

# Part 4(i) – Complaints against Members Rules

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# Part 4(i) – Complaints against Members Rules

## 1. Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of Southend on Sea Borough Council (“the Council”) or Leigh on Sea Town Council (“the Town Council”) has failed to comply with the Members’ Code of Conduct (“the Code”), and sets out how the Council will deal with allegations of a failure to comply with the Code.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Council (or the Town Council), has failed to comply with the Code can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a Member (or a member or co-opted member of the Town Council) against whom an allegation has been made.

## 2. The Members’ Code of Conduct

- 2.1 The Council has adopted the Code, which is available for inspection on the Council’s website and on request from Reception at the Council Offices.
- 2.2 The Town Council has also adopted a Members’ Code of Conduct. If you wish to inspect this code you should look at the Town Council’s website or contact the Town Council.

## 3. Making a Complaint

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

The Monitoring Officer, Strategic Director (Legal & Democratic Services), Southend-on-Sea Borough Council, Civic Centre, Victoria Avenue, Southend on Sea SS2 6ER or send an e-mail to [johnwilliams@southend.gov.uk](mailto:johnwilliams@southend.gov.uk)

- 3.2 The Monitoring Officer is a senior officer of the Council who has responsibility for maintaining the Register of Members’ interests and is also responsible for administering the system in respect of complaints of Member misconduct.
- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, you must complete and send us the Complaint Form (see template at **Appendix A**), which can be downloaded from the Council’s website and is available on request from the Reception at the Council Offices.
- 3.4 If you want to keep your name and address confidential, please indicate this in the space provided on the Complaint Form. The Monitoring Officer will consider your request and if he agrees we will not disclose your name and address to the Member against whom you make the complaint, without your prior consent. If he does not agree, then you can normally decide whether you want to proceed with your complaint without anonymity or otherwise your complaint will be closed.
- 3.5 The Council will not normally investigate anonymous complaints.
- 3.6 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.
- 3.7 The Complaints Procedure Flowchart at **Appendix B** summarises how complaints are dealt with.
- 3.8 That in the event of the Monitoring Officer having a conflict of interest in respect of a complaint, the matter will be dealt with by a Deputy Monitoring Officer or other arrangements will be made.

## **4. Will your complaint be investigated?**

**4.1** The Monitoring Officer will review every complaint received and may consult with the Independent Person before taking a decision as to whether it:

**4.1.1** Merits no further investigation; or

**4.1.2** Merits formal investigation

The Monitoring Office may decide to refer the issue to the Standards Committee in certain limited circumstances such as when the complaint:

- Comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer himself; or
- Is about a high profile Member such as the Leader of the Council.

**4.2** This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria at **Appendix C**.

When the Monitoring Officer has taken a decision, he will inform you of his decision and the reasons for that decision. There is no right of appeal.

Where the Monitoring Officer requires additional information in order to come to a decision, he may come back to you for such information and may request information from the Member against whom your complaint is directed. (Where your complaint relates to a Town Councillor, the Monitoring Officer may also inform the Clerk to the Town Council of your complaint and seek the views of the Town Council before deciding whether the complaint merits formal investigation).

**4.3** In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his / her conduct was unacceptable and offering an apology, or other remedial action by the 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 merits further investigation.

**4.4** If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police or other regulatory agencies.

## **5. How is an investigation conducted?**

**5.1** The Council has adopted a procedure for the investigation of misconduct complaints in the form of an instruction to the Investigating Officer. This is attached at **Appendix D**.

**5.2** If the Monitoring Officer decides that a complaint merits further investigation, he will generally appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another authority or an external investigator. The Investigating Officer will decide whether he / she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed.

**5.3** The Investigating Officer will normally write to the Member against whom you have complained and provide him / her with a copy of your complaint. The Member will be asked to provide his / her explanation of events and to identify what documents need to be seen and who needs 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, your name and address can be deleted from the papers given to the Member, or there can be a delay in notifying the Member until the investigation has progressed sufficiently.

- 5.4 At the end of his / her investigation, the Investigating Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 5.5 Having taken account of any comments on the draft Investigation Report it will then be finalised. The Investigating Officer will send the final report to the Monitoring Officer.

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

- 6.1 The Monitoring Officer will review the Investigating Officer’s report and if he is satisfied that the report is sufficient, he will write to you and to the Member concerned (and to Town Council, where your complaint relates to a Town Councillor), confirming that he is satisfied that no further action is required. The Monitoring Officer will supply both you and the Member with a copy of the Final Investigation Report. There is no right of appeal.
- 6.2 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his / her report.

