

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.

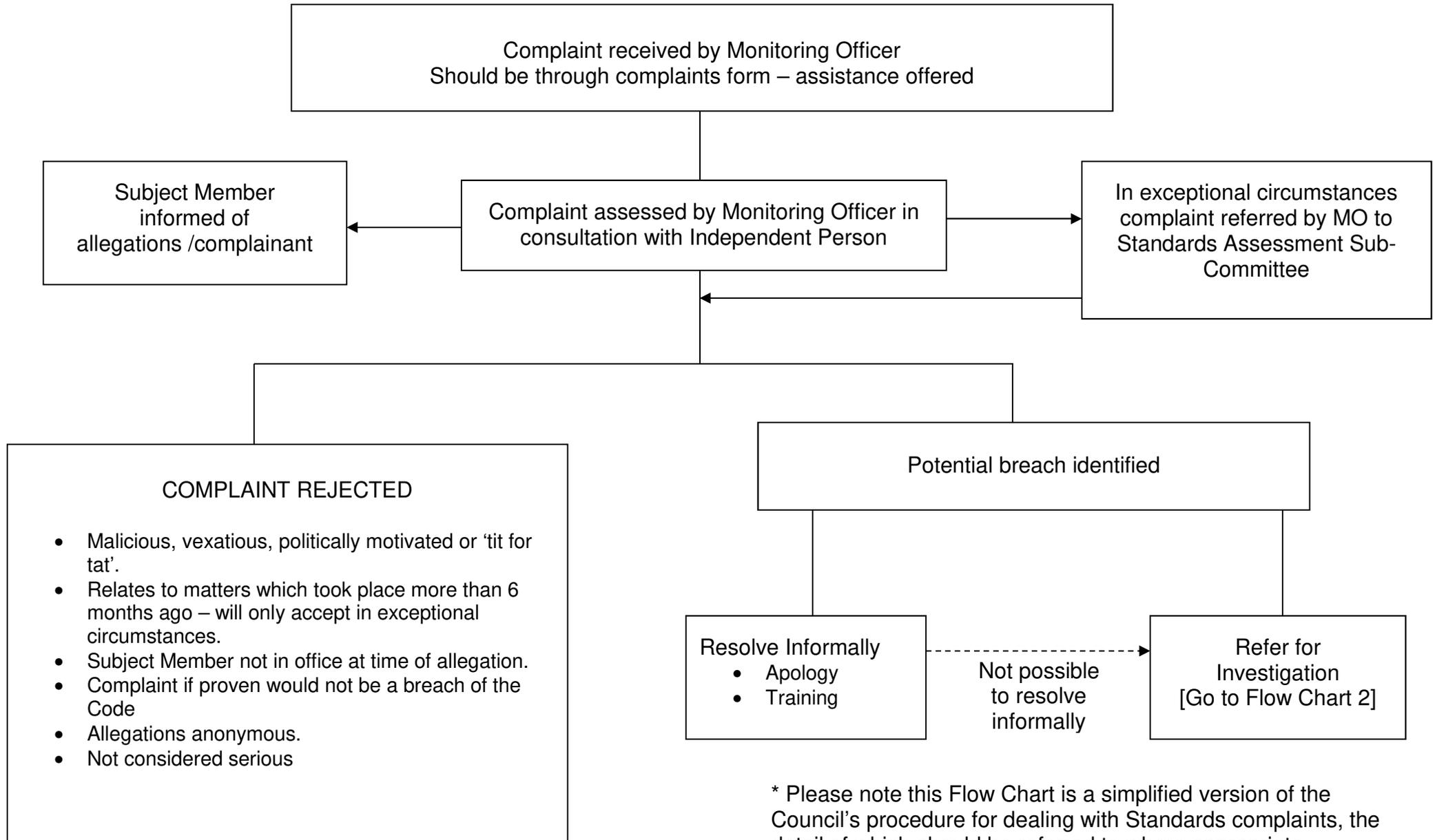
13. Revision of these Arrangements

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

