

Making a complaint about a Councillor

Procedure

Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member of the Council 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 Councillor or co-opted member of the Council or of a Committee or Sub-Committee of the Council, has failed to comply with 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 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 Council at any other stage, or by a member against whom an allegation has been made. Harlow has decided to appoint two Independent Persons to assist in these arrangements.

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 in part 5 of the Constitution and on request from Reception at the Council Offices.

3. Making a complaint about a Councillor

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

The Monitoring Officer
Harlow Council
Civic Centre
The Water Gardens
Harlow
Essex
CM1 1WG

- 3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of Councillors' interests and who is responsible for administering the system in respect of complaints of Councillor misconduct.
- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please request a complaint form, from the Monitoring Officer email: simon.hill@harlow.gov.uk
- 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. 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.
- 3.5 The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.6 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.
- 3.7 The Complaints Procedure Flowchart is annexed 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:
 - a) Merits no further investigation
 - b) Merits further investigation
 - c) Should be referred to the Audit and 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 annexed 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.

- 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 Councillor or the Council 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 as 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 Council, 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 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 him/her with a copy of your complaint, and ask the Councillor 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 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 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 Councillor 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 is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the Councillor concerned notifying you that he/she 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 Audit and Standards Sub-Committee or seek an informal resolution in consultation with the Independent Person.

7.1.1 Informal Resolution

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 Councillor accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Standards Committee for information, but will take no further action.

7.1.2 Hearing

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 the Monitoring Officer will report the Investigation Report to the Sub-Committee which may conduct a hearing before deciding 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.

The Council has agreed a procedure for hearing complaints, which is attached as Appendix 4 to these arrangements.

At the hearing, the Investigating Officer or the Monitoring Officer will present her/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Councillor 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 Councillor 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 Councillor did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the Councillor 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, the Sub-Committee should take as a result of the Councillor's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the Councillor an opportunity to make representations to the Panel 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 Audit and 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 Councillors as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may:-

- 8.1.1 Publish its findings in respect of the Councillor's conduct;
- 8.1.2 Report its findings to Council for information;
- 8.1.3 Recommend to Council that he/she be issued with a formal censure or be reprimanded
- 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 Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.6 Instruct the Monitoring Officer to arrange training for the Councillor;
- 8.1.7 Remove from all outside appointments to which he/she has been appointed or nominated by the Council;

- 8.1.8 Withdraw facilities provided to the Councillor by the Council, such as a computer, website and/or email and internet access; or
- 8.1.9 Exclude the Councillor 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 Councillor or to withdraw Councillors' or special responsibility allowances.
- 9. What happens at the end of the hearing?**
 - 9.1 At the end of the hearing, the Chairman will state the decision of the Audit and Standards Sub-Committee as to whether the Councillor failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.
 - 9.2 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 Councillor, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.
- 10. Who are the Standards Sub-Committee?**
 - 10.1 It is a Sub-Committee comprising of Councillors sitting on the authority's Audit and Standards Committee.
 - 10.2 The Audit and Standards Committee has decided that it will comprise a maximum of six Councillors of the Council, including not more than one member of the authority's Executive and comprising Councillors drawn from all political groups. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.
 - 10.3 The Independent Person(s) 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 Councillor'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, and is appointed by a positive vote from a majority of all the members of 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 after 1 July 2012;

11.2.2 Is a relative or close friend, of a person within paragraph 11.2.1. For this purpose, a “relative” means:

11.2.2.1 Spouse or civil partner;

11.2.2.2 Living with the other person as husband and wife or as if they were civil partners;

11.2.2.3 Grandparent of the other person;

11.2.2.4 A lineal descendent of a grandparent of the other person

11.2.2.5 A parent, sibling or child of a person within paragraphs 11.2.3.1 or 11.2.3.2; or

11.2.2.6 A spouse or civil partner of a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5; or

11.2.2.7 Living with a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5 as husband and wife or as if they were civil partners.

