

# **Member Misconduct Complaints Procedure**

## **Context**

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this Council has failed to comply with the Code of Conduct for Members, and sets out how the Council will deal with allegations of a failure to comply with the Code of Conduct.
- 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 has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the Council to appoint at least 1 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 against whom an allegation has been made.

## **2. The Code of Conduct**

- 2.1 The Council has adopted a Code of Conduct for Members, which is available for inspection on the Council’s website and on request from Reception at the Council Offices.

## **3. Making a complaint**

- 3.1 Complaints can be made using [the online form](#) here
- 3.2 Complaints can also be made in writing to:  
The Monitoring Officer  
Fareham Borough Council  
Civic Offices, Civic Way  
Fareham  
PO16 7AZ
- 3.3 If you have any questions about this process, you can contact the Monitoring Officer by telephone on 01329 236100 or by email at [monitoring@fareham.gov.uk](mailto:monitoring@fareham.gov.uk)
- 3.4 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members’ interests and who is responsible for administering the system in respect of complaints of member misconduct.
- 3.5 In order to ensure that we have all the information which we need to be able to process your complaint, please complete your complaint as fully as possible.

- 3.6 Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. 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 for confidentiality and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.
- 3.7 The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.8 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.
- 3.9 The Complaints Procedure Flowchart is annexed at Appendix 1 for your assistance

#### **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
  - 4.1.2 Merits further investigation
  - 4.1.3 Should be referred to the Standards Sub Committee
- 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 annexed at Appendix 2. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed.
- 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 call in the Police or other regulatory agencies.

**5. How is the investigation conducted?**

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix 3 to these arrangements.
- 5.2 If the Monitoring Officer decides that a complaint merits further investigation, he/she may appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer or Monitoring 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 or Monitoring Officer will normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.
- 5.4 At the end of his/her investigation, the Investigating Officer or Monitoring 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 received and taken account of any comments which you may make on the draft Investigation Report, a final Investigation Report will be prepared by the Investigating Officer or Monitoring Officer as appropriate.

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

- 6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigation Final Report.
- 6.2 If an Investigating Officer has been appointed and 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 or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Audit and Governance Standards Sub Committee, or in consultation with the Independent Person seek an informal resolution.

**7.1.1 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/she will consult with the Independent Person and with you as complainant and seek to agree what you may consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee for information, but will take no further action.

**7.1.2 Hearing by the Standards Sub-Committee**

If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will refer the Investigation Report to Standards Sub-Committee which may conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

At the hearing, the Investigating Officer or the Monitoring Officer will present his/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 of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. 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 of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

**8. What action can the Standards 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 individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may decide:-

8.1.1 No action needs to be taken;

8.1.2 Censure or reprimand the Member.

8.1.3 Report its findings to Council for information;

8.1.4 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees, Sub-Committees or Panels of the Council;

8.1.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

8.1.6 Instruct the Monitoring Officer to arrange training for the member;

8.1.7 Remove from all outside appointments to which he/she has been appointed or nominated by the authority;

8.1.8 Restrict or remove the use of Council resources or facilities for a specified period of time provided this does not prevent the Member from carrying out their duties as an elected Councillor.

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

**9. What happens at the end of the hearing?**

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

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, to the member, and make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

**10. Who are the Standards Sub-Committee?**

10.1 The Standards Sub-Committee comprises a maximum of 3 elected or co-opted Members of the Council, including not more than 1 member of the authority's Executive, and with any elected members drawn from all political groups. Subject

to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

- 10.2 The Independent Person is invited to attend all meetings of the Committee involving the consideration of misconduct allegations and their views are sought and taken into consideration before the Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.
- 10.3 The Independent Person does not have voting rights on the Committee. Their role is an advisory one and they are appointed in accordance with the provisions of the Localism Act.

## **11. Who is the Independent Person?**

- 11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.
- 11.2 A person cannot be "independent" if he/she:
  - a) Is, or has been within the past 5 years, a member, co-opted member or officer of the authority, save where any transitional provisions permit ; or
  - b) Is a relative or close friend, of a person within paragraph a) above.

For this purpose, a "relative" means:

- i. Spouse or civil partner;
- ii. Living with the other person as husband and wife or as if they were civil partners;
- iii. Grandparent of the other person;
- iv. A lineal descendent of a grandparent of the other person;
- v. A parent, sibling or child of a person within paragraphs i) or ii); or
- vi. A spouse or civil partner of a person within paragraphs iii), iv) or v); or
- vii. Living with a person within paragraphs iii), iv) or v) as husband and wife or as if they were civil partners.

