



Borough of Tamworth

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AUDIT AND GOVERNANCE COMMITTEE

18 September 2014

Dear Councillor

A meeting of the Audit and Governance Committee will be held in **Committee Room 1 - Marmion House on Thursday, 25th September, 2014 at 6.00 pm.** Members of the Committee are requested to attend.

Yours faithfully

A handwritten signature in black ink, appearing to be 'A. G. ...', written over a circular stamp.

A G E N D A

NON CONFIDENTIAL

11 Revised Arrangements for Dealing with Complaints in Relation to Members for an Alleged Breach of the Code of Conduct (Pages 1 - 18)

(Report of the Solicitor to the Council and Monitoring Officer)

This is an additional report which has been followed on from Council 16 September 2014.

People who have a disability and who would like to attend the meeting should contact Democratic Services on 01827 709264 or e-mail committees@tamworth.gov.uk preferably 24 hours prior to the meeting. We can then endeavour to ensure that any particular requirements you may have are catered for.

To Councillors: J Chesworth, M Couchman, J Faulkner, M Gant, R Kingstone, J Oates
and P Seekings.

AUDIT AND GOVERNANCE COMMITTEE

25 SEPTEMBER 2014

REPORT OF THE SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

REVISED ARRANGEMENTS FOR DEALING WITH COMPLAINTS IN RELATION TO MEMBERS FOR AN ALLEGED BREACH OF THE CODE OF CONDUCT

EXEMPT INFORMATION

None

PURPOSE

The Localism Act 2011 made fundamental changes to the system of regulation of Standards of Conduct for Members. This report provides details of the revised arrangements for dealing with complaints in relation to Members for an alleged breach of the Code of Conduct and seeks the Committee's endorsement of the said arrangements.

RECOMMENDATIONS

It is recommended that the Committee

- (1) consider and discuss the revised arrangements for dealing with complaints in relation to Members for an alleged breach of the Code of Conduct and**
- (2) endorse the said revised arrangements.**

EXECUTIVE SUMMARY

Article 9 of the Constitution provides *inter alia* that Audit and Governance Committee maintain an overview of the Constitution including the Code of Conduct. Under the Localism Act the Authority remains under a duty to promote and maintain high standards of conduct for its elected members. The Audit and Governance Committee is in a position to exercise all functions of the Council relating to the Code of Conduct which includes making recommendations to full Council the actions to be taken where a member is found to have failed to comply with the Code of Conduct.

OPTIONS CONSIDERED

1. Do nothing with current policy.
2. Partly review current policy
3. Conduct a full review of current policy

It was clear that option 3 was the best and most useful option in terms of providing clear and concise processes to deal with Member issues and at the same time making administration thereof more user friendly for all involved, thus a full review has been implemented and carried out.

RESOURCE IMPLICATIONS

The amendments as required to the Constitution and the decided hearing processes arising from alleged breaches of the Code of Conduct will be carried out as part of the duties of the Monitoring Officer and have no additional resource implications for the Authority. However additional resource could be required should an investigation be necessitated.

LEGAL/RISK IMPLICATIONS BACKGROUND

To have a Policy that is not fit for purpose could lead to the Council making decisions that would be *ultra vires*. In addition an effective Policy provides the mechanism for ensuring that Members, Officers and the Public can make use of the resource as required and will provide the mitigating action necessary to ensure that the Council's obligations under the Localism Act 2011 are met.

SUSTAINABILITY IMPLICATIONS

It is essential that the Authority operates in a manner that is open, transparent, inclusive and embodies good governance. By adopting and operating the revised arrangements to deal with an allegation of a breach of the Code of Conduct the Authority is providing a framework that is accessible, user friendly and written in plain English.

BACKGROUND INFORMATION

At the Council meeting on 16 September 2014 the Portfolio holder for Operations and Assets put forward for adoption into the Constitution the revised arrangements for dealing with complaints in relation to Members for an alleged breach of the Code of Conduct as attached at **Annex 1** in terms of Section 28(6) of the Localism Act 2011.

The changes were approved at the said meeting and will be incorporated into the Constitution. The revised arrangements will also be published on Tamworth Borough Council website

Accordingly the proposals are attached at **Annex 1** for discussion and consideration by the Committee.

REPORT AUTHOR

Jane M Hackett Solicitor to the Council and Monitoring Officer Tel 709258 if you would like further information or clarification prior to the meeting

LIST OF BACKGROUND PAPERS

Localism Act 2011

Arrangements adopted by Council on 19 June 2012 for dealing with complaints regarding Members

APPENDICES

Annex 1: Arrangements for dealing with Members for an alleged breach of the Code of Conduct.



