

AGENDA FOR

STANDARDS SUB COMMITTEE

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To: All Members of Standards Assessment Sub Committee

Councillors: P Cropper, T Pickstone and M Whitby

Dear Member/Colleague

Standards Sub Committee

You are invited to attend a meeting of the Standards Sub Committee which will be held as follows:-

Date:	Thursday, 18 March 2021
Place:	Microsoft Teams and Live Streamed on the Council's Website.
Time:	2.00 pm
Briefing Facilities:	If Opposition Members and Co-opted Members require briefing on any particular item on the Agenda, the appropriate Director/Senior Officer originating the related report should be contacted.
Notes:	

AGENDA

1 APPOINTMENT OF CHAIR

2 APOLOGIES FOR ABSENCE

3 DECLARATIONS OF INTEREST

**4 DETERMINATION OF ALLEGATION OF BREACH OF THE MEMBER
CODE OF CONDUCT PART A** *(Pages 3 - 44)*

A report from the Interim Monitoring Officer, Janet Witkowski is attached.

5 EXCLUSION OF PRESS AND PUBLIC

That Members may wish to consider that the press and public be excluded from the meeting under Section 100 (A)(4), Schedule 12(A) of the Local Government Act 1972, for the reason that the following business may involve the disclosure of exempt information.

**6 DETERMINATION OF ALLEGATION OF BREACH OF THE MEMBER
CODE OF CONDUCT PART B** *(Pages 45 - 60)*

A report from the Interim Monitoring Officer, Janet Witkowski is attached.



Classification	Item No.
Open	

Meeting:	Standards Sub-Committee (Hearings Panel)
Meeting date:	18 March 2021
Title of report:	Determination of Allegation of Breach of the Member Code of Conduct - Part A
Report by:	Janet Witkowski – Interim Council Solicitor and Monitoring Officer
Decision Type:	Council
Ward(s) to which report relates	N/a

Executive Summary:

The role of the Council's Standards Sub-Committee is to hear and determine complaints that a councillor has breached the Code of Conduct for Councillors and other Voting Representatives (the Code).

Having heard and determined the matter, the Sub-Committee may then either dismiss the complaint if no breach is found by the Sub-committee, or if a breach is upheld, hear any representations as to mitigation and consider any further action that should be taken, or sanction imposed, upon the Subject Member.

Recommendation(s)

The sub- committee is asked to:

1. Note the report and appendices.
2. Determine the facts of the case if they are not agreed.
3. Determine if the councillor concerned has breached the Code of Conduct and;

- a. Option 1 – if the sub-committee determines there has been no breach of the Code, to dismiss the matter Or;
- b. Option 2 - if the sub-committee determines there has been a breach of the Code, to determine how the councillor is dealt with, such actions to include;
 - i. Publish its findings in respect of the Subject Member’s conduct;
 - ii. Recommend to Council that the Member be censured;
 - iii. Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
 - iv. Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
 - v. Instruct the Monitoring Officer to arrange training for the Member;
 - vi. Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council;
 - vii. Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access;
or
 - viii. Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.

Key considerations

Background

The role of the Council’s Standards Committee includes promoting and maintaining high standards of conduct by Councillors as well as monitoring the operation of the Code. The Committee can determine how to deal with complaints against councillors, investigation reports compiled on behalf of the Monitoring officer and establish hearing panels where necessary.

The Council adopted its Code of Conduct and its arrangements for dealing with complaints that Council members have breached the Code, in 2012 attached at appendix 1 and 2. In addition a hearings procedure is in place for matters that cannot be resolved by local resolution which is attached at appendix 3.

Power is delegated to the Monitoring Officer, who has responsibility for the initial assessment of all complaints under the Members Code of Conduct. In consultation with the Independent Person, the Monitoring Officer is required to make an initial assessment of any complaint to decide if it should be accepted and if so to consider whether it should be dealt with informally or by way of investigation.

On 14 July 2020 the Monitoring Officer received a complaint concerning the conduct of a councillor.

This matter was considered by the Monitoring Officer and in accordance with the Council's arrangements for dealing with complaints, the Monitoring Officer consulted with the Council's independent person Mrs Valerie Bracken. It was agreed that there was a potential breach of the code and was sufficiently serious to merit further action and that an independent investigation should be undertaken.

Ms Maria Memoli of Local Governance Limited was appointed to investigate the matter and her report is attached to the report in Part B of the agenda.

In summary the Independent Investigator found that there were failures to comply with the Code and it was recommended that the matter be resolved by way of a local resolution.

Attempts have been made by the Monitoring Officer to resolve the matters by local resolution but this has been unsuccessful and the matter is now before the sub-committee for local hearing.

Relevant legislation

Section 27 (2) of the Localism Act 2011 places a duty on relevant authorities to ensure their members and co-opted members maintain high standards of conduct and requires such authorities to adopt a code of conduct for their members.

Section 28 (2) requires a relevant authority to adopt a code whose contents must be consistent with the seven "Nolan" principles of standards in public life (Selflessness, integrity, objectivity, accountability, openness, honest and leadership).

The proposal

The sub-committee is asked to:

Consider the recommendations set out within the Executive Summary.

