

MEMBER CONDUCT COMMITTEE – 28TH NOVEMBER 2022

Report of the Monitoring Officer

Part A

REVIEW OF THE CONSTITUTION

Purpose of Report

To provide the Committee with a briefing about the annual review of the Council's Constitution and those parts of the Constitution that relate to the roles of the Committee.

Recommendations

1. That the Committee notes the report and the content of the current sections of the Constitution relating to member conduct and the handling of member conduct complaints.
2. That the Committee makes any recommendations regarding changes to the Council's Constitution relating to its roles that it wishes to see.

Reasons

- 1&2. To enable the Committee's views to form part of the annual review of the Council's Constitution.

Policy Justification and Previous Decisions

The roles of the Committee include:

- monitoring the operation of, and advising the Council on, the adoption or revision of codes and protocols relating to standards issues
- overseeing the process for dealing with complaints that those codes and protocols have been breached and where necessary making determinations of specific complaints
- making recommendations on major amendments to the Council's Constitution which involve standards issues.

Implementation Timetable including Future Decisions

The Council reviews the Constitution each year. As part of the review consultation is undertaken with officers and councillors. It is planned to submit the results of the review to the Cabinet on 9th February 2023 and Council on 27th February 2023. At its meeting on 13th December 2021 the Committee agreed to review the Planning Code of Good Practice on a two yearly basis. It will next be reviewed in 2023.

Report Implications

The following implications have been identified for this report.

Financial Implications

None

Risk Management

No risks have been identified with this decision.

Background Papers: None

Officers to Contact: Adrian Ward
Head of Governance and HR and Monitoring Officer
01509 634573
adrian.ward@charnwood.gov.uk

Karen Widdowson
Democratic Services Manager and Deputy Monitoring
Officer
01509 634785
Karen.widdowson@charnwood.gov.uk

1.0 Parts of the Constitution Dealing with Member Conduct Issues

The Council's Constitution includes a section containing the Council's Codes and Protocols in relation to conduct. These are:

- Members' Code of Conduct
- Officers' Code of Conduct
- Protocol on Member/Officer Relations
- Monitoring Officer Protocol
- Members' Planning Code of Good Practice
- Protocol Presentations to Councillors.

The Officers' Code of Conduct falls within the remit of the Personnel Committee as it forms part of the terms and conditions on which staff are employed. However all 6 documents can be accessed using the link at the end of the report for the Committee's information.

2.0 Amendments

The Monitoring Officer has reviewed Chapter 18 of the Constitution relating the arrangements for dealing with complaints about Member Conduct under the Localism Act 2011. The suggested changes are set out in appendix A for the Committee to consider.

3.0 Codes and Protocols

The current codes and protocols in the Constitution can be found using the following link:

https://www.charnwood.gov.uk/files/documents/05_codes_and_protocols/05%20Codes%20and%20protocols.pdf

ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT MEMBER CONDUCT UNDER THE LOCALISM ACT 2011

18.1	Introduction	18.1
18.2	Making a complaint	18.2
18.3	When a complaint is received	18.3
18.4	Initial consideration of complaints by panels of the Member Conduct Committee	18.6
18.5	Investigation of Complaints	18.7
18.6	Hearings and Appeals	18.9
18.7	Hearing Principles	18.11
18.8	Hearings by a Panel of Members of the Member Conduct Committee	18.12
18.9	After the hearing and appeals	18.13
18.10	Non-Code of Conduct Complaints - Before the meeting of the Member Conduct Panel	18.14
18.11	The meeting of the Panel	18.15
18.12	The Right of Appeal	18.17

18.1 Introduction

This procedure is the means by which the Monitoring Officer, and the Member Conduct Committee and its panels will deal with complaints that a member or co-opted member of an authority (the 'Member') has failed to comply with the Members' Code of Conduct of the authority concerned. The Member Conduct Committee is able to consider complaints involving alleged breaches of the Code of Conduct of Charnwood Borough Council and the 27 Town and Parish Councils, ~~and 6 Parish Meetings~~ in the Borough ('relevant authorities').

Complaints that members of the Borough Council have failed to comply with the Council's codes and protocols other than the Members' Code of Conduct are dealt with in accordance with a separate procedure which is contained within this document.

The precise conduct and order of events of a meeting of the Member Conduct Committee and its panels will be a matter for the Chair of the Committee or panel as he or she and the Committee or panel consider appropriate in the circumstances. In exercising their discretion, they must have regard to the objective of ensuring the fairness and good administration of the complaints process, and the principles of natural justice.