Procedure for making Complaints against a Councillor for an Alleged Breach of the Code of Conduct

1. Introduction and Context

- 1.1 These procedures set out how you may make a complaint that an elected or co-opted member of this authority has failed to comply with the Members' Code of Conduct. The procedures set out how the authority will deal with any allegations of a failure to comply with the Members' 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 Committee or Sub-Committee of the authority, has failed to comply with their Code of Conduct that 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 against whom an allegation has been made.

2. The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members, which is available for inspection on the Council's website - www.tamworth.gov.uk and on request from Democratic Services at Marmion House, Lichfield Street, Tamworth. B79 7BZ.

3. Making a Complaint

- 3.1 If you wish to make a complaint, please write to:

The Monitoring Officer, Marmion House, Lichfield Street, Tamworth. B79 7BZ and a Member Complaint form will be sent to you. Alternatively, you may download a Word version of the form from this page on Council's website: Insert link XXX

You may either return the form by post to the Monitoring Officer or email it to jane-hackett@tamworth.gov.uk.

- 3.2 The Monitoring Officer is the senior officer of the Council 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.
- 3.3 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. If you need help in completing the form please contact Legal and Democratic Services on tel: 01827 709264.
- 3.4 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. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. Only in exceptional circumstances will your address be kept confidential. Therefore it is important that you give clear reasons for your request for confidentiality. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.
- 3.5 The Council does not normally investigate anonymous complaints, unless there is clear evidence of a potential breach of the Code and it is in the public interest to investigate the matter.
- 3.6 The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it. We will keep you informed of the progress of your complaint at the appropriate stages.
- 3.7 The Complaints Procedure Flowchart is annexed at **Appendix 1** for your assistance.

4. Will your Complaint be Investigated?

- 4.1 If the complaint is from one member against another member or from an officer of the Council against a member, then the Monitoring Officer will seek to resolve the issue without resorting to this complaints procedure. The Monitoring Officer will seek a

mutually agreed outcome in such circumstances and if this is not possible then the procedure set out below will be followed.

- 4.2 The Monitoring Officer will review every complaint received from a member of the public and may consult with the Independent Person before taking a decision as to whether it:
 - a) Merits no further investigation
 - b) Merits further investigation
 - c) Should be referred to Audit & Governance Committee
- 4.3 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 annexed at **Appendix 2**. Where the Monitoring Officer has taken a decision, she will inform you of her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, she may come back to you for such information, and may request information from the member against whom your complaint is directed.
- 4.4 If your complaint identifies criminal conduct or breach of other regulation by a member, 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 as **Appendix 3** to these arrangements.
- 5.2 If the Monitoring Officer decides that a complaint merits further investigation, she may appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether 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 need to be 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 her with a copy of your complaint, ask the member to provide her explanation of events and identify what documents she needs to see and who 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 matters in that draft report which you disagree with or which you consider require more consideration.
- 5.5 Having received and taken account of any comments which you may make, the draft Investigation Report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send her final report to the Monitoring Officer.

6. What happens if the Investigating 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 she is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the member concerned notifying you that she is satisfied that no further action is required, and give you both a copy of the Final Investigation 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, she may ask the Investigating Officer to reconsider his/her report.

7. What happens if the Investigating 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 Committee or, in consultation with the Independent Person, seek an informal resolution.

a) Informal Resolution

- 7.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring

Officer will report the matter to the Audit & Governance Committee for information, no further action will be taken.

b) Hearing

- 7.3 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 present the Investigation Report to the Hearing Sub-Committee which will 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.
- 7.4 The Assembly has agreed a procedure for hearing complaints, which is attached as **Appendix 4** to these arrangements.
- 7.5 At the hearing, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as she considers necessary and make representations to substantiate 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 she considers that he/she did not fail to comply with the Code of Conduct.
- 7.6 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.
- 7.7 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, and will then decide what action, if any, to take in respect of the matter.
- 8. What action can the Hearing Sub-Committee take where a Member has failed to comply with the Code of Conduct?**
- 8.1 The Hearing Sub-Committee has been delegated by the Council 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:

- a) Publish its findings in respect of the member's conduct.
- b) Report its findings to Council for information.
- c) Recommend to Council that the member be issued with a formal censure or be reprimanded.
- d) 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.
- e) Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities. Recommend to Council that the Member be replaced as Executive Leader.
- f) Instruct the Monitoring Officer to arrange training for the member.
- g) Remove the member from all outside appointments to which he/she has been appointed or nominated by the Council.
- h) Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and internet access.
- i) Exclude the member for up to a maximum of six months 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 Audit & Governance Sub-Committee as to whether the member failed to comply with the Code of Conduct and any actions which the Sub-Committee resolves to take.

