



**Brighton & Hove  
City Council**

# Standards Committee Hearing Panel

Title:	<b>Standards Committee Hearing Panel</b>
Date:	<b>13 December 2011</b>
Time:	<b>10.00am</b>
Venue	<b>Council Chamber, Hove Town Hall</b>
Members:	<b>Councillors: J. Kitcat, A. Norman</b>  <b>Independent Member: Dr M B M Wilkinson</b> (Chairman)
Contact:	<b>Mark Wall</b> Head of Democratic Services 01273 291006 mark.wall@brighton-hove.gov.uk

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## AGENDA

### 1. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes – Where Councillors are unable to attend a meeting, a substitute Member from the Standards Committee, and from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interests and whether the Member regards the interests as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of the Press and Public – To consider whether, in view of the nature of business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any items appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

### 2. CONSIDERATION OF A COMPLAINT MADE AGAINST A MEMBER 1 - 52 CASE REFERENCE: BJC-005376

Covering report of the Monitoring Officer to Hearing Panel in connection with a Code of Conduct complaint against former Councillor Averil Older (copy attached).

Contact Officer: Liz Woodley  
Ward Affected: All Wards

Tel: 29-1509

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For further details and general enquiries about this meeting contact Mark Wall, (01273 291006, email [mark.wall@brighton-hove.gov.uk](mailto:mark.wall@brighton-hove.gov.uk)) or email [democratic.services@brighton-hove.gov.uk](mailto:democratic.services@brighton-hove.gov.uk)

Date of Publication - Monday, 5 December 2011

**STANDARDS COMMITTEE HEARING PANEL**

# STANDARDS HEARING PANEL

## Agenda Item 2

Brighton & Hove City Council

<b>Subject:</b>	<b>Hearing of an allegation of failure by former Councillor Older to comply with the Code of Conduct</b>		
<b>Date of Meeting:</b>	<b>13 December 2011</b>		
<b>Report of:</b>	<b>Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Liz Woodley</b>	<b>Tel: 291509</b>
	<b>Email:</b>	<b>Liz.woodley@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

### FOR GENERAL RELEASE.

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report deals with a complaint that former Councillor Averil Older has failed to comply with the Members' Code of Conduct.

#### 2. RECOMMENDATIONS:

- 2.1 That the Panel determine the complaint that former Councillor Averil Older has failed to comply with the council's Code of Conduct.

#### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 On 11 March 2011 Ms Holly Smith made a complaint about the conduct of former Councillor Older at the Council Budget Meeting on 3 March 2011.

- 3.2 The Standards Assessment Panel referred the complaint for investigation by the Monitoring Officer having considered that the conduct, if proven, would amount to a breach of the following provisions of the Code of Conduct:-

Paragraph 3(1) You must treat others with respect

Paragraph 5 You must not conduct yourself in a manner which could reasonably be regarded as bring your office or authority into disrepute.

- 3.3 The Investigating Officer undertook an investigation and his report is attached as Appendix 1. He concluded that there had been a breach of paragraph 3(1), but no breach of Paragraph 5.

3.4 The Standards Hearing Panel considered the report at a meeting on 4 October 2011. Without making any finding that there had been a failure to comply with the Code, it determined that the matter should be considered at a meeting of the Hearing Panel. That meeting should be conducted in accordance with the council's adopted procedure for Local Determination Hearings. A copy of that procedure is attached as Appendix 2.

3.5 In accordance with the agreed procedures, a pre-hearing summary has been produced and provided in advance to the complainant, the subject member, members of the panel and the Investigating Officer. A copy of the summary is attached as Appendix 3. The summary is meant to highlight areas of agreement and disagreement between the subject member and the Investigating Officer. In fact, there is no dispute as to the facts.

#### **4. COMMUNITY ENGAGEMENT AND CONSULTATION**

4.1 There has been no consultation on this report. None is envisaged by the council's Local Determination Hearings procedures.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

5.1 There are none.

##### Legal Implications:

5.2 The Local Government Act 2000 and the Standards Committee (England) Regulations 2008 set out a framework for dealing with complaints that members may have breached the Code of Conduct. By virtue of section 57A (6) of the 2000 Act, the Standards Board is entitled to issue guidance with respect to the conduct of investigations and hearings. The council's procedures have been drawn up having regard to that guidance, and this complaint has been processed in accordance with those procedures.

*Lawyer Consulted: Name Liz Woodley*

*Date: 21/11/11*

##### Equalities Implications:

5.3 There are no direct equalities implications arising from this report.

##### Sustainability Implications:

5.4 There are no sustainability implications arising from this report.

##### Crime & Disorder Implications:

5.5 There are no crime and disorder implications arising from this report.

Risk and Opportunity Management Implications:

- 5.6 There are no risk or opportunity management implications arising from this report.

Public Health Implications:

- 5.7 There are no public health implications arising from this report.

Corporate / Citywide Implications:

- 5.8 There are no corporate/citywide implications arising from this report.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Investigating Officer's report
2. Procedure for Local Determination Hearings of Allegations of Member Misconduct
3. Pre-hearing summary

### **Documents in Members' Rooms**

1. None

### **Background Documents**

1. None



**PRIVATE AND CONFIDENTIAL**

**Case Reference: BHC-005376**

**Subject Member: Former Councillor Averil Older**

**Complainant: Ms Holly Smith**

This report represents the findings of an investigation carried out under regulation 14 of The Standards Committee (England) Regulations 2008 by Brian Foley, Standards and Complaints Manager, on behalf of the Monitoring Officer for Brighton and Hove City Council into an allegation concerning former Councillor Averil Older, and will be presented to a Hearing Panel of the Standards Committee.

**DATE: 01 September 2011**

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## 1.0 Executive Summary

- 1.1 The complaint is about the conduct of former Councillor Averil Older at the Council Budget Meeting on 03 March 2011. Ms Older was a serving councillor at the time but has since stood down.
- 1.2 Ms Smith made a number of complaints on 11 March 2011 about the conduct of various councillors at that meeting.
- 1.3 It is generally accepted the meeting was highly charged.
- 1.4 Ms Smith alleged that Ms Older took photographs of members of the public seated in the gallery. She complained that Ms Older was asked to stop doing so by people around her but Ms Older laughed and continued to take photographs.
- 1.5 There is no evidence from other persons to support Ms Smith's allegation.
- 1.6 However, Ms Older does accept that she was asked to stop taking photographs. She says that she only took one photograph and has supplied that to the Investigating Officer.
- 1.7 That photograph is slightly incongruous in that it would appear members of the public were unaware it was being taken. It is possible, that other photographs were taken or that at the very least Ms Older was giving the impression that she was taking photographs of the public. Ms Older had not sought the consent of people in the gallery before photographing them, nor had any been given.
- 1.8 The Investigating Officer has concluded that
  - a. there has been a breach of the Members Code of Conduct in respect of Paragraph 3(1): "*You must treat others with respect.*"
  - and,
  - b. there has been no breach of Paragraph 5: "*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*"
- 1.9 This complaint will now be referred to a Consideration Panel of the Standards Committee prior to being referred to a Full Hearing (Determination Panel) of the Standards Committee to decide the outcome.

## **2.0 Relevant legislation**

- 2.1 The council has adopted a Code of Conduct for members, in accordance with section 51 of the Local Government Act 2000.
- 2.2 This investigation is carried out under regulation 14 of The Standards Committee (England) Regulations 2008.
- 2.3 Disclosure of information of parts of the report and of the documents in the schedule of evidence may be an offence under section 63 of the Local Government Act 2000.

