

Standards Committee Tuesday, 7th November, 2023 at 7.30 pm

Agenda

The agenda for this meeting is set out below.

Members of the Standards Committee

Councillor Sir Nicholas White (Chair)	Councillor Jackie Wren (Vice-Chair)
Councillor Martin Allen	Councillor Annette Evans
Councillor Matthew Groves	Councillor David Lee
Councillor Catherine Sayer	Shaun Mundy

Substitute Members

Councillor Christopher Botten	Councillor Peter Damesick
Councillor Judy Moore	Councillor Keith Prew

If a member of the Committee is unable to attend the meeting, they should notify Democratic Services. If a Member of the Council, who is not a member of the Committee, would like to attend the meeting, please let Democratic Services know by no later than noon on the day of the meeting.

If any clarification about any item of business is needed, contact should be made with officers before the meeting. Reports contain authors' names and contact details.

David Ford

Chief Executive

Information for the public



This meeting will be held in the Council Chamber, Council Offices, Oxted and the public are welcome to attend. Doors for the Council Offices will open 15 minutes before the start of the meeting.



The meeting will also be broadcast online at tinyurl.com/webcastTDC. In attending this meeting, you are accepting that you may be filmed and consent to the live stream being broadcast online and available for others to view.



Information about the terms of reference and membership of this Committee are available in the Council's Constitution available from tinyurl.com/howTDCisrun. The website also provides copies of agendas, reports and minutes.



Details of reports that will be considered at upcoming Committee meetings are published on the Council's Committee Forward Plan. You can view the latest plan at tinyurl.com/TDCforwardplan.

AGENDA

1. Apologies for absence (if any)

2. Declarations of interest

All Members present are required to declare, at this point in the meeting or as soon as possible thereafter:

- i) any Disclosable Pecuniary Interests (DPIs) and / or
- ii) other interests arising under the Code of Conduct

in respect of any item(s) of business being considered at the meeting. Anyone with a DPI must, unless a dispensation has been granted, withdraw from the meeting during consideration of the relevant item of business. If in doubt, advice should be sought from the Monitoring Officer or her staff prior to the meeting.

3. To deal with any questions submitted under Standing Order 30

Questions must be sent via email or in writing to Democratic Services by 5pm on Friday 3 November and comply with all other aspects of Standing Order 30 of the Council's Constitution.

4. Monitoring Officer report – 2022/23 (Pages 3 - 12)

5. Review of Tandridge District Council's Standards Arrangements (Pages 13 - 28)

6. Any other business which, in the opinion of the Chair, should be considered as a matter of urgency

Monitoring Officer report

Standards Committee – Tuesday, 7th November 2023

Report of: Head of Legal Services and Monitoring Officer

Purpose: For information

Publication status: Open

Wards affected: All

Executive summary:

This report gives an overview from the Monitoring Officer of democratic and ethical governance activity from 1st July 2022 – 30th June 2023.

This report supports the Council's priority of: Building a better Council

Contact officer Lidia Harrison, Head of Legal and Monitoring Officer
lharrison@tandridge.gov.uk

Recommendation to Committee:

That the Committee notes the Monitoring Officer's Annual Report.

Reason for recommendation:

This is an annual report to the Committee by the Monitoring Officer to give the Committee an overview of the work of the Monitoring Officer that falls within the scope of the functions for which the Committee is responsible. It also comments on other current issues that the Monitoring Officer function has been involved with.

Future reports can be further developed as the current Committee see fit.

Introduction and background

1 Background

- 1.1 The Monitoring Officer is appointed under Section 5 of the Local Government and Housing Act 1989 and has several statutory functions in addition to those conferred under the Local Government Act 2000 and subsequent regulations governing local investigations into Member conduct.
- 1.2 The Head of Legal has performed the role of the Monitoring Officer of the Council and has carried out the statutory functions since June 2018. She was and continues to be supported by Barry Gilham as the Deputy Monitoring Officer.
- 1.3 During 2022/23, there has been regrettably an issue with the timeliness of dealing with complaints. The delay has been due to change of personnel and other urgent high priority issues which meant that Officers with responsibility for conduct complaints including the Monitoring Officer and Deputy Monitoring Officer were re-allocated to support those issues. To ensure that all outstanding complaints are now dealt with as quickly as possible, a second Deputy Monitoring Officer, Caroline Daniels has been appointed in October 2023.
- 1.4 The Monitoring Officer is a member of the Management Team. Management Team and the Extended Management Team meet separately and together. The Monitoring Officer has regular 'Statutory Officer meetings' with the Council's Chief Executive; Deputy Executive and the S151 Officer.
- 1.5 The Council's in house Legal Service team provides advice and assistance to Officers throughout the Council and reports to the Monitoring Officer on any areas of concern in relation to lawfulness and compliance with the Council's protocols, policies and processes.
- 1.6 The Monitoring Officer and her staff have attended meetings and provided advice to Officers and Members at an early stage, including seeing relevant reports to Committee meetings. The Monitoring Officer also requires appropriate recording of delegated authority to evidence compliance with the Council's Constitution.
- 1.7 Since its last annual Monitoring Officer report, the following items have been considered by the Monitoring Officer in various Committees:
 - The draft Annual Governance Statement for 2021/22 (A&S Feb 2023)
 - Member Induction and Development (Full Council May 2023);
 - Extending the term of office of the Independent Person(May 2023);
 - The Independent Remuneration Panel (IRP) recommendations regarding Member Allowances (S&R Dec 2022),