Determine the complaint that the councillor has breached the Code and resolve either that a breach is proven or not proven.

Should the Sub-committee determine that the councillor has breached the Code, they are recommended to determine any further action that should be taken, including any sanction to be imposed, as set out in the in the Executive Summary.

Other alternative options considered

To take no further action as per recommendation 3.a. option 1.

Community impact / Contribution to the Bury 2030 Strategy

Equality Impact and considerations:

24. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

25. *The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.*

Assessment of Risk:

The following risks apply to the decision:

Risk / opportunity	Mitigation
The Council is required to have a Code of Conduct and maintain the ethical standards in public life. A failure to act on complaints would be contrary to that requirement.	A Code is in place along with arrangements for dealing with complaints.

Consultation: N/a

Legal Implications:

As set out in the report.

Financial Implications:

No financial implications arising from the report.

Report Author and Contact Details:

Janet Witkowski – Interim Council Solicitor and Monitoring Officer
j.witkowski@bury.gov.uk

Background papers:

The Bury Council Constitution

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning

Appendix 1

The Code of Conduct for Councillors and Other Voting Representative

Appendix 2

Council's Arrangements – Complaints Against Members

Appendix 3

Hearings Procedure



CODE OF CONDUCT FOR COUNCILLORS AND OTHER VOTING REPRESENTATIVES

**Approved by Council
2 April 2014**

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PRE-AMBLE TO CODE OF CONDUCT FOR MEMBERS

1. Introduction

The Council is determined to provide excellent local government for the people of the Borough. It promotes and maintains high standards of conduct by Members and Co-opted Members and has adopted a Code of Conduct for Members, in line with its obligations under section 27(2) of the Localism Act 2011.

2. General Principles of Conduct for Members and Co-opted Members

The Code and the Guidance are based on the following General Principles.

2.1 General Principles

Members and co-opted Members must behave according to the highest standards of personal conduct in everything they do as a Member. In particular they must observe the following principles of conduct, some of which are set out in law.

2.2 Selflessness

Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

2.3 Honesty and Integrity

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

2.4 Objectivity

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

2.5 Accountability

Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

2.6 Openness

Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

2.7 Personal Judgement

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

2.8 Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

2.9 Duty to Uphold the Law

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

2.10 Stewardship

Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

2.11 Leadership

Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

3. Training

- 3.1 Each Member must attend training on the Code of Conduct/ethical standards, in addition to any current requirements to receive training for specific Committees, for example Planning Control or Licensing Committees.

THE CODE OF CONDUCT

Part 1 General Provisions

1. Introduction and Interpretation

- 1.1 This Code applies to you as a member of the Council.
- 1.2 It is your responsibility to comply with this Code. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and /or disqualification from office for a period of up to 5 years. In this Code - "meeting" means any meeting of:
- (a) the Council;
 - (b) any of the Council's committees or sub-committees, joint committees or joint sub-committees;
 - (c) the Cabinet or any committee of the Cabinet.
- 1.3 "Member" includes a co-opted member and an appointed member.

2. Scope

- 2.1 Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you are acting as a member or co-opted member of the Council or an appointed member of a joint committee, and, references to your official capacity are construed accordingly.
- 2.2 This Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 2.3 Where you act as a representative of the Council:
- (a) on another relevant authority, including the Greater Manchester Combined Authority, the Greater Manchester Fire & Rescue Authority and the Greater Manchester Waste Disposal Authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General Obligations

- 3.1 You must not:

- (a) do anything which may knowingly cause the Council to breach the Equality Act 2010;
- (b) bully or be abusive to any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be:

- (i) a complainant,
- (ii) a witness, or
- (iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council;
- (e) behave in a way that a reasonable person would regard as disrespectful.

4. You must not:

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - (a) reasonable and in the public interest; and
 - (b) made in good faith and in compliance with the reasonable requirements of the Council; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

6. You:

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority:
 - (i) act in accordance with the Council's reasonable requirements; and
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 7.** (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by:
- (a) The Council's chief finance officer; or
 - (b) The Council's monitoring officer,
- where that officer is acting pursuant to his or her personal statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2 - Disclosable Pecuniary Interests

8. Notification of Disclosable Pecuniary Interests

- 8.1 Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.
- 8.2 A 'disclosable pecuniary interest' is an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in the table below.
- 8.3 "Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 month period prior to notification of the interest in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation Act) 1992 (a).
Contracts	Any contract which is made between you or your partner (or a body in which you or your partner has a beneficial interest) and the Council - (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of Bury Metropolitan Borough Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Bury Metropolitan Borough Council for a month or longer.