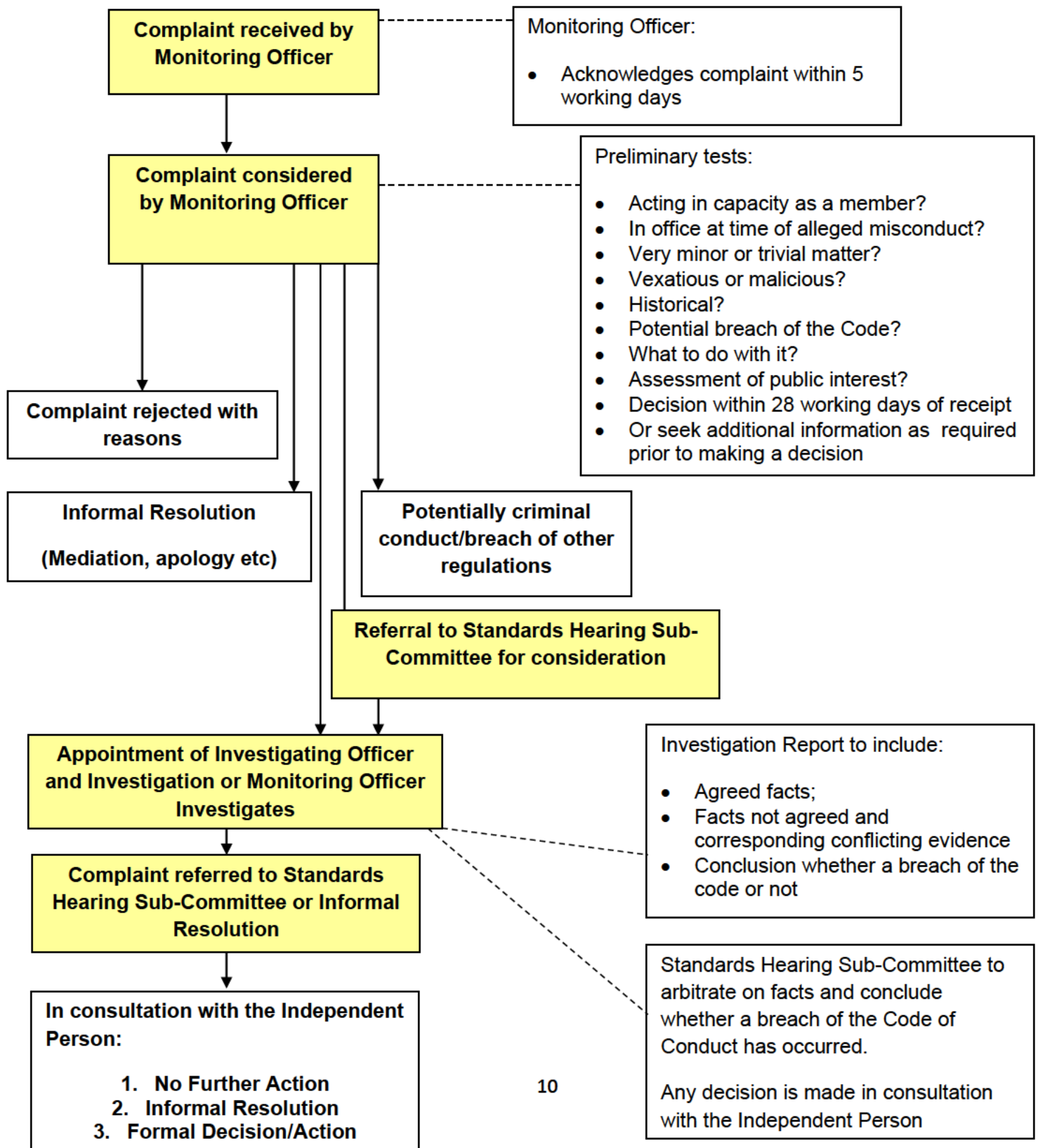
12. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman 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.

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 Sub-Committee.
- 13.2 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 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 eg allegation of bullying, harassment etc.
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 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 Hearing Sub-Committee

1. It is serious enough, if proven, to justify the range of actions available to the Standards Hearing Sub-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.
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 Councillor such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him to investigate

