

Procedure for making Complaints against a Councillor for an alleged breach of the Code of Conduct

1. Introduction

- 1.1. These procedures set out how you may make a complaint that a Councillor (elected or co-opted member) of this Council has failed to comply with the Councillors Code of Conduct. The procedures set out how the Council will deal with any 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 Councillor (Member or co-opted Member) of the Council or of a Committee or Sub-Committee of the Council, has failed to comply with their Code of Conduct, can be investigated and decisions made on such allegations.
- 1.3. Such arrangements must provide for the Council to appoint at least one Independent Person, whose views may be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a member against whom an allegation has been made
- 1.4. In these arrangements a number of terms are used which have the following meanings:

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| Member | An elected Councillor |
| Councillor | A person who is an elected member of the Council |
| Co-opted Member | A person who is not an elected member of the Council but has been appointed to a committee or sub-committee of the Council. |
| Monitoring Officer | An officer of the Council designated under section 5 of the Local Government and Housing Act 1989 to undertake the statutory duties prescribed which include ensuring that the Council and its members and officers act lawfully at all times. |
| Investigating Officer | An appropriate person appointed by the Monitoring Officer to investigate an allegation. |
| Independent Person | A person appointed by the Council pursuant to Section 28 of the Localism |

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| | Act 2011, whose views maybe sought and considered before decisions upon allegations against members are taken and who may be consulted by a member who is the subject of allegations or the Council, generally. |
| Hearing Sub-Committee | A Sub-Committee of Audit & Governance established to conduct hearings into allegations against members and to determine such allegations following a hearing. |

2. The Code of Conduct

- 2.1. The Council has adopted a Code of Conduct for Councillors, which is available for inspection on the Council's website - www.tamworth.gov.uk and on request from Democratic Services.

3. Making a Complaint

- 3.1. An allegation that a Councillor of Tamworth Borough Council has failed to comply with the Councillors Code of Conduct should be made in writing, wherever possible, using the Complaint Form on the Council's website and sent to:

The Monitoring Officer,
Marmion House
Lichfield Street
Tamworth
B79 7BZ

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

- 3.2. Any complaints received without a completed complaint form; one will be sent to you.
- 3.3. If you need help in completing the form please contact Legal and Democratic Services on Tel: 01827 709264, or by email at: democratic-services@tamworth.gov.uk.
- 3.4. 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 Councillor misconduct. In the Monitoring Officer's absence, the Deputy Monitoring Officer has the same powers and responsibilities for the purposes of these procedures.

- 3.5. 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.
- 3.6. 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 Councillor against whom you make the complaint, without your prior consent. 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.
- 3.7. The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it and keep you informed of the progress of your complaint at the appropriate stages.
- 3.8. The Complaints Procedure Flowchart is annexed at **Appendix 1** for your assistance.
- 3.9. The Monitoring officer may inform the Councillor against whom an allegation has been made and will give the details of the complaint and remedy sought to them. In exceptional circumstances the Monitoring Officer has the discretion not to inform the Councillor if, in their opinion, to do so would risk an investigation being frustrated or prejudiced in some other way.

4. Will your Complaint be Investigated?

- 4.1. If the complaint is from one Councillor against another Councillor or from an Officer of the Council against a Councillor, then the Monitoring Officer will seek to resolve the issue without resorting to this complaint's 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 20 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, they will inform you of their decision and the reasons for

that decision. Where the Monitoring Officer requires additional information in order to come to a decision, they 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 councillor, 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, they 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 they need 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 councillor against whom you have complained and provide them with a copy of your complaint, ask the councillor to provide their explanation of events and identify what documents they need to see and who they need to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the councillor might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the councillor, or delay notifying the councillor until the investigation has progressed sufficiently.
- 5.4. At the end of their investigation, the Investigating Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the councillor 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 their 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 they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the councillor concerned notifying you that they are 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, they may ask the Investigating Officer to reconsider their 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 Hearing Sub-Committee or, in consultation with the Independent Person, seek an informal resolution.

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, they 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 councillor accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit & Governance Committee for information, and no further action will be taken.

Hearing

- 7.3. If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then a Hearing Sub-Committee will be convened, and members of the Hearing Sub-committee will decide whether the councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Councillor.
- 7.4. The Council has agreed a procedure for hearing complaints, which is attached as **Appendix 4** to these arrangements.
- 7.5. At the Hearing Sub-Committee, the Investigating Officer will present their report, call such witnesses as they consider necessary and make

representations to substantiate their conclusion that the councillor has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearing Sub-Committee. The councillor will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearing Sub-Committee as to why they consider that they did not fail to comply with the Code of Conduct.