<p>Corporate Tenancies</p>	<p>Any tenancy where (to your knowledge) - (a) the landlord is the Council; and (b) the tenant is a body in which you or your partner has a beneficial interest.</p>
<p>Securities</p>	<p>Any beneficial interest in securities of a body where - (a) that body (to your knowledge) has a place of business or land in the area of Bury Metropolitan Borough Council; and (b) either - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you or your partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

8.3 For the purposes of the above

- (a) "a body in which you or your partner has a beneficial interest" means a firm in which you or your partner is a partner or a body corporate of which you or your partner is a director, or in the securities of which you or your partner has a beneficial interest.
- (b) "director" includes a member of the committee of management of an industrial and provident society.
- (c) "land" excludes an easement, interest or right in or over land which does not carry with it a right for you or your partner (alone or jointly) to occupy the land or receive income, and
- (d) "securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

9. Non Participation in Case of Disclosable Pecuniary Interest

9.1 If you are present at a meeting [of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, or the executive or committee of the executive] and you have a disclosable

pecuniary interest in any matter to be considered or being considered at the meeting,

- (a) You must not participate in any discussion of the matter at the meeting.
- (b) You must not participate in any vote taken on the matter at the meeting.
- (c) If the interest is not registered, you must disclose the interest to the meeting.
- (d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

9.2 Where a Cabinet member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the Cabinet member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

10. Offences

10.1 It is a criminal offence to:

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- As an Cabinet Member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest
- As a Cabinet Member discharging a function acting alone, and having a disclosable pecuniary interest in a matter, taking any steps in relation to such a matter.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

10.2 The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

Part 3 - Other Interests

11. Notification of Personal Interests

11.1 In addition to the disclosable pecuniary interests notifiable under the Localism Act 2011, you must, within 28 days of -

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the categories set out in paragraph 11(2) below for inclusion in the register of interests.

11.2 You have a personal interest in any business of your authority where it relates to or is likely to affect -

(a) any body of which you are in a position of general control or management and to which you are appointed or nominated by your authority;

(b) any body -

(i) exercising functions of a public nature;

(ii) directed to charitable purposes; or

(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are in a position of general control or management;

(c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least [£100]

12. Disclosure of Interests

12.1 Subject to paragraphs 12.4 to 12.7, where you have a personal interest described in paragraph 11.2 above or in paragraph 12.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

12.2 You also have a personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a *relevant person* to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward, affected by the decision;

12.3 In paragraph 12.2, a *relevant person* is:

- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in paragraph 11.2(a) or (b).
- 12.4 Where you have a personal interest in any business of the Council which relates to or is likely to affect a body described in paragraph 11.2(a) or 11.2(b)(i), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- 12.5 Where you have a personal interest in any business of the Council of the type mentioned in paragraph 11.2(c), (gifts and hospitality) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- 12.6 Where you have a personal interest but, by virtue of paragraph 16, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- 12.7 Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

13. Non Participation in Case of Prejudicial Interest

- 13.1 Where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business:
- (a) affects your financial position or the financial position of a person or body described in paragraph 12.3 ;or
 - (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 12.3.
- 13.2 Subject to paragraphs 13.3 and 13.4, where you have a prejudicial interest in any business of your authority:

- a) You must not participate in any discussion of the matter at the meeting.
- b) You must not participate in any vote taken on the matter at the meeting.
- c) If the interest is not registered, you must disclose the interest to the meeting.
- d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days

13.3 Where you have a prejudicial interest in any business of the Council, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

13.4 Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your authority in respect of:

- (a) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay; and
- (c) any ceremonial honour given to members.
- (d) housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
- (e) an allowance, payment or indemnity given to members;
- (f) setting council tax or a precept under the Local Government Finance Act 1992

13.5 Where, as a Cabinet Member, you may discharge a function alone, and you become aware of a prejudicial interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

14. Interests Arising in Relation to Overview and Scrutiny Committees

In any business before an overview and scrutiny committee of the Council (or of a sub-committee of such a committee) where:

- (a) that business relates to a decision made (whether implemented or not) or action taken by the Executive/Cabinet or another of the authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the Executive/Cabinet, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken,

You may attend the meeting of the overview and scrutiny committee for the purpose of explaining the reasons for the decision, or answering questions or giving evidence relating to the business, but you cannot participate otherwise in the discussion or in any vote on the matter.

Part 4 - General Matters Relating to Parts 2 and 3

15. Register of Interests

Subject to paragraph 16 any disclosable pecuniary interests or personal interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

16. Sensitive interests

This paragraph applies where you consider that disclosure of the details of a disclosable pecuniary interest or a personal interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees. In these circumstances, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2) of the Localism Act 2011.

17. Dispensations

The Council may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest or a prejudicial interest.

COMPLAINTS AGAINST MEMBERS

Arrangements for dealing with complaints that Council Members have failed to comply with the Council's Code of Conduct for Members

1. Introduction

- 1.1 This procedure applies when a complaint is received that a Member or Co-opted Member of the Council has or may have failed to comply with the Code of Conduct for Members.
- 1.2 The person making the complaint will be referred to as "the Complainant" and the person against whom the complaint is made will be referred to as the "Subject Member".
- 1.3 No Member or Officer of the Council will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter.

2. Making a Complaint

- 2.1 A complaint must be made in writing either by post or e-mail to; The Monitoring Officer, Department for Resources and Regulation, Town Hall, Knowsley Street, Bury or j.m.hammond@bury.gov.uk.
- 2.2 The Monitoring Officer will acknowledge receipt of the complaint within ten working days of receiving it and, at the same time, write to the Subject Member with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The degree of detail will be at the discretion of the Monitoring Officer. The Subject Member may, within five working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the initial assessment of the complaint.

