



County Hall
Cardiff
CF10 4UW
Tel: (029) 2087 2000

Neuadd y Sir
Caerdydd
CF10 4UW
Ffôn: (029) 2087 2000

AGENDA

| | |
|---------------------------------|--|
| Committee | STANDARDS & ETHICS COMMITTEE |
| Date and Time of Meeting | MONDAY, 1 JULY 2019, 5.00 PM |
| Venue | COMMITTEE ROOM, 3 COUNTY HALL, ATLANTIC WHARF, CARDIFF |
| Membership | Councillor Richard Tebboth (Chair) Councillors Cunnah, Sandrey and Williams Community Councillor Stuart Thomas Independent Members James Downe, Hollie Edwards-Davies and Hugh Thomas (1 vacancy) |

1 **Membership and Terms of Reference** (*Pages 3 - 4*)

Membership

The Annual Council on 23 May 2019 re-appointed the following Councillors to this Committee: -

Councillors Stephen Cunnah, Emma Sandrey and Joel Williams

Terms of Reference

The Annual Council on 23 May 2019 agreed the terms of reference as attached.

2 **Apologies for Absence**

To receive apologies for absence.

3 **Declarations of Interest**

To be made at the start of the agenda item in question, in accordance with the Members' Code of Conduct.

4 **Minutes** (*Pages 5 - 8*)

To consider the minutes of the informal meeting 6 March 2019 and ratify any decisions.

By receiving this Agenda Pack electronically you have saved the Authority approx. £** in printing costs

This document is available in Welsh / Mae'r ddogfen hon ar gael yn Gymraeg

- 5 Independent Member Vacancy** *(Pages 9 - 16)*
Report of the Director of Governance and Legal Services
- 6 Member Conduct - Hearing Panel & Procedures** *(Pages 17 - 44)*
Report of Director of Governance and Legal Services
- 7 Urgent Items (if any)**
- 8 Date of next meeting - Wednesday 2 October 2019 @ 5.00pm**

Davina Fiore
Director Governance & Legal Services
Date: Tuesday, 25 June 2019
Contact: Kate Rees,
02920 872427, KRees@cardiff.gov.uk

| Committee | Terms of Reference |
|--------------------|---|
| Standards & Ethics | <p>(a) To monitor and scrutinise the ethical standards of the Authority, its Members, employees and any associated providers of the Authority’s services, and to report to the Council on any matters of concern.</p> <p>(b) To advise the Council on the content of its Ethical Code and to update the Code as appropriate.</p> <p>(c) To advise the Council on the effective implementation of the Code including such matters as the training of Members and employees on the Code’s application.</p> <p>(d) To consider and determine the outcome of complaints that Councillors and co-opted members have acted in breach of the Code in accordance with procedures agreed by the Standards Committee, including the imposition of any penalties available to the Committee.</p> <p>(e) To oversee and monitor the Council’s whistleblowing procedures and to consider ethical issues arising from complaints under the procedure and other complaints.</p> <p>(f) To grant or refuse requests for dispensations in respect of Members’ interests under the Members Code of Conduct in accordance with the relevant statutory provisions.</p> <p>(g) To undertake those functions in relation to community councils situated in the area of the Council and members of those community councils which are required by law</p> <p>(h) To recommend to Council and the Cabinet any additional guidance on issues of probity.</p> <p>(i) To hear and determine any complaints of misconduct by Members or a report of the Monitoring Officer, whether on reference from the Ombudsman or otherwise.</p> <p>(j) To recommend the provision to the Monitoring Officer of such resources as he/she may require for the performance of his/her duties.</p> <p>All Members of the Committee will be required to undertake relevant training to enable them to properly discharge their duties.</p> |

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STANDARDS & ETHICS COMMITTEE
6 MARCH 2019

Present: Councillor Richard Tebboth (Chairperson) (Independent Member)
Councillors Cunnah, Sandrey and Williams,
Community Councillor Stuart Thomas
James Downe and Hugh Thomas, Independent Members

22 : APOLOGIES FOR ABSENCE

Hollie Edwards-Davies and Lizz Rowe (Independent Members)

23 : DECLARATIONS OF INTEREST

There were no declarations of interest for this meeting.

24 : MINUTES

The minutes of the meeting 5 December 2018 were approved and signed as a correct record.

25 : ELECTED MEMBER ROLE DESCRIPTIONS

At the start of this item, Councillor Stephen Cunnah joined the meeting and therefore in accordance with Part 2 Article 9 Rule 9.2 (c) the meeting was no longer quorate as there were insufficient Independent Members present.

RESOLVED – That the Committee agreed that the meeting proceed on an Informal basis.

The Committee considered the revised Role Descriptions:

RESOLVED – That the Committee

- (1) confirmed that the revised role descriptions as set out in Appendices A and B were fit for purpose;
- (2) recommended that the revised Role Descriptions at Appendices A and B be submitted to the Democratic Services Committee for submission to Council for approval and adoption.

26 : OFFICERS' PERSONAL INTERESTS

The Committee received and considered the report and Members were of the view that senior officers should be using the same pro-forma as elected members and more detail should be made available in relation to financial contracts.

The Committee was advised that the recommendations in the report tied in with the current arrangements. If changes were to be made a consultation process with officers and trade unions would take place. The status of officers was slightly

different to that of elected members with officers being policy lead and elected members making the decisions.

Members of the Committee were keen to see transparency across the organisation as officers held decision making powers which should be recorded the same as an elected member.

The Committee was advised that previously not all officer interests had been published on the Council's website and some of the forms needed to be updated. The scrutiny and control of this process fell under the Standard & Ethics Committee.

Members of the Committee felt that the Officer's Policy should be changed to reflect the current Elected Member policy.

RESOLVED - That

1. to the publication of Senior Officers' outside business interests on the Council's website, with the exception of 'sensitive information' agreed as such by the Monitoring Officer in line with paragraph 13 of the report was approved with effect from 1 April 2019.
2. the view of the Committee was that the policy should reflect that of the current Elected Members policy and therefore further discussions on this matter should take place.

27 : OFFICERS' GIFTS AND HOSPITALITY

The Committee received a report which enabled them to consider the Council's rules and guidance in relation to gifts and hospitality received by officers.

The Committee noted that the information on the Officer Hospitality Declarations list did not provide a value of that gift and were of the view that an approximate value should be recorded.

Members of the Committee referred to the auditing of this process, with the Audit Committee having the powers to refer matters to Standards & Ethics if they saw fit.

The Committee was of the view that adding the value of the gift or hospitality to both Elected Member and Officers Gifts and Hospitality registers was a way forward.

RESOLVED – That

1. the publication of the Register of Senior Officers' Gifts and Hospitality for 2018/19 and subsequent years on the Council's website with effect from 1 April 2019 was agreed; and
2. the value of the specific gift be added to both registers.

28 : MEMBERS' CODE OF CONDUCT COMPLAINTS - QUARTER 3 OF 2018/19

The Committee was provided with an update on complaints made during Quarter 3 of 2018/2019 (the period running from 1 October 2018 to 31 December 2018) against

Members of Cardiff Council or any of Cardiff's Community Council's, alleging a breach of the Members' Code of Conduct.

