

**Procedure for Local Determination Hearings
of Allegations of Member Misconduct**

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**Procedure for Local Determination Hearings of
Allegations of Member Misconduct**

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1. Interpretation

- (a) “Member”, except where the context otherwise requires, means the member or co-opted member of the authority who is the subject of the allegation being considered by the Hearing Panel. It also includes the Member’s nominated representative.
- (b) “Investigating Officer” means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigating Officer means the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and her nominated representative).
- (c) “The matter” is the subject matter of the Investigating Officer’s report.
- (d) “The Hearing Panel” refers to the Standards Committee whose role it is to hear cases and make local determinations on complaints about alleged breaches of the Code of Conduct for Members or alleged breaches of local protocols.
- (e) “The Committee Support Officer” means an officer of the authority responsible for supporting the Hearing Panel’s discharge of its functions, acting as clerk for the hearing including recording the Hearing Panel’s decisions.
- (f) “Legal Adviser” means the officer responsible for providing legal advice to the Hearing Panel. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) “The Chairman” refers to the person presiding at the hearing.

2. Modification of Procedure

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

3. Representation

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Hearing Panel, another person. Note that the cost of such representation must be met by the Member, unless the Hearing Panel has expressly agreed to meet all or any part of that cost.

4. Pre-hearing Procedure (ESO’s Report)

Upon reference of a matter from an Ethical Standards Officer for local determination following completion of the Ethical Standards Officer’s report. The Monitoring Officer shall:

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- (a) Arrange a date for the Hearing Panel to hear the matter;
- (b) Send a copy of the ESO's report to the Member, advise him/her of the date, time and place for the hearing, provide the Member with a copy of the determination procedure and outline the Member's rights and responsibilities during the hearing process;
- (c) Send a copy of the ESO's report to the person who made the allegation, advise him/her of the date, time and place for the hearing and provide him/her with a copy of the determination procedure.
- (d) Notify the Parish Council of the matter and of the date, time and place of the hearing if the allegation is about the misconduct of a Member of the Parish Council;
- (e) Request the Member to complete and return the model Pre-Hearing Forms A, B, C, D and E, as recommended by the Standards Board for England within 14 days of receipt;
- (f) In the light of any Pre-Hearing Forms returned by the member, determine whether the Hearing Panel will require the attendance of the Ethical Standards 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.
- (g) Send a copy of the Member's response to the ESO for his/her comments, confirm the time, date and place of the hearing and invite the ESO to confirm within 14 days of receipt whether he/she:
 - Wants to be represented at the hearing;
 - Wants to call relevant witnesses to give evidence to the hearing panel;
 - Wants any part of the hearing held in private; and
 - Wants any part of the ESO's report or other relevant documents to be withheld from the public.
- (h) Notify the witnesses who will be required to attend the hearing of the date, time and place of the hearing and that their presence is required;
- (i) Prepare a Pre-Hearing Summary Report setting out:
 - The date, time and place of the hearing;
 - Summarise the allegation;
 - Outline the main facts of the case that are agreed;
 - Outline the main facts of the case that are not agreed;

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- Note whether the Member concerned and the Ethical Standards Officer will go to or be represented at the hearing;
 - List those witnesses, if any, who will be asked to give evidence; and
 - Outline the proposed procedure for the hearing.
- (j) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent, at least two weeks before the hearing, to:
- All members of the Hearing Panel who will conduct the hearing;
 - The Member;
 - The person who made the allegation, and
 - The Ethical Standards Officer.

5. Pre-hearing Process (Local Investigations)

Upon receipt of the final report of the Investigating Officer (IO) including a finding that the Member failed to comply with the Code of Conduct for Members or the Hearing Panel finds that the matter should be considered at a formal hearing, the Monitoring Officer shall:

- (a) Arrange a date for the Hearing Panel to hear the matter;
- (b) Send a copy of the IO's report to the Member and advise him/her of the date, time and place of the hearing, provide the Member with a copy of the determination procedure and outline the Member's rights and responsibilities during the hearing process;
- (c) Send a copy of the IO's report to the person who made the allegation and advise him/her of the date, time and place for the hearing and provide him/her with a copy of the determination procedure;
- (d) Notify the Parish Council of the matter and of the date, time and place of hearing if the allegation is made against a Parish Councillor.
- (e) Request the Member to complete and return the model Pre-hearing Forms A, B, C, D and E, as recommended by the Standards Board for England within 14 days of receipt;
- (f) In the light of any Pre-Hearing Forms returned by the Member, determine whether the Hearing Panel 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 and arrange for their attendance;

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- (g) Send a copy of the Member's response to the IO for his/her comments, confirm the time, date and place of the hearing and invite the IO to confirm within 14 days of receipt whether he/she:
- Wants to be represented at the hearing;
 - Wants to call relevant witnesses to give evidence to the hearing panel;
 - Wants any part of the hearing held in private; and
 - Wants any part of the IO's report or other relevant documents to be withheld from the public.
- (h) Notify the witnesses who will be required to attend the hearing of the date, time and place of the hearing and that their attendance is required;
- (i) Prepare a Pre-Hearing Summary Report setting out:
- The date, time and place of the hearing;
 - Summarise the allegation;
 - Outline the main facts of the case that are agreed;
 - Outline the main facts of the case that are not agreed;
 - Note whether the Member concerned and the Investigating Officer will go to or be represented at the hearing;
 - List those witnesses, if any, who will be asked to give evidence; and
 - Outline the proposed procedure for the hearing.
- (j) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent, at least two weeks before the hearing, to:
- (i) All members of the Hearing Panel;
 - (ii) The Member;
 - (iii) The person who made the allegation, and
 - (iv) The Investigating Officer.