3. Initial Assessment of Complaint

- 3.1 The Monitoring Officer will review the complaint and, following consultation with the Independent Person take a decision (initial assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

The complaint will be rejected if;

- The complaint is not against one or more named Members or co-opted Members of the Council;
- The Subject Member was not in office at the time of the alleged conduct.

- The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.
- The complaint relates to a matter which took place more than six months ago, except in exceptional circumstances.

3.2 If the complaint has not been rejected on the grounds in 3.1 the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected;

- Whether a substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and
 - i. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and
 - ii. Whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat;
- Whether the complaint suggests that there is a wider problem throughout the Authority;
- Whether it is apparent that the Subject Member is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response.

The Monitoring Officer will consult with the Independent Person and then give his decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question of how to proceed to [a Sub-Committee] of the Standards Committee.

4. Additional Information

- 4.1 The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation.
- 4.2 Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the Council (in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.3 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code of Conduct.

5. Confidentiality

- 5.1 If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.
- 5.2 As a matter of fairness and natural justice the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
- 5.3 If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the subject Member.

6. Investigation

- 6.1 The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer from another Council, or an external investigator.
- 6.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of Council resources and shall be interpreted in line with these principles.

- 6.3 The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to the Monitoring Officer decision on confidentiality.
- 6.4 At the end of their investigation, the Investigating Officer will produce a report and will send a copy of that report to the Monitoring Officer. [*The Investigating Officer may before that produce a draft report and send copies to the Complainant and Subject Member for comments on matters of fact. The Investigating Officer will take such comments into account before issuing their report to the Monitoring Officer*]

7. Investigating Officer finding of no failure to comply with the Code of Conduct

- 7.1 Where the Investigating Officer's report finds that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.
- 7.2 The Monitoring Officer will write to the Complainant and the Subject Member with a copy of the decision and the Investigating Officer's report.
- 7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

8 Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct.

Where the Investigating Officer's report finds that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then having consulted the Independent Person either send the matter for local hearing before the hearing panel or seek local resolution.

8.1 Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a local hearing without further reference to the Complainant or the Subject Member.

8.2 Local Hearing

Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the Complainant and/or Subject Member refuses to accept local resolution, then the Monitoring Officer will report the Investigating Officer's findings to the Hearing Panel which will conduct a local hearing before deciding whether the Member has failed to comply with a Code of Conduct and, if so, what action (if any) to take in respect of the Member.

9. Constitution of the Hearing Panel

The Hearing Panel is a sub-committee of the Council's Standards Committee. It will comprise of at least one of the independent Members co-opted to the Standards Committee and three elected Members of the Standards Committee of whom one should be a Member of the minority party.

The Independent Person is invited to attend all meetings of the Hearing Panel and their views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject 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.

10. The Independent Person

10.1 The Independent Person must be a person who has applied for the post following advertisement of a vacancy for the post, and appointed by a positive vote from a majority of all the Members of the Council at a meeting of the full Council.

10.2 A person is not eligible for appointment if they:

- are, a Member, co-opted Member or officer of the Council;
- subject to Paragraph 10.3 below, have within the past five years been a Member, co-opted Member or officer of Bury Council,
- are a relative or close friend of a person within the bullet points above.

10.3 A person may be appointed as an Independent Person if they are not a Member of the Standards Committee on 1 July 2012, but have held such a post at any time during the 5 years ending on 30 June 2012, provided that this only applies to appointments made before 1 July 2013.

10.4 For the purpose of paragraph 10.2, "relative" means:

- Spouse or civil partner;
- Living with the other person as husband and wife or as if they were Civil partners;
- Grandparents of the other person;
- A lineal descendant of a grandparent of the other person;
- A parent, sibling or child of the person within the above bullet points;
- A spouse or civil partner of a person within the above bullet points; or

- Living with a person within the above bullet points as husband and wife or as if they were civil partners.

11. Action

Where a Hearing Panel finds that a Subject Member has failed to comply with the Code of Conduct, the Council has delegated to the Standards Committee (and the Standards Committee has sub-delegated to the Hearing Panel), such of its powers to take action in respect of Subject Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearing Panel may:

- Publish its findings in respect of the Subject Member's conduct;
- Recommend to Council that the Member be censured;
- Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
- Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer to arrange training for the Member;
- Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council
- Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or
- Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances

12. Withdrawal of a Complaint

In the event that a Complainant withdraws a complaint at any time prior to a decision having been made by a Hearing Panel, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint but shall, in taking such a decision take into account any issues which may arise under Paragraph 3.1(c) of the Code of Conduct.

