

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS

UNDER THE LOCALISM ACT 2011



1. BACKGROUND

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this Authority *[or of a parish council within the Borough]* has failed to comply with the Authority’s Code of Conduct, and sets out how the Authority will deal with allegations of a failure to comply with the adopted Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Authority must have in place “arrangements” under which allegations that a member or co-opted member of the Authority *[or of a parish council]*, or of a Committee or Sub-Committee of the authority, has failed to comply with that Authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Authority 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, and whose views can be sought by the Authority at any other stage, or by a member *[or a member or co-opted member of a parish council]* against whom an allegation as been made.

2. THE CODE OF CONDUCT

The Authority has adopted a Code of Conduct for members, which is attached as **Appendix One** to these arrangements and available for inspection on the Authority’s website www.hartlepool.gov.uk and on request from Reception at the Civic Centre.

[Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish council and request the parish clerk to allow you to inspect the parish council’s Code of Conduct.]

The Council’s Code of Conduct will have application when a Member acts in their official capacity, namely where they are conducting the business of the Borough Council or otherwise acting, claiming to act, or giving the impression that they are acting as a representative of the Borough Council. Further, that at the time of the alleged misconduct, they were an elected or co-opted member of the Borough Council.

3. MAKING A COMPLAINT

If you wish to make a complaint, please write or email to –

Mrs H Martin
 Chief Solicitor & Monitoring Officer
 Hartlepool Borough Council
 Civic Centre
 Victoria Road
 Hartlepool
 TS24 8AY

Or –

Hayley.martin@hartlepool.gov.uk

The Monitoring Officer is a senior officer of the authority 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.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the Authority's website, next to the Code of Conduct, and is available on request from Reception at the Civic Centre.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The Authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

4. PUBLICITY

The Monitoring Officer will request both the complainant and the subject member do not make public the complaint until the Monitoring Officer (in unison with the Independent Person) has decided how the matter should be dealt with and until any investigation is formally completed. Should the complainant and/or the subject member disclose details of the complaint or any part of the investigation prior to its conclusion, then this would be a material consideration as to the confidentiality behind that item when it is formally reported to the relevant Council Committee, following the completion of that investigation. Any consideration as to whether that disclosure of information was in the public interest will be determined by the Monitoring Officer at that time, and included as a reference within that report.

5. WILL YOUR COMPLAINT BE INVESTIGATED?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. *[Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.]* *[Complaints about the conduct of a Parish Councillor towards a Clerk should be made by the Chair or by the Parish Council as a whole, rather than the Clerk in all but exceptional circumstances.]*

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. 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 you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police and other regulatory agencies.

We would normally expect, unless there are exceptional circumstances, a complaint to be made within 3 months of the potential failure of the Code of Conduct occurring. Where a complaint is received outside this time limit the Monitoring Officer will consult with both the Chair of the Audit and Governance Committee and one of the Independent Persons as to whether the complaint should progress.

Vexatious Complaints

A complaint is unlikely to be referred for investigation where the complaint is either habitual/repeated or is vexatious in nature, or is otherwise the unreasonable pursuit of a complaint. The Council shall keep under review those complaints that have been determined to be either habitual, repeated or vexatious and for the avoidance of doubt, will not disregard any new issues which are so significantly different from the original complaint that they need to be addressed as a separate complaint. However, it will be unlikely that a matter would proceed for investigation in the following circumstances:

- A persistence in pursuing a complaint where the local assessment and determination process has been fully and properly implemented and exhausted.
- Where the complainant has persistently changed the substance of a complaint or raises identical or similar issues or otherwise seeks to prolong unreasonably the matters of complaint through further concerns or questions whilst the original complaint is being addressed.
- The complaint is unreasonable or disproportionate in the amount of time expended and those matters of complaint are considered to be unreasonable as to impose a significant burden in terms of time and cost to be expended by the Council, if such matters were pursued.
- Is a matter of complaint which can fairly be characterised as being obsessive or manifestly unreasonable through, for example, repetitive allegations.
- The matter of complaint is politically motivated and where press and other publicity has been attracted to the matter of complaint before the same have been reported to the Council's Monitoring Officer and which the Monitoring Officer in unison with the Independent Person reasonably believes is not in the public interest to warrant an investigation. It will be also be a consideration as to whether independent evidence is likely to be obtained and the nature of seriousness of complaint which may not warrant any further action being taken.

6. HOW IS THE INVESTIGATION CONDUCTED?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

Timescales

If a complaint has been referred for investigation it will be conducted and completed as expeditiously as possible, and this generally will be within six months of the start of the investigation.