- A timetable of Committee and Council meetings for the 2023/24 municipal year (S&R Jan 2023)
- Appointment of Councillors to Outside Bodies – Gatwick and High Weald AONB (S&R Jan 2023)
- An annual update and proposed amendments to the Council’s current RIPA Policy and Officer Guidance (S&R Mar 2023)
- The allocation of seats in accordance with political balance requirements for the municipal year (Full Council May 2023)
- Appointment of Councillors to outside bodies (Full Council May 2023)
- Amended Financial Regulations and reviewed the Scheme of Delegations (June 2023)
- Drafted new Planning Protocol (Planning Policy Sep 2022);

1.8 Ordinarily, the Committee’s views would be sought, and any recommendations acted upon regarding updating the Council’s Code of Conduct. However, the fact that the Council will have all out elections in May 2024, the Monitoring Officer recommends that a review is undertaken after the next Council elections, by the “new intake” of Members, so that they can influence the Code that they will have to comply with.

2.0 The number and nature of complaints of breaches of the Code of Conduct.

2.1 The Code of Conduct is designed to protect the democratic role, promote good conduct and safeguard the public’s trust in local government and is based upon the Nolan Principles.

2.2 In each conduct case, it is necessary for the Monitoring Officer to assess whether the behaviour complained about arose where the person was acting or purporting to act as a Councillor known as ‘official capacity’. Consideration is given to the following assessment criteria:

Adequate information: Is sufficient information available at the ‘initial test and assessment stage’ to decide whether the complaint should be referred for fact-finding investigation or other action?

Official capacity: Was the Subject Member acting in an official capacity?

Seriousness: The Monitoring Officer will not normally refer a matter for investigation or other action if it is considered trivial, malicious, vexatious, or politically motivated.

2.3 The Monitoring Officer will consider when the events subject to the complaint took place and will not normally investigate or pursue other action if the events occurred more than 6 months prior to the complaint being submitted other than in exceptional circumstances,

such as where the conduct relates to a pattern of behaviour which has recently been repeated.

2.4 During the reporting period (from 1st July 2022 – 30th June 2023) there were a total of thirteen complaints received. Of those cases received in 2022-23 details and outcomes are detailed as follows:

Complaint or allegation	Details	Outcome
1 Complaint raised against a District Councillor	Complaint about post on social media.	Written apology, no formal action.
2 Complaint raised against a District Councillor by a fellow Councillor	Complaint about Conduct of Councillor towards a fellow Councillor (Discriminatory comments said to a Councillor by a fellow Councillor).	No Action - Insufficient evidence to take the complaint forward - no witnesses
3 Complaint raised against a District Councillor	Complaint about a Councillor having misled a member of the public concerning the planning process.	No Action - Not enough evidence to support the allegation and the member of the public was deemed to be vexatious by the MO.
4 Complaint raised against two Parish Councillors	Complaint about Councillors not showing respect to a member of the public.	No action - Not enough evidence to support the allegation
5 Complaint raised against a District Councillor	Complaint about post on social media	No action - comments were made in a "private chat" group. So it was unclear whether the Councillor was acting as a Councillor when such comments were posted

6 Complaint raised against a Parish Councillor	Complaint about a Councillor speaking to a member of the public in a disrespectful manner and making unfounded allegations.	No action - Councillor had not breached the Code as they were not acting in the capacity of a Councillor at the time of the altercation.
7 Complaint raised against a District Councillor	Complaint about a Councillor had failed to respect an Officer and a member of the public.	Matter was escalated to the Hearing Panel. There was sufficient evidence that the Councillor had breached Paragraph 1.2 of the Council's Code of Conduct, in failing to respect the complainants, and by behaving as he did, had brought their office into disrepute. Agreed by the Hearing Panel that the Councillor should be given further training on the Council's Code of Conduct and provide a written apology to both complainants.
8 Complaint raised against a District Councillor	Complaint about a Councillor who had made false and libellous allegations against members of the public.	No action - No breach of the Code of Conduct, and that the Councillor was acting in personal capacity.
9 Complaint raised against a District Councillor	Complaint about Councillors not showing respect to a member of the public	No action – no evidence to support the allegation / complaint was submitted.

