
INVESTIGATION AND DETERMINATION OF COMPLAINTS

1 SUMMARY

- 1.1 This report details revised rules of procedure for the investigation and determination of complaints ('arrangements') against Members of the District Council and the District's Parish/Town Councils, following enactment of the Localism Act 2011. The report also sets out a programme for establishing a Standards Sub-Committee to act as a hearing panel, in cases where a complaint requires a hearing.

2 INTRODUCTION

- 2.1 The Localism Act requires that the Council adopts 'arrangements' under a Complaints Procedure for dealing with complaints of a breach of the Code of Conduct. Under these 'arrangements' the District Council also has responsibility for dealing with standards complaints against elected and appointed Members of the District's Parish/Town Councils. These 'arrangements' are set out in the Complaints Procedure attached to this report.

3 COMPLAINTS PROCEDURE

- 3.1 The Complaints Procedure sets out how a complaint can be made that a District/Parish Member has failed to comply with the Councillors' Code of Conduct and how such complaints can be investigated and decisions made. The revised Councillors' Code of Conduct, which complies with Section 28 of the Localism Act 2011 and the principles contained in that section, took effect from 1 July 2012. The District Council and each Parish/Town Council is required to adopt a Code of Conduct.
- 3.2 Council on 17 April 2012 agreed that the Monitoring Officer be appointed as the Proper Officer to receive complaints. The Monitoring Officer will review every complaint received and may consult with the Independent Person before taking a decision as to whether or not the complaint merits further investigation. The Monitoring Officer can either refer the matter to a Standards Sub-Committee for a hearing or, in consultation with the Independent Person, seek an informal resolution.
- 3.3 The Standards Sub-Committee will have delegated powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct.

4 STANDARDS SUB-COMMITTEE

- 4.1 The views of one of the Independent Persons must be sought before a decision can be taken on an allegation made about a Member that it has been decided shall be investigated. The advice of one of the Independent Persons

may also be sought at any other stage of the process by either the District Council or by a Member against whom an allegation has been made.

- 4.2 If the Monitoring Officer considers that there is evidence of a failure to comply with the Code of Conduct, there are the options of either an informal resolution, where the Monitoring Officer consults with an Independent Person and the complainant to agree a fair resolution, or the matter can be referred to the Standards Sub-Committee to conduct a local hearing. The Sub-Committee will have authority to take decisions in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct.
- 4.3 The Standards Sub-Committee will need to be constituted on an ad hoc basis each time a hearing is required. It would be appropriate for each Sub-Committee to comprise four Standards Committee District Councillors with voting rights and one Parish Member. An Independent Person will be invited to all Sub-Committee meetings to offer advice.
- 4.4 A rota system will be used to determine the membership of the Sub-Committee each time it is formed to hear a case.
- 4.5 Three District Council Members will be required to be present throughout the hearing to form a quorum. The Sub-Committee will appoint a District Council Member as Chairman for the meeting.

5 CRIME AND DISORDER IMPLICATIONS

- 5.1 If criminal conduct is identified the Monitoring Officer has the power to refer the matter to the Police.

6 LEGAL IMPLICATIONS

- 6.1 The Council has a statutory duty to have in place 'arrangements' to deal with allegations of a failure to comply with the Code of Conduct by Members.

7 PARISH IMPLICATIONS

- 7.1 The District Council has responsibility for dealing with 'standards' allegations against Members of the District's Parish/Town Councils.

8 RECOMMENDATION

- 8.1 It is proposed that the Committee **RESOLVES**
 - (1) To endorse the revised rules of procedure for the investigation and determination of complaints ('arrangements') to replace those currently in the Council's constitution.
 - (2) To establish a Standards Sub-Committee to hear allegations of breaches of the Code of Conduct by District and Parish/Town Council Members. The Sub-Committee to comprise four District Councillors, an

Independent Person and a Parish Councillor. The membership of the Sub-Committee to be determined on a rota basis.

Albert Bugeja

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Background Papers:-

None.

