



Brighton & Hove

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 authority¹
- (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.²

¹ 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.

² 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 matter³;
- (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:

³ 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.⁴

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 quorate⁴

(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:

⁴ 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.

⁴ 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 Conduct⁵

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. ⁶

- (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 Officer⁷ 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

⁵ 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.

⁶ 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.

⁷ 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.⁸

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

⁸ 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:

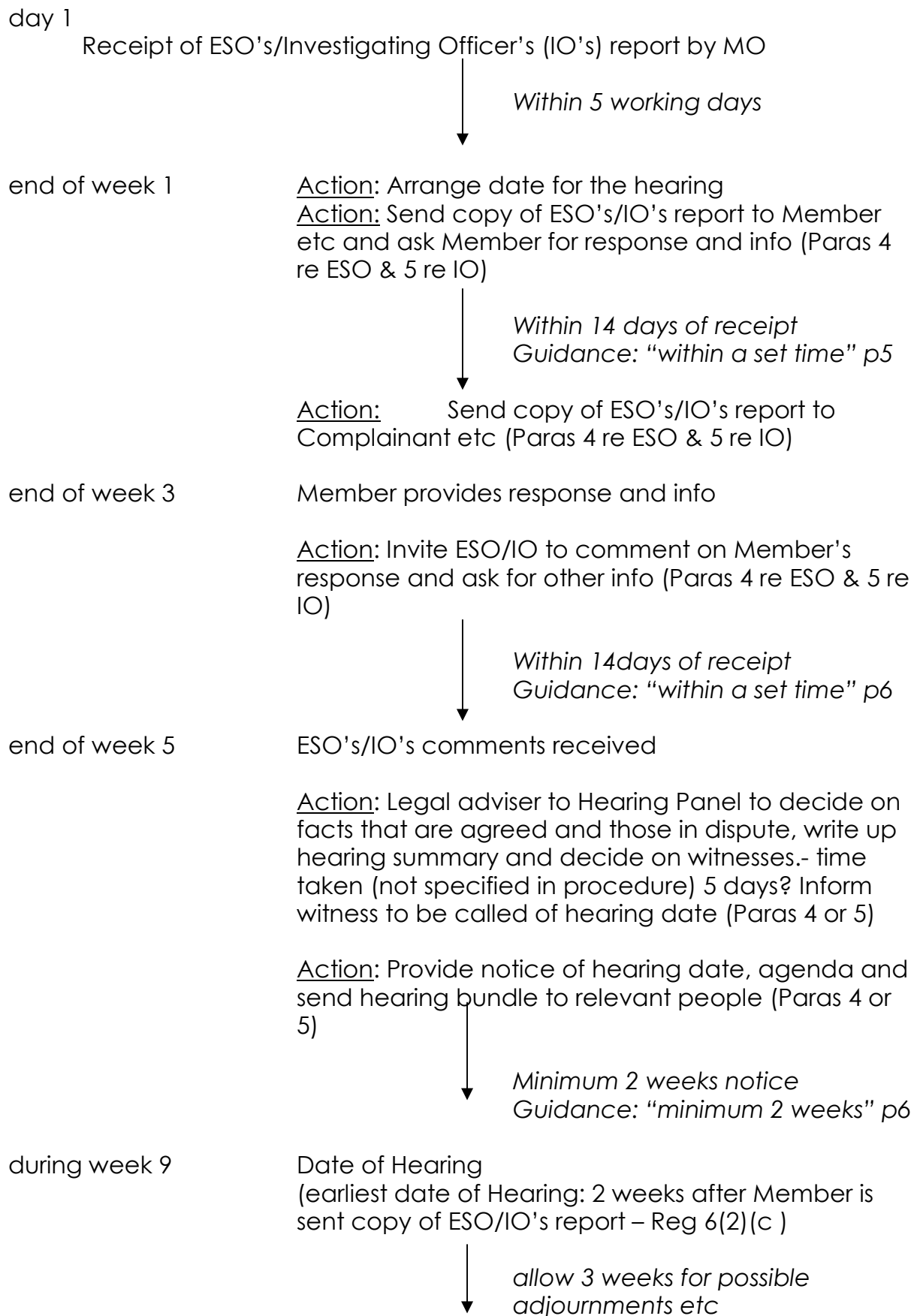
- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people.
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involves repeatedly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