10 Complaint against a Parish Council	Complaint about the Parish being corrupt and gaining a financial interest in a planning application	No action – after a fact-finding investigation the complaint was untrue. The complainant had been misinformed
11 Complaint raised against a Parish Councillor	Complaint about Councillors not showing respect to a member of the public	No action - Not enough evidence to support the allegation
12 Complaint raised against a Parish Councillor	Complaint about Councillors not showing respect to a member of the public	No action - Not enough evidence to support the allegation
13 Complaint raised against a District Councillor	Complaint about Councillors not showing respect to a member of the public	No action - Not enough evidence to support the allegation

2.5 The most common reason for complaints continues to be alleged disrespectful behaviour. The majority of complaints were assessed as requiring no further action. Sometimes this has been accompanied by some informal recommendations or guidance to improve governance.

2.6 The Monitoring Officer intends, during 2023-24, to further review the arrangements for dealing with complaints against Members. This is to achieve greater clarity of process and responsibilities for the benefit of members of the public and Members themselves. The Committee will be kept informed of this work and will consider it at a future meeting.

3.0 Member training and awareness raising sessions

3.1 The Monitoring Officer, assisted by the Deputy Monitoring Officer ran a session on the Member Code of Conduct in June 2023 and this was

attended by 10 Members of Council in the live session and recorded to allow Members who were not able to attend to access the training later.

- 3.2 A range of other training and awareness raising sessions were held during 2022-23 including Planning, Introduction to Committees, Finance Module 1 (new Members) and Finance Module 3 (existing Members), Housing; Licensing; Local Plan Briefing; Future Tandridge Programme updates and other topical issues.

4.0 Democratic process

- 4.1 Clarity and accountability in the decision making of the Council is an important bedrock for good governance. Following lessons learned from the Covid-19 Pandemic, members of the public continue to be able to participate at formal meetings in person or virtually in terms of speaking and addressing meetings, as well as viewing them remotely.
- 4.2 In total, 55 formal public meetings were held and facilitated by the Democratic Services team of the Council during the reporting period. Members of the public asked 0 public questions and presented 0 petitions during 2022-23.

5.0 Decision-making governance

- 5.1 It is important, though, as in any year, to reflect to the Committee process on how the decision-making arrangements worked in practice as regards instances of closed sessions, urgent decisions, and instances of call-in.
- 5.2 The press and public can be excluded from the whole or part of a meeting if the meeting is to discuss confidential or exempt information (as set out in Schedule 12A of the Local Government Act 1972, as amended). The Monitoring Officer, in the role of ensuring lawful decision making, has reviewed the number of times that either the public was excluded or that an exempt report was featured on an agenda. This happened 22 times over the past year. In each case, the Monitoring Officer was satisfied that the reasons for closure were appropriate.
- 5.3 Under Standing Order 35 in the Council's Constitution, the Chief Executive is authorised to undertake urgency decisions on behalf of the Council. The need for urgent action arises between meetings of a committee and when there is not enough time to call a special meeting. In such circumstances, decisions may be taken by the Chief Executive and other Management Team. The Chief Executive and the Management Team Member are then required to first consult Political Group Leaders and the Chair of the concerned committee. Once the consultation has been completed, it is necessary to complete a form. These decisions will now be added to the Delegated Action List which is sent to Members every three weeks. The Delegated Action List is held by Democratic Services.

- 5.4 There were 4 urgency decisions taken during the review period.
- 5.5 No decisions of a committee were called in under the Council's call-in procedure under Part F of the Constitution during 2022-23.

6.0 Transparency and access

- 6.1 Modern.Gov is the software package used by the Council for creating, tracking and publishing Council and Committee meeting agenda, reports and minutes. This is important for transparency as the system publishes clear information on the Council's website as to the calendar of meetings and the accessibility of meeting papers.
- 6.2 Members will continue to receive regular reminders to keep their register of interests up to date and are now able to upload their interests electronically. Modern.Gov is used to manage Councillors register of interests amongst other things. Democratic Services will be looking into seeing what other functions can be recorded on the system in 2023/24 i.e. any training completed.
- 6.3 The system has wider capabilities to support paperless meetings and report preparation. The Monitoring Officer and the Democratic and Electoral Services Manager will be looking at various options with a view to sharing a report with all Councillors in 2023/24.

