

Agenda Item No:	6	
Committee:	Conduct Committee	
Date:	21st August 2019	
Report Title:	Revised Conduct Procedure Rules, Guidance & Templates	

1. Purpose / Summary

The purpose of this Report is to update members as to the outcome of the consultation exercise authorised at the last meeting of the Conduct Committee and to provide a final opportunity to review and comment on the proposed revisions to Conduct Procedure, Constitution and associated templates (“the Draft Documentation”) and, as appropriate, to recommend them for approval by Full Council.

2. Key issues

The Member Conduct Procedure has been reviewed to ensure it represents an effective and efficient way of processing Member Conduct complaints for both Members and Complainants.

A number of changes have been proposed to the Member Conduct Procedure and these have been subject to consultation with all District, Town and Parish Councillors and Independent Persons. The consultation period ran from 5th July 2019 to 5th August 2019 and 4 responses were received which are contained within the papers.

On 30th January 2019, the Committee on Standards in Public Life published the outcome of its Review on Local Government Ethical Standards

The proposed revisions to the Conduct Procedure Rules (and associated constitutional amendments) have been developed to ensure that Fenland District Council’s arrangements are consistent with the recommendations set out in the report.

Requests for dispensations may now be considered and granted by the Monitoring Officer, in consultation with the Chairman of Conduct Committee and Independent Person in line with section 31 of the Localism Act 2011 to ensure these matters can be dealt with efficiently and effectively and without the need to convene a meeting of the Conduct Committee. The Conduct Committee will be kept informed of any dispensations granted.

3. Recommendations

It is recommended that the Conduct Committee consider the consultation responses at Appendix 1 and proposed revisions to the Conduct Procedure Rules and associated Constitutional amendments required to bring them into effect and recommend them for adoption by Full Council.

Wards Affected	All
Forward Plan Reference	N/A
Portfolio Holder(s)	Councillor David Topgood, Chairman of Conduct Committee
Report Originator(s)	Carol Pilson, Monitoring Officer, Amy Brown, Deputy Monitoring Officer

Contact Officer(s)	Carol Pilson, Monitoring Officer Amy Brown, Deputy Monitoring Officer
Background Paper(s)	Standards in Public Life Review Consultation responses - Appendix 1.

1. BACKGROUND/INTRODUCTION

Following the Conduct Committee's meeting on 3rd July 2019, preliminary amendments were incorporated into the Draft Documentation and there then followed a period of consultation for a period of 5 weeks with the Independent Persons and all District, Town and Parish Councillors having been notified of the proposed amendments and reminded of the consultation deadline of 5th August. The Conduct Committee is requested to note the consultation responses as Appendix 1 to this Report and, as appropriate, recommend the Draft Documentation for approval by Full Council.

2. CONDUCT COMMITTEES' RECOMMENDATIONS OF 3RD JULY 2019

The general revisions to the Draft Documentation are as previously set out in the Report presented to the Conduct Committee on 3rd July 2019. However, following feedback from the Conduct Committee at that meeting, further amendments were made to the Draft Documentation as follows and the amended versions were therefore circulated for consultation and now replace the Appendices referred to within the original report:

Appendix 1	<p>The amendments are shown as track changes but comprise the following:</p> <ul style="list-style-type: none"> - Minor amendments to the definitions to give absolute clarity as to the definition of Chairman/Vice Chairman in this context. - Paragraph 2.2. the Chairman (or Vice Chairman in accordance with the above definition) will undertake the initial assessment of the complaint with the Independent Person. - Paragraph 2.3 the Chairman will consider the need for investigation, the level and scope of that investigation and, where the circumstances dictate, the discontinuation of the investigation with the Independent Person and Monitoring Officer. - Paragraph 2.4 the Chairman will be involved in determining what if any further action is required following receipt of the investigation report. - Paragraph 2.5 the Chairman will be involved in considering what if any summary resolution may be appropriate.
Appendix 3	<p>The template complaint form has been amended to include the following:</p> <ul style="list-style-type: none"> - A text box requesting that the complainant include reference to the specific 'General Obligations' set out in the Code of Conduct which are thought to have been breached. - Additional information regarding the confidentiality requirements underpinning the revised procedure.
Appendix 6	<p>The Guidance has been amended in the sections relating to the Initial Assessment, Investigation and Summary Resolution so as to incorporate</p>

	the involvement of the Chairman in accordance with the changes made to Appendix 1.
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3. CONSULTATION

A total of 4 responses were received from District, Town and Parish Councillors and one from the Independent Person. All of the responses were supportive of the proposed amendments to the Draft Documentation but 3 specific observations were made as set out in Appendix 1 together with the responses shown in red.

4. CONCLUSION

Following completion of the consultation exercise Members are invited to consider whether any further amendments are required before debating whether or not to recommend the Draft Documentation for approval by Full Council.

Appendix 1 - Conduct Procedure Consultation Responses

Date	Name	Comments
22/7/19	Cllr Ray Jack	<p>However there is one part under sanctions (below) that I have difficulty with,</p> <p>Recommend to the Council that it excludes the Subject from the Council's office or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub- Committee meetings.</p> <p>Which is more or less the same as shown earlier, why 2 versions of more or less the same thing?</p> <p>Recommend to the Subjects Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the council.</p> <p style="color: red;">These sanctions are set out within the Localism Act 2011 and we therefore must include them. By means of explanation, the first sanction is intended to provide a means of limiting the subject of a complaint from being able to access the Council's offices/premises where it is considered necessary as a result of the facts of the complaint. For instance if the complaint relates to a failure of the subject to treat officers of the Council with respect during visits to the premises. It does not however seek to restrict their attendance at and/or participation in meetings of the Council and its Committees. The second of the sanctions however does exactly that i.e. recommends that the Group Leader considers the subject's removal from all Committees/Sub-Committees of the Council which they may have been assigned to. This does not necessarily mean however that they will have restricted access to the Council's offices/premises. These are standard sanctions and can operate separately or in conjunction with each other to achieve the different outcomes described.</p>
24/7/19	Cllr Phil Wing	All looks fairly clear and straightforward to me...certainly no objection to the format.
24/7/19	Cllr Sam Hoy	I am happy with the new procedure
25/7/19	Cllr David Mason	As you are probably aware I initially sat on the FDC Conduct Committee as a Parish Representative and then in 2015 when elected as a District Councillor I served as a full member of the Committee until I assumed Portfolio Holder duties in February 2018.

		<p>I have to congratulate FDC on producing a comprehensive set of guidance notes but must confess that I found it the most frustrating committee to sit on. An enormous amount of time was absorbed in pre-meetings and hearings from what at times seemed complaints brought by individuals with personal issues against the accused Councillor.</p> <p>Where the committee satisfied themselves that the accused was in fact guilty of breaching the Code of Conduct, in most cases they applied the minimum reprimand, i.e. either referral for further training or in the case of an experienced Councillor publication of his or her sins in the local press.</p> <p>In summary, I believe the Committee is essential to serve the public interest but I would like to see more complaints referred to yourself, the Chairman and Independent Person initially to avoid wasting valuable time of Councillors. In the event of a "guilty verdict" at a subsequent hearing then more stringent measures could be taken against the accused in the way of sanctions.</p> <p>I hope this assists in your deliberations and I wish the Conduct Committee good luck for the future.</p> <p>The views expressed by Councillor Mason are acknowledged. The revised process is designed to provide greater powers during the Initial Assessment stage to make decisions as to the outcome of the complaint, the requirement and scope of any investigation and following receipt of the investigation report whether or not a hearing is required. This will significantly streamline the process and remove the need for the involvement of anyone other than the Chairman/Vice-Chairman during the early stages and as Councillor Mason describes.</p>
30.07.19	Independent Person	<p>At an induction meeting with the newly appointed Independent Person, the following views were expressed:</p> <ul style="list-style-type: none"> • That the procedure should provide specific reference to the need for the complainant and subject to be kept regularly informed of progress; and • That the Complaint Form is less stringent in its requirement for the complainant to specify which of the General Obligations have been breached as this may be difficult for a lay person and could act as a deterrent. <p>It is standard for the Monitoring Officer to provide updates to the complainant and the subject during the different stages of the process however, it is agreed that the procedure and guidance could be updated to confirm that this will be the case thereby making a firm commitment to continue existing good practice. The inclusion of the requirement to state the general obligations arose at the request of the Conduct Committee. Again, this reflects the practice of the Monitoring Officer contacting a complainant to clarify what specific breaches they are alleging to have occurred. This has not proven</p>

