

BASSETLAW DISTRICT COUNCIL

COUNCIL

29th January 2013

REPORT OF THE MONITORING OFFICER

LOCALISM ACT 2011 – CODE OF CONDUCT NEW ARRANGEMENTS

Cabinet Member: Policy

Contact: Ros Theakstone
Ext: 3160

1. Public Interest Test

- 1.1 Ros Theakstone has determined in preparing this report that this matter is not confidential.

2. Purpose of the Report

- 2.1 To seek approval for new arrangements for dealing with complaints made against District, Town and Parish Councillors in relation to Code of Conduct in line with the requirements of the Localism Act 2011.

3. Background and Discussion

- 3.1 The Council adopted a new Code of Conduct including the new framework for establishing and maintaining a Register of Members Interests in July 2012. The Council also approved a procedure for dealing with Dispensations and appointed an “Independent Person” to assist in dealing with complaints against elected and co-opted members including parish councillors in December 2012.
- 3.2 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 Town or Parish Council within the authority’s area, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations. Under S.28 of the Localism Act an authority must also put in place arrangements under which it can investigate an allegation of a breach of a code. These arrangements will replace the former Code of Conduct Complaint procedures in force as part of the former Standards regime.
- 3.3 Attached to this report are the proposed new arrangements for this Council. Much time has been spent considering the best and most suitable procedures to be adopted which are understandable and fair to both complainants and members being complained about. The procedures have been independently reviewed by external lawyers and hence are both robust and fully compliant with the requirements outlined in the Localism Act.

4. **Implications**

- a) For service users

The Council needs to ensure that members of the public have sufficient confidence that any complaints against elected or co-opted members including parish and town councillors support will be robustly but fairly dealt with.

- b) Strategic & Policy

The Council is meeting its statutory responsibilities by adopting a Code of Conduct and putting into place appropriate arrangements for the consideration of complaints as defined within the regulations.

- c) Financial - Ref: (13/0)

There are no budgetary implications arising from this report.

- d) Legal - Ref: (11/01/13)

The Council has a duty to comply with the requirements of the Localism Act 2011 by promoting and maintaining high standards of conduct together with ensuring complaints against members are dealt with correctly as defined within the regulations. S.28 also requires an authority to put in place arrangements under which it can investigate an allegation of a breach of a code made in writing.

- e) Human Resources

None directly from this report.

- f) Community Safety, Equalities, Environmental

None arising.

- g) Whether this is a key decision, and if so the reference number.

This is a not a key decision.

5. **Options, Risks and Reasons for Recommendations**

- 5.1 The Council has a duty to comply with the requirements of the Localism Act 2011 and therefore the proposed new arrangements for complaints made relating to Code of Conduct and Members Interests ensures this duty is discharged.

6. **Recommendations**

- 6.1 That the proposed new arrangements for dealing with Code of Conduct Complaints are approved with appropriate amendments made to the Council's Constitution to reflect the changes.

Background Papers

Localism Act 2011

Location

Legal Services

Code of Conduct Complaints Procedure

Bassetlaw District Council

1. Context

This procedure explains how you can make a complaint against a Council member. All Councillors are required to comply with a Councillor Code of Conduct. The Bassetlaw Code of Conduct is available from reception and from the District Council's website. However Town and Parish Councils may either adopt the Bassetlaw Code or one of their own which will be available direct from the relevant Town/ Parish Council on request. If you wish to complain that a Member has not complied with the code then this procedure sets out how the Council will deal with your complaint.

Under the Localism Act 2011, the Council must have in place a procedure by which allegations can be investigated and a decision made on such allegations.

The Localism Act also requires the Council to appoint at least one Independent person. The Independent Person's views must be sought by the Council before making a decision on an allegation which it has decided should be investigated. The Council may also seek the views of the Independent Person at any other stage of the procedure. The views of the Independent Person may also be sought, at any stage of the procedure, by a Member against whom a complaint has been made.

2. Parish Councils

References to Council Members in the procedure mean also co-opted Members and to Members or co-opted Members of a Parish Council within the Bassetlaw District. The procedure applies to complaints made about those members and each Parish Council is required to adopt a Code of Conduct.

3. How to make a complaint

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

The Monitoring Officer (monitoringofficer@bassetlaw.gov.uk) Bassetlaw District Council, Queens Buildings, Potter Street, Worksop S80 2AH.

The Monitoring Officer is a senior officer of the Council. The Monitoring Officer has legal responsibility for maintaining the register of members' interests and is responsible for administering the Code of Conduct for Councillors and for investigating complaints against Council Members .

To ensure that we have sufficient information to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the Council's website, next to the Code of Conduct, and is available on request from the Reception at the Council Offices.

Please provide us with your name and a contact address or email address. We can then acknowledge receipt of your complaint and keep you informed of its progress. If there is a reason why you may need 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 may, in exceptional circumstances, agree not to disclose your name and address to the Member against whom you make the complaint, without your prior consent.