It may be necessary for a person other than the Monitoring Officer to carry out the functions assigned to the Monitoring Officer below. As a result, references to the Monitoring Officer below also include the Deputy Monitoring Officer, and any other

person appointed by the Monitoring Officer to carry out those functions.

The Council has appointed a number of Independent Persons, who are not councillors or council employees, to assist in the process for dealing with complaints. Appointment of the Independent Persons to be made by Full Council on recommendation from the Monitoring Officer. Independent Persons are consulted at each stage of the process by the Monitoring Officer so that an independent view of the complaint and any action proposed to be taken can be considered before any decision is taken. Members being complained about also have the right to consult an Independent Person.

18.2 Making a Complaint

Charnwood Borough Councillors and the councillors of the 27 Town and Parish Councils, ~~and 6 Parish Meetings~~ in the Borough have to comply with a Code of Conduct.

Complaints that a councillor has not followed the requirements of the relevant Code must be made in writing, including by electronic means. Complaints by letter or e-mail should be addressed to the Monitoring Officer at the addresses below. A complaint form will be made available to assist complainants in making complaints. The complaint form will include provision for complainants to request that their name or details of the complaint should be withheld from the Member so that such requests can be considered by the Monitoring Officer who will decide whether to withhold that information or not.

Adrian Ward
Monitoring Officer
Charnwood Borough Council
Southfield Road
Loughborough
LE11 2TT
e-mail adrian.ward@charnwood.gov.uk

The Monitoring Officer will arrange for appropriate support to be provided to those complainants requiring assistance to put their complaint in writing, for example where they have a disability or English is not their first language.

Where it is unclear whether the complainant wishes to make a formal complaint, the Monitoring Officer will contact the complainant and determine what outcome the complainant is seeking. Where appropriate the Monitoring Officer will refer the complaint to the appropriate service or another authority to respond to.

Where a complaint that a Member has failed to comply with the Code of Conduct of a relevant authority is received the Monitoring Officer will write to the complainant to acknowledge receipt of the complaint within 5 working days and explain the process for dealing with the complaint.

18.3 When a complaint is received

When a complaint that a Member has failed to comply with the Code of Conduct of a relevant authority is received, the Monitoring Officer will, subject to considering any requests to the contrary made by complainant, inform the Member and consider whether an informal resolution of the complaint, for example an offer by the Member to make an apology or undertake training, is practicable and appropriate. The Monitoring Officer will consult with one of the Independent Persons appointed by the Borough Council and consider, but not be bound by, the views of the complainant before concluding any informal resolution of a complaint.

Where a complaint that a Member has failed to comply with the Code of Conduct of a relevant authority is received that the Monitoring Officer believes ~~is~~ not resolvable informally, he or she will review the complaint and obtain any necessary information that he or she requires to determine whether the complaint merits further action or investigation. Subject to considering any requests to the contrary made by the complainant, the Monitoring Officer may ~~request~~ the Member to respond to the complaint where he or she thinks appropriate in reaching his or her decision. Normally the Monitoring Officer will seek to inform the Member that a complaint has been made about him or her at the earliest opportunity. The Monitoring Officer will consult with one of the Independent Persons appointed by the Borough Council before reaching his or her decision.

In determining whether a complaint merits further action or investigation, the Monitoring Officer will consider:

- (i) whether the complaint is about the conduct of a member or co-opted member of the Borough Council or one of the 27 Parish/Town Councils in the Borough who was in office and the Code of Conduct in force at the time of the alleged conduct;
- (ii) whether the conduct would, if proven, be a breach of the Code of Conduct;
- (iii) whether the complaint is sufficiently serious to merit further action.

Within 15 working days of a complaint that a Member has failed to comply with the Code of Conduct of a relevant authority being received, the Monitoring Officer will inform the complainant, the Member and, where the Member is a parish or town councillor, the Clerk of the outcome of his or her initial consideration of the complaint. Following consultation with one of the Independent Persons appointed by the Borough Council, the Monitoring Officer may decide that:

- (i) an informal resolution of the complaint is appropriate, and no further action is required;
- (ii) the complaint does not merit further action or investigation having considered the issues set out in paragraph 318.3 above and no further action is required;
- (iii) the complaint merits investigation;
- (iv) the complaint merits further action other than an investigation, for example providing guidance or training for all councillors on a particular issue.

If the Monitoring Officer and the Independent Person disagree on the course of action to be taken and the complainant is not satisfied with the outcome of the Monitoring Officer's initial consideration of the complaint, he or she may request that the complaint is referred to a Panel of the Member Conduct Committee to determine whether the complaint merits further action or not.

If the Monitoring Officer and the Independent Person agree on a course of action other than that the complaint merits investigation, the complainant will be given 10 working days to appeal in writing, setting out the reasons why they disagree with the decision.