- 7.6. The Hearing Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the councillor did not fail to comply with the Code of Conduct, and dismiss the complaint.
- 7.7. If the Hearing Sub-Committee concludes that the councillor did fail to comply with the Code of Conduct, the Chair will inform the councillor of this finding and the Hearing Sub-Committee will then consider what action, if any, the Hearing Sub-Committee should take as a result of the councillor's failure to comply with the Code of Conduct. In doing this, the Hearing Sub-Committee will give the councillor 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 Councillor 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 Councillors as may be necessary to promote and maintain high standards of conduct.

Accordingly, the Hearing Sub-Committee may:

- Publish its findings in respect of the councillor's conduct.
- Report its findings to Council for information.
- Recommend to Council that the councillor be issued with a formal censure or be reprimanded
- Recommend to the Councillors Group Leader (or in the case of ungrouped Councillors, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council.
- Instruct the Monitoring Officer to arrange training for the councillor.
- Remove the councillor from all outside appointments to which they have been appointed or nominated by the Council.
- Withdraw facilities provided to the Councillor by the Council, such as a computer, website and/or email and internet access.

- Exclude the Councillor 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.

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 Hearing Sub-Committee as to whether the councillor failed to comply with the Code of Conduct and any actions which the Hearing 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 Hearing Sub-Committee, and send a copy to you, to the Councillor, and report the decision to the next convenient meeting of Full Council.

10. Who is the Hearing Sub-Committee Members?

- 10.1. It is a Sub-Committee comprising Councillors sitting on the Councils Audit & Governance Committee
- 10.2. It will comprise of three councillors appointed from Members of the Audit & Governance who will have been drawn from all political groups.
- 10.3. The Independent Person is invited to attend all meetings of the Hearing Sub-Committee and their views are sought and taken into consideration before the Hearing 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 they:
 - A) are, or has been within the past 5 years, a member, co-opted member, or Officer of the Authority
 - B) are a relative or close friend, of the complainant or the Councillor(s) against whom the complaint has been made

For the above purpose "relative" means:-

- A) Spouse or civil partner
- B) Living with the other person as husband or wife or as if they were civil partners

- C) Grandparent of the other person
- D) A lineal descendent of a grandparent of the other person
- E) A parent, sibling, or a child of a person within paragraphs 11.3.1 or 11.3.2
- F) A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 or
- G) 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

- 12.1. The Council may by resolution agree to amend these arrangements and has delegated to the Chair of Audit & Governance Committee the right to depart from these arrangements where they consider 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 councillor against a decision of the Monitoring Officer or of the Hearing 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:

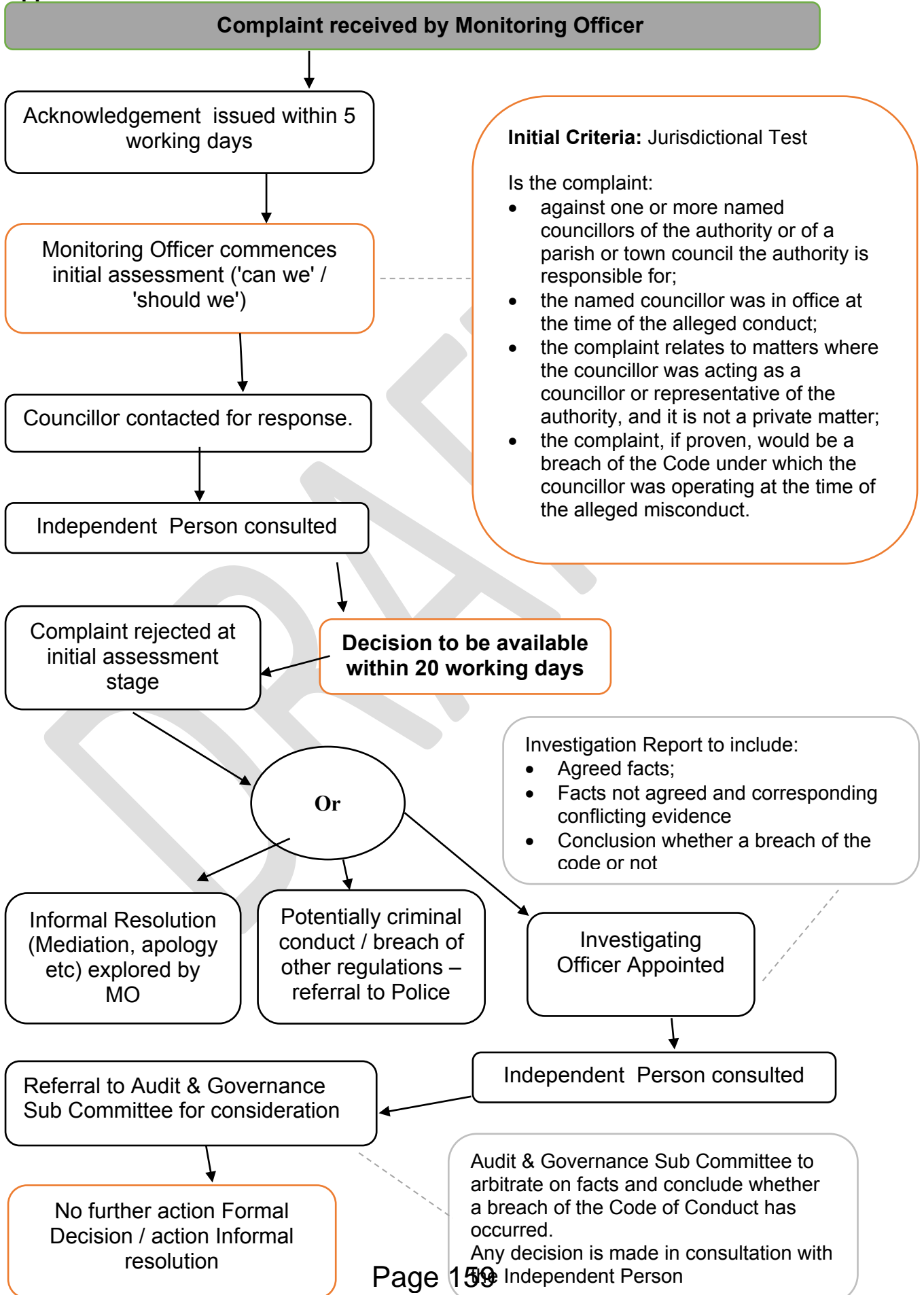
www.lgo.gov.uk

Local Government Ombudsman, PO Box 4771,
Coventry, CV4 0EH

Tele: Advice Team – 0300 061 0614

Text to 'call back' 0762 480 3014

Appendix 1



Appendix 2

COMPLAINTS ASSESSMENT CRITERIA

1. Introduction

The following criteria has been agreed to assist the Monitoring Officer in making an initial assessment of a code of conduct complaint and deciding what action, if any, to take.

Each complaint will be assessed on its own merits and the Monitoring Officer may consult the Independent Person before making a decision.

2. Initial Assessment

Before an assessment of a complaint begins, the Monitoring Officer, in consultation with the 'Independent Person' should be satisfied that the complaint meets the following tests:

- The complaint is against one or more named councillors of the authority or of a parish or town council the authority is responsible for;
- The named councillor was in office at the time of the alleged conduct;
- The complaint relates to matters where the councillor was acting as a councillor or representative of the authority, and it is not a private matter;
- The complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.

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

A complaint will not be considered as a code of conduct complaint if:

- the complaint is about a council decision, the way the council conducts or records its meetings or the way the council has or has not done something;
- the complaint falls within the council's complaints procedure or
- the complaint is about a council officer e.g. a TBC employee.

The Code of Conduct applies whenever the councillor is "acting as a member of the authority". A complaint will not be considered as a Code of Conduct complaint where it is clear it is about a member's private life or about conduct other than when "acting as a member of the authority".

3. Circumstances where it may be decided that no action should be taken in respect of the allegation.

- 3.1. The complaint is not considered sufficiently serious to warrant investigation
- 3.2. The complaint appears to be simply motivated by malice or is “tit-for-tat”
- 3.3. The complaint appears to be politically motivated
- 3.4. 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
- 3.5. It is about someone who is no longer a member of the Council
- 3.6. There is insufficient information available for a referral
- 3.7. 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
- 3.8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out
- 3.9. 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
- 3.10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct
- 3.11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

4. Complaints which may be referred to the Standards Committee

- 4.1. It is serious enough, if proven, to justify the range of actions available to the Standards Committee
- 4.2. 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
- 4.3. 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.
- 4.4. 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
- 4.5. 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, The Monitoring Officer must be mindful of the public money which may be incurred in arranging a formal investigation of a

complaint. Investigations are costly and time consuming and in some circumstances, complaints may be more effectively dealt with by informal resolution or other action. The Monitoring Officer will not refer complaints for investigation where the complaint is not sufficiently serious to justify the cost of an investigation, or it is not in the public interest to investigate.