The Committee was advised that the single complaint received in Quarter 1 (made by a member of the public alleging intimidating and bullying behaviour by a Member) was still open. The Ombudsman's decision was awaited.

Members discussed behaviour at Council meetings and the possibility of training being provided to Members who required further support.

RESOLVED – That the report be noted.

29 : OBSERVATION OF MEETINGS

The Committee considered the opportunities in 2019, for Members of the Standards and Ethics Committee to observe meetings of the Council, its Committee's and the six Community Council's in Cardiff.

RESOLVED – That the information in the report was noted and the Committee agreed to observe appropriate meetings of the Council, Committee's and Community Councils and provide feedback to the Committee.

30 : WORK PROGRAMME 2019 - 2020

The Committee considered its Work Plan and agreed the items for consideration by the Standards and Ethics Committee in 2019/20.

The Committee discussed the Annual Report and Briefing Papers.

RESOLVED – That

1. subject to the terms of reference and available resources, the work plan was agreed and the Director of Governance and Legal Services and Monitoring Officer was authorised to make any amendments and how it wished to progress the various items or topics contained therein.
2. the Director of Governance and Legal Services and Monitoring Officer draft an email in relation to behaviour of Elected Members at Council Meetings for the Chairperson of Standards and Ethics to clear and circulate to all Members of the Council.

31 : URGENT ITEMS - There was no urgent business to report

32 : FUTURE MEETINGS

Dates of future meetings would be circulated in due course as part of the consultation process for developing the Council's schedule of meetings for 2019/ 20.

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**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES AND MONITORING OFFICER**

INDEPENDENT MEMBER VACANCY

Reason for this Report

1. To inform the Committee about an independent member vacancy on the Committee and seek approval of the arrangements to fill that vacancy.

Background

2. The Constitution provides that the Standards & Ethics Committee shall have five independent members, three county councillors and one community councillor – Constitution Article 9.2(a).
3. One Independent Member, Lizz Roe, has indicated that, due to personal circumstances, she wishes to resign from the Committee.

Issues

4. The Constitution requires the Standards and Ethics Committee to have five Independent Members. The Council therefore needs to make a new appointment to fill the vacancy arising from the resignation of Lizz Roe.
5. The appointment of members of the Standards and Ethics Committee is governed by the Standards Committees (Wales) Regulations 2001 (as amended) (“the Regulations”) and the Council’s Constitution.
6. The Regulations require a public recruitment process to be followed for an Independent Member vacancy, specifically, the Council must:
 - (i) advertise the vacancy in at least 2 newspapers circulating in its area, and may additionally advertise the vacancy in its own newspaper;
 - (ii) set selection criteria and publish those criteria in the advertisement of the vacancy;
 - (iii) establish an Appointments Panel, comprised of up to five panel members, and including one lay panel member (the lay panel member must be a person who is not, and has not been, a member, co-opted member or officer of a county or community council; and is

- not the spouse or civil partner of a member or officer of a county or community council) and one Cardiff community councillor; and
- (iv) arrange for the Appointments Panel to assess all applications against the published criteria and make a recommendation on the appointment to Council for approval.
7. The Regulations provide that an Independent Member's term of office must be set at between four and six years. Having regard to the costs involved in carrying out the required public recruitment exercise, it is recommended that the proposed appointee should be offered the full 6 year term.
8. A draft advertisement for the vacancy and person specification, based on the documentation used previously (for the recruitment of an Independent Member in 2017) are attached as **Appendices A and B** respectively. Members are invited to approve these documents, subject to any amendments; and to instruct the Monitoring Officer to make the necessary arrangements for publication of the advertisement as required by the Regulations.
9. In line with previous practice, the Committee may wish to decide that the required Appointments Panel should be comprised of 5 members, as follows:
- (i) One lay person – a lay member of the Education Appeals Panel has previously undertaken this role; and it is suggested that a similar appointee may be sought;
 - (ii) Community Councillor Stuart Thomas for the Community Councillor position;
 - (iii) Two Independent Members of the Committee, to include the Chair and or Vice-Chair; and
 - (iv) One Elected Member of the Committee.
- Nominations are invited for the Independent and Elected Member positions above.
10. It is proposed that the vacancy should be advertised at the earliest opportunity, with the aim of selecting and recommending a suitable appointee to full Council for approval in September if possible, before the next Committee meeting (currently scheduled for 2nd October 2019), if possible.

Legal Implications

11. The legal implications are contained within the body of the report.

Financial Implications

12. There are no financial considerations beyond the cost of the recruitment advert, which will be met from within the Directorate budget.

RECOMMENDATIONS

The Committee is recommended to:

- (i) Note the information set out in the report;
- (ii) Agree the establishment of an Appointments Panels comprised of 5 members, as set out in paragraph 9 of the report, with delegated authority to shortlist and interview candidates and make a recommendation on appointment to full Council;
- (iii) Approve the advertisement and person specification for the Independent Member vacancy, as set out in **Appendices A and B**, subject to any agreed amendments;
- (iv) Authorise the Monitoring Officer, in consultation with the Chair, to make all necessary administrative arrangements; and
- (v) Note that the recommendation of the Appointments Panel on the appointment of an independent member to the Committee will be submitted to full Council for approval.

Davina Fiore

Director of Governance and Legal Services and Monitoring Officer

25th June 2019

Appendices

Appendix A

Independent Member Vacancy - Advertisement

Appendix B

Independent Member Person Specification

Background papers

Standards and Ethics Committee report, 'Committee Vacancies', September 2017

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CARDIFF COUNCIL VACANCY FOR AN INDEPENDENT MEMBER OF THE STANDARDS & ETHICS COMMITTEE

Cardiff Council is seeking to appoint a new independent member to its Standards & Ethics Committee.

If you value local democracy, have a commitment to public service and have the capacity to be independent, objective and strong-minded, then you may be the right person for this role.

The Standards & Ethics Committee performs an important role in promoting and maintaining high standards of conduct of elected members of Cardiff Council and the six Community Councils within its area. The Committee is comprised of five Independent members, 1 community councillor and three county councillors. There is a vacancy for one Independent Member due to one member stepping down. Appointments are made for a term of 4 to 6 years, and may be extended for a further 4-year term.

For this role you will need to:

- Have a general interest in ethical issues
- Be of good character,
- Demonstrate a commitment to the Seven Principles of Public Life (the Nolan principles;selflessness;integrity;objectivity;accountability;openness;honesty;leadership)
- Have an understanding of governance in a corporate body
- Have the capacity to be independent, objective and strong minded
- Have no business connection with the Council
- Be able to analyse evidence, issues and problems
- Be able to communicate and contribute effectively in a committee environment
- Be politically independent
- Be able to commit on average 2 to 3 hours each month (which includes evening meetings) to the work of the Committee

The Committee usually meets on a quarterly basis and Independent members are asked to attend other Council and Committee meetings to observe proceedings and familiarise themselves with the work of the Council. Appropriate training will be provided for members to develop the necessary understanding and skills to effectively discharge their role. An allowance of £198 per day / £99 for half a day is paid, and expenses may be claimed for care, travel and subsistence.

If you believe you meet the above requirements and are interested in this role, please email democraticservices@cardiff.gov.uk or telephone 02920 872432 for an application pack.