## **3.0 Background to the complaint and Decision of Standards Assessment Panel**

- 3.1 A complaint was received from Ms Smith by email on 11 March 2011.
- 3.2 Ms Smith's complaint refers to the Council Budget Meeting held on Thursday 03 March 2011.
- 3.3 Ms Smith made five complaints about the conduct of various members at that meeting.
- 3.4 Ms Smith stated that former Councillor Older stood directly in front of the public and was taking photographs of members of the public sitting there.
- 3.5 Ms Smith said that one person asked her to stop taking photographs.
- 3.6 Ms Smith was seated directly behind that person and was concerned that she too would be in the photographs being taken by Averil Older.
- 3.7 In her complaint Ms Smith stated that the actions of Averil Older might be subject to Harassment laws.
- 3.8 Ms Smith thought the actions of Councillor Older were deliberately provocative and that she seemed to be trying to antagonise people.
- 3.9 At their meeting on 31 March 2011 the Standards Committee Assessment Panel decided that if proven the allegation could amount to a breach of the Code of Conduct on the following grounds.

Paragraph 3(1)

*You must treat others with respect.*

Paragraph 5

*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*

- 3.10 In accordance with the council's local assessment procedures, before the complaints could be assessed the assessment panel had to decide if the complaints met each of the initial tests. The assessment panel were satisfied that the complaints were against a named member of the council and that the member was in office at the time of the alleged misconduct and the code of conduct was in force at the time of the alleged misconduct.
- 3.11 The Assessment Panel decided unanimously that the complaint against then Councillor Older should be referred for investigation.
- 3.12 In light of their decision, the Panel instructed the Monitoring Officer to carry out an investigation; in turn, the Monitoring Officer instructed the Standards and Complaints Manager to proceed on his behalf.

#### **4.0 Evidence gathered**

##### **Evidence in support of the complaint as supplied by Ms Smith**

- 4.1 Ms Smith's written evidence is as set out in her original complaint and is summarised in paragraphs 4.4 to 4.8 above (see also Appendix 1).
- 4.2 Ms Smith was invited to offer further written evidence. None was supplied.
- 4.3 Ms Smith met with the investigator on 23 June 2011. (Appendix 2)
- 4.4 Ms Smith stated former Councillor Older was striding around in front of the gallery. She was holding her phone out at nearly arms length and the camera lens was pointed at members of the public. Ms Smith could not be certain if Ms Older was filming or taking individual photographs.
- 4.5 Ms Smith drew a diagram to show that she and a group of five friends were seated directly to the left of the Chair in the front two rows of the gallery. Ms Smith was sat adjacent to the wall.
- 4.6 Ms Smith said that her friends were politely asking Ms Older to stop what she was doing but she did not. Ms Smith said she kept standing there and was laughing.
- 4.7 Ms Smith said the sequence of events was as described in her letter of complaint. One of the group made it clear he objected to Ms Older's behaviour and asked her to stop; Ms Smith said he told her he was a law student and that he could bring a charge against her.

- 4.8 Ms Smith said Ms Older laughed in his face.
- 4.9 The Investigating Officer asked Ms Smith if she could clarify exactly when this incident occurred. Ms Smith said she thought it was at the beginning but she could not remember precisely because of the time that has passed. Ms Smith was however pretty clear that it had been during one of the start ups. Ms Smith commented that there had been many interruptions and the meeting kept stopping and starting.
- 4.10 The Investigating Officer viewed the webcast and was able to confirm there had been many interruptions with the Chair finding it necessary on occasions to warn some members of the public that they might be removed. There were several pauses when security were called. However, the webcast cameras were not at any time directed towards the audience. It was therefore not possible to verify unequivocally if Ms Older had been acting in the way described and if so at what time during the meeting.
- 4.11 Ms Smith added that she thought there may have been an additional occasion when Ms Older took photographs when there were fewer people in the gallery.
- 4.12 The Investigating Officer asked Ms Smith for examples of how she thought Ms Older had antagonised people in the gallery.
- 4.13 Ms Smith was quite clear that people were upset when Ms Older ignored their request to stop taking photographs and by her laughing at those people who made this request.
- 4.14 The Investigating Officer asked Ms Smith how she could be certain the person she was referring to was former Councillor Older.
- 4.15 Ms Smith explained that at first she and her friends did not know who the councillor was. However, they viewed the website and recognised Ms Older from her photograph.
- 4.16 Regarding the question of other witnesses. It was agreed that Ms Smith would approach those people initially to see if they would be willing to provide evidence in support of her complaint. It was agreed that it would be helpful to have a short statement from some of those people but not essential.
- 4.17 None of the other witnesses referred to by Ms Smith have shown a willingness to be involved in the complaint.

### **Averil Older's response to the complaint**

- 4.18 Averil Older provided an email response to the complaint on 26 May 2011 (Appendix 3). Ms Older was invited to meet with the Investigating Officer to discuss the allegation but declined the opportunity.
- 4.19 Ms Older denied that she had stood directly in front of the members of the public and was taking photographs from the start of the meeting.
- 4.20 Ms Older does however admit taking one photograph and has supplied a copy of that photograph. (Appendix 4).
- 4.21 Ms Older said this photograph was taken towards the end of a long extremely disruptive meeting, when for about the seventh time there was an adjournment and the police were speaking to the members of the public in the gallery.
- 4.22 Ms Older accepts that someone did ask her to stop taking photographs and she states that she did so.
- 4.23 Ms Older said that she thought there were about a dozen people there at that time but she did not hear anyone say they were a law student.
- 4.24 Furthermore Ms Older says she did not 'laugh in his face', it is assumed Ms Older is referring to the person who asked her to stop taking photographs.
- 4.25 Ms Older said she did not find the situation at all funny but extremely serious. She said the business of the Council Budget setting was unable to proceed because of constant interruption from the public. Ms Older said the disturbances began within a few second's of the vicar's prayers before the meeting had even begun.
- 4.26 Ms Older said she had not done anything with the photograph she had taken.
- 4.27 Ms Older promptly supplied that photograph to the Investigating Officer. Ms Smith is visible in the photograph.
- 4.28 The photograph appears to have been taken from the chamber rather than from directly in front of the gallery. There is no indication that Police Officers are present. The photograph appears to have been taken from the benches where members sit. One elected member is not in their seat and is partially caught in the photograph. The people in the picture are facing in many different directions. No one is obviously looking into the lens.
- 4.29 It would seem quite possible that most people would not have been aware the photograph supplied to the Investigating Officer had actually been taken.

## **Comments Obtained from Legal Services**

- 4.30 The Investigating Officer took advice from a Senior Lawyer of the Council with regard to the issues of complaint. (Appendix 5)
- 4.31 It was noted that for matters of the type described the following pieces of legislation can be considered:
- Public Order Act 1986
  - Protection from Harassment Act 1997
- 4.32 The view of the Council's lawyer was that it is acceptable to use cameras in public spaces however it is generally accepted that a person should not take photographs of individuals without their permission.
- 4.33 Pointing a camera in the face of a person may be deemed to be a nuisance. In some circumstances this may result in damages, an injunction or a restrictive order to stop the nuisance.
- 4.34 However, in the instance described this would probably not be actionable. This is because we are looking at a 'one off' incident and a single photograph.
- 4.35 In a confrontational situation or a fraught meeting the use of a camera is likely to be seen as a form of harassment or nuisance. It is almost certainly provocative.
- 4.36 The Council's lawyer drew upon an example of similar behaviour at a tenant association meeting. It is likely that the action of taking a photograph in the manner attributed to Ms Older would result in a warning that the conduct is unacceptable, inappropriate and inflammatory and that action would be taken if it occurred again.
- 4.37 Ms Smith said that she thought a case of harassment could be brought. The Council's lawyer advised that the conduct may be perceived as an act of harassment if it is calculated to cause distress or if it is deemed to be oppressive by impact; this is a subjective measure based on what the recipient feels.
- 4.38 In summary the legal view was that in relation to Anti-Social Behaviour and nuisance it is the case that Judges repeatedly hand down warnings about the inflammatory nature of using cameras and other recording equipment as part of a dispute on the basis that the intention behind recording is to provoke a reaction.
- 4.39 However, it is unlikely that a criminal charge would come about as a consequence of the described action. As a single act it would not sit comfortably as an action within the civil court regime. If the conduct had



formed part of a repeated action that might have led to an arguable legal case.