If an appeal is received from the complainant, the Councillor being complained about will be given 10 working days to submit their own written response should they wish to do so. The original complaint, the Monitoring Officer's fact-finding summary and the written appeal submissions from the complainant and Councillor being complained about will then be submitted to the Chair and Vice-chair of the Member Conduct Committee for consideration. Having considered the relevant documentation, either the Chair or Vice-chair has the option to refer the complaint to a Panel of the Member Conduct Committee for consideration, or to take no action.

If the complaint identifies criminal conduct, including offences relating to disclosable pecuniary interests, or a breach of other regulation by any person, the Monitoring Officer will refer the complainant to the Police or other appropriate regulatory body.

Anonymous complaints – The Monitoring Officer will only refer anonymous complaints for investigation or other action where they are accompanied by documentary, photographic or other evidence which indicates an exceptionally serious or significant matter which can be satisfactorily dealt with without the need to interview the complainant.

Withdrawn complaints – The Monitoring Officer will consider requests by the complainant to withdraw a complaint. The Monitoring Officer will not refer for investigation or further action complaints which are withdrawn except where the public interest in taking action due to the seriousness of the complaint significantly outweighs the complainant's desire to withdraw the complaint and the complaint is accompanied by documentary, photographic or other evidence which indicates the matter can be satisfactorily dealt with without the need to interview the complainant.

The Monitoring Officer will consider requests by complainants that their identity and/or the nature of the complaint are withheld from the Member. As a matter of fairness and natural justice, Members should usually be told who has made a complaint against them and what the complaint is about. In exceptional circumstances the Monitoring Officer will agree to a request that the identity of the complaint should not be disclosed to the Member. The circumstances in which such requests will be agreed to are:

- (i) the complainant has reasonable grounds for believing that they will be at risk of harm if their identity is disclosed;
- (ii) the complainant is an officer who works closely with the Member and they are afraid of the consequences to their employment if their identity is disclosed;
- (iii) the complainant has provided reasonable evidence that they suffer from a serious health condition and there are medical risks associated with their identity being disclosed.

The Monitoring Officer will consider whether, in exceptional circumstances, not to provide the Member with all or part of the details of the complaint if to provide the information would be against the public interest or prejudice the investigation. The circumstances in which this might be appropriate are:

- (i) the Member is likely to attempt to intimidate the complainant or witnesses;
- (ii) the Member is likely to attempt to tamper with evidence and this is not outweighed by the fairness to the Member of being able to preserve evidence;

- (iii) the disclosure to the Member of details of the complaint is likely to result in the identity of the complainant becoming apparent and the Monitoring Officer has decided to withhold that information from the Member.

18.4 Initial consideration of complaints by panels of the Member Conduct Committee

Where a meeting of a panel is required, the Monitoring Officer will appoint members to the panel from among the members ~~and reserve members~~ of the Member Conduct Committee to consider the complaint (reserves are permitted). The Panel will comprise 3 Borough Council members selected on the basis of political balance. If the Member is a Parish or Town Councillor, one of the Parish Members of the Committee will also be appointed as a non-voting member of the Panel.

Except in exceptional circumstances, an agenda for the meeting will be sent to the members of the Panel at least five clear working days before the meeting. In addition to the documentation supplied by the complainant, the agenda papers for the meeting will include a report by the Monitoring Officer setting out a summary of the information he or she has gathered, the views of the Independent Person who the Monitoring Officer has consulted, and, where applicable, the written appeal submission from the complainant, and a statement by the Member and the views of the Independent Person who the Member has consulted if the Member wishes these to be submitted.

Meetings of the Panel are subject to the provisions of Part VA of the Local Government Act 1972. The Monitoring Officer will consider whether the agenda papers include exempt information to which the press and public, including the complainant and the Member, should not have access. The Panel's decision will be recorded in the form of the minutes of its meeting having regard for any exempt information that it considered and communicated to the complainant, the Member and, where the Member is a parish or town councillor, the Clerk by letter.

The Panel will appoint a Chair from among its voting members. The Chair will deal with the following administrative matters prior to the consideration of any complaints:

- (i) ensuring the meeting is quorate (the Panel's quorum is three Borough Council members);
- (ii) dealing with any disclosures of interest;
- (iii) ensuring that the members of the Panel understand the procedure to be followed.

The Panel will come to one or more of the following decisions in respect of each complaint submitted to it:

- (i) to refer the complaint to the Monitoring Officer for investigation;
- (ii) to refer the complaint to the Monitoring Officer for other action;
- (iii) to refer the complainant to the Police as their complaint identifies a criminal offence;
- (iv) to take no action in respect of the complaint.

