



Lewes District Council

Standards Panel

23 November 2021

Time and venue:

1.30 pm in the Ditchling & Telscombe Rooms - Southover House, Lewes

Membership:

Councillors: Nancy Bikson, Christine Brett and Christine Robinson

Quorum: 3

Published: 15 November 2021

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Agenda

- 1 Election of Chair of the Standards Panel for this meeting**
- 2 Apologies for absence**
- 3 Declarations of interest**

Disclosure by councillors of personal interests in matters on the agenda, the nature of any interest and whether the councillor regards the interest as prejudicial under the terms of the Code of Conduct.
- 4 Hearing in relation to allegations that Councillor Isabelle Linington failed to comply with the Council's Code of Conduct for Members (Pages 3 - 50)**

To consider the report of the Monitoring Officer (attached herewith)
- 5 Decision as to whether Councillor Isabelle Linington failed to comply with the Code of Conduct for Members and, if applicable, whether to impose any sanction in respect of that failure.**

Information for the public

Accessibility:

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Information for councillors

Disclosure of interests:

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In the case of a disclosable pecuniary interest (DPI), if the interest is not registered (nor the subject of a pending notification) details of the nature of the interest must be reported to the meeting by the member and subsequently notified in writing to the Monitoring Officer within 28 days.

If a member has a DPI or other prejudicial interest he/she must leave the room when the matter is being considered (unless he/she has obtained a dispensation).

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Report to:	Standards Panel
Date:	23 November 2021
Title:	Hearing of an allegation that Cllr Linington failed to comply with the Code of Conduct for Members
Report of:	Monitoring Officer
Purpose of report:	To outline the allegations against Cllr Linington; and to set out the procedure for the Standards Panel hearing
Officer recommendation(s):	That the Standards Panel– (1) Consider the investigation report set out in Appendix 1. (2) Hear the verbal submissions of the investigating officer, the complainant, Cllr Linington and her witness. (3) Determine whether Cllr Linington did in any respect fail to comply with the Code of Conduct for Members; and, if she did, determine whether to impose a sanction in respect of that failure.
Reasons for recommendations:	To comply with the Council's Hearings Procedure for code of conduct matters
Contact Officer(s):	Name: Oliver Dixon Post title: Monitoring Officer E-mail: oliver.dixon@lewes-eastbourne.gov.uk Telephone number: (01323) 415881

1 Introduction

- 1.1 In accordance with s.28 of the Localism Act 2011, the Council has arrangements under which allegations that a Member has failed to comply with the authority's Code of Conduct can be investigated and decided.
- 1.2 These arrangements include provision for allegations to be assessed and, where necessary, formally investigated. The Council's Independent Person, a statutory appointment under the Localism Act, advises the Council at the required steps during this process.
- 1.3 The role of the Standards Panel, as a sub-committee of the Council's Audit and Standards Committee, is, on a referral from the Monitoring Officer, to hear and

determine allegations that a member has failed to comply with the Code of Conduct.

2 Information

- 2.1 On 15 July 2021, Cllr Phil Davis of Lewes District Council made a written allegation to the Monitoring Officer (MO) about the conduct of Cllr Isabelle Linington. The substance of the allegation is set out in paragraph 3.1 below.
- 2.2 The MO followed the Council's Arrangements for Dealing with Complaints about Councillor Conduct. In consultation with the Deputy Monitoring Officer and Independent Person, the MO considered that the complaint would, if proven, engage the Code of Conduct and that the serious nature of the allegation merited formal investigation. The MO commissioned Sandra Prail, a consultant with expertise in governance matters concerning elected Member conduct, to carry out the investigation on his behalf. The investigating officer's report, based on interviews and evidence gathering, is set out at Appendix 1.

3 Summary of Allegation

- 3.1 On 19 March 2021, the Council's Standards Panel met to hear allegations about the conduct of Cllr Stephen Gauntlett. Cllrs Phil Davis and Roy Burman were two of the three members of that Panel.

Cllr Phil Davis alleges that–

- on the evening before the Panel hearing, Cllr Linington phoned him to make it clear she expected him to find Cllr Gauntlett guilty and to insist on his resignation
- later the same evening, he received a call from Cllr Roy Burman who said that he had taken a similar call from Cllr Linington
- on the day after the hearing (by when the Panel's decision had been published), Cllr Burman told him that Cllr Linington had contacted him to say he had been weak for not doing as she had requested.

4 Investigating Officer's Conclusion

- 4.1 The investigating officer concluded that Cllr Linington had acted in breach of paragraphs 3(2)(c), 5 and 6(a) of the Council's Code of Conduct, in that–
- she made a call to Councillor Davis which a reasonable person would consider to have been an attempt to improperly influence the outcome of a Panel hearing
 - her conduct also breaches the Code's general obligations not to bring her office or authority into disrepute and not to attempt to use her position as a member improperly to confer on or secure for herself or any other person an advantage.
- 4.2 The Council's Code of Conduct is set out at Appendix 2.

5 Supplementary Evidence

- 5.1 The Hearings Procedure permits the Subject Member (Cllr Linington) to submit to the MO any evidence, in addition to that provided in the investigation report, she wishes to rely on at the hearing.
- 5.2 Cllr Linington did request that the Panel be provided with a written statement containing supplementary evidence; as MO, I considered that it would assist the Panel to see this evidence, and have therefore provided this to them and to the investigating officer in advance of the hearing. The evidence in question is set out at Appendix 3 and contains certain redactions to protect private and confidential information.
- 5.3 If any person taking part in the hearing needs to refer to any part of the redacted material, it may be necessary for the Chair to move that the Panel goes into closed session.

6 Statement from Cllr Burman

Cllr Burman is unable to attend the Panel hearing. He has, however, provided the MO with the following statement:

“I have carefully read the report of my contribution to the investigation and confirm it is a true and complete record of my evidence given in the interview with Sandra Prail.”

7 Hearing – Order of Proceedings

- 7.1 The Order of Proceedings for the hearing is set out at Appendix 4.

8 Role of the Independent Person

- 8.1 In accordance with section 28(7) of the Localism Act 2011–
- i. The Panel must seek and take into account the views of the Independent Person before it makes its decision on the allegation concerning Cllr Linington; and
 - ii. Cllr Linington, as the Subject Member, has been informed of her right to seek the views of the Independent Person.
- 8.2 To avoid any conflict of interests, the Independent Person who gives his views to the Panel is different from the Independent Person whom Cllr Linington may consult.

9 Potential Sanctions

- 9.1 If the Panel determines that Cllr Linington failed to comply with any part of the Code of Conduct, it may have regard to the failure in deciding–
- (a) whether to impose a sanction in relation to that failure; and

(b) what sanction to impose.

9.2 The factors the Panel should take into account before deciding on any sanction, and the actual sanctions they are permitted to impose, are set out in the Hearings Procedure at Appendix 5.

9.3 Whilst not a legal obligation, the Council's hearings procedure requires the Panel to seek and take into account the views of the Independent Person before it makes any decision on whether to impose a sanction and what any sanction should consist of.

10 Financial appraisal

10.1 The Panel's determination of the allegations against Cllr Linington and the imposition of any sanctions is unlikely to involve any significant expenditure by the Council. The investigating officer's fees for carrying out the investigation, the Independent Person's fees in connection with the hearing, and officers' staff costs are met from the Council's corporate budget.

11 Legal implications

11.1 The legislative framework for local authorities' codes of conduct for members and arrangements for dealing with alleged failures to comply is provided by Part 1, Chapter 7, of the Localism Act 2011. Both this report and the investigation report refer to the relevant parts of the Act.

12 Appendices

- Appendix 1 – Investigation report
- Appendix 2 – Code of Conduct for Members
- Appendix 3 – Subject Member's supplementary evidence (redacted)
- Appendix 4 – Order of Proceedings
- Appendix 5 – Hearings Procedure

13 Background papers

The background papers used in compiling this report were as follows:

- Localism Act 2011, section 28:
<https://www.legislation.gov.uk/ukpga/2011/20/section/28>
- Arrangements for Dealing with Complaints about Councillor Conduct:
https://www.lewes-eastbourne.gov.uk/_resources/assets/inline/full/0/261279.pdf
- Investigations procedure: https://www.lewes-eastbourne.gov.uk/_resources/assets/inline/full/0/261281.pdf

Investigation into a complaint against Councillor Isabelle Linington, Lewes District Council

A report for the Monitoring Officer of Lewes District
Council

19 October 2021

Sandra Prail

Sandra Prail Ltd

EXECUTIVE SUMMARY

The Monitoring Officer (MO) of Lewes District Council (the Council) received a complaint by email dated 15 July 2021 from Councillor Phil Davis (the Complainant). The complaint alleged that Councillor Linington (the Subject Member) had telephoned Councillor Davis prior to a Standards Panel Hearing and tried to coerce him into finding Councillor Stephen Gauntlett guilty at the Panel Hearing and insisting upon his resignation. The complaint also referenced a similar alleged call to Councillor Roy Burman.