		<p>to be a deterrent to date and in any circumstance where a complainant is unclear as to what is required guidance will be provided however, the Monitoring Officer must remain impartial throughout the process and ensure that they are not put in a position where they are being required to assess the evidence and substitute their views with that of the complainant. The Guidance and Complaint Form could however be updated to make clear that complainants may contact the Monitoring Officer if they are at all unclear as to what is expected of them so that the usual guidance can then be provided.</p>
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RULE 9: PROCEDURE FOR RESPONDING TO CONDUCT COMPLAINTS AND HEARING PANEL PROCEDURE RULES

1. INTRODUCTION

- 1.1. Fenland District Council (“the Authority”) is responsible for receiving and determining conduct complaints for both District Councillors, and the Town and Parish Councillors within the District.
- 1.2. All members are required to conduct themselves in accordance with a locally agreed Code of Conduct. Fenland District Council’s Code can be found at Part 5 of Fenland District Council’s Constitution [insert link] and in all other cases on the websites of the relevant Town or Parish Councils.
- 1.3. Where it is considered that a Member has breached the Code of Conduct, this Procedure shall apply.
- 1.4. Where a particular number of working days has been specified for compliance with any given stage of this process, this is intended as an indication of best practice but may be varied with the consent of the Monitoring Officer where exceptional circumstances exist for example to take into account periods of unavailability resulting from illness or leave.
- 1.5. Any function of the Monitoring Officer in this procedure may be delegated to the Deputy Monitoring Officer at any time.
- 1.6. In this Procedure and the Conduct Committee Hearing Procedure, the following definitions shall apply:
 - 1.6.3. **Chairman:** in this procedure references to the Chairman are references to the Chairman of the Conduct Committee and should also be taken to include references to the Vice Chairman of the Conduct Committee. The Vice Chairman will ~~who~~ act in the Chairman’s place where he/she is unavailable for any reason to include where a conflict of interest exists.
 - 1.6.4. **Code of Conduct:** means the Code of Conduct for Members adopted by Fenland District Council to promote high standards of behaviour amongst the elected and co-opted members of the Council whenever they are acting in their capacity as a member of the Authority or giving the impression of acting as a representative of the Authority.
 - 1.6.5. **Conduct Committee:** Means the committee with authority to hear conduct complaints referred by the Monitoring Officer whose terms of reference are set out at [xxxx of the Constitution - insert link].
 - 1.6.6. **Independent Person:** The Independent Person is a lay person who has been appointed by a majority of all the Councillors on the District Council. The Independent Person is invited to attend all meetings of the Conduct Committee. Their views are sought and taken into consideration: (a) before the Monitoring Officer decides whether to investigate a complaint (b) before the Monitoring Officer decides whether to refer an investigated Complaint for hearing or for Summary Resolution (c) before the Conduct Committee takes any decision on whether the Councillor’s conduct constitutes a failure to comply with the respective Code of Conduct.

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- 1.6.7. **Subject(s):** means the Councillor(s) who is/are the subject of the complaint(s).

2. PROCEDURE FOR DEALING WITH CONDUCT COMPLAINTS

2.1. Reporting Concerns & Confidentiality

- 2.1.3. All complaints should be submitted in the prescribed form which can either be accessed on-line [\[insert link\]](#) or emailed/posted upon request to the Monitoring Officer. Completed forms should also be returned to the Monitoring Officer at Fenland Hall, County Road, March, Cambridgeshire, PE15 8NQ, or by email to monitoringofficer@fenland.gov.uk.
- 2.1.4. Complaints will be acknowledged in writing within 5 working days of receipt and where necessary the Monitoring Officer will clarify any points of uncertainty as soon as possible and before any further action is taken.
- 2.1.5. In order to ensure that a fair process can be followed and subject to paragraph 2.1.7 details of the complaint together with the name of the complainant will be shared with the Subject concerned as soon as practicable after receipt (or where clarification is sought, as soon as possible after that). At that stage the Subject will be given 7 working days to provide an initial response to the concerns which the Monitoring Officer will take into account in determining what if any further action to take under this procedure.
- 2.1.6. The Monitoring Officer can obtain any other preliminary information as may be of assistance such as minutes of meetings, policy or procedural documents and published media.
- 2.1.7. Anonymous complaints will not be acted on unless there is a clear public interest to do so however, complainants can request that their identities remain confidential. Requests for confidentiality will be considered by the Monitoring Officer and the complainant will be informed in writing of the outcome before the complaint proceeds any further.
- 2.1.8. The Monitoring Officer will keep the Complainant, the Subject and the Clerk (if appropriate) informed of the progress of the Complaint, unless the Monitoring Officer considers that this may prejudice any investigation.
- 2.1.9. The existence and content of all complaints will remain strictly confidential and shall not be published, discussed or otherwise disclosed until a conclusion has been reached and unless it is a requirement of this or the hearing process (for example at an investigative interview or hearing) or the Subject waives this requirement by making the disclosure themselves.
- 2.1.10. Complainants can withdraw their complaint at any time during the process by informing the Monitoring Officer in writing. The Monitoring Officer does however reserve the right to pursue the issues giving rise to the complaint where it is considered to be in the interests of good governance to do so.

2.2. Initial Consideration of the Complaint

- 2.2.3. The Monitoring Officer will consider the complaint and determine, in consultation with the [Chairman and](#) Independent Person which of the following actions to take:

- No further action required;

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- Further action through information resolution;
- Referral to the Police in any circumstance where there is evidence of potential criminal conduct;
- Referral for investigation in accordance with paragraph 2.3 of this Procedure;
- Summary Resolution in accordance with paragraph 2.5 of this Procedure.

2.2.4. It is likely that no action will be taken in the following (non-exhaustive) circumstances:

- Where there is insufficient information upon which to base a decision;
- A significant amount of time (typically more than 6 months) has elapsed since the events which are the subject of the complaint;
- The issue complained of in relation to the particular Subject(s) have already been considered under this Procedure;
- The complaint appears to be politically motivated, trivial, vexatious, tit for tat, repetitious or otherwise a general misuse of this Procedure;
- The conduct occurred at a time when the Subject was not or could not have been considered to be acting in their official capacity (as defined by the Code of Conduct);
- The complaint concerns someone who is no longer a Councillor; and
- The complaint is essentially against the Council as a whole and should not be directed at an individual.

2.2.5. Where it is appropriate to take some action and depending on the nature of the concerns raised it may be possible to resolve complaints informally and without the need for formal determination and/or sanction. The view of both the complainant and the Subject will be sought and will most likely be appropriate in circumstances where the concerns raised are not in dispute and/or are not of a serious nature.

