

West Devon Borough Council
Standards Committee

Hearing Procedure

Hearing Procedure

Where the Investigating Officer finds that the Code has been broken, the Monitoring Officer may (after consultation with the Independent Person) decide that the matter should be dealt with before the Hearing Panel, in accordance with the following Procedure.

Timescales

The Monitoring Officer will arrange for a subcommittee of the Standards Committee (known as the Hearing Panel) to meet to hear the complaint.

The Hearing Panel will deal with the matter as soon as is reasonably practicable and (subject to exceptional circumstances) will aim to do so **within 3 months** of receiving the Investigating Officer's Final Report.

The Monitoring Officer will send a copy of the Investigating Officer's Final Report to the following **within 14 days** of receiving it:

- The Councillor
- The Complainant
- The Independent Person (inviting any comments).

The Monitoring Officer will also notify the following that the Final Report has been received:

- The Standards Committee
- Independent Person
- Parish /Town Clerk (where relevant)

The Hearing Panel

The Hearing Panel is a subcommittee of the Standards Committee. It comprises three members of the full Standards Committee and they must

be present throughout the whole Hearing. One of the three members will act as Chairman.

The Independent Person is invited to attend all meetings of the Hearing Panel and his/her views may be sought and taken into account before the Hearing Panel takes any decision on whether the Councillor has broken the Code of Conduct and as to any action to be taken.

The Pre-Hearing Process

The purpose of the pre-hearing process is two-fold:

- To ascertain whether it is appropriate to deal with the matter as a Paper Hearing
- Where the matter is to be referred to a formal hearing, it will enable matters to be dealt with more fairly and economically, identifying potential areas of difficulty and enabling the hearing to focus on specific unresolved elements
- A valuable part of the Pre-Hearing process is an attempt to focus the relevant parties' attention on isolating all relevant disputes of fact between them.

The matter may be dealt with by way of a 'paper' hearing where:

- the Councillor accepts the findings of the Investigating Officer's Report and does not wish to make any further representations (save for written representations on possible sanctions) on the Report at a formal Hearing
- there are no overriding public interest or other reasons why the matter should be referred to a formal Hearing.
- Please refer to Appendix B for the procedure.

The Pre-hearing process will:

- Identify where the Councillor accepts the findings of the Investigating Officer and does not wish to make any representations on the Report (please see Appendix B)

- Identify whether the Councillor disagrees with any of the findings of fact in the Investigating Officer's Report
- Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
- Identify whether evidence about these disagreements will need to be heard during the hearing
- Consider whether any parts of the Hearing / Report (or other documents) should be withheld from the public prior to the hearing, on the grounds that they contain "exempt" material.

Exempt / confidential information

The Standards Committee is subject to the normal requirements on confidential and exempt information as apply to any other Committee under the Local Government Act 1972.

The Monitoring Officer will consider whether these provisions apply in advance of the Hearing and may consult the views of:

- the Independent Person
- Chairman of the Hearing Panel
- any other party

The pre-hearing process will usually be carried out in writing by the Monitoring Officer unless she considers that a meeting of the people involved is necessary.

Stage 1 – the Councillor

The Monitoring Officer will send to the Councillor:

- the proposed date for the hearing
- a letter explaining what happens next
- the **Councillor's Response Form**
- date by which the completed forms should be returned to the Monitoring Officer.

The **Councillor's Response Form** will set out whether the Councillor:

- will be attending the hearing;
- wants to be represented at the hearing by a solicitor/barrister or other person;
- disagrees with any of the findings of fact in the Investigating Officer's report (including reasons for the disagreements);
- wants to give evidence at the hearing;
- wants to call witnesses to give evidence at the hearing;

Stage 2 – the Investigating Officer

Once the Councillor's Response Form has been received from the Councillor, the Monitoring Officer will write to the Investigating Officer:

- Inviting the him/her to comment on the Councillor's response
- Setting out the date by which the response should be received by the Monitoring Officer.

The Investigating Officer will:

- Give any comments on the Councillor's written response
- Advise whether s/he wishes to be represented at the hearing
- Advise if s/he wishes to call witnesses to give evidence at the hearing;

Stage 3 - witnesses

The Councillor and the Investigating Officer will be responsible for providing outline statements of the evidence that their witnesses intend to give. This will allow the Hearing Panel to decide how many witnesses may reasonably be needed (and deal with any duplication) and to identify the issues it will be dealing with at the Hearing.

Other witnesses

The Hearing Panel may also invite other witnesses (including the Complainant) to attend the Hearing if it feels it would help determine the

case. However, the Hearing Panel cannot order witnesses to appear or to give evidence. Further guidance on this should be sought from the Monitoring Officer.