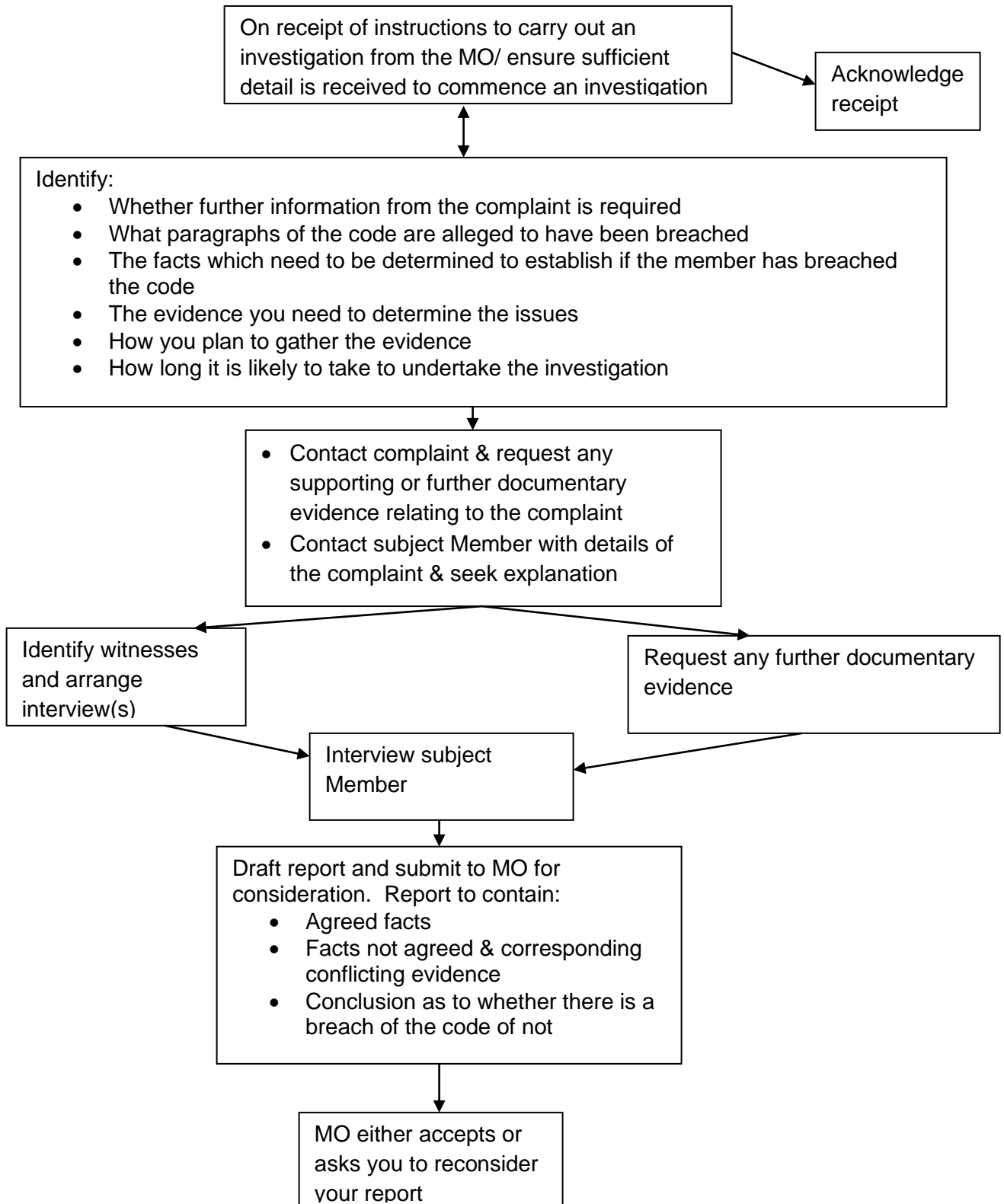
Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and members' time. This is an important consideration where the complaint is relatively minor.

Appendix 3

Audit and Standards Complaints Investigation Procedure

You should maintain a written record to demonstrate what was considered at the start of each 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 Councillors 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.



Appendix 4

Complaints Standards Hearing Sub-Committee Procedure

<u>Item No.</u>	<u>Procedure</u>
1	<u>Quorum</u>
	<p>1.1. Three Councillors must be present throughout the hearing to form a quorum.</p> <p>1.2. The Sub-Committee shall nominate a Chairman for the meeting</p>
2	<u>Opening</u>
	<p>2.1 The Chairman 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 Chairman asks all present to introduce themselves</p> <p>2.3 The Councillor will be asked whether they wish to briefly outline their position</p>
	<u>The Complaint</u>
3	<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</p>

	<p>questions rising from the Investigators report and not to make a statement)</p> <p>3.3 Councillors on 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 Councillors of the Sub-Committee may question the Councillor 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 Councillor (or their representative) may sum up their case.</p>
6	<p style="text-align: center;"><u>Decision</u></p> <p>6.1 Councillors 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> <p>6.2.1 The Sub-Committee decides that the Councillor has failed to</p>

	follow the Code of Conduct or
6.2.2	The Sub-Committee decides that the Councillor has not failed to follow the Code of Conduct
6.2.3	The Sub-Committee will give reasons for their decision
6.3	If the Sub-Committee decides that the Councillor has failed to follow the Code of Conduct the Panel will consider any representations from the Investigator and/or the Councillor as to:
6.3.1	Whether any action should be taken and
6.3.2	What form any action should take
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
6.5	On the Sub-Committee's return the Chairman will announce the Sub-Committee's decision
6.6	The Sub-Committee will consider whether it should make any recommendations to the Council.
6.7	The Chairman will confirm that a full written decision shall be issued within 7 working days following the hearing and that the Sub-Committee's findings to be published.