

Agenda

Standards Hearing Sub-Committee Meeting

Date: Monday, 27 November 2023

Time 2.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT*

Membership:

Councillors James Hunt, Hannah Perkin and Ashley Wise

Quorum = 3

Independent Persons (non-voting): Patricia Richards and Christopher Webb

Pages

Recording Notice

*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website by 24 November 2023.

Privacy Statement

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1. Emergency Evacuation Procedure

Visitors and members of the public who are unfamiliar with the building and procedures are advised that:

- (a) The fire alarm is continuous loud ringing. In the event that a fire drill is planned during the meeting, the Chair will advise of this.
- (b) Exit routes from the chamber are located on each side of the room, one directly to a fire escape, the other to the stairs opposite the lifts.
- (c) In the event of the alarm sounding, leave the building via the nearest safe exit and gather at the assembly point on the far side of the car park. Do not leave the assembly point or re-enter the building until advised to do so. Do not use the lifts.
- (d) Anyone unable to use the stairs should make themselves known during this agenda item.

2. Election of Chair

To elect a Chair for this meeting.

3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their families or friends.

The Chair will ask Members if they have any disclosable pecuniary interests (DPIs) or disclosable non-pecuniary interests (DNPIs) to declare in respect of items on the agenda. Members with a DPI in an item must leave the room for that item and may not participate in the debate or vote.

Aside from disclosable interests, where a fair-minded and informed observer would think there was a real possibility that a Member might be biased or predetermined on an item, the Member should declare this and leave the room while that item is considered.

Members who are in any doubt about interest, bias or pretermination should contact the monitoring officer for advice prior to the meeting.

Part B decision to be taken by the Sub-Committee

4. Exclusion of the Press and Public

To decide whether to pass the resolution set out below in respect of the following item: -

That under Section 100A(4) of the Local Government Act 1972, as amended, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

1. Information relating to any individual.

5. Consideration of Breach of Code of Conduct

Issued on Thursday 16 November 2023

The reports included in Part I of this agenda can be made available in alternative formats. For further information about this service, or to arrange for special facilities to be provided at the meeting, please contact **DEMOCRATIC SERVICES** on democraticservices@swale.gov.uk To find out more about the work of the Committee, please visit www.swale.gov.uk

**Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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PART 4.6 - STANDARDS COMMITTEE PROCEDURE RULES

The Pre-Hearing Process

Procedure for Local Standards Hearings

Pre-Hearing Process

Upon receipt of the final report of the Investigating Officer, including a finding that the Subject Member failed to comply with the Code of Conduct for Members, or where the Standards Committee determines that the matter should be considered at a formal hearing, the Monitoring Officer shall:

- (a) Arrange a date for the Standards Committee's hearing;
- (b) Constitute a Hearings Panel comprising of three Members, the Chairman of which is to be appointed by the Monitoring Officer in consultation with the Chairman/Vice Chairman of the Standards Committee;
- (c) Send a copy of the report to the Subject Member and advise him/her of the date, time and place of the hearing;
- (d) Send a copy of the report to the Complainant and advise him/her of the date, time and place of the hearing;
- (e) Where the complaint relates to a Parish/Town Councillor, notify that Parish or Town Council of the date, time and place of the hearing;
- (f) Request the Subject Member to complete and return the Pre-Hearing Forms within 14 days of receipt;
- (g) In the light of any Pre-Hearing Forms returned by the Subject Member, determine whether the Standards Committee will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (h) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and high-lighting the issues which the Standards Committee will need to address, and
- (i) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
 - (i) All Members of the Standards Sub-Committee who will conduct the hearing;
 - (ii) The Subject Member;
 - (iii) The Complainant; and
 - (iv) The Investigating Officer.

The Hearing Procedure

Standards Committee or any constituted Sub Committee

Procedure for Local Standards Hearings

1. Interpretation

- 1.1 “Subject Member” means the Member of the Authority who is the subject of the allegation being considered by the Hearings Panel, unless stated otherwise. It also includes the nominated representative of the Subject Member(s).
- 1.2 “Complainant” means the person who has submitted the complaint in respect of the Member’s alleged breach of the Code.
- 1.3 “Investigating Officer” references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation which may include the Monitoring Officer, and his or her nominated representative.
- 1.4 “The Matter” is the subject matter of the Investigating Officer’s report.
- 1.5 “The Hearings Panel” refers to a Sub-Committee of the Standards Committee which it has delegated the conduct of the hearing.
- 1.6 “Chairman” refers to the person appointed to preside at the meeting.
- 1.7 “Independent Person” refers to a non-voting person who has been appointed, following advertisement, by a positive vote from a majority of all the Members of Council and who’s views must be sought and taken into account.
- 1.8 “The Committee Support Officer” means an officer of the Authority responsible for supporting the Hearings Panel’s discharge of its functions and recording the decisions of the Hearings Panel.
- 1.9 “Legal Advisor” means the officer responsible for providing legal advice to the Hearings Panel. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.