7.0 Constitution Review

- 7.1 Some further work has been undertaken to ensure that the Constitution enables the needs of a modern council. A cross-party working group was reconvened to making recommendations to the Strategy and Resources Committee on potential improvements. A report will be presented to the November Strategy and Resources Committee on these proposed changes.

8.0 Independent Person

- 8.1 The Council currently has one Independent Person, Mr Shaun Mundy. He was first appointed by the Council on 19th July 2012 (via a recommendation from the Standards Committee on 4th July 2012). His initial term was from then until the end of the 2015/16 Municipal Year. He was reappointed at Annual Council on 26th May 2016 to serve until the end of 2019/20. He was reappointed in 2020/21 and 2022/2023.
- 8.1 The Independent Person is appointed by the Council to fulfil the statutory role set out in the Localism Act 2011. The role of the Independent Person is familiar to the Committee, but in summary, the prime duty is to provide impartial and independent advice and support to the Monitoring Officer in considering code of conduct complaints and, where required, to those making complaints and those complained about during the course of an investigation.

8.2 Following a recruitment campaign, interviews to appoint two Independent Persons will take place in mid-November. The outcome of the interview process will be reported to the next Committee meeting in January 2024.

9.0 Conclusion

9.1 This report provides an overview of the work of the Monitoring Officer; the work of the Standards Committee and other governance arrangements for the Municipal year 2022/23 as well as the preceding year. It is imperative that Members and Officers set the ethical tone within the Council and model the behaviours that they expect of themselves and others.

9.2 The Monitoring Officer will contact in 2023/24 those Parish Councils that have not yet adopted the Local Government Association (LGA's) model code with the aim of bringing a universal approach to the model code across the District.

Key implications

Comments of the Chief Finance Officer

The Monitoring Officer's Report has not identified any financial implications for this Council over and above normal requirements.

Comments of the Head of Legal Services

Relevant references to legal powers are included in the main body of the report. Under S5 of the Local Government and Housing Act 1989 the Council is required to designate an officer as the Monitoring Officer whose responsibilities set out in the Council's Constitution include ensuring lawfulness and fairness of decision making and to contribute to the promotion and maintenance of high standards of conduct through provision of support and advice to

Equality

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The public sector equality duty (specific duty) requires Officers to consider how it can positively contribute to the advancement of equality and good relations, and demonstrate that it is paying 'due regard' in Council's decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, the Monitoring Officer does not believe that it will have an impact on our equality duty on end users.

----- end of report -----

Review of Tandridge District Council's Standards Arrangements

Standards Committee Tuesday, 7 November 2023

Report of: Head of Legal Services & Monitoring Officer

Purpose: For recommendation

Publication status: Open

Wards affected: All Wards

Executive summary:

To seek the Standards Committee's approval of a revision of the Council's Arrangements for Dealing with Standards Allegations under The Localism Act 2011.

This report supports the Council's priority of: Building a better Council.

Contact officer Lidia Harrison Head of Legal & Democratic Services
lharrison@tandridge.gov.uk

Recommendation to Committee:

To recommend to Full Council the adoption of either:

Option A:

That the Council's Arrangements for Dealing with Standards Allegations under The Localism Act 2011 retains its current wording at Paragraph 11.1

or

Option B:

That the Council's Arrangements for Dealing with Standards Allegations under The Localism Act 2011 be amended to state, at Paragraph 11.1, that:

"The Hearings Panel is a Sub-Committee of the Council's Standards Committee. It will be comprised of three District Councillors serving on the Standards Committee."

... with a view to the chosen option also being reflected in the Standards Committee's Terms of Reference.

Reason for recommendation:

Currently there is a conflict between the Council's Arrangements for Dealing with Standards Allegations under The Localism Act 2011 and the Council's Constitution as to how the membership of a Standards Hearing Panel should be appointed. By approving one of the above options, this will provide consistency for the Committee's future governance arrangements.

Introduction and background

1. The terms of reference for the Standards Committee state that its responsibilities include:
 - a. Advising the Council on the adoption or revision of the Members' Code of Conduct.
 - b. Monitoring the operation of the Members' Code of Conduct ('the Code').
 - c. Making arrangements for investigating and determining complaints regarding alleged breaches of the Members' Code applicable to Tandridge District Council or one of the Parish Councils within the District.
2. The Council currently has in place Arrangements for Dealing with Standards Allegations (the Arrangements) which sets out how allegations that one or more of its Member of the District or Parish Council has breached the Code and how this can be investigated and decisions on allegations can be made.
3. The last revision to the Arrangements were approved by the Standards Committee on 15 March 2021.
4. The current version of the Arrangements contains a conflict with the Council's Constitution in relation to the appointment of a Hearing Panel.
5. The Arrangements states the following at paragraph 11.1:

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. It will comprise three District Councillors. For each hearing, the Monitoring Officer, in consultation with the Chief Executive, will appoint three members of the Panel:

- *one Member will be a member of the Standards Committee who has received appropriate training*

- *the two remaining Members (not necessarily members of the Standards Committee) will be selected on the basis that they are disinterested in the matter under consideration.*

6. The Council's Constitution states the following at paragraph 4 of the Standards Committee Terms of Reference:

DELEGATION TO HEARINGS PANELS

Determination of complaints referred by an Investigating Officer regarding alleged breaches of the Members' Code of Conduct (applicable to Tandridge District Council or one of the Parish Councils within the District).

Such Panels shall comprise three District Councillors serving on the Standards Committee.

7. The two conflicting methods for calling a Hearing Panel has caused confusion in the past. It is therefore necessary for the Committee to recommend to Full Council how it would prefer to appoint a Standards Hearing Panel.
8. To assist the Committee, a review of the Standards procedures for the other District and Borough Councils in Surrey has highlighted that many appoint three members from their Standards (or equivalent) Committee. A summary of this review is attached to this report at Appendix B.
9. The Committee should also note that guidance from the Local Government Association states that the composition of the panel should be drawn from the main body of the Standards Committee.

Key implications

Comments of the Chief Finance Officer

This report contains no financial implications.

Comments of the Head of Legal Services

Hearings held by the Hearing Panel are quasi-judicial and the principles of natural justice and fairness must be upheld. The proposed changes are in line with these principles.

Section 28(6) Localism Act 2011 provides that a local authority must have in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made.

Equality

There are no equalities issues arising from this report. There is sufficient flexibility in the Arrangements to enable the Hearing Panel to accommodate any disability or equality issues and make reasonable adjustments to ensure fairness and accessibility on a case by case basis.

Climate change

None

Appendices

Appendix A - Council's Arrangements for Dealing with Standards Allegations under The Localism Act 2011

Appendix B - Overview of the standards procedures for other Surrey District and Borough Councils

Background papers

None

----- end of report -----



**Tandridge District Council
Arrangements for dealing with Standards Allegations under
The Localism Act 2011**

1 Context

- 1.1 These 'Arrangements' explain how this Council will deal with allegations that an elected or coopted Member of Tandridge District Council ("the Council") or one of the 21 Parish Councils within the District (hereafter referred to as 'Member') has failed to comply with the applicable Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have "arrangements" in place for investigating and determining allegations that a Member has failed to comply with the applicable Code of Conduct.
- 1.3 Such arrangements must provide for the Council to appoint at least one Independent Person, whose views:
 - must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated;
 - can be sought by the authority or the Member at any other stage.
- 1.4 All timescales contained within these arrangements are subject to the timely provision of information by third parties requested by the Monitoring Officer and/or Investigating Officer.
- 1.5 There is no statutory mechanism preventing complainants alleging a breach of the Code of Conduct for Members (or those the subject of such a complaint) making the nature of the allegation known to the press and public or making public comment on the allegation. Any such comments would be subject to the general law of defamation and a Member could seek a court injunction to prevent the publication of defamatory material.
- 1.6 A Member who is aware of a complaint is recommended not to make any public comment on it, and it is recommended that the matter should not be the subject of public discussion or debate.

2 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members (to be attached to these Arrangements and made available for inspection on the Council's website).
- 2.2 The Codes of Conduct of the Parish Councils may be viewed by arrangement with the respective Parish Clerks and may be available for inspection on the Parish Council's website.

3. Independent Person/ Reserve Independent Person

The Council has made these appointments in connection with 1.3 above and the Protocol for the Independent Person(s).

4. Making a complaint

4.1 Complaints should be addressed to –

The Monitoring Officer
Tandridge District Council
Council Offices
Station Road East
Oxted Surrey
RH8 0BT
monitoringofficer@tandridge.gov.uk

4.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of Member misconduct.

4.3 Complainants will be asked to provide their names and contact details for subsequent communication purposes. If a complainant wishes to keep his/her name and address confidential, the Council will not disclose the information to the Member. However, the Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

4.4 The Monitoring Officer will acknowledge receipt of the complaint within five working days.

4.5 The Monitoring Officer may vary the procedure set out below, including timescales, when he/she considers it desirable in the interests of justice or fairness or the effective conduct of the matter to do so.