The Council will not usually investigate complaints made anonymously, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within 3 working days of receiving it, and will keep you informed of the progress of your complaint as appropriate.

The Monitoring Officer will normally write to the Member informing them that a complaint has been received from you (unless a request to withhold this information has been granted) together with the nature of the complaint. The Member will be advised not to contact you.

The Complaints Procedure is set out in the flowchart attached at [Appendix 1](#). A more detailed description of the procedure is set out below.

4. Will your complaint be investigated?

The Monitoring Officer will review each complaint received. The Monitoring Officer may consult with the Independent Person before taking a decision as to whether the complaint:

- Merits no further action
- Whether to attempt informal resolution
- Merits formal investigation
- Should be referred to the Standards Sub-Committee

This decision will normally be taken within 28 working days of receipt of your complaint. Initially the Monitoring Officer will validate the complaint by subjecting it to the Initial Intake Test and Assessment Test set out at [Appendix 2](#). If the complaint fails the Initial Intake Test it will not be considered further and you and the Member will be informed of this. If the complaint fails the subsequent Assessment Test it will not be considered further and you and the member will be

informed of this. The Monitoring Officer may seek the views of the Independent Person when applying the Assessment Test.

Where the Monitoring Officer has taken a decision, you will be informed of that decision and the reasons for it. Where the Monitoring Officer requires additional information in order to come to this decision, they may request such further information from you. The Monitoring Officer may also request information from the Member against whom your complaint is directed. Having considered the Assessment Test, the Monitoring Officer may deem that the complaint is valid. In appropriate cases the Monitoring Officer may, in consultation with the Independent Person, seek to resolve the complaint informally, without the need for a formal investigation. Informal resolution may involve the Member agreeing that their conduct was unacceptable and offering an apology, or agreeing to other remedial action by the Council. Where the Member 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 should be investigated further

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer will inform you of this and may notify the Police or other regulatory agencies.

5. How is the investigation conducted?

The Council has adopted a procedure for the investigation of complaints against Members, which is attached as [Appendix 3](#). A more detailed description of the procedure is set out below

If the Monitoring Officer in consultation with the Independent Person decides that a complaint merits further investigation, they may appoint an Investigating Officer. If the nature of the complaint is relatively straightforward then the Investigating Officer may be another senior council officer or an officer or Independent Person of another authority. If the complaint is more complex and/or contentious then a suitably qualified and experienced external investigator will be appointed in accordance with the Council's Contract Procedure Rules and procurement of such services. The Investigating Officer or Monitoring Officer will decide whether they need to meet you or speak to you. This may help them to understand the nature of your complaint, enable you to explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.

The Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained. They will provide the Member with a copy of your complaint. They will ask the member to provide their view of events, and to identify any documents that may need to be seen and who may need to be interviewed. 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.

At the end of their investigation, the Investigating Officer or Monitoring Officer will produce a draft report ("the Investigation Report"). They will send copies of that draft report, in confidence, to you and to the Member concerned. This will give you both an opportunity to identify any matter in the draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you and the Member may make on the draft Investigation Report the Monitoring Officer or Investigating Officer will prepare a final report. Where an Investigating Officer has been appointed then the Investigating Officer will send their 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?

If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if satisfied that the Investigating Officer's report is sufficient to show no evidence of failure to comply with the code of conduct, the Monitoring Officer will write to you and to the Member concerned (*and to the Parish Council, where your complaint relates to a Parish Councillor*), notifying you that they are satisfied that no further action is required. You will both receive a copy of the Investigation Final Report.

Where an Investigating Officer has been appointed and Monitoring Officer is not satisfied that the investigation has been conducted properly, the Monitoring Officer may ask the Investigating Officer to reconsider their report.

Before taking either of those steps the Monitoring Officer may consult with the Independent Person.

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?

If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report. Where the report demonstrates evidence of failure to comply with the code of conduct the Monitoring Officer will then either send the matter for a hearing before a Standards Sub-Committee or in consultation with the Independent Person seek an informal resolution.

Informal Resolution

The Monitoring Officer may consider that the matter can be resolved without the need for a hearing. In such a case, the Monitoring Officer will consult with the Independent Person and with you as complainant and seek to agree what you may consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or agreeing to other remedial action by the Council. If the member complies with the suggested resolution, the Monitoring Officer will take no further action, other than reporting the matter to the Audit and Risk Scrutiny Committee (*and the Parish Council*) for information.

Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the Member concerned does not agree that the proposed remedial action is appropriate such as giving an apology, then the Monitoring Officer will refer the Investigation Report to a Standards 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. The Council has agreed a procedure for hearing complaints. The procedure for Standards Sub-Committee hearings is attached at [Appendix 4](#). Once the Monitoring Officer has submitted the Investigation Report to the Standards Sub-Committee you and the member will not be able to introduce any further points of complaint or evidence without the consent of the Sub-Committee.