If an investigation is likely to exceed this six months timescale then an update report will be brought before the Audit and Governance Committee to explain why an extension to the six months is required.

7. WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS NO FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned *[and to the Parish Council, where your complaint relates to a Parish Councillor]*, notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

8. WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS A FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Sub Committee or, after consulting the Independent Person, seek local resolution.

8.1 Local Resolution

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 with you as complainant and seek to agree what you consider to be 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 by the Authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee *[and the Parish Council]* for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

8.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Sub-Committee 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 Authority has agreed a procedure for local hearings, which is attached as **Appendix Three** to these arrangements.

Essentially, 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 to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Sub-Committee may issue directions as to the manner in which the hearing will be conducted. 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 you as the complainant to attend and give evidence to the Hearings Sub-Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Sub-Committee, with the benefit of any 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 Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Hearings Sub-Committee will then consider what action, if any, the Hearings Sub-Committee should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Sub-Committee will give the member an opportunity to make representations to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

9. WHAT ACTION CAN THE HEARING SUB-COMMITTEE TAKE WHEN A MEMBER HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT?

The Audit and Governance Committee has delegated to the Hearings Sub-Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

- 9.1 Recommend to the Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion
- 9.2 Publish its findings in respect of the member's conduct;
- 9.3 Report its findings to the Authority *[or to the Parish Council]* for information;
- 9.4 Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to the Authority or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 9.5 Instruct the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the member;
- 9.6 Remove *[or recommend to the Parish Council that the member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
- 9.7 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
- 9.8 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 Authority, Committee and Sub-Committee meetings.
- 9.10 Instruct the Monitoring Officer or Parish Council, to implement a Communications Plan for the Subject Member;
- 9.11 Instruct the Monitoring Officer, or Parish Council, to apply the informal resolution process;
- 9.12 Instruct the Monitoring Officer, or Parish Council, to restrict the Subject Member's access to confidential or exempt information.

NOTE The Hearings Sub-Committee 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?

At the end of the hearing, the Chair will state the decision of the Hearings Sub-Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Sub-Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Sub-Committee, and send a copy to you, to the member *[and to the Parish Council]*, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Authority.

11. WHO ARE THE HEARINGS SUB-COMMITTEE?

The Hearings Sub-Committee is a Sub-Committee of the Authority's Audit and Governance Committee. The Audit and Governance Committee has decided that it will comprise a maximum of seven members of the Authority and comprising members drawn from at least 2 different political parties. Subject to those requirements, a Member is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Authority.

The Independent Person is invited to attend all meetings of the Hearings Sub-Committee and his/her views are sought and taken into consideration before the Hearings Sub-Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

12. WHO IS THE INDEPENDENT PERSON?

The Hearings Sub-Committee is a Sub-Committee of the Authority's Audit and Governance Committee. The Audit and Governance Committee has decided that it will comprise a maximum of ten members of the Authority and comprising members drawn from at least 2 different political parties. Subject to those requirements, a Member is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Authority. The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is the appointed by a positive vote from a majority of all the members of the Authority.

A person cannot be “independent” (subject to transitional arrangements) if he/she –

- 12.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 12.2 *[Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area], or*
- 12.3 Is a relative, or close friend, of a person within paragraph 12.1 or 12.2 above. For this purpose, “relative” means –
 - 12.3.1 Spouse or civil partner;
 - 12.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 12.3.3 Grandparent of the other person;
 - 12.3.4 A lineal descendent of a grandparent of the other person;
 - 12.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 12.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 12.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

The Independent Person is invited to attend all meetings of the Hearings Sub-Committee and his/her views are sought and taken into consideration before the Hearings Sub-Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

13. REVISION OF THESE ARRANGEMENTS

The Authority may by resolution agree to amend these arrangements, and has delegated to the Hearings Sub-Committee the right to depart from these arrangements where the Sub-Committee considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

14. APPEALS

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Sub-Committee.

If you feel that the Authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Appendix One	The Authority's Code of Conduct
Appendix Two	Assessment Criteria
Appendix Three	Procedure for Hearings

APPENDIX 1

Please see the below link to the Authority's Code of Conduct

[Hartlepool Borough Council's Constitution | Hartlepool Borough Council](#)

APPENDIX 2

HARTLEPOOL BOROUGH COUNCIL
AUDIT AND GOVERNANCE COMMITTEE
ASSESSMENT CRITERIA FOR DEALING WITH STANDARDS ALLEGATIONS
UNDER THE LOCALISM ACT, 2011

Assessment Criteria

Before commencing an assessment of a complaint, it needs to be satisfied that:-

1. It is a complaint against one or more named Members of the Council or a Parish Council within the Borough of Hartlepool.
2. The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
3. The complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of the above requirements it cannot be investigated as a breach of the code and the complainant will be informed that no further action will be taken in respect of the complaint.