The MO, in consultation with one of the Council's Independent Persons, and in accordance with the Council's published arrangements for dealing with complaints about councillor conduct, assessed whether the allegations should be formally investigated. He determined that the complaint merited formal investigation. I was appointed by the MO to investigate the complaint.

Councillor Isabelle Linington is a member of Lewes District Council and the Lewes Conservative Group Leader. I have considered whether on the evidence gathered Councillor Linington failed to comply with the District Council's Code of Conduct. In particular, I have considered whether her conduct intimidated or improperly influenced or attempted to intimidate or improperly influence any person involved in the administration of an investigation or proceedings in relation to an allegation that a member has failed to comply with the District Council's Code of Conduct.

There are a number of potential findings available to me, namely:

- The Subject Member was not acting in her capacity as a councillor and therefore the code was not engaged and the member cannot therefore be found to have breached it;
- The Subject Member was acting in her capacity as a councillor but did not through her conduct breach any provision of the Code;
- The Subject Member was acting in her capacity as a councillor and breached the Code;
- The Subject Member was acting in her capacity as a councillor and there is insufficient evidence to make with any degree of certainty a conclusion as to whether or not she breached the Code.

In my view the allegation against Councillor Linington does fall within the jurisdiction of the Code because she was acting in her official capacity.

On the evidence before me I find that Councillor Linington failed to comply with the Code in that her conduct in telephoning Councillor Davis on 18 March 2021 could reasonably be construed as an attempt to improperly influence his involvement in a Standards Panel Hearing.

The Council's arrangements for dealing with such allegations state that the MO will review the Investigating Officer's report and then either send the matter for a Standards Panel hearing or, after consultation with the Independent Person, seek informal resolution.

RELEVANT LEGISLATION AND PROTOCOLS

Localism Act 2011

By section 27(1) of the Localism Act 2011 (the Act) a 'relevant authority' is placed under a statutory duty to 'promote and maintain high standards of conduct by members and co-opted members of the authority'. A relevant authority 'must in particular adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity'. Such a code, when viewed as a whole must be consistent with prescribed principles of standards in public life – known as the Nolan principles.

The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which engenders public confidence in democracy.

Under section 28(6) of the Act local authorities must have in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made.

Lewes District Council Arrangements

The Council has established a Code of Conduct for members (the Code) pursuant to section 27(2) of the Act. It is included in the Council's Constitution at Part 5. The Code includes within its general obligations at paragraph 3(2)(c) that members must not 'intimidate or improperly influence or attempt to intimidate or improperly influence any person who is likely to be involved in the administration of any investigation or proceedings in relation to an allegation that a member has failed to comply with his or her authority's code of conduct'. Other general obligations include at paragraph 3(1) to 'treat others with respect', at paragraph 2(b) not 'to bully or harass any person', at paragraph 5 that a member 'must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute', and at paragraph 6 'not to use your position as a member to confer on or secure for yourself or any other person an advantage or disadvantage'. Appendix 1 provides that members commit to behaving in a manner that is consistent with the seven principles of public life when acting as a member or co-opted member of the Council. The seven Nolan principles are cited as selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The Council has published 'arrangements for dealing with complaints about councillor conduct.' This sets out the process for the handling and determining of complaints. I have followed these arrangements in undertaking my investigation.

BACKGROUND

Councillor Davis by email to the MO dated 15 July 2021 made a complaint against Councillor Linington. The MO, in consultation with one of the Council's Independent Persons, and in accordance with the Council's published arrangements for dealing with complaints about councillor conduct, assessed whether the allegations contained in the complaint should be formally investigated.

In assessing whether the complaint should be investigated the MO took into account various factors including the public interest and alternative courses of action. He determined that the complaint merited formal investigation as, if proven, the allegations were serious ie an attempt to improperly influence the outcome of a statutory process which should be strictly neutral and impartial and involved a senior member of the Council.

I was appointed by the MO to investigate the complaint. I have a strong track record and expertise in governance matters concerning elected member conduct.

THE INVESTIGATION

Summary of allegations

The allegations the subject of my investigation are set out in the complaint made to the MO by the Complainant in an email dated 15 July 2021. A Standards Panel Hearing was scheduled for 19 March 2021 to consider an alleged breach of the Code by Councillor Stephen Gauntlett, a Liberal Democrat Councillor and member of the Council. Councillor Phil Davis (the Complainant) and Councillor Roy Burman were Panel members. The complaint alleges that the day before the Panel Hearing Councillor Linington telephoned the Complainant and tried to coerce him into finding Councillor Stephen Gauntlett guilty and insisting upon his resignation at the Panel Hearing. It also referred to a call from Councillor Roy Burman and Councillor Davis's concerns about Councillors Linington's leadership. There is no complaint by Councillor Burman and therefore any call between Councillor Linington and Burman is relevant only so far as it sheds any light on the call the subject of the complaint.

Scope of investigation

The scope of my investigation was to identify relevant evidence and to produce this report making an assessment of whether the evidence indicates a breach of any provision of the Council's Code of Conduct. Matters relating to internal political Group dynamics and relationships are not in scope. I have carefully considered all of the evidence that I have been able to collect as a result of my investigation. On the basis of this evidence I draw findings as to whether or not Councillor Linington breached any of the requirements of the Code and, if so, what remedies might be appropriate. It is not within my scope to consider political party or group rules that may address councillor behaviour and sanctions from political groups.

Evidence

I was provided with the complainant's email of 15 July, a briefing note from the MO, the Council's investigations procedure and Code and responses provided by Councillors Linington and Burman to the MO as part of his assessment of whether to formally investigate the complaint.

The purpose of my interviews was to ensure that as far as possible all information relevant to the investigation is identified and presented to the MO. I interviewed Councillors Phil Davis (the Complainant), Isabelle Linington (the Subject Member) and Roy Burman (an interested party referenced in the complaint) on 27th August, 31st August and 6 September respectively. During interview Councillor Davis stated that his wife and daughter had been present when he received the alleged call. I asked for a written statement from Mrs Davis outlining what she had heard. This was provided and taken into account as evidence relevant to the investigation. Interviewees also provided me with the documents listed in Appendix A. All three members confirmed that they were aware of the content of the Code and had received adequate training.

I provided each interviewee with a draft note of the main points covered at interview. Each draft note was agreed as accurate by each interviewee (subject to minor additions in the case of the Subject Member). The Complainant was asked what remedy he was seeking in the event of a finding of breach of the Code.

The draft report was shared with the Complainant and Subject Member. The Complainant responded that he felt the report to be 'a concise comprehensible document'. The Subject Member provided a detailed response stating that she had 'substantial concerns about the way the case has been presented'. She believes that 'the motive for this complaint is a nasty power-play by one individual, abetted by a second, to oust me as Leader of the Conservative Group using their apparent recollection of a single remark made many months ago to bring a complaint against me using Council procedures after other means of harassment have failed'.

In particular she draws attention to—

- the delay between the call the subject of the complaint and the making of the complaint
- discrepancies between her evidence and that of Councillor Burman, suggesting that his recollection of events is unreliable
- the background context to the making of the call and that her comment about the hearing was 'a light hearted aside', not 'forcefully expressing a wish for a particular outcome'
- mixed recall by Councillors Davis and Burman as to whether they discussed whether there was a breach of the Code at the time of the call
- the fact that Mrs Davis is not an independent witness
- details of the Group Meeting and conversations between councillors about the position of Group Leader.

All of these points have been taken into account in the report. Having given careful consideration to the responses to the draft report, there is no material evidence that changes my conclusions and I do not consider that any further investigation is necessary.

I set out below a summary of the agreed interview notes as relevant to the investigation.