Stage 4 – Briefing Note - Pre-hearing summary

Once the written response is received from the Investigating Officer, the Monitoring Officer (in consultation with the Chair of the Hearing Panel) will prepare a **Briefing Note** (Pre- hearing summary) which will include the following information:

- Date, time and place of the hearing;
- A summary of the complaint;
- An outline of the main facts of the case which are agreed;
- An outline of the main facts of the case which are not agreed;
- Identify (where known) the evidence which the Investigating Officer and Councillor (and any witnesses) are expected to give
- Confirmation of whether the Councillor and the Investigating Officer will be attending or be represented at the hearing;
- Confirm any witnesses who will be asked to give evidence
- Any comments from the Independent Person on the Investigating Officer's Final Report.
- A copy of the Hearing Procedure
- Any other matters that the Monitoring Officer considers appropriate

Where practicable before the Hearing, the Briefing Note will be sent to:

- The members of the Standards Committee

- The Councillor;
- The Investigating Officer;
- Any other relevant person

Members of the Hearing Panel should consider immediately on receipt of the papers whether there are any potential conflicts of interest.

The Hearing

Purpose of the Hearing

The main purpose of a Hearing is to:

- decide whether or not a Councillor has failed to follow the relevant Code of Conduct and,
- decide what action should be taken (if any)
- if so, to decide whether or not any sanction should be applied and (if so) what form the sanction should take.

The Hearing Panel's role is to be inquisitorial and not adversarial, with power to determine through a hearing not an investigation. The Hearing Panel's work should at all times be demonstrably fair, independent and politically impartial.

The Hearing Panel controls the procedure and evidence presented at the Hearing, including the number of witnesses and the way in which witnesses are questioned.

Procedure Rules

The following Rules will apply to the Hearing:

Quorum

- Three members to be present throughout the Hearing

Chairman

- The Chairman can make such changes as s/he thinks fit in order to ensure a fair and efficient meeting.
- The Chairman may ask any party who behaves rudely, unreasonably or disruptively to leave the Hearing and may continue the Hearing in that party's absence

Votes

- Each member of the Hearing Panel shall have a vote, and all

matters/issues shall be decided by a simple majority of votes cast.

- Abstentions shall not be permitted.

Legal advice

- Legal advice can be sought from the Legal Advisor at any time during the Hearing or while it is considering the outcome.
- The advice may be given in private if necessary but the substance of any legal advice should be shared with the Councillor and Investigating Officer if they are present.

Representatives

- The Investigating Officer may be represented at the Hearing.
- The Councillor may be represented by a solicitor or barrister, or any other person if s/he wishes. If the Councillor wishes to have a non-legal representative, then the Hearing Panel must consent beforehand, but it may refuse permission if the representative is directly involved in the matter concerned.
- The Hearing Panel can withdraw permission to allow a representative if that representative (after appropriate prior warning by the Chairman) disrupts the hearing.

Witnesses

- The Councillor and the Investigating Officer may call witnesses to give evidence at the Hearing. Prior notice will have been given, and the Hearing Panel may limit the number of witnesses if it believes the number is unreasonable or if there is duplication.
- The Councillor and Investigating Officer must make his/her own arrangements to ensure that his/her witness (es) attend the Hearing.
- Witnesses of facts that are disputed should normally attend the hearing and be prepared to be cross-examined. Witnesses as to the character of the Councillor will usually present their evidence in writing and may not attend the Hearing.

Evidence

- Evidence will not be given under oath
- Factual evidence will be decided on the balance of probabilities
- The Hearing Panel will normally only need to consider the Investigating

Officer's Report and any other supporting documents.

- The Hearing Panel may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the Report.
- Cross-examination may be allowed but questions must be asked through the Chairman.
- Members of the Hearing Panel can ask questions of the parties directly.
- New evidence will only be admitted in exceptional circumstances

The Hearing Panel

- Should aim where possible to complete a hearing in one sitting on the same day.
- At any time during the whole process, the Hearing Panel may question any of the people involved or any of the witnesses.
- May retire to consider its findings in private

The Independent Person

- Will be invited to attend the Hearing
- May be consulted by the Hearing Panel prior to its making a decision about whether the Code has been broken and/or whether to impose sanctions

Costs

- The Councillor is responsible for his or own costs including any representation
- Expenses for any witnesses will not be paid

The Hearing

Parties

Unless otherwise specified, the parties to the hearing will be:

- The Councillor
- The Investigating Officer

The Complainant will not be a party to the proceedings unless called as a witness by the Investigating Officer.

Also in attendance will be the Legal advisor and any witness as agreed. The Independent Person will be invited to attend all Hearings.

Preliminary Issues

The Chairman will make the formal introductions and explain how the Committee is to run the hearing.

Representations as to whether the Hearing (or any part of it) should not be in public (or whether any documentation should be withheld) will be made at this stage. The Hearing Panel will decide whether the public interest is better served by disclosing or maintaining the exemption.