Preliminary Questions

1.1 The complaint will be assessed by the Monitoring Officer, in consultation with the Independent Person, and the following assessment criteria applied:

- a) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- b) Did the alleged conduct occur when the person complained of was acting as a Member of another authority?
- c) Is the complaint about dissatisfaction with the Council's or Parish Council's decisions, policies and priorities, etc?
- d) Is the complaint submitted in writing?
- e) Is the Subject Member of the complaint named?
- f) Is the complaint a 'repeat complaint', or supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant?
- g) Is the complaint anonymous, or supported by independent documentary evidence

substantiating or indicating that the complaint is exceptionally serious or significant?

- h) Is there sufficient information/evidence to substantiate the complaint has been submitted by the Complainant?
- i) Is the complaint malicious, trivial, politically motivated or retaliatory?
- j) Is the Complainant unreasonably persistent, malicious and/or vexatious?
- k) Did the alleged misconduct happen more than 3 months ago?
- l) Is the complaint relatively minor and would dealing with the complaint have a disproportionate effect on both public money and officers' and Members' time?
- m) Have the circumstances changed so much that there would be little benefit arising from an investigation or other action?
- n) Has the complaint been the subject of an investigation or other action and there is nothing more to be gained by further action being taken?
- o) Is the complaint such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter?
- p) Is the complaint about a deceased person?
- q) Is the complaint about a person who is no longer a Councillor or Parish Councillor or Co-opted Member?
- r) Is the complaint about a Council employee?

The Monitoring Officer will determine whether the complaint is accepted or rejected. If the complaint is rejected, the Complainant will be notified accordingly, with reasons, normally within 20 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

Decisions to refer a complaint for investigation

A complaint is likely to be investigated when it meets one or more of the following criteria:-

- It is so serious, if proven, to justify in the public interest a formal investigation of the complaint.
- It is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Authority and there is no other avenue left to deal with it, other than by investigation.

Note: In considering the above points, consideration will be given to the time that has passed since the alleged conduct occurred.

Decisions not to refer for investigation

A complaint is unlikely to be referred for investigation where it falls into any of the following categories:-

- The complaint appears to be vexatious, malicious, politically motivated, relatively minor or insufficiently serious,
- The same, or substantially similar, complaint has already been the subject of an investigation and there is nothing more to be gained by further action being.
- The complaint concerns acts carried out in the Members private life, when they are not carrying out the work of the authority or have not misused their position as a Member.
- It appears that the complaint concerns, or is really about dissatisfaction with a Council decision, or policy rather than a breach of the Code.
- There is not enough information currently available to justify a decision to refer the matter for investigation.
- The complaint is about someone who is no longer a member of the Authority.
- A significant period of time has elapsed since the events the subject of the complaint occurred.
- The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter.

Other Considerations

- Training for the Member concerned is considered to be a more appropriate way of dealing with the matter.
- The Monitoring Officer in conjunction with the Independent Person believe that a breakdown in relationships has occurred which may be effectively dealt with by conciliation/mediation and the member complained of and the complainant are amenable to engaging in such alternative action.
- An investigation is not the most cost effective way of resolving the matter and the Monitoring Officer is able to deal with it informally.
- Some other action is more appropriate e.g. a review and/or change to the Authority's policies and procedures.
- The conduct complained of is not so serious that it requires a substantive investigation.

Informal Resolution

The Monitoring Officer will, in consultation with the Independent Person, determine whether the complaint can be resolved through informal resolution.

Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Council or Parish Council procedures; or
- b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- d) The conduct complained of appears common to a number of Members of the Council or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Council or Parish Council procedures, etc; or
- e) The conduct complained of appears to the Monitoring Officer not to require a formal censure; or
- f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Council or Parish Council; or
- g) The complaint consists of allegations and retaliatory allegations between Councillors; or
- h) The complaint consists of allegations about how formal meetings are conducted; or
- i) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

Informal resolution may consist of one or more, (but not limited to), of the following actions, which do not have to be limited to the Subject Member, but may extend to other Councillors, including the whole Council or Parish Council, where it may be useful to address systemic behaviour:

- a) Training;
- b) Conciliation/mediation;
- c) Mentoring;
- d) Apology;
- e) Implementing changes to the Council's or Parish Council's procedures.
- f) Conflict management;
- g) Development of the Council's or Parish Council's protocols;
- h) Other remedial action by the Council or Parish Council; or
- i) Other steps (other than investigation), if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

Decisions to refer the complaint to another Authority

The Monitoring Officer is likely to refer complaints to another Authority where:-

- The Complaint is about someone who is no longer a Member of an Authority within Hartlepool, but is a Member of another Authority. In such cases the Monitoring Officer may refer the complaint to the Audit and Governance Committee of that other Authority.

