



Colchester Borough Council
Governance and Audit Committee
Councillor Code of Conduct

Arrangements for dealing with complaints

1. Introduction

- 1.1 These “Arrangements” came into effect on 1 July 2012 detail the process for making a complaint that an elected or co-opted member of Colchester Borough Council or of a parish council, town council or community council (referred to as a parish council in this document) within the Borough of Colchester has failed to comply with the Councillors’ Code of Conduct. It also sets out how the Borough Council will deal with allegations of a failure to comply with the Councillors’ Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Borough Council must have in place “Arrangements” under which allegations that a member or co-opted member of the Borough Council or of a parish council within the Borough of Colchester, has failed to comply with Councillors’ Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such Arrangements must provide for the Borough Council to appoint at least 1 Independent Person, whose views must be sought by the Borough Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Borough Council at any other stage, or by a member or a co-opted member of a parish council against whom an allegation has been made. Both members and co-opted members are referred to as Councillors in this document for ease of reference.

2. The Code of Conduct

- 2.1 The Borough Council has adopted a Code of Conduct for Councillors, which is published on the Borough Council’s website.
www.colchester.gov.uk/standards
- 2.2 Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect

any website operated by the Parish Council or request the parish clerk to allow you to inspect the Parish Council's Code of Conduct.

3. Making a complaint

- 3.1 If you wish to make a complaint, please email :
andrew.weavers@colchester.gov.uk or write to:

The Monitoring Officer
Colchester Borough Council
Rowan House, 33 Sheepen Road
Colchester, CO3 3WG.

- 3.2 The Monitoring Officer is a senior officer of the Borough Council who has statutory responsibility for maintaining the register of Councillors' interests and who is responsible for administering the system in respect of complaints of Councillor misconduct.
- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the Borough Council's website, next to the Code of Conduct.
- 3.4 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 and if granted we will not disclose your name and address to the Councillor against whom you make the complaint, without your prior consent.
- 3.5 The Borough Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 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 is attached at Appendix 1.
- 3.8 The Borough Council has agreed a Press Policy in relation to complaints made against Councillors and this is attached at Appendix 2.

4. Will your complaint be investigated?

- (1) The Monitoring Officer will review every complaint received and, may consult with the Independent Person before taking a decision as to whether it:
 - (a) merits no further investigation; or
 - (b) merits further investigation; or
 - (c) should be referred to the Governance and Audit Committee,
- (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 Borough Council's Assessment Criteria contained at Appendix 3. 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 Councillor against whom your complaint is directed.
- (3) Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.
- (4) 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 Councillor accepting that their conduct was unacceptable and offering an apology, or other remedial action by the Authority. Where the Councillor or the Authority 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.
- (5) 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?

- (1) The Borough Council has adopted a procedure for the investigation of allegations, which is attached as Appendix 4 to these Arrangements.

- (2) If the Monitoring Officer decides that a complaint merits further investigation, they may appoint an Investigating Officer, who may be another senior officer of the Borough Council, an officer of another Authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether they need 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.
- (3) The Investigating Officer or Monitoring Officer will normally write to the Councillor against whom you have complained and provide them with a copy of your complaint and ask the Councillor to provide their explanation of events, and to identify what documents are required 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 Councillor might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Councillor, or delay notifying the Councillor until the investigation has progressed sufficiently.
- (4) At the end of their 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 Councillor 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) Having received and taken account of any comments which you may make on the draft Investigation Report. Where an Investigating Officer has been appointed the Investigating Officer will send their final report to the Monitoring Officer.

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?

- (1) If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report and, if satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the Councillor concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that no further action is required, and give you both a copy of the Investigation Final Report.

- (2) If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their 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?

- (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 Hearings Sub-Committee or in consultation with the Independent Person seek an informal resolution.

(a) Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Councillor accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Borough Council's Governance and Audit Committee (and the Parish Council) for information but will take no further action.

(b) Hearing

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 report the Investigation Report to the Hearings Sub-Committee which will conduct a hearing before deciding whether the Councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Councillor.