2.2.6. Where following informal action the complainant's concerns are not resolved, they may submit a request in writing for reconsideration by the Monitoring Officer. Where the Subject or Fenland District Council makes a reasonable offer of informal resolution but the person complaining is not willing to accept that offer, the Monitoring Officer will take account of this in deciding what if any further action to take. Where appropriate, the Monitoring Officer may again consider the options under paragraph 2.2.3 of this procedure.

2.2.7. Where a Police or other regulatory investigation is necessary, no further action will be taken by the Monitoring Officer until that procedure has been concluded and/or it is appropriate to do so. The Monitoring Officer has the power to make such a referral and must do so in all circumstances in which a criminal and/or regulatory offence may have occurred.

2.2.8. In all circumstances the Monitoring Officer will give a summary of the reasons for the decision in the form of a Decision Notice.

2.3. *Referral for Investigation*

2.3.3. The Monitoring Officer, ~~in~~after consultation with the Chairman and Independent Person, will take a decision as to whether a formal investigation is required and will take into account the following (non-exhaustive factors):

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- Whether there is enough evidence to make a decision without the need for investigation;
 - Whether the allegations amount to a potential breach of the Code;
 - The seriousness of the allegations;
 - Whether it is in the public interest to investigate.
- 2.3.4. Where a formal investigation is required, the Monitoring Officer, in consultation with the Chairman and Independent Person will determine the level and scope of the investigation.
- 2.3.5. The Investigating Officer may be an officer of Fenland District Council, another Council or an appropriate experienced external investigator.
- 2.3.6. The Monitoring Officer will inform the complainant and the subject(s) of the complaint of the proposed timescales of the investigation which will most likely involve interviewing them and other witnesses as well as reviewing any relevant paperwork. Unless exceptional circumstances exist every effort should be made to ensure that the investigation is completed within 3 months of the referral.
- 2.3.7. In the event of a material change of circumstances the Monitoring Officer in consultation with the Chairman and Independent Person may terminate the investigation before it has concluded. Examples of when this may be appropriate are as follows:
- The Member has resigned (or not been re-elected) from the relevant Council, Town or Parish Council,
 - The Member is seriously ill, or
 - The Member has died.
- 2.3.8. If the Subject fails to respond to correspondence from the Investigating Officer the complaint will be progressed and concluded in the absence of their input. If the complainant fails to respond, the complaint will be treated as withdrawn subject to paragraph 2.1.10 above. All parties are encouraged to respond promptly to any correspondence in relation to the complaint and within any deadline set.
- 2.3.9. The Investigating Officer will prepare a draft report on the outcome of the investigation and will provide the complainant and Subject with a copy for review and comment within an agreed period.
- 2.3.10. The Investigating Officer will submit a final version of the report to the Monitoring Officer as soon as reasonably practicable once the deadline for providing comments in accordance with paragraph 2.3.9 has elapsed. The Investigating Officer will be expected to give their view of the evidence and whether or not a breach of the Code of Conduct has occurred.
- 2.3.11. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report.
- 2.4. Consideration of the Investigation Report**
- 2.4.3. The Monitoring Officer will review the Investigating Officer's report in consultation with the Chairman and Independent Person and will reach a

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determination as to what if any further action is required within 7 working days of receiving the Report.

2.4.4. Where the Investigating Officer concludes that there is no evidence of a breach of the Code and the Monitoring Officer, Chairman and Independent Person are in agreement, the final report will be sent to the Complainant, the Subject and the Clerk (if appropriate) with confirmation that no further action will be taken.

2.4.5. Where the Investigating Officer concludes that there is evidence of a breach of the Code and the Monitoring Officer, Chairman and Independent Person are in agreement, they will then either seek a summary resolution or refer the matter for hearing by the Conduct Committee.

2.5. Summary Resolution

2.5.3. The Monitoring Officer may consider that a complaint can be reasonably resolved without the need for a hearing. In that event they will consult with the Chairman, Independent Person ~~the Chairman of the Conduct Committee~~ and the complainant with a view to agreeing a fair outcome. Such outcomes include the Subject offering an apology, removing posts from social media, attending training and/or mediation.

2.5.4. If the Subject accepts and complies with the suggested resolution no further action will be taken.

2.5.5. Where the Subject refuses to accept the suggested resolution, the matter will be referred to the Hearing Panel of the Conduct Committee for a hearing.

2.6. Referral to the Hearing Panel

2.6.3. If the Monitoring Officer considers that a summary resolution is not appropriate, or it is impossible to achieve, the matter will be referred to the Conduct Committee for a hearing to decide whether the Subject has failed to comply with the Code of Conduct and, if so, what if any action to take.

3. HEARING PANEL PROCEDURE RULES

3.1. Attendance and Right to be Accompanied

3.1.3. The Subject will be requested to attend the hearing and may choose to be accompanied and/or represented by a fellow Councillor, friend, colleague or legal representative ("the Representative"). The hearing will be arranged taking into account the availability of the Subject and their Representative(s) unless this is likely to cause unreasonable delay to the conclusion of the complaint.

3.1.4. The Complainant will be notified of the date of the hearing however, unless the Investigating Officer wishes to call them as a witness, there will be no requirement for them to attend.

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- 3.1.5. An Independent Person must be present at the hearing and unless this will cause unreasonable delay to the conclusion of the complaint, this will normally be the same person that the Monitoring Officer has consulted throughout the process.
- 3.1.6. Where the subject of the complaint fails to attend the hearing the Hearing Panel may, having regard to any written representations:
- resolve to proceed with the hearing; or
 - adjourn the hearing to another date.

3.2. **The Hearing**

3.2.3. Order of Business

- 3.2.3.1. Subject to paragraph 3.2.3.8 below, the order of business will be as follows:
- 3.2.3.2. Elect a Chairman (if either the Chairman or Vice-Chairman of the Conduct are not present);
- 3.2.3.3. Apologies for absence;
- 3.2.3.4. Declarations of Interest;
- 3.2.3.5. In the absence of the Subject, consideration as to whether to adjourn or to proceed with the hearing in accordance with paragraph 3.2.3.9 below;
- 3.2.3.6. Introduction by the Chairman of the persons present and participating in the hearing to include members of the Panel, the Independent Person, the Monitoring Officer, the Investigating Officer, the complainant, the subject of the complaint and any legal representatives;
- 3.2.3.7. To receive representations from the Monitoring Officer and/or the Subject as to whether any part of the hearing should take place in private and/or whether any documents (or parts thereof) should be withheld from the public/press in accordance with Schedule 12A of the Local Government Act 1972;
- 3.2.3.8. The Chairman may exercise their discretion and amend the order of the business where it is considered expedient to do so in order to ensure that a fair hearing takes place.
- 3.2.3.9. The Hearing Panel may resolve to adjourn the hearing at any time.

3.2.4. Presentation of the Complaint

- 3.2.4.1. The Investigating Officer presents their report including any documentary evidence or other material and calls their witnesses. No new points should be introduced at this stage in the process;
- 3.2.4.2. The Subject or their Representative may question the Investigating Officer and any witnesses called by them;
- 3.2.4.3. The Hearing Panel may question the Investigating Officer and any witnesses called by them.

3.2.5. Presentation by the Subject of the Complaint

- 3.2.5.1. The Subject of the complaint or their Representative presents their case and calls witnesses.
- 3.2.5.2. The Investigating Officer may question the Subject and any witnesses called by them. The Subject will normally be expected to answer questions on their own behalf rather than via the Representative.

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3.2.5.3. The Panel may question the Subject and any witnesses called by them.