## **5.0 The Material Facts**

- 5.1 The Council's Budget Meeting was held on 03 March 2011.
- 5.2 At that time Ms Averil Older was a serving councillor. She did not stand for re-election in May 2011.
- 5.3 Many members of the public attended the Council's Budget Meeting. The gallery was full and the ante-room was used to provide a live webcast.
- 5.4 From the outset there were many disturbances emanating from the public gallery.
- 5.5 Such was the level of disturbance that it had not been possible to complete 'prayers' with the public present.
- 5.6 The Chair stopped the meeting in the region of seven times to speak to some members of the public about their behaviour. The Chair considered it necessary to call security on occasions.
- 5.7 Ms Smith observed Ms Older taking photographs of members of the public.
- 5.8 Ms Older accepts that at least one person asked her to stop doing so.
- 5.9 There is uncertainty regarding precisely how many times Ms Older was asked to stop taking photographs.
- 5.10 There is uncertainty regarding the exact point in the meeting when Ms Older was using the camera function on her mobile phone.
- 5.11 Ms Older admitted that she did take a picture and has supplied a copy of that photograph.
- 5.12 The picture is of members of the public in the gallery. Some people are seated, others are standing, and some are moving around. It would appear therefore that this photograph was either taken at the beginning of the meeting or during a break.
- 5.13 Ms Smith felt antagonised by Averil Older's actions; she thought the action of taking photographs, or appearing to take photographs was provocative.

- 5.14 Had the actions described occurred at a tenant meeting it is probable that the person taking the photographs would have been warned about their conduct.
- 5.15 It is however unlikely that the actions described, as a one off event, would reach the threshold where legal action could be taken.

## **6.0 Reasoning as to whether there have been failures to comply with the Code of Conduct**

- 6.1 The sections of the Code of Conduct which relate to this complaint are:

Paragraph 3(1)

*You must treat others with respect.*

Paragraph 5

*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*

- 6.2 There are no examples in Standards for England case reporting to draw upon which directly compare with this complaint.
- 6.3 The basic principle with regard to paragraph 3(1) is whether there has been a dispute about a matter of principle or whether there is conflict at a personal level which amounts to disrespect. In general a negatively expressed statement about a line of argument will not be considered disrespectful even if it is forcefully and quite rudely expressed. However, a statement made about a person delivered with the same force might be deemed to be disrespectful if it passes a certain threshold. It should be noted that the threshold is higher for conflicts between elected members compared to those between an elected member and a member of the public.
- 6.4 In deciding whether there has been a breach of Paragraph 3 the Investigating Officer has taken into account the effect former Councillor Older's actions had on Ms Smith. It is not possible to know what effect her actions had on other members of the public as no statement has been made. However, from Ms Smith's account members of the public did object to Ms Older taking photographs.
- 6.5 Ms Smith gained the impression from Ms Older that she was either filming or taking a series of photographs of members of the public sat in the gallery. Ms Older admits she had taken at least one photograph and agrees she was asked to stop. From Ms Smith's account of events it is likely there were several requests of this kind.

- 6.6 The Council's lawyer advised that conduct might be perceived as an act of harassment if it is calculated to cause distress or if it is deemed to be oppressive by impact. He has described this is a subjective measure based on what the recipient feels.
- 6.7 Ms Smith described Ms Older's actions as deliberately antagonistic, she thought her actions were incredibly disrespectful.
- 6.8 There is no question that the atmosphere at the Council Budget Meeting on that day was already highly charged and it is possible that action of the type described could have made the situation worse.
- 6.9 The Investigating Officer is of the view that Ms Older's action in taking pictures, or appearing to take pictures of members of the public without their permission and after being asked to stop doing so was antagonistic and was disrespectful to those people who were affected.
- 6.10 The view of the Investigating Officer is that there has been a breach of Paragraph 3(1) of the Code of Conduct.
- 6.11 With regard to Paragraph 5.
- 6.12 In general terms, disrepute can be defined as a lack of good reputation or respectability.
- 6.13 Standards for England guidance suggests that in the context of the Code of Conduct, a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded as either:
- Reducing the public's confidence in that member being able to fulfill their role; or
  - Adversely affecting the reputation of members generally, in being able to fulfill their role.
- 6.14 The allegation that Ms Older was taking photographs of members of the public against their wishes was an incident isolated to one particular highly charged meeting. There is no evidence to suggest there has been a pattern of recurring incidents of this type.
- 6.15 There is nothing to suggest in the evidence or findings of fact to suggest that this one off incident would have adversely affected public confidence in Ms Older carrying out her role of local councillor.
- 6.16 There is no evidence to suggest that Ms Older's actions as described affected the reputation of members in general.
- 6.17 The Investigating Officer is therefore of the view that there has been no breach of Paragraph 5 of the Code of Conduct.

## 7.0 **Finding**

7.1 The finding of this investigation as set out above is that:

- a. In respect of Paragraph 3(1) there has been a breach of the Code of Conduct, and
- b. In respect of Paragraph 5 there has been no breach of the Code of Conduct.

**Appendix 1 – Complaint as received by Standards and Complaints, redacted to remove references to other matters.**

**complaints:**

**name:** Holly Smith

**address:**

**tel:**

**email:**

**wantsto:** complaint

**complaintcomment:** I am writing to complain about the behaviour of some individual Councillors at the Full Council budget meeting on Thursday 3rd March in Brighton Town Hall. I was present in the public gallery for the entire duration of this meeting (some 6 hours) and some of the events and actions I saw absolutely appalled me. Rather than bore with you the order of events in time order, I will concentrate on each individual Councillor and the behaviours that I found inappropriate at best, unprofessional, undemocratic and hugely offensive at worst. It was a very long and tiring day, and we were not permitted to leave the building at any time to get food or drink (well, we were, but they said that if we did we would not be allowed to come back in again – why??) so I was very tired, hungry, and thirsty, so please forgive me if my memory is not 100% and I cannot remember exact quotations etc., yet I understand that this is broadcast on YouTube? So all events/comments I will be reporting will be available to check. I would first like to declare that this is not a party political issue

Averil Older – when we first all came into the chamber right at the start of the meeting then Averil Older came up and stood directly in front of us and was taking photographs of the people sat in the gallery. A man sat in front of me objected to this and asked that she stop. She didn't. When he informed her that he was a law student and that he could bring a legal charge of harassment or breach of the peace then she laughed in his face. I find this incredibly disrespectful. I was sat in the row behind this student, therefore will presumably be in the photographs. I would like to know what she intended by taking these, and what she intends on doing with them. I recognise and respect the legislation surrounding photography freedom laws, however if the subject objects strongly and requests that the photographer stops or deletes the photos, then I understand there can be a harassment case here. Averil Older seemed to be deliberately trying to antagonise people and I am at a loss to understand her motive.