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Complaints Procedure

1 Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of this authority (*or of a Parish Council within its area*) has failed to comply with the Councillors’ Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Councillors’ Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the authority (*or of a Parish Council within the authority’s area*), or of a Committee or Sub-Committee of the authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member (*or a Member or co-opted Member of a Parish Council*) against whom an allegation has been made.

2 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available for inspection on the authority’s website and on request from Reception at the Council Offices. Each Parish Council is also required to adopt a Code of Conduct, which is similarly available.

3 Making a complaint

- 3.1 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of Members’ interests and who is responsible for administering the system in respect of complaints of Member misconduct.
- 3.2 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the authority’s website, next to the Code of Conduct, and is available on request from the Reception at the Council Offices.
- 3.3 Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.4 The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it, and will keep you informed of the progress of your complaint.

- 3.5 The Complaints Procedure Flowchart is attached at Appendix 1 for your assistance

4 Will your complaint be investigated?

- 4.1 The Monitoring Officer will review every complaint received and may consult with the Independent Person before taking a decision as to whether it:-

4.1.1 Merits no further investigation

4.1.2 Merits further investigation

4.1.3 Should be referred to the Standards Committee

- 4.2 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria attached at Appendix 2. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the Member against whom your complaint is directed. *(Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation).*

- 4.3 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Member or the authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

- 4.4 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

5 How is the investigation conducted?

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached at Appendix 3 to these arrangements.

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

- 5.3 The Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, and to identify what documents he/she needs to see and who he/she needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.
- 5.4 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report ("the Investigation Report") and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 5.5 Having received and taken account of any comments which you may make on the draft Investigation Report, where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer.

6 What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

- 6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned (*and to the Parish Council, where your complaint relates to a Parish Councillor*), notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigation Final Report.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

7 What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

- 7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Sub-Committee or, in consultation with the Independent Person, seek an informal resolution.

Informal Resolution

- 7.1.1 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will

consult with the Independent Person and with you as complainant and seek to agree what you may consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee *(and the Parish Council)* for information, but will take no further action.

Hearing

- 7.1.2 If the Monitoring Officer considers that informal resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Sub-Committee which may conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

The Council has agreed a procedure for hearing complaints, which is attached at Appendix 4.

At the hearing, the Investigating Officer or the Monitoring Officer will present her/his report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8 What action can the Standards Sub-Committee take where a Member has failed to comply with the Code of Conduct?

- 8.1 The Council has delegated to the Sub-Committee such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may:-

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- 8.1.1 Publish its findings in respect of the Member's conduct;
 - 8.1.2 Report its findings to Council (*or to the Parish Council*) for information;
 - 8.1.3 Recommend to Council that he/she be issued with a formal censure or be reprimanded (*or to the Parish Council;*)
 - 8.1.4 Recommend to the Member's Group Leader (or in the case of ungrouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - 8.1.5 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - 8.1.6 Instruct the Monitoring Officer to (*or recommend that the Parish Council*) arrange training for the Member;
 - 8.1.7 Remove (*or recommend to the Parish Council that the Member be removed*) from all outside appointments to which he/she has been appointed or nominated by the authority (*or by the Parish Council*);
 - 8.1.8 Withdraw (*or recommend to the Parish Council that it withdraws*) facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or
 - 8.1.9 Exclude (*or recommend that the Parish Council exclude*) the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.2 The Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' or special responsibility allowances.

9 What happens at the end of the hearing?

- 9.1 At the end of the hearing, the Chair will state the decision of the Standards Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee has resolved to take.
- 9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the Member, the Parish/Town Council Clerk if the complaint relates to a Parish/Town Council.

10 What is the Standards Sub-Committee?

- 10.1 It is a Sub-Committee comprising Councillors appointed to the authority's Standards Committee.

- 10.2 If the Councillor complained about is a Member of a Parish Council a Parish Councillor who is a Member of the Standards Committee will also be invited to attend the Sub-Committee.
- 10.3 The Independent Person is invited to attend all Sub-Committee meetings and his/her views are sought and taken into consideration before the Sub-Committee takes any decision on whether a Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11 Who is the Independent Person?