The Borough Council has agreed a procedure for hearing allegations, which is attached as Appendix 5 to these Arrangements.

At the hearing, the Investigating Officer or the Monitoring Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their 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 Hearings Sub-Committee. The Councillor will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Sub-Committee as to why they consider that they did not fail to comply with the Code of Conduct.

The Hearings Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the Councillor did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Hearings Sub-Committee concludes that the Councillor did fail to comply with the Code of Conduct, the Chair will inform the Councillor of this finding and the Hearings Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the Councillor's failure to comply with the Code of Conduct. In doing this, the Hearings Sub-Committee will give the Councillor an opportunity to make representations to the Hearings Sub-Committee 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 Hearings Sub-Committee take where a Councillor has been found to have failed to comply with the Code of Conduct?

8.1 The Borough Council has delegated to the Hearings Sub-Committee its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct.

Accordingly, the Hearings Sub-Committee may: -

- (a) Report its findings to Council (or to the Parish Council) for information;
- (b) Recommend to Council (or to the Parish Council) that the Councillor be issued with a formal censure or be reprimanded
- (c) Recommend to the Councillor's Group Leader (or in the case of ungrouped Councillors, recommend to Council or to Committees) that

the Councillor be removed from any or all Committees or Panels of the Council;

- (d) Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - (e) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Councillor;
 - (f) Recommend to Council to remove (or recommend to the Parish Council that the Councillor be removed) from all outside appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
 - (g) Recommend to Council to withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Councillor by the Council, such as a computer, website and/or email and internet access; or
 - (h) Recommend to Council to exclude (or recommend that the Parish Council exclude) the Councillor from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.
- 8.2 The Hearings Sub-Committee has no power to suspend or disqualify a Councillor or to withdraw a Councillor's basic allowance or any special responsibility allowances.
- 8.3 Any actions recommended by the Hearings Sub-Committee should be proportionate and commensurate with the circumstances of the particular case.

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 Hearings Sub-Committee as to whether the Councillor failed to comply with the Code of Conduct and as to any actions which the Hearings 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 Hearings Sub-Committee, and send a copy to you, to the Councillor (and to the Parish Council), make that decision notice available for public

inspection and report the decision to the next convenient meeting of the Council.

10 Who are the Hearings Sub-Committee?

- 10.1 The Sub-Committee comprises Councillors who are members of the Governance and Audit Committee.
- 10.2 The Governance and Audit Committee has decided that it will comprise a maximum of five Councillors and will comprise Councillors 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. If the Councillor complained about is a member of a Parish Council a parish Councillor who is a co-opted member of the Governance and Audit Committee will also be invited to attend the Sub-Committee.
- 10.3 An Independent Person will also be invited to attend all meetings of the Hearings Sub-Committee and their views are sought and taken into consideration before the Sub-Committee takes any decision on whether the Councillor'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.

11 Who are the Independent Persons?

- 11.1 The Independent Persons are persons 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 the Borough Council.
- 11.2 A person cannot be "independent" if they:
- (a) are, or have been within the past 5 years, a member, co-opted member or officer of the Borough Council;
 - (b) (are or have been within the past 5 years, a member, co-opted member or officer of a parish council within the Borough of Colchester), or
 - (c) are a relative or close friend, of a person within paragraph (a) or (b) 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 (a) or (b); above or
- (vi) a spouse or civil partner of a person within paragraphs (iii), (iv) or (v) above; or
- (vii) living with a person within paragraphs (iii), (iv) or (v) above as husband and wife or as if they were civil partners.