18.5 Investigation of Complaints

(a) Investigation reports

Where a complaint has been referred for investigation, the Monitoring Officer ~~_, or another person appointed by the Monitoring Officer will~~ appoint a suitable person to carry out ~~the an~~ investigation (the 'Investigator'), ~~will conduct that investigation, and which it~~ will be completed within a maximum period of six months. The Investigator may refer the complaint back to the Monitoring Officer where:

- (i) as a result of the investigation the Investigator believes that the complaint is materially more or less serious than was apparent when the investigation was begun;
- (ii) as a result of new evidence, the Investigator believes that a different decision about whether to begin an investigation would have been taken had that evidence been known;
- (iii) in cases where (i) or (ii) apply the Investigator will also consider factors such as whether during the course of the investigation there has been a failure to co-operate by people involved in the complaint, whether there have been further complaints about the conduct of the Member or other members of the relevant authority;
- (iv) the Member has died, is seriously ill or has resigned from the relevant authority and the Investigator believes that it is no longer appropriate to continue the investigation.

The Monitoring Officer will consider any referrals back from the Investigator or matters as set out in section 18.5(a) arising from his or her own investigation. Having consulted the Independent Person, the Monitoring Officer will review his or her decision on how the complaint should be dealt with, in accordance with the process set out in section 18.3. Where the decision to investigate a complaint was made by a panel, the Monitoring Officer will refer the complaint and the matters raised back to a panel.

Following receipt by the Monitoring Officer of the report on the outcome of an investigation, the Monitoring Officer will inform the complainant, the Member and, where the Member is a parish or town councillor, the Clerk of the outcome of his or her initial consideration of the report by letter. Following consultation with one of the Independent Persons appointed by the Borough Council, the Monitoring Officer may decide that:

- (i) the Member has not breached the code of conduct and no further action is required;
- (ii) the Member has breached the code of conduct but has taken appropriate steps to remedy the situation and no further action is required;
- (iii) the Member has a case to answer and the Investigator's report should be referred to a panel of the Member Conduct Committee for a hearing.

If the Monitoring Officer and the Independent Person disagree on the course of action to be taken and the complainant is not satisfied with the outcome of the Monitoring Officer's consideration of the investigation, he or she may request that the Investigator's report is referred to a panel of the Member Conduct Committee to determine whether the complaint should be referred to a hearing or not.

If a review of the Monitoring Officer's decision is requested, the Monitoring Officer will appoint members to the panel from among the members ~~and reserve members~~ of the Member Conduct Committee to consider the complaint (reserves are permitted). The Panel will comprise 3 Borough Council members selected on the basis of political balance. If the Member is a Parish or Town Councillor, one of the Parish Members of the Committee will also be appointed as a non-voting member of the Panel.

Except in exceptional circumstances, an agenda for the meeting will be sent to the members of the Panel at least five clear working days before the meeting. In addition to the Investigator's report the Monitoring Officer will provide the views of the Independent Person who the Monitoring Officer has consulted and the views of the Independent Person who the Member has consulted if the Member wishes this to be submitted.

Meetings of the Panel are subject to the provisions of Part VA of the Local Government Act 1972. The Monitoring Officer will consider whether the agenda papers include exempt information to which the press and public, including the complainant and the Member, should not have access. The Panel's decision will be recorded in the form of the minutes of its meeting having regard for any exempt information that it considered and communicated

to the complainant, the Member and, where the Member is a parish or town councillor, the Clerk by letter.

The Panel will appoint a Chair from among its voting members. The Chair will deal with the following administrative matters prior to the consideration of any complaints:

- (i) ensuring the meeting is quorate (the Panel's quorum is three Borough Council members);
- (ii) dealing with any disclosures of interest;
- (iii) ensuring that the members of the Panel understand the procedure to be followed.

The Panel will come to one of the following decisions in respect of each complaint submitted to it:

- (i) the Member has not breached the code of conduct and no further action is required;
- (ii) the Member has breached the code of conduct but has taken appropriate steps to remedy the situation and no further action is required;
- (iii) the Member has a case to answer and the Investigator's report should be referred to a panel of the Member Conduct Committee for a hearing.

18.6 Hearings and Appeals

Pre-hearing process

Where a hearing is required, the Monitoring Officer will undertake a pre-hearing process and then prepare a report for the Panel setting out the results of the process.

The object of the pre-hearing process is to enable the hearing to take place fairly and as efficiently as is reasonably practicable, through conveying to the Panel those aspects, issues and matters related to the Investigator's report and the observations or representations made or received in respect of it that are relevant to the matter which was the subject of the investigation. As such, the Monitoring Officer's covering report will concern itself with procedure and shall not contain any recommendation as to the outcome of the hearing.