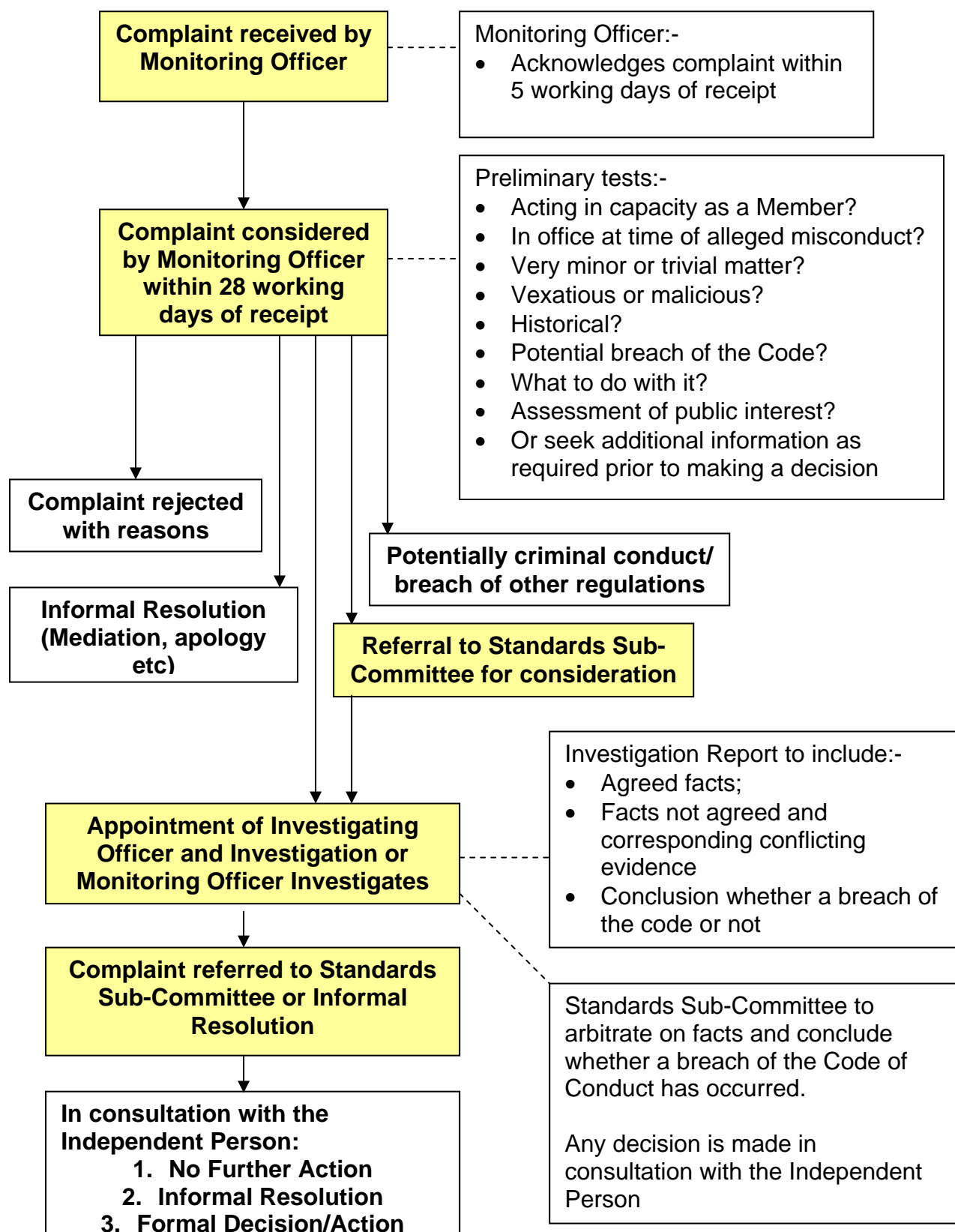
- 11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy, and is appointed by a positive vote from a majority of all Members of the Council.
- 11.2 A person cannot be "independent" if he/she:-
- 11.2.1 Is, or has been within the past five years, a Member, co-opted Member or officer of the authority, subject to the transitional provisions applicable to existing Independent Members;
 - 11.2.2 Is or has been within the past five years, a Member, co-opted Member or officer of a Parish Council within the authority's area.