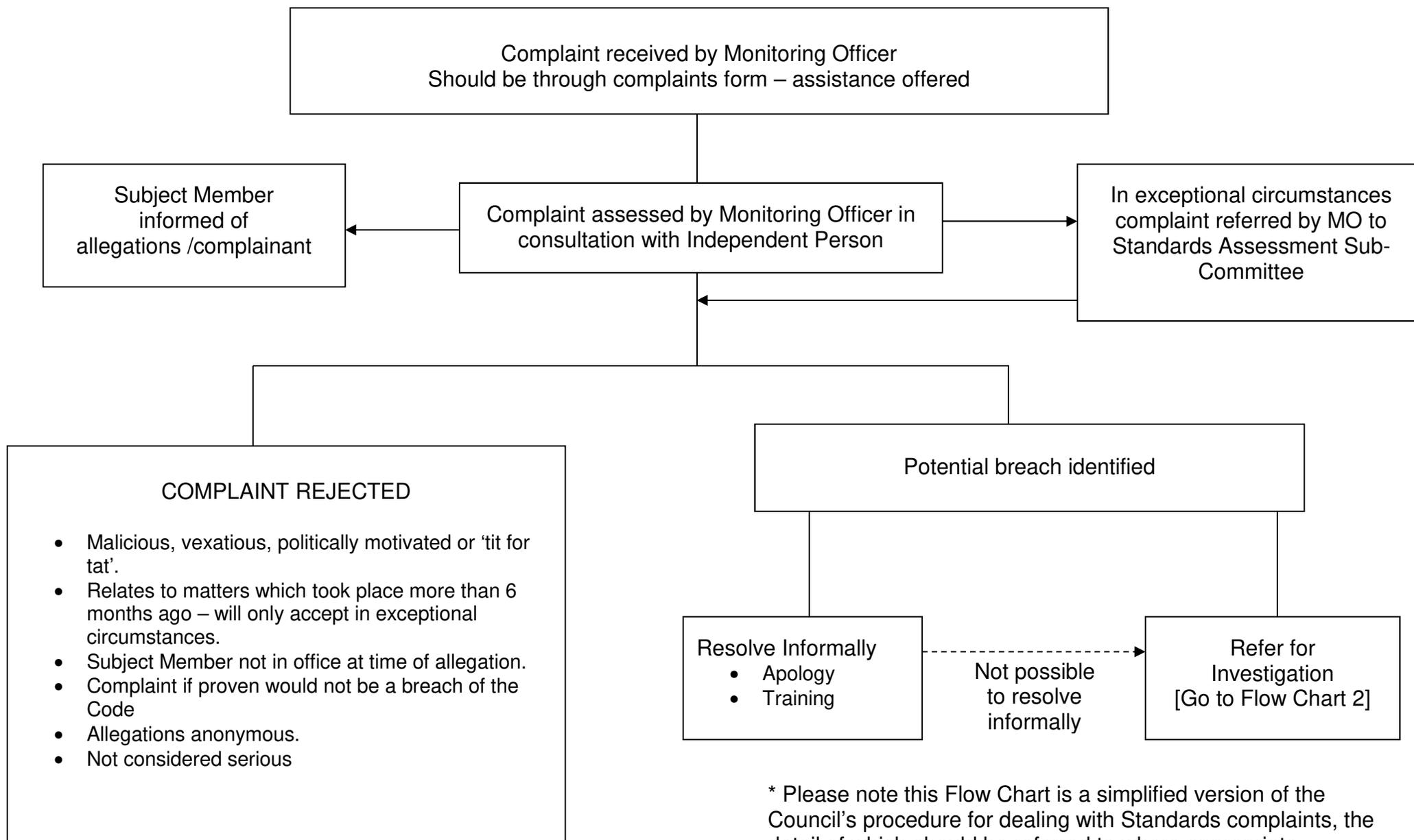
13. Revision of these Arrangements

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure fair consideration of any matters.