The Monitoring Officer will invite the Member and Investigator to participate in the pre-hearing process. The Monitoring Officer will:

- (i) write to the Member enclosing a copy of the Investigator's report, where possible to inform the Member of the provisional date(s) of the Panel hearing and to request

him or her to return the following information, within 14 days:

- Member's response to the evidence set out in the Investigator's report;
- Member's evidence relating to the allegation not previously submitted or identified in the Investigator's report;
- Mitigating circumstances desired to be submitted by or on behalf of the Member;
- Arrangements for the Panel hearing (witnesses, representation, request for documents or matters to be considered in private, etc.);
- Details of proposed witnesses which are wished to be called; and
- Any views of an Independent Person sought by the Member which he or she wishes to submit.

(ii) Upon receipt of the Member's comments in response to the Investigator's report, the Monitoring Officer will copy that response to the Investigator and request within 14 days the return of information relating to:

- Response to the Member's representations; and
- Arrangements for the Panel hearing (witnesses, request for documents or matters to be considered in private, etc.).

The Monitoring Officer will produce his or her report on the outcome of the pre-hearing process. The report will:

- (i) collate the paperwork to be presented or submitted to the hearing
- (ii) identify the main facts of the case that are in dispute;
- (iii) identify those issues, where appropriate, that are not relevant to the Panel's hearing of the complaint;
- (iv) set out the views of the Independent Person(s) which have been sought by the Monitoring Officer and the Member (where the Member wishes those to be included);
- (v) list those witnesses which may be called to give evidence; and
- (vi) determine what papers (if any) are likely to be considered in the absence of press or public at the hearing and therefore exempted from publication prior to the hearing,

The Monitoring Officer will appoint members to the Panel from among the members ~~and reserve members~~ of the Member Conduct Committee to consider the complaint (reserves are permitted). The Panel will comprise 3 Borough Council

members selected on the basis of political balance. If the Member is a Parish or Town Councillor, one of the Parish Members of the Committee will also be appointed as a non-voting member of the Panel.

Except in exceptional circumstances, an agenda for the meeting will be sent to the members of the Panel, at least five clear working days before the meeting. The Monitoring Officer will provide the Member and the Investigator with a copy of the agenda. The Monitoring Officer will publish that part of the agenda which he or she considers does not contain exempt information.

18.7 Hearing Principles

Hearings are not a court and, therefore, evidence will not be taken on oath and persons attending the Panel will not be expected to stand when addressing the meeting or giving evidence. However, the Panel remains quasi-judicial and the principles of natural justice will be applied. All comments or questions must be put to, or through, the Chair. The Panel will reach its decisions on the balance of probabilities based on the evidence presented to it.

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person. The Panel may take legal advice, in private if necessary, from ~~its legal adviser~~ the Monitoring Officer at any time during the hearing or while they are considering the outcome. The substance of any ~~legal~~ advice given to the Panel should be shared with the Member and the Investigator if they are present.

During the course of the hearing, the Panel can ask the Monitoring Officer to obtain further information if the Panel decides that it requires that information in order to reach a decision. The hearing will be adjourned until the Monitoring Officer provides that information. The Panel can make such a request only once per hearing;

18.8 Hearings by a Panel of Members of the Member Conduct Committee

The Panel will appoint a Chair from among its members. The Chair of the Panel will:

- (i) introduce those present;

- (ii) establish that the hearing is quorate (the Panel's quorum is 3 Borough Council members);
- (iii) deal with any disclosures of interest;
- (iv) ensure that the participants understand the procedure to be followed;
- (i) ensure that the Member, if unaccompanied, was made aware that he or she could have been represented.

Meetings of the Panel are subject to the provisions of Part VA of the Local Government Act 1972. The Monitoring Officer will consider whether the agenda papers include exempt information to which the press and public, ~~including the complainant and the Member,~~ should not have access.

If the Member is not present, the Panel will consider any indication from the Member that he/she would not be present, and any reasons provided. The Panel will then determine whether to hold the hearing in the absence of the Member or adjourn the hearing to another date.

If witnesses are to be called and the Panel has decided that the hearing should be held in exempt session, the Monitoring Officer will advise the Panel as to whether such witnesses should only be permitted to be present when they are called to answer questions.

The Investigator will put the case against the Member and may call witnesses. The Member and/or his/her representative may ask questions of the investigating officer and any witnesses. The Panel may ask questions of the investigating officer and any witnesses.