Councillor Phil Davis (the Complainant)

Councillor Phil Davis is a Conservative member of Lewes District Council. He told me at interview that he was one of three members sitting on a Standards Panel hearing which met on 19 March 2021 to consider an alleged breach of the Code by Councillor Stephen Gauntlett. He says that the night before the Hearing he received a call from Councillor Linington concerning the Hearing. He understood the call to be made in her capacity as a councillor and Group Leader. His wife and daughter were with him when he received the call. He alleges that Councillor Linington said words to the effect of 'of course you will find him guilty and then you will insist on his resignation'. When responding that he would not find him guilty unless the evidence supported that conclusion he alleges that Councillor Linington interrupted saying 'you have to find him guilty' 'we want him to resign'. I was provided with a diary note made by Councillor Davis of the call in which he records the alleged attempt at coercion. At interview I was told that Councillor Davis did not at this time consider whether the call comprised a breach of the Code and therefore didn't consider making a complaint.

The Complainant also described a call from Councillor Roy Burman the same evening when he said that he had received a similar call from Councillor Linington.

The Hearing Panel did not find Councillor Gauntlett to have acted in breach of the Code. The decision was unanimous.

Councillor Davis also described a subsequent conversation with Councillor Burman on 20 March (after the Panel hearing). He says that Councillor Burman told him that Councillor Linington had called him and said he had been 'weak' for not doing as she requested at the Panel Hearing. He

recalls Councillor Burman expressing himself to be 'disgusted with Councillor Linington's conduct' and that he had withdrawn his candidacy from East Sussex County Council and become less proactive in Group as a result of the call. He says that they did not at that time discuss whether the calls were in breach of the Code.

At Group Meeting on 14 July Councillor Davis recalls telling the Group about the call the subject of the complaint. He recalls that Councillor Linington said that she had been encouraged to make the call by another member of the Group. Councillor Davis says that he expressed to Group his concerns about Councillor Linington's failure to lead the Conservative Group well.

The following day (after discussion with another Councillor) Councillor Davis decided that he needed to take advice from the MO as to whether he was 'personally exposed' by not reporting the call as a potential breach of the Code in March. He told me at interview that this was the first time that he had considered the call as a potential breach of the Code. He intended his email to the MO of 15 July as a means of seeking advice but recognises that it was framed as a complaint and should be dealt with accordingly.

In the event of a finding of breach of the Code Councillor Davis said that he thought an appropriate sanction would be reprimand and removal from the position as Group Leader.

Councillor Linington (the Subject Member)

The Subject Member told me in interview that she had made a telephone call to Councillor Davis on 18 March concerning the Panel Hearing to take place the following day. I recorded in my draft interview note that she said she made this call in her capacity as a councillor and Conservative Group Leader. In her response to the draft note of the interview Councillor Linington annotated 'it was in my capacity as Group Leader, as a colleague, not acting as a councillor as such'. As this did not accord with my notes or recollection I sought further comment from Councillor Linington. Her reply was that she 'was phoning to check on preparedness for the next day and I was not thinking that I was acting in official capacity as a councillor - but I defer to you if you think that as Group Leader I was acting in official capacity as a councillor at the time of the phone calls'.

At interview Councillor Linington said that she recalls saying in the call to Councillor Davis that she felt sorry for Councillor Gauntlett (the member the subject of the panel hearing) and 'it would be good if you found him guilty and then we could seek his resignation'. She says that these words were said as a joke and not intended to intimidate or improperly influence the outcome. She recalls Councillor Davis saying that he would look at the evidence and that she replied with words to the effect of 'that's all you can do'. She thinks that her words about guilt meant in jest were misunderstood. She denies saying anything that asked or required Councillor Davis to find Councillor Gauntlett guilty and understands the importance of impartiality and making decisions based on evidence.

Councillor Linington recalls a conversation with Councillor Burman when he said he was worried about the Panel Hearing and didn't know what to do. She recalls explaining the process to him but no discussion on detail. Because of this call she rang him on 18 March the day before the hearing (she can't recall if she had rung Councillor Davis first) to check that he was prepared. She recalls that he said that he was fine and she says that she might have joked about finding Councillor Gauntlett guilty but she doesn't have a clear recollection of her exact words. She says that she made the call to check he was clear on process not to discuss outcome.

She denies any intention to intimidate or improperly influence the Panel Hearing (or attempt to do so). She did not make any notes of the calls and no one else was present when they were made.

Councillor Linington says that she saw the outcome of the Panel Hearing in the press. She recalls sending a Whats App message to Councillor Burman saying something like 'how come you ended up clearing Councillor Gauntlett?'. She says that she wanted to understand what had happened especially as the Investigating Officer had said there was a Code breach. She recalls having a call with him when he said that they had made the right decision based on the evidence before them. She does not recall calling him a 'weak person'. She understood his intention to step down as a councillor was due to pressure of work and time not the call concerning the Hearing.

Conservative Group met on 14 July. She recalls that at the meeting Councillor Davis said words to the effect of 'the night before the Panel you phoned me and tried to coerce me and you did the same to Roy Burman'. She recalls saying something like 'you have misunderstood me I may have jokingly said 'find him guilty' but I wasn't seeking to coerce you'. She says that she was shocked and surprised by the allegation and this was the first time it had been raised with her.

Councillor Burman

Councillor Burman is a Conservative member of Lewes District Council. He told me in interview that he recalls that he received a phone call from Councillor Linington a day or two before the Panel Hearing concerning Councillor Stephen Gauntlett. He says that she put to him forcefully that the outcome of the hearing should be a finding of breach and disqualification. He says she called in her capacity as Group Leader. He says that she said words to the effect that 'on her reading of the Investigating Officer's report to Panel she had no doubt that a breach had occurred' and that she 'was expecting' him to propose that view to the Panel. He recalls that he replied saying that he had read the papers and would hear the evidence viva voce before taking a view and that he would not prejudice a fair outcome. He says that she said something like 'we need this resignation it would help regain council control. I want to make sure that you are aware of that and act accordingly'. He says that her words made him feel under pressure and he replied along the lines of 'I can't make a decision in advance, my role is to find the facts whether they are convenient or not'. He says that Councillor Linington was not pleased with this response and the call ended in an unfriendly manner.

Councillor Burman considers the call made by Councillor Linington to be stupid, a mistake and a demonstration of poor leadership. He says that the call rankled him but he did not at the time consider the call to comprise a breach of the Code and remains of that view. He describes the call as an 'unsustainable attempt to push him towards a finding of breach' 'a strong request' but because the panel member role is well understood and she did not say 'do it or else' he does not consider the call an attempt to improperly influence him.

Councillor Burman did not make notes of the call and no one else was present.

Later the same day he says that Councillor Phil Davis rang him to say that he had had a similar call. He recalls Councillor Davis saying 'you won't believe the call I have had from Councillor Linington she is telling me what to do'. In contrast Councillor Burman says that he felt that she was not telling him what to do but what she wanted him to do. He says that he discussed with Councillor Phil Davis whether to report the call as a breach of the code and decided against doing so.

Councillor Burman recalls Councillor Linington phoning him after the Panel hearing. He says that she knew the outcome and said she was upset that Councillor Gauntlett had been 'let off'. He recalls her saying that he had not complied with the Group and was 'disloyal' 'weak in not leading the Panel in

direction of a finding of breach'. He recalls replying that he would not blindly follow her recommendation and had based the decision on evidence.

Councillor Burman does not recall any call with Councillor Linington to discuss the Panel process.

At the Conservative Group meeting on 14 July he recalls Councillor Linington asking why he and Councillor Davis were not being supportive of her. He recalls Councillor Davis saying words to the effect of 'you have unduly pressurised me to vote in a hearing and that's improper'. Councillor Burman recalls saying something like 'I also had a call and thought it was inappropriate and foolish'.

Mrs Davis

Judith Davis, Councillor Phil Davis's wife provided me with the following signed statement:

' We were sitting at the dinner table (Phil and I sit next to each other) when Phil's phone rang. We normally ignore phones during meal times but Phil said he would take the call as he could see it was from Isabelle Linington, a rare occurrence. Phil listened for a minute or so and then said 'I will make a judgement once I have heard all of the evidence... I will make a decision after and only after I have heard all the evidence' he repeated this three times. Phil also said 'I will view the evidence impartially and objectively' plus 'No I will not'. Phil ended the call was rather putout by what had been said. Phil told me that Isabelle was insisting that he find Stephen Gauntlett guilty of misconduct and then convince the panel to demand his resignation as it would benefit the group'.