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Appendix 3

COMPLAINTS INVESTIGATION PROCEDURE

1. Introduction

1.1. This document sets out the procedure which will be followed once a decision has been taken that an allegation of a breach of the Code of Conduct by a Councillor should be investigated.

1.2. This document also sets out the process which will be followed when a report of an Investigating Officer reveals a breach of the Code of Conduct, and the Independent Person has taken a decision that a Hearing is required.

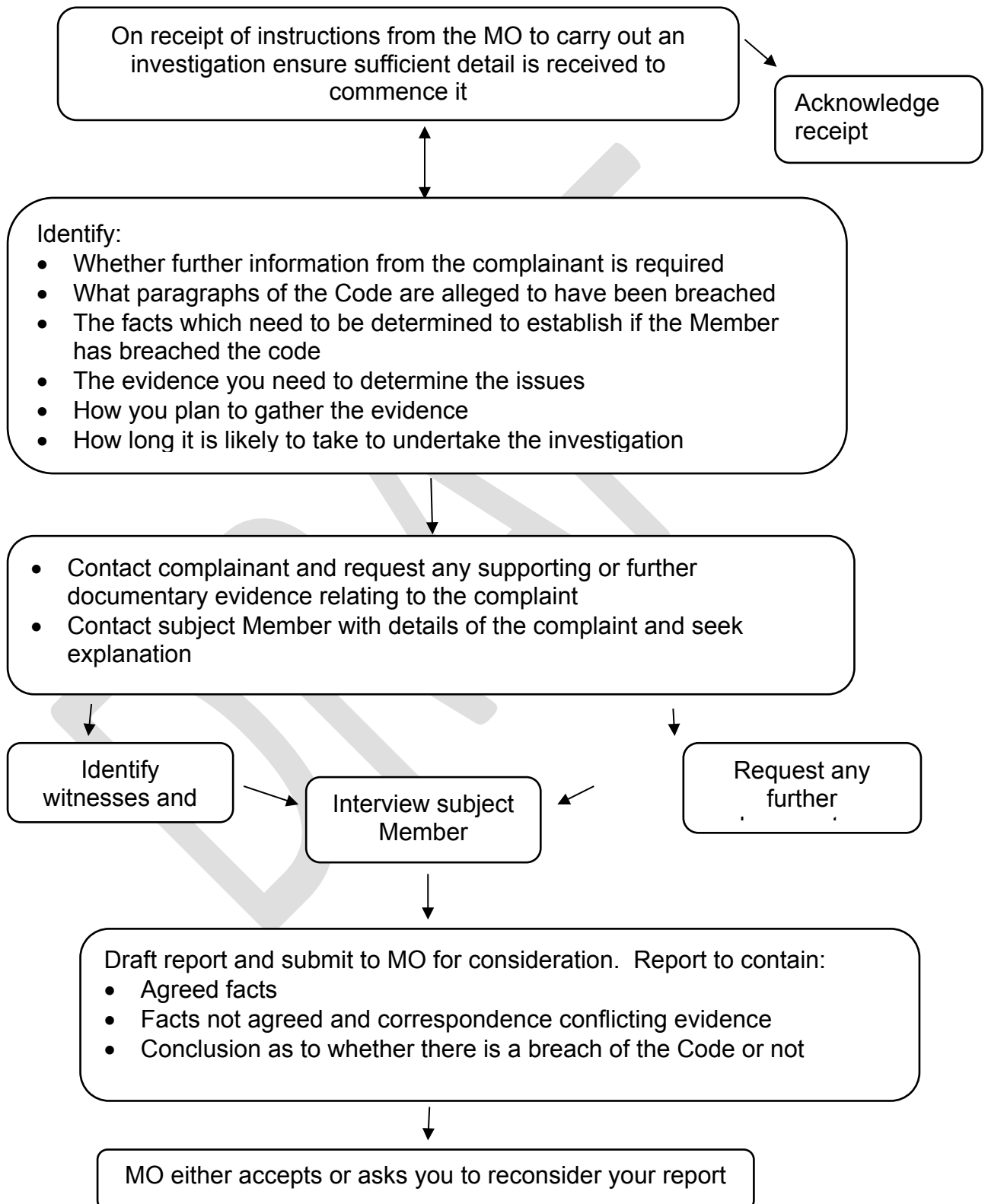
2. The Appointment of the Investigating Officer

2.1. Upon deciding to refer an allegation for investigation, the Monitoring Officer will appoint an Investigating Officer and instruct them to conduct an investigation of the alleged breach of the Code of Conduct and report on it. The Monitoring Officer may appoint a replacement if the Investigating Officer is unable to complete the investigation or if a conflict of interest occurs. The Investigating Officer may be an Officer of the authority or another authority or an external Investigating Officer

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

3. Conduct of Investigation

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



Appendix 4

PROCEDURE FOR HEARINGS

Hearings will where possible be held within two months of receipt of the Monitoring Officer (MO) of the investigator's final report.

