

NORTH YORKSHIRE COUNCIL
STANDARDS AND GOVERNANCE COMMITTEE
HEARINGS PANEL
HEARINGS PANEL PROCEDURE

1.0 GENERAL

- 1.1 This Procedure should be read alongside the Council's Arrangements for dealing with allegations of breach of the Members' Code of Conduct. A summary of this Procedure is contained in **Appendix 1**.
- 1.2 The Standards and Governance Committee has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider it expedient to do so to secure the effective and fair consideration of any matter. The Chair of the Panel has ultimate discretion to ensure that the Hearing is conducted in a fair, efficient and proportionate way.
- 1.3 References in this Procedure to the Monitoring Officer also include reference to the Deputy Monitoring Officer or any other officer nominated by them.
- 1.4 Where a complaint of a breach of the relevant Members' Code of Conduct has been investigated and the Investigating Officer has concluded that there is evidence of a failure to comply with the Code, then if local resolution is not possible (as judged by the Monitoring Officer in consultation with the Independent Person for Standards), or the Complainant or subject Member are not satisfied with the proposed resolution, or the subject Member is not prepared to undertake any remedial action, then the investigation report will be reported to the Standards and Governance Committee Hearings Panel ("the Panel"). This Procedure sets out what will happen at a Hearings Panel meeting ("Hearing").
- 1.5 Prior to the Hearing, the Monitoring Officer will engage with the parties in a pre-hearing process regarding the convening of the Hearing and to:
- identify whether the parties disagree with any of the findings of fact in the investigation report;
 - identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide;
 - identify whether evidence about those disagreements will need to be heard during the hearing;
 - ask the parties whether they want to:
 - be represented at the hearing;
 - give evidence to the hearing, either verbally or in writing;
 - want to call relevant witnesses;

Please note - any witness evidence called at the Hearing must relate to relevant facts which are in dispute; any witness evidence as to character

will generally be by way of written statement unless otherwise agreed with the Monitoring Officer;

- clarify the nature of any witnesses' likely evidence;
- decide if witnesses proposed to be called by the parties are relevant bearing in mind the need for proportionality;
- seeks views regarding the confidentiality of the Hearing and documentation, although this determination will ultimately be made by the Panel at the Hearing;
- identify any potential conflicts of interests.

A critical part of the pre-hearing process is to attempt to focus the relevant parties' attention on isolating all relevant disputes of facts between them. This is because attention to the factual issues will save valuable time later on at the Hearing.

- 1.5.1 Once the pre-hearing process has been completed the Monitoring Officer will write to the parties and relevant others involved where possible at least two weeks before the Hearing. This should confirm the date, time and place for the Hearing, note whether the subject Member, Complainant or Investigating Officer will be represented at the hearing and also list those witnesses, if any, who will be asked to give evidence and outline the proposed procedure for the Hearing.
- 1.5.2 If a party is unable to make the specified date the Monitoring Officer, in their discretion, may arrange for the Hearing to be held on a different date, provided that they are satisfied that the party has given an acceptable reason. Where the party does not give an acceptable reason or does not reply within a specified time, the Panel should proceed with the date and may consider the report in the party's absence if they do not go to the Hearing. The parties should not be able to evade having the case heard simply by refusing to cooperate and failure to cooperate may also be a potential breach of the Code. Where relevant, the Panel should make clear at the start of the Hearing that they have considered whether they can proceed in the absence of the party and should record their reasons.
- 1.5.3 If one or more witnesses are unavailable on the given date the Monitoring Officer, in consultation with the Chair of the Panel, should decide how material they would be to the Hearing and whether another date needs to be looked for. Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect although it may be that their views were already sought as part of the investigation so the Panel would need to evaluate how they could proceed without them.
- 1.6 Where a complaint relates to a town or parish councillor the Panel meeting will also be attended by a town or parish councillor representative (not from the same parish as the subject Member) to bring a local perspective to the Hearing. The parish/town council representative is not a formal member of the Hearings Panel and is not entitled to vote.
- 1.7 The Independent Person for Standards will attend the Panel meeting and will be consulted by the Panel in making its decision about whether or not there has been a breach of the Code and any action to be taken. The Independent Person is not a formal member of the Hearings Panel and is not entitled to vote.

