

North East Derbyshire District Council

Standards

12 July 2018

Councillor Complaint Procedure

Report of the Head of Service Corporate Governance and Monitoring Officer

This report is open

Purpose of the Report

- To recommend for approval a Councillor Complaint Procedure.

1 Report Details

- 1.1 The Localism Act 2011 sets out the revised Standards Regime. A Local Authority must adopt a Member Code of Conduct and have arrangements with regards to how they deal with member complaints.
- 1.2 North East Derbyshire District Council do have a Councillor Complaint Summary document available on the website but it was felt this could be improved and provide individuals with more specific information as to how the Council deals with member complaints. This is attached at **Appendix 1**.
- 1.3 The Draft Councillor Complaint Procedure sets out the standard arrangements introduced as a result of the Localism Act 2011.
- 1.4 It is a simple procedure aimed at those who may wish to make a formal complaint about the conduct of a District or parish councillor. It sets out in basic terms, what the complainant can expect, including the role of the Monitoring Officer, what they will do and within what time frames. It is also a useful document for Members who may be the subject of a complaint.
- 1.5 The Procedure lists at paragraph 8 a range of sanctions that could be imposed by the Standards Committee in the event of misconduct by a councillor being found. It should be noted that whilst this is not necessarily an exhaustive list, there are no statutory sanctions provided for in the Localism Act in relation to general breaches of the Code. However, Members are reminded that a failure to declare a Disclosable Pecuniary Interest constitutes a criminal offence with the potential sanction of a fine and/or disqualification.
- 1.6 Following formal approval by Council, the Procedure and a complaint form will be published on the Council's website. Hard copies will also be available from the Monitoring Officer.

1.7 The draft Councillor Complaint Procedure Documents are attached to this report at Appendix 2.

2 Conclusions and Reasons for Recommendation

2.1 The Councillor Complaint Procedure provides a guide as to how a Member Complaint will be dealt with, what the complainant can expect, the role of the monitoring officer what they will do and within what time frame. It is considered good practice to adopt the procedure to aid complaints and Members through the process.

3 Consultation and Equality Impact

3.1 Consultation is taking place through Standards Committee and Council.

3.2 Equality issues have been taken into account in the review of the policy.

4 Alternative Options and Reasons for Rejection

4.1 None.

5 Implications

5.1.1 Finance and Risk Implications

5.1.2 None.

5.2 Legal Implications including Data Protection

5.2.1 The legal implications in relation to councillor complaints are set out within the policy

5.3 Human Resources Implications

5.3.1 None.

6 Recommendations

6.1 That the draft Councillor Complaint Procedure be considered and recommended to Council for approval.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the relevant Portfolio Holder been informed</p>	Yes/No
<p>District Wards Affected</p>	None directly
<p>Links to Corporate Plan priorities or Policy Framework</p>	All

8 Document Information

Appendix No	Title	
1	Councillor Complaint Procedure	
Report Author		Contact Number
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North East Derbyshire District Council

Councillor Complaints Procedure

Arrangements for dealing with standards allegations under the Localism Act 2011

1 Introduction

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of North East Derbyshire District Council, or of a parish or town council within the District, has failed to comply with the Authority’s Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the authority’s Code of Conduct.

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 Council or parish or town council within its area has failed to comply with that Authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must 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 authority at any other stage, or by the member against whom an allegation has been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix 1 to these arrangements and is available for inspection on the Authority’s website or on request from the Monitoring Officer.

Each parish or town council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish or town council and request the parish clerk to allow you to inspect the parish or town council’s Code of Conduct.

3 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer
North East Derbyshire District Council
2013 Mill Lane
Wingerworth
Chesterfield
Derbyshire
S42 6NG

Or email sarah.sternberg@bolsover.gov.uk

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.

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 found on the Council's website, or obtained from the Monitoring Officer. If you need help to complete the form or make a complaint, please contact a member of the Legal Services Team on 01246 242428.

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 together with the reason why you feel your identity should not be disclosed. However, only in exceptional cases will it be possible not to disclose your identity. As a matter of fairness and natural justice, the member should be told who has complained about them. The Authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so, for example:

- a) The complainant has reasonable grounds for believing that they will be at risk of intimidation, victimisation or physical harm if their identity is disclosed;
- b) The complainant is an officer who works closely with the member and they are afraid of the consequences to their employment if their identity is disclosed;
- c) The complainant suffers from a serious health condition, which may be adversely affected if their identity is disclosed.

