

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.

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

LOCAL DETERMINATION PROCEDURE

SECTION 1	GUIDE TO MAIN PROVISIONS
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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
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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.

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.

“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.

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.

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.