- 1.8 Any witnesses called (other than the Complainant and subject Member) may not sit in the Hearing until after they have given evidence.
- 1.9 The Complainant and the subject Member will be invited to attend the Hearing Panel to present information and make representations in relation to the allegations that there has been a failure to comply with the Code of Conduct.
- 1.10 The parties may choose to be represented by counsel, a solicitor, or by any other person they wish. The Panel does, however, have the right to withdraw its permission to allow a representative if that representative disrupts, or otherwise compromises, the fairness and efficiency of the Hearing. An appropriate warning should usually be given before permission is withdrawn.
- 1.11 The Panel can proceed in the absence of either the subject Member or the Complainant where it deems this to be appropriate. In such a case, the Panel will make clear at the start of the Hearing that it has considered whether it can proceed in the absence of the party, whether the Hearing will proceed or be deferred and should record its reasons for its decision.
- 1.12 The Panel will be advised by the Monitoring Officer or an officer nominated by them and any reference in this procedure to the Monitoring Officer shall be construed accordingly.
- 1.13 At the Hearing the Panel will consider the matter in different stages:
 - i. The findings of fact set out in the Investigating Officer's report, focussing particularly on those issues still in dispute and the responses of the parties to those findings.
 - ii. Whether or not there has been a breach of the Code of Conduct.
 - iii. Where the Panel finds the subject Member has not breached the Code, whether the Panel would wish to make any recommendations to the Council or parish/town council arising from the Hearing; and whether any publicity should be given to the outcome of the complaint.
 - iv. Where the Panel finds the subject Member has breached the Code, whether the Panel would wish to impose a sanction (or recommend the imposition of a sanction to the parish/town council where it is a complaint about a parish/town councillor), and, if so, what sanction or sanctions it deems appropriate; and what, if any, publicity should be given to the outcome of the complaint.
- 1.14 The Panel, through the Chair, controls the procedure and evidence presented at a Hearing, including the number of witnesses and the way witnesses are questioned. If the Panel believes that questions are irrelevant or oppressive then the Chair may stop that particular line of questioning. Generally, the parties are entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. However, the Panel has the right to govern its own procedures in a fair and proportionate manner. For this reason, the Panel may limit the number of witnesses if the number is unreasonable.
- 1.15 The Panel will consult the Independent Person (and independent parish/town councillor representative where relevant) in making its conclusions as to whether or

not there has been a breach of the Code and, if so, whether any action needs to be taken in relation to it.

- 1.16 The Panel decides on factual evidence on the balance of probabilities and may conclude:
- a) that the subject Member has not breached the Code of Conduct; or
 - b) that the subject Member has breached the Code of Conduct; and, if so, the Panel may determine whether any action is necessary and, if so, what sanction is appropriate.
- 1.17 In either case, the Panel may determine whether it feels any general recommendations to the relevant authority are appropriate.
- 1.18 All present at the hearing should treat the process with respect. The Chair has discretion to remove anyone causing a disruption, or otherwise compromising the fairness and efficiency of the Hearing, from the meeting room and may determine that they have forfeited their right to be present during the Hearing.

2.0 THE HEARING

- 2.1 The Monitoring Officer will open the meeting and invite the Panel to select a Chair for the meeting.
- 2.2 The Panel will elect a Chair of the Panel for the meeting, who will take the chair and deal with preliminary matters such as apologies for absence and declarations of interests.
- 2.3 The Chair will invite the Panel to consider whether to exclude the press and public during the Hearing and to maintain the exempt status of the relevant documentation.
- 2.4 The Chair will introduce the Panel and invite the parties and those present to introduce themselves.
- 2.5 The Chair will then briefly explain the hearing process.
- 2.6 Any preliminary issues not resolved through the pre-hearing process will be considered.