If the Monitoring Officer decides to refuse a request for confidentiality, she/he will offer the complainant the option to withdraw the complaint rather than proceed with disclosure of the complainant's identity.

If the Monitoring officer considers that the disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring officer can agree to delay notifying the member until consideration of the complaint has progressed sufficiently.

The Monitoring Officer will acknowledge receipt of your complaint within 10 working days of receiving it, and will keep you informed of the progress of your complaint. The Monitoring Officer will also normally inform the member who is subject of the complaint and invite their initial response at this stage.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person (see paragraph 11 below), take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of your complaint. A flowchart setting out the full procedure is set out at Appendix 2. Where the Monitoring Officer has taken a decision, he/she will inform you of his decision and the reasons for that decision.

Before assessment of the complaint begins the Monitoring Officer must be satisfied that the complaint:

- is against one of more named members of the Authority or an authority within their jurisdiction, and
- is about a member who was in office at the time of the alleged conduct and the Code of Conduct was in force at the time,
- is about the behaviour of the councillor when the councillor is carrying out their duties as councillor (the Code of Conduct does not apply to a Councillor's private life) and
- if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.

If the complaint meets each of these criteria it may be assessed for investigation through the Council's standards framework. In that event the Monitoring Officer has three options:

1. Refer the matter for investigation, or
2. Resolve the complaint informally with other action, or
3. Take no further action.

When deciding whether an investigation is necessary the Monitoring Officer must have regard to the duty to promote and maintain high standards of member conduct. Relevant factors include but are not limited to:

- Whether the available evidence suggests that the member was acting in their official capacity when the alleged conduct took place.
- Whether the information provided is sufficient to justify a referral for investigation.
- Is the complaint too trivial to warrant further action?
- Is the complaint best dealt with in other ways, by for example training
- Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
- Is the complaint already the subject of an investigation or other action related to either the Code of Conduct or another disciplinary process?
- Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?
- Is the complaint anonymous?
- Would an investigation serve any public benefit?

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 or Town Councillor, the Monitoring Officer will normally also inform the Parish Council of your complaint before deciding whether the complaint merits formal investigation.

Wherever possible, the Monitoring Officer will 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 local resolution, but you are not willing to accept that offer, the

Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

It should be noted that a decision to refer a complaint for other action does not involve making any findings of fact; no conclusions are reached about what happened and no decision is made about whether the member failed to comply with the Code of Conduct. In addition, an investigation should not be viewed as something that can take place after other action has been attempted and is not to the satisfaction of one of the parties. There is a risk that other action will not be taken seriously if it is seen merely as a precursor to an investigation.

A decision to take 'other action' might also involve a member/members being asked to attend a relevant training course or engage in a process of conciliation. This form of other action is most beneficial where a complaint exposes systemic problems rather than individual ones; indeed other action does not have to be limited to the subject of the complaint. Matters that a Monitoring Officer might consider referring for "other action" include complaints that demonstrate:

- A need for a better understanding of procedures
- Lack of experience or training
- Tit-for-tat allegations between the same members
- A general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect/bullying
- Allegations that may be symptomatic of governance problems that are more significant than the allegations themselves.

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 and other regulatory agencies.

In some cases, at his/her discretion, the Monitoring Officer may refer the complaint to the Standards Committee to decide whether or not it should be investigated or other action taken.

Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

5 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will 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 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 the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would 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 needs to see and who he 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.

Where a complaint is raised by an officer regarding a member and while it is being investigated, the member must comply with any measures deemed appropriate by the Monitoring Officer in consultation with the Independent Person.

These measures may include, but are not limited to,

- Members not having contact with officer who has raised a complaint for the duration of the investigation and until an outcome is decided;
- Members contacting a nominated person if they wish to have contact with the officer who made a complaint;
- Officers not attending meetings with the member on their own;
- Members being required to copy in specified people in their email correspondence with the officer;
- Members being required to communicate with the officer in a specified form (for example, by email);
- Member's group leader being informed if one of their Members is the subject of a complaint.

At the end of his/her investigation, the Investigating Officer will produce a draft 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.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

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.

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

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 if appropriate to the Parish or Town Council where the complaint relates to a Parish or Town Councillor, notifying you that he/she is satisfied that no further action is required, and giving you both a copy of the Investigating Officer's final report. 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. The Monitoring Officer will consult the Independent Person before making any decision following the investigation.

