel's reports, which relate to parts of the hearing held in private, will not have to be made available for public inspection. The same principle applies to the minutes of any hearing.
- 10 When considering whether or not to exclude the public from a hearing, the Hearing Panel will also need to say which parts of the reports before the hearing are not to be made available for public inspection.
- 11 Copies of the agenda, reports and minutes of a hearing, as well as any background papers, will be available for public inspection for a specific period of up to six years after that hearing has taken place.

APPENDIX TWO

“EXEMPT INFORMATION”

Categories of exempt information under Schedule 12A of the Local Government Act 1972.

- 1 Information relating to any individual.
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes -
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Source: Appendix 2 is an extract from the Local Government Act 1972.

APPENDIX THREE

EXCLUSION OF PRESS AND PUBLIC

ISSUES FOR CONSIDERATION

- 1 At the meeting, the Hearing Panel will consider as a preliminary point whether to exclude the press and public from the meeting, or any part of the meeting.
- 2 The Hearing Panel must act in accordance with Article 6 of the European Convention on Human Rights, which gives a right to a fair and public hearing by an independent and impartial tribunal. Article 6 provides that judgement shall be pronounced publicly, but that the press and public may be excluded from all or part of the "trial" in the interests of:
 - (a) Morals
 - (b) public order
 - (c) national security in a democratic society
 - (d) where the interests of juveniles or the protection of the private life of the parties so require or
 - (e) in special circumstances where publicity would prejudice the interests of justice.

Accordingly, the presumption is in favour of a public hearing unless either the Member or Investigating Officer can demonstrate over-riding reasons within one of the five headings above for the press and public to be excluded.

- 3 Article 8 of the European Convention on Human Rights provides that everyone has the right to respect for their private and family life, home and correspondence. It provides that there shall be no interference by a public authority (such as the Hearing Panel) with the exercise of this right except such as is:
 - (a) in accordance with the law (such as the requirements for publication of the agenda, reports and background papers set out in Section 100A to 100K of the Local Government Act 1972), and
 - (b) necessary in a democratic society in the interests of:
 - (i) national security
 - (ii) public safety
 - (iii) the economic well-being of the country
 - (iv) the prevention of crime or disorder

- (v) the protection of health and morals (which would include the protection of standards of conduct in public life) or
- (vi) the protection of the rights and freedoms of others.

There is a clear public interest in promoting the probity of public authorities and public confidence, so that the presumption of a public hearing set out in Article 6 would appear to come within the exception set out in paragraph (b)(v) above, unless either the Investigating Officer or the Member demonstrates to the Hearing Panel's satisfaction that a public hearing is not necessary for that purpose and that the interest of protecting the privacy of the Member or of the should over-ride that public interest.

- 4 Where the Hearing Panel concludes that the interest of protecting the privacy of the Member or of the Authority should over-ride the public interest in a public hearing, the Hearing Panel remains bound by the provisions of the Local Government Act 1972, as primary legislation, so that it may only exclude press and public from all or part of the meeting if it is satisfied that admitting the press and public would be likely to lead to disclosure of exempt information. In that case, the Hearing Panel has a discretion under Section 100A(4) of the Local Government Act 1972, and would need to resolve whether or not to exclude the press and public.
- 5 Where the Hearing Panel does not resolve to exclude the press and public from the meeting, the Head of Legal and Democratic Services will then be required to provide copies of the agenda and reports to the press and public and other members of the Authority, and to permit inspection of any background papers.

APPENDIX FOUR

SANCTIONS AVAILABLE TO THE HEARING PANEL

A Sanctions available in respect of a Member who has ceased to be a Member at the date of the Hearing Panel

1 Censure of the Member

B Sanctions available in respect of a Member who remains a Member at the date of the Hearing Panel

Any one, or a combination, of the following:

- 1 Censure of the Member;
- 2 Recommending to Full Council, or to the Town or Parish Council that the Member be removed from any or all Committees or Sub-Committees;
- 3 Recommending to Full Council, or to the Town or Parish Council, that the Member be removed from all outside appointments to which s/he has been appointed or nominated by the authority
- 4 Recommending to Full Council, or to the Town or Parish Council, that the Member's access and use of resources of the Authority be restricted for a maximum period of six months, provided that any such restrictions imposed upon the Member –
 - (a) are reasonable and proportionate to the nature of the breach; and
 - (b) do not unduly restrict the Member's ability to perform his functions and duties as a Member;
- 5 A requirement that the Member submit a written apology.
- 6 A requirement that that Member undertake training as specified by the Hearing Panel.
- 7 A requirement that that Member undertake conciliation as specified by the Hearing Panel.

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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