3.0 STAGE 1 – FINDINGS OF FACT

- 3.1 The purpose of this stage is to establish the facts of the case. This may be achieved by agreement of all parties or may be complicated by disagreement. In the case of the latter the Panel will need to listen to the evidence, question this as necessary and deliberate in private to reach its decision.
- 3.2 After dealing with any preliminary issues, the Chair will invite the Investigating Officer to present their report and, with the Panel's permission, call witnesses..
- 3.3 The Chair will invite questions of the Investigating Officer and, subsequently, any witnesses called by the Investigating Officer, in turn by:
- (i) the Complainant

- (ii) the Subject Member
 - (iii) the Panel Members
 - (iv) any parish/town council representative
 - (v) the Independent Person
 - (vi) the Monitoring Officer
- 3.4 The Chair will invite the Complainant to make any representations, present information and, with the Panel's permission, call witnesses.
- 3.5 The Chair will invite questions of the Complainant and, subsequently, any witnesses called by the Complainant, in turn by:
- (i) the Investigating Officer
 - (ii) the Subject Member
 - (iii) the Panel Members
 - (iv) any parish/town council representative
 - (v) the Independent Person
 - (vi) the Monitoring Officer
- 3.6 The Chair will invite the subject Member to make any representations, present information and, with the Panel's permission, call witnesses.
- 3.7 The Chair will invite questions of subject Member and, subsequently, any witnesses called by the subject Member, in turn by:-
- (i) the Investigating Officer
 - (ii) the Complainant
 - (iii) the Panel Members
 - (iv) any parish/town council representative
 - (v) the Independent Person
 - (iv) the Monitoring Officer
- 3.8 At any time, the Panel may question any of the people involved or any of the witnesses.
- 3.9 At an appropriate time, with the permission of the Chair, the Investigating Officer, Complainant or subject Member may make further representations or re-question a witness on matters arising from their evidence.
- 3.10 The Chair will invite the Investigating Officer to sum up the evidence supporting their findings of fact and whether there has been a breach of the code of conduct.
- 3.11 The Chair will invite the Complainant to sum up the evidence supporting their version of events and whether there has been a breach of the code of conduct.
- 3.12 The Chair will invite the subject Member to sum up the evidence supporting their version of events and whether there has been a breach of the code of conduct.
- 3.13 The Chair will invite the views of any parish/town council representative.
- 3.14 The Chair will invite the views of the Independent Person.
- 3.15 The Chair will invite the Monitoring Officer to explain the considerations to be taken into account by the Panel.

- 3.16 The Panel will retire to consider, in private, all relevant representations and evidence and determine their findings regarding the facts of the matter.
- 3.17 Upon resuming the Hearing, the substance of any legal advice given to the Panel by the Monitoring Officer and of any views offered by the Independent Person during private deliberations should be shared with the parties.
- 3.18 The Chair will read out the findings of fact found by the Panel. No further representations from either the Investigating Officer nor the parties may be made regarding the facts.

4.0 STAGE 2 – DETERMINATION AS TO WHETHER OR NOT THERE HAS BEEN A BREACH OF THE CODE

- 4.1 Based on the facts it has found the Panel will then hear representations as to whether or not the subject Member has failed to comply with the Code of Conduct.
- 4.2 The Chair will invite the Investigating Officer to make representations regarding whether there has been a breach of the Code.
- 4.3 The Chair will invite the Complainant to make representations regarding whether there has been a breach of the Code
- 4.4 The Chair will invite the subject Member to make representations regarding whether there has been a breach of the Code and to give reasons why the Panel should decide that they have not failed to comply with the Code of Conduct.
- 4.5 The Chair will invite the views of any parish/town council representative on whether there has been a breach of the Code.
- 4.6 The Chair will invite the views of the Independent Person on whether there has been a breach of the Code.
- 4.7 The Chair will invite the Monitoring Officer to explain the considerations to be taken into account by the Panel.
- 4.8 The Panel may, at any time, question anyone involved on any point they raise in their representations.
- 4.9 The Panel will retire to consider, in private, all relevant representations and evidence and determine their findings regarding whether or not there has been a breach of the relevant Code of Conduct.
- 4.10 Upon resuming the Hearing, the substance of any legal advice given to the Panel by the Monitoring Officer and of any views offered by the Independent Person during private deliberations should be shared with the parties.
- 4.11 The Chair of the Panel will announce the decision of the Panel as to whether or not the subject Member has failed to comply with the Code of Conduct. The Panel may conclude:
 - a. that the subject Member has not breached the Code of Conduct; or
 - b. that the subject Member has breached the Code of Conduct.