Anonymous Complaints

The Monitoring Officer will only consider anonymous complaints if there is independent evidence to substantiate them. There must be documentary, photographic or other evidence which supports the substance of the anonymous complaint. However, even if such evidence has been provided, the Monitoring Officer in consultation with the Independent Person is unlikely to consider a complaint that is minor in nature, or appears to be malicious or politically motivated.

If the subject member requests to know the identity of the complainant, then representations will be sought from the Complainant and the Subject Member and thereafter this information will be reported to the Audit and Governance Committee as to whether or not there should be disclosure of the complainants name to the Subject Member.

Considering Requests for withholding a complainant's details

The Monitoring Officer and where required a Hearing Sub-Committee will need to determine whether or not the complainant's details should be withheld from the subject member. Rarely is it in the public interest not to disclose the complainant's details. This could be on the basis that disclosure could prejudice an investigation, may lead to intimidation of the complainant or indeed, any witnesses involved, or could lead to evidence being compromised or destroyed. This will necessarily involve undertaking an assessment of the potential risks against the wider connotations of procedural fairness and the principles of natural justice.

Withdrawing Complaints

A complainant may ask to withdraw their complaint prior to any investigation being undertaken.

In such circumstances, and before coming to a decision on the request, consideration will need to be given to;

- whether the public interest in taking action about the complaint (eg because of its seriousness) outweighs the complainant's wish for the matter to be withdrawn;
- if the complaint can be actioned e.g. investigated, without the complainant's participation or assistance;
- the actual reasons given (if any), and what other reasons there appear to be, for the request to withdraw and whether those reasons would support a decision to agree to the withdrawal of the complaint.

APPENDIX 3

HEARING PROCEDURES FOR THE AUDIT AND GOVERNANCE COMMITTEE:

HARTLEPOOL BOROUGH COUNCIL

Definition and Interpretation

'Member' means the Member of the authority who is the subject of the allegation being considered by the Audit and Governance Committee, unless stated otherwise. It also includes the Member's nominated representative.

'Investigator' means the Monitoring Officer or other Investigating Officer, and his or her nominated representative.

'Committee' also refers to 'a sub-committee' of the Council's Audit and Governance Committee.

'Legal Adviser' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer or the Deputy Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

The member may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the Committee, another person.

Legal Advice

The Committee may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the member and the investigator if they are present.

Setting the scene

After all the Members and everyone involved have been formally introduced, the Chair should explain how the Committee is going to proceed with the hearing.

Preliminary procedural issues

The Committee should seek to resolve any issues or disagreements about how the hearing should be conducted, prior to the formal hearing process.

Making findings of fact

After dealing with any preliminary issues, the Committee should then consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.

If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the investigator.

The Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.

NOTE

At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the Member.

If the Member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at any earlier stage, the Committee may then:

- (a) continue with the hearing, relying on the information in the investigator's report;
- (b) allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or

- (c) postpone the hearing to arrange for appropriate witnesses to be present or for the investigator to be present if he or she is not already.

The Committee will usually move to another room to consider the representations and evidence in private.

On their return, the Chair will announce the Committee's findings of fact.

Did the Member fail to follow the Code?

The Committee needs to consider whether or not, based on the facts it has found, the Member has failed to follow the Code of Conduct.

The Member should be invited to give reasons why the Committee should not decide that he or she has failed to follow the Code.

The Committee should then consider any verbal or written representations from the investigator.

The Committee may, at any time, question anyone involved on any point they raise in their representations.

The Member should be invited to make any final relevant points.

The Committee will then move to another room to consider the representations.

On their return, the Chair will announce the Committee's decision as to whether or not the Member has failed to follow the Code of Conduct.

If the Member has not failed to follow the Code of Conduct

If the Committee decides that the Member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the authority.

If the Member has failed to follow the Code

If the Committee decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the Member as to:-

- (a) whether or not the Committee should recommend action to be taken; and
- (b) what form any action should take.

The Committee will then move to another room to consider whether or not to impose a sanction on the Member and if so, what the sanction should be.

The Chair will announce the Committee's decision.

Recommendations to the Authority

After considering any verbal or written representations from the investigator, the Committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among Members.

The written decision

The Committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision within 5 working days from the conclusion of the hearing.