The Member and/or his/her representative will put his/her case and may call witnesses. The Investigator may ask questions of the Member and any witnesses. The Panel may ask questions of the Member and any witnesses.

The Independent Person, if present, will give their views on the complaint, and may be questioned by the Investigator, the Member, or the Panel.

The Investigator will sum up first, followed by the Member and/or his/her representative. No new evidence may be introduced at this stage.

The Panel may withdraw to consider the case and come to a decision in private. The Monitoring Officer and the officer recording the proceedings will remain with the Panel. If it is necessary to recall either party to clarify certain points, both

parties will ~~return~~ be present. On their return, the Chair will announce the Panel's decision in respect of the material facts and whether they amounted to a breach of the code of conduct.

If the Panel finds against the Member, he/she will be asked if he/she wishes to respond to the finding before the Panel considers whether to impose a sanction. The views of the Investigator and the Independent Person regarding potential sanctions will also be sought.

 If the Panel finds against the Member, the Panel may impose one or more of the following sanctions:

- (i) issue a formal letter to the Member setting out the breach of the Code which has been identified;
- (ii) censure the Member;
- (iii) make recommendations to full Council to remove the Member from committee(s) and other appointments unless these are subject to political balance requirements;
- (iv) where political balance requirements apply make recommendations to the relevant Group Leader to remove the Member from committee(s) and other appointments;
- (v) make recommendations to the Leader to remove the Member from the Cabinet or from the role of Cabinet Support Member
- (vi) recommend that the Member undertake training or issue an apology.
- (vii) recommend removal from outside body appointments (for Charnwood Borough Council appointments this would be subject to approval of Cabinet);
- (viii) withdraw specified facilities (IT equipment, internet access, email access) for a specified period;
- (vx) exclude the Member from council premises for a specified period, except where necessary to attend council or committee meetings.

Where the Member is a parish/town councillor the Panel's decision will be in the form of a recommendation to the relevant authority on what sanction to impose.

Once the Panel has sufficient information to enable it to determine whether a sanction should be applied and, if appropriate, what the sanction should be, the Panel may withdraw to consider the representations and evidence in private. On their return, the Chair will announce the Panel's decision.

~~After considering any verbal or written representations from the Investigator, t~~he Panel will also consider whether it should

make any recommendations to the authority, with a view to promoting and maintaining high standards of conduct among members which will be announced by the Chair.

18.9 After the hearing and appeals

The Panel will announce its decision on the day. The Panel's decision and reasons will be recorded in the form of the minutes of its meeting having regard for any exempt information that it considered and communicated to the relevant parties by letter. The Panel will, wherever possible, issue its full written decision and reasons within 10 working days of the end of the hearing.

The written decision will be provided to the Member, the complainant, the Investigator and where the Member is a parish/town councillor, the Parish/Town Clerk. The written decision will, if a finding has been made that the Member had failed to comply with the Code of Conduct, provide information as to the Member's right to appeal against the finding

Where the Panel has determined that the Member failed to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a notice of the Panel's findings and the Member's right to appeal in a local newspaper and on the Borough Council's website.

Where the Panel has determined that the Member did not fail to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a notice of the Panel's findings in a local newspaper and on the Borough Council's website unless the Member requests that no notice is published.

If the Panel finds against the Member, the Member may ask for that decision to be reviewed by the Borough Council's Appeals and Review Committee. A request for a review must be made in writing, giving the reasons for the request, to the Monitoring Officer/Deputy Monitoring Officer within 10 working days of the date of the written notification of the Panel's decision.

On receipt of the review the Monitoring Officer/Deputy Monitoring Officer in consultation with the Independent Person will consider the validity of the appeal in terms of whether there has been a procedural breach or new evidence has come to light.

The appeal will normally be heard within 20 working days of the receipt of the written request stating the wish for the finding to be reviewed. The appeal will be conducted following the procedure set out in section 8 but will consider only material relevant to the reasons for the review request set out by the Member.

18.10 Non-Code of Conduct Complaints - Before the meeting of the Member Conduct Panel

The Monitoring Officer will make enquiries and, where he or she considers it appropriate, investigate any allegations of misconduct in accordance with the Monitoring Officer Protocol.

Any investigation will be conducted as quickly as is reasonably possible, having regard to the nature of the complaint. Unless it is inappropriate to do so, the Monitoring Officer will inform the complainant and the Member that the investigation is taking place, the matter being investigated and of the likely length of the investigation.

If, following an investigation, in the opinion of the Monitoring Officer there is no case to answer or the matter can be resolved by agreement of the parties involved, the Monitoring Officer will inform the parties involved and the Chair of the Member Conduct Committee of that finding.