Where the Hearing Panel does not resolve to exclude the press and public from all or any part of the Hearing, the agenda and reports (which have been withheld in advance of the Hearing) shall be made available to the press and public during the Hearing and collected in at the end of the Hearing.

Exclusion of Press and Public

The Hearing Panel may resolve to exclude the press and public from the Hearing, or any part thereof, where it appears likely that confidential or exempt information will be disclosed.

The Investigating Officer's final report, pre-hearing summary and copies of any relevant documents shall be withheld from the press and public in advance of the meeting and at the meeting, until this question is resolved.

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

Where the Panel does not resolve to exclude press and public, copies of any documents which have been withheld from the press and public shall forthwith be made available to the press and public. These documents will be collected at the Hearing.

Attendance of the Councillor and Investigating Officer at the Hearing

If the Councillor stated during the Pre-hearing process that s/he wished to attend to make an oral representation, and is not reasonably able to attend to give his/her evidence, the Hearing will be adjourned to another date.

If the Councillor has stated that s/he does not wish to attend to make an oral representation, or has failed to attend without reasonable excuse, the Hearing may continue in the Councillor's absence.

If the Investigating Officer is not present, the Hearing Panel shall only conduct the Hearing if it is 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.

Adjournment of hearing for further information

The Hearing Panel may adjourn the Hearing at any stage and require the Monitoring Officer to seek further information or undertake further investigation. The Hearing Panel can only make this request once per case.

Stages of the Hearing

The **Hearing** is essentially divided up into three stages:

Stage 1:

Summary of complaint and agreement as to the **facts**. In this stage of the procedure, the Hearing Panel will only be determining **the facts** of the matter.

Stage 2:

Deciding whether the Code has been broken

Stage 3:

Deciding whether sanctions would be appropriate and if so which sanctions.

Hearing - Stage 1

- **Summary of allegation**
- **agreement as to finding of facts**

The Investigating Officer and the Councillor will be invited to give a brief opening summary of their case.

The Chairman of the Hearing Panel will then:

- summarise the allegation and
- give an outline of the main facts agreed
- identify any areas of disagreement as to the facts in the Investigating Officer's Report

The following scenarios may arise:

- a) no disagreements and no representations to be made**
- b) disagreements but no representations**

If the Councillor and Investigating Officer:

- agree with the facts set out in the Investigating Officer's Report, or
- do not agree all of the facts, but do not wish to make any representations to the Hearing Panel

then the Hearing Panel will find the facts as set out in the Investigating Officer's Report.

- c) Disagreements and representations**

Where the Councillor and the Investigating Officer do not agree about the facts set out in the Investigating Officer's Report, any representations will be heard in the following order (unless the Chairman directs otherwise):

Investigating Officer

- The Investigating Officer will be invited to make representations in support of his/her Report regarding the relevant **findings of fact**.
- The Investigating Officer may call any supporting witnesses to give evidence **as to the facts**.
- The Councillor may be given the opportunity to challenge any evidence **as to facts** put forward by any witness called by the Investigating Officer.
- The Councillor will not be permitted to question the Investigating Officer directly.

Councillor

- The Councillor will have the opportunity to make representations to support his/her version of the facts, and
- (with the Hearing Panel's permission) call any witnesses to give evidence on the facts.
- The Investigating Officer will be permitted to challenge any evidence as to facts put forward by witnesses called by the Councillor.

Once all the representations have been heard, the Hearing Panel will retire to consider its findings in private and announce its findings to the Hearing.

d) If the Councillor does not agree with the facts set out in the Investigating Officer's Report but has not previously notified the Hearing Panel

If the Councillor disagrees with any relevant fact in the Report, but has not given prior notice of the disagreement, s/he must give good reasons for not mentioning it before the date of the Hearing. Having considered the Councillor's explanation for not raising the issue at an earlier stage, the Committee may:

If the Investigating Officer is not present:

- Consider whether or not it would be in the public interest to continue in his/her absence.
 - If it is decided to continue with the Hearing, the Hearing Panel must rely on the information in the Investigating Officer's report.
 - If it is decided not to continue with the Hearing, the Hearing Panel must adjourn the hearing to allow the Investigating Officer to attend or for appropriate witnesses to be called.

If the Investigating Officer is present:

- Allow the Councillor to make representations about the issue and invite the Investigating Officer to respond and call any witnesses as necessary.

On deciding that it has heard all the evidence, the Hearing Panel will make its findings of fact in private. The Chairman will then announce the Committee's findings of fact to the Hearing.

The Hearing - Stage 2

Deciding whether the Code has been breached

The Hearing Panel must then consider whether, based on the facts that it has found under Stage 1, the **Councillor has failed to follow** the Code of Conduct.