For an informal discussion about the role, please contact: Davina Fiore, Director of Legal and Governance email Davina.Fiore@cardiff.gov.uk or call 02920 873905

Members of ethnic minority communities and disabled people are currently under-represented on the Committee, so applications from members of these groups are particularly welcome, although all applications will be considered on merit.

The closing date for applications is 18 July 2019

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Person Specification

Designation of Post: Independent Member of Standards & Ethics Committee

THE PERSON APPOINTED MUST FULFIL THE FOLLOWING REQUIREMENTS:

| | <i>Essential</i> | <i>Desirable</i> |
|---------------------------------|---|--|
| Knowledge and Experience | <p>Experience or understanding of governance in a corporate body</p> | <p>Understanding of how local government functions and the principles of public accountability</p> <p>Understanding of legislation (or ability to learn)</p> <p>A record of achievement in the public, commercial, voluntary or academic sectors</p> |
| Skills and Abilities | <p>Able to analyse issues and problems, weigh evidence and put forward persuasive arguments to support your view</p> <p>Able to contribute effectively in a committee environment, and work constructively with others to achieve consensus</p> <p>Able to communicate effectively</p> <p>Capacity to be independent, objective and strong minded</p> <p>Able to commit an average of 2 to 3 hours each month (including evening meetings) to the work of the Committee</p> | |
| Personal Attributes | <p>Of good character and showing integrity.</p> <p>Value local democracy</p> <p>A commitment to public service</p> <p>A general interest in ethical issues</p> | <p>Respected for a contribution made to community life</p> |

| | Essential | Desirable |
|---|---|--|
| Personal Attributes (contd) | <p>A commitment to the Seven Principles of Public Life (the Nolan Principles: selflessness;;integrity; objectivity;accountability; openness; honesty; leadership)</p> <p>Personal and political sensitivity</p> <p>Must <u>not</u> have any business or other interests (including membership or affiliation of any political or other organisation) which would cause real or perceived conflict with the independence and impartiality of the role</p> <p>Must <u>not</u> be:</p> <ul style="list-style-type: none"> • a current councillor or officer (or the spouse or partner of a councillor or officer) of Cardiff Council or any other local authority, National Park authority, fire authority, or community council; • a former councillor or officer of Cardiff Council; or • a former councillor or officer of any other local authority, National Park authority, fire authority, or community council, <i>unless</i> you ceased to hold that position more than 12 months ago <p>A commitment to the Council's Equal Opportunities Policy and an awareness of, and sensitivity to, the diversity of modern society</p> | |
| Other | | A resident and local government elector in Cardiff |

**CYNGOR CAERDYDD
CARDIFF COUNCIL**



STANDARDS AND ETHICS COMMITTEE:

1 JULY 2019

**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES AND MONITORING OFFICER**

MEMBER CONDUCT - HEARINGS PANEL & PROCEDURES

Reason for this Report

1. For the Committee to approve arrangements to hear and determine any referrals from the Ombudsman in relation to a complaint about member misconduct.

Background

2. Members of Cardiff Council are bound by the statutory Members' Code of Conduct adopted by the Council (pursuant to section 51 of the Local Government Act 2000, 'the Act').
3. The Ombudsman may investigate any alleged breach of the Code of Conduct by a Member (under section 69 of the Act.)
4. Under the Standards and Ethics Committee's terms of reference (paragraph (i)), the Committee has responsibility:
 - i) To hear and determine any complaints of misconduct by Members or a report of the Monitoring Officer, whether on reference from the Ombudsman or otherwise
5. Complaints about a Member's conduct may be referred to the Standards & Ethics Committee by (i) the Ombudsman (under Part 3 of the Local Government Act 2000); or (ii) the Monitoring Officer, under the Local Resolution Protocol adopted by the Council for resolving relatively low level complaints.
6. In May 2014, the Committee considered a misconduct complaint referred by the Ombudsman, and resolved to appoint a sub-committee, 'the Hearings Panel', (comprised of three independent members of the Committee) to determine that complaint and impose any appropriate sanctions. The Monitoring Officer, in consultation with the Chair of the Panel, was instructed to convene and take all necessary steps in advance of the hearing.
7. In May 2014, the Committee also considered its arrangements for hearings under the Local Resolution Protocol. The Committee approved the establishment of a sub-committee, 'the Hearings Panel' required under the Local Resolution Protocol, comprised of three out of the five independent members of the Committee; and

delegated authority to the Monitoring Officer (in consultation with the Chair) to take all steps necessary to convene a meeting of the Hearings Panel, as and when required.

8. The Committee has adopted separate procedures for the Hearings Panel to determine:
 - (i) complaints referred by the Ombudsman - this procedure was last amended in March 2012; and
 - (ii) complaints under the Local Resolution Protocol – this procedure was last amended in March 2016.

Issues

9. The Ombudsman may refer a misconduct complaint to the Monitoring Officer under section 70(4) or section 71(2) of the Local Government Act 2000. A referral under section 70(4) requires the Monitoring Officer to conduct an investigation into the complaint and then submit an investigation report to the Standards and Ethics Committee for determination of the complaint. A referral under section 71(2) is made when the Ombudsman has investigated the complaint and requires the Monitoring Officer to consider the investigation report and submit it, with recommendations, to the Standards and Ethics Committee for determination.
10. The powers and duties of the Monitoring Officer and the Standards and Ethics Committee and the procedure to be followed in dealing with a referral from the Ombudsman are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 ('the Regulations').
11. Upon receiving a referral from the Ombudsman under section 71(2) of the Local Government Act 2000, the Monitoring Officer is obliged to consider the Ombudsman's investigation report and, if appropriate, make recommendations to the Standards and Ethics Committee (SI 2001/2281, Regulation 3(2)).
12. Under the Regulations, the Committee is required to:
 - (i) Make an initial determination that either there is no evidence of a breach of the Code, or that the Councillor should be given the opportunity to respond, either orally or in writing; and
 - (ii) If the Panel's initial determination is to give the Councillor the opportunity to respond, the Panel must then consider the Councillor's representations and make a final determination.
13. The Committee's final determination, if required, must be one of the following:
 - (a) that there is no evidence of any breach of the Code of Conduct and therefore no further action needs to be taken;
 - (b) that the Member has breached the Code of Conduct but that no action needs to be taken in respect of that breach;
 - (c) that the Member has breached the Code of Conduct and should be censured, or

(d) that the Member has breached the Code of Conduct and should be suspended or partially suspended from being a Member of the authority for a period of up to six months.

14. After making its final determination, the Panel is required to give notice of its determination to the persons concerned and the Ombudsman and to produce and publish a report on the outcome of the investigation.
15. If the Panel finds a breach of the Code, the Councillor may apply to the Adjudication Panel for Wales within 21 days from receiving notice of the Committee's determination for permission to appeal. If permission to appeal is granted, the Adjudication Panel for Wales may either uphold the Committee's determination, recommend a different sanction to the Committee for reconsideration or overturn the Committee's determination.

Monitoring Officer's Recommendations

16. The Monitoring Officer recommends that the Committee should:
 - (i) Approve the establishment of a Hearings Panel sub-committee, comprised of three Committee members, to include at least two independent members, to consider and determine complaints referred by the Ombudsman); and
 - (ii) Update the Hearings Panel's procedure to ensure it remains fit for purpose.