1. Quorum

- 1.1. The Hearing will be before the Hearing Sub-Committee.
- 1.2. Three Members must be present throughout the hearing to form a quorum
- 1.3. One of the members will be elected Chairman
- 1.4. The MO or Deputy MO will be present as adviser to the Sub-Committee. The adviser can speak at any time to advise the Sub-Committee on technical matters or ask questions of any party.
- 1.5. The Independent Person appointed under Section 28 of the Localism Act 2011 will also be present.
- 1.6. Both the Councillor/s and complainant will be invited to appear. They may present their own case, or they may be represented.

2. Hearing Opening / Introductions

- 2.1. Election of Chairman of Sub-Committee
- 2.2. Exclusion of Press and Public
- 2.3. Declarations of Interest
- 2.4. Possible Adjournment (where applicable)
- 2.5. The Chair explains the procedure for the hearing and reminds all parties to turn off mobile phones, audible alarms etc.
- 2.6. The Chair introduces all those present.

3. Investigating Officer

- 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 accepted.
- 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)
- 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.

4. The Complainants Case

- 4.1. The complainant (or their representative) may at this stage present their case (and call any witnesses as required by the complainant or their representative).
- 4.2. Members of the Sub-Committee may question the Member and/or any witnesses.

5. The Councillors Case

- 5.1. The Councillor against whom the complaint has been made (or their representative) may at this stage present their case (and call any witnesses as required by the Councillor or their representative).
- 5.2. Members of the Sub-Committee may question the Councillor and/or any witnesses.
- 5.3. Where the Councillor seeks to dispute any matter in the Investigation Report which they have not given notice of intention to dispute in their written statement in response, the Adviser shall draw this to the attention of the Sub-Committee.

The Sub-Committee may decide:

- a. not to admit such dispute but to proceed to a decision on the basis of the information contained in the report;
- b. to admit the dispute, but invite the Investigator, to respond thereto, recalling any witness as necessary; or
- c. to adjourn the meeting to enable the Investigator, to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.

6. Councillor Comments

- 6.1. At the conclusion of the presentation by the Councillor, the Chairman shall ask the Investigator, whether there was any matter raised during the course of that presentation which was not raised in the Councillor's written statement in response.

The Investigator may then respond to any such new matter or may request the Sub-Committee to adjourn to enable them to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter.

7. Decision

- 7.1. The Sub-Committee will adjourn into another room with the Adviser & Independent Person where they will in private, deliberate to consider whether the Councillor has acted in breach of the Code of Conduct.
- 7.2. At the conclusion of their consideration, the Sub-Committee will return, and the Chairman will advise the Investigator and the Councillor of their decision as to whether the Councillor has acted in breach of the Code of Conduct and the reasons for that decision.
- 7.3. If the Sub-Committee decides that the Councillor has failed to follow the Code of Conduct the Sub-Committee will consider any representations from the Investigator and/or the Councillor as to:
- a. whether any action should be taken, and
 - b. what form any action should take
- 7.4. The Sub-Committee will then adjourn into another room together with the Adviser and Independent Person where they will consider in a private session whether to take any action in respect of the Councillor and what form any such action should take.
- 7.5. Actions available to the Sub-Committee are as follows (this is not an exhaustive list)
- a) Publish its findings in respect of the councillor's conduct.
 - b) Report its findings to Council for information.
 - c) Recommend to Council that the councillor be issued with a formal censure or be reprimanded
 - d) Recommend to the Councillors Group Leader (or in the case of ungrouped Councillors, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council.
 - e) Instruct the Monitoring Officer to arrange training for the councillor.
 - f) Remove the councillor from all outside appointments to which they have been appointed or nominated by the Council.
 - g) Withdraw facilities provided to the Councillor by the Council, such as a computer, website and/or email and internet access.
 - h) Exclude the Councillor 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.
- 7.6. On the Sub-Committee's return the Chair will announce the Sub-Committee's decision

- 7.7. 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
- 7.8. The Chair will confirm that a full written report of the Sub-Committees decision, with reasons, will be prepared and issued following the hearing and a copy sent to the complainant and the councillor.

Meeting closed

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