- The Councillor will be invited to give relevant reasons why the Hearing Panel should not decide that s/he has failed to follow the Code;
- The Investigating Officer will be invited to make any representations
- The Councillor should be invited to make any final relevant points.

The Hearing Panel will consider the evidence in private and make one of the following findings:

- That the Councillor has not breached the Code of Conduct
- That the Councillor has failed to comply with the Code of Conduct

The Hearing Panel will then announce its decision to the Hearing on whether or not the Councillor has failed to follow the Code of Conduct.

If the Hearing Panel decides that the Councillor has not breached the Code

The Hearing Panel will consider whether it should make any recommendations to the Council concerned.

Otherwise that is the end of the matter.

The Hearing - Stage 3

Deciding on sanctions for breaching the Code

If the Hearing Panel finds **that the Councillor has broken the Code of Conduct**, it will consider verbal or written representations from the Councillor and the Investigating Officer as to whether it should:

- a) impose any sanction(s) and if so, what form they should take
- b) make any recommendations to the relevant Council with a view to promoting promoting high standards of conduct amongst members.
- c) make a recommendation / stipulation as to timing of sanctions.

The Hearing Panel may consult the Independent Person before making this decision.

Actions that the Hearing Panel may take if the Councillor has broken the Code

In deciding what (if any) action to take, the Hearing Panel should bear in mind the aim of upholding and improving the standard of conduct expected of councillors as part of the process of fostering public confidence in local democracy.

The action taken or recommended by the Hearing Panel should be designed to discourage or prevent the Councillor from any future non-compliance, discourage similar action by others, and maintain public confidence in the Code of Conduct.

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

In determining a sanction, the Hearing Panel will ensure that it is reasonable and in proportion to the Councillor's behaviour.

Mitigating or Aggravating factors

When making its decision on actions to take, the Hearing Panel will consider the seriousness of the breach of the Code and any potential consequences. The Hearing Panel will have regard to any mitigating or aggravating factors.

Mitigating factors
<ul style="list-style-type: none">• An honest (but mistaken) belief that the action was not a breach of the code (particularly where such a view has been formed after taking appropriate advice)
<ul style="list-style-type: none">• A Councillor's previous record of good service
<ul style="list-style-type: none">• Substantiated evidence that the Councillor's actions have been affected by ill-health
<ul style="list-style-type: none">• Recognition that there has been a failure to follow the Code; co-operation in rectifying that failure; an apology to affected person where that is appropriate; self reporting of the breach
<ul style="list-style-type: none">• Compliance with the Code since the events giving rise to the finding of the breach
Aggravating factors
<ul style="list-style-type: none">• Dishonesty
<ul style="list-style-type: none">• Continuing to deny facts despite clear evidence to the contrary
<ul style="list-style-type: none">• Seeking unfairly to blame other people
<ul style="list-style-type: none">• Failing to follow appropriate advice or warnings
<ul style="list-style-type: none">• Previous breaches – particularly if they are a similar nature
<ul style="list-style-type: none">• Persisting with a pattern of behaviour which involves repeatedly failing to abide by the Code

Where there has been a breach of the Code, the Hearing Panel may impose one (or any combination of) the following:

Censure or reprimand of the Councillor

Publish its findings in respect of the Councillor's conduct

Reports its findings to the Council (or the Town / Parish Council)

Recommend to the Councillor's Group Leader (or in the case of an ungrouped Councillor, recommend to Council or a Committee) that s/he be removed from any or all Committees or sub-committees of the Council

Instruct the Monitoring Officer to (or recommend that the Town / Parish Council) arrange training for the Councillor

Recommend (or recommend to the Town / Parish Council) that the Councillor be removed from all outside appointments to which s/he has been appointed or nominated by the Authority

Withdraw (or recommend to the Town / Parish Council that it withdraws) facilities provided to the councillor (e.g. computer, website, and/or email and Internet access)

Exclude (or recommend that the Town / Parish Council excludes) the Councillor from the Council's offices or other premises (with the exception of meeting rooms as necessary for attending council, committee or subcommittee meetings)

NB the Hearing Panel has no power to suspend or disqualify the Councillor or withdraw members' allowances

The Decision

Decision

The Hearing Panel will give a verbal decision at the Hearing on whether the Councillor has broken the Code of Conduct and any actions it wishes to impose.

The Written Decision

The full decision in writing (Form 4) will be issued by the Monitoring Officer (in consultation with the Chairman) **within 14 days** of the Hearing to:

- The members of the Hearing Panel
- The Councillor
- The Complainant
- Clerk to Town or Parish Council/County Solicitor (if appropriate)

Making the Decision public

A summary of the Decision, and the reasons for it will be reported to the next ordinary Standards Committee meeting.