Evidence in dispute

There is no dispute that Councillor Linington made a telephone call to Councillor Davis on 18 March concerning the Panel Hearing taking place the following day. There is no dispute that in the call Councillor Linington expressed a view that she would like Councillor Gauntlett to be found guilty of breach of the Code at that Hearing and that his resignation would be welcome. Councillor Linington says that her words were said in jest whereas Councillor Davis felt under coercion to find Councillor Gauntlett guilty regardless of the evidence at the Hearing.

There is no dispute that Councillor Linington made a telephone call to Councillor Burman on or around 18 March concerning the Panel Hearing taking place the following day and a subsequent call following the Hearing. There is no dispute that Councillor Linington expressed the view that she would like a finding of guilt at the hearing.

Councillor Davis says that he did not consider whether the call was a breach of the code until the day after the Group meeting in July. Councillor Burman says that he discussed the matter with Councillor Davis shortly after the call in March.

It is a matter of fact that there was a delay between the incident complained of (18 March) and the making of the complaint (15 July).

Has there been a failure (s) to comply with the Code?

Official capacity

Section 27(2) of the Act provides that a Code of Conduct deals with conduct expected of members when 'they are acting in that capacity'. This is reiterated in the Council's Code which states at paragraph 2(2) that the Code 'does not have effect in relation to conduct other than where it is in

your official capacity'. Para 2(1) states that 'official capacity' is to be construed as (a) conducting the business of your authority (which in this code includes the business of the office to which you are elected or appointed) or (b) act, claim, or give the impression you are acting as a representative of your authority.

Before considering whether or not Councillor Linington's conduct amounts to a failure(s) to comply with the Code it is necessary to decide if she was acting in her official capacity.

Councillor Davis considers that Councillor Linington spoke with him in her capacity as a councillor and Group Leader. Councillor Linington considers that she had the call as Group Leader and colleague but not as a councillor.

Holding the role of Group Leader is predicated on holding the office of a councillor. It is an office to which an individual is appointed by members of a political Group. Para 2(2) of the Code expressly states that conducting the business of your authority (in this case Lewes District Council) includes the business of the office to which you are elected or appointed (member of Lewes District Council and Conservative Group Leader).

It is well established¹ that interactions between fellow councillors considering or discussing local authority business, including telephone meetings, are activities that are in the capacity as a councillor. The Panel Hearing was local authority business.

I find on the evidence that Councillor Linington was acting in her official capacity when she made the call the subject of the complaint. Her conduct therefore falls within the jurisdiction of the standards framework.

Did Councillor Linington fail to comply with the Code?

The Complainant does not identify the provision(s) of the Code that he considers to have been engaged but refers to the alleged conduct as 'coercion'. The dictionary definition of coercion is 'the use of force to persuade someone to do something that they are unwilling to do'. The scope of this investigation is limited to whether or not there has been failure to comply with the Code. Coercion is not a concept contained in the code and therefore I shall not make a finding on whether or not the call the subject of the complaint comprised coercion. I shall limit my consideration to whether or not the evidence shows a failure of any provision of the Code.

The Code includes within its general obligations at paragraph 3(2)(c) that members must not 'intimidate or improperly influence or attempt to intimidate or improperly influence any person who is likely to be involved in the administration of any investigation or proceedings in relation to an allegation that a member has failed to comply with his or her authority's code of conduct'.

As a matter of fact Councillor Davis as a member of a Standards Panel hearing was involved in proceedings in relation to an allegation that a member had failed to comply with the Code (namely Councillor Gauntlett). The matter in dispute is whether during the call on 18 March Councillor Linington intimidated or improperly influenced or attempted to intimidate or improperly influence Councillor Davis in relation to that Hearing.

In this case the evidence is that Councillor Davis felt that the call was intended to put him under pressure to agree to predetermine the outcome of a hearing. There can be no doubt that

¹ Guidance on Local Government Association Model Councillor Code of Conduct, 8 July 2021

predetermination of a Panel Hearing outcome without taking the evidence into account (or taking into account irrelevant evidence) would amount to improper conduct by the Panel member and any attempt to persuade a Panel Member to do so would be improper influence.

The test to be applied to the evidence is an objective one - would a reasonable person in possession of the evidence conclude conduct to be a breach of the Code. The words used in Councillor Linington's account of the call ('it would be good if you found him guilty and then we could seek his resignation') could reasonably be construed as an attempt to improperly influence. They were said from a position of authority as Group Leader. She was not a Panel member and any view that she held was not relevant to the Panel's evidence-based decision making. It seems to me that it was more likely than not that her purpose in expressing her view to Councillor Davis was to influence the outcome or at least ensure that her view was taken into account.

Councillor Linington's explanation for the call and comments is that she was joking. There is no evidence that her words were received in jest either by Councillors Davis or Burman. Councillor Davis's wife in her account of hearing her husband answer the call makes no suggestion of a jocular tone. For Councillor Linington to give an impression that she felt that her view of the outcome was a relevant consideration was at best ill-judged and more likely than not an attempt to improperly influence a quasi-judicial statutory hearing by putting inappropriate pressure on a fellow councillor for a particular outcome or at least to take her views into account. She should have been aware of the need for great care to be taken when talking to councillors involved in the case and to let the proper processes take their course in accordance with adopted Council policies and procedures. Her conduct was not consistent with the principles of public life, in particular selflessness and objectivity. I find the conduct complained of to be a breach of paragraph 3(2)(c) of the Code.

Paragraph 3(2) (c) is directly applicable to the facts of this case. But for the sake of completeness, I have also considered whether the evidence suggests breach of any other general provision of the Code. The Code includes (at paragraph 3(1)) a general obligation to 'treat others with respect'. Whilst this is subjective and difficult to define, guidance² states that 'failure to treat others with respect occurs when unreasonable or demeaning behaviour is directed by one person against or about another' and that 'any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with you because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour'. There is no evidence before me of any change in willingness to interact with Councillor Linington following the call. I do not consider that this provision of the Code has been breached.

The Code includes (at paragraph 2(b)) a general obligation not to 'bully or harass any person'. Guidance states that bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened' and is 'usually part of a pattern of behaviour'. There is no evidence before me that supports this interpretation. I do not consider that this provision of the Code has been breached on the evidence before me.

The Code includes (at paragraph 5) an obligation not to 'conduct yourself in a manner that could reasonably be regarded as bringing your office or authority into disrepute'. It comprises conduct that could be regarded as either reducing the public's confidence in them being able to fulfil their role or adversely affecting the reputation of councillors in being able to fulfil their role. Conduct that could

² Guidance on Local Government Association Model Councillor Code of Conduct, 8 July 2021

reasonably be considered as an attempt to improperly influence a statutory hearing has the potential to undermine public confidence in Councillor Linington and the Council as a whole. I therefore consider that this provision of the Code has been breached.

The Code includes (at paragraph 6) an obligation 'not to use or attempt to use your position as a member to confer on or secure for yourself or any other person, an advantage or disadvantage'. In this case the Conservative Group would potentially benefit from a finding of breach of the Code by Councillor Gauntlett particularly if that led to resignation and the potential for a change in political composition of the Council. I consider that the attempt to influence fellow councillors to vote in a particular way would be to the Conservative Group's advantage. It was likely to have been politically motivated and not in the public interest. This conclusion is unaffected by the fact that councillors did not vote in the way that Councillor Linington desired. I consider that this provision of the Code has been breached.

Conclusion

I therefore find Councillor Linington to have acted in breach of the Code in particular paragraphs 3(2)(c), 5 and 6(a).

Recommendation

My investigation has established that Councillor Linington made a call to Councillor Davis which a reasonable person would consider to have been an attempt to improperly influence the outcome of a Panel hearing. The conduct also breaches the Code's general obligations not to bring her office or authority into disrepute and not to attempt to use her position as a member to confer on or secure another an advantage.

The Council's arrangements for dealing with complaints against councillors state that the MO will review the Investigating Officer's report and then either send the matter to a Standards Panel hearing or, after consulting the Independent Person, seek informal resolution. In considering what course of action the MO should take, he may wish to consider balancing the seriousness of the breach by a senior member appointed as Group Leader with the delay in the making of the complaint, the differing views of Councillors Davis and Burman as to whether the conduct comprised a breach of the Code and the stated concerns made by the Complainant of the Subject Member's leadership.