Before taking either of the above steps the Monitoring Officer may first consult the Independent Person.

8. What action can the Standards Sub-Committee take where a member has failed to comply with the code of conduct?

The Council has delegated powers to the Audit & Risk Committee to take charge of standards and Code of Conduct – Appendix 5 refers. Further, the Council has delegated powers to the Standards sub-committee to take action in respect of individual members. The powers of the sub-committee are set out at [Appendix 5a](#).

9. What happens at the end of the hearing?

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

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and

send a copy to you, to the Member (*and to the Parish Council if applicable*). The decision notice will be available for public inspection and will be reported to the next convenient meeting of the Audit and Risk Scrutiny Committee.

10. What is the Standards Sub-Committee?

Full details are contained in Appendix 6.

11. Who is the Independent Person?

Full details are contained in Appendix 6.

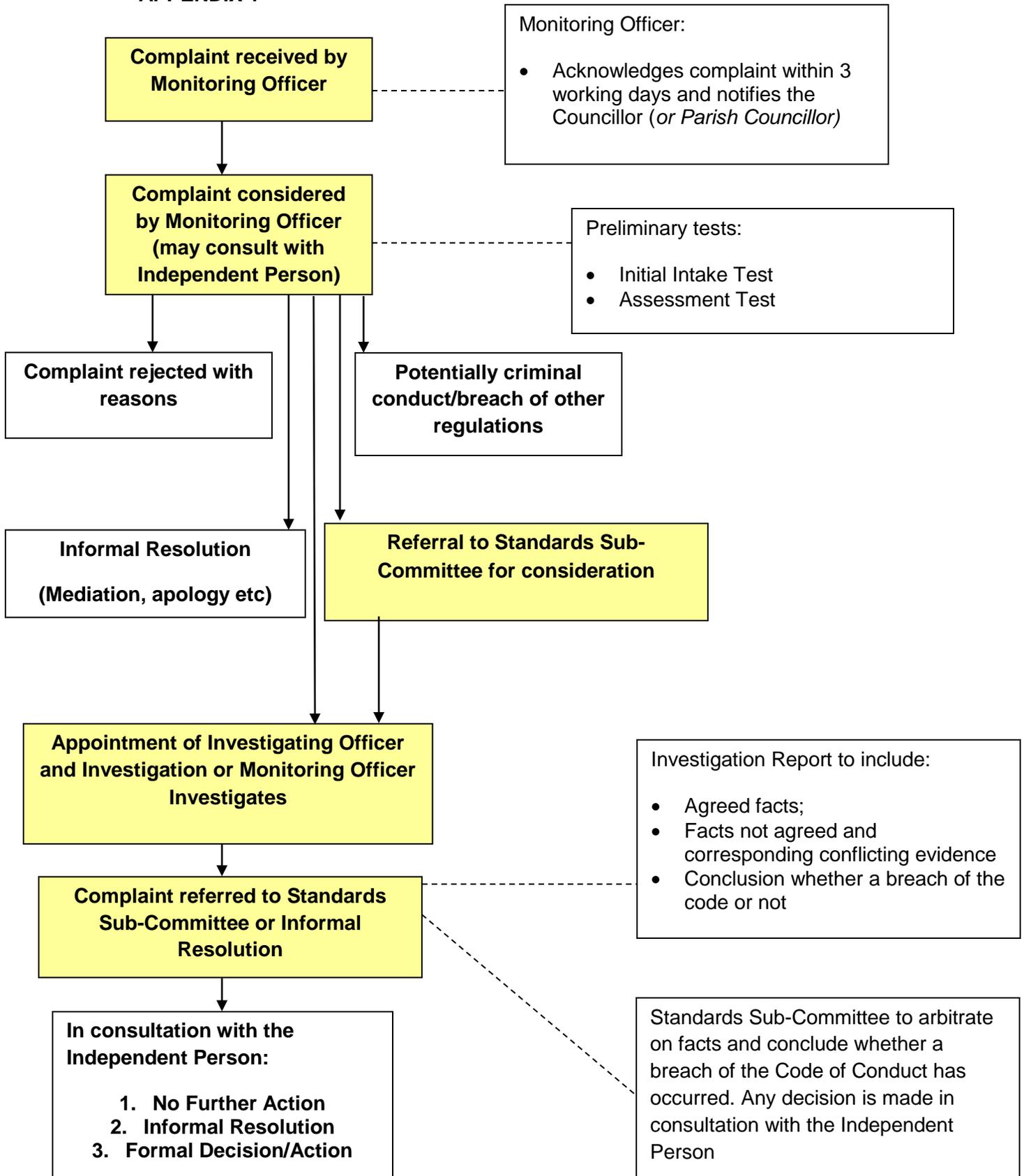
12. Can this procedure be changed?