3.2.6. Summing Up

3.2.6.1. The investigating Officer sums up the complaint.

3.2.6.2. The Subject or their Representative sums up their response.

3.2.7. Views/Submissions of the Independent Person

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

3.2.8. Deliberations of the Hearing Panel

3.2.8.1. The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by the Monitoring Officer where required) to consider whether or not the Subject has failed to comply with the Code of Conduct.

3.2.8.2. The Independent Person may retire with the Hearing Panel and contribute to the discussion but will not be a decision maker.

3.2.8.3. The Hearing Panel may at any time reconvene the hearing in order to seek additional evidence from the Investigating Officer, the Subject and/or their witnesses.

3.2.8.4. If the Hearing Panel require additional information which cannot be obtained by the persons present at the hearing they may resolve to adjourn and issue directions specifying what they require from whom. Any information requested must not have the effect of introducing new points.

3.2.8.5. Where the hearing is adjourned in accordance with paragraph 3.2.8.4 above:

3.2.8.6. any additional information provided will be copied to the Investigating Officer, the complainant and the Subject within 5 working days of the reconvened hearing; and

3.2.8.7. at that hearing, there will then be an opportunity for each of the parties to make verbal or written representations in relation to the additional information. Where appropriate the Hearing Panel will also provide an opportunity for the parties to ask questions of each other and sum up their position in relation to the additional information before again retiring to deliberate.

3.3. **The Decision**

3.3.3. The Hearing Panel will reconvene the hearing at the conclusion of their deliberations and the Chairman will announce whether or not on the facts found, it is considered that there has been a breach of the Code of Conduct.

3.3.4. Where the Hearing Panel finds that there has been a breach of the Code of Conduct the Chairman will invite the Investigator, the Subject, the Independent Person, and the Monitoring Officer to make any representations as to whether or not any sanctions should be applied and if so, what form they should take.

3.3.5. When deciding whether to apply one or more sanctions, the Hearing Panel will ensure it is reasonable and proportionate to do so. The Hearing Panel will consider the following questions along with any other relevant

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circumstances or factors specific to the local environment to include (but not exhaustively):

- What was the subject of the complaint's intention and did they know they were failing to follow the Code of Conduct;
- Did the subject of the complaint receive advice from officers before the incident and was that advice acted on in good faith;
- Has there been a breach of trust;
- Has there been financial impropriety e.g. improper expense claims or procedural irregularities;
- What was the result/impact of failing to comply with the Code of Conduct;
- How serious was the incident;
- Does the Subject accept that they were at fault;
- Did the Subject apologise to the complainant or other relevant persons;
- Has the subject of the complaint previously been reprimanded or warned for similar misconduct within the last 12 months;
- Has the Subject previously breached the Code of Conduct within the last 12 months;
- Is there likely to be a repetition of the incident.

3.3.6. Having heard the representations of the Independent Person, the Subject and the Monitoring Officer, the Hearing Panel will adjourn and deliberate in private to reach a decision as to the sanctions to be applied. The Hearing Panel may be accompanied by the Monitoring Officer and the Independent Person who again may contribute to the discussion but will not take part in the decision.

3.3.7. The Hearing Panel will make its decision on the balance of probabilities based on the evidence before it at the hearing.

3.3.8. Where there is more than one complaint, the Hearing Panel will set out the reasons for their decision in relation to each aspect but may impose a separate or collective sanction or recommendation.

3.3.9. If evidence presented to the Hearing Panel highlights other potential breaches of the Code of Conduct then the Chairman will outline the concerns identified and recommend that the matter is referred to the Monitoring Officer as a new complaint.

3.4. ***Announcement of the Decision***

3.4.3. The Hearing Panel will reconvene the hearing and the Chairman will announce:

3.4.4. the decision as to whether or not the Subject has failed to comply with the Code of Conduct and the principal reasons for the decision;

3.4.5. the sanctions (if any) to be applied;

3.4.6. the recommendations (if any) to be made to the relevant authority or Monitoring Officer;

3.4.7. that there is no right of appeal against the Hearing Panel's decision.

3.5. ***Public Record***

3.5.3. The Monitoring Officer will arrange for the Decision Notice to be published with the Minutes on the Council's website.

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3.6. *Range of Possible Sanctions*

3.6.3. Where the Hearing Panel determines that the Subject has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied:

- Report its findings to Full Council for information;
- Issue a formal Letter of reprimand;
- Recommend to the Subject's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Subject be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Recommend to Council to remove the Subject from all outside appointments to which they have been appointed or nominated by the authority;
- Recommend to Council that it withdraws facilities provided to the Subject by the Authority such as a computer, website and/or email and internet access;
- Recommend to the Council that it excludes the Subject from the Council's office or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- Offer additional training for the Subject.
- Publication of formal notification of breach in a newspaper circulating in the area.

3.6.4. The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' allowances however, this Hearing Procedure should be read in conjunction with the legislation as it exists at the time its decisions are taken and where additional sanctions are prescribed by law, they will be available to the Hearing Panel as if they formed part of this Procedure. The Monitoring Officer will then make the necessary arrangements to amend the Hearing Procedure at the next scheduled meeting of Full Council.

4. **APPEALS**

4.1. There are no direct rights of appeal against the decisions of the Monitoring Officer or the Conduct Committee. If the complaint has not been resolved to the satisfaction of the complainant they are entitled to raise the issue with the Local Government Ombudsman.

Appendix 3

CONSTITUTIONAL AMENDMENTS REQUIRED TO BRING REVISED CODE & PROCEDURE INTO EFFECT

ARTICLES

ARTICLE 9 – CONDUCT COMMITTEE & HEARING PANEL

1. CONDUCT COMMITTEE

1.1. The Council will establish a Conduct Committee the membership of which shall as far as practicable be politically proportionate.

1.2. Membership

1.2.1. The Conduct Committee shall comprise of 5 elected Councillors all of whom will be required to undertake relevant training

1.2.2. The Committee will appoint, at its first meeting following the annual meeting of the Council, its Chairman and Vice-Chairman for the forthcoming year.

1.2.3. The Conduct Committee shall be entitled to co-opt up to two representatives from Town or Parish Councils from within the District who may sit with the Committee and consider matters before it. They shall have the right to speak and engage with the debate of the committee however they do not have a right to vote.

1.2.4. The Council's designated Independent Person shall sit alongside the Conduct Committee and any Hearing Panel to offer advice in a non-voting capacity. Members must take account the views of the Independent Person in reaching decisions.

1.2.5. The Conduct Committee will be considered to be quorate where 3 or more members are present and Rule 24.3 of the Council's Standing Orders will not apply to Rule 7 in this context.

1.3. Role and Functions

1.3.1. The Conduct Committee will have the following roles and functions in respect of the District Council and its Members and Town and Parish councils and their Members:

- promoting and maintaining high standards of conduct by Members;
- assisting Members and co-opted Members to observe their authority's Codes of Conduct;
- advising the Council on the adoption or revision of a Code of Conduct;
- monitoring the operation of the Codes;
- advising, training or arranging to train members and co-opted members on matters relating to the Code;
- To make recommendations to the Council on the appointment of its Independent Person(s); and

Appendix 3

- To have oversight of Parish and Town Council's Codes of Conduct and Registers of Interests and authority to hear complaints relating to town or parish councillors.
- 1.3.2. The Monitoring Officer, in consultation with the Chairman of the Conduct Committee and the Independent Person, may issue dispensations to any member in respect of statutory and non-statutory disclosable interests. The Conduct Committee will receive a report on such cases at the next available meeting.
- 1.3.3. The Chairman of the Conduct Committee will be able to attend meetings of the full Council to present reports, answer questions and respond to motions on the work of the Committee in accordance with the appropriate provisions of the Rules of Procedure.