5. Stage 1 – consideration of complaint by Monitoring Officer

5.1 The Monitoring Officer will review every complaint received and decide whether it merits initial enquiry. The criteria against which complaints are assessed and may, at the Monitoring Officer's absolute discretion, be rejected are set out at Appendix 1. This decision will normally be taken within 14 working days of receipt of a complaint.

5.2 If the complaint is rejected at this stage, the Monitoring Officer will inform the complainant of his/her decision and the reasons for that decision.

5.3 The Monitoring Officer will commence a process of enquiry ('preliminary fact-finding') in order to gather the information necessary to decide whether there is substance to the complaint and if there is, whether an informal resolution can be reached or whether a factfinding investigation should be conducted.

- 5.4 Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Member or the authority make a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 5.5 The Monitoring Officer may ask the complainant or the Member for additional information. Where a complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council and seek their views before deciding whether the complaint merits formal investigation.
- 5.6 If the complainant makes allegations that a criminal offence may have been committed, then the matter will be referred to the Police. Consideration of the complaint under the Council's procedure will be paused during Police investigation and may be recommenced by the Monitoring Officer, in consultation with the Independent Person, upon completion of action by the criminal justice system up to and including prosecution.

6 Stage 2 - Factfinding Investigation

- 6.1 If the Monitoring Officer decides that a complaint merits a fact-finding investigation, he/she will appoint an Investigating Officer, who may be the Deputy Monitoring Officer, or an officer of another authority or an external investigator. They will agree a timescale in which to undertake the investigation, which will normally take no more than 12 weeks from the appointment (subject to timely provision of information by the complainant and witnesses). The Investigating Officer may then decide to contact the complainant to establish an understanding of events and help to identify what documents the Investigating Officer needs to see, and who he/she needs to interview.
- 6.2 The Investigating Officer will normally write to the Member to:
- Provide the Member with a copy of the complaint;
 - Seek the Member's explanation of events;
 - List any documents which the Investigating Officer proposes to take into account in any investigation of the allegation, providing copies of these documents, and confirm where the original documents may be inspected;
 - Request that they provide the name, address and telephone number (or other appropriate contact details) where known to the Member of any person or organisation whom the Interviewing Officer proposes to interview in the course of any investigation of the allegation;
 - Provide any other information they wish to rely on.
- 6.3 In exceptional cases, where:
- it is appropriate to keep a complainant's identity confidential; or
 - disclosure of details of the complaint to the Member might prejudice the investigation,

the Monitoring Officer can delete the complainant's name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.

- 6.4 At the end of his/her investigation, the Investigating Officer will produce a report and will send a copy of that report, to the Monitoring Officer. The Monitoring Officer will then consult with the Independent Person.

7 What happens if the Investigating Officer concludes in consultation with the Independent Person that there is no evidence of a failure to comply with the Code of Conduct?

- 7.1 The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied having consulted the Independent Person that the investigation has been conducted properly and there is no evidence of a failure to comply with the Code of Conduct, he/she will write to the complainant and the Member (and to the Parish Council where a complaint relates to a Parish Councillor) confirming that he/she is satisfied that no further action is required. A copy of the Investigating Officer's final report will be supplied to the complainant; Member; and (if applicable) Parish Council at this time.
- 7.2 If the Monitoring Officer in consultation with the Independent Person is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.
- 7.3 The Monitoring Officer will take action as appropriate within ten working days of receipt of the Investigating Officer's report.

8 Stage 3 - Referral for local hearing or seeking local resolution

- 8.1 Having reviewed the Investigating Officer's report, the Monitoring Officer will consult the Independent Person on whether there is evidence of a failure to comply with the Code of Conduct and, if so, whether to refer the matter for local hearing before the Hearings Panel or seek local resolution.
- 8.2 Local Resolution
- 8.2.1 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and ask the views of the complainant within ten working days and seek agreement on a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee for information but will take no further action.

8.3 Local Hearing

8.3.1 If:

- the Monitoring Officer in consultation with the Independent Person considers that local resolution is not appropriate; or
- the complainant is not satisfied by the proposed resolution; or
- the Member is not prepared to undertake any proposed remedial action, such as giving an apology

the Monitoring Officer will refer the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member. The Panel will normally meet within ten working days of a decision to refer the decision.

8.3.2 The Monitoring Officer will conduct a "pre-hearing process", requiring the Member to give his/her response to the Investigating Officer's report, in order that the Monitoring Officer may identify what is likely to be agreed and what is likely to be in contention at the hearing.