6. Legal Advice to the Hearing Panel

The Hearing Panel may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance

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of any legal advice given to the Hearing Panel should be shared with the Member and the Investigating Officer if they are present.

7. Setting the scene at the hearing

At the start of the hearing, the Chairman shall introduce each of the members of the Hearing Panel, the Member (if present), the Investigating Officer (if present) and any other officers present, and shall then explain the procedure which the Hearing Panel will follow in the conduct of the hearing.

8. Preliminary procedural issues

The Hearing Panel shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chairman shall ask members of the Hearing Panel to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chairman shall confirm that the Hearing Panel is quorate.

(c) Hearing procedure

The Chairman shall confirm that all present know the procedure which the Hearing Panel will follow in determining the matter.

(d) Proceeding in the absence of the Member

If the Member is not present at the start of the hearing:

(i) The Chairman shall ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing;

(ii) The Hearing Panel shall then consider any reasons which the 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;

(iii) If the Hearing Panel is satisfied with such reasons, it shall adjourn the hearing to another date;

(iv) If the Hearing Panel is not satisfied with such reasons, or if the Member has not given any such reasons, the Hearing Panel shall decide whether to consider the matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

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(e) Exclusion of Press and Public

The Hearing Panel may exclude the press and public from its consideration of this matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

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

Where the Hearing Panel does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

9. The hearing of the allegation of failure to comply with the Code of Conduct or Local Protocol?

The Hearing Panel will then address the issue of whether the Member failed to comply with the Code of Conduct or local protocol in the manner set out in the Investigating Officer's report.

(a) The Chairman shall ask the Member to confirm that he/she maintains the position as set out in the Pre-Hearing Summary Report.

(b) The Pre-Hearing Process Summary

The Chairman will ask the legal adviser or the Committee Support Officer to present the Pre-hearing Summary Report, highlighting any points of difference in respect of which the Member has stated that he/she disagrees with any finding of fact in the ESO's or the Investigating Officer's report. The Chairman will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the ESO's or the Investigating Officer's report.

(i) If the Member admits that he/she has failed to comply with the Code of Conduct or local protocol in the manner described in the Investigating Officer's report, the Hearing Panel may then make a determination that the Member has failed to comply with the Code of Conduct or local protocol in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken (Paragraph 11).

(ii) If the Member identifies additional points of difference, the Chairman shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she

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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. Where the hearing Panel is not satisfied with the Member's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the 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 the Member did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

(c) Presenting the Investigating Officer's report

- (i) If the Investigating Officer is present, the Chairman will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her finding of fact, that the Member had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
- (ii) If the Investigating Officer is not present, the Hearing Panel 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. In the absence of the Investigating Officer, the Hearing Panel shall determine on the advice of the Monitoring Officer 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.
- (iii) No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chairman shall ask the Member if there are any matters upon which the Hearing Panel should seek the advice of the Investigating Officer or the witness.

(d) The Member's response

- (i) The Chairman shall then invite the Member to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
- (ii) No cross-examination shall be permitted but, at the conclusion of the Member's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigating Officer if there are any

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matters upon which the Hearing Panel should seek the advice of the Member or the witness.

(e) Witnesses

- (i) The Hearing Panel shall be entitled to refuse to hear evidence from the Investigating Officer, the Member 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.
- (ii) Any member of the Hearing Panel may address questions to the Investigating Officer, to the Member or to any witness.

(f) Additional Evidence

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

- (g) If the Hearing Panel at any stage prior to determining whether there was a failure to comply with the Code of Conduct or local protocol 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, the Hearing Panel may (on not more than one occasion) adjourn the hearing and make a request to the local Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Hearing Panel.

(h) Determination as to whether there was a failure to comply with the Code of Conduct or Local Protocol.

- (i) At the conclusion of the Member's response, the Chairman shall ensure that each member of the Hearing Panel is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the Code of Conduct or local protocol as set out in the Investigating Officer's report.
- (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 9(b)(i) above), the Hearing Panel shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct or local protocol as set out in the Investigating Officer's report.
- (iii) The Hearing Panel shall take its decision on the balance of probability based on the evidence which it has received at the hearing.