2. HEARING PANEL

- 2.1. Whenever necessary the Chairman or Vice-Chairman of the Conduct Committee shall appoint a Sub-Committee in consultation with the Monitoring Officer for the purpose of considering and determining conduct complaints ("Hearing Panel").

2.2. Membership

- 2.2.1. The Hearing Panel shall comprise three members of the Conduct Committee, including either the Chairman or Vice-Chairman all of whom must be present for the meeting to be quorate.
- 2.2.2. The membership of the panel shall, as far as practicable, be politically proportionate.
- 2.2.3. The Council's designated Independent Person or Deputy shall sit alongside the Hearing Panel to offer advice in a non-voting capacity.
- 2.2.4. Where the complaint relates to a Town or Parish Councillor the co-opted representatives will also be invited to sit alongside the Hearing Panel to offer advice in a non-voting capacity.

2.3. Role and Functions

- 2.3.1. The Hearing Panel will have the following roles and functions in respect of members of the District, Town and Parish councils and shall perform these in accordance with Rule 9 of the Constitution:
- Hearing and determining complaints referred by the Monitoring Officer;
 - Issuing appropriate sanctions when it has determined that the subject of a complaint has been found to have breached the Code of Conduct.

Appendix 3

PART 3, TABLE 2 RESPONSIBILITY FOR COUNCIL FUNCTIONS

Decision Making	Functions	Delegation of Functions
Conduct Committee	<p>The promotion and maintenance of high standards and conduct within the Council,</p> <p>To advise the Council on the adoption or revision of its Code of Conduct for Members.</p> <p>To determine any complaints of a breach of The Members' Code of Conduct via the Sub-Committee Hearing Panel.</p>	As defined in Tables 4 and 5 of this Part of the Constitution.

PART 3 - MONITORING OFFICER

Paragraph 47B to be amended to read as follows:

To consider and grant requests for Dispensations from section 31 of the Localism Act 2011 in accordance with paragraph 1.3.2 of Article 9.

Appendix 4



MEMBER CONDUCT: COMPLAINT FORM

1. BACKGROUND INFORMATION

Please provide us with your name and contact details:

Title:	
First Name:	
Last Name:	
Address:	
Contact Number	
Email Address	
Preferred form of contact:	

Your address and contact details will not usually be released unless necessary or to deal with your complaint. However, the following people will be aware that you have made this complaint:

- the Member(s) you are complaining about;
- the Monitoring Officer of the authority;
- the parish clerk (if applicable);
- The Independent Person; and
- The Chairman/Vice-Chairman of the Conduct Committee

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it.

If you have serious concerns about your name and a summary, or details of your complaint being released, please complete Section 3 of this form however, please be aware that the Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

Appendix 4

2. Your Complaint

The **Conduct Procedure Rules** set out in the Council's Constitution together with Fenland District Council's **Guidance: Submitting a Conduct Complaint** set out the process the Monitoring Officer will follow in order to respond to your complaint. These are available on the Council's website at [\[insert link\]](#) or on request to the Monitoring Officer.

Please provide us with the name of the Member(s) you believe have breached the Code of Conduct and the name of their authority:

TITLE	FIRST NAME	LAST NAME	AUTHORITY

Please explain in this section (or on separate sheets) what the Member has done which you believe falls below the standards expected of them.

It is important that you provide all the information you wish to have taken into account when a decision is made about whether to take any action on your complaint. For example:

- If you are complaining about one or more Members you should clearly explain what each individual person has done;
- You should consider whether the Member was acting or you perceived they were acting in their official capacity as a Councillor or as a normal member of the public. This process only applies to Members acting in their official capacity.
- You must set out which of the General Obligations contained in the Member's Code of Conduct have been breached;
- You should be specific wherever possible about exactly what you are alleging the Member said or did. For instance, instead of writing that the Member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.
- You should provide confirmation of the outcome you are seeking.

Appendix 4

Please provide us with the details of your complaint. Continue on a separate sheet if necessary:

You must use this box to specify which of the General Obligations set out in the Code of Conduct you consider have been breached:

Appendix 4

You must use this box to set out why you consider the General Obligations identified above have been breached identifying any other documents/information which may be relevant in support of your concerns:

Appendix 4

3. CONFIDENTIALITY

The existence and content of all complaints will remain strictly confidential and shall not be published, discussed or otherwise disclosed until a conclusion has been reached and unless it is a requirement of this or the hearing process (for example at an investigative interview or hearing) or the Subject waives this requirement by making the disclosure themselves.

You are requested to respect the overall confidentiality of the process and should not therefore disclose the details of your complaint to anyone other than your close friends and family members (on the understanding that they will also keep the details confidential) and/or anyone who may be able to provide information to the Monitoring Officer and/or Investigator in support of your concerns. The Monitoring Officer, Chairman, Vice Chairman, Independent Person, Town/Parish Clerk and Investigating Officer are also subject to the same requirements.

Please be aware however that In the interests of fairness and natural justice, we believe Members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are therefore unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that you will suffer significantly by physical or mental detriment. If you consider that this may be the case then please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The request will be considered alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint. However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to (for example if we are obliged to refer the matter to the Police for investigation).

Appendix 4

4. ADDITIONAL HELP

We can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible. Please return this form to the Monitoring Officer: *[insert address, and email address and phone number]*.

5. DECLARATION

I confirm that the contents of this Form are true to the best of my knowledge and belief and that I have read and understood the Guidance: Submitting a Complaint.

Signed:
Dated:

INITIAL ASSESSMENT DECISION NOTICE

BACKGROUND

SUBJECT MEMBER: *[Insert]*

1. COMPLAINT

- 1.1. On *[date]* the Monitoring Officer received a formal complaint from *[insert]* (“the Complainant”), alleging that *[insert]* (“the Subject Member”) had breached the Fenland District Council Code of Conduct.
- 1.2. The Complaint relates to *[summary of complaint]*.
- 1.3. The Subject Member was invited to comment on the complaint with a view to establishing whether or not the concerns could be informally resolved. The Complainant has confirmed that they do not consider their concerns to be capable of informal resolution and an initial assessment of the complaint has therefore been completed by the Independent Person in consultation with the Monitoring Officer.

2. EVIDENCE CONSIDERED

- 2.1. The following documents and information were considered for the purposes of initial assessment of this complaint:-
 - 2.1.1. Complaint sent by *[insert]* on *[date]*;
 - 2.1.2. Response from the Subject Member *[and associated attachments]* sent by *[insert]* on *[date]*;
 - 2.1.3. Confirmation by the Complainant that the complainant could not be informally resolved sent by *[insert]* on *[date]*; and
 - 2.1.4. The Council’s Members’ Code of Conduct and Procedure Rules.

3. JURISDICTION

- 3.1. For a complaint to be considered in connection with the Member’s Code of Conduct, the following test must be satisfied:
 - 3.1.1. the complaint was made against a person who, at the time the alleged action took place, was a member of *[Fenland District Council/relevant Town/Parish Council]*; and
 - 3.1.2. the Subject Member had signed up to the Members’ Code of Conduct in force at the time the alleged action took place; and

Appendix 5

- 3.1.3. the Subject Member was conducting the business of their authority or acting, claiming to act or giving the impression of acting as a representative of the authority.
- 3.2. The Independent Person [or Deputy Independent Person] has concluded that *[all three limbs of this test are satisfied in this matter OR state which limbs are fulfilled and where they are unfulfilled the overall impact on the management of the complaint]*.