12. Revision of these Arrangements

The Borough Council may by resolution agree to amend these Arrangements, and has delegated to the Chair of the Hearings Sub-Committee the right to depart from these Arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13. Appeals

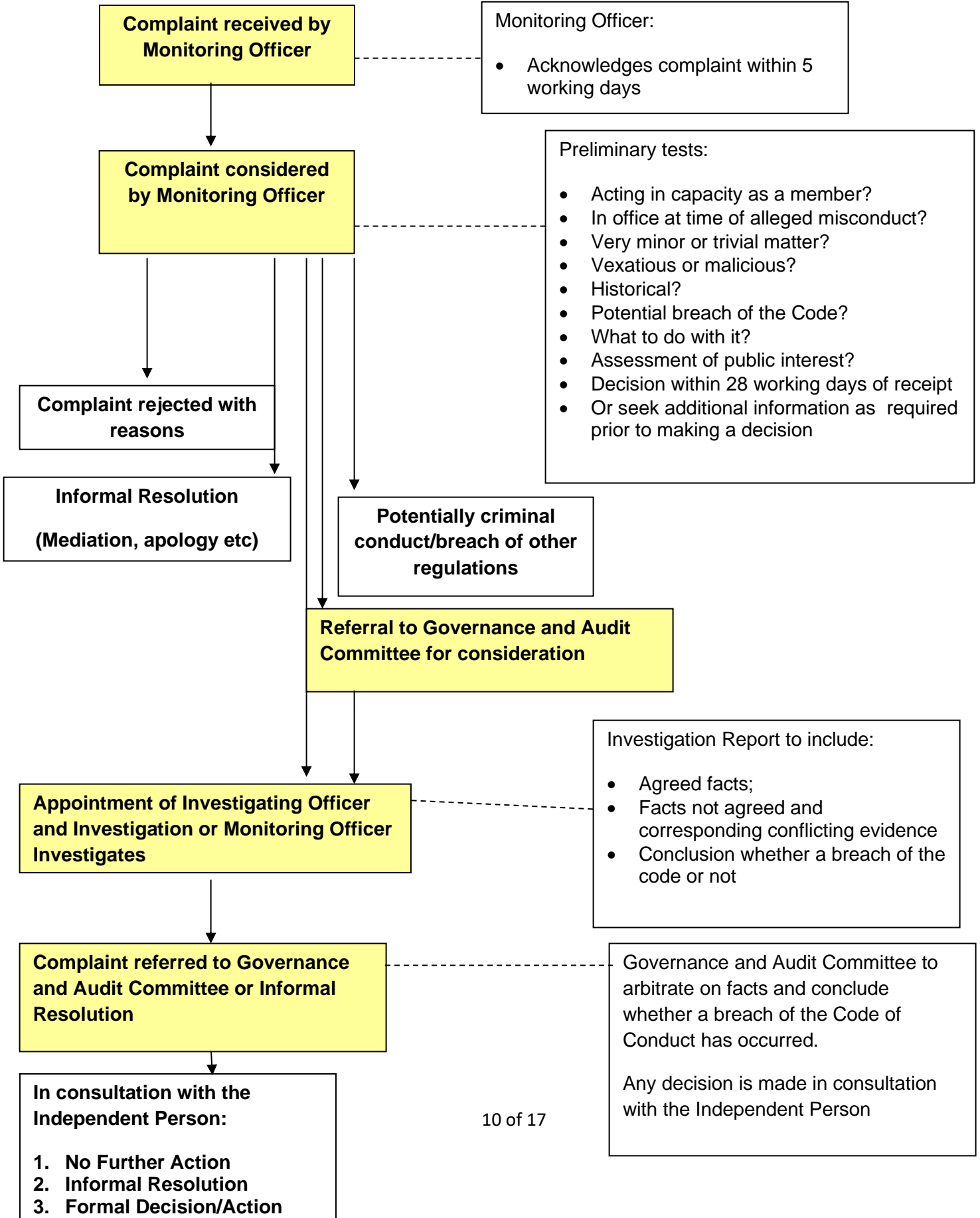
13.1 There is no right of appeal for you as complainant or for the Councillor against a decision of the Monitoring Officer or of the Hearings Sub-Committee.

13.1.1 If you feel that the Borough Council has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

14. Review

These Arrangements will be kept under annual review by the Governance and Audit Committee.

Complaints Procedure Flowchart



Colchester Borough Council

Press Policy

Complaints against Members

This Policy sets out how the Borough Council will respond to press enquiries into a complaint made against Councillor(s). This includes Borough Councillors, Parish, Town and Community Councillors.