12 Appeals

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

Appendix 1

Complaints Procedure Flowchart



**Appendix 2
Standards Complaints Assessment Criteria**

Complaints which would not normally be referred for investigation:-

- (1) The complaint is not considered sufficiently serious to warrant investigation; or
- (2) The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
- (3) The complaint appears to be politically motivated; or
- (4) It appears that there can be no breach of the Code of Conduct. For example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
- (5) It is about someone who is no longer a Councillor.
- (6) There is insufficient information available for a referral; or
- (7) The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances. For example, an allegation of bullying, harassment etc; or
- (8) The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
- (9) The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Sub-Committee; or
- (10) It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct.
- (11) Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

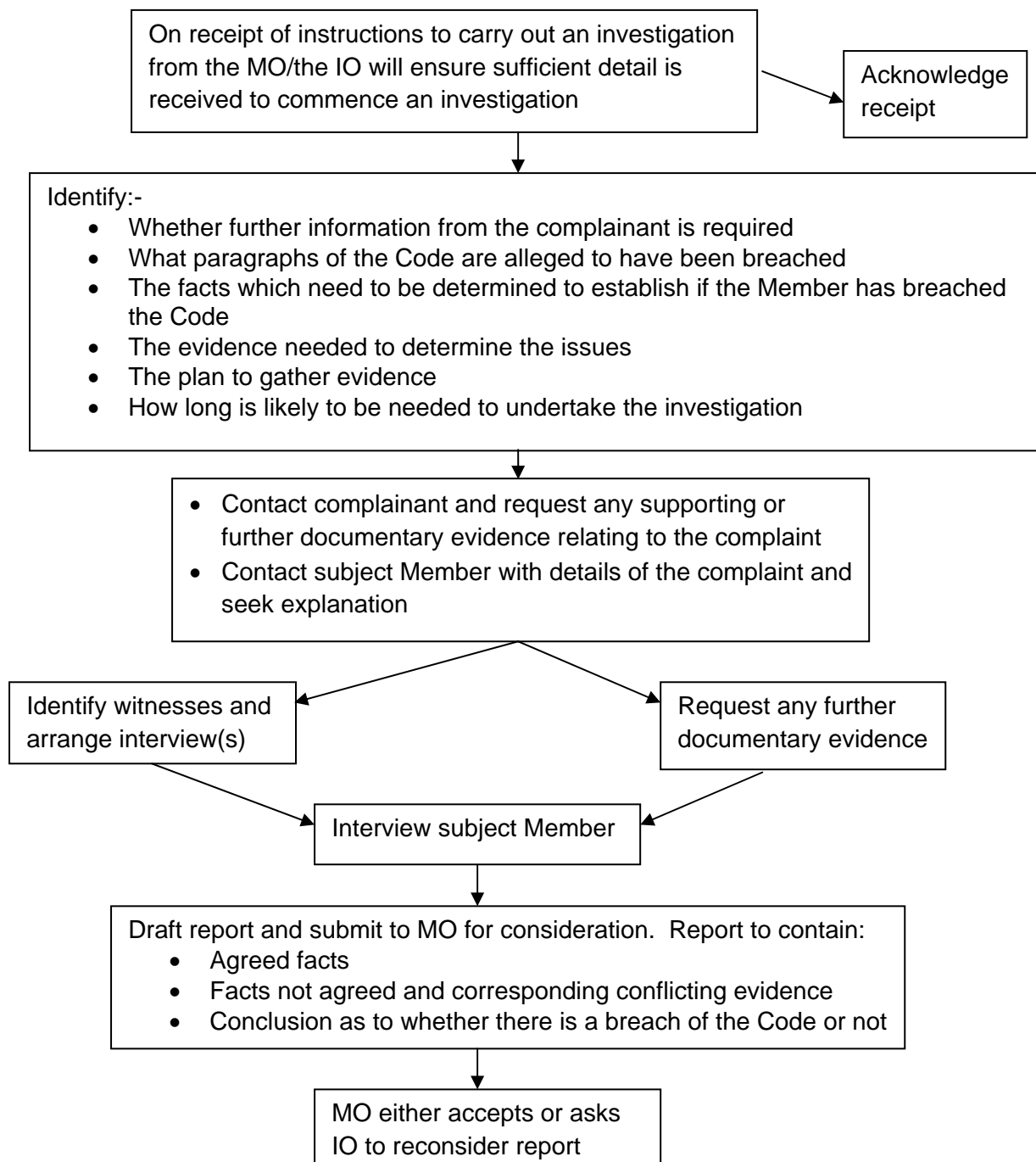
Complaints which may be referred to the Standards Committee:-