APPENDIX

Documents provided to me by interviewees in the course of the investigation:

- Email trail between Councillor Geoff Rutland & Phil Davis 11/13 July 2021;
- Screenshots of WhatsApp messages 19,22 March between Councillors Linington& Burman;
- Screenshot of details of call from Councillor Linington to Councillor Davis 18 March 2021;
- Screenshot of details of call from Councillor Burman to Councillor Davis 20 March 2021;
- Copy diary entries made by Councillor Davis.

PART 5

CODES AND PROTOCOLS

	Page
Code of Conduct of Members of the Council (including Guidance for Members on the Code of Conduct and its interpretation)	L1
Register of Interests of Members and Co-opted Members of the Council	M1
Officers' Code of Conduct	N1
Protocol on Member/Officer Relations	O1
Protocol on Key Decisions	P1

Part 5

On their election or co-option to the Lewes District Council, members are required to sign an undertaking to comply with the authority's Code of Conduct.

The Code of Conduct, adopted by the authority on 19 July 2012 is set out below. It is made under Chapter 7 of the Localism Act 2011 and includes, as standing orders made under Chapter 7 of that Act and Schedule 12 of the Local Government Act 1972, provisions which require members to leave meetings in appropriate circumstances, while matters in which they have a personal interest are being considered.

PART 1

Code of Conduct of Members of the Council – General Provisions

1 Introduction and Interpretation

- (1) The Code applies to you as a member of the authority, when acting in that capacity.
- (2) This Code is based upon seven principles fundamental to public service, which are set out in Appendix 1. You should have regard to these principles, they will help you to comply with the Code.
- (3) If you need guidance on any matter under this Code you should seek it from the authority's monitoring officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (4) It is a criminal offence to fail to notify the authority's monitoring officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have a disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly provide false or misleading information to the authority's monitoring officer.
- (5) Any written allegation received by the authority that you have failed to comply with this Code will be dealt with by the authority under the arrangements which it has adopted for such purposes. If it is found that you have failed to comply with the Code, the authority has the right to have regard to this failure in deciding –
 - (a) whether to take action in relation to you, and
 - (b) what action to take.

- (6) Councillors must comply with any reasonable request by the Monitoring Officer, the Deputy Monitoring Officer or an investigating officer appointed by them, regarding the provision of information in relation to a complaint that alleges a breach of the Code of Conduct, and must comply with any formal standards investigation.
- (7) Councillors must not misuse the standards process by, for example, making trivial or malicious allegations against another councillor.

- (8) In this Code –

“authority” means Lewes District Council

“Code” means this Code of Conduct

“co-opted member” means a person who is not a member of the authority but who –

- (a) is a member of any committee or sub-committee of the authority; or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority.

and who is entitled to vote on any question that falls to be decided at any meetings of that committee or sub-committee.

“meeting” means any meeting of

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees.

“member” includes a co-opted member.

“register of members’ interests” means the authority’s register of members’ pecuniary and other interests established and maintained by the authority’s monitoring officer under section 29 of the Localism Act 2011.

2 Scope

- (1) Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you –
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority.

and references to your official capacity are construed accordingly.

- (2) this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) Where you act as a representative of your authority –
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3 General Obligations

- (1) You must treat others with respect.
- (2) You must not –
 - (a) do anything which may cause your authority to breach any of its equality duties (in particular set out in the Equality Act 2010);
 - (b) bully or harass any person;

(Bullying means offensive, intimidating, malicious or insulting behaviour, or an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

Harassment means unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.

For examples of conduct that constitute bullying or harassment, see Appendix 2.)

- (c) intimidate or improperly influence or attempt to intimidate or improperly influence any person who is or is likely to be—
 - (i) a complainant;
 - (ii) a witness; or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4 You must not –

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of the person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is –
 - (a) reasonable and in the public interest; and
 - (b) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6 You –

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
- (b) must, when using or authorising the use by others of the resources of your authority –
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7
to

- (1) When reaching decisions on any matter you must have regard any relevant advice provided to you by –

- (a) your authority's chief finance officer; or
- (b) your authority's monitoring officer;

where that officer is acting pursuant to his or her statutory duties.

- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

INTERESTS

8 Personal Interests

- (1) The interests described in paragraphs 8(3) and 8(5) are your personal interests and the interests in paragraph 8(5) are your pecuniary interests which are disclosable pecuniary interests as defined by section 30 of the Localism Act 2011.
- (2) If you fail to observe Parts 2 and 3 of the Code in relation to your personal interests –
 - (a) the authority may deal with the matter as mentioned in paragraph 1(5) and
 - (b) if the failure relates to a disclosable pecuniary interest, you may also become subject to criminal proceedings as mentioned in paragraph 1(4).
- (3) You have a personal interest in any business of your authority where either –
 - (a) it relates to or is likely to affect –
 - (i) any body of which you are a member or in the position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body –
 - (a) exercising functions of a public nature;
 - (b) directed to charitable purposes; or
 - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or are in a position of general control or management;
 - (iii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50; or
 - (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial

position or the well-being or financial position of a relevant person to a greater extent than the majority of (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

- (4) In sub-paragraph (3)(b), a relevant person is –
- (a) a member of your family or a close associate; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (3)(a)(i) or (ii).
- (5) Subject to sub-paragraph (6), you have a disclosable pecuniary interest as defined by section 30 of the Localism Act 2011 in any business of your authority where (i) you or (ii) your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) has any interest within the following descriptions:

Interest	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.

Interest	Description
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on interests are subject to the following definitions:

"body in which the relevant person has a beneficial interest" means a firm in which the relevant person is a partner, or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

"director" includes a member of the committee of management of an industrial and provident society;

"land" includes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

"M" means the person M referred to in section 30 of the Localism Act 2011;

"member" includes a co-opted member;

"relevant authority" means the authority of which M is a member;

"relevant period" means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) of the Localism Act 2011;

"relevant person" means M or any other person referred to in section 30(3)(b) of the Localism Act 2011;

"securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

- (6) In sub-paragraph (5), any interest which your partner may have is only treated as your interest if you are aware that your partner has the interest.

9 Disclosure of Personal Interests (See also Part 3)

- (1) Subject to sub-paragraphs (2) to (5), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which any matter relating to the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (3) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest and, if also applicable, that it is a disclosable pecuniary interest, but need not disclose the sensitive information to the meeting.
- (4) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision on any matter in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (5) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

10 Prejudicial Interest Generally

- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where either –

- (a) the interest is a disclosable pecuniary interest as described in paragraph 8(5); or
 - (b) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) For the purposes of sub-paragraph (1)(b), you do not have a prejudicial interest in any business of the authority where that business –
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of –
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

11 Interests Arising in Relation to Overview and Scrutiny Committees

You also have a personal interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where –

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

12 Effect of Prejudicial Interests on Participation

- (1) Subject to sub-paragraph (2) and (3), where you have a prejudicial interest in any matter in relation to the business of your authority –
 - (a) you must not participate, or participate further, in any discussion of the matter at any meeting, or participate in any vote, or further vote, taken on the matter at the meeting and must withdraw from the room or chamber where the meeting considering the matter is being held –
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the matter is being considered at that meeting;unless you have obtained a dispensation from your authority's monitoring officer or standards committee;
 - (b) you must not exercise executive functions in relation to that matter; and
 - (c) you must not seek improperly to influence a decision about that matter.
- (2) Where you have a prejudicial interest in any business of your authority which is not a disclosable pecuniary interest as described in paragraph 8(5), you may attend a meeting (including a meeting of the overview and scrutiny committee of

your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

- (3) Where you have a prejudicial interest which is not a disclosable pecuniary interest as described in paragraph 8(5), arising solely from membership of any body described 8(3)(a)(i) or 8(3)(a)(ii)(a) then you do not have to withdraw from the room or chamber and may make representations to the committee but may not participate in the vote.