No breach

- 4.12 If the Panel decides that the subject Member has **not** failed to follow the relevant Code of Conduct, the Panel may move on to consider whether it should make any **recommendations** to the Council or parish/town Council on any issue which has arisen.
- 4.13 The Panel will consult the subject Member, and any other person present in the Chair's discretion, regarding any **publicity or privacy** the subject Member may wish for in relation to the complaint outcome.
- 4.14 **Until a decision has been made by the Panel as to what, if any, publicity should be given to the complaint and its outcome, all aspects of the complaint will be dealt with in the strictest confidence.**
- 4.15 The outcome will be reported to the next meeting of the Standards and Governance Committee.

Breach

- 4.16 If the Panel decides that the subject Member **has** failed to follow the Code, then Stage 3 of the procedure will be followed.

5.0 STAGE 3 – SANCTIONS AND PUBLICITY RE BREACH OF CODE

- 5.1 If the Panel decides that the subject Member has failed to follow the Code, then it may determine whether or not any action is necessary in relation to the breach and, if so, what sanction is appropriate.
- 5.2 In doing so, the Panel will consider any verbal or written representations from:
- i. the Investigating Officer
 - ii. the Complainant
 - iii. the subject Member

and seek the views of the Independent Person and any parish/town council representative as to:-

- a) whether or not the Panel should impose a sanction (or recommend a sanction to the parish/town council where the complaint is against a parish/town councillor);
 - b) if so, what form any sanction should take (or be recommended to be taken by the parish/town council);
 - c) whether any recommendations should be made to the Council (or parish/town Council) on any issue which has arisen; and
 - d) what, if any, publicity should be undertaken regarding the outcome of the matter
- 5.3 The Panel may question the Investigating Officer and subject Member, and take legal advice, to ensure they have the information they need in order to make an informed, fair and proportionate decision.
- 5.4 When deciding on a sanction, the Panel should ensure that it is reasonable, proportionate and relevant to the subject Member's behaviour. Before deciding what

sanction to issue, the Panel should consider the following questions, along with any other relevant circumstances:

- i. What was the subject Member's intention?
- ii. Did the subject Member know that they were failing to follow the Code of Conduct?
- iii. Did the subject Member get advice from officers before the incident? Was that advice acted on or ignored?
- iv. Has there been a breach of trust?
- v. Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- vi. What was the result or potential result of failing to follow the Code of Conduct?
- vii. How serious was the incident?
- viii. Does the subject Member accept they were at fault?
- ix. Did the subject Member apologise to the relevant people?
- x. Has the subject Member previously been warned or reprimanded for similar misconduct or failed to follow the Code of Conduct before?
- xi. Is the subject Member likely to do the same thing again?
- xii. How will the sanction impact on the subject Member's ability to carry out their role?

Sanctions involving restricting access to an authority's premises or equipment or contact with officers should not unnecessarily restrict the subject Member's ability to carry out their responsibilities as an elected representative or co-opted Member.

5.5 Mitigating factors may include

- an honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice;
- the subject Member's previous record of good service;
- substantiated evidence that the subject Member's actions have been affected by ill-health;
- recognition that there has been a failure to follow the Code;
- co-operation in rectifying the effects of that failure;
- an apology to affected persons where that is appropriate,
- self-reporting of the breach by the subject Member;
- compliance with the Code since the events giving rise to the complaint.