14. Appeals

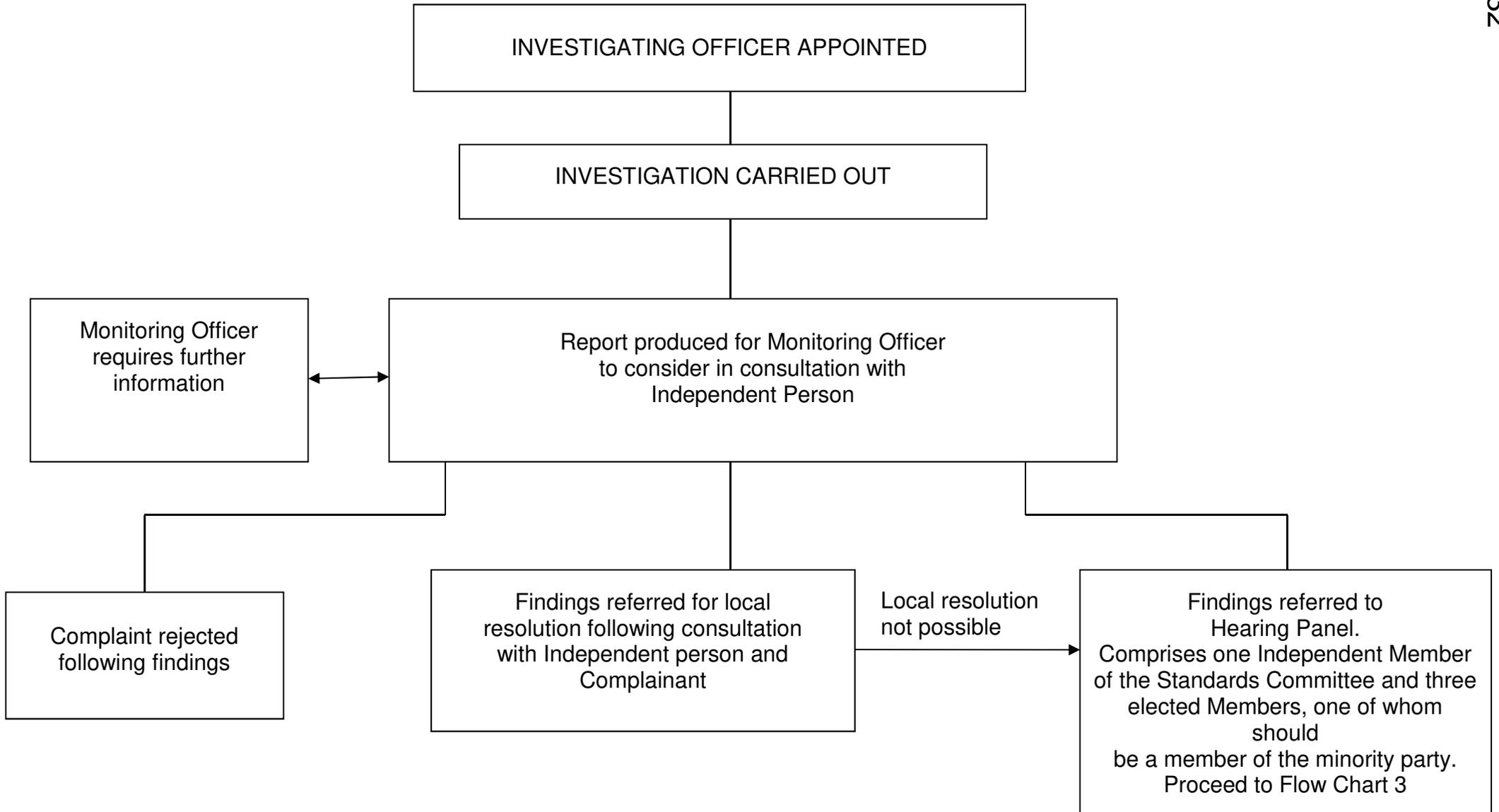
Subject to judicial review or a decision of a local ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the Hearing Panel.

