



## Agenda for Standards Assessment Sub Committee

Wednesday, 27th July, 2022, 11.30 am

(or on the rising of the Standards Committee but not before 11.30am)

# CLOSED MEETING

For those receiving the confidential papers DO NOT show them to ANYONE ELSE or discuss with ANYONE ELSE, despite the complaint being anonymised, as this could compromise you, or the fairness of the process.

This meeting is only open to invited members and representatives. It is not open to all Councillors or members of the public and press.

### Members of Standards Assessment Sub Committee

Cllr D Barrow, Bryant, Coulter, C Gardner, Goscomb, P Stott and P Twiss, Pat Coulter (Ind. Person), Martin Goscomb (Ind. Representative) and Pauline Stott (Town and Parish Representative); plus Ken Bryant (Ind. Representative)

**Venue:** Online via zoom

**Contact:** Debbie Meakin [dmeakin@eastdevon.gov.uk](mailto:dmeakin@eastdevon.gov.uk) 01395 517540;

(or group number 01395 517546)

19 July 2022; re-issued 21 July 2022

- 1 Election of Chair
- 2 Declarations of interest
- 3 Confidential/exempt information

To agree items to be dealt with after the public (including the Press) have been excluded. Officers recommend the complaint item(s) should be dealt with in this way on the grounds that they are likely to involve the disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972; or that the reports contain information which is likely to reveal the identity of an individual as defined in paragraph 2 of Part 1 of Schedule 12A of the Local Government Act 1972.

- 4 **Complaint for assessment C07** (Pages 3 - 6)
- 5 **Complaint for assessment C08** (Pages 7 - 10)

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- 6 **Complaint for assessment C10** (Pages 11 - 17)
- 7 **Complaint for assessment C11** (Pages 18 - 21)
- 8 **Complaint for assessment C15** (Pages 22 - 24)
- 9 **Complaint for assessment C01** (Pages 25 - 28)
- 10 **Complaint for assessment C14** (Pages 29 - 31)
- 11 Complaint procedure for reference (Pages 32 - 53)

Section 4 outlines the processes for the Standards Assessment Sub Committee; appendix 2 outlines the Basic and Local Assessment Criteria.

[Decision making and equalities](#)

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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## STANDARDS PROCESS

FOR DEALING WITH COMPLAINTS THAT  
MEMBERS HAVE BREACHED THE CODE OF  
CONDUCT

Adopted October 2021

## CONTENTS:

1. Introduction
2. Making a complaint
3. Initial Assessment (Stage 1)
4. Standards Assessment Sub-Committee (Stage 2)
5. Monitoring Officer Investigation (Stage 3)
6. Independent Investigation (Stage 4)
7. Standards Hearing Sub-Committee (Stage 5)
8. General matters

Appendix 1:	Complaint Flow Chart
Appendix 2:	Basic and Local Assessment Criteria
Appendix 3:	Standards Assessment Sub-Committee Procedure
Appendix 4:	Standards Hearing Sub-Committee Procedure

## Definitions used in this document:

<b>Code of Conduct</b>	means the Code of Conduct for Members which the Council and town or parishes are required to adopt under Section 27 of the Localism Act 2011
<b>Complainant</b>	means the individual who has submitted a complaint.
<b>Council</b>	means East Devon District Council
<b>Member</b>	means a member or co-opted member of East Devon District Council, or of a parish or town council within its area
<b>Monitoring Officer</b>	means the senior officer of the Council who has the statutory responsibility for maintaining the register of Member's interests and who is responsible for administering the arrangements for dealing with complaints of Member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.
<b>Independent Person</b>	means a person appointed under Section 28(7) of the Localism Act 2011;  (i) whose views must be sought and taken into account before a decision is made on an allegation of member misconduct under these arrangements.  (ii) who may be consulted by the Subject Member about the complaint.
<b>Subject Member</b>	means a Member against whom a complaint has been made that they have not complied with the Code of Conduct.