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

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before a Sub-Committee of the Standards Committee) or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing to formally determine whether a breach had in fact been committed. In such a case, he/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 Standards Committee, and the Parish Council where applicable, for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, 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 Investigating Officer's report to the Sub-Committee which will conduct a local 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 Monitoring Officer will conduct a "pre-hearing process", requiring the 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, and the Chairman of the Sub-Committee may explain and give guidance as to the manner in which the hearing will be conducted.

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. For this purpose, the Investigating 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.

If the Sub-Committee, with the benefit of any advice from the Independent Person, concludes that the member did not fail to comply with the Code of Conduct, it will dismiss the complaint.

If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Sub-Committee will then consider what action, if any, it 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 to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

Referral to Standards Committee

In certain more serious or sensitive cases, the Monitoring officer may refer the case to the full Standards Committee rather than the Sub-Committee. The criteria for determining whether to refer the case to the full Committee are set out in Appendix 3 and such a decision shall be at the sole discretion of the Monitoring Officer based on those criteria.

8 What actions can the Standards Committee take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Standards Committee and 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 –

- 8.1 Censure or reprimand its member or recommend that the council does so;
- 8.2 Publish its findings in respect of the member's conduct;
- 8.3 Report its findings to Council (or to the relevant Parish Council) for information;
- 8.4 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-Committee s of the Council;
- 8.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.6 Recommend to the Council that the member be replaced as Executive Leader;
- 8.7 Instruct the Monitoring Officer to (or recommend that the Parish or Town Council) arrange training for the member;
- 8.8 Recommend to full Council (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);
- 8.9 Withdraw (or recommend to the Parish or Town Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 8.10 Exclude (or recommend that the Parish or Town Council exclude) the member from the Council's offices or other premises, with the exception of meeting rooms and public areas as necessary for attending Council, Committee and Sub-Committee meetings.

There is no power to suspend or disqualify the member or to withdraw a member's basic or special responsibility allowance.

9 What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Sub-Committee, and send a copy to you, to the member (and to the Parish Council where applicable), and make that decision notice available for public inspection.

10 What is the Sub-Committee?

The Sub-Committee of the Council's Standards Committee will comprise at least three members of the Council. The Sub-Committee will contain members from more than one political party depending on the political balance of the Council as a whole.

The Independent Person is invited to attend all meetings of the Standards Committee or Sub-Committee when a decision is being taken on whether the member's conduct constitutes a failure to comply with the Code of conduct or on any action to be taken following a finding of failure to comply with the Code of Conduct. His/her views will be sought and taken into consideration before any decision is taken on these matters.

The Standards Committee may also contain non-councillor or parish or town council members who may attend and participate in discussions at meetings of either the full Committee or the Sub-Committee, but they are not entitled to *vote* on any matter under discussion.

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council. There are a number of statutory restrictions on eligibility for this role to ensure that the post-holder has no close associations with the Council and is therefore truly independent. They are not a member of the Standards Committee but they must be consulted by the Monitoring Officer prior to any decisions or findings on alleged breaches of the Code and *may* be consulted at other stages of the complaints process.

The Independent Person may also be consulted by a member who is the subject of a complaint under this procedure. Any such consultation shall be arranged through the Monitoring Officer and the subject member will be advised by the Monitoring Officer as to the procedure for doing so at the relevant time.

Currently there are 2 Independent Persons

12 Revision of these arrangements

The Standards Committee may by resolution agree to amend these arrangements, and has delegated to the Chief Executive Officer 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.

13 Appeals

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

If you feel that the Authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Appendix One – North East Derbyshire District Council’s Code of Conduct

Appendix Two – Standards Procedure Flow chart

Appendix Three - Criteria for referral of cases to the full Standards Committee

Members' Code of Conduct

As a member or co-opted member of the Parish Council I have a statutory responsibility to have regard to the following principles when representing the community and working constructively with staff and partner organisations to secure better social, economic and environmental outcomes for all.

The Seven Statutory Principles

In accordance with the Localism Act provisions, when acting or appearing to act in my capacity as a councillor 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 the Council.

The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, Naps, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest.

INTEGRITY: Holders of public office 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 families, or their friends. They must declare and resolve any interests and relationships.