The Council will keep under review the Code of Conduct Complaints Procedure and may agree (by resolution) to amend these arrangements. The Council has delegated to the Chair of the Sub-Committee the right to depart from these arrangements where the Chair considers that it is expedient to do so in order to secure the effective and fair consideration of any matter put before them.

13. Can I challenge decisions made under this procedure?

There are no rights of review of decisions taken under the procedure, other than the right to challenge the process by way of Judicial Review or referral to the Local Government Ombudsman if appropriate.

APPENDIX 1



APPENDIX 2 - STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Criteria for Assessment of Complaints against Members relating to the Code of Conduct

Initial Intake test

Before assessment of a complaint begins, the complaint has to meet the following tests:

It is a complaint against one or more named Members of Bassetlaw District Council or one or more named Members of one of the Parish Councils within the Bassetlaw District Council area.

The Subject Member was a Member at the time of the alleged conduct.

The behaviour took place within the last 90 days.

The complainant has given their name and address.

The complaint is an allegation under the Code rather than a service, officer or a statement of policy disagreement,

The complaint is not an allegation that could constitute a criminal offence (Section 34 of the Localism Act 2011)

The complaint is not being dealt with by the police, ombudsman or another complaint process (in this case the complaint will not be processed until after the other process has been completed).

The complaint is not being made within 6 weeks prior to an election (no action will be taken in relation to any complaint within this period).

The complaint is not the same or substantially similar to a complaint that has already been assessed even if this was prior to 1st July 2012.

Tick box
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If the complaint fails one or more of these tests it cannot be considered for Assessment and the complainant will be informed that no further action will be taken in respect of the complaint. The Subject Member concerned will also be told of the complaint and that it had failed the Initial Intake test. The Monitoring Officer may advise the complainant that the complaint needs to be referred elsewhere, if appropriate.

Assessment test

The Subject Member concerned will be informed of the complaint by being sent a copy of the complaint together with all supporting documentation and given the opportunity to respond.

The allegations will then be considered by the Monitoring Officer, together with the appointed Independent Person. A complaint will be considered in relation to the following criteria:-

Sufficiency of Complaint

- Does the complaint state sufficient and detailed information as regards the allegation and alleged misconduct to sustain a breach of the Code of Conduct
- Does the complaint and related documents include sufficient independent evidence supporting the claim and establishing the facts on which it is based such as witness statements and documentary evidence to show a reasonable prospect of establishing a breach of the Code of Conduct
- Can it be shown that the Subject Member was acting in a public capacity
- Can it be shown that the behaviour falls within the relevant Code of Conduct

Evidence

- Is the evidence sufficiently reliable i.e. is it first-hand evidence or hearsay evidence
- What weight can be given to the evidence
- Is the evidence relevant to the alleged breach
- Could any further evidence be revealed by an investigation

Suitability for Investigation

- Is it sufficiently serious
- Would an investigation serve any useful purpose
- Have the circumstances changed
- Is it serious enough to warrant a sanction
- Is the conduct seriously and unreasonably disrupting the business of the authority
- How long ago did the alleged conduct occur
- Is an investigation likely to prove on the balance of probability that a breach took place
- Is it likely that an investigation will prove only a technical or inadvertent breach
- Has the same or a substantially similar complaint already been the subject of an investigation
- Is the complaint really about dissatisfaction with a Council decision
- **Is the complaint about the administrative practices of the Council rather than a Member's behaviour**

Extenuating Circumstances

- Has the issue been publicised in the local press
- Is the complaint malicious
- Is the complaint minor
- Is the complaint tit for tat
- Is the case politically motivated

Possible Defences

- Was the breach made in all innocence i.e. without knowledge
- Are there strong mitigating circumstances
- Was there provocation

In order to facilitate the making of a decision the following definitions are given:-

- Lack of respect means derogatory comments that are aimed at a person or their personal qualities. However Members should be able to express disagreement publically with each other and have the freedom to disagree with the views and opinions of others.
- Bullying or intimidation means offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient (Advisory, Conciliation and Arbitration Service (Acas)). Such conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature or when the behaviour by both the complainant and the Subject Member contributed equally to the breakdown in relations.

The Monitoring Officer will evaluate and weigh up the above criteria in reaching a decision. The Monitoring Officer will make one of the following decisions:-

- No further action
- Attempt informal resolution
- Recommend formal investigation
- Referral to Standards Committee

The complainant, the Subject Member concerned and the relevant Parish Clerk (if applicable) will be informed of the outcome.

There may be certain complaints where the Monitoring Officer feels the need to make a referral to the Standards Sub-Committee. Such referrals will take place according to the criteria set out below.