8.3.3 The Hearings Panel may govern its own procedure as long as it acts fairly. It may request advice from the Monitoring Officer (or Deputy) at any time. However in general the following procedure should be adopted:

- a) Hearings, having started in public session, should normally be held in private unless the Hearings Panel has resolved not to exclude the press and public from all or any part of the hearing
- b) Any submissions by either party about the conduct of the case, including disputes about witnesses, potential new information, new supporting documents etc should be raised at the commencement of the hearing
- c) The Panel will adopt as far as is reasonably practicable an inquisitorial approach to the hearing rather than permit an adversarial or hostile approach to develop.
- d) Witnesses are not to be present in the hearing until they have been called to give their evidence.
- e) If the subject Member is not present, then the Hearings Panel shall consider whether or not to proceed. If the Hearings Panel is not satisfied that there is sufficient reason for the subject Member's absence, it may either proceed to consider the matter and make a determination in the absence of the subject Member or adjourn the hearing to another date and time. If the Hearings Panel is satisfied there is sufficient reason, it shall adjourn the hearing to another date unless the subject Member has indicated that the hearing should proceed in their absence.

8.3.4 At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Hearings Panel. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why

he/she considers that he/she did not fail to comply with the Code of Conduct.

- 8.3.5 The subject Member may be represented or accompanied during the hearing by another person as long as the Hearings Panel or its Chairman has given prior consent, such consent not to be unreasonably withheld.
- 8.3.6 The subject Member may make representations (orally or in writing) or present evidence in accordance with this procedure either personally or through their representative. The Hearings Panel will not normally permit the subject Member and their representative to both make representations.
- 8.3.7 The Hearings Panel, having taken advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Hearings Panel will then consider what action, if any, it should take. In doing this, the Hearings Panel will give the Member an opportunity to make representations to the Panel and will consult the Independent Person.

9 Stage 4 – Action following a finding of failure to comply with the Code of Conduct

- 9.1 The Panel may:
 - 9.1.1 Publish its findings in respect of the Member's conduct and any other relevant actions the Panel has decided to take;
 - 9.1.2 Ask the Member to apologise;
 - 9.1.3 Report its findings to Council or to the Parish Council for information;
 - 9.1.4 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - 9.1.5 Instruct the Monitoring Officer to arrange (or recommend that the Parish Council arrange) training for the Member;
 - 9.1.6 Remove the Member from all outside bodies which he/she has been appointed or nominated by the authority (or recommend to the Parish Council that he/she be removed from such bodies appointed by the Parish Council);
 - 9.1.7 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
 - 9.1.8 Exclude (or recommend that the Parish Council exclude) the 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.

- 9.1.9 The Hearings Panel has no power to suspend or disqualify the Member or to withdraw members' or special responsibility allowances.

10 What happens at the end of the hearing?

10.1 At the end of the hearing, the Chair will state the decision of the Panel and what actions, if any, it has resolved to take.

- 10.2 The Monitoring Officer shall, within five working days of the Panel meeting, prepare a formal decision notice in consultation with the Chairman of the Hearings Panel and:
- send a copy to the complainant, the Member and (if applicable) to the Parish Council;
 - make the decision notice available for public inspection; and
 - report the decision to the next convenient meeting of the Council.

11 Who are the Hearings Panel?

11.1 The Hearings Panel is a Sub-Committee of the Council's Standards Committee. It will comprise three District Councillors. For each hearing, the Monitoring Officer, in consultation with the Chief Executive, will appoint three members of the Panel:

- one Member will be a member of the Standards Committee who has received appropriate training
- the two remaining Members (not necessarily members of the Standards Committee) will be selected on the basis that they are disinterested in the matter under consideration.

11.2 The Committee will elect a Chair at each meeting.

11.3 The Independent Person is also invited to attend the meetings and his/her views will be sought and taken into consideration before the Hearings Panel takes any decisions.

11.4 Members of Hearings Panels who have not received training will be required to attend a briefing before sitting on the Panel.

12 Annual report

12.1 The Monitoring Officer will report annually to the Standards Committee on the number of complaints made in relation to the Code of Conduct for Members and actions taken in response to those complaints.

13 Revision of these arrangements

13.1 The Council may by resolution agree to amend these arrangements and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

- 13.1 There is no right of appeal for the complainant or the Member against a decision of the Monitoring Officer or of the Hearings Panel.
- 13.2 If a complainant considers that the authority has failed to deal with his/her complaint properly, he/she may make a complaint to the Local Government Ombudsman.