FLOW CHART FOR STANDARDS COMPLAINTS – 1.ASSESSMENT*

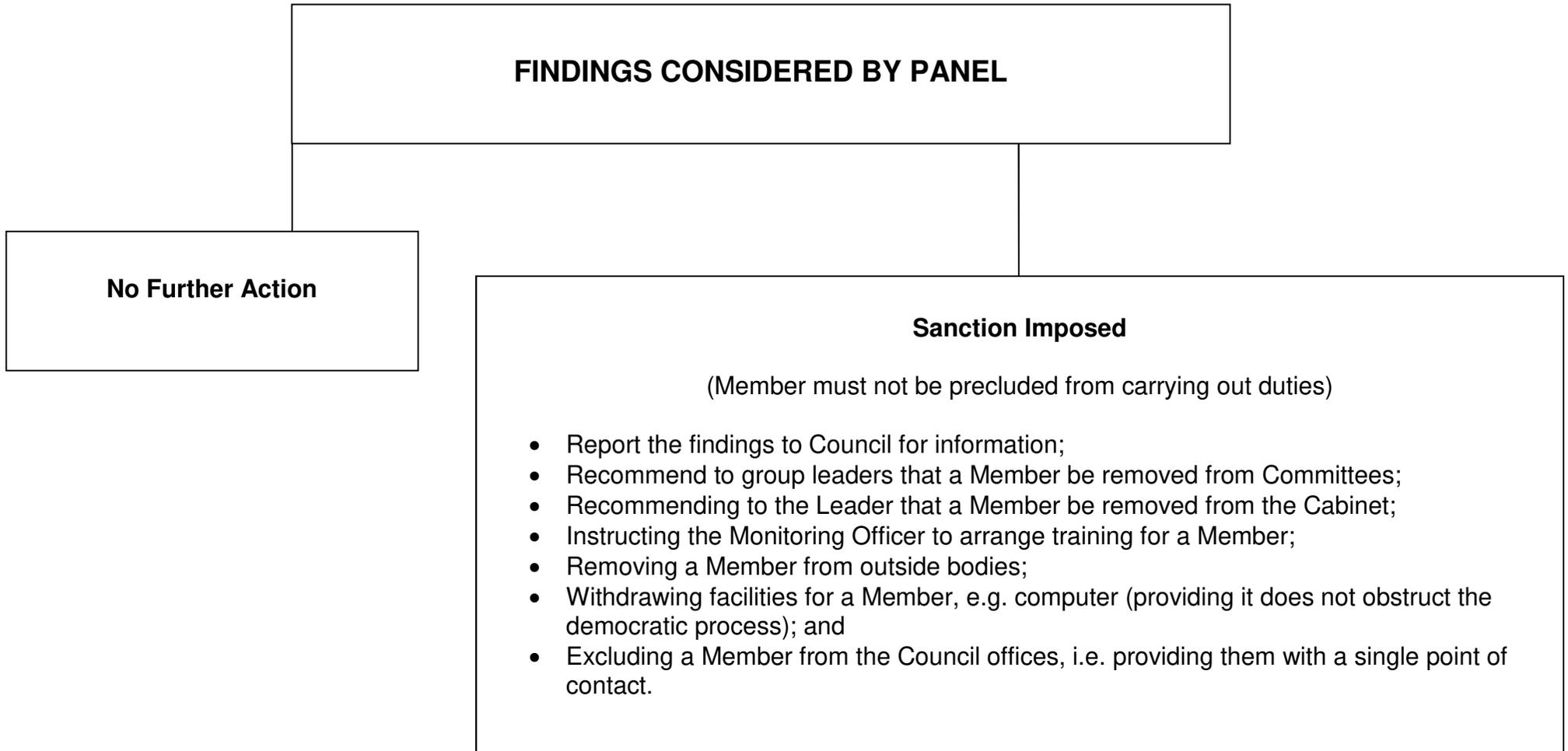


* Please note this Flow Chart is a simplified version of the Council’s procedure for dealing with Standards complaints, the detail of which should be referred to where appropriate

FLOW CHART FOR STANDARDS COMPLAINTS – 2.INVESTIGATION



FLOW CHART FOR STANDARDS COMPLAINTS – 3.HEARING



DELEGATIONS TO STANDARDS COMMITTEE

Council is asked to delegate to Standards Committee the following powers:-

1. To promote and maintain high standards of conduct by councillors, co-opted members and church and parent governor representatives;
2. To assist councillors, co-opted members and church and parent governor representatives to observe the Council's Code of Conduct for Members;
3. To advise the Council on the adoption, revision or replacement of the Council's Code of Conduct for Members and the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Council's Code of Conduct for Members ("the Council's Arrangements");
4. To monitor the operation of the Council's Code of Conduct for Members and the Council's Arrangements;
5. To advise, train, or arrange to train councillors and co-opted members and church and parent governor representatives to observe the Council's Code of Conduct for Members;
6. To determine in accordance with the Council's Arrangements whether a Council member has failed to comply with the Council's Code of Conduct for Members and, if so, to determine what action (if any) to take in respect of the Council member.
7. To delegate such of the Council's powers as can be delegated to take decisions in respect of decisions in respect of a Council member who is found on a hearing in accordance with the Council's Arrangements to have failed to comply with the Council's Code of Conduct for Members, such actions to include:
 - Publication of the findings of the Standards (Hearing) Sub-Committee in respect of the Subject Member's conduct;
 - Recommendation to Council that the Subject Member should be censured;
 - Recommendation to the Subject Member's group leader (or in the case of ungrouped members to Council) that the Subject Member should be removed from any or all committees or sub-committees of the Council;
 - Recommendation to the Leader of the Council that the Subject Member should be removed from the Cabinet, or removed from their portfolio responsibilities.
 - Instructing the Monitoring Officer to arrange training for the Subject Member;
 - Recommendation to Council that the Subject Member should be removed from all appointments to which the Subject Member has been appointed or nominated by the Council.
 - Withdrawal of facilities provided to the Subject member by the Council, such as a computer, website and/or e-mail and Internet access; or
 - Placing such restrictions on the Subject Member's access to Council staff, buildings or parts of buildings as may be reasonable in the circumstances.

8. Dispensations

8.1 To grant dispensations from Section 31(4) of the Localism Act 2011 (after consultation with the Independent Person) if, having had regard to all relevant circumstances, the Standards Committee

- (i) considers that granting the dispensation is in the interests of persons living in the Council's area, or
- (ii) considers that it is otherwise appropriate to grant a dispensation.

8.2 To determine appeals against the Monitoring Officer's decision on the grant of dispensations.

DELEGATIONS TO COUNCIL'S MONITORING OFFICER

Council is asked to delegate to the Council's Monitoring Officer the following powers:

1. To act as the Council's Proper Officer to receive complaints that Council members have failed to comply with the Council's Code of Conduct for Members;
2. To determine, after consultation with the Independent Person and in accordance with the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Council's Code of Conduct for Members ("the Council's Arrangements") whether to reject, informally resolve or investigate a complaint.
3. To seek informal resolution of complaints that Council members have failed to comply with the Council's Code of Conduct for Members wherever practicable.
4. To refer decisions dealing with a complaint against a Council Member to the Standards Committee in exceptional circumstances.
5. To arrange for the appointment of an Investigating Officer to investigate a complaint where the Monitoring Officer (in consultation with the Independent Person) determines that a complaint merits formal investigation.
6. To issue guidance to be followed by an Investigating Officer on the investigation of complaints.
7. To determine, after consultation with the Independent Person and in accordance with the Council's Arrangements, to confirm an Investigating Officer's finding of no failure to comply with the Council's Code of Conduct for Members.
8. Where an Investigating Officer's report finds that the Subject Member has failed to comply with Council's Code of Conduct for Members, to determine, after consultation with the Independent Person and in accordance with the Council's Arrangements, either to seek a local resolution or to send a matter for local hearing.
9. Independent Persons
 - 9.1 To make arrangements, to advertise a vacancy for the appointment of (i) Independent Persons and (ii) Co-Opted Independent Members.
 - 9.2 To make arrangements, in consultation with the Chair of the Council's Standards Committee for short-listing and interviewing candidates for appointment as Independent Persons and to make recommendations to Council for appointment.