Complaints which may be referred to the Standards Sub-Committee

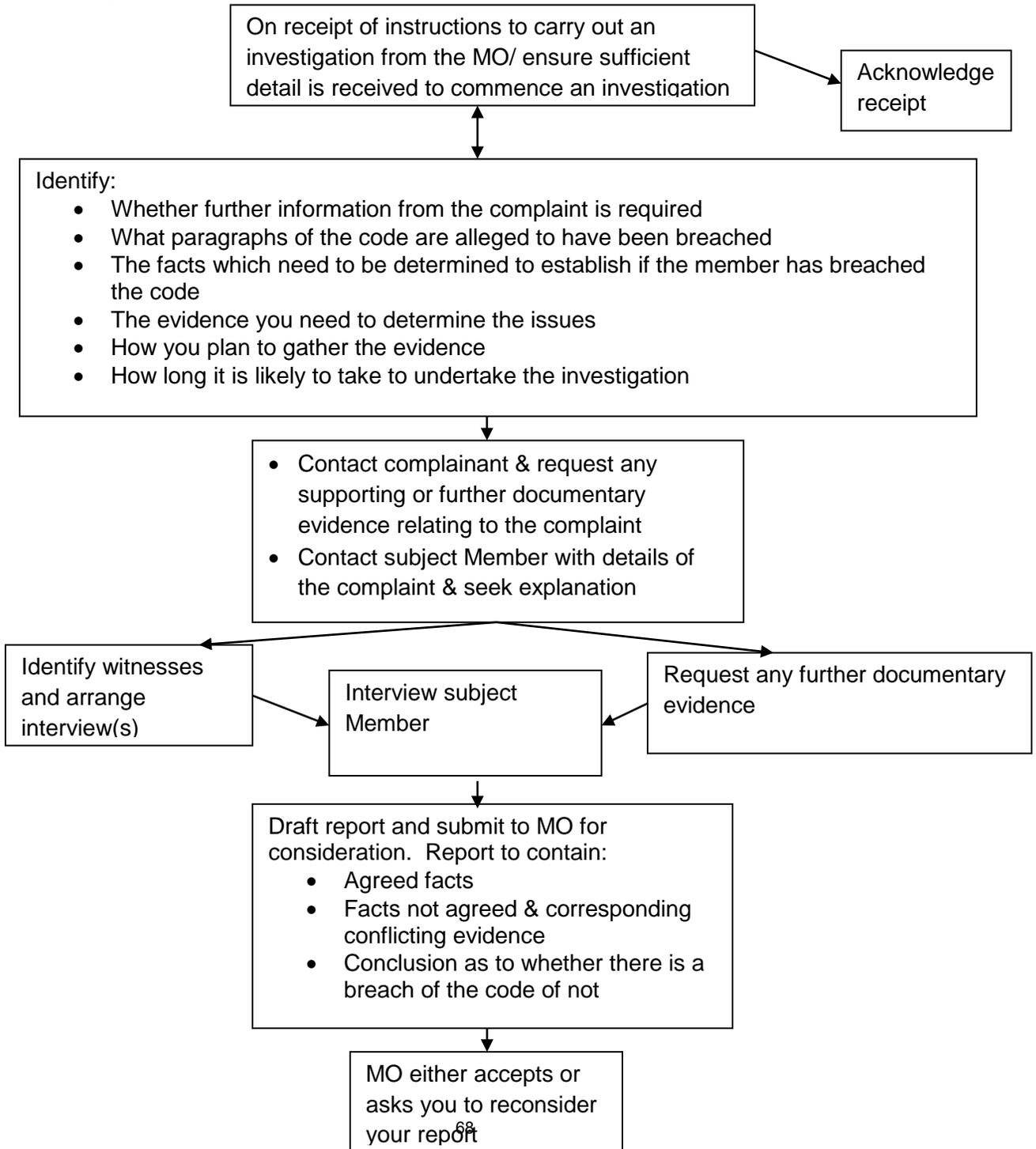
1. It is serious enough, if proven, to justify the range of actions available to the Standards Sub-Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no 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 Member 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 - 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 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.



Appendix 4 - Complaints - Standards 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. Members will be drawn from the Audit & Risk committee however any member may be called to join the sub-committee subject to having received appropriate training.</p> <p>1.3. 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 of complaint or evidence which post-dates the Investigation Report shall be allowed without the consent of the Sub-Committee.</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 Investigators 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 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 Members of the Sub-Committee will deliberate in private to consider the complaint in consultation with the Independent Person prior to reaching a decision</p> <p>6.2 Upon the Sub-Committee's return the Chair 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 follow the Code of Conduct or</p> <p>6.2.2 The Sub-Committee decides that the Councillor has not failed to follow the Code of Conduct</p> <p>6.2.3 The Sub-Committee will give reasons for their decision</p> <p>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:</p> <p>6.3.1 Whether any action should be taken and</p> <p>6.3.2 What form any action should take</p>