2. Rules of Procedure

- 2.1 The Hearings Panel consists of three voting elected Members drawn from the Standards Committee, one of whom will be appointed as Chairman by the Monitoring Officer in consultation with the Chairman/Vice-Chairman of the Standards Committee.
- 2.2 The quorum for a meeting of the Hearings Panel is three elected Members.
- 2.3 If the Subject Member is not present at the start of the hearing the Chairman shall ask the Legal Advisor whether the Subject Member has indicated his/her intention

not to attend the hearing. The Hearing Panel shall then consider any reasons which the Subject Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend. If the Hearings Panel is satisfied with such reasons, it shall adjourn the hearing to another date; however if they are not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Hearings Panel shall decide whether to consider the matter and make a determination in the absence of the Subject Member or to adjourn the hearing to another date.

- 2.4 If the Investigating Officer is not present, the Standards Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer.
- 2.5 The Hearings Panel may exclude the press and public from the meeting where it appears likely that confidential or exempt information will be disclosed. At the start of the meeting the Chairman shall ask the Subject Member, Investigating Officer and the Legal Adviser whether they wish to make any representations that the Hearings Panel exclude the press and public from all or any part of the hearing. Full reasons for the request must be given and the other parties will be given the opportunity to respond.

On hearing the arguments of all parties the Standards Committee shall determine whether to exclude the press and public from all or any part of the hearing. Where no resolution to exclude press and public is made the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available.

- 2.6 The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.
- 2.7 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.

3. Representation

- 3.1 The Subject Member may be represented or accompanied during the meeting by a solicitor, counsel or another person agreed in advance with the Monitoring Officer.

4. Conduct of the Hearing

- 4.1 Subject to paragraph 4.2 below, the order of business will be as follows:
 - (a) apologies for absence;
 - (b) declarations of interest

- (c) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (see paragraph 2.3 above);
- (d) introduction by the Chairman of all persons present;
- (e) receive representations as to whether the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the press and public;
- (f) determine whether the press and public are to be excluded from any part of the hearing and/or whether any documents (or parts thereof) should be withheld from the press and public.

4.2 The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that, upon taking legal advice, such a variation is necessary in the interests of fairness.

4.3 The Hearings Panel may adjourn the hearing at any time.

4.4 The Hearings Panel may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Hearings Panel should be shared with the Subject Member and the Investigating Officer if they are present.

4.5 At the start of the hearing the Chairman will confirm that all present know the procedure which will be followed by the Hearings Panel in determining the matter.

4.6 Presentation of the Pre-Hearing Summary Report

4.6.1 The Monitoring Officer, or his representative, will present the pre-hearing summary report highlighting any points of difference in respect of which the Subject Member has stated that he/she disagrees with any finding of fact in the Investigating Officer's report.

4.6.2 The Chairman will then ask the Subject Member to confirm that this is an accurate summary of the issues and that he/she maintains the position as set-out in the pre-hearing summary report.

4.6.3 The Chairman will then give the Subject Member the opportunity to identify any additional points upon which he/she disagrees with any finding of fact in the Investigating Officer's report. In such cases the Subject Member will need to explain, to the satisfaction of the Hearings Panel; why these points were not identified during the pre-hearing process.

4.6.4 Where the Subject Member fails to explain, to the satisfaction of the Hearings Panel, reasons for failing to identify each additional point of difference as part of the pre-hearing process, the Hearings Panel may decide to continue with the hearing without allowing the Subject Member to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report, but in respect of which they failed to identify a point of difference as part of the pre-hearing process.

4.6.5 If the Hearings Panel is satisfied with the Subject Member's reasons, the Chairman shall then ask the Investigating Officer (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance, or whose attendance at the hearing can conveniently be arranged. Alternatively, the Hearings Panel may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

4.7 **Presentation of the Investigating Officer's Report**

4.7.1 The Investigating Officer presents their report; including any documentary evidence or other material; having particular regard to any points of difference identified by the Subject Member and explain their reasoning, on the basis of their findings of fact, why they concluded that the Subject Member had failed to comply with the Code of Conduct.

4.7.2 Where the Subject Member admits that they failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Hearings Panel may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken (see paragraph 4.16 below).

4.7.3 Where no admission is made by the Subject Member, the Investigating Officer may call witnesses as necessary to address any points of difference. ***No new points will be permitted.***

4.7.4 In the absence of the Investigating Officer, the Hearings Panel shall determine on the advice of the Legal Advisor which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.

4.7.5 No cross-examination shall be permitted however, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness. The Chairman shall ask the Subject Member if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer or the witness.

4.7.6 The Hearings Panel may question the Investigating Officer upon the content of their report and any witness called.

4.8 **Presentation of the Subject Member's case**

4.8.1 The Chairman shall then invite the Subject Member to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.

4.8.2 No cross-examination shall be permitted but, at the conclusion of the Subject Members evidence and/or of the evidence of each witness, the Chairman

shall ask the Investigating Officer if there are any matters upon which the Hearings Panel should seek the advice of the Councillor or the witness.