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

- 7.1 The Monitoring Officer will review the Investigating Officer’s report and will then either seek an informal resolution (in consultation with the Independent Person) or send the matter for a hearing before the Standards Hearing Sub-Committee.

### **7.2 Informal Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he will consult with the Independent Person and with you 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 his / her conduct was unacceptable and offering an apology, and / or other remedial action by the Council. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee (and the Town Council if appropriate) for information, but will take no further action. There is no right of appeal against the Monitoring Officer’s decision to resolve the matter by informal resolution.

### **7.3 Hearing**

If the Monitoring Officer considers that informal resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Hearing Sub-Committee. The Sub-Committee will conduct a hearing and then decide whether the Member has failed to comply with the Code of Conduct and if so, whether to take any action.

The Council has agreed a procedure for hearing complaints, which is attached as **Appendix E**.

At the hearing, the Investigating Officer will present her / her report, call such witnesses as he / she considers necessary and make representations to substantiate his / her conclusion that the Member has failed to comply with the Code. For this purpose, the Investigating Officer may ask you to attend and give evidence to the Sub-Committee but you have no right to attend unless the meeting is held in public. The Member will then have an opportunity to give his / her evidence, to call witnesses and to make representations to the Sub-Committee as to why he / she considers that he / she did not fail to comply with the Code.

The Sub-Committee, with the benefit of any advice from the Independent Person then makes a decision:

The Sub-Committee may conclude that the Member did not fail to comply with the Code and dismiss the complaint.

Alternatively the Sub-Committee may conclude that the Member did fail to comply with the Code. In such a case the Chairman of the Sub-Committee will inform the Member of this finding and the Sub-Committee will then consider what action, if any, should taken as a result of the Member's failure to comply with the Code. In doing this, the Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person. The Sub-Committee will then decide on any lawful sanction (see 8 below).

## **8. What action can the Standards Hearing Sub-Committee take where a Member has failed to comply with the Code of Conduct?**

**8.1** The Council has delegated to the Sub-Committee such of its powers to take action in respect of Members as may be necessary to promote and maintain high standards of conduct. Accordingly the powers available to the Sub-Committee are as follows:

- Censuring or reprimanding the Member;
- Reporting its findings to the Council (or Town Council) for information;
- Recommending to the Member's Group Leader that he / she be removed from any or all Committees or Sub-Committees of the Council;
- Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Asking the Monitoring Officer to arrange training for the Member;
- Removing the Member from all outside appointments to which he / she has been appointed or nominated by the Council;
- Withdrawing facilities provided to the Member by the Council, such as a computer, website and / or email and internet access; or
- Excluding 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.

**8.2** The Sub-Committee has no power to suspend or disqualify the Member or to withdraw allowances.

## **9. What happens at the end of the Hearing?**

**9.1** At the end of the hearing, the Chair will state the decision of the Standards Hearing Sub-Committee as to whether the Member failed to comply with the Code and if he / she did, details of any sanctions / actions. There is no right of appeal against the decision of the Sub-Committee.

**9.2** 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 and to the Member (and to the Town Council if appropriate). The decision notice will be available for public inspection. Any finding that there has breach of the Code will be reported to the next convenient meeting of the Council.

## **10. What is the Standards Hearing Sub-Committee?**

- 10.1** It is a Sub-Committee comprising of 3 Councillors drawn from the Council's Standards Committee. If the Councillor complained about is a member of the Town Council, then a member of the Town Council will sit in as a non-voting Co-opted Member.
- 10.2** The Standards Committee has 9 Members and is made up on a politically proportional basis.
- 10.3** The Independent Person (whose role is prescribed in S.28 of the Localism Act) is invited to attend all meetings of the Standards Committee and the Hearing Sub-Committee and 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 and as to any action to be taken following a finding of failure to comply with the Code.

## **11. Revision of these arrangements**

The Council may by resolution agree to amend these arrangements and has delegated to the Chair of the Sub-Committee the right to depart from these arrangements where he / she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **12. Appeals**

- 12.1** Neither the complainant nor the Member complained against has any right of appeal against a decision of the Monitoring Officer or of the Standards Hearing Sub-Committee under these Rules.
- 12.2** If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

## **13. Appendices**

- Appendix A** Complaint Form
- Appendix B** Complaints Procedure Flowchart
- Appendix C** Standards Complaints Assessment Criteria
- Appendix D** Investigation Procedure
- Appendix E** Standards Hearing Sub-Committee Hearing Procedure

## Complaint Form

### 1. Your Details

Please provide us with your name and contact details:

<b>Title:</b>	
<b>First Name:</b>	
<b>Last Name:</b>	
<b>Address:</b>	
<b>Daytime Telephone:</b>	
<b>Evening Telephone:</b>	
<b>Mobile Telephone:</b>	
<b>Email Address:</b>	
<b>Signature:</b>	
<b>Date of Complaint:</b>	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint and they will see this form:

- the Member(s) you are complaining about
- the Monitoring Officer of the Southend-on-Sea Borough Council
- the Town Clerk to the Leigh-on-Sea Town Council (if applicable)
- Members of the Standards Hearing Sub-Committee

We will tell them your name and give them details of your complaint. If you have serious concerns about your name and details of your complaint being released, please complete section 6 of this form.