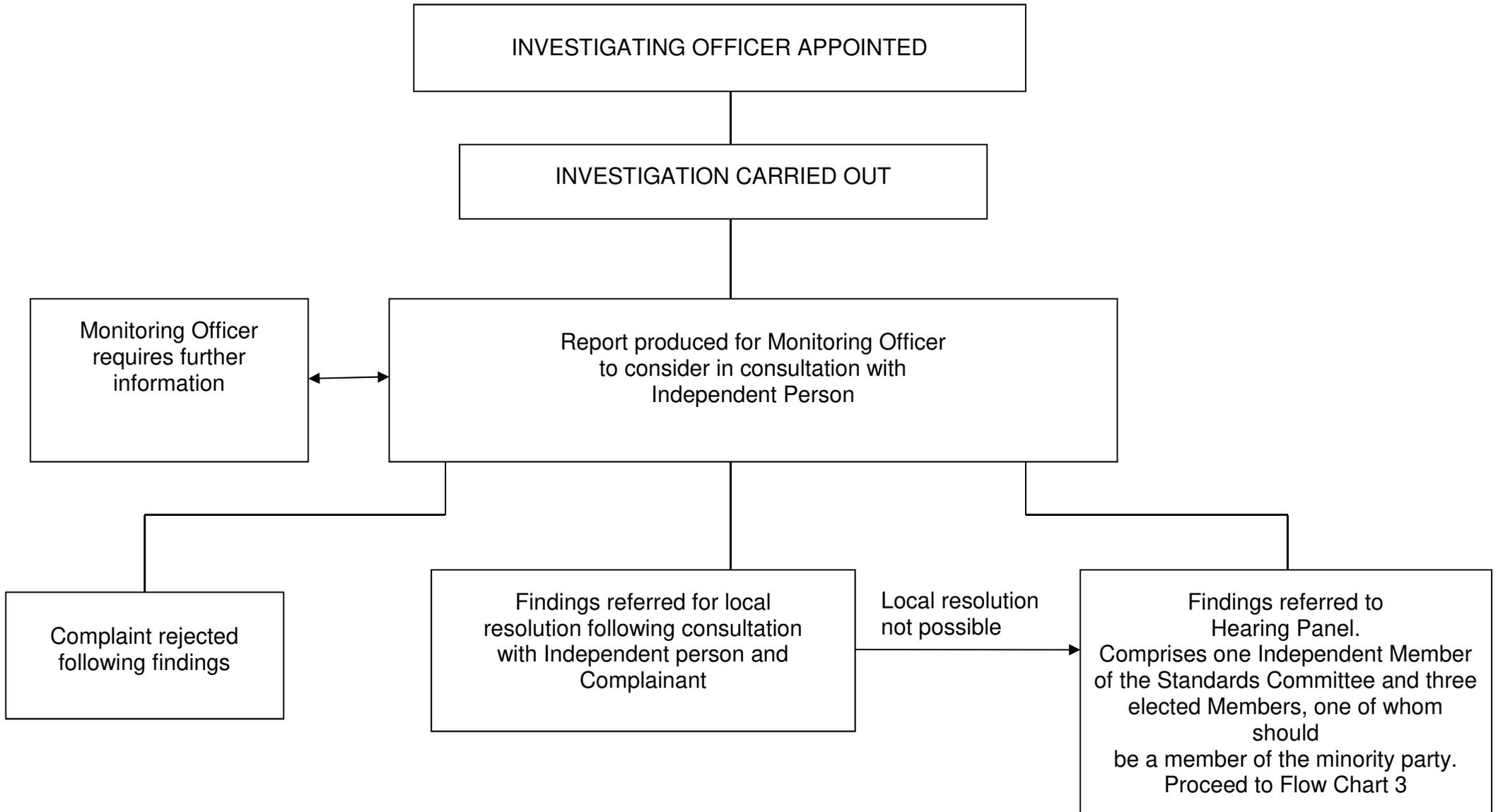
Subject to judicial review or a decision of a local ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the Hearing Panel.