## **Appendix 2 - Ms H Smith Interview, 23 June 2011**

**Present: Brian Foley, Investigating Officer  
Ms Smith, Complainant**

- 1.0 Brian Foley opened the interview by describing the process for dealing with complaints about member conduct and what the potential sanctions can be if a member is found to have breached the code of conduct. It was pointed out that Averil Older is no longer a councillor, she did not stand for re-election in May 2011.
- 2.0 Ms Smith was invited to describe the circumstances of the complaint against ex-councillor Older.
- 2.1 Ms Smith drew a diagram to show that she and a group of five friends were seated directly to the left of the Chair in the front two rows of the gallery adjacent to the wall.
- 2.2 Ms Smith described how ex-councillor Older was striding around in front of the gallery. She was holding her phone out at nearly arms length. Ms Smith could not be certain if Ms Older was filming or taking individual photographs.
- 2.3 Ms Smith said that her friends were politely asking Ms Older to stop what she was doing but she did not. She kept standing there and was laughing.
- 2.4 Ms Smith said the sequence of events was as described in her letter of complaint. One of the group made it clear he objected to her behaviour and asked her to stop; Ms Smith said he told her he was a law student and that he could bring a charge against her.
- 2.5 Ms Smith said Ms Older laughed in his face.
- 3.0 The Investigating Officer asked Ms Smith if she could clarify exactly when this incident occurred. Ms Smith said she thought it was at the beginning but she could not remember precisely because of the time that has passed. Ms Smith was however pretty clear that it had been during one of the starts. Ms Smith commented that there had been many interruptions and the meeting kept stopping and starting.
- 3.1 Ms Smith said she thought there may have been an additional occasion when Ms Older took photographs when there were fewer people in the gallery.
- 4.0 The Investigating Officer asked Ms Smith for examples of how Ms Older had been antagonising people in the gallery.

- 4.1 Ms Smith was quite clear that Ms Older was antagonising people by ignoring their request to stop taking photographs and by laughing at the members of the public who made this request.
- 5.0 The Investigating Officer asked Ms Smith how she could be certain the person she was referring to was ex-Councillor Older.
- 5.1 Ms Smith explained that at first she and her friends did not know who the councillor was. However, they viewed the website and recognised Ms Older from her photograph.
- 6.0 Regarding the question of other witnesses. Ms Smith supplied the Investigating Officer names and addresses of the people she had been sat with. It was agreed that it would be helpful to have a short statement from some of those people but not necessarily all.
- 6.1 Ms Smith may contact her companions with a view to supplying the Investigating Officer with their email addresses. Those people may be invited to provide an additional statement. It does not at this stage seem necessary to interview them individually.

I confirm this is a true and accurate account

Signed

Date

Print Name

### Appendix 3 – Statement in response to complaint

**From:** Averil Older [mailto:averil.older@googlemail.com]  
**Sent:** 26 May 2011 12:25  
**To:** Brian Foley  
**Subject:** Complaintthere was an adjournm

Brian

I would like to refer to the first sentence of the complaint which has been made against me - 'when we first all came into the chamber right at the start of the meeting then Averil Older came up and stood directly in front of us and was taking photographs of the people sat in the gallery'.  
This is simply not true and I would appreciate Holly Smith being asked why she has said this.

The one photo I took, which you have received a copy of, was taken towards the end of a long extremely disruptive meeting, when for about the seventh time there was an adjournment and the police were speaking to the members of the public in the gallery. I was asked to stop by someone and I did.  
I think there were around a dozen people still there at this point.

I did not hear anyone mentioning they were a law student etc, I did not 'laugh in his face' as I did not find the situation at all funny but extremely serious when the business of the Council Budget setting cannot proceed with constant interruption from the public - which began within a few second's of the vicar's prayers before the meeting had even begun.

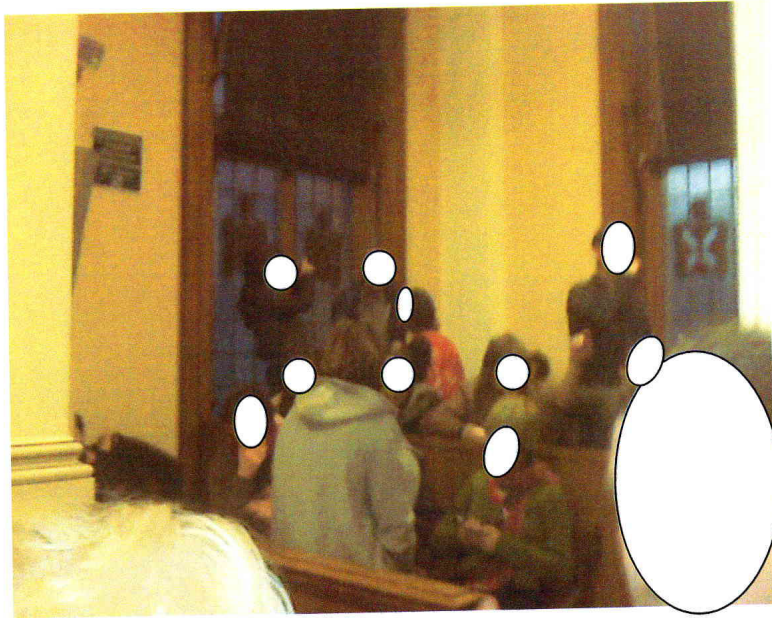
I am being asked what I have done with the 'photos' - the answer is nothing.

--

*Averil Older*



**Appendix 4 – Photograph submitted By Ms Older**



## **Appendix 5 - Standards Complaints regarding Averil Older**

### **Notes of meeting 15 July 2011 between Senior Lawyer, and Brian Foley Investigator.**

The following pieces of legislation should be considered

- Public Order Act 1986
- Protection from Harassment Act 1997

1.1 It is acceptable to use cameras in public spaces however it is generally accepted that a person should not take photographs of individuals without their permission.

1.2 Pointing a camera in the face of a person may be deemed to be a nuisance. This may result in damages, an injunction or a restrictive order to stop the nuisance. However in the instance described this would probably not be actionable. This is because we are looking at a one of incident and a single photograph.

1.3 In a confrontational situation or a fraught meeting the use of a camera is likely to be seen as a form of harassment or nuisance. It is almost certainly provocative.

1.4 As an example: if such behaviour occurred in a tenant meeting it is likely there would be a warning that the conduct is unacceptable, inappropriate and inflammatory and that action would be taken if it occurred again.

1.5 The conduct may be perceived as an act of harassment if it is calculated to cause distress or if it is deemed to be oppressive by impact, this is a subjective measure based on what the recipient feels.

1.6 The legal view is that:

It is unlikely that a criminal charge would come about as a consequence of the described action. As a single act it would not sit comfortably as an action within the civil court regime. However, if the conduct had formed part of a repeated action that might have led to an arguable legal case.

Legal's experience in relation to ASB and nuisance ( mainly housing) is that Judges repeatedly hand down warnings about the inflammatory nature of using cameras and other recording equipment as part of a dispute, this has included covertly hidden recording devices on the basis that the intention behind recording is to provoke a reaction.

I confirm this is an accurate record of my interview

Signed

Date

Case Reference BJC-005376

To the Panel members, Subject Member and all interested parties

### **Pre-Hearing Process Summary**

#### **Date, Time and Place:**

13 December 2011 at 10am in the Council Chamber, Hove Town Hall

#### **Subject Member:**

Former Councillor Averil Older

#### **Complainant:**

Miss Holly Smith

#### **Panel Members:**

Dr M Wilkinson, Chairman and Independent Member

Councillor J. Kitcat, Elected Member

Councillor A. Norman, Elected Member

#### **Democratic Services Officer:**

Mark Wall, Head of Democratic Services

#### **Monitoring Officer and Panel's Legal Advisor:**

Liz Woodley, Senior Lawyer, Brighton & Hove City Council

#### **Investigating Officer:**

Brian Foley, Standards and Complaints Manager, Brighton & Hove City Council

#### **Allegation:**

That at the Budget Council meeting on 3 March 2011, former Councillor Averil Older took photographs of members of the public seated in the public gallery, despite being asked to stop so doing.