### 2. Who are you?

Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee
- Other (please specify)



### 3. Complaints Process

Please see the Complaints against Members Rules in **Part 4(i)** of the Constitution.

### 4. Name of Member(s)

Please provide us with the name of the Member(s) you believe have breached the Members' Code of Conduct and the name of their Authority:

Title	First Name	Last Name	Council or Authority Name

### 5. Nature of Complaint

Please explain in this section (or on separate sheets) what the Member has done that you believe breaches the Members' Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breaches the Members' Code of Conduct and set out any evidence to substantiate this.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer or the Sub-Committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible; about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

**Please provide us with the details of your complaint:**

*Continue on a separate sheet if there is not enough space on this form.*

## 6. Confidentiality

Only complete this next section if you are requesting that your identity is kept confidential.

In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with details of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that:

- You may be at risk of physical harm should your identify be disclosed.
- You work closely with the Member and are concerned about the consequences to your employment.
- You have a serious health condition and there are medical risks associated with your identify being disclosed.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

If your complaint is dealt with by the Standards Hearing Sub-Committee after an investigation you may be asked to attend as a witness.

Please provide us with details of why you believe we should withhold your name and / or the details of your complaint:

## 7. Remedy Sought

Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

*Continue on separate sheet(s) as necessary.*

## **8. Additional Information**

Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

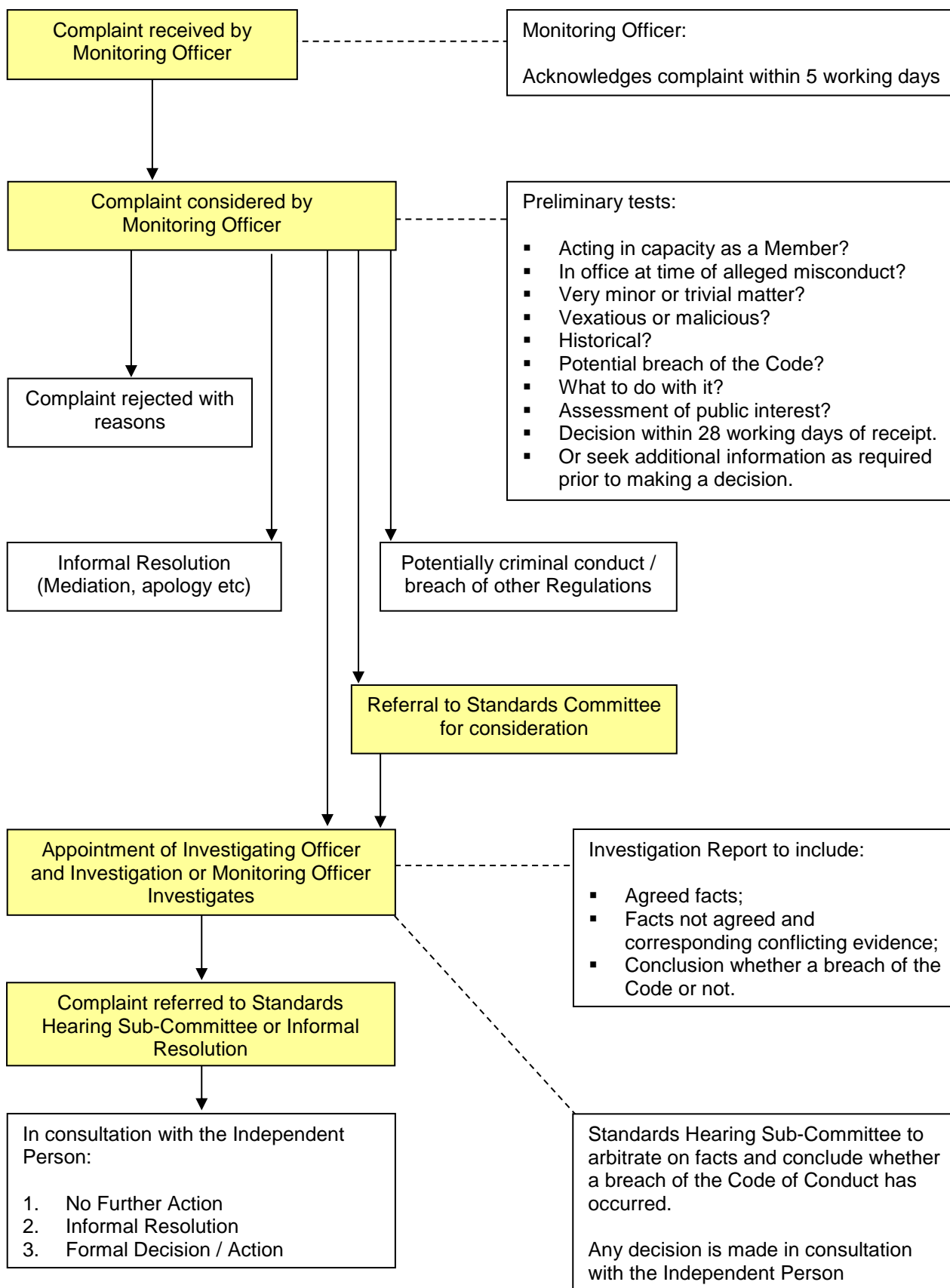
This form should be sent to:

The Monitoring Officer:  
Strategic Director (Legal & Democratic Services)  
Southend-on-Sea Borough Council  
Civic Centre  
Victoria Avenue  
Southend-on-Sea  
Essex SS2 6ER

or by e-mail to [johnwilliams@southend.gov.uk](mailto:johnwilliams@southend.gov.uk)

Telephone No. 01702 215102

### Complaints Procedure Flowchart



### Standards Complaints Assessment Criteria

#### Complaints which would not normally be referred for investigation:

1. The complaint is not considered sufficiently serious to warrant investigation e.g. not pursuing a residents concern with sufficient vigour, e.g. failing to respond to correspondence;
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”;
3. The complaint appears to be politically motivated;
4. It appears that there can be no breach of the Code of Conduct; for example, it relates to the Councillor’s private life or is about dissatisfaction with a Council decision;
5. The complaint is about someone who is no longer a Councillor;
6. There is insufficient information available for a referral;
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair Investigation to be carried out;
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct.
11. Where the Member complained about has apologised and / or admitted making an error and the matter would not warrant a more serious sanction

#### Complaints which may be referred for Investigation:

1. It is serious enough, if proven, to justify the range of actions available to the Standards 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.

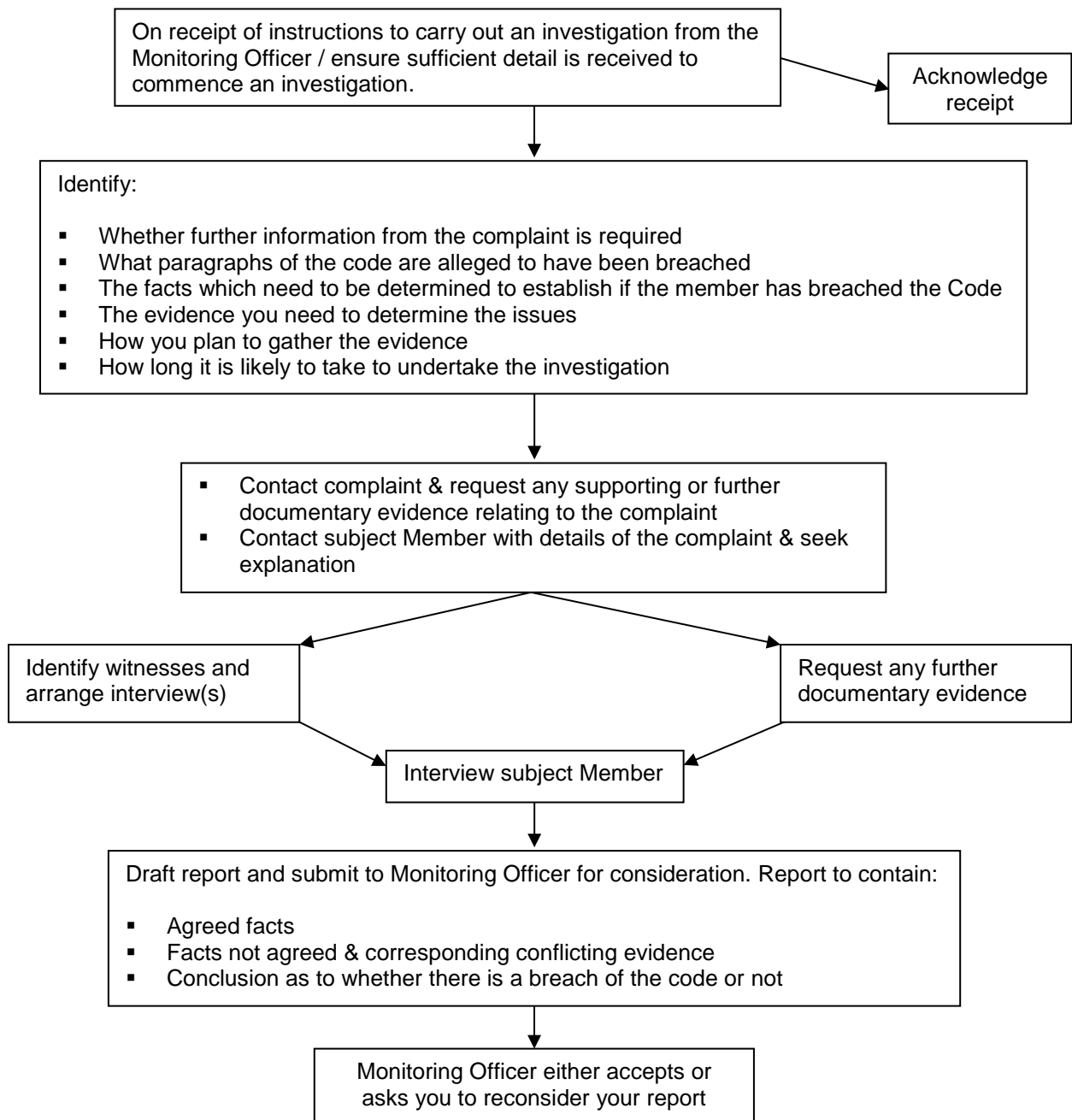
**Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers’ and members’ time. This is an important consideration where the complaint is relatively minor.**