Hearings Panel

17. The Committee may appoint a sub-committee to discharge any of its functions, comprised of not less than three members of the Committee (pursuant to section 54A of the Local Government Act 2000 and SI 2001/2283, Regulation 3). For a sub-committee to be quorate, at least two members, including the chairperson, must be present; and at least half the members present, including the chairperson, must be independent members (SI 2001/2283, Regulation 24)
18. Setting up a sub-committee for misconduct hearings allows matters to be determined effectively and efficiently. As noted in paragraphs 6 and 7 above, a Hearings Panel sub-committee comprised of three independent members has been set up to determine previous misconduct complaints referred to the Committee by the Ombudsman and under the Local Resolution Protocol.
19. For hearings under the Local Resolution Protocol, the Committee has approved the appointment of a Hearings Panel and authorised the Monitoring Officer to make any necessary arrangements to convene a meeting of the Panel as and when required (please see paragraph 7 above).
20. The Constitution, Article 9.3 provides for a sub-committee to be appointed to deal with misconduct referrals from the Ombudsman relating to a community councillor. Such sub-committee is 'to include at least two independent members and one community committee member, unless the matter before the sub-committee relates to the community committee member's Council or a member of that council, in which case the community committee member's place will be taken by another member of the Standards & Ethics Committee'.

21. As misconduct referrals need to be dealt with promptly, without the delays involved in waiting until the next scheduled Committee meeting or convening an extra full Committee meeting, it is recommended that the Committee approve similar arrangements for determining any complaints referred by the Ombudsman. Accordingly, the Committee is recommended to approve the establishment of a Hearings Panel, comprised of three members of the Committee, at least two of whom must be independent members; and including the community council member on the Committee for any complaint relating to a community councillor, unless the complaint relates to a member of his/her own community council. The Hearings Panel should be given delegated authority to conduct any hearings, impose any sanctions and take any other steps considered necessary in relation to misconduct complaints referred to it, from time to time, by the Ombudsman; and the Monitoring Officer should be authorised, in consultation with the Chair, to make all associated administrative arrangements.

Hearings Panel Procedure

22. The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 make certain provision regarding the procedure to be followed for the investigation and determination of Member misconduct complaints. Subject to any express provisions in these Regulations (or the Standards Committees (Wales) Regulations 2001), the procedure to be followed by a Standards Committee in exercising its functions under the Regulations is for the Committee to decide (Regulation 8).
23. As noted in paragraph 8 above, the Committee adopted a procedure for the Hearings Panel to deal with complaints referred by the Ombudsman in March 2012.
24. The procedure seeks to comply with:
 - a. The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001; and
 - b. The principles of natural justice. In particular, it seeks to ensure that the hearing is fair and gives adequate opportunity for each party to present their case.
25. The procedure has been reviewed and a number of changes are recommended to reflect current legislative requirements, clarify procedures and ensure they remain fit for purpose. The proposed amendments to the current procedure are shown in **Appendix A** (marked up copy showing proposed amendments) and **Appendix B** (clean, formatted copy).

Legal Implications

26. Members may wish to note that where a meeting of a Standards Committee or sub-committee is convened to consider a misconduct complaint referred by the Ombudsman, the statutory access to information rules (which apply to meetings of the Council and its committees and sub-committees under Part VA of the Local Government and Housing Act 1989) provide the following specific exemptions:

- (i) There is no requirement to publish or make publicly available the agendas, reports, minutes or background papers connected to this matter until after the conclusion of the proceedings (after the appeal period ends or any appeal is concluded) – Regulation 26(2A) of the Standards Committee (Wales) Regulations 2001; and
 - (ii) The deliberations of the committee or sub-committee in reaching its findings; and any confidential information are exempt, if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information – Regulation 4 of the Standards Committees (Wales) Amendment Regulations 2007 and paragraphs 18A and 18C of Schedule 12A of the Local Government Act 1972.
27. The public may also be excluded from any meeting where exempt information is to be discussed. The categories of exempt information for these purposes includes information about an individual, provided the committee or sub-committee is satisfied that the public interest in exempting the information outweighs the public interest in disclosing it. This means that the Hearings Panel will be required to decide whether the hearing (or any part of it) should be conducted in public or private. The Councillor complained of will be given the opportunity to make representations on this point. However, as noted in paragraph 14 above, the Hearings Panel is required produce a report on the outcome of the investigation, which is to be published by the Monitoring Officer after the conclusion of the matter (Regulation 13 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001).
28. Other relevant legal implications are set out in the body of the report.

Financial Implications

29. There are no direct financial implications as a result of the changes recommended in this paper.

RECOMMENDATION

The Committee is recommended to:

1. Approve the establishment of a sub-committee, 'Hearings Panel', comprised of three members of the Committee, to include at least two independent members (and for complaints against a community councillor, to include the community committee member in accordance with Article 9.3 of the Constitution), to deal with referrals from the Ombudsman;
2. Delegate authority to the Hearings Panel established under recommendation 1, to exercise all the functions of the Committee in relation to any misconduct hearings which may be referred to the Committee by the Ombudsman from time to time;

3. Delegate authority to the Monitoring Officer, in consultation with the Chair, to convene a Hearings Panel, as and when required, and make all associated administrative arrangements; and
4. Authorise the Monitoring Officer to amend the Hearings Panel Procedure as shown in **Appendix A**, subject to any further amendments agreed by the Committee.

Davina Fiore

Director of Governance and Legal Services and Monitoring Officer

25 June 2019

Appendices

- Appendix A Procedure for Hearings (Ombudsman's Referrals) - marked to show proposed amendments
- Appendix B Revised draft Procedure for Hearings (Ombudsman's Referrals) - clean, formatted copy

Background Papers

Standards & Ethics Committee reports March 2012, May 2014, October 2014, March 2016
Local Resolution Protocol Panel Hearing Procedure

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CARDIFF COUNTY COUNCIL
STANDARD AND ETHICS COMMITTEE

PROCEDURE FOR HEARINGS (OMBUDSMAN REFERRALS)

Adopted by Standard and Ethics Committee on 20-March-2012-XX

Introduction

The Standard and Ethics Committee ('the Committee') needs to have in place effective and efficient procedures for dealing with Hearings in respect of an allegation that a County Councillor, Community Councillor or co-opted member of any committee or sub-committee in Cardiff has failed to comply with the Code of Conduct adopted by his/her respective Authority. ~~All such allegations must in the first instance be made to the Public Services Ombudsman for Wales, who will decide whether or not to investigate the allegation.~~

The Committee has adopted a separate procedure for conducting hearings under the Local Resolution Protocol.

Standard and Ethics Committee Hearings will may also be required to determine a complaint referred to the Committee by the Ombudsman under Part 3 of the Local Government Act 2000 ('the Act'). This may occur as the result of either:

- (a) The Ombudsman ceasing an investigation and referring the matter to the Council's Monitoring Officer (under section 70(4) of the Act). The Monitoring Officer must then investigate the matter and report on the conclusion of his/her investigation to the Standard and Ethics Committee.
- (b) The Ombudsman undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer (under section 71(2) of the Act), for reporting to the Standard and Ethics Committee.

The following procedure should be used in respect of both instances referred to of Ombudsman referrals set out above and provides the Standard and Ethics Committee with a consistent approach in determining matters locally.