Part 3

REGISTRATION OF INTERESTS

13 Registration of members' interests

- (1) Subject to paragraph 14, you must, within 28 days of –
 - (a) this Code being adopted by the authority; or
 - (b) your election or appointment to office (where that is later), register in the register of members' interests details of –
 - (i) your personal interests where they fall within a category mentioned in paragraph 8(3)(a) and
 - (ii) your personal interests which are also disclosable pecuniary interests where they fall within a category mentioned in paragraph 8(5)

by providing written notification to your authority's monitoring officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest falling within sub-paragraphs (1)(b)(i) or (1)(b)(ii) or any change to any personal interest registered under sub-paragraphs (1)(b)(i) or (1)(b)(ii), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

14 Sensitive Information

- (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, the monitoring officer shall not include details of the interest on any copies of the register of members' interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in the register of members' interests.
- (3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

15 Dispensations

- (1) The Audit and Standards committee, or any sub-committee of the Audit and Standards committee, or the monitoring officer may, on a written request made to the monitoring officer of the authority by a member, grant a dispensation relieving the member from either or both of the restrictions in paragraph 12(1)(a) (restrictions on participating in discussions and in voting), in cases described in the dispensation.
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Audit and Standards committee, its sub-committee, or the monitoring officer -
 - (a) considers that without the dispensation the number of persons prohibited by paragraph 12 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
 - (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
 - (c) considers that granting the dispensation is in the interests of persons living in the authority's area;
 - (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by paragraph 12 from participating in any particular business to be transacted by the authority's executive; or
 - (e) considers that it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Paragraph 12 does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

Note from Monitoring Officer: Councillors are reminded that quite apart from the Code of Conduct, section 106 of the Local Government Finance Act 1992 restricts the rights of Councillors who are two months or more in arrears with their council tax payments. Any such member must disclose the fact and must not vote at any meeting on decisions being taken which might affect the level of the council tax or the arrangements for administering it. Failure to comply is a criminal offence.

Appendix 1

CODE OF CONDUCT OF MEMBERS

As a member or co-opted member of Lewes District Council I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

The Seven Principles of Public Life

Selflessness

- 1 Members should act solely in terms of the public interest.

Integrity

- 2 Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

- 3 Members must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

- 4 Members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

- 5 Members should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

- 6 Members should be truthful.

Leadership

- 7 Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix 2

Non-exhaustive Examples of Bullying and Harassment

With reference to paragraph 3(2)(b) of this Code –

(1) Examples of bullying behaviour include, without limitation:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decision on the basis of sexual advances being accepted or rejected.
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading or constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities
- invading someone's personal space
- speaking to someone in an overbearing manner
- using aggressive body language
- undermining or belittling someone
- any of the behaviours listed above, occurring on a single, repeated or habitual basis

(2) Examples of harassment include, without limitation:

- making abusive, derogatory, patronising, suggestive or sexualised comments or sounds
- making jokes or insulting gestures or facial expressions
- ridicule
- offensive e-mails, tweets or comments on social networking sites
- trolling via social networking sites
- threats of aggression or intimidation
- making false and malicious assertions
- intrusive questioning about private matters
- display of offensive material
- unwanted comments on dress or appearance
- any of the behaviours listed above, occurring on a single, repeated or habitual basis.

In confidence to Members of the Panel and the Monitoring Officer

Comments to the Panel Hearing on the investigation into complaint against me

Isabelle Linington 11 November 2021

1. Preface to comments

The complaint against me revolves around my 18 March communication with two Panel members (Cllrs Davis and Burman) ahead of the Panel Hearing next day into a complaint made against Cllr Gauntlett. As written, the Investigating Officer's report is likely to damage previously cordial relations with Cllr Gauntlett who I have always held in high regard and would never wish to be mistreated. This adds to the upset over the unfair and extremely damaging allegations made against me by Cllrs Davis and Burman.

Although standard LDC practice, I do consider it unfair that the Investigation Report will be made publically available before the Panel Hearing. Because of this, my personal and political reputation will already have been damaged in the eyes of the public well before I am able to put my case to the Panel.

2. Key elements that I wish to bring to the attention of the Panel

- (a) In the Investigation Report, the words attributed to me in my phone calls to Cllrs Davis and Burman have been shorn of the uncertainty and the qualifying comments expressed during the interview with the Investigating Officer (IO). This has the effect of changing something that was said with the intention of reassuring the Panel members ahead of the unpleasant task ahead of them, into an apparent instruction. While I have been attributed as saying my comments were jokey, what I was trying to convey was that they were said off-the-cuff and with no implied gravity. I regret not challenging the wording in the summary note of my interview. That I didn't was because I received the draft when I was being pulled in many directions in my personal life and consequently did not give it the consideration merited. I made some quick amendments and later agreed these were accurate but I did not, in fact, confirm the whole note was accurate. Because it was a summary note, I assumed that full information provided in my interview would be used for the final Investigation Report. The rather selective use of my words in the Investigation Report and the certainty ascribed to my motives is not what I would have expected of a balanced investigation. Additionally, although it is stated in the Investigation Report that there is no dispute that I wanted Cllr Gauntlett to be found guilty of a breach of the Code – **this is precisely what is in dispute**. My subsequent protestations were dismissed by the IO.
- (b) I have decided that, although in my interview, I wished to avoid making reference to Group speculation about the effect of the 19 March adjudication, it is material to explaining why I made my comments to the two councillors. I have therefore referenced it below.
- (c) The Investigation Report has ruled that 'matters relating to internal political group dynamics and relationships' are not in scope. Consequently, little of the 1.5 hour interview with the IO, and the documented evidence provided, has found its way into the Report. However, without the background to the relationship between me and both Cllrs Davis and Burman, it is *impossible* to assess the likely reliability of their allegations. In the absence of the background, it is difficult to see how any councillor can defend themselves in such a case. [REDACTED] felt obliged, just before the complaint was made,

to email the complainant, copied to the Group, asking [REDACTED]
[REDACTED] Additionally he said that Cllr Davis's treatment of
me [REDACTED] This indicates that there is more to this
complaint than the Investigation Report suggests. I strongly contend that without an
understanding of the background, including the reason behind the four month delay in
making this complaint, I cannot receive a fair hearing.

3. Questions concerning the complaint against me

This complaint fits into a pattern of behaviour shown by Cllr Davis towards me that started
in 2019, well before the matter in hand. He has sought to find fault with my leadership on
every possible occasion and other councillors in the Group have expressed concern about his
behaviour [REDACTED] email is referenced above, others have expressed their views
verbally, and examples of pre-complaint emails within the Group include: 23 Oct 19 – [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] In consequence, it is my contention that the complaint
was made by grossly exaggerating one brief, well-meaning comment with the intention that
the threat of a subsequent complaint procedure would encourage me to quickly resign as
Group Leader. Despite now being on a path that could lead to considerable personal and
political damage, I'm not prepared to acquiesce to such behaviour and feel it would be
unfair to see it rewarded.

Both Cllrs Davis and Burman were on the Audit & Standards Committee at the time. Cllr
Davis claims that he felt coerced by me on 18 March to find against Cllr Gauntlett at the
Panel Hearing next day and that I said '*of course you will find him guilty*' and '*we want him to
resign*'. Cllr Burman claims that I said '*We need this resignation it would help regain control. I
want to make sure that you are aware of that and act accordingly*'. If such intolerable and
imperative wording had *actually* been used, Cllrs Davis and Burman, as members of the
Audit & Standards Committee, would have known that they had to report the phone calls
immediately to the Monitoring Officer (MO) because such a clear attempt to influence
would have undermined the Panel Hearing. I think it also reasonable to ask, given their
negative attitude towards my leadership, whether (a) it is likely that I would have
intentionally risked such an attempt to influence them or have behaved coercively knowing
the possibility of its future use against me or (b) why I would have expected either to work.
The suggestion that I could have intimidated two senior businessmen is ludicrous given they
are used to staff following their instructions unquestioningly and they had already displayed
little respect for me.

In the event, Cllr Burman claims to have discussed the matter with Cllr Davis and he says
they decided that the matter had not breached the Code. As one of several inconsistencies

in their combined testimony, Cllr Davis said that the first time he considered whether the code had been breached was in July. Either way, their actions are astonishing given the words they attribute to me. I submit that given the above, the complaint is based on phrases that were never used.

Despite what is claimed, I was not aware of anything being amiss either during the phone calls on 18 March or in the period leading up to the complaint. Consequently, the time delay has put me at a considerable disadvantage as I made no notes (which I surely would have had I sensed a problem). Such notes would have been helpful to me in this case because I now have to fall back on memory of events that had little significance at the time.

It is my contention that Cllr Davis decided to try to make my position untenable, with no thoughts to my personal consequences, in a fit of pique, by making contact with the MO on 15 July (knowing that his enquiry would lead to it being made a complaint) because of four factors: (a) continuing solid support for me from the majority of the Group; (b) [REDACTED] emails; (c) the lack of traction when he aired his complaint for the first time at the Group Meeting on 14 July; and (d) [REDACTED]
[REDACTED]

The report states that at that Group meeting, Cllr Burman said I asked why he and Cllr Davis were not supporting me. As I said in my interview, what I actually asked Cllr Davis was to explain 'the issue' that he referred to in his 13 July email to the Group that said [REDACTED]
[REDACTED] as I had no idea what it was. Cllr Burman was logged into the meeting while driving his car at the time and this may explain why he can't recall with accuracy what was said.