	<p>6.4 The Sub-Committee will then deliberate in private to consider what action if any should be taken in consultation with the Independent Person</p> <p>6.5 On the Sub-Committee's return the Chair will announce the Sub-Committee's decision (in relation to a Parish Councillor a recommendation to the Parish Council)</p> <p>6.6 The Sub-Committee will consider whether it should make any recommendations to the Council or in relation to a Parish Councillor to the Parish Council with a view to promoting high standards of conduct among Members</p> <p>6.7 The Chair 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.</p>

APPENDIX 5 – COUNCIL CONSTITUTION

PART 3 - RESPONSIBILITY FOR FUNCTIONS – MEMBERS

AUDIT AND RISK SCRUTINY COMMITTEE

The following additional responsibilities apply:

8. To promote and maintain high standards of conduct by Members and Co-opted Members of the Authority, and:
 - Advise and assist Parish Council(s) and Parish Councillors to maintain high standards of conduct and to make recommendations to Parish Councils on improving standards or on actions following a finding of failure by a Parish Councillor to comply with the Code of Conduct
 - To conduct hearings on behalf of the Parish Council.
 - To advise the Council on the adoption or revision of the Members Code of Conduct.
 - To receive reports from the Monitoring Officer and assessing the operation and effectiveness of the Members Code of Conduct. The Monitoring Officer shall report the outcome of all complaints to the committee including those complaints which failed the Initial Intake Test and Assessment Test.
 - To advise, train or arrange training for Members and Co-opted Members on matters relating to the Members' Code of Conduct.
 - To hear and determine complaints about Members and Co-opted Members referred to it by the Monitoring Officer.
 - To maintain oversight of the Council's arrangements for dealing with complaints
 - To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints.
 - To grant dispensations after consultation with the Independent Person pursuant to S33(2) (b), (c) and (e) of the Localism Act 2011
 - To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to S33(2)(a) and (d) of the Localism Act 2011.

Other Matters

a) The Council

The Audit and Risk Scrutiny Committee reports to Council

b) Sub-Committees/Working/Consultation Groups appointed by an reporting to Standards Committee

The Audit and Risk Scrutiny Committee may appoint a sub-committee to conduct a Hearing into an allegation that a Member or Co-opted Member has breached the Authority's Code of Conduct.

Following a Hearing, the Sub-Committee may make one of the following findings:

- (a) That the Member has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the Hearing
- (b) That the Member has failed to comply with the Code of Conduct but that no further action needs to be taken in respect of the matters considered at the Hearing
- (c) That the Member has failed to comply with the Code of Conduct and that a sanction and/or an informal resolution should be imposed.

The Sub-Committee may impose any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions as are available to it by law or policy.

After making a finding the sub-committee shall, as soon as reasonably practicable provide written notice of its findings and the reasons for its decision to the Member and complainant.

The Standards Committee may appoint working or consultation groups for the proper discharge of its functions.

c) Monitoring Officer

Unless otherwise restricted by legislative or regulatory provision the Standards Committee may delegate any of its functions to the Monitoring Officer.

d) Training

A member appointed to the Audit and Risk Scrutiny Committee may not speak and/or vote at a meeting of the Committee or Sub-Committee in relation to an investigation and/or taking action on a complaint until he/she has undertaken appropriate training approved or organised by or on behalf of the Council.

e) Lead Officer

The Monitoring Officer

APPENDIX 5A – POWERS OF THE STANDARDS SUB-COMMITTEE

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

1. Publish its findings in respect of member conduct;
2. Recommend to Council that he/she be issued with a formal censure (*or to the Parish Council*);
3. Issue a formal letter to the Councillor (*or Parish Councillor*) found to have breached the code
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-Committees of the Council subject to statutory and constitutional requirements;
5. Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
6. Instruct the Monitoring Officer to (*or recommend that the Parish Council*) arrange training for the member;
7. Recommend removal (*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. Withdraw (*or recommend to the Parish Council that it withdraws*) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
9. Exclude (*or recommend that the Parish Council exclude*) the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Sub-Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

Any decision of the District Council on sanctions in relation to a Parish Council can only in effect be a recommendation to the Parish Council, who must then itself decide whether to accept the recommendation. The District Council could only make a finding of breach/ no breach and then recommend a course of action to the Parish Council.

**APPENDIX 6 – STANDARDS COMMITTEE/ SUB-COMMITTEE
INDEPENDENT PERSON**

What are the Audit and Risk Scrutiny Committee and Standards Sub-Committee?

1. The Audit and Risk Scrutiny Committee comprises of 6 Councillors of the Council drawn from all political groups including one member of the authority's Executive. It also includes 2 co-opted Parish Councillors (non-voting). 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 (i.e. politically balanced).
2. The Standards Sub-Committee will comprise a maximum of 3 Councillors serving on the Standards Committee. If the Councillor complained about is a member of a Parish Council the Parish Councillor who is a member of the Standards Committee will also be invited to attend the Sub-Committee. Audit and Risk Scrutiny Committee The Independent Person is invited to attend all meetings of the Standards Committee and Standards Sub-Committee. In relation to the Sub-Committee, 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.

