

APPENDIX S: Annexe 3

STANDARDS HEARINGS SUB COMMITTEE PROCEDURE

The complainant and the Subject Member can request that the hearing takes place by way of written submissions rather than a formal hearing undertaken by the Standards Hearings Sub Committee. This can only take place with the agreement of both the complainant and Subject Member.

1. Rules of procedure
 - 1.1 The Standards Hearings Sub Committee consists of three voting elected Members drawn from the Standards Committee.
 - 1.2 The quorum for a meeting of the Standards Hearings Sub Committee is three elected Members.
 - 1.3 The Independent Person's view must be sought and taken into consideration before the Standards Hearings Sub Committee 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 must be present throughout the hearing (but not during the deliberations of the Standards Hearings Sub Committee] in private) or may submit their views on the complaint to the Standards Hearings Sub Committee in writing.
 - 1.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards Hearings Sub Committee. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Standards Hearings Sub Committee because it is likely that confidential or exempt information will be disclosed.
 - 1.5 All matters/issues before the Standards Hearings Sub Committee will be decided by a simple majority of votes cast.
 - 1.6 Where the Subject Member fails to attend the Standards Hearings Sub Committee and where the Standards Hearings Sub Committee is not satisfied with their explanation for their absence from the hearing, the Standards Hearings Sub Committee may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination. If the Standards Hearings Sub Committee is satisfied with the Subject Member's reasons for not attending the hearing they may adjourn the hearing to

another date or, may resolve in exceptional circumstances, to proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.

2. Right to be accompanied by a representative
 - 2.1 The Subject Member may choose to be accompanied and/or represented at the Standards Hearings Sub Committee by a fellow councillor, friend or colleague or legal counsel.
3. The conduct of the Standards Hearings Sub Committee
 - 3.1 Subject to paragraph 3.2 below, the order of business will be as follows:
 - (a) appointment of a chairman
 - (b) apologies for absence;
 - (c) declarations of interests;
 - (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.6 above);
 - (e) introduction by the Chairman, of members of the Standards Hearings Sub Committee, the Independent Person, the Monitoring Officer, Investigating Officer, complainant and the Subject Member and their representative;
 - (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
 - (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.
 - 3.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.
 - 3.3 The Standards Hearings Sub Committee may adjourn the hearing at any time.
 - 3.4 Presentation of the complaint
 - (a) The Investigating Officer presents their report including any documentary evidence or other material and calls any complainant witnesses;
 - (b) The Standards Hearings Sub Committee may question the Investigating Officer upon the content of his/her report and any complainant witnesses.

3.5 Presentation of the Subject Member's case

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Standards Hearings Sub Committee may question the Subject Member and any witnesses called by the Subject Member.

3.6 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Standards Hearings Sub Committee, there has been a breach of the Code of Conduct or no breach as the case may be.

3.7 Deliberations of the Standards Hearings Sub Committee

- 3.7.1 (a) The Standards Hearings Sub Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Standards Hearings Sub Committee will consider the views expressed by the Independent Person prior to reaching a decision(s), including any views of the Independent Person on sanction(s) to be applied [and/or recommendations to the District or Town/Parish Council or Monitoring Officer.
- (c) The Standards Hearing Sub Committee when making its decision will consider the criteria set out in Annexe 1 - Assessment test.
- (d) Where the complaint has a number of aspects, the Standards Hearings Sub Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (e) The Standards Hearings Sub Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- (f) The Standards Hearings Sub Committee 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 Standards Hearing Sub Committee cannot be presented, then the Standards Hearing Sub Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- (g) If evidence presented to the Standards Hearings Sub Committee highlights other potential breaches of the District or Town/Parish Council's Code of Conduct, then the Chairman will outline the

Standards Hearing Sub Committee's concerns and recommend that the matter be referred to the Monitoring Officer as a 'new complaint'.

- 3.7.2 (a) Having deliberated on its decision and/or recommendation(s) and the application of any sanction(s), the Standards Hearings Sub Committee will reconvene the hearing in public and the Chairman will announce that on the facts presented to the Standards Hearing Sub Committee, the Standards Hearing Sub Committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be. The Chairman will announce the sanction(s) the Sub Committee is minded to apply and/or any recommendation(s) to the District or Town/Parish Council and/or Monitoring Officer.
- (b) The Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether any sanction(s) should be taken and what form any sanction(s) should take. The Independent Person will be invited to express their view on any recommendation(s) to the District or Town/Parish Council or Monitoring Officer.

Having heard the representations/views, the Standards Hearings Sub Committee will adjourn and deliberate in private.