#### **Agreed facts:**

The findings of fact in the Investigating Officer's report are not disputed.

#### **The Code of Conduct:**

3 (1) You must treat others with respect

5 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

#### **Attendances:**

Both former Councillor Older and the Investigating Officer have indicated that they will attend the hearing,

#### **Names of witnesses who will be attending:**

Neither former Councillor Older nor the Investigating Officer has indicated that they intend to call witnesses.

#### **Procedure to be used:**

The Standards Committee's Procedure for Local Determination Hearings of Allegations of Member Misconduct





**Procedure for Local Determination Hearings of  
Allegations of Member Misconduct**

# Procedure for Local Determination Hearings of Allegations of Member Misconduct

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### Introduction and Summary

This document sets out the procedure which will be followed in the local determination of allegations of misconduct by Members. It takes into account the statutory provisions in the Local Government Act 2000, the Standards Committee (England) Regulations 2008 and the statutory guidance issued thereunder.

The procedure enables a Hearing Panel to receive an investigation report and hear both sides of the matter. The Hearing Panel can then come to an informed decision as to whether the Member has failed to comply with the authority's Code of Conduct for Members and upon any consequential action.

The Hearing Panel acts 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, and may commission further investigation or information if it needs to do so in order to come to a decision.

The Hearing Panel will normally consist of three person (which is the minimum number required) including at least one independent person and at least one Member of the authority or, where the allegation relates to a Member of Rottingdean Parish Council, at least one member of that body.

A timeline for the local determination procedure can be found at Appendix B to this document, and a summary of the procedure of the hearing itself at Appendix C.

### 1 Interpretation

- (a) "Code of Conduct" means the Code of Conduct for Members.
- (b) "ESO" means Ethical Standards Officer.
- (c) "Member", except where the context otherwise requires, means the member or co-opted member of the authority who is the subject of the allegation being considered by the Hearing Panel. It also includes the Member's nominated representative.
- (d) "Investigating Officer" as appropriate in the circumstances means the ESO who referred the report to the authority, and includes his or her nominated representative, or the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).
- (e) "The matter" is the subject matter of the Investigating Officer's



report.

- (f) "The Hearing Panel" refers to the Standards Sub-Committee whose role it is to hear cases and make local determinations on complaints about alleged breaches of the Code of Conduct.
- (g) "The Democratic Services Officer" means a person given responsibility by the authority for supporting the Hearing Panel's discharge of its functions, acting as clerk for the hearing including recording the Hearing Panel's decisions.
- (h) 'Legal Adviser' means a person given responsibility by the authority for providing legal advice to the Hearing Panel. This may be the Monitoring Officer, another legally qualified or suitably experienced officer of the authority, or someone appointed for this purpose from outside the authority<sup>1</sup>
- (i) "Regulation 17" and "Regulation 20" means respectively regulations 17 and 20 of the Standards Committee (England) Regulations 2008.
- (j) "The Chair" refers to the person presiding at the hearing.
- (k) "Parish Council" means Rottingdean Parish Council.

### **2 Modification of Procedure**

The Chair may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness and does not conflict with any statutory requirement.

### **3 Representation**

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Hearing Panel, another person. Note that the cost of such representation must be met by the Member, unless the Hearing Panel has expressly agreed to meet all or any part of that cost.<sup>2</sup>

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<sup>1</sup> The role of the Investigating Officer must be kept distinct from the roles of Democratic Services Officer and Legal Adviser to the Hearing Panel. The Investigating Officer must be a different person from the person or persons who act as Democratic Services Officer and/or legal adviser to the Hearing Panel in respect of the allegation.

<sup>2</sup> Regulations under Section 101 of the Local Government Act 2000 grant authorities a discretion to provide an indemnity or to provide insurance to Members to meet the costs which they may incur in "Part 3 proceedings" (investigations, hearings or other proceedings under Part III of the 2000 Act), but any such indemnity or insurance is required to be subject to a requirement to repay any sums received in the event that the Member is found to have failed to comply with the Code of Conduct.

**4 Pre-hearing Procedure**

Upon (1) reference of a matter from an ESO for local determination following completion of the ESO's report or (2) receipt of a final report of the Investigating Officer which includes a finding that the Member failed to comply with the Code of Conduct or (3) if a Hearing Panel has found under Regulation 17 that a report from the Investigating Officer should be considered at a Hearing Panel, the Monitoring Officer shall:

- (a) Arrange a date for the Hearing Panel to hear the matter<sup>3</sup>;
- (b) Send a copy of the Investigating Officer's report to the Member and advise him/her of the date, time and place for the hearing, provide the Member with a copy of the determination procedure and outline the Member's rights and responsibilities during the hearing process;
- (c) Send a copy of the Investigating Officer's report to the person who made the allegation and advise him/her of the date, time and place for the hearing and provide him/her with a copy of the determination procedure;
- (d) Notify the Parish Council of the matter and of the date, time and place of the hearing if the allegation is made against a Parish Councillor;
- (e) Request the Member to complete and return the model Pre-Hearing Forms A, B, C, D and E, as recommended by the Standards Board for England or similar as appropriate within 14 days of receipt;
- (f) In the light of any Pre-Hearing Forms returned by the Member, determine whether the Hearing Panel will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion and arrange for their attendance;
- (g) Send a copy of the Member's response to the Investigating Officer for his/her comments, confirm the time, date and place of the hearing and invite the Investigating Officer to confirm within 14 days of receipt whether he/she:

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<sup>3</sup> The hearing must normally be conducted within 3 months of the date when the matter is referred by the ESO to the Monitoring Officer (in the case of an ESO investigation) or the date when the Investigating Officer delivers his final report to the Monitoring Officer (in the case of local investigations). There must also be a gap of at least 14 days between the date on which the Monitoring Officer sends the report to the Member and the date of the Hearing Panel, unless the Member agrees to the hearing being earlier.

- wants to be represented at the hearing;
  - wants to call relevant witnesses to give evidence to the hearing panel;
  - wants any part of the hearing held in private; and
  - wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
- (h) Notify the witnesses who will be required to attend the hearing of the date, time and place of the hearing and that their attendance is required;
- (i) Prepare a Pre-Hearing Summary Report:
- Setting out the date, time and place of the hearing;
  - Summarising the allegation;
  - Outlining the main facts of the case that are agreed;
  - Outlining the main facts of the case that are not agreed;
  - Noting whether the Member concerned and the Investigating Officer will go to or be represented at the hearing;
  - Listing those witnesses, if any, who will be asked to give evidence; and
  - Outlining the proposed procedure for the hearing.
- (j) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent, at least two weeks before the hearing, to:
- (i) All members of the Hearing Panel;
  - (ii) The Member;
  - (iii) The person who made the allegation, and
  - (iv) The Investigating Officer.

### **5 Legal Advice to the Hearing Panel**

The Hearing Panel may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Hearing Panel should be

shared with the Member and the Investigating Officer if they are present.<sup>4</sup>

### **6 Setting the scene at the hearing**

At the start of the hearing, the Chair shall introduce each of the members of the Hearing Panel, the Member (if present), the Investigating Officer (if present) and any other officers present, and shall then explain the procedure which the Hearing Panel will follow in the conduct of the hearing.

### **7 Preliminary procedural issues**

The Hearing Panel shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chair shall ask members of the Hearing Panel to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chair shall confirm that the Hearing Panel is quorate<sup>4</sup>

(c) Hearing procedure

The Chair shall confirm that all present know the procedure which the Hearing Panel will follow in determining the matter.