9.2 As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the member, make that decision notice available for public inspection

and report the decision to the next convenient meeting of the Assembly.

10. Who are the Hearing Sub-Committee Members?

- 10.1 It is a Sub-Committee comprising Councillors sitting on the Authority's Hearing Committee.
- 10.2 It will comprise of three elected members appointed from members of the Hearing Committee who will have been drawn from all political groups.
- 10.3 The Independent Person is invited to attend all meetings of the Sub-Committee and their views are sought and taken into consideration before the Sub-Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

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 for the post, whose appointment will be ratified by the Council.
- 11.2 A person cannot be "independent" if he/she:
 - a) is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
 - b) is a relative or close friend, of the complainant or the member(s) against whom the complaint has been made.
- 11.3 For the above purpose "relative" means:-
 - 11.3.1 Spouse or civil partner
 - 11.3.2 Living with the other person as husband or wife or as if they were civil partners
 - 11.3.3 Grandparent of the other person
 - 11.3.4 A lineal descendent of a grandparent of the other person
 - 11.3.5 A parent, sibling or a child of a person within paragraphs 11.3.1 or 11.3.2
 - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 or
 - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners

12. Revision of these Arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Sub-Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter the details of which can be found on the Council's website.

13. Appeals

13.1 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.

13.2 If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman whose details are as follows:

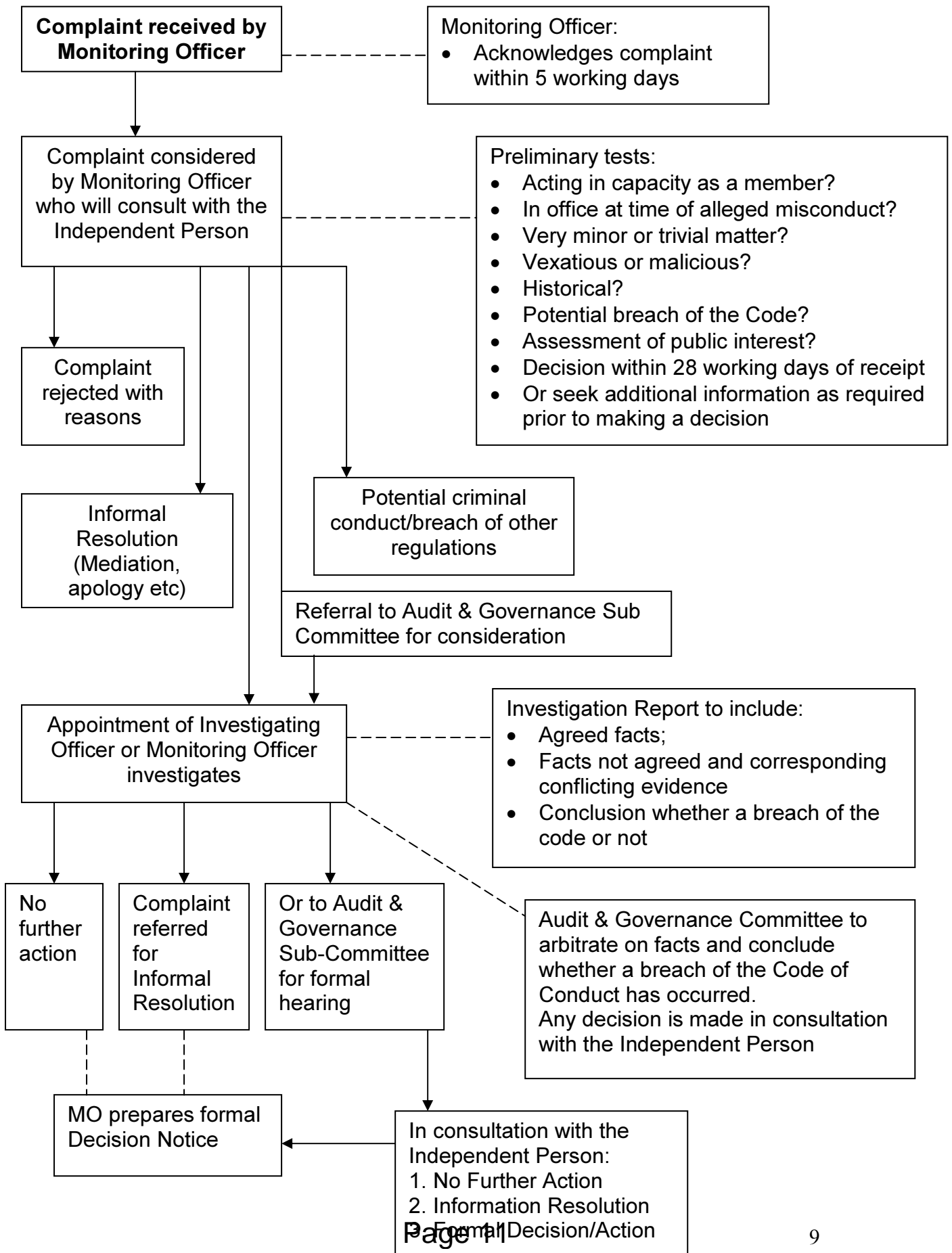
www.lgo.gov.uk

LGO, PO Box 4771, Coventry, CV4 0EH

Tele: Advice Team – 0300 061 0614

Text to 'call back' 0762 480 3014

COMPLAINTS PROCEDURE FLOWCHART



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 member’s private life or is about dissatisfaction with a Council decision or service; or
5. It is about someone who is no longer a member of the Council; or
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, e.g. 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 Hearing Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
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. It is serious enough, if proven, to justify the range of actions available to the Standards Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting

the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or

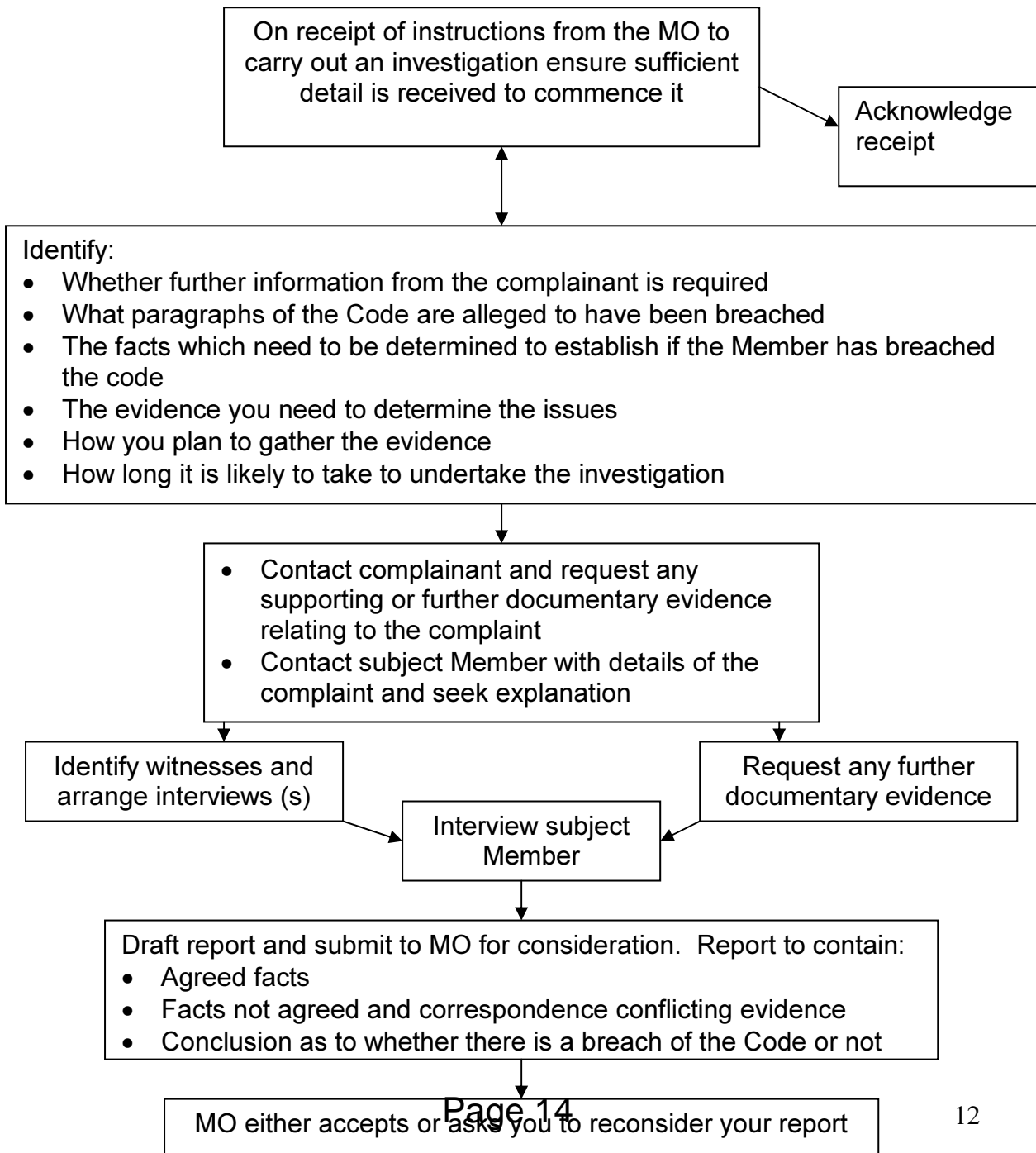
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
4. The complaint is about a high profile member such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate; or
5. Such other complaints as the Monitoring Officer considers would not be appropriate for him/her to investigate.