We like to be as helpful as possible to the press and we will confirm, when requested by a journalist:

- the name of a Councillor(s) involved in an ongoing or past investigation
- the type of person who made the allegation – whether they are a member or Officer of the Authority, or a member of the public
- part of the Code of Conduct potentially breached
- whether the case was referred for investigation and, if not, the reason it was not referred
- approximate dates of when the allegation was received and the date of when a decision was made on whether or not to investigate
- the outcome of any investigation, on issue of the final report

Please note that we will only respond to queries about specific Councillors.

We will not comment on complaints received until a decision has been made on whether a complaint will be investigated; we allow three working days from the date of that decision before confirming it to the press.

We will confirm the outcome of an investigation three working days after the final report has been issued. This policy ensures that the relevant parties involved in the complaint and investigation are notified before the press.

We will always stress that a complaint is just that: while an investigation is ongoing, no decision is made regarding a Councillor's guilt or otherwise.

Colchester Borough Council

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; or
4. It appears that there can be no breach of the Code of Conduct; e.g. 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 Governance and Audit 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 Councillor 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 Governance and Audit Committee

1. It is serious enough, if proven, to justifying the range of actions available to the Governance and Audit 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; or

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 Councillor such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him to investigate.

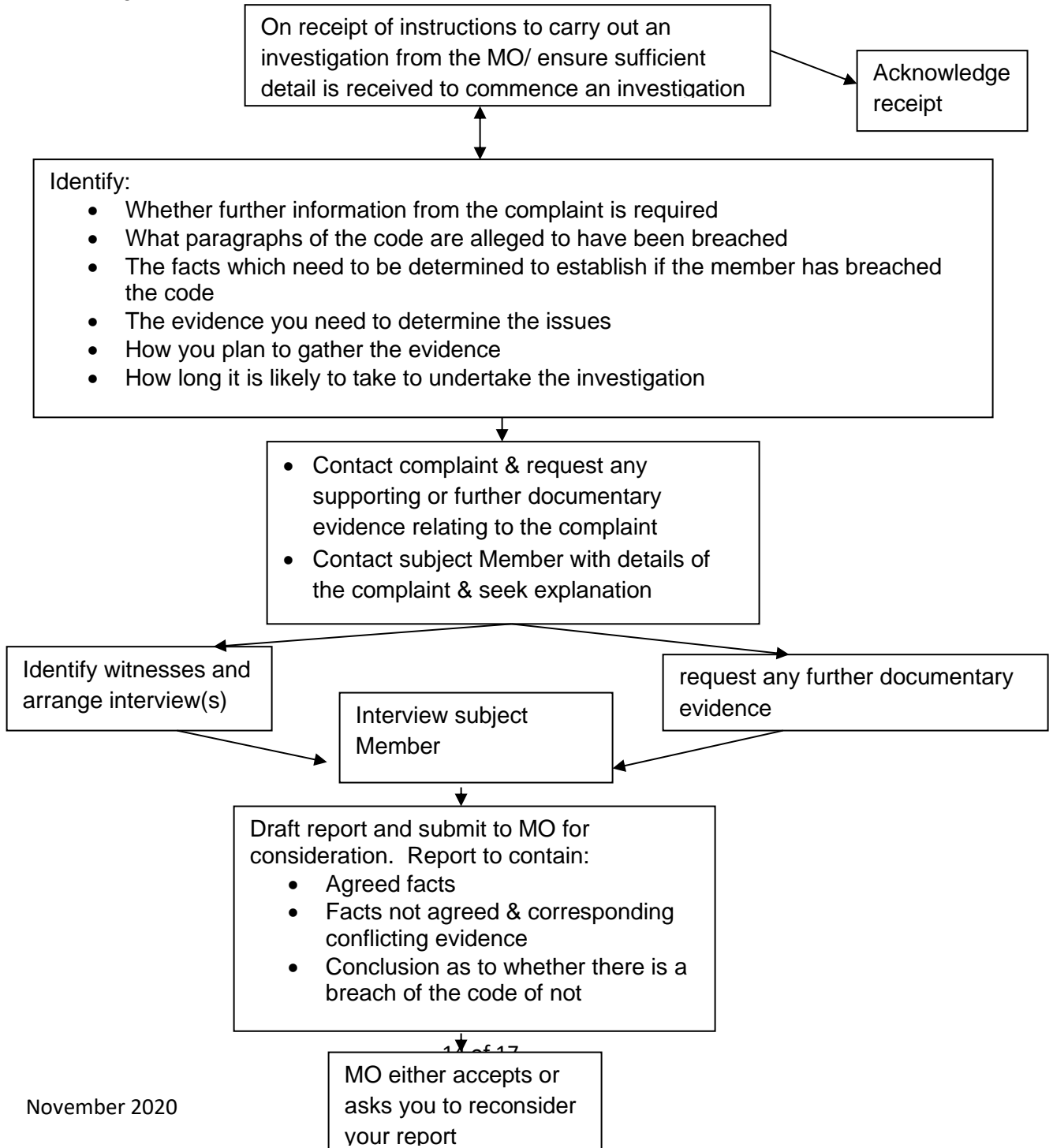
Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and Councillors' time. This is an important consideration where the complaint is relatively minor.