Having contacted the MO on 15 July, Cllr Davis phoned Cllr Liz Boorman to say he was taking legal advice about me and asked her to take over the leadership which she declined because I had her full support. He expressed to her that [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] His motive is further reinforced by the fact that he went on to tell the IO that my resignation as Group Leader would resolve the complaint. Despite the material significance of this phone conversation, the IO refused to interview Cllr Liz Boorman. Additionally, despite referencing the Group Meeting of 14 July, the IO didn't interview other councillors present.

4. Why did I contact Cllrs Davis and Burman ahead of the Panel Meeting?

Much has been implied of my motives for contacting both councillors ahead of the Panel Meeting. Cllr Davis was a late substitute on the Panel for [REDACTED]
[REDACTED] and for whom no call would have been necessary. My experience has been that Cllr Davis can turn up to meetings not having read the relevant papers, or even fail to turn up. He had also experienced problems with receiving Council emails. I wanted to make sure that for such an important meeting, he had received all the documents and had read them. With Cllr Burman, it was a follow-up of his February phone call to me (in which he said that he was confused by procedures, a call he claims that he can't remember) to make sure he was now comfortable with procedures, though I sensed he didn't like to be reminded of his previous call. Because these were calls to colleagues, I concluded them with some general

conversation. It is this, and recollections of it, around which the complaint against me is based.

I have been told by the IO that I was acting as a Councillor in making these phone calls though my understanding at the time was that I was acting solely as Group Leader (and Cllr Burman appears to have thought this as well) and in a pastoral role.

5. Supporting evidence to the complaint

Fundamentally, this complaint revolves around my word against those of two others whom admit to having been in discussions with one another. Because they share the same desired outcome (my removal as Group Leader) and have been in discussion, I would contend that Cllr Burman is not an independent witness and that caution to this effect should have been expressed in the Investigation Report. Furthermore, Cllr Burman's recollection is not reliable. Cllr Davis states that Cllr Burman told him that he stood down as a candidate for the East Sussex County Council elections because of 'disgust' over my phone call to him. I proved that this assertion was incorrect in my interview and again in response to the draft report yet it is still in the final Investigation Report. Cllr Burman phoned me to tell me he was standing down on 1 March and I offered the IO an email from the [REDACTED] i.e., he resigned as a candidate 17 days *before* the phone call relating to this complaint. Demonstrably misleading inaccuracy has been used to reinforce the complaint.

Cllr Burman claims not to remember phoning me in mid-February about his uncertainty over the procedures having been appointed to the Panel. However, I have clear recollection that he did call me on this matter because I remember thinking it odd that he was actually admitting to not understanding something. The conversation involved an explanation by me of the hearing process. I said that from what I could remember it was rather like a Licensing Hearing, and that the MO would explain everything and take them through the procedure.

The Investigation Report gives significant space to what Cllr Davis's wife claims she heard. Cllr Davis claimed at the Group Meeting on 14 July that (although not informing me at the time) I had been on speakerphone when phoning him and that his wife had heard everything I said. I offered this information to the IO though it turns out Mrs Davis did not actually hear what I was saying but only her husband's responses (and even these are not as I recollect). By reporting that I was on speakerphone, it would appear that Cllr Davis was attempting to convince the Group of the truth of what he was saying. As the wife of the complainant, Mrs Davis is not an independent witness, and, consequently, it is unfair that her evidence, which in any case was indirect, is still in the Investigation Report despite a request that it be removed. Additionally, Cllr Davis's diary record of my phone call need not have been contemporary with events.

6. Content of the phone calls on 18 March

In my interview, I made it very clear to the IO that so many months after the event, I had no clear recollection of the exact words spoken to Cllrs Davis and Burman. I could have left it there but in trying to shed light on how the complaint might have arisen, I proffered words that I believed had been deliberately exaggerated in the complaint. The IO focused down on and selected certain of the words proffered and, despite raising the matter subsequently,

declined to add the qualifying words given in the interview or to reflect the uncertainty expressed.

When news of the Cllr Gauntlett's Panel Hearing first became public and the Investigation Report for that case had suggested he had breached the Code, there was inevitable speculation within the Group as to the implications should the Panel uphold that Report. There was never any suggestion within the Group of trying to influence the outcome. It would be surprising if there was not equivalent speculation about this current case. I had hoped to avoid mentioning this speculation during the investigation but see that it may be material to the case.

Because both Cllrs Davis and Burman may have been aware of this speculation, I wanted to clarify in the lightest possible way that, even were the breach to be substantiated, there would not necessarily be the political advantages that some supposed. I hoped that this removed any political baggage they might be carrying.

My recollection is that having checked that Cllr Davis had received and read his papers and that Cllr Burman was now comfortable with procedures, I said that it was neither a nice job for them nor nice for Cllr Gauntlett to be subject to the Panel Hearing. I went on to say that I felt sorry for Cllr Gauntlett. The gist of what I then said summarised the situation that *while* it may be good if Cllr Gauntlett had *indeed* breached the Code, the sanction of resignation was not something the Panel could impose and other sanctions were unlikely to have much of an effect on the Alliance administration. What is very clear to me is that this comment had none of the imperative commands attributed to me and, despite the comments attributed to me by him, Cllr Burman is quoted as saying that he *still* considers it wasn't a breach and 'does not consider the call an attempt to improperly influence him'. In the Investigation Report, the gist of what I said became truncated and was morphed into 'It would be good if you found him guilty and then we could seek his resignation'. This has changed the meaning and suggests very much more than was the case.

It is astonishing that Cllr Burman claims our call ended on a sour note as I have absolutely no recollection of this. After reading about the outcome of the hearing, I sent Cllr Burman a WhatsApp message purely to understand what had happened. In a subsequent phone call, I certainly did not call him weak. The call connection was lost and so I sent a WhatsApp message (also available but not used) wishing him a good trip [REDACTED] and looking forward to catching up when he was back i.e., there is no suggestion of annoyance on my part. Like so much of this case, my recollection of events does not accord with his.

There was absolutely no intent to influence the outcome one way or another and neither do I believe that the responses of Cllrs Davis and Burman at the time suggested that it had been taken that way. It appears to have suited their purposes months later to place a completely different interpretation on what was said. Indeed, when Cllr Davis said in the phone call that he would be weighing up the evidence, I said 'yes, that is all you can do'. This is referenced in the Investigation Report and is hardly indicative of coercive, intimidating or influencing behaviour. I believe that viewed in its entirety, my comments were neither an attempt to improperly influence nor an attempt to confer an advantage.

I take my role as a councillor and as Group Leader very seriously. I would never knowingly do anything as a councillor or as Group Leader which would reflect badly on, or bring into disrepute, the Council, the Conservative Group or the Conservative Party. As such, I have a completely clear conscience over my propriety in respect of the allegation made against me.

Lewes District Council

Standards Panel Hearing – 23 November 2021

Order of Proceedings

1. Chair to introduce the Panel members and those advising or assisting, as follows–
 - (i) Standards Panel, consisting of Cllrs Christine Robinson, Christine Brett and Nancy Bikson.

The role of the Panel is–

(a) to hear verbal submissions from:

- the Investigating Officer, Sandra Prail
- the complainant, Cllr Phil Davis
- the Member against whom the allegation was made, Cllr Linington ('the Subject Member')
- the witness called by the Subject Member

(b) having regard to the Investigating Officer's written report and all verbal submissions received, to decide–

- whether Cllr Linington failed to comply with Lewes District Council's Code of Conduct for Members; and
- if there was a failure, what sanction (if any) to impose or recommend.

- (ii) Independent Person, Neal Robinson – whose views on the allegation against Cllr Linington **must** be sought by the Panel and taken into account before we decide on whether she failed to comply with the Code. The Independent Person himself does not vote on the matter; the final decision rests solely with the three Panel members.

If the Panel decides that a failure did occur, the Panel will consult the Independent Person before deciding whether to apply or recommend a sanction (and if so, what).

- (iii) The Monitoring Officer, Oliver Dixon, and Deputy Monitoring Officer, Simon Russell, who will provide impartial advice to the Panel on matters of law and procedure. They will not express any view on the

evidence heard or seek to influence the Panel's decision.