4.8.3 The Hearings Panel may question the Subject Member and any witness called.

4.9 Witnesses

The Hearings Panel shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the Code of Conduct.

4.10 Summing-up

The Chairman will invite the Investigating Officer to sum-up the complaint, followed by the Subject Member who will sum-up their case.

4.11 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether or not they consider that, on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

4.12 Additional Evidence

4.12.1 At the conclusion of the evidence, the Chairman shall check with the Members of the Hearings Panel that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

4.12.2 If the Hearings Panel at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point, in order to be able to come to a considered conclusion on the matter, they may; on not more than one occasion; adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and/or to undertake further investigation on any point specified by the Hearings Panel.

4.13 Deliberations of the Hearings Panel

4.13.1 The Hearing Panel will adjourn the hearing and deliberate in private; assisted on matters of law by the legal advisor; to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.

4.13.2 The Hearings Panel shall take its decision on the balance of probability based on the evidence which it has received at the hearing.

4.13.3 The Hearing Panel may at any time come out of private session and reconvene the hearing in public in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may

adjourn the hearing and issue directions as to the additional evidence required and by whom.

- 4.13.4 At the conclusion of their consideration, the Hearings Panel shall consider whether it is minded to make any recommendations to the Authority with a view to promoting high standards of conduct among Councillors.

4.14 Announcing the decision

The Hearing Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct as set out in the Investigating Officers report.

4.15 Determination of No Breach of the Code of Conduct

- 4.15.1 Where the Hearings Panel determines that the Councillor has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report, the Chairman will set-out any recommendations which the Hearings Panel is minded to make to the Authority with a view to promoting high standards of conduct among Councillors and seek the views of the Subject Member, the Investigating Officer and the Legal Advisor before the Hearings Panel finalises any such recommendations.

- 4.15.2 The Chairman will then ask the Subject Member whether they have any objection to publication by the authority of a statement of its findings.

4.16 Determination that there was a Breach of the Code of Conduct

- 4.16.1 Where the Hearings Panel determines that the Subject Member has failed to follow the Code of Conduct in the manner set-out in the Investigating Officer's report the Chairman will invite the Independent Person, the Investigating Officer (or in their absence, the Legal Advisor) and the Subject Member to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take. Possible sanctions include:

- (a) Reporting its findings to Council *[or to the Parish Council]* for information;
- (b) Recommending to the Subject Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council's;
- (c) Recommending to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (d) Instructing the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Subject Member;
- (e) Removing the Subject Member *[or recommend to the Parish Council that the Member be removed]* from all outside appointments to which they have been appointed or nominated by the authority *[or by the Parish Council]*;

- (f) *Withdrawing [or recommend to the Parish Council that it withdraws]* facilities provided to the Subject Member by the Council, such as a computer, website and/or email and Internet access; or
- (g) *Excluding [or recommend that the Parish Council exclude]* the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

4.16.2 When deciding whether to apply one or more sanctions, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- (a) What was the Subject Member's intention and did they know that they were failing to follow the District or Parish Council's Code of Conduct?
- (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- (e) What was the result/impact of failing to follow the District or Parish Council's Code of Conduct?
- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant person?
- (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- (j) Has the Subject Member previously breached the District or Parish Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?

4.16.3 Having heard the representations, the Chairman will ensure that each Member of the Hearings Panel is satisfied that they have sufficient information to enable them to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.

4.16.4 The Chairman should then set-out any recommendations which the Standards Committee is minded to make to the Authority with a view to promoting high standards of conduct among Councillors and seek the views of the Independent Person, the Investigating Officer (or in their absence, the Legal Advisor) and the Subject Member.

4.16.5 The Hearing Panel will adjourn and deliberate in private to consider whether to impose a sanction, and where appropriate what sanction to impose and when that sanction should take effect. In addition, they will consider any recommendations to be made to the Authority.

4.16.6 At the completion of their consideration, the Hearings Panel will reconvene the hearing in public and the Chairman will announce the Hearings Panel's decision as to whether a sanction is to be imposed, the nature of such a sanction, and when it should take effect, together with the principal reasons for those decisions. They will then give details of any recommendations to be made to the Authority.

4.17 Closing the hearing

The Hearings Panel will announce its decision on the day of the hearing and provide the Legal Advisor with a short written statement of their decision, which the Legal Advisor will use as the basis of the formal decision notice. The Chairman will then formally close the meeting.

5. Publication and notification of the decision and recommendations

- 5.1 Following the closing of the hearing, the Legal Advisor will agree with the Chairman of the Hearings Panel a formal written decision notice of the Hearings Panel's determination.
- 5.2 Within 20 working days of the hearing, the Monitoring Officer will provide a copy of the full written decision and the reasons for that decision, including any recommendations, to:
- (a) the Subject Member;
 - (b) the Complainant;
 - (c) in the case of a Parish Council Member; the Clerk to that Member's Parish Council.
- 5.3 Within 20 working days of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the Council's website.

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