Annex 1 - Standards complaints assessment criteria

A. Complaints which would not normally be referred for investigation

1. The complaint is not considered sufficiently serious to warrant investigation and dealing with the complaint would have a disproportionate effect on both public money and Members' and Officers' time; or
2. The complaint appears to be simply motivated by malice or is 'tit-for-tat'; or
3. The complaint appears to be politically motivated, vexatious or trivial; or
4. The complaint relates to a matter relating to the Member's democratic role and is more appropriately judged by the electorate at the local elections; or
5. It appears there can be no breach of the Code of Conduct; for example, that it relates to the Councillor's private life or is about dissatisfaction with a Council decision; or
6. It is about someone who is no longer a Councillor unless there are exceptional circumstances, eg allegation of bullying, harassment etc; or
7. There is insufficient information or evidence available for a referral; or
8. The complaint has not been received within three months of the alleged misconduct unless there are exceptional circumstances, eg allegation of bullying, harassment etc; or
9. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out;
10. The circumstances have changed so much that there would be little benefit arising from an investigation or other action; or
11. The same, or similar complaint has already been investigated and there is nothing further to be gained seeking the sanctions available to the Hearings Panel; or
12. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
13. Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

B. Complaints which may be referred for investigation

1. It is serious enough, if proven, to justify the range of actions available to the Hearings Panel; or
2. There are individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/ her to investigate.

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Appendix B - Overview of the standards procedures for other Surrey District and Borough Councils

<u>Council</u>	<u>Constitution</u>	<u>Protocol/Guidance/Notes</u>	<u>Members of Parent Committee</u>
Elmbridge	<ul style="list-style-type: none"> • 4.1 - Sub Committees will compromise of <u>three members from the full Audit & Standards Committee</u> • 4.3.4 – Standards sub-committee in relation to Councillor’s Code of Conduct 	<ul style="list-style-type: none"> • Hearing Panel is Sub-Committee of Audit & Standards Committee 	7
Epsom & Ewell	<ul style="list-style-type: none"> • Appendix 3 - Standards & Constitution Hearing Sub Committee - Panels shall comprise <u>three Borough councillors serving on the Standards and Constitution Committee.</u> 	<ul style="list-style-type: none"> • Panels shall comprise three Borough councillors serving on the Standards and Constitution Committee • Members Code of Conduct, as part of the Constitution 	6
Guildford	<ul style="list-style-type: none"> • 10.6 (b) The Hearings Sub-Committee shall be politically balanced and comprise of <u>five voting members of the Corporate Governance and Standards Committee.</u> 		7
Mole Valley	<ul style="list-style-type: none"> • 11.4 (b) The Complaints Sub-Committee shall comprise <u>three members of the Standards Committee</u> appointed by the Executive Head with responsibility for Democratic and Electoral Services or the Monitoring Officer. 		6
Reigate & Banstead	<ul style="list-style-type: none"> • The role and functions of the Standards Committee are set out in Table 2 (Responsibility for Council Functions) of Part 3a of this Constitution. • <u>5 Members of the Authority</u> together with the following non-voting co-opted member (1 representative of Town/Parish Councils). 	<ul style="list-style-type: none"> • Committee appointed by Annual Council. 	5 (4 Subs)
Runnymede	<ul style="list-style-type: none"> • Annex 3 2.2 (p.212) - Hearing Panel consists of <u>three voting elected Members drawn from the Standards and Audit Committee,</u> 		10

Spelthorne	<ul style="list-style-type: none"> 8.4 (b) Hearings Panel (comprising <u>three councillors drawn from the membership of the Standards Committee</u> and chaired by an independent member 	<ul style="list-style-type: none"> Established by the Standards Committee 	9
Surrey Heath	<ul style="list-style-type: none"> The membership of a Standards Sub-Committee shall comprise <u>3 members of the Audit & Standards Committee.</u> 	<ul style="list-style-type: none"> Members appointed by Head of Legal & Dem Services Quorum is 3 	7
Waverley	<ul style="list-style-type: none"> 5.3 – 4 – step 9 - Hearings Panel of <u>three Councillors drawn from the Group appointed by the Council.</u> 	<ul style="list-style-type: none"> The membership of the Standards Panel will be drawn from the members of the Standards Committee 	7
Woking	<ul style="list-style-type: none"> Article 10 - 4.1 - The Committee will establish the Standards Panel. <u>The Panel will comprise of four Councillors</u> and the Independent Member. 4.2. A <u>substitute for each Councillor member of the Panel</u> shall be appointed. A substitute may attend any meeting of the Panel, with all the powers of the appointed Councillor member in the event that the appointed Councillor member is unable to attend a particular meeting. 	<ul style="list-style-type: none"> Standards Hearing Sub-Committee is a sub-committee of the Council's Standards and Audit Committee Note – Does not specify that members <i>have</i> to be from parent committee, however this seems to be the case. <ul style="list-style-type: none"> September 2021 meeting – 2 of 4 Councillors were of Committee. October 2020 – 3 of 4 were from parent Committee. 	6