(iv) Committee Officer (Nick Peeters) – to take minutes

The hearing of verbal submissions and any questioning of the Subject Member or witnesses will take place in open session. The Panel's deliberations will take place in private. The Panel's decisions will be announced in open session.

2. Investigating Officer to present her written report.
3. Questions from the Panel to the Investigating Officer (and to the complainant if necessary).
4. Submissions to the Panel from the complainant
5. Questions to the complainant from the Panel.
6. Submissions to the Panel from the Subject Member.
7. Questions from the Panel to the Subject Member (and to her witness if necessary).
8. Investigating Officer, complainant and Subject Member to sum up.
9. Panel goes into closed session to consider their decision.
10. Once the Panel reaches their decision, the hearing reconvenes and the Chair announces the decision as to whether or not, in respect of the allegation, the Subject Member failed to comply with the Council's Code of Conduct for Members.
11. If the Panel finds there was a failure, they will invite representations from the Subject Member as to any sanction the Panel might impose, i.e. any mitigating factors she wishes the Panel to take into account.
12. Panel goes into closed session to consider what (if any) sanctions to impose.
13. Panel reconvenes and the Chair announces the decision on sanctions.
14. The Monitoring Officer will, in consultation with the Chair, prepare a notice of the Panel's decision and any sanctions as soon as practicable after the hearing, and publish it on the Council's website. A copy of the notice will be sent to the Subject Member and complainant. The Panel's decision will be reported to the next convenient meeting of the full Council.

Hearings Procedure

The following process will be followed when a decision has been taken that a hearing, as to whether a member has breached the code of conduct, is required.

Pre-hearing process

The Monitoring Officer will, where possible, arrange for the Standards Panel to meet to hear the complaint within 3 months of receiving the Investigating Officer's report. They should aim to find a date which the witnesses, the Investigating Officer, the complainant and the Subject Member (the member against whom the complaint has been made) can attend. They should give all those involved, particularly the Subject Member, sufficient notice of the hearing. The Monitoring Officer should aim to arrange a hearing which can take place in one day or consecutive days without the need to have gaps between sittings or lengthy days.

The Standards Committee and the Standards Panel are subject to the normal requirements on confidential and exempt information as any other Committee under ss100 A to K and Schedule 12A of the Local Government Act 1972. The Monitoring Officer will consider whether these provisions apply in advance of the hearing.

The Monitoring Officer will require the Subject 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.

If the Subject Member wishes to rely on evidence at the hearing, they should provide it to the Monitoring Officer as soon as possible. The Investigating Officer may have taken a witness statement from them or set out their comments in their report but if the Subject Member wishes to add to what the Investigating Officer has written they should provide a witness statement to the Monitoring Officer as soon as possible.

The Panel will not allow new arguments or evidence to be presented at the hearing.

The Monitoring Officer will decide what evidence will need to be heard, and what written evidence can be read at the hearing. The Monitoring Officer should take account of the views of the witnesses and the Subject Member in reaching such decisions.

The Monitoring Officer can consult the Chair of the Hearing Panel if he/she feels their guidance would assist and ask the Chair to issue directions in relation to the pre-hearing process.

The Monitoring Officer may wish to offer to cover the expenses of witnesses associated with their attendance at the hearing.

The Monitoring Officer will consider whether it is appropriate to hear two complaints together, for example if they relate to the same member, or relate to the same incident or occasion.

The Subject Member should be provided with the Investigating Officer's report and any evidence which will be heard at the hearing.

The Monitoring Officer should provide the members of the Hearing Panel with all the evidence in advance of the hearing so that they can read it to identify any potential conflicts of interest.

The Monitoring Officer will provide the Hearing Panel with a report which summarises the allegation. This should include a list of agreed facts and disputed issues and outline the proposed procedure for the hearing.

The Monitoring Officer will act as a point of contact for the Subject Member, the complainant, the Independent Person and any witnesses who will give evidence.

The Hearing

The hearing will generally take place in public.

An Independent Person will be invited to attend the hearing and may be asked to comment if the Panel thinks it is appropriate. This will be an Independent Person who has not previously been consulted by the Subject Member.

If the Subject Member does not attend the hearing, the Panel may adjourn the hearing or may continue to reach a decision on the basis of the Investigating Officer's report and any evidence they hear, if they decide to hear evidence.

Whilst the hearing is a meeting of the authority, it is not a court of law. It does not hear evidence under oath. The rules of natural justice should nevertheless be followed and the Hearing Panel will have due regard to the seriousness of the proceedings for those involved, the Council and the public.

The Panel will decide disputed issues and whether the Subject Member has breached the code on the balance of probabilities.

Representation

The Subject Member may choose to be represented by any person they wish. They will have to bear any cost of being represented. The Panel may refuse to allow a representative to remain at the hearing if they are disruptive. The Panel will have the discretion to hear opening or closing arguments from the Subject

Member and the Investigating Officer if they feel it would assist them in reaching a decision.

Evidence

The Panel will control the procedure and evidence presented at a hearing, including the number of witnesses and the way they are questioned. All matters relating to the evidence and procedure are within their discretion.

Generally the Subject Member is entitled to present their case as they see fit.

The Panel will usually have regard to submissions from the Subject Member if they are considering whether to hear particular evidence.

Witnesses of facts that are disputed would normally be expected to attend to be questioned. Character witnesses will normally provide written evidence which can be read at the hearing.

Witnesses should be treated with courtesy throughout the pre-hearing stage and at the hearing.

Witnesses may be questioned by the Panel, the Monitoring Officer and the Subject Member. This discretion should generally be unfettered by the Panel unless there is good reason to do so.

The onus is on the Subject Member to ensure the attendance of witnesses who they would like to give evidence to assist them. The Panel can limit the number of witnesses or the issues which can be covered by them.

Neither the Panel nor the Subject Member will have any power to compel witnesses to give evidence.

At the Hearing

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. The Investigating Officer is likely to ask the complainant to attend and give evidence to the Panel. The Investigating Officer may be asked about their report or any matters relating to their involvement.

Role of Monitoring Officer

References to the Monitoring Officer should be read to include any representative of the Monitoring Officer.

The Monitoring Officer has a key role in ensuring the smooth running of the pre-hearing and hearing process. They will remain neutral throughout and will provide independent advice to the Panel

Role of the complainant

The role of the complainant will usually be limited to being a witness and they are not a party to the proceedings. However, the Panel may wish to consult them at any stage in the hearing if they feel their comments would assist them.

Decision

The Panel must consult the Independent Person in reaching their decision.

The Panel may wish to retire to consider their decision. The Monitoring Officer may assist them in constructing the reasons for their decision. The Monitoring Officer will not express any view on the evidence heard or the decision to be reached.

The Panel will reach a decision as to whether the subject member has breached the code of conduct. If they decide that the Subject Member has not breached the code of conduct they will take no further action. If they decide that the Subject Member has breached the code of conduct they should go on to decide what sanction, if any, is appropriate.

Sanctions

The Panel must consult the Independent Person before imposing any sanction and give the Subject Member the opportunity to make representations.

The Panel should consider all the mitigating and aggravating circumstances that appear to them to be relevant. For example, they may wish to consider:

- What were the actual and potential consequences of the breach?
- How serious was the breach?
- What is the attitude of the Subject Member now? Have they apologised?
- Has the Subject Member previously been dealt with for a breach of the code?

The following are example of mitigating and aggravating factors but these lists should not be regarded as exhaustive.

Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the code
- A previous record of good service
- Evidence that they were suffering from ill health at the time of the breach

Aggravating Factors

- Dishonesty
- Continuing to deny the facts or blaming other people

- Evidence of a failure to follow advice or warnings

The priority of the Panel should be to ensure that there are no further breaches of the code and that public confidence is maintained.

Sanctions

The sanctions available to the Panel are:

- Publish its findings in respect of the member's conduct,
- Write a formal letter to the councillor found to have breached the code,
- Report its findings to Council for information,
- Seek formal censure through a motion at Council,
- Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council,
- Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities,
- Instruct the Monitoring Officer to arrange training, mediation or other appropriate remedy, for the Member.
- Recommend to Council or to the Town/Parish Council (if applicable) that the member be removed from some/all outside appointments to which he/she has been appointed or nominated by the authority or by the Town/Parish Council.

Notice of decision

As soon as is reasonably practicable after the hearing, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to the complainant, the Subject Member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

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