Who is the Independent Person?

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.
2. A person cannot be "independent" if he/she:
 - Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
 - *(Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area), or*
 - Is a relative or close friend, of a person within both paragraphs above.

For this purpose, a "relative" means:

- a) Spouse or civil partner
- b) Living with the other person as husband and 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 child of a person within paragraphs a) or b); or
 - f) A spouse or civil partner of a person within paragraphs c), d) or e); or
 - g) Living with a person within paragraphs c), d) or e) as husband and wife or as if they were civil partners.
3. Independent Members of the Council's former Standards Committee cannot become an "Independent Person". However, transitional arrangements permit the appointment of a former member or co-opted member of the Standards Committee as the Independent Person, provided that:
- The person in question is not a member or co-opted member of the Standards Committee on 1st July 2012, and
 - The appointment is made before the 1st July 2013.

The appointment can run on beyond July 2013, provided it is made by then.

Code of Conduct Complaints Procedure

Bassetlaw District Council

Parish Councils

1. Context

This procedure explains how you can make a complaint against a Parish Council member. All Councillors are required to comply with a Councillor Code of Conduct. The Bassetlaw Code of Conduct is available from reception and from the District Council's website. However Town and Parish Councils may either adopt the Bassetlaw Code or one of their own which will be available direct from the relevant Town/ Parish Council on request. If you wish to complain that a Parish Councillor has not complied with the code then this procedure sets out how the District Council will deal with your complaint.

Under the Localism Act 2011, the District Council must have in place a procedure by which allegations can be investigated and a decision made on such allegations.

The Localism Act also requires the District Council to appoint at least one Independent person. The Independent Person's views must be sought by the District Council before making a decision on an allegation which it has decided should be investigated. The District Council may also seek the views of the Independent Person at any other stage of the procedure. The views of the Independent Person may also be sought, at any stage of the procedure, by a Parish Councillor against whom a complaint has been made.

2. Parish Councils

References to Parish Councillors in the procedure mean also to co-opted Members of a Parish Council within the Bassetlaw District. The procedure applies to complaints made about those Parish Councillors and each Parish Council is required to adopt a Code of Conduct.

3. How to make a complaint

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

The Monitoring Officer (monitoringofficer@bassetlaw.gov.uk) Bassetlaw District Council, Queens Buildings, Potter Street, Worksop S80 2AH.

The Monitoring Officer is a senior officer of the Council. The Monitoring Officer has legal responsibility for maintaining the register of members' interests and is

responsible for administering the Code of Conduct for Councillors and for investigating complaints against Parish Councillors.

To ensure that we have sufficient information to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the Council's website, next to the Code of Conduct, and is available on request from the Reception at the Council Offices.

Please provide us with your name and a contact address or email address. We can then acknowledge receipt of your complaint and keep you informed of its progress. If there is a reason why you may need 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 may, in exceptional circumstances, agree not to disclose your name and address to the Parish Councillor against whom you make the complaint, without your prior consent.

The Council will not usually investigate complaints made anonymously, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within 3 working days of receiving it, and will keep you informed of the progress of your complaint as appropriate.

The Monitoring Officer will normally write to the Parish Councillor informing them that a complaint has been received from you (unless a request to withhold this information has been granted) together with the nature of the complaint. The Parish Councillor will be advised not to contact you.

The Complaints Procedure is set out in the flowchart attached at [Appendix 1](#). A more detailed description of the procedure is set out below.

4. Will your complaint be investigated?

The Monitoring Officer will review each complaint received. The Monitoring Officer may consult with the Independent Person before taking a decision as to whether the complaint:

- Merits no further action
- Whether to attempt informal resolution
- Merits formal investigation
- Should be referred to the Standards Sub-Committee

This decision will normally be taken within 28 working days of receipt of your complaint. Initially the Monitoring Officer will validate the complaint by subjecting it to the Initial Intake Test and Assessment Test set out at [Appendix 2](#). If the

complaint fails the Initial Intake Test it will not be considered further and you and the Parish Councillor will be informed of this. If the complaint fails the subsequent Assessment Test it will not be considered further and you and the member will be informed of this. The Monitoring Officer may seek the views of the Independent Person when applying the Assessment Test.