(d) Proceeding in the absence of the Member

If the Member is not present at the start of the hearing:

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<sup>4</sup> In the interests of openness, the Hearing Panel may prefer to receive any such advice in the main hearing room in the presence of the Investigating Officer and the Member. Where this is not practicable, the legal adviser should repeat in the presence of the Investigating Officer and the Member the advice which he/she has tendered.

<sup>4</sup> A meeting of the Hearing Panel is not quorate unless at least three members of the Hearing Panel are present for the duration of the meeting. See the Introduction for further information about the composition of the Panel.  
NB: If the Standards Committee is responsible for Parish Council matters, it must include at least one Parish Council representative amongst its members. However it is only a requirement that the parish representative is actually present when the Hearing Panel is dealing with a parish matter.

- (i) the Chair shall ask the Legal Adviser or Democratic Services Officer whether the Member has indicated his/her intention not to attend the hearing;
  - (ii) the Hearing Panel shall then consider any reasons which the Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
  - (iii) if the Hearing Panel is satisfied with such reasons, it shall adjourn the hearing to another date;
  - (iv) if the Hearing Panel is not satisfied with such reasons, or if the Member has not given any such reasons, the Hearing Panel shall decide whether to consider the matter and make a determination in the absence of the Member or to adjourn the hearing to another date.
- (e) Exclusion of Press and Public

The Hearing Panel may exclude the press and public from its consideration of this matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chair shall ask the Member, the Investigating Officer and the Legal Adviser or Democratic Services Officer whether they wish to ask the Hearing Panel to exclude the press or public from all or any part of the hearing. If any of them so request, the Chair shall ask them to put forward reasons for so doing and ask for responses from the others and the Hearing Panel shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Hearing Panel does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

**8 The hearing of the allegation of failure to comply with the Code of Conduct<sup>5</sup>**

The Hearing Panel will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report. <sup>6</sup>

(a) The Chair shall ask the Member to confirm that he/she maintains the position as set out in the Pre-Hearing Summary Report.

(b) The Pre-Hearing Process Summary

The Chair will ask the Legal Adviser or Democratic Services Officer<sup>7</sup> to present the Pre-Hearing Summary Report, highlighting any points of difference in respect of which the Member has stated that he/she disagrees with any finding of fact in the Investigating Officer's report. The Chair will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the Investigating Officer's report.

(i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the

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<sup>5</sup> The model procedure recommended by the Standards Board suggests that the Hearing Panel should first determine findings of fact and then determine whether there has been a failure to comply with the Code of Conduct. These two are so closely connected that the Hearing Panel may find that it can conveniently determine the two together without any loss of fairness.

<sup>6</sup> Note that the Hearing Panel's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the Investigating Officer's report. It is possible that, in the course of their consideration, the Hearing Panel apprehends that the Member may have failed to comply with the Code of Conduct in some other manner. Note that any possible additional or alternative failure will not be within the remit of the Hearing Panel as, at that stage, the Member will not have had notice of the Hearing Panel's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Hearing Panel does apprehend a possible additional or alternative failure, a failure by a different Member, or a failure in respect of the Code of Conduct of another authority, they may refer the second matter to the Monitoring Officer to consider what steps, if any, may be necessary.

<sup>7</sup> Tasks such as the following will be undertaken by the Legal Adviser or Democratic Services Officer as appropriate in the circumstances (and both roles may be performed by the same person):- (i) the conduct of the pre-hearing process; (ii) the presentation of an introductory report to the Hearing Panel at the commencement of the hearing setting out the outcomes of the pre-hearing process; (iii) the giving of legal advice to the Hearing Panel; (iv) the recording of the Hearing Panel's determination; and (v) the distribution and publication of any required notices of the Hearing Panel's determination.

Investigating Officer's report, the Hearing Panel may then make a determination that the Member has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken (Paragraph 11).

- (ii) If the Member identifies additional points of difference, the Chair shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigating Officer (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Hearing Panel is not satisfied with the Member's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Member to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which the Member did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.
- (c) Presenting the Investigating Officer's report
- (i) If the Investigating Officer is present, the Chair will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
  - (ii) If the Investigating Officer is not present, the Hearing Panel shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Hearing Panel shall determine on the advice of the Legal Adviser or Democratic Services Officer which witnesses, if any, to call. Where such witnesses are called, the Chair shall draw the witnesses' attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct

the report and to provide any relevant evidence.

- (iii) No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chair shall ask the Member if there are any matters upon which the Hearing Panel should seek the advice of the Investigating Officer or the witness.
- (d) The Member's response
- (i) The Chair shall then invite the Member to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
  - (ii) No cross-examination shall be permitted but, at the conclusion of the Member's evidence and/or of the evidence of each witness, the Chair shall ask the Investigating Officer if there are any matters upon which the Hearing Panel should seek the advice of the Member or the witness.
- (e) Witnesses
- (i) The Hearing Panel shall be entitled to refuse to hear evidence from the Investigating Officer, the Member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the Code of Conduct.
  - (ii) Any member of the Hearing Panel may address questions to the Investigating Officer, to the Member or to any witness.
- (f) Additional Evidence
- At the conclusion of the evidence, the Chair shall check with the members of the Hearing Panel that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.
- (g) If the Hearing Panel at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Hearing Panel may (on not more than one occasion) adjourn the hearing and make a request to the local Investigating Officer to seek and provide such additional



evidence and to undertake further investigation on any point specified by the Hearing Panel.

- (h) Determination as to whether there was a failure to comply with the Code of Conduct.
  - (i) At the conclusion of the Member's response, the Chair shall ensure that each member of the Hearing Panel is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigating Officer's report.
  - (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 9(b)(i) above), the Hearing Panel shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.
  - (iii) The Hearing Panel shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
  - (iv) The Hearing Panel's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Member or a witness, or to seek the legal advice. If it requires any further information, it may adjourn on not more than one occasion and instruct an officer or request the Member to produce such further evidence to the Hearing Panel.
  - (v) At the conclusion of the Hearing Panel's consideration, the Hearing Panel shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
  - (vi) The Hearing Panel shall then return to the main hearing room and the Chair will state the Hearing Panel's principal findings of fact and their determination as to whether the Member failed to comply with the Code of Conduct as set out in the Investigating Officer's report.

### **9 If the Member has not failed to follow the Code of Conduct**

If the Hearing Panel determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report:

- (a) The Chair will announce the Hearing Panel's decision that the Member has not failed to follow the Code of Conduct in respect of the alleged matter. The Chair will then move on to make any other announcements (if appropriate) as follows:
- (b) If the Hearing Panel apprehends, from the evidence which they have received during the hearing, that the Member may have failed to comply with the Code of Conduct (other than the matter which the Hearing Panel has just determined) and that this potential failure ought to be assessed, the Chair shall outline the Hearing Panel's concerns and state that the Hearing Panel will refer this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the relevant Standards Committee.
- (c) The Chair should then set out any recommendations which the Hearing Panel is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigating Officer and the Legal Adviser or Democratic Services Officer before the Hearing Panel finalises any such recommendations.
- (d) Finally, the Chair should ask the Member whether he/she wishes the authority not to publish its finding that he or she had not failed to comply with the Code of Conduct and its reasons for that finding in a local newspaper and (in both cases at the discretion of the Hearing Panel) on the Authority's website and in any other publication.<sup>8</sup>

### **10 Action consequent upon a failure to comply with the Code of Conduct**

- (a) The Chair may ask the Investigating Officer (if present, or otherwise the Legal Adviser or Democratic Services Officer) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Hearing Panel should impose a sanction and, if so, what would be the appropriate sanction.
- (b) The Chair will then ask the Member to respond to the Investigating Officer's advice.
- (c) The Chair will then ensure that each member of the Hearing Panel is satisfied that he/she has sufficient information to enable

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<sup>8</sup> The summary of the Hearing Panel's decision and reasons for it must be published in one or more local newspapers that are independent of the Council and otherwise as the Hearing Panel directs, unless the Hearing Panel finds that the Member did not fail to follow the Code of Conduct, in which case the Member is entitled to ask that there is no such publication.

him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.