4. INITIAL ASSESSMENT

4.1. The Complaint

- 4.1.1. The Independent Person [or Deputy Independent Person] with advice from the Monitoring Officer as appropriate have considered whether the actions of the Subject Member described in paragraph 1.2 above constitute a breach of the following provisions of the Members' Code of Conduct:
 - 4.1.1.1. *[set out specific breaches and relevant paragraphs of the Code of Conduct for each element of the Complaint]*.
- 4.1.2. The Complaint and Subject Member's response can be summarised as follows:
 - 4.1.2.1. The First Complainant alleges that the Subject Member *[insert detail]*.
 - 4.1.2.2. The Subject Member has responded to confirm that *[insert detail]*.
- 4.1.3. The Independent Person having considered all of the available evidence with the pertinent factors having been identified as follows:
- 4.1.4. As to the question of whether *[summarise key considerations for each allegation]*.
- 4.1.5. In conclusion the Independent Person's view is that:
 - 4.1.5.1. In respect of the allegation of the Subject Member having failed to *[identify alleged breach of Code and conclusion for each accusation]*.
- 4.1.6. As a consequence of the above, the Independent Person advised that in their opinion there was *[no apparent breach of the Code of Conduct and therefore no further action should be taken or that the Code may have been breached in respect of the following allegations - list]*.

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- 4.1.7. The Monitoring Officer [or Deputy Monitoring Officer] concurs and therefore *[no further action will be taken or the allegations will be referred for investigation/to the Conduct Committee for determination. Where referral is made for investigation specify the scope and expectations with regard to who will conduct it i.e. internal/external investigation].*

Approved By: **Councillor Topgood/Councillor Wallwork**
[Insert] Independent Person [or Deputy Independent Person]
[Insert] Monitoring Officer [or Deputy Monitoring Officer]

Dated: **[Insert]**

Appendix 6



CONDUCT COMMITTEE HEARING PANEL: DECISION NOTICE

INTRODUCTION

Subject Members:

Complainant:

Chairman:

Panel Members:

Independent Person:

Monitoring Officer:

Investigating Officer:

Clerk:

Date:

SUMMARY OF THE ALLEGATION

On *[date]*, a complaint was received by the Monitoring Officer about the conduct of Councillor *[insert]* in relation to *[insert description]*.

Following the initial consideration of the complaint by the Monitoring Officer and Independent Person on *[date]*, it was determined that *[an investigation should be commissioned to consider all of the issues raised/the matter could proceed straight for consideration by the Hearing Panel]*.

[The investigation was carried out externally by [Insert] and concluded that there had been a breach of the code. A hearing was therefore arranged and the Hearing Panel tasked with determining whether or not there has been a breach of the Code and, if so, what sanction is required].

Appendix 6

RELEVANT SECTIONS OF THE CODE OF CONDUCT

The investigation report indicated a breach of the following general obligations of the Code of Conduct:

- *[Rule 3.1 - Failure to treat others with respect;*
- *Rule 3.2(a) - Conduct in breach of UK Equalities legislation;*
- *Rule 3.2(b) - Conduct which amounts to bullying of any person;*
- *Rule 3.2(c) - Intimidation or attempted intimidation of any person who is or is likely to be [a complainant, a witness, involved in the administration of any investigation or proceedings in relation to an allegation that a Member (including the Subject Member) has failed to comply with the Code of Conduct;*
- *Rule 3.2(d) - Conduct which compromises or is likely to compromise the impartiality of those who work for or on behalf of Fenland District Council;*
- *Rule 3.2(e) - Conduct which could reasonably be regarded as bringing the Subject Member's office or Fenland District Council into disrepute;*
- *Rule 4.1 - Disclosure of information given to the Subject Member in confidence by anyone or information acquired by the Subject Member which they believe, or ought reasonably to be aware, is of a confidential nature and no lawful exemptions apply;*
- *Rule 4.2 - Preventing access to information by any person who is entitled to it by law;*
- *Rule 5.1 - Use or attempted use by the Subject of their position as a member improperly to confer on, or secure for themselves or any person an advantage or disadvantage;*
- *Rule 6.1 - Failing to act in accordance with Fenland District Council's reasonable requirements when using or authorising the use by others of its resources;*
- *Rule 6.1 - Failing to ensure that Fenland District Council's resources are not used improperly for political purposes;*
- *Rule 6.2 - Failing to have regard to Fenland District Council's Code of Publicity.]*

PRELIMINARY MATTERS DETERMINED BY THE HEARING PANEL

[Set out the detail of any preliminary issues considered and the conclusion reached together with any reasons given].

SUMMARY OF EVIDENCE CONSIDERED AND REPRESENTATIONS MADE

Presentation of the Complaint

The Investigating Officer ("IO") summarised the content of his investigation report and in particular drew the Panel's attention to *[insert detail]*.

The witness *[insert]* informed the Panel that *[insert detail]*.

Presentation of the Response

Councillor *[insert]* gave evidence as to the facts and in particular *[insert detail]*.

The witness *[insert]* informed the Panel that *[insert detail]*.

Appendix 6

Points Covered During Questioning

The following matters were discussed during questioning *[insert]*.

Summing Up by IO

The IO summed up to confirm that *[insert]*.

Summing Up by Subject Member

Cllr *[insert]* contended that *[insert detail]*.

The Views of the Independent Person

The Independent Person (IP) expressed their view that *[insert]*.

Advice Given by the Monitoring Officer

The Monitoring Officer, following a request for advice confirmed that *[insert]*.

DECISION AND FINDINGS

The Panel confirmed that it had listened carefully to the Investigating Officer, Councillor *[insert]*, *[their representatives and witness]* and the views of the Council's Independent Person.

The Panel confirmed that it had decided *[unanimously/by majority]* that *[it agreed/disagreed]* with the conclusions of the investigation report. In particular that *[insert detail]*.

REPRESENTATIONS AS TO SANCTIONS

Investigating Officer

The Investigating Officer shared their opinion that *[insert]*.

Subject Member

Councillor *[insert]* contended that *[insert]*.

Independent Person

The Independent Person offered their view that *[insert]*.

Monitoring Officer

The Monitoring Officer advised that *[insert detail]*.

Appendix 6

SANCTIONS & POST-HEARING ACTIONS

The Panel confirmed again that it had considered the representations of all concerned regarding the form of sanction that should be imposed.

The Panel's decision was to *[insert detail]*.

Appendix 7



GUIDANCE: MAKING A CONDUCT COMPLAINT

INTRODUCTION

Complaints that a Fenland District, Town or Parish Councillor may have breached the **Code of Conduct**, are dealt with by the Monitoring Officer in consultation with the Council's Independent Person.

The **Code of Conduct** can be found on Fenland District Council's website at Part 5 of the Constitution [[insert link](#)].

Please note that the Monitoring Officer can only deal with complaints about the behaviour of a Councillor covered by the **Code of Conduct** and not when they are 'off-duty' or acting in their private/personal capacity. Where the Monitoring Officer does not consider this to be the case they will be obliged to confirm that they are unable to progress your complaint.

MAKING A COMPLAINT

If you wish to make a complaint, please contact the Monitoring Officer either by email at monitoringofficer@fenland.gov.uk or by post at Fenland District Council, Fenland Hall, County Road, March, PE15 8NQ.

You will be asked to complete a **Conduct Complaint Form** in order for your complaint to be processed and this is available from the Council's website [[insert link](#)] or on request from the Monitoring Officer.