Where the Monitoring Officer has taken a decision, you will be informed of that decision and the reasons for it. Where the Monitoring Officer requires additional information in order to come to this decision, they may request such further information from you. The Monitoring Officer may also request information from the Parish Councillor against whom your complaint is directed. Having considered the Assessment Test, the Monitoring Officer may deem that the complaint is valid. In appropriate cases the Monitoring Officer may, in consultation with the Independent Person, seek to resolve the complaint informally, without the need for a formal investigation. Informal resolution may involve the Member agreeing that their conduct was unacceptable and offering an apology, or agreeing to other remedial action by the Council. Where the Parish Councillor or the District 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 should be investigated further

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer will inform you of this and may notify the Police or other regulatory agencies.

5. How is the investigation conducted?

The District Council has adopted a procedure for the investigation of complaints against Members, which is attached as [Appendix 3](#). A more detailed description of the procedure is set out below

If the Monitoring Officer in consultation with the Independent Person decides that a complaint merits further investigation, they may appoint an Investigating Officer. If the nature of the complaint is relatively straightforward then the Investigating Officer may be another senior District Council officer or an officer or Independent Person of another authority. If the complaint is more complex and/or contentious then a suitably qualified and experienced external investigator will be appointed in accordance with the District Council's Contract Procedure Rules and procurement of such services. The Investigating Officer or Monitoring Officer will decide whether they need to meet you or speak to you. This may help them to understand the nature of your complaint, enable you to explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.

The Investigating Officer or Monitoring Officer will normally write to the Parish Councillor against whom you have complained. They will provide the Member with a copy of your complaint. They will ask the member to provide their view of events, and to identify any documents that may need to be seen and who may need to be interviewed. 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 Parish Councillor until the investigation has progressed sufficiently.

At the end of their investigation, the Investigating Officer or Monitoring Officer will produce a draft report ("the Investigation Report"). They will send copies of that draft report, in confidence, to you and to the Parish Councillor concerned. This will give you both an opportunity to identify any matter in the draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you and the Member may make on the draft Investigation Report the Monitoring Officer or Investigating Officer will prepare a final report. Where an Investigating Officer has been appointed then the Investigating Officer will send their 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?

If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if satisfied that the Investigating Officer's report is sufficient to show no evidence of failure to comply with the code of conduct, the Monitoring Officer will write to you and to the Parish Councillor concerned and to the Parish Council, notifying you that they are satisfied that no further action is required. You will both receive a copy of the Investigation Final Report.

Where an Investigating Officer has been appointed and Monitoring Officer is not satisfied that the investigation has been conducted properly, the Monitoring Officer may ask the Investigating Officer to reconsider their report.

Before taking either of those steps the Monitoring Officer may consult with the Independent Person.

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?

If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report. Where the report demonstrates evidence of failure to comply with the code of conduct the Monitoring Officer will then either

send the matter for a hearing before a Standards Sub-Committee or in consultation with the Independent Person seek an informal resolution.

Informal Resolution

The Monitoring Officer may consider that the matter can be resolved without the need for a hearing. In such a case, the Monitoring Officer 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 Parish Councillor accepting that their conduct was unacceptable and offering an apology, and/or agreeing to other remedial action by the Council. If the member complies with the suggested resolution, the Monitoring Officer will take no further action, other than reporting the matter to the Audit and Risk Scrutiny Committee and the Parish Council for information.

Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the Parish Councillor concerned does not agree that the proposed remedial action is appropriate such as giving an apology, then the Monitoring Officer will refer the Investigation Report to a Standards 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. The Council has agreed a procedure for hearing complaints. The procedure for Standards Sub-Committee hearings is attached at [Appendix 4](#). Once the Monitoring Officer has submitted the Investigation Report to the Standards Sub-Committee you and the member will not be able to introduce any further points of complaint or evidence without the consent of the Sub-Committee.

Before taking either of the above steps the Monitoring Officer may first consult the Independent Person.

8. What action can the Standards Sub-Committee take where a member has failed to comply with the code of conduct?

The Council has delegated powers to the Audit & Risk Committee to take charge of standards and Code of Conduct – Appendix 5 refers. Further, the Council has delegated powers to the Standards sub-committee to take action in respect of individual members. The powers of the sub-committee are set out at [Appendix 5a](#).

9. What happens at the end of the hearing?

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

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the Parish Councillor and to the Parish Council. The decision notice will be available for public inspection and will be reported to the next convenient meeting of the Audit and Risk Scrutiny Committee.

10. What is the Standards Sub-Committee?

Full details are contained in [Appendix 6](#).

11. Who is the Independent Person?

Full details are contained in [Appendix 6](#).

12. Can this procedure be changed?

The Council will keep under review the Code of Conduct Complaints Procedure and may agree (by resolution) to amend these arrangements. The Council has delegated to the Chair of the Sub-Committee the right to depart from these arrangements where the Chair considers that it is expedient to do so in order to secure the effective and fair consideration of any matter put before them.

13. Can I challenge decisions made under this procedure?

There are no rights of review of decisions taken under the procedure, other than the right to challenge the process by way of Judicial Review or referral to the Local Government Ombudsman if appropriate.