- (d) Any member of the Hearing Panel may address questions to the Investigating Officer, the Member and/or the Legal Adviser as necessary to enable him/her to take such an informed decision.
- (e) The Chair should then set out any recommendations which the Hearing Panel is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigating Officer and the Legal Adviser or Democratic Services Officer;
- (f) The Hearing Panel shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Hearing Panel will make to the authority.
- (g) In considering whether to impose a sanction and, if a sanction is to be imposed, what that sanction should be, the Hearing Panel shall take into account the guidance in Appendix A to this Procedure.
- (h) At the completion of their consideration, the Hearing Panel shall return to the main hearing room and the Chair shall state the Hearing Panel's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Hearing Panel will make to the authority.

### **11 Reference back to the ESO or Investigating Officer**

- (a) If the Hearing Panel is considering a report referred by an ESO it may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request, with reasons, to the ESO concerned that the matter be referred back to the ESO for further investigation. If the request is accepted, the Hearing Panel shall cease its consideration of the matter. If it is not accepted, the Hearing Panel shall continue its consideration of the matter and make no further such requests.
- (b) If the Hearing Panel is considering a report prepared by the Monitoring Officer (or a person appointed by him), it may at any stage prior to the conclusion of the hearing adjourn the hearing and, on one occasion only, require the Monitoring Officer to seek

further information or undertake further investigation on any point specified by it.

### 12 The close of the hearing

- (a) The Hearing Panel will announce its decision on the day of the hearing and provide the Democratic Services Officer with a short written statement of its decision, which the Democratic Services Officer will deliver to the Member as soon as practicable after the close of the hearing;
- (b) The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Democratic Services Officer will agree in draft form a formal written notice of the Hearing Panel's determination. The front cover of the decision will include the following information:
  - The names of:
    - the Council;
    - the Member;
    - the complaint;
    - the Chair;
    - the other members of the Hearing panel;
    - the Monitoring Officer;
    - the Investigating Officer;
    - the Democratic Services Officer;
  - The Council's case reference number and any applicable case reference number from the Standards Board for England;
  - The date of the hearing; and
  - The date of the report.

The formal written notice shall contain:

- A summary of the complaint;
- The relevant section or sections of the Code of Conduct;

- A summary of the evidence considered and representations made;
  - The findings of fact, including the reasons for them;
  - the finding as to whether the Member failed to follow the Code, including the reasons for that finding;
  - the sanctions imposed, if any, including the reasons for any sanctions; and
  - the right to appeal.
- (d) the Monitoring Officer shall arrange for the distribution of the formal written notice within two weeks of the close of the hearing, to:
- the Member;
  - the Standards Board
  - the Investigating Officer and/or the ESO;
  - the members of the Standards Committee;
  - the Standards Committee of any local authority concerned;
  - any Parish Council concerned;
  - the person who made the allegation.
- (e) Subject to paragraph 9(d) if the Member had not failed to follow the Code of Conduct, the Monitoring Officer shall arrange for a summary of the notice (which shall include the information required by Regulation 20) to be published in one or more newspapers independent of the council and circulating in the area and (in both cases at the discretion of the Hearing Panel) on the Council's website and in any other publication.

### 13 Appeals

The Member may seek permission to appeal against the decision of the Hearing Panel and, if appropriate, apply for suspension of any sanction imposed until such time as any appeal is determined, by giving written notice to the President of the Adjudication Panel for England, ensuring that his/her notice sets out

- (a) the finding against which he/she seeks to appeal;
- (b) whether the appeal is against the finding of failure to comply

with the Code of Conduct, the sanction imposed or both;

(c) the grounds of the appeal;

(d) whether any application for suspension of any sanction is made;  
and

(e) whether or not he/she consents to the appeal being conducted  
by way of written representations.

The notice must be received by the President within 21 days of the Member's receipt of the notification of the finding under Paragraph 13(a).

## APPENDIX A

## Sanctions

## 1. Available sanctions

The sanctions which are available to the Hearing Panel under the Standards Committee (England) Regulations 2008 are any of the following either individually or in combination:

- (i) censure of that Member (which is the only sanction that may be imposed for a person who has ceased to be a member);
- (ii) restriction for a period not exceeding six months of that Member's access to the premises of the authority or that Member's use of the resources of the authority, provided that such restrictions imposed upon the Member -
  - (a) are reasonable and proportionate to the nature of the breach; and
  - (b) do not unduly restrict the person's ability to perform his functions and duties as a member.
- (iii) partial suspension of that Member for a period not exceeding six months;
- (iv) suspension of that Member for a period not exceeding six months;
- (v) that the Member submit a written apology in a form specified by the Hearing Panel;
- (vi) that the Member undertakes such training as the Hearing Panel specifies;
- (vii) that the Member participate in such conciliation as the Hearing Panel specifies;
- (viii) partial suspension of the Member for a period not exceeding six months or until such time the Member submits a written apology in a form specified by the Hearing Panel;
- (ix) partial suspension of the Member for a period not exceeding six months or until such time as the Member has undertaken such training or has participated in such conciliation as the Hearing Panel specifies;
- (x) suspension of the Member for a period not exceeding six months or until such time as the Member has submitted a written apology in a form specified by the Hearing Panel;
- (xi) suspension of the Member for a period not exceeding six months or until such time as the Member has undertaken such training or has participated in such conciliation as the Hearing Panel specifies.

Any sanction imposed shall commence immediately unless the Hearing Panel directs (for any sanction other than censure) that it shall commence on any date specified by the Hearing Panel within six months of the date of the hearing.

### 2. Considering the sanction

#### (i) General

In deciding what action to take, the Hearing Panel should bear in mind the aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus the action taken by the Hearing Panel should be designed both to discourage or prevent the Member from any future non-compliance and also to discourage similar action by others.

The Hearing Panel should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. Any such would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.

#### (ii) Questions to be considered

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

- What was the Member's intention?
- Did the Member know that they were failing to follow the Code of Conduct?
- Did the Member get advice from officers before the incident and if so, was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial irregularity, for example improper expense claims or procedural irregularities?
- What was the result of the failure to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Member accept that they were at fault?
- Did the Member apologise to any relevant people?
- Has the Member failed to follow the Code of Conduct before?
- Is the Member likely to do the same thing again?



- How will the sanction be carried out? For example, in the case of training or conciliation, who will provide that training or conciliation?
- Are there any resource or funding implications? For example, if a subject Member has repeatedly or blatantly misused the authority's information technology resources, the standards committee may consider withdrawing those resources from the subject Member.