OBJECTIVITY: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

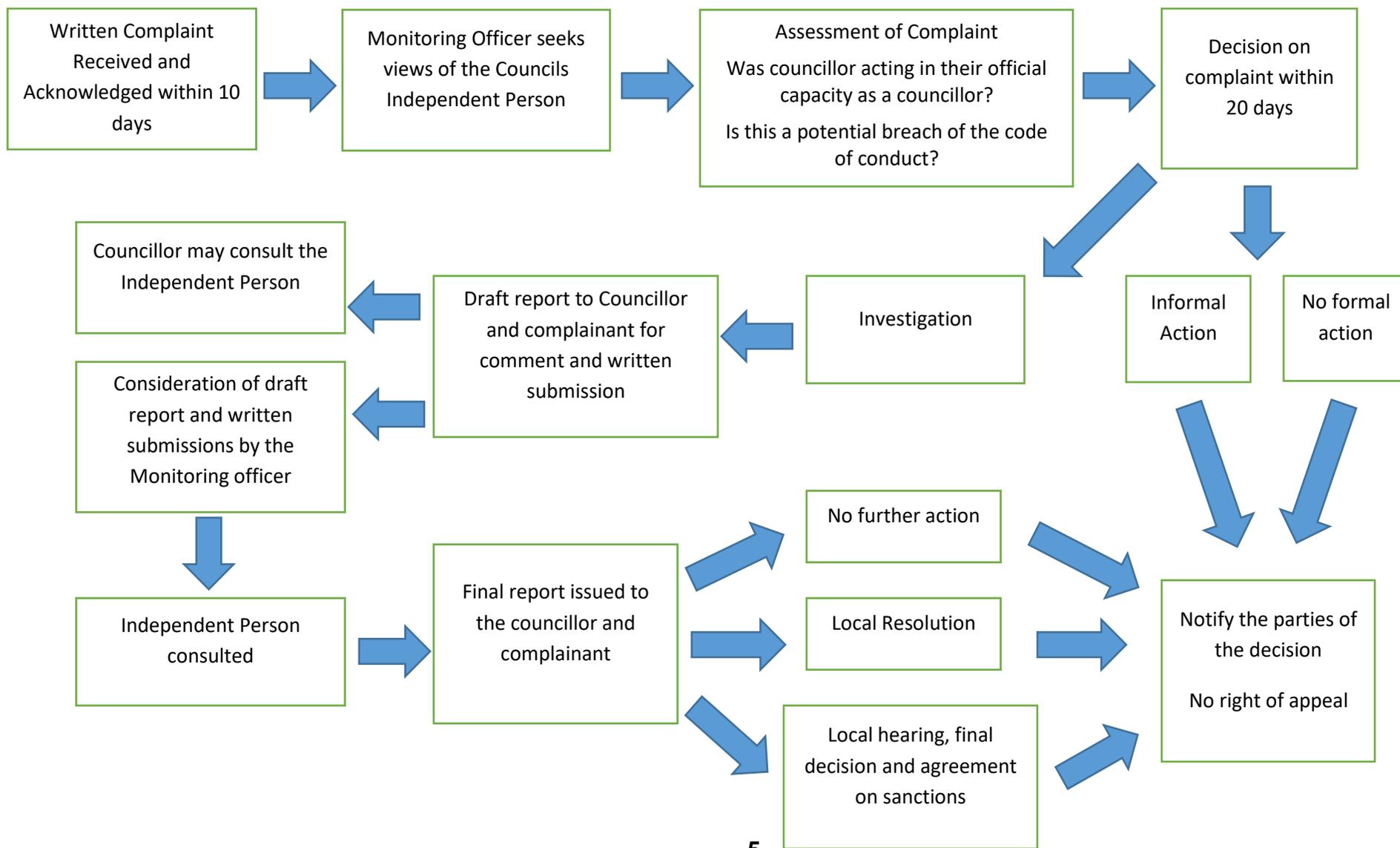
ACCOUNTABILITY: Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

OPENNESS: Holders of public office 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: Holders of public office should be truthful.

LEADERSHIP: Holders of public office 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.

Standards Procedure Flow Chart



Proposed Terms of Reference for Standards Committee

- a. promoting and maintaining high standards of conduct by Councillors and co-opted Members;
- b. assisting Councillors and co-opted Members to observe the Members' Code of Conduct;
- c. advising the Council on the adoption or revision of the Members' Code of Conduct;
- d. monitoring the operation of the Member's Code of Conduct;
- e. advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- f. dealing with complaints about Councillors in accordance with the published Members' Complaints Procedure approved under section 28(6) of the Localism Act 2011;
- g. the exercise of (a) to (f) above in relation to parish councils wholly or mainly in its area and the members of those parish councils;
- h. granting dispensations to Councillors and co-opted Members from requirements relating to disclosable pecuniary interests;