Hearings Panel Sub-Committee

A sub-committee of the Standards and Ethics Committee, referred to as 'the Hearings Panel' or 'the Panel', shall be set up to consider investigation reports, conduct hearings, make determinations, impose any sanctions and exercise any associated powers of the Committee granted by law or under this Procedure.

The Hearings Panel shall be composed of three members of the Committee independent, at least onetwo of whom shouldmust be an-independent members of the Committee.

For complaints about a member of a community council, the Panel shall include the community council representative on the Committee, unless the complaint concerns a member of his/her own community council.

The Hearings Panel shall elect one of the independent Panel members to serve as Chair for each meeting.

Except for any decisions that may be expressed in this Procedure to be taken by the Chair, any decision of the Hearings Panel shall be made on the basis of a simple majority vote.

Initial Determination

~~Prior to the Hearing, following receipt of a Report and any recommendations from the Monitoring Officer, or a Report from the Ombudsman, together with any recommendations of the Monitoring Officer, the Standard and Ethics Committee~~ Hearings Panel must make an initial determination, either:

- (a) that there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned (and must then notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman for Wales accordingly); or
- (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant Authority's Code of Conduct.

~~If the Standards and Ethics Committee~~ Hearings Panel makes a determination under paragraph (b) above, the Panel will instruct arrangements to be made for a Hearing in accordance with the rules below ~~Hearing rules set out below will be followed at a subsequent meeting of the Committee.~~

Prior to the Hearing

~~Prior to the hearing the Investigating Officer shall set out in writing the results of their investigation, and send copies of that report together with including copies of all written evidence the report relies upon in an 'Investigation Report'; and send copies of the Investigation Report to the Committee and to the Councillor. If relevant the Investigating Officer's report may simply refer the Committee to any report of the Public Services Ombudsman for Wales or other pre-existing report. The report should also indicate any witnesses the Investigating Officer wishes to call together with brief reasons for doing so (if any).~~

The Panel shall write to the Councillor to notify him/her of the Panel's initial determination (made under paragraph xx above); provide information about the possible sanctions open to the

Commented [AK1]: This section has been moved to here and amended.

Hearing if a breach of the Code of Conduct is found; and invite a written response to the findings of the Investigation Report to be submitted to the Panel within three weeks from receipt of the Panel's notification letter.

~~The Councillor shall be required to respond in writing to the Committee and copied to the Investigating Officer within three weeks of receipt of the Investigating Officers' report. The Councillor shall be informed that his/her written response need not set out the Councillor's position in full, but it should:~~

- (a) indicate whether or not the Cllr will be represented and if so, by whom
- (b) indicate whether the Cllr intends to apply to the Panel to have the press and public excluded from the hearing and any grounds for doing so
- (a)(c) indicate all areas of the Investigating Officers' Report that the Councillor intends to dispute with brief reasoning;
- (b)(d) attach all written evidence the Councillor intends to rely upon; and
- (e) indicate any witnesses the Councillor wishes to call (which may include any witnesses referred to in the Investigation Report) and brief reasons for doing so (if any); and
- (f) indicate any dates or times when the Councillor, the representative and any witnesses they wish to call will be unavailable to attend a Hearing.

The Panel shall also write to the Investigating Officer to notify him/her of the Panel's initial determination (made under paragraph xx above); and to:

- (i) request that the Investigating Officer should attend the Hearing to present the Investigation Report and explain any matters in it, if the Panel considers it appropriate OR to ask if the Investigating Officer wishes to attend the Hearing for this purpose;
- (ii) ask if there are any dates or times when the Investigating Officer will be unavailable to attend a Hearing; and
- (iii) ask the Investigating Officer to indicate any witnesses he/she wishes to call and brief reasons for doing so (if any).

Following receipt of the Councillor's and the Investigating Officer's written response, the Committee/Panel shall write to the Investigating Officer and the Councillor confirming the following:

- (a) the date, time and location set for the hearing (having taken reasonable steps to accommodate the availability of the Councillor and the Investigating Officer);
- (b) whether the witnesses the Investigating Officer and the Councillor wishes to call will be allowed (giving reasons and allowing opportunity to respond if any witnesses are not to be allowed); and

any other steps the Committee Panel may in its discretion require prior to the Hhearing.

The Monitoring Officer

The Monitoring Officer, Deputy Monitoring Officer or another Legal Advisor shall be in attendance to advise the Hearings Panel.

If the Monitoring Officer has investigated a complaint, he/she (or a nominated representative) will attend a Hearing in his/her role as the person who has investigated the complaint and will not be present to provide legal advice to the Committee. In such cases, the Deputy Monitoring Officer or another of the Authority's Lawyers Legal Advisor will be present to advise the Committee.

1. Interpretation

- (a) "Councillor" means the Member or former Member of the County or Community Council or the co-opted member of any committee or sub committee who is the subject of the allegation being considered by the Standards and Ethics Committee, unless stated otherwise. Unless the context requires otherwise it also includes the Councillor's nominated representative.
- (b) "Investigating Officer" means the Public Services Ombudsman for Wales and includes his/her nominated representative. In the case of matters that have been referred to the Monitoring Officer for investigation, references to the "Investigating Officer", means the Monitoring Officer, or a person appointed by the Monitoring Officer to undertake the investigation, and his/her nominated representative.
- (c) "Legal Advisor" means the person officer responsible for providing legal advice to the Standards and Ethics Committee Hearings Panel. This may be the Monitoring Officer, or another legally qualified officer of the Authority.

Commented [AK2]: This paragraph to be moved up to follow after the Introduction paragraph.

2. Powers of the Standards and Ethics Committee Hearings Panel

- (a) The Chair, having taken legal advice from the Legal Advisor, 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.

- (b) The Chair, having taken legal advice from the Legal Advisor, may also agree to vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure). Such power will include, for the avoidance of doubt:
- (i) the ability to combine Stages 1 and 2 of this procedure set out below so that both the Councillor and the Investigating Officer give combined submissions on both the facts and whether the facts amount to a breach of the Code of Conduct; and
 - (j) the ability to request that the proceedings be conducted by exchange of written submissions only if the Councillor so agrees.
- (c) The members of the Committee Panel may question anyone taking part in the proceedings on a point they raise in their representations or to seek clarification of views on points raised by others appearing at the Hearing. They may also request advice from the Legal Advisor.
- (d) The Committee Panel may also require the attendance of a particular witness or the production of specific documentation where it appears that such additional material may resolve conflict on facts.
- (d)(e) The sanctions and other powers available to the Panel are set out under paragraphs xx below.

3. Representation

The Councillor and the Investigating Officer may be represented or accompanied during the Hearing by Counsel or a Solicitor, or any other person he or she desires. The Councillor and the Investigating Officer is/are responsible for meeting the cost of any representation.

4. Legal Advice

The Committee may take legal advice from its Legal Advisor at any time before or during the Hearing or while the outcome is being considered. The substance of any legal advice given to the Committee Panel should be shared with the Councillor and the Investigating Officer, if they are present, but not the detail of the request for legal advice.