- (1) The complaint is serious enough, if proven, to justifying the range of actions available to the Standards Sub-Committee; or
- (2) There are individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disrupting the business.

Appendix 3 Investigation Procedure

The investigating officer will maintain a written record of what was considered at the start of the investigation, the plan to carry out the investigation, the paragraphs of the Code that may have been breached, the facts needing to be determined and how long it will take to conclude the investigation.

A written Investigation Report will need to be prepared by the investigating officer (IO) for consideration by the Council's Monitoring Officer (MO).



Appendix 4

Standards Sub-Committee Hearing Procedure Rules

Item No	Procedure
1	<p><u>Quorum</u></p> <p>1.1. Three District Council Members must be present throughout the hearing to form a quorum.</p> <p>1.2. The Sub-Committee shall nominate a District Council Member as Chairman for the meeting.</p>
2	<p><u>Opening</u></p> <p>2.1 The Chairman explains the procedure for the hearing.</p> <p>2.2 The Chairman asks all present to introduce themselves.</p> <p>2.3 The Member against whom the complaint has been made (or his/her representative) will be asked whether they wish to briefly outline his/her position.</p>
3	<p><u>The Complaint</u></p> <p>3.1 The Monitoring Officer will be invited to present his/her report including any documentary evidence or other material (and to call witnesses as required). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>3.2 The Member against whom the complaint has been made (or his/her representative) may question the Monitoring Officer upon the content of his/her report and any witnesses called by the Monitoring Officer. (This is the Member's opportunity to ask questions rising from the Monitoring Officer's report and not to make a statement).</p> <p>3.3 Members of the Sub-Committee may question the Monitoring Officer upon the content of his/her report and/or any witnesses called by the Monitoring Officer.</p>
4	<p><u>The Member's case</u></p> <p>4.1 The Member against whom the complaint has been made (or his/her representative) may present his/her case (and call any witnesses as required).</p> <p>4.2 The Monitoring Officer may question the Member and/or any witnesses.</p>

	4.3 Members of the Sub-Committee may question the Member and/or any witnesses.
5	<p><u>Summing Up</u></p> <p>5.1 The Monitoring Officer may sum up the Complaint.</p> <p>5.2 The Member (or his/her representative) may sum up his/her case.</p>
6	<p><u>Decision</u></p> <p>6.1 Members of the Sub-Committee will deliberate in private to consider the complaint, in consultation with the Independent Person, prior to reaching a decision.</p> <p>6.2 Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:-</p> <ul style="list-style-type: none"> (a) The Sub-Committee has decided that the Member has failed to follow the Code of Conduct or (b) The Sub-Committee has decided that the Member has not failed to follow the Code of Conduct. (c) The Sub-Committee will give reasons for its decision. <p>6.3 If the Sub-Committee has decided that the Member has failed to follow the Code of Conduct the Sub-Committee will consider any representations from the Monitoring Officer and/or the Member as to:-</p> <ul style="list-style-type: none"> (a) Whether any action should be taken and (b) What form any action should take <p>6.4 The Sub-Committee will then deliberate in private to consider what action if any should be taken, in consultation with the Independent Person.</p> <p>6.5 On the Sub-Committee's return the Chairman will announce the Sub-Committee's decision (or, in relation to a Parish Councillor, its recommendation to the Parish Council).</p> <p>6.6 The Sub-Committee will consider whether it should make any recommendations to the Council or, in relation to a Parish Councillor, to the Parish Council with a view to promoting high standards of conduct among Members.</p> <p>6.7 The Chairman will confirm that a full written decision will be issued within 7 working days following the hearing and that the Sub-Committee's findings will be published.</p>