If, following an investigation, in the opinion of the Monitoring Officer there is a case to answer and there is no possibility of the matter being resolved by agreement of the parties involved, the Monitoring Officer will:

- (i) prepare a report and inform the Member of the procedure which will be used;
- (ii) once the report is completed, inform the Member and send him/her a copy of the report;
- (iii) ask the Member or his/her representative to provide details of the evidence which he/she wishes to present at the hearing and the witnesses which he/she wishes to call at the hearing.

The Monitoring Officer's report will normally include:

- (i) details of the alleged misconduct;
- (ii) a summary of the investigation;
- (iii) the names of any witnesses and copies of any documentary evidence to be presented at the hearing.

~~The Monitoring Officer will appoint members to a Panel from among the members and reserve members of the Member Conduct Committee to consider the complaint. The Panel will comprise 3 Borough Council members selected on the basis of political balance.~~

~~Except in exceptional circumstances, an agenda for the meeting will be sent to the members of the Panel, at least five clear~~

~~working days before the meeting. The Monitoring Officer will provide the Member and the Investigator with a copy of the agenda. The Monitoring Officer will publish that part of the agenda which he or she considers does not contain exempt information.~~

~~18.11 The meeting of the Panel~~

~~The Panel will appoint a Chair from among its members. The Chair of the Panel will:~~

- ~~(i) introduce those present;~~
- ~~(ii) establish that the hearing is quorate (the Panel's quorum is 3 Borough Council members);~~
- ~~(iii) deal with any disclosures of interest;~~
- ~~(iv) ensure that the participants understand the procedure to be followed;~~
- ~~(v) ensure that the Member, if unaccompanied, was made aware that he or she could have been represented.~~

~~Meetings of the Panel are subject to the provisions of Part VA of the Local Government Act 1972. The Monitoring Officer will consider whether the agenda papers include exempt information to which the press and public, including the complainant and the Member, should not have access.~~

~~If the Member is not present, the Panel will consider any indication from the Member that he/she would not be present, and any reasons provided. The Panel will then determine whether to hold the hearing in the absence of the Member or adjourn the hearing to another date.~~

~~The investigating officer will put the case against the Member and may call witnesses. The Member and/or his/her representative may ask questions of the investigating officer and any witnesses. The Panel may ask questions of the investigating officer and any witnesses.~~

~~The Member and/or his/her representative will put his/her case and may call witnesses. The investigating officer may ask questions of the Member and any witnesses. The Panel may ask questions of the Member and any witnesses.~~

~~The investigating officer will sum up first, followed by the Member and/or his/her representative. No new evidence may be introduced at this stage.~~

~~The Panel may withdraw to consider the case and come to a decision in private. The Monitoring Officer and the officer recording the proceedings will remain with the Panel. If it is~~

~~necessary to recall either party to clarify certain points, both parties will return. On their return, the Chair will announce the Panel's decision.~~

~~If the Panel finds against the Member, he/she will be asked if he/she wishes to respond to the finding before the Panel considers whether to impose a sanction. If the Panel finds against the Member, the Panel may impose one or more of the following sanctions:~~

- ~~(i) issue a formal letter to the Member setting out the breach which has been identified;~~
- ~~(ii) censure the Member;~~
- ~~(iii) make recommendations to full Council to remove the Member from committee(s) and other appointments unless these are subject to political balance requirements;~~
- ~~(iv) where political balance requirements apply make recommendations to the relevant Group Leader to remove the Member from committee(s) and other appointments;~~
- ~~(v) make recommendations to the Leader to remove the Member from the Cabinet or from the role of Cabinet Support Member~~
- ~~(vi) recommend that the Member undertake training or issue an apology.~~

~~Once the Panel has sufficient information to enable it to determine whether a sanction should be applied and, if appropriate, what the sanction should be, the Panel may withdraw to consider the representations and evidence in private. On their return, the Chair will announce the Panel's decision.~~

~~After considering any verbal or written representations from the investigating officer, the Panel will consider whether it should make any recommendations to the Council, with a view to promoting and maintaining high standards of conduct among members which will be announced by the Chair.~~

~~The Panel will announce its decision on the day. The Panel's decision and reasons will be recorded in the form of the minutes of its meeting having regard for any exempt information that it considered and communicated to the relevant parties by letter. The Panel will, wherever possible, issue its full written decision and reasons within 10 working days of the end of the hearing.~~

~~The hearing process as set out in section 18.8 will be followed.~~

The Panel will consider what publicity is appropriate in connection with its decision. The Panel will ask for the views of the Member when considering what publicity is appropriate.