The Conduct Complaint Form contains different sections which are designed to assist in ensuring that all relevant information is included. You must provide as much information as possible about how you think the General Obligations of the **Code of Conduct** have been breached together with any supporting evidence such as extracts from social media and the names and contact details of anyone else who may have witnessed the behaviour you are complaining about.

Examples of possible breaches of the General Obligations include (but are not limited to):

- behaviour which is disrespectful or could amount to bullying or discrimination.
- behaviour which compromises the impartiality of people who work for or on behalf of Fenland District Council or which has or is capable of damaging the reputation of the Council or Councillor.
- Disclosure of information which is confidential. Use of position to improperly obtain an advantage or disadvantage for themselves or someone else.

If you do not include enough information the Monitoring Officer will contact you to ask for more. If you do not provide it or there is simply not enough information on which to make an initial assessment the Monitoring Officer will be obliged to confirm that they are unable to progress your complaint.

You are required in the **Conduct Complaint Form** to provide the Monitoring Officer with your name and contact address and/or email address so that your complaint can be acknowledged and you can be kept informed as it progresses.

The Monitoring Officer will not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

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If you are concerned about your name being shared with the Councillor who is the subject of your complaint you can request that it remains confidential and your reasons for that within the **Conduct Complaint Form**. In that instance, the Monitoring Officer will not disclose your name and address without prior consent. However, the Monitoring Officer has to balance your request against the need to ensure that a fair process is followed which in some instances will require an understanding of who has made the complaint.

If the Monitoring Officer does not consider your reasons justify anonymity or for your name to remain confidential, you will be informed and given the opportunity to withdraw if you do not wish to proceed without it.

All complaints will be treated as confidential unless and until the Monitoring Officer publishes a Decision Notice following the initial assessment of your complaint or, if it is not resolved at that stage, where a meeting of the Hearing Panel is required. You should not therefore disclose the details of your complaint to anyone other than your close friends and family members (on the understanding that they will also keep the details confidential) and/or anyone who may be able to provide information to the Monitoring Officer and/or Investigator in support of your concerns. Equally the Monitoring Officer, Chairman, Independent Person and Investigating Officer will also keep the details of your complaint confidential from members of the public during the initial assessment and investigation. Details of your complaint will therefore only be published once a conclusion has been reached or unless the subject of your complaint waives this requirement.

Initial Assessment

The Monitoring Officer will acknowledge your complaint in writing within 5 working days of receiving it. Where an email address has been provided the Monitoring Officer will use this unless you have specifically requested correspondence by post.

Unless exceptional circumstances exist, the Monitoring Officer will always inform the Councillor that a complaint has been received by providing them with a copy of the **Conduct Complaint Form** (with any personal details excluded if a request for confidentiality/anonymity has been agreed). They will then be provided with a period of 7 working days (or more depending on the complexity of the complaint and the amount of information to consider) to provide their comments. The Monitoring Officer will also notify the Chairman of the Conduct Committee (“the Chairman”) (or Vice Chairman if the complaint relates to the Chairman or the Chairman is otherwise unavailable for any other reason) that a complaint has been received and the nature of it.

Once the Monitoring Officer has received the Councillor’s comments they will share them with you and ask you to consider whether you are satisfied with the response and/or if the complaint is capable of an ‘informal resolution’. This means that your complaint will be concluded outside the formal process and might be appropriate where for example the Councillor apologises or agrees to remove an offending post or comment from social media.

If you confirm that your complaint is not capable of being resolved informally then the Monitoring Officer will complete an initial assessment of your complaint in consultation with the Chairman and the Independent Person (“the Initial Assessment”).

As part of the Initial Assessment the Monitoring Officer, Chairman and Independent Person will take into account the following factors in deciding what if any further action is required in relation to your complaint:

- Whether there is insufficient information upon which to base a decision;
- Whether a significant amount of time (typically more than 6 months) has elapsed since the events which are the subject of the complaint;
- Whether the issue complained of in relation to the particular Subject(s) have already been considered under this Procedure;

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- Whether the complaint appears to be politically motivated, trivial, vexatious, tit for tat, repetitious or otherwise a general misuse of this Procedure;
- Whether the conduct occurred at a time when the Subject was not or could not have been considered to be acting in their official capacity;
- Whether the complaint concerns someone who is no longer a Councillor; and
- Whether the complaint is essentially against the Council as a whole and should not be directed at an individual.

Where it is considered that there may have been a breach of the Code the Chairman and Independent Person will decide, in consultation with the Monitoring Officer whether or not an investigation is required and if so, will put in place arrangements to appoint an investigator (who may or may not be an employee of Fenland District Council) and agree which of your concerns will be investigated. Where no further investigation is required, your complaint will be referred for consideration by the Hearing Panel.

The Monitoring Officer will write to you to let you know what the Pre-Sift decided and, where your complaint has been dismissed, the reasons for that.

Possible Outcomes

If the Initial Assessment identifies that a breach of the **Code of Conduct** may have occurred your complaint may be further investigated and/or referred to the Conduct Committee for determination.

If the Initial Assessment identifies that the issues set out in the **Conduct Complaint Form** are vexatious, trivial or tit-for-tat or that it would be otherwise inappropriate to progress your complaint then no further action will be taken.

Investigation

Once an Investigator has been identified they may contact you and any witnesses to discuss your complaint and to obtain any additional information they might need. They will also contact the Councillor and any witnesses they might have.

The investigation will be completed as soon as reasonably possible and the Investigator will then prepare a draft Report which will be shared with you and the Councillor for any final comments. One these have been considered the final report will be sent to the Monitoring Officer and the Investigator will confirm whether or not in their view there has been a breach of the **Code of Conduct**.

Possible Outcomes

Where the Investigator concludes that there has not been a breach of the **Code of Conduct** and the Chairman of the Conduct Committee, Independent Person are in agreement, no further action will be taken.

Whether the Investigator concludes that there has been a breach of the **Code of Conduct** and it is not possible to reach a summary resolution, the Monitoring Officer, in consultation with the Chairman and Independent Person will arrange a Conduct Hearing where a final decision will be taken.

Conduct Hearing

The Monitoring Officer will put in place arrangements for a meeting of the Hearing Panel as soon as possible. This can take up to a month depending on the availability of everyone who is required to attend and the time required to prepare and publish the Agenda pack.

Appendix 7

The Monitoring Officer will let you know the date of the hearing once it has been agreed. They may well have asked you if there are any dates that you would not be available and these will be taken into account when making the arrangements if the Investigator has indicated that they would like you to be there. Otherwise there is no requirement for you to attend unless you would like to in which case you can observe the hearing but you will not usually be invited to speak.

The Hearing Panel will be made up of 3 Councillors of the Conduct Committee (“the Hearing Panel”) and the Monitoring Officer will let you know who they are. You should let the Monitoring Officer know as soon as possible if you think there might be a conflict of interest for instance if you are a close friend, family member or business colleague of one of the Councillors listed.

The Council must make sure that the Agenda pack is available online or for inspection at its offices for at least 5 working days before the meeting takes place. The Agenda pack will contain a copy of your **Conduct Complaint Form** which unless agreed will contain your name and that of any witnesses (but not yours or their address/contact details) together with the Councillor’s response, the view of the Pre-Sift and where applicable, the Investigator’s Report.

Meetings of the Hearing Panel usually take place in public and the Agenda and Minutes will be published on the Council’s website. There are some exceptions to this but they are limited so it is important that the Monitoring Officer is aware of any concerns you might have about your name and the details of your complaint being published as soon as possible. If it has already been agreed that your name will remain confidential then it will not be published however if you think you could still be identified from the details of the complaint you should again discuss this with the Monitoring Officer. You can find examples of previous Minutes and Decisions on the Council’s website [*insert link*].