### (iii) Mitigating and aggravating factors

The Hearing Panel will also take into account any aggravating or mitigating factors. The following are given by way of example only and are not intended to be an exhaustive list. Mitigating factors may include:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- A Member's previous record of good service.
- Substantiated evidence that the Member's actions have been affected by ill-health.
- Recognition that there has been failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where appropriate; self-reporting of the breach by the Member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Aggravating factors may include:

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people.
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

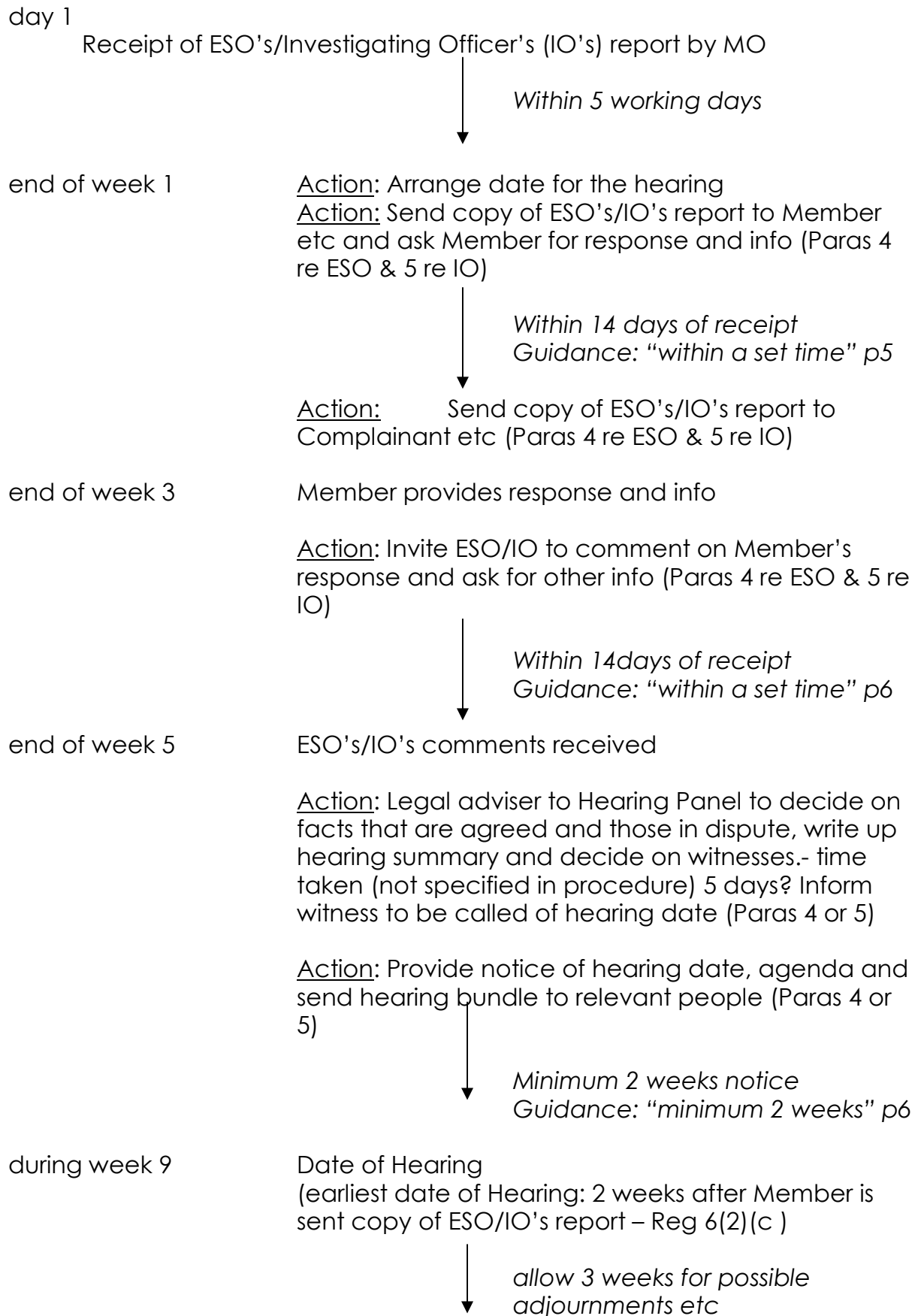
### (iv) Miscellaneous

- Suspension may be appropriate for more serious cases, such as those involving:
  - trying to gain an advantage for themselves or others;
  - dishonesty or breaches of trust;
  - bullying.

- Sanctions which involve restricting access to the Council's premises or equipment should not unnecessarily restrict the Member's ability to carry out their responsibilities as an elected representative or co-opted member.



**Appendix B - Time line for local determination procedure**



end of week 12

Hearing must be completed within 3 months of receipt of ESO's report – Reg 6(2)(b)

### Appendix C: Hearing Process

- Introductions & explanation of procedures
- Preliminaries: disclosures of interest, quorum, confirm hearing procedure
- Decision as to whether to proceed in absence of Member (if applicable)
- Decision as to exclusion of press and public
- Member confirms whether maintaining position
- Legal adviser or Democratic Services Officer presents Pre-Hearing Summary Report
- Member confirms whether accurate summary of issues, identifies any additional points where disagrees with findings of fact in Investigation Officer's Report and or admits failure to comply with Code of Conduct.
- If Member admits failure to comply with Code of Conduct, Hearing Panel may make a determination accordingly and proceed directly to consider whether any action to be taken.
- If Member identifies additional points of difference, Chair asks Member to explain why not identified as part of the Pre-Hearing Process and decide on what basis to proceed or whether to adjourn hearing.
- Investigating Officer presents report if present and calls witnesses as necessary. If Investigating Officer absent, Hearing Panel determines whether to conduct hearing and calls witnesses as necessary.
- At conclusion of report and/or each witnesses' evidence, Hearing Panel consults Member as to whether it should seek the advice of the Investigating Officer or the relevant witness.
- Chair invites Member to respond to the Investigating Officer's report and to call any witnesses as necessary.
- At the conclusion of Member's evidence and/or of the evidence of each witness, Chair asks Investigating Officer if there are any matters upon which the Hearing Panel should seek the advice of the Member or the witness.
- At the conclusion of all evidence, Chair checks that members of the Hearing Panel are satisfied they have sufficient evidence to come to a considered conclusion.
- Hearing Panel retires to consider determination (unless determination will merely confirm Member's admission of a failure to comply with the Code

of Conduct) and whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.

- Hearing Panel may, at any time, return to the main hearing room in order to seek additional evidence or legal advice. If it requires any further information, it may adjourn on not more than one occasion and instruct an officer or request the Member to produce such further evidence to the Hearing Panel.
- Hearing Panel returns to main hearing room and Chair states Hearing Panel's principal findings of fact and its determination.
- If Hearing Panel determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report, Chair announces Hearing Panel's decision, any decision of whether to refer other potential failures, any other recommendations and checks whether Member objects to publication of a summary of the complaint.
- If Hearing Panel determines Member has failed to follow the Code of Conduct:
  - Chair may take advice on appropriate sanction
  - Member responds
  - Chair ensures all members of Panel have sufficient information to decide on sanction
  - Panel retires to consider whether to impose sanction and any recommendations.
  - On return, Chair states decision (with principal reasons) as to whether a sanction should be imposed, the nature of any sanction, and states any recommendations.
- Hearing Panel provides Democratic Services Officer with short written statement of its decision, which Democratic Services Officer delivers to Member as soon as practicable after the close of the hearing
- Chair thanks all those present who have contributed to the conduct of the hearing and formally closes the hearing.
- Following close of hearing Democratic Services Officer agrees formal written notice of the Hearing Panel's determination in draft form.
- Monitoring Officer arranges for distribution of formal written notice within two weeks of the close of the hearing,

- Monitoring Officer arranges for summary of notice to be published.

**NB:** If Hearing Panel is considering a report referred by an ESO it may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request, with reasons, to the ESO concerned that the matter be referred back to the ESO for further investigation. If the request is accepted, the Hearing Panel shall cease its consideration of the matter. If it is not accepted, the Hearing Panel shall continue its consideration of the matter and make no further such requests. If the Hearing Panel is considering a report prepared by the Monitoring Officer (or a person appointed by him), it may at any stage prior to the conclusion of the hearing adjourn the hearing and, on one occasion only, require the Monitoring Officer to seek further information or undertake further investigation on any point specified by it.