## **12. Revision of these arrangements**

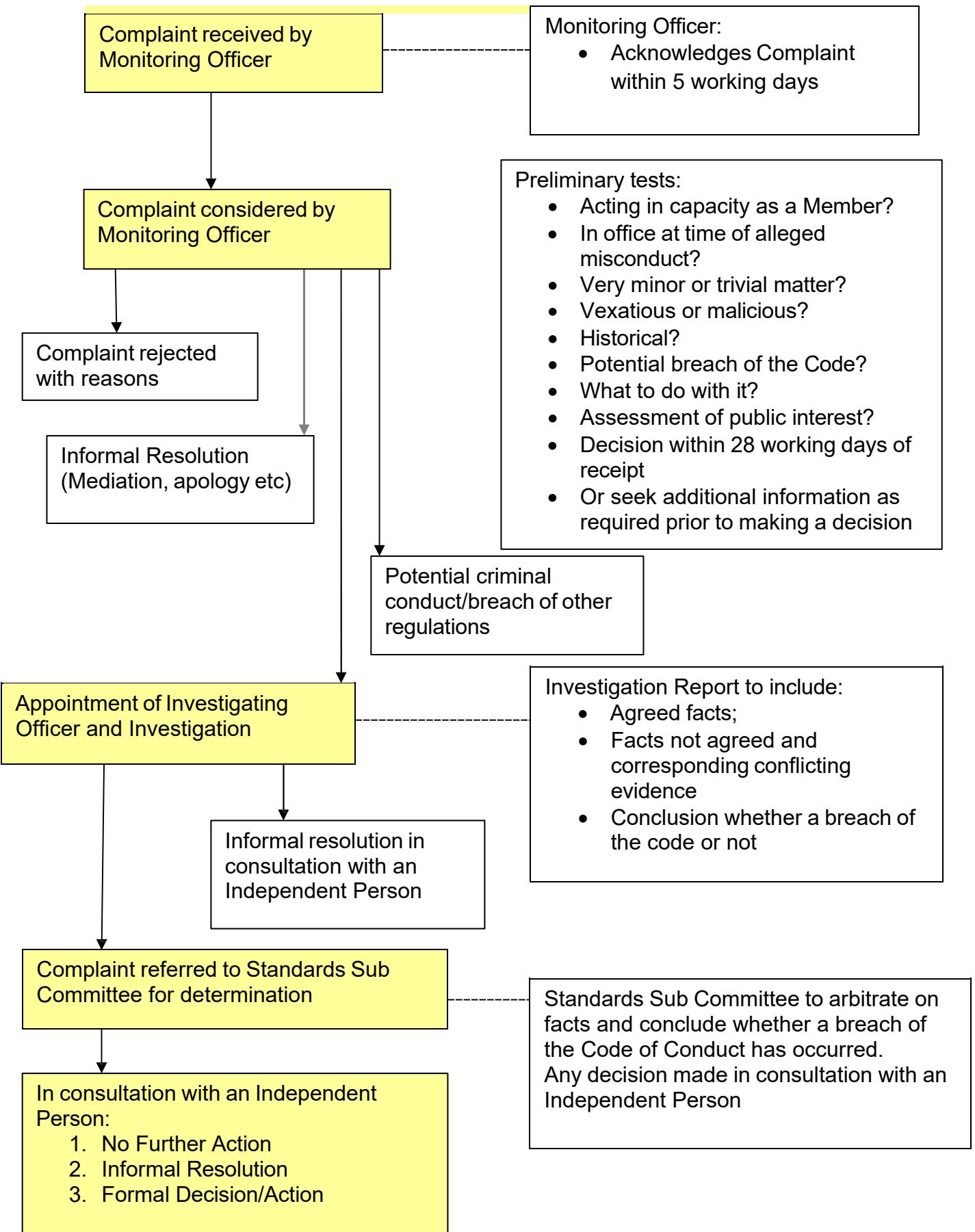
The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

### **13. Appeals**

13.1 There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer or the Standards Sub Committee.

## Appendix 1

### Complaints Procedure Flowchart



## **APPENDIX 2**

### **STANDARDS COMPLAINTS ASSESSMENT CRITERIA**

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

1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated, vexatious or trivial; or
4. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. it is about someone who is no longer a Councillor; or
6. There is insufficient information available for a referral; or
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; or
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
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 Sub Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

#### **Complaints which may be referred to the Standards Sub Committee**

1. It is serious enough, if proven, to justify the range of actions available to the Standards Sub Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation.

3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him to investigate

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

## APPENDIX 3

### INVESTIGATION PROCEDURE