## Standards Complaints Investigation Procedure

### 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.



### Standards Hearing Sub-Committee Procedure

#### Procedure:

#### 1. Quorum

- 1.1 Three Members must be present throughout the hearing to form a quorum.
- 1.2 Where the complaint refers to a Leigh-on-Sea Town Councillor a non voting Town Council member of the Standards Committee may be present.

#### 2. Opening

- 2.1 The Chair explains the procedure for the hearing and reminds all parties to turn off mobile phones, audible alarms and pagers etc.
- 2.2 The Chair asks all present to introduce themselves.
- 2.3 The Councillor will ask whether the parties wish to briefly outline their positions.

#### 3. The Complaint

- 3.1 The Investigating Officer shall be invited to present his / her report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.
- 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 Investigator's report and not to make a statement).
- 3.3 Members of the Sub-Committee may question the Investigating Officer about the content of his / her report and / or any witnesses called by the Investigating Officer.

#### 4. The Councillor's Case

- 4.1 The Councillor against whom the complaint has been made (or his / her representative) may present their case (and call any witnesses as required by the Councillor or his / her representative).
- 4.2 The Investigating Officer may question the Councillor and / or any witnesses.
- 4.3 Members of the Sub-Committee may question the Member and / or any witnesses.

#### 5. Summing-Up

- 5.1 The Investigating Officer may sum up the Complaint
- 5.2 The Member (or his / her representative) may sum up their case.



## **6. Decision**

- 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.
- 6.2** Upon the Sub-Committee's return the Chair will announce the Sub-Committee's decision in the following terms:
- 6.2.1** The Sub-Committee decides that the Member has failed to follow the Members' Code of Conduct; or
- 6.2.2** The Sub-Committee decides that the Member has not failed to follow the Members' Code of Conduct.
- 6.3** The Sub-Committee will give reasons for their decision.
- 6.4** If the Sub-Committee decides that the Member has failed to follow the Members' Code of Conduct, it will consider any representations from the Investigator and / or the Member as to:
- Whether any action should be taken; and
  - What form any action should take
- 6.5** The Sub-Committee will then deliberate in private to consider what action if any should be taken in consultation with the Independent Person.
- 6.6** On the Sub-Committee's return the Chair will announce the Sub-Committee's decision (in relation to a Town Councillor a recommendation to the Leigh-on-Sea Town Council).
- 6.7** The Sub-Committee will consider whether it should make any recommendations to the Council (or in relation to a Town Councillor to the Town Council) with a view to promoting high standards of conduct among Members.
- 6.8** The Chair will confirm that a full written decision shall be issued within 7 working days following the hearing and that it will be sent to the Member and Complainant.