5. —

6. Introductions at the Hearing

At the start of the Hearing, the Chair shall introduce each of the Members of the Standards and Ethics Committee Hearings Panel and everyone involved in the Hearing. The Chair shall then explain the procedure which the Committee Panel is to follow in its conduct of the

Hearing and should obtain confirmation from everybody taking part in the Hearing that they have understood the procedure.

7. Preliminary Procedural Issues

(a) The Committee Panel should then resolve any issues or disagreements about how the Hearing should continue, including whether all or part of the Hearing should be heard without the attendance of the public.

(b) If either party want to adduce further information to the Committee Panel they should make an application to the Committee Panel for permission to do so prior to the commencement of the formal part of the Hearing. It will assist if the Legal Advisor and the other party have been provided with details of the late information as early as possible but at least two days before the commencement of the Hearing. The Committee Panel retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present the evidence which is relevant to the matters before the Committee Panel.

(c) If the Councillor fails to attend the Hearing, the Committee Panel may, depending on the reason for such non-attendance, continue with the proceedings or adjourn the Hearing to another date to give the Councillor a last opportunity to make representations.

8. Stage 1 — Formal Findings of Fact

(a) After dealing with any preliminary issues, the Committee Panel should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's Report.

(b) If there is no disagreement about the facts, the Committee Panel can move on to the next stage of the Hearing.

(c) If there is a disagreement about the facts, the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the Report (for the avoidance of doubt, the Investigating Officer may choose to invite the Committee Panel to consider the evidence given in the Investigation Report and not make any further submission). With the Committee Panel's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee Panel may allow the Councillor an opportunity to challenge or comment upon any evidence put forward by any witness called by the Investigating Officer.

- (d) The Councillor should then have the opportunity to make representations to support his/her version of the facts and with the CommitteePanel's permission, to call any necessary witnesses to give evidence.
- (e) At any time, a Member of the CommitteePanel may question any of the people involved or any of the witnesses. The CommitteePanel may allow the Investigating Officer an opportunity to challenge or comment upon any evidence put forward by a witness called by the Councillor.
- (f) If the Councillor disagrees with any relevant fact in the Investigating Officer's Report, without having given prior notice of the disagreement, he/she **must** give good reasons for not mentioning it before the Hearing. If the Investigating Officer is not present, the CommitteePanel will consider whether or not it would be in the public interest to continue in his/her absence. After considering the Councillor's explanation for not raising the issue at an earlier stage, the CommitteePanel may then:
 - (i) continue with the Hearing, relying on the information in the Investigating Officer's Report;
 - (ii) allow the Councillor to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
 - (iii) adjourn the Hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present, if he or she is not already present.
- (g) The CommitteePanel shall then retire to consider their decision. Depending on the number of persons attending the Hearing, the CommitteePanel will either move to another room to deliberate on the representations and evidence in private or request the parties to leave the room during the deliberations.
- (h) Once the decision is reached and the meeting re-convened, the Chair will announce the CommitteePanel's findings of fact.

9. Stage 2 — Did the Member fail to follow the Code?

- (a) The CommitteePanel then needs to consider whether or not, based on the facts it has found, the Councillor has failed to follow the Code of Conduct. It should be noted that this stage of the hearing does not provide either the Councillor or the Investigating Officer an opportunity to re-examine the facts of the case in question.
- (b) The Councillor should be invited to give relevant reasons why the CommitteePanel should not decide that he or she has failed to follow the Code.

- (c) The ~~CommitteePanel~~ should then consider any verbal or written representations from the Investigating Officer.
- (d) The ~~CommitteePanel~~ may, at any time, question anyone involved on any point they raise in their representations.
- (e) The Councillor should be invited to make any final relevant points.
- (f) The parties shall then retire or the ~~CommitteePanel~~ will then move to another room to consider the representations and make its decision as to whether or not the Member has failed to follow the Code of Conduct.
- (g) On the Hearing being re-convened, the Chair will announce the ~~CommitteePanel~~'s decision as to whether or not the Councillor has failed to follow the Code of Conduct.

10. Stage 3 — Breach of the Code and Sanctions

10.1 If it is found that the Councillor has not failed to follow the Code of Conduct.

If the ~~CommitteePanel~~ decides that the Councillor has not failed to follow the Code of Conduct, the ~~CommitteePanel~~ can however ~~nevertheless~~ consider whether it should make any general recommendations to the Authority in question.

10.2 If it is found that the Councillor has failed to follow the Code of Conduct (representations on sanction)

- (a) If the ~~CommitteePanel~~ decides that the Councillor has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Councillor as to:
 - (i) whether or not the ~~CommitteePanel~~ should set a ~~sanction~~ penalty; and
 - (ii) what form any ~~sanction~~ penalty should take.
- (b) The ~~CommitteePanel~~ may question the Investigating Officer and the Councillor and, if necessary, take legal advice, to make sure it has the information needed in order to make an informed decision.
- (c) The parties shall then retire or the ~~CommitteePanel~~ will then move to another room to consider whether or not to impose a ~~sanction~~ penalty on the Councillor and, if so, what the ~~sanction~~ penalty should be.
- (d) On reconvening the Hearing, the Chair will announce the ~~CommitteePanel~~'s decision.

10.3 If it is found by the Standards and Ethics Committee Panel that a Councillor has failed to comply with an Authority's Code of Conduct (potential sanctions)

If the Committee Panel finds that a Councillor has breached the Code, it can decide.

- (a) that no action needs to be taken in respect of that failure; or
- (b) that the Councillor should be censured; or
- (c) that the Councillor should be suspended or partially suspended from being a Member or Co-opted Member of the Authority in question, for a period not exceeding six months.

The Panel may request the Cllr to take any remedial action it considers to be reasonable and proportionate in the circumstances, for example to apologise or attend training, and it may adjourn a decision on sanction to allow time for the requested remedial action to be taken prior to a decision on sanction.

11. Recommendations to the Authority

After considering any verbal or written representations from the Investigating Officer and the Councillor (should it choose to do so), the Committee Panel will consider whether or not it should make any recommendations to the Authority concerned, with a view to promoting high standards of conduct among Councillors.

12. The Written Decision

The Committee Panel will announce its decision on the day and provide a short written confirmation of its decision on that day. It will also need to issue a full written decision, with reasons, within five working days of the end of the hearing, shortly after the end of the Hearing and formally notify all parties ('the Decision Notification'). ~~It is good practice to prepare the full written decision in draft on the day of the Hearing, before memories fade.~~

13. Appeals

Where the Standards and Ethics Committee Panel determines that a person has failed to comply with the Code of Conduct, that person may seek permission to appeal against the determination to an Appeals Tribunal drawn from the Adjudication Panel for Wales. The grounds and procedure for making such an appeal application are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended).

Any such appeal application must be instigated by giving notice in writing to the President of the Adjudication Panel for Wales within 21 days of receiving notification of the Standards and Ethics Committee's Hearings Panel's determination (the Decision Notification).

14. Publication

The Committee Panel will cause produce a report of the proceedings on the outcome of the investigation and send a copy of this report to all parties, the Ombudsman and the Monitoring Officer to be published on the Authority's website not later than within 14 days after the period for an appeal or after the appeal process has been completed, whichever is the later, and also Upon receipt of the Panel's report, the Monitoring Officer shall arrange for the report to be published on the Authority's website for a period of 21 days, make copies of the report publicly available upon request and publish a notice in a newspaper circulating in the area to explain the availability of the report.