10. Council's Register of Member's Interests

10.1 To prepare and maintain a new Council Register of Member's Interests to comply with the requirements of the Localism Act 2011 and the Council's Code of Conduct for Members, and ensure that it is available for inspection and published on the Council's website as required by the Act.

11. Dispensations

To grant dispensations from Section 31(4) of the Localism Act 2011 if, having had regard to all relevant circumstances, the Monitoring Officer:

- (i) considers that without the dispensation the number of persons prohibited by section 31(4) of the Localism Act from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
- (ii) considers that without the dispensation each member of the Council's Executive would be prohibited by section 31(4) of the Localism Act from participating in any particular business to be transacted by the Council's Executive.
- (iii) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.

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BURY METROPOLITAN BOROUGH COUNCIL

STANDARDS HEARINGS PANELS

HEARING PROCEDURES

Introduction

This procedure is intended to provide the Standards Hearings Panel with an efficient and effective hearing process for the determination of any matter referred to it. This will help the Panel to deal with all the issues that need to be resolved in a way that is fair to the Member and to any person who may be involved.

Interpretation

1. "Investigator" means (subject to paragraph 3 below) the Monitoring Officer or other investigating officer, and his or her nominated representative.
2. 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.
3. 'Member' means the member of the Authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Member's nominated representative.
4. 'Model Code' means the Code of Conduct for Councillors and Voting Co-opted Members adopted by the Authority.

Representation

5. The Member may be represented or accompanied during the meeting by a solicitor, barrister or, with the permission of the Committee, another person.

Legal Advice

6. The Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee may be shared with the Member and the Investigator if they are present.

Setting the Scene

7. After all the members and everyone involved have been formally introduced, the Chair should explain how the Hearing Panel is going to run the hearing.

Preliminary Procedural Issues

8. The Panel should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making Findings of Fact

9. After dealing with any preliminary issues, the Panel should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.
10. If there is no disagreement about the facts, the Panel can move on to the next stage of the hearing.
11. If there is a disagreement, the Investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Panel's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Panel may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.
12. The Member should then have the opportunity to make representations to support his or her version of the facts and, with the Panel's permission, to call any necessary witnesses to give evidence.
13. At any time, the Panel may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Member.
14. If the Member disagrees with most of the facts, it may make sense for the Investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
15. If the Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Panel will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Panel may then –
 - (a) continue with the hearing, relying on the information in the Investigator's report,
 - (b) allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary, or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already.

16. The Panel will usually move to another room to consider the representations and evidence in private.
17. On their return, the Chair will announce the Panel's findings of fact.

Did the Member fail to follow the Code?

18. The Panel then needs to consider whether or not, based on the facts it has found, the Member has failed to follow the Code of Conduct.
19. The Member should be invited to give relevant reasons why the Panel should not decide that he or she has failed to follow the Code.
20. The Panel should then consider any verbal or written representations from the Investigator.
21. The Panel may, at any time, question anyone involved on any point they raise in their representations.
22. The Member should be invited to make any final relevant points.
23. The Panel will then move to another room to consider the representations.
24. On their return, the Chair will announce the Panel's decision as to whether or not the Member has failed to follow the Code of Conduct.

If the Member has not failed to follow the Code of Conduct

25. If the Panel decides that the Member has not failed to follow the Code of Conduct, the Panel can move on to consider whether it should make any recommendations to the Authority.

If the Member has failed to follow the Code

26. If the Panel decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to –
 - (a) whether or not the Committee should set a penalty, and
 - (b) what form any penalty should take.
27. The Committee may question the Investigator and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
28. The Committee will then move to another room to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be.

29. On their return, the Chair will announce the Committee's decision.

Adjournment

31. The Committee may at any stage prior to the conclusion of the hearing, adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee. The Committee shall not adjourn a hearing more than once for this purpose

32. The Committee may, at any stage prior to the conclusion of the hearing, adjourn the hearing and make a written request, to the Ethical Standards Officer concerned, that the matter be referred back to the Ethical Standards Officer for investigation, indicating the Committee's reason(s) for making such request.

Recommendations to the Authority

33. After considering any verbal or written representations from the Investigator, the Committee will consider whether or not it should make any recommendations to the Authority, with a view to promoting high standards of conduct among Members.

The Written Decision

34. The Committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision within two weeks after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

Admission of and disclosure of information to the media and public

35. The hearing will normally be conducted in public (except when the Committee retires to consider any matter as prescribed in this procedure) unless the Committee is satisfied in accordance with the relevant provisions that it is appropriate for the Committee to exclude the press and public from any part of the proceedings, and resolves accordingly.

36. Any documents submitted to the Committee during or for the purposes of the hearing will normally be available for public inspection, along with the agenda for and minutes of the Committee meeting which constitutes the hearing, unless the Committee is satisfied in accordance with the relevant provisions that any such document (in whole or in part) should not be so disclosed, and resolves accordingly.

Re-issued by Janet Witkowski Interim Council Solicitor and Monitoring Officer and approved by Standards Committee 13 January 2021

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