5.6 Aggravating factors may include

- dishonesty or breaches of trust;
- trying to gain an advantage or disadvantage for themselves or others;
- bullying;
- continuing to deny the facts despite clear contrary evidence;
- seeking unfairly to blame other people;
- failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code;
- persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

- 5.7 The Panel will retire to consider, in private, all relevant representations and relevant factors and determine:
- (i) their findings regarding whether or not a sanction should be applied (or recommended to the relevant parish/town council) in respect of the breach of the Code; and
 - (ii) whether or not it wishes to make any recommendations to the Council (or parish/town Council) on any issue which has arisen.

Sanctions available

- 5.8 If the Panel concludes that a sanction or sanctions is/are appropriate, the Panel may:
- (a) **censure** the subject Member;
 - (b) require an **apology** to be given to the Complainant;
 - (c) recommend to the subject Member's Group Leader that they be **removed** from any or all committees or sub-committees of the Council;
 - (d) instruct the Monitoring Officer to arrange **training** for the subject Member; or
 - (e) such other sanction that it is legally able to impose and believes to be proportionate and appropriate;

except:

- i. where the subject Member is a parish or town council Member, in which case the Panel can only make recommendations regarding sanctions to the relevant town/parish council;

Please note that where the subject Member is no longer a member of the relevant authority, the range of relevant sanctions may be more limited.

- 5.9 The Panel has no power to suspend or disqualify the Member or to withdraw allowances.
- 5.10 Upon resuming the Hearing, the substance of any legal advice given to the Panel by the Monitoring Officer and of any views offered by the Independent Person (and, where relevant, any independent parish/town council representative) during private deliberations should be shared with the parties.
- 5.11 The Chair of the Panel will announce the decision of the Panel as to:
- a) whether or not the Panel has decided to impose (or recommend to the parish/town council) a sanction or sanctions;
 - b) if so, what sanction or sanctions are to be imposed (or recommended to the parish/town council); and
 - c) whether the Panel wishes to make any recommendations to the Council (or parish/town Council) on any issue which has arisen.

Publicity

- 5.12 The Panel shall consult the Independent Person (and, where relevant, any independent parish/town council representative) and decide what, if any, publicity should be undertaken regarding the outcome of the matter. Options for such publicity

include a report to the Council (or parish/town council), a notice on the Council's website or a press release.

- 5.13 **Until a decision has been made by the Panel as to what, if any, publicity should be given to the complaint and its outcome, all aspects of the complaint will be dealt with in the strictest confidence.**
- 5.14 The outcome will be reported to the next meeting of the Standards and Governance Committee.
- 5.15 Where the subject Member is a parish or town councillor, the matter will be referred back to that council to say that a breach of the Code has been found and setting out any recommended sanction. The town or parish council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. The town or parish council cannot overturn the finding that there has been a breach of the Code; if it wishes to impose a different sanction it should seek advice from the clerk. The parish or town council should report back to the Monitoring Officer within three months, or as soon as possible thereafter, to confirm that it has met to discuss the sanction, and, if necessary, to write again once the sanction has been fulfilled.

6.0 RECORDING THE DECISION

- 6.1 The Monitoring Officer will prepare a written Decision Notice which will be sent to the subject Member and the Complainant within 10 working days of the Hearing or as soon as possible thereafter.
- 6.2 The confidentiality or otherwise of the Decision Notice will be determined by the Panel, as set out earlier, when it considers what publicity should be given to the complaint outcome.

7.0 NO RIGHT OF APPEAL

- 7.1 The national ethical framework is intended to be light-touch and proportionate. There is therefore no right of appeal against a decision of the Monitoring Officer, Standards and Governance Committee or Hearings Panel. A complaint may, however, be made to the Local Government and Social Care Ombudsman if it is felt that the Council has failed to deal with the complaint in accordance with the Council's procedures.