CARDIFF COUNTY COUNCIL
STANDARD AND ETHICS COMMITTEE

PROCEDURE FOR HEARINGS (OMBUDSMAN REFERRALS)

Adopted by Standard and Ethics Committee on XX

1. Introduction

- 1.1 The Standard and Ethics Committee ('the Committee') needs to have in place effective and efficient procedures for dealing with Hearings in respect of an allegation that a County Councillor, Community Councillor or co-opted member of any committee or sub committee in Cardiff has failed to comply with the Code of Conduct adopted by his/her respective Authority.
- 1.2 The Committee has adopted a separate procedure for conducting hearings under the Local Resolution Protocol.
- 1.3 Standard and Ethics Committee Hearings may also be required to determine a complaint referred to the Committee by the Ombudsman under Part 3 of the Local Government Act 2000 ('the Act'). This may occur as the result of either:
- (a) The Ombudsman ceasing an investigation and referring the matter to the Council's Monitoring Officer (under section 70(4) of the Act). The Monitoring Officer must then investigate the matter and report on the conclusion of his/her investigation to the Standard and Ethics Committee.
 - (b) The Ombudsman undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer (under section 71(2) of the Act), for reporting to the Standard and Ethics Committee.
- 1.4 The following procedure should be used in respect of both instances of Ombudsman referrals set out above and provides the Standard and Ethics Committee with a consistent approach in determining matters locally.

2. Interpretation

- (a) "Councillor" means the Member or former Member of the County or Community Council or the co-opted member of any committee or sub committee who is the subject of the allegation being considered by the Standards and Ethics Committee, unless stated otherwise. Unless the context requires otherwise it also includes the Councillor's nominated representative.
- (b) "Investigating Officer" means the Public Services Ombudsman for Wales and includes his/her nominated representative. In the case of matters that have been referred to the Monitoring Officer for investigation, references to the "Investigating Officer", means the Monitoring Officer, or a person appointed by the Monitoring Officer to undertake the investigation, and his/her nominated representative.

- (c) "Legal Advisor" means the person responsible for providing legal advice to the Hearings Panel.

3. Hearings Panel Sub-Committee

- 3.1 A sub-committee of the Standards and Ethics Committee, referred to as 'the Hearings Panel' or 'the Panel', shall be set up to consider investigation reports, conduct hearings, make determinations, impose any sanctions and exercise any associated powers of the Committee granted by law or under this Procedure.
- 3.2 The Hearings Panel shall be composed of three members of the Committee, at least two of whom must be independent members of the Committee.
- 3.3 For complaints about a member of a community council, the Panel shall include the community council representative on the Committee, unless the complaint concerns a member of his/her own community council.
- 3.4 The Hearings Panel shall elect one of the independent Panel members to serve as Chair for each meeting.
- 3.5 Except for any decisions that may be expressed in this Procedure to be taken by the Chair, any decision of the Hearings Panel shall be made on the basis of a simple majority vote.

4. Initial Determination

- 4.1 Following receipt of a report and any recommendations from the Monitoring Officer, or a report from the Ombudsman, together with any recommendations of the Monitoring Officer, the Hearings Panel must make an initial determination, either:
- (a) that there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned (and must then notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman for Wales accordingly); or
- (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant Authority's Code of Conduct.
- 4.2 If the Hearings Panel makes a determination under paragraph 4.1(b) above, the Panel will instruct arrangements to be made for a Hearing in accordance with the rules below.

5. Prior to the Hearing

- 5.1 The Investigating Officer shall set out in writing the results of their investigation, including copies of all written evidence the report relies upon in an 'Investigation Report'; and send copies of the Investigation Report to the Committee and to the Councillor.
- 5.2 The Panel shall write to the Councillor to notify him/her of the Panel's initial determination (made under paragraph 4.1 above); provide information about the possible sanctions open to the Hearing if a breach of the Code of Conduct is found; and invite a written response to the findings of the Investigation Report to be submitted to the Panel within three weeks from receipt of the Panel's notification letter.
- 5.3 The Councillor shall be informed that his/her written response need not set out the Councillor's position in full, but it should:
- (a) indicate whether or not the Councillor will be represented and if so, by whom;
 - (b) indicate whether the Councillor intends to apply to the Panel to have the press and public excluded from the hearing and any grounds for doing so;
 - (c) indicate all areas of the Investigation Report that the Councillor intends to dispute, with brief reasoning;
 - (d) attach all written evidence the Councillor intends to rely upon;
 - (e) indicate any witnesses the Councillor wishes to call (which may include any witnesses referred to in the Investigation Report) and brief reasons for doing so (if any); and
 - (f) indicate any dates or times when the Councillor, the representative and any witnesses they wish to call will be unavailable to attend a Hearing.
- 5.4 The Panel shall also write to the Investigating Officer to notify him/her of the Panel's initial determination (made under paragraph 4.1 above), and to:
- (a) request that the Investigating Officer should attend the Hearing to present the Investigation Report and explain any matters in it, if the Panel considers it appropriate OR to ask if the Investigating Officer wishes to attend the Hearing for this purpose;
 - (b) ask if there are any dates or times when the Investigating Officer will be unavailable to attend a Hearing; and
 - (c) ask the Investigating Officer to indicate any witnesses he/she wishes to call and brief reasons for doing so (if any).

5.5 Following receipt of the Councillor's and the Investigating Officer's written response, the Panel shall write to the Investigating Officer and the Councillor confirming the following:

- (a) the date, time and location set for the hearing (having taken reasonable steps to accommodate the availability of the Councillor and the Investigating Officer);
- (b) whether the witnesses the Investigating Officer and the Councillor wishes to call will be allowed (giving reasons and allowing opportunity to respond if any witnesses are not to be allowed); and
- (c) any other steps the Panel may in its discretion require prior to the Hearing.

6. The Monitoring Officer

6.1 The Monitoring Officer, Deputy Monitoring Officer or another Legal Advisor shall be in attendance to advise the Hearings Panel.

6.2 If the Monitoring Officer has investigated a complaint, he/she (or a nominated representative) will attend a Hearing in his/her role as the person who has investigated the complaint and will not be present to provide legal advice to the Committee. In such cases, the Deputy Monitoring Officer or another Legal Advisor will be present to advise the Committee.

7. Powers of the Hearings Panel

- (a) The Chair, having taken legal advice from the Legal Advisor, 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.
- (b) The Chair, having taken legal advice from the Legal Advisor, may also agree to vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure). Such power will include, for the avoidance of doubt:
 - (i) the ability to combine Stages 1 and 2 of this procedure set out below so that both the Councillor and the Investigating Officer give combined submissions on both the facts and whether the facts amount to a breach of the Code of Conduct; and
 - (j) the ability to request that the proceedings be conducted by exchange of written submissions only if the Councillor so agrees.
- (c) The members of the Panel may question anyone taking part in the proceedings on a point they raise in their representations or

to seek clarification of views on points raised by others appearing at the Hearing. They may also request advice from the Legal Advisor.

- (d) The Panel may also require the attendance of a particular witness or the production of specific documentation where it appears that such additional material may resolve conflict on facts.
- (e) The sanctions and other powers available to the Panel are set out under paragraph 14 below.