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and members' time. This is an important consideration where the complaint is relatively minor.

COMPLAINTS INVESTIGATION PROCEDURE

You should maintain a written record to demonstrate what was considered at the start of the investigation and plan how you intend to carry out the investigation, the paragraphs of the code that may have been breached, the facts you need to determine to establish, the evidence you will need, how you plan to gather the evidence and how long it will take to conclude your investigation. Remember there is no provision in the Localism Act 2011 compelling Members or witnesses to co-operate with your investigation.

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



Complaints Sub-Committee Procedure

<u>Item No</u>	<u>Procedure</u>
1	<p style="text-align: center;"><u>Quorum</u></p> <p>1.1 Three Members must be present throughout the hearing to form a quorum</p> <p>1.2 The Sub-Committee shall nominate a Chair for the meeting</p>
2	<p style="text-align: center;"><u>Opening</u></p> <p>2.1 The Chair explains the procedure for the hearing and reminds all parties to turn off mobile phones, audible alarms and pagers etc</p> <p>2.2 The Chair asks all present to introduce themselves</p> <p>2.3 The Councillor will be asked whether they wish to briefly outline their position</p>
3	<p style="text-align: center;"><u>The Complaint</u></p> <p>3.1 The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). 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 Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor's opportunity to ask questions rising from the Investigator's report and not to make a statement)</p> <p>3.3 Members of the Sub-Committee may question the Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer.</p>

4	<p style="text-align: center;"><u>The Councillor's Case</u></p> <p>4.1 The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative).</p> <p>4.2 The Investigating Officer may question the Councillor and/or any witnesses.</p> <p>4.3 Members of the Sub-Committee may question the Member and/or any witnesses.</p>
5	<p style="text-align: center;"><u>Summing Up</u></p> <p>5.1 The Investigating Officer may sum up the complaint.</p> <p>5.2 The Member (or their representative) may sum up their case</p>
6	<p style="text-align: center;"><u>Decision</u></p> <p>6.1 Members of the Sub-Committee will deliberate 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 Chair will announce the Sub-Committee's decision in the following terms:-</p> <p style="padding-left: 40px;">6.2.1 The Sub-Committee decides that the Member has failed to follow the Code of Conduct or</p> <p style="padding-left: 40px;">6.2.2 The Sub-Committee decides that the Member has not failed to follow the Code of Conduct</p> <p style="padding-left: 40px;">6.2.3 The Sub-Committee will give reasons for their decision</p> <p>6.3 If the Sub-Committee decides that the Member has failed to follow the Code of Conduct the Sub-Committee will consider any representations from the Investigator and/or the Member as to:</p> <p style="padding-left: 40px;">6.3.1 whether any action should be taken, and</p> <p style="padding-left: 40px;">6.3.2 what form any action should take</p>

	<p>6.4 The Sub-Committee will then deliberate 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 Chair will announce the Sub-Committee's decision</p> <p>6.6 The Sub-Committee will consider whether it should make any recommendations to the Council with a view to promoting high standards of conduct among Members</p> <p>6.7 The Chair will confirm that a full written decision shall be issued within seven working days following the hearing and that the Sub-Committee's findings will be published.</p>
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