FLOW CHART FOR STANDARDS COMPLAINTS – 1.ASSESSMENT*

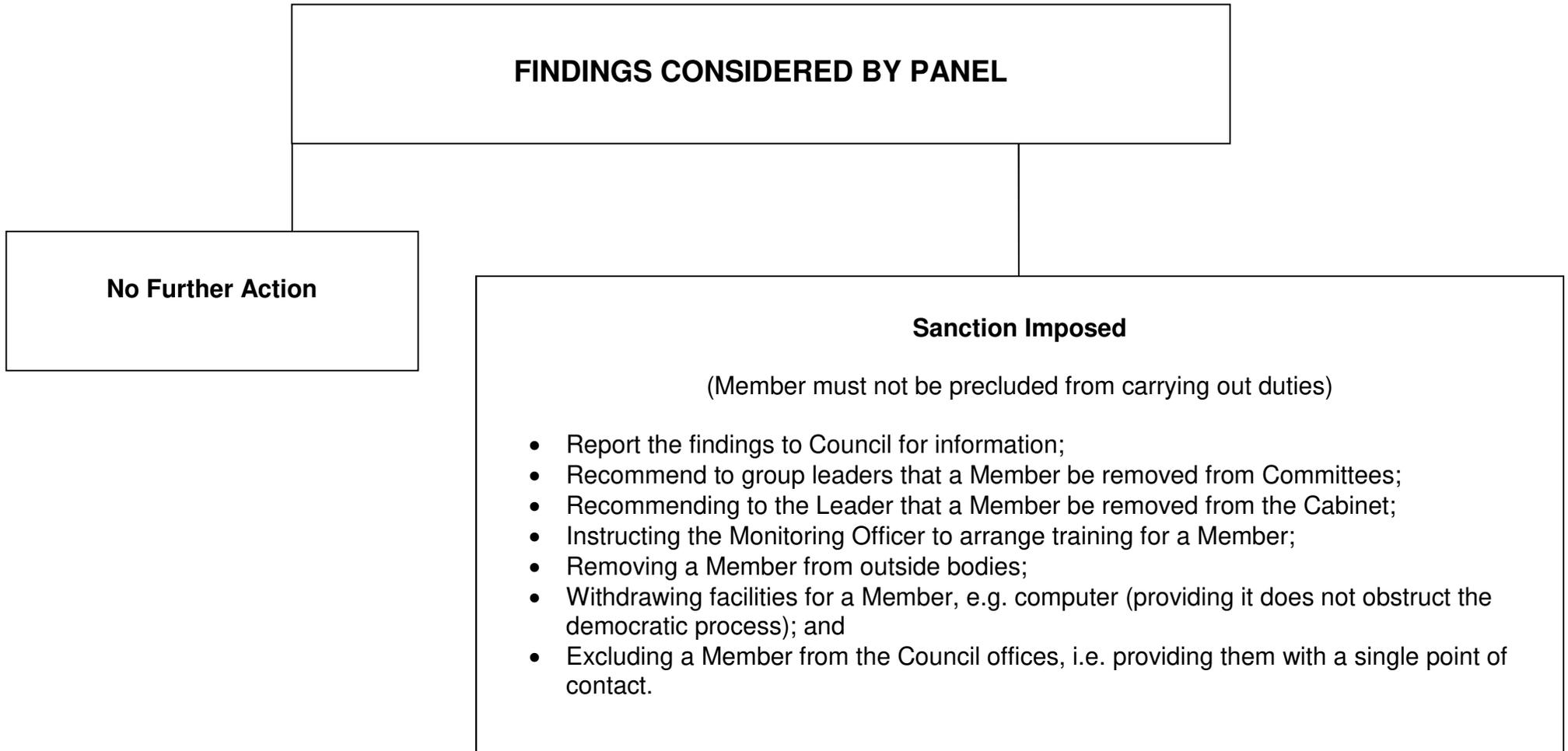


* Please note this Flow Chart is a simplified version of the Council’s procedure for dealing with Standards complaints, the detail of which should be referred to where appropriate

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.