6 September 2024

NORTH YORKSHIRE COUNCIL
STANDARDS AND GOVERNANCE COMMITTEE
HEARINGS PANEL

Summary of Hearings Panel procedure

1. **Appointment of Chair**
2. **Apologies for absence by Panel members**
3. **Declarations of interests**
4. **Exempt information** - The Panel to consider whether to exclude the press and public during the Hearing and to maintain the exempt status of the relevant documentation
5. **Introductions of those present**
6. **Absence of parties** - Where a party is not in attendance, consideration by the Panel as to whether or not it can proceed in the absence of that party.
7. **Brief explanation of process by Chair**
8. **Preliminary issues** - Consideration of any preliminary issues not resolved through the pre-hearing process
9. **Stage 1 – Making Findings of Fact**
 - a. Investigating Officer to present report and call any witnesses
 - (i) Each may be questioned the parties, Panel members, parish/town council representative, the Independent Person and the Monitoring Officer, in turn
 - b. Complainant representations and witnesses
 - (i) Each may be questioned the parties, Panel members, parish/town council representative, the Independent Person and the Monitoring Officer, in turn
 - c. Subject Member representations and witnesses
 - (i) Each may be questioned the parties, Panel members, parish/town council representative, the Independent Person and the Monitoring Officer, in turn
 - d. Investigating Officer sums up
 - e. Complainant sums up
 - f. Subject Member sums up
 - g. Parish/town council representative gives views
 - h. Independent Person gives views

- i. Monitoring Officer explains considerations to be taken into account by Panel

PANEL RETIRES IN PRIVATE TO DELIBERATE

Hearing resumes

- j. Any Monitoring Officer advice/Independent Person/independent parish/town council representative views given during deliberations is shared with parties
- k. Chair reads out findings of fact found by Panel

10. Stage 2 – Determination as to breach of the Code

- a. Representations as to whether or not there has been a breach of the Code
 - (i) by the Investigating Officer
 - (ii) by the Complainant
 - (iii) by the subject Member
- b. Parish/town council representative gives views
- c. Independent Person gives views
- d. Final views from subject Member
- e. Monitoring Officer explains considerations to be taken into account by Panel

PANEL RETIRES IN PRIVATE TO DELIBERATE

Hearing resumes

- f. Any Monitoring Officer advice/Independent Person/independent parish/town council representative views given during deliberations is shared with parties
- g. Chair announces decision by Panel as to breach or not of the Code:
 - (i) that the subject Member has not breached the Code of Conduct; or
 - (ii) that the subject Member has breached the Code of Conduct.
- h. If no breach is found:
 - (i) Panel considers if wishes to make any recommendations to relevant authority
 - (ii) Panel considers issue of publicity re outcome of complaint
- i. If a breach is found, then Stage 3 of the procedure should be followed.

Stage 3 – Determination of sanctions and publicity re breach of the Code

- a. Representations as to whether or not a sanction should be imposed and, if so, what sanction or sanctions are appropriate
 - (i) by the Investigating Officer
 - (ii) the Complainant

- (iii) by the subject Member
- b. Parish/town council representative gives views
- c. Independent Person gives views

PANEL RETIRES IN PRIVATE TO DELIBERATE

Hearing resumes

- d. Any Monitoring Officer advice/Independent Person/independent parish/town council representative views given during deliberations is shared with parties
 - e. Chair announces decision by Panel as to:
 - (i) Whether or not a sanction or sanctions should be imposed or recommended to the parish/town council concerned
 - (ii) If so, what sanction or sanctions are to be imposed or recommended to the parish/town council concerned
 - (iii) Whether or not the Panel wishes to make any recommendations to the relevant authority
 - f. Panel considers issue of publicity re outcome of complaint, in consultation with the Independent Person and any independent parish/town council representative
11. The Monitoring Officer will prepare a written Decision Notice which will be sent to the subject Member and the Complainant within 10 working days of the Hearing or as soon as possible thereafter. The confidentiality or otherwise of the Decision Notice will be determined by the Panel, as set out earlier, when it considers what publicity should be given to the complaint outcome.

6 September 2024