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- (iv) The Hearing Panel's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Member or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an officer or request the Member to produce such further evidence to the Hearing Panel.
- (v) At the conclusion of the Hearing Panel's consideration, the Hearing Panel shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
- (vi) The Hearing Panel shall then return to the main hearing room and the Chairman will state the Hearing Panel's principal findings of fact and their determination as to whether the Member failed to comply with the Code of Conduct or local protocol as set out in the Investigating Officer's report.

10. If the Member has not failed to follow the Code of Conduct or Local Protocol

If the Hearing Panel determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report:

- (a) The Chairman will announce the Hearing Panel's decision that the Member has not failed to follow the Code of Conduct or local protocol in respect of the alleged matter. The Chairman will then move on to make any other announcements (if applicable) as follows.
- (b) If the Hearing Panel apprehends, from the evidence which they have received during the hearing, that the Member has failed to comply with the Code of Conduct (other than the matter which the Hearing Panel has just determined), the Chairman shall outline the Hearing Panel's concerns and state that the Hearing Panel has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (c) The Chairman should then set out any recommendations which the Hearing Panel is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigating Officer and the legal adviser before the Hearing Panel finalises any such recommendations.
- (d) Finally, the Chairman should ask the Member whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

11. Action consequent upon a failure to comply with the Code of Conduct or Local Protocol

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- (a) The Chairman shall ask the Investigating Officer (if present, or otherwise the legal adviser) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Hearing Panel should impose a sanction and, if so, what would be the appropriate sanction.
- (b) The Chairman shall ask the Investigating Officer (if present, or otherwise the legal adviser) whether, in his/her opinion, the Member's failure to comply with the local protocol is such that the Hearing Panel should impose a sanction and, if so, what would be the appropriate sanction.
- (c) The Chairman will then ask the Member to respond to the Investigating Officer's advice.
- (d) The Chairman will then ensure that each member of the Hearing Panel is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (e) Any member of the Hearing Panel may address questions to the Investigating Officer or to the Member as necessary to enable him/her to take such an informed decision.
- (f) The Chairman should then set out any recommendations which the Hearing Panel is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigating Officer and the legal adviser.
- (g) The Hearing Panel shall then retire to another room to consider in private whether to impose a sanction and (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Hearing Panel will make to the authority.
- (h) At the completion of their consideration, the Hearing Panel shall return to the main hearing room and the Chairman shall state the Hearing Panel's decisions as to whether to impose a sanction and (when a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for these decisions, and any recommendations which the Hearing Panel will make to the authority.

12. Reference back to the Ethical Standards Officer

If, at any time before the Hearing Panel has determined upon any appropriate sanction, the Hearing Panel considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Hearing Panel, the Hearing Panel may request the Monitoring Officer to refer the matter back to the Ethical Standards

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Officer, and may adjourn the hearing until the Monitoring Officer advises the Hearing Panel of the Ethical Standards Officer's responses to such a request.

13. Sanctions

The Standards Committee can impose one, or any combination, of the following:

- Censure the Member;
- restrict the Member's access to the premises and resources of the relevant authority for up to three months, ensuring that any restrictions are proportionate to the nature of the breach and do not unduly restrict the Member's ability to perform his or her duties as a Member;
- order the Member to submit a written apology in a form satisfactory to the Standards Committee;
- order the Member to undertake training specified by the Standards Committee;
- order the Member to participate in a conciliation process specified by the Standards Committee;
- suspend, or partially suspend, the Member for up to three months;
- suspend, or partially suspend, the Member for up to three months, or until such time as the Member submits a written apology that is accepted by the Standards Committee;
- suspend, or partially suspend, the Member for up to three months, or until such time as the Member undertakes any training or conciliation ordered by the Standards Committee.

Any conciliation process should have an agreed timeframe for resolution. The process may be of an informal or formal nature, involving elements of training and mediation that will lead to an effective and fair conclusion of the matter. Any decisions reached during the process regarding future behaviour of the Member concerned, and measures to prevent a repetition of the circumstances that gave rise to the initial allegation, should be agreed by all parties.

14. The close of the Hearing

- (a) The hearing Panel will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Member as soon as practicable after the close of the Hearing.

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- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing.
- (c) Following the close of the Hearing, the Committee Support Officer will agree a formal written notice of the Hearing Panel's determination and the Monitoring Officer shall arrange for the distribution of that notice within two weeks of the close of the hearing, to:
 - the Member
 - the Investigating Officer
 - the Members of the Standards Committee
 - any Parish Council concerned in the hearing
 - the person who made the allegation

and shall arrange for a summary of the findings and the penalty imposed for breach of the Code of Conduct (but not for breach of a local protocol) to be published in one or more newspapers independent of the Council and circulating in the area.

15. Appeals

The Member may appeal against the decision of the Hearing Panel by writing to the President of the Adjudication Panel for England, ensuring that his/her letter sets out the grounds for such an appeal, includes a statement as to whether or not he/she consents to the appeal being heard by way of written representations, and is received by the President within 21 days of the date of the written notice of decision under Paragraph 13(a).