- 3.7.3 (a) Having deliberated on its decision and/or recommendation(s) and the application of any sanction(s), and having taken into account the Independent Person's views, the Standards Hearings Sub Committee will reconvene the hearing in public and the Chairman will announce:
- (i) the Sub Committee's decision that the Subject Member has failed to comply with the Code of Conduct; or, that the Subject Member has not failed to comply with the Code of Conduct and the principal reasons for the decision;
 - (ii) the sanction(s) to be applied;
 - (iii) whether any recommendations will be made to the District or Town/Parish Council;
 - (iv) that the Sub Committee's full decision and reasons will be issued by the Monitoring Officer, in writing, within 10 working days following the close of the hearing;
 - (v) that the decision will be published on the District Council's website; and
 - (vi) that there is no right of appeal against the Sub Committee's decision(s) and/or recommendation(s).

- 3.7.4 The Standards Hearings Sub Committee's decision and/or recommendations will be published in accordance with paragraph 5 of this Annexe 3.

4. Range of possible sanctions
 - 4.1 Subject to paragraph 4.4 below, where the Standards Hearings Sub Committee determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the sanctions set out in paragraph 1.5 of the document entitled “Arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011”.
 - 4.2 The Standards Hearings Sub Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
 - 4.3 The Standards Hearings Sub Committee may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.
 - 4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Standards Hearings Sub Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member’s behaviour and that any sanction does not unduly restrict the Subject Member’s ability to perform the functions of a councillor. The Standards Hearings Sub Committee will consider the following questions along with any other relevant circumstances or other factors specific to the local environment and/or the Conventions ‘proportionality’ requirements:
 - (a) What was the Subject Member’s intention and did they know that they were failing to follow the District or Town/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 Town/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 persons?
 - (i) Has the Subject Member previously been reprimanded or warned for similar relevant misconduct?
 - (j) Has there been a relevant previous breach of the District or Town/Parish Council’s Code of Conduct?
 - (k) Is there likely to be a repetition of the incident?
 - (l) Was it a deliberate breach of the code or was it inadvertent (i.e. the Member thought that he/she was acting in a private capacity)? If capacity is an issue the Standards Hearings Sub

Committee will need to give reasons for its decision that the Subject Member was or was not acting publicly.

5. Publication and notification of the Standards Hearings Sub Committee's decision(s) and/or recommendation(s)
 - 5.1 Within 10 working days of the Standards Hearings Sub Committee's announcement of its decision and/or recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Standards Hearings Sub Committee's decision and/or recommendations and reasons for the decision and/or recommendations on the District Council's website.
 - 5.2 Within 10 working days of the announcement of the Standards Hearings Sub Committee's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision including any recommendations in the format of the decision notice template annexed to this Annexe 3 to:
 - (a) the Subject Member;
 - (b) the Complainant;
 - (c) the Clerk to the Town/Parish Council;
 - 5.3 The Monitoring Officer will report the Standards Hearings Sub Committee's decision and/or recommendations to the next ordinary meeting of the Standards Committee for information.

TEMPLATE - DECISION NOTICE (of Standards Hearings Sub Committee)

Complaint No: xxxx

On [insert date], the Standards Hearings Sub Committee of The Sevenoaks District Council considered a report of an investigation into the alleged conduct of Councillor [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

Complaint summary

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer's report to the Standards Hearings Sub Committee]

Consultation with Independent Person

[Summarise the Independent Person's views in numbered paragraphs]

Findings

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Standards Hearings Sub Committee reached the following decision(s):

[Summarise the finding of facts and the Standards Hearings Sub Committee's decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer's report to the Standards Hearings Sub Committee, but substitute the Investigating Officer for the Standards Hearings Sub Committee. Please note that the Standards Hearings Sub Committee's findings may differ from that of the Investigating Officer]

The Standards Hearings Sub Committee also made the following recommendation(s)

[Detail recommendations]

Sanctions applied

The breach of the [insert authority name] Code of Conduct warrants a [detail sanctions applied].

Appeal

There is no right of appeal against the Standards Hearings Sub Committee's decision.

Notification of decision

This decision notice is sent to the:

- Councillor [name of councillor]
- Complainant
- Clerk to the xxxx Parish/Town Council;

Additional help

If you need additional support in relation to this decision notice or future contact with the District Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on 01732 227000 or email information@sevenoaks.gov.uk. We welcome calls via Typetalk

Signed:

Date

Print name:

Chairman of the Standards Hearings Sub Committee Sevenoaks District Council,
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