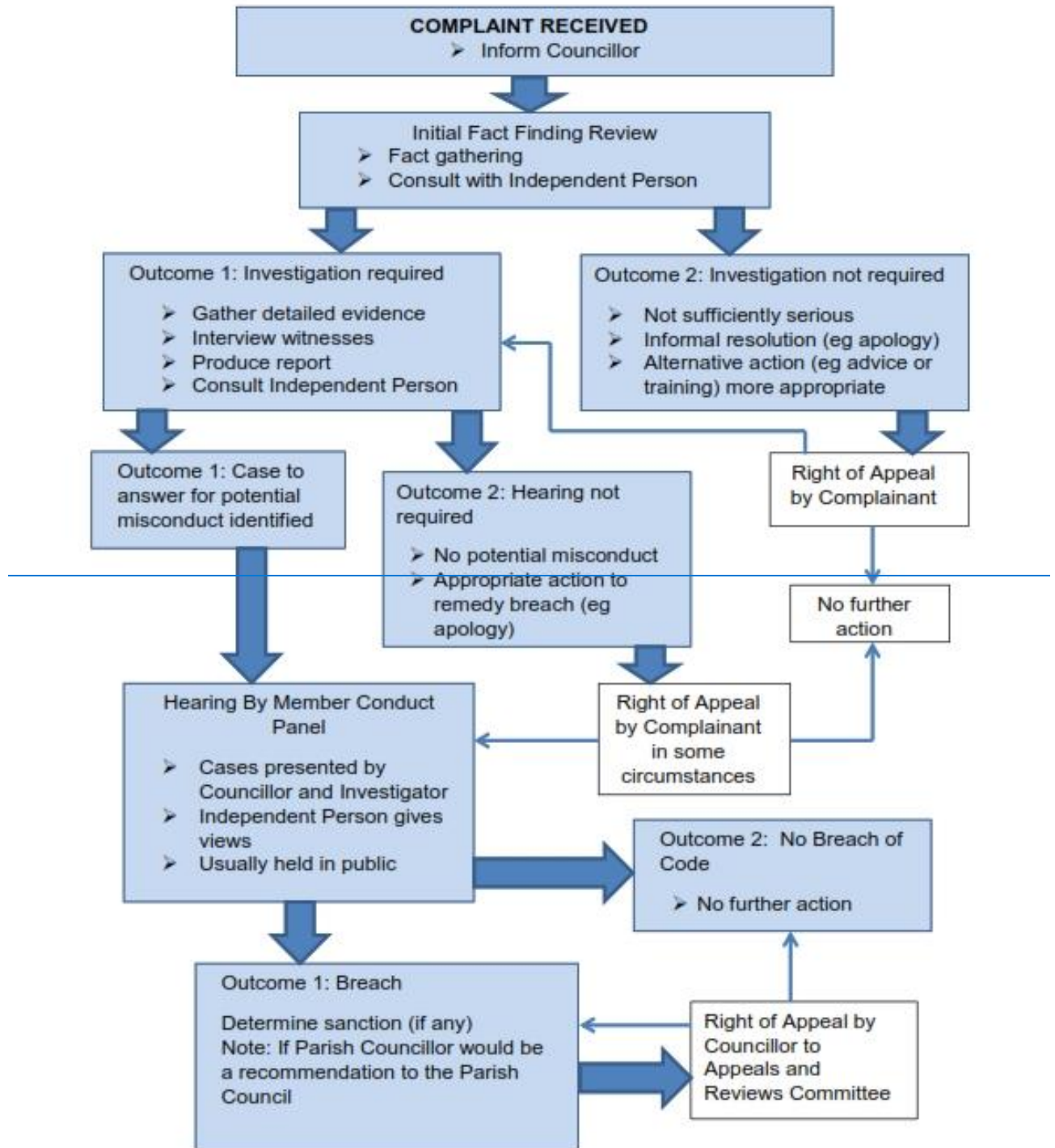
18.12 The Right of Appeal

If the Panel finds against the Member, the Member may ask for that decision to be reviewed. A request for a review must be made in writing, giving the reasons for the request, to the Monitoring Officer within 10 working days of the date of the written notification of the Panel's decision.

The appeal will be heard by the Appeals and Reviews Committee only after the Monitoring Officer in consultation with the Independent Person has considered the validity of the appeal in terms of whether there has been a procedural breach or if new evidence has come to light. The appeal will normally be heard within four weeks of the receipt of the written request stating the wish for the finding to be reviewed.

The appeal will be conducted following the procedure set out in section 18.11 but will consider only material relevant to the reasons for the review request set out by the Member.

MEMBER CONDUCT COMPLAINTS – SUMMARY OF PROCEDURE



|