The Hearing Panel will follow the procedure set out in the **Conduct Procedure Rules** which are available to view on the Council’s website [*insert link*]. A summary of the hearing procedure will also be included in the Agenda pack.

The sanctions available to the Hearing Panel are as follows:

- Report its findings to Full Council for information;
- Issue a formal Letter of reprimand;
- Recommend to the Subject’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Subject be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Recommend to Council to remove the Subject from all outside appointments to which they have been appointed or nominated by the authority;
- Recommend to Council that it withdraws facilities provided to the Subject by the Authority such as a computer, website and/or email and internet access;
- Recommend to the Council that it excludes the Subject from the Council’s office or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- Offer additional training for the Subject.
- Publication of formal notification of breach in a newspaper circulating in the area.

NB: A Motion of Censure, if agreed, is in basic terms an expression of strong disapproval or harsh criticism.

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Possible Outcomes

If the Hearing Panel decides that there has been a breach of the **Code of Conduct** they will then consider and confirm what if any sanctions should be applied.

If the Hearing Panel decides that there has not been a breach of the **Code of Conduct** the hearing will conclude and no further action will be taken.

CONCLUSION

If you decide to make a complaint then unless it is capable of informal resolution, you should expect that it could take up to 6 months to conclude however everyone involved in the process will make every effort to ensure that your concerns are addressed at the very earliest opportunity.

Conduct complaints are a matter of public interest and the Council is therefore required to publish information relating to the complaint and where relevant the decision of the Conduct Committee and Hearing Panel. It is generally also considered that the full circumstances of the complaint (including the identity of the person complaining) should be made available to the Councillor in order to ensure the overall fairness of the process. For example it may be that knowing your identity will add some context that will enable the Councillor to provide an explanation that you are able to accept or which will assist them in defending their actions.

If you have any questions or concerns at any stage in the process you can contact the Monitoring Officer who will go through the options with you. The Monitoring Officer will make sure that you are kept up-to-date at the conclusion of each stage of the process and you must keep the Monitoring Officer informed if you have any concerns or additional information.

There is no right of appeal against a decision taken by the Monitoring Officer, Pre-Sift, Conduct Committee or Hearing Panel however if you have any concerns at the conclusion of the process you can raise these with the Local Government Ombudsman at <https://www.lgo.org.uk/make-a-complaint>.

Appendix 8



MEMBER GUIDANCE: HEARING PANEL PROCESS

INTRODUCTION

This Guidance has been prepared to provide an overview of the Hearing Procedure Rules for members of the Hearing Panel of the Conduct Committee.

The Guidance should be read in conjunction with the **Terms of Reference for the Hearing Panel, the Members' Code of Conduct and the Hearing Procedure Rules**.

OVERVIEW OF HEARING PROCEDURE

PRELIMINARY MATTERS	
1	The Chairman of the Panel will introduce the members of the Panel, the Independent Person, the Subject, the Investigating Officer, the complainant if present and any officers.
2	Declarations of Interest will be taken.
3	The Chairman will explain that the hearing will normally be held in public unless the Panel exercises its discretion to exclude the public from all or part of the hearing in accordance with Schedule 12A the Local Government Act 1972. The Monitoring Officer will confirm whether there has been a request for the hearing, or any part of it to be held in private. The Panel will determine that request.
4	The Chairman will explain the reason for the meeting and outline the procedure to be followed.
5	The Chairman may choose to vary this procedure if they are of the opinion that such a variation is necessary in the interests of fairness.
6	The Chairman will confirm that all those involved understand the procedure to be followed and ask if there are any preliminary issues which anyone wishes to raise before the Hearing begins.
7	If any procedural issues are raised, the Panel will hear representations on them and determine them before beginning the hearing.
8	If the Subject is not present at the start of the hearing, the Panel will consider any reasons given by them for their non-attendance. If the Panel is satisfied that there is good reason for their non-attendance, it may adjourn to another date. Where no reason has been given and the Panel is satisfied that the Subject has been properly notified of the hearing, it will proceed in his/her absence.

Appendix 8

HEARING	
9	The Investigator will be invited to summarise his/her report and findings and make any representations about any pre-hearing submission of the Subject. The Investigator may call any witnesses, including the complainant.
10	The Subject will be invited to make representations in support of the facts concerned. The Subject may call any witnesses in support of the facts. Character witnesses will not be permitted.
11	The Panel has the discretion to question any of the parties as they see fit. The Independent Person or the Monitoring Officer may question any of the parties at the discretion of the Chairman.
12	The Subject and the Investigator will be given the opportunity to make closing statements if they wish to do so.
13	The Chairman will invite the Independent Person to share their opinion as to whether or not they consider there has been a breach of the Code of Conduct.
14	
THE DECISION	
15	The Chairman will then announce to all present at the Hearing the Panel's decision as to whether or not the Subject has failed to comply with the Code of Conduct, whilst setting out the facts upon which the conclusions have been reached.
16	If the Panel decides that the Subject has not failed to follow the Code of Conduct, the hearing will be concluded.
17	If the Panel decides that the Councillor has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigator, the Subject, the Independent Person and the Monitoring Officer, as to: <p>(a) whether or not the Panel should impose a sanction; and</p> <p>(b) what form of sanction(s) is/are appropriate.</p>
18	The Panel, the Independent Person and the Monitoring Officer will retire to consider the sanctions in private. The Monitoring Officer may be requested to give legal advice or clarify any of the evidence as required. Neither the Monitoring Officer or the Independent Person will participate in the decision.
19	The Panel will announce its decision in public at the conclusion of the hearing and will issue a full written decision including reasons within 10 working days of the hearing. The Monitoring Officer will make arrangements for the Decision Notice to be published on the Councils website.

Appendix 8

SANCTIONS

When deciding whether to apply one or more sanctions, the Hearing Panel will consider the following questions along with any other relevant circumstances or factors specific to the local environment to include (but not exhaustively):

- What was the subject of the complaint's intention and did they know they were failing to follow the Code of Conduct;
- Did the subject of the complaint receive advice from officers before the incident and was that advice acted on in good faith;
- Has there been a breach of trust;
- Has there been financial impropriety e.g. improper expense claims or procedural irregularities;
- What was the result/impact of failing to comply with the Code of Conduct;
- How serious was the incident;
- Does the Subject accept that they were at fault;
- Did the Subject apologise to the complainant or other relevant persons;
- Has the subject of the complaint previously been reprimanded or warned for similar misconduct within the last 12 months;
- Has the Subject previously breached the Code of Conduct within the last 12 months;
- Is there likely to be a repetition of the incident.

The following sanctions may be imposed:

- Report its findings to Full Council for information;
- Issue a formal Letter of reprimand;
- Recommend to the Subject's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Subject be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Recommend to Council to remove the Subject from all outside appointments to which they have been appointed or nominated by the authority;
- Recommend to Council that it withdraws facilities provided to the Subject by the Authority such as a computer, website and/or email and internet access;
- Recommend to the Council that it excludes the Subject from the Council's office or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- Offer additional training for the Subject.
- Publication of formal notification of breach in a newspaper circulating in the area.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' allowances however, this Hearing Procedure should be read in conjunction with the legislation as it exists at the time its decisions are taken and where additional sanctions are prescribed by law, they will be available to the Hearing Panel as if they formed part of this Procedure. The Monitoring

Appendix 8

Officer will then make the necessary arrangements to amend the Hearing Procedure at the next scheduled meeting of Full Council.