8. Representation

The Councillor and the Investigating Officer may be represented or accompanied during the Hearing by Counsel or a Solicitor, or any other person he or she desires. The Councillor and the Investigating Officer are responsible for meeting the cost of any representation.

9. Legal Advice

The Committee may take legal advice from its Legal Advisor at any time before or during the Hearing or while the outcome is being considered. The substance of any legal advice given to the Panel should be shared with the Councillor and the Investigating Officer, if they are present, but not the detail of the request for legal advice.

10. Introductions at the Hearing

- 10.1 At the start of the Hearing, the Chair shall introduce each of the Members of the Hearings Panel and everyone involved in the Hearing.
- 10.2 The Chair shall then explain the procedure which the Panel is to follow in its conduct of the Hearing and should obtain confirmation from everybody taking part in the Hearing that they have understood the procedure.

11. Preliminary Procedural Issues

- (a) The Panel should then resolve any issues or disagreements about how the Hearing should continue, including whether all or part of the Hearing should be heard without the attendance of the public.
- (b) If either party want to adduce further information to the Panel they should make an application to the Panel for permission to do so prior to the commencement of the formal part of the Hearing. It will assist if the Legal Advisor and the other party have been provided with details of the late information as early as possible but at least two days before the commencement of the Hearing. The Panel retains sole discretion whether to permit the late introduction of information .

but shall always seek to ensure that neither party is prejudiced and all parties are able to present the evidence which is relevant to the matters before the Panel.

(c) If the Councillor fails to attend the Hearing, the Panel may, depending on the reason for such non-attendance, continue with the proceedings or adjourn the Hearing to another date to give the Councillor a last opportunity to make representations.

12. Stage 1 — Formal Findings of Fact

- (a) After dealing with any preliminary issues, the Panel should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report.
- (b) If there is no disagreement about the facts, the Panel can move on to the next stage of the Hearing.
 - (c) If there is a disagreement about the facts, the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the Report (for the avoidance of doubt, the Investigating Officer may choose to invite the Panel to consider the evidence given in the Investigation Report and not make any further submission). With the Panel's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Panel may allow the Councillor an opportunity to challenge or comment upon any evidence put forward by any witness called by the Investigating Officer.
- (d) The Councillor should then have the opportunity to make representations to support his/her version of the facts and with the Panel's permission, to call any necessary witnesses to give evidence.
- (e) At any time, a Member of the Panel may question any of the people involved or any of the witnesses. The Panel may allow the Investigating Officer an opportunity to challenge or comment upon any evidence put forward by a witness called by the Councillor.
- (f) If the Councillor disagrees with any relevant fact in the Investigation Report, without having given prior notice of the disagreement, he/she must give good reasons for not mentioning it before the Hearing. If the Investigating Officer is not present, the Panel will consider whether or not it would be in the public interest to continue in his/her absence. After considering the Councillor's explanation for not raising the issue at an earlier stage, the Panel may then:

- (i) continue with the Hearing, relying on the information in the Investigation Report;
 - (ii) allow the Councillor to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
 - (iii) adjourn the Hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present, if he or she is not already present.
- (g) The Panel shall then retire to consider their decision. Depending on the number of persons attending the Hearing, the Panel will either move to another room to deliberate on the representations and evidence in private or request the parties to leave the room during the deliberations.
- (h) Once the decision is reached and the meeting re-convened, the Chair will announce the Panel's findings of fact.

13. Stage 2 — Did the Member fail to follow the Code?

- (a) The Panel then needs to consider whether or not, based on the facts it has found, the Councillor has failed to follow the Code of Conduct. It should be noted that this stage of the hearing does not provide either the Councillor or the Investigating Officer an opportunity to re-examine the facts of the case in question.
- (b) The Councillor should be invited to give relevant reasons why the Panel should not decide that he or she has failed to follow the Code.
- (c) The Panel should then consider any verbal or written representations from the Investigating Officer.
- (d) The Panel may, at any time, question anyone involved on any point they raise in their representations.
- (e) The Councillor should be invited to make any final relevant points.
- (f) The parties shall then retire or the Panel will then move to another room to consider the representations and make its decision as to whether or not the Member has failed to follow the Code of Conduct.
- (g) On the Hearing being re-convened, the Chair will announce the Panel's decision as to whether or not the Councillor has failed to follow the Code of Conduct.

14. Stage 3 — Breach of the Code and Sanctions

14.1 If it is found that the Councillor has not failed to follow the Code of Conduct.

If the Panel decides that the Councillor has not failed to follow the Code of Conduct, the Panel can nevertheless consider whether it should make any general recommendations to the Authority in question.

14.2 If it is found that the Councillor has failed to follow the Code of Conduct (representations on sanction)

- (a) If the Panel decides that the Councillor has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Councillor as to:
 - (i) whether or not the Panel should set a sanction; and
 - (ii) what form any sanction should take.
- (b) The Panel may question the Investigating Officer and the Councillor and, if necessary, take legal advice, to make sure it has the information needed in order to make an informed decision.
- (c) The parties shall then retire or the Panel will then move to another room to consider whether or not to impose a sanction on the Councillor and, if so, what the sanction should be.
- (d) On reconvening the Hearing, the Chair will announce the Panel's decision.

14.3 If it is found by the Standards and Ethics Panel that a Councillor has failed to comply with an Authority's Code of Conduct (potential sanctions)

14.3.1 If the Panel finds that a Councillor has breached the Code, it can decide.

- (a) that no action needs to be taken in respect of that failure; or
- (b) that the Councillor should be censured; or
- (c) that the Councillor should be suspended or partially suspended from being a Member or Co-opted Member of the Authority in question, for a period not exceeding six months.

14.3.2 The Panel may request the Cllr to take any remedial action it considers to be reasonable and proportionate in the circumstances, for example to apologise or attend training, and it may adjourn a decision on sanction to allow time for the requested remedial action to be taken prior to a decision on sanction.

15. Recommendations to the Authority

After considering any verbal or written representations from the Investigating Officer and the Councillor (should it choose to do so), the Panel will consider whether or not it should make any recommendations to the Authority concerned, with a view to promoting high standards of conduct among Councillors.

16. The Written Decision

The Panel will announce its decision on the day and provide a short written confirmation of its decision on that day. It will issue a full written decision, with reasons, within five working days of the end of the hearing and formally notify all parties ('the Decision Notification')

17. Appeals

17.1 Where the Standards and Ethics Panel determines that a person has failed to comply with the Code of Conduct, that person may seek permission to appeal against the determination to an Appeals Tribunal drawn from the Adjudication Panel for Wales. The grounds and procedure for making such an application are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended).

17.2 Any such application must be instigated by giving notice in writing to the President of the Adjudication Panel for Wales within 21 days of receiving notification of the Hearings Panel's determination (the Decision Notification).

18. Publication

18.1 The Panel will produce a report on the outcome of the investigation and send a copy of this report to all parties, the Ombudsman and the Monitoring Officer within 14 days after the period for an appeal or after the appeal process has been completed, whichever is the later.

18.2 Upon receipt of the Panel's report, the Monitoring Officer shall arrange for the report to be published on the Authority's website for a period of 21 days, make copies of the report publicly available upon request and publish a notice in a newspaper circulating in the area to explain the availability of the report.

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