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.



Colchester Borough Council
GOVERNANCE AND AUDIT COMMITTEE
HEARINGS SUB-COMMITTEE PROCEDURE

| <u>Item No.</u> | <u>Procedure</u> |
|------------------------|---|
| | <u>Quorum</u> |
| 1. | <p>1.1. Three members must be present throughout the hearing to form a quorum.</p> <p>1.2. Where the complaint refers to a Parish Councillor a non-voting Parish member of the Governance and Audit Committee may be present.</p> <p>1.3. An Independent Person shall also be invited to attend.</p> <p>1.4. The Sub-Committee shall nominate a Chair for the meeting</p> |
| | <u>Opening</u> |
| 2. | <p>2.1 The Chair explains the procedure for the hearing and reminds all parties to turn off mobile phones etc.</p> <p>2.2 The Chair asks all present to introduce themselves.</p> <p>2.3 The Councillor will be asked whether they wish to briefly outline their position.</p> |
| | <u>The Complaint</u> |
| 3. | <p>3.1 The Investigating Officer shall be invited to present their 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.</p> <p>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 Investigators report and not to make a statement).</p> |

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| | 3.3 | Members of the Sub-Committee may question the Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer |
| | <u>The Councillor's case</u> | |
| 4. | 4.1 | The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative). |
| | 4.2 | The Investigating Officer may question the Councillor and/or any witnesses. |
| | 4.3 | Members of the Sub-Committee may question the Councillor and /or any witnesses. |
| | <u>Summing Up</u> | |
| 5. | 5.1 | The Investigating Officer may sum up the Complaint. |
| | 5.2 | The Councillor (or their representative) may sum up their case. |
| | <u>Decision</u> | |
| 6. | 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 Councillor has failed to follow the Code of Conduct; or |
| | 6.2.2 | The Sub-Committee decides that the Councillor has not failed to follow the Code of Conduct |
| | 6.3 | The Sub-Committee will give reasons for their decision |
| | 6.4 | If the Sub-Committee decides that the Councillor has failed to follow the Code of Conduct the Sub-Committee will consider any representations from the Investigator and/or the Councillor as to: |
| | 6.4.1 | Whether any action should be taken and |
| | 6.4.2 | What form any action should take |

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| | <p>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.</p> <p>6.6 On the Sub-Committee's return the Chair will announce the Sub-Committee's decision (in relation to a Parish Councillor a recommendation to the Parish Council).</p> <p>6.7 The Sub-Committee will consider whether it should make any recommendations to the Borough Council (or in relation to a Parish Councillor to the Parish Council) with a view to promoting high standards of conduct among Councillors.</p> <p>6.8 The Chair will confirm that a full written decision shall be issued within 7 working days following the hearing and that the Sub-Committee's findings to be published.</p> |
| | |