## **1. Introduction**

- 1.1 The Localism Act 2011 abolished the previous Standards Board regime for dealing with complaints in relation to Member conduct.
- 1.2 Section 27 of the Localism Act 2011 requires a local authority to adopt a code of conduct to govern the conduct that is expected of its Members (and co-opted members) when acting in their official capacity and which must, when taken as a whole, be compliant with the Nolan principles. A town or parish council may adopt its own code or that of its principal authority (in East Devon that is the District Council).
- 1.3 Each year, at the Annual Council meeting in May, the Council agrees the Member's Code of Conduct as part of the adoption of the Constitution.
- 1.4 Section 28 of the Localism Act 2011 requires the Council to have in place arrangements through which allegations that a Member's conduct has breached the Code of Conduct can be investigated and decided upon. This process must involve an Independent Person, who is independent of the Council and who is an important safeguard in the process. There are certain restrictions on who this person can be.
- 1.5 This document sets out the local procedure for dealing with complaints that a Member has failed to comply with the Code of Conduct. It has been adopted by the Council for this purpose. A flow chart of the process is contained at Appendix 1.
- 1.6 Both the Member's Code of Conduct and this standards procedure will be subject to regular review.

## 2. Making a complaint

- 2.1 The expectation is that all complaints must be lodged using the official form in order for us to progress it any further. Further details and an online form can be found on our [How to Complain about a Councillor](#) pages of our website.
- 2.2 Reasonable adjustments can be made to assist anyone who has a disability that prevents a complaint being made online. Please contact the Monitoring Officer on 01395 517535 to obtain further assistance or via email [monitoringofficer@eastdevon.gov.uk](mailto:monitoringofficer@eastdevon.gov.uk).
- 2.3 It is very important that anyone completing the form gives as much detail as possible as insufficient information may result in the complaint not progressing (see Section 3). The name of the Member and the relevant paragraphs of the Code of Conduct that it is felt they have breached should be included together with a description of the event/actions that led to the breach. Relevant evidence (such as email exchanges, witness accounts or recordings) to support the alleged breach should be referenced / provided.
- 2.4 Potential Complainants are encouraged to explore whether the matter can be resolved without the need to submit a formal complaint under this process.
- 2.5 Complainants are also encouraged to think about the outcomes and / or remedy they are seeking. A list of possible outcomes is set out in Section 8.7.
- 2.6 Complaints submitted online will be acknowledged immediately. If submitted by any other means, we will acknowledge your complaint within five working days.
- 2.7 Relevant Codes of Conduct for each of the Parish or Town Councils can be found on their websites, the home page for them can be found on our webpage using the link above.

### 2.8 Complainant confidentiality

When we receive a complaint, the Member who is being complained about will, in normal circumstances, be told who has complained about them. Confidentiality may be permitted where the Monitoring Officer is satisfied that there are very good grounds for withholding the Complainant's identity. Anonymous complaints will not therefore be accepted for consideration unless they are exceptionally serious or significant - Section 8.3 provides further detail.

Where a Complainant asks for their identity to be kept confidential, the Monitoring Officer will consider the request before informing the Member that a complaint has been made. If the Monitoring Officer doesn't think it is appropriate to grant a request for confidentiality the Complainant will be offered the opportunity to withdraw the complaint rather than proceed with it. In a case where confidentiality is granted, the Monitoring Officer will decide how the complaint should be taken forward.

### 2.9 Complaints by District Councillors

Under the Council's Constitution East Devon District Councillors should consult with the Monitoring Officer before making any complaint against another District or Town / Parish Councillor.

### **3. Initial Assessment (Stage 1)**

- 3.1 The Monitoring Officer will first assess the complaint against the Basic Criteria to ensure that it is a valid complaint. The Basic Criteria are contained at Appendix 2.
- 3.2 The outcome of the initial assessment will usually be confirmed to the Complainant by the Monitoring Officer within four weeks of the complaint being lodged.
- 3.3 Where a complaint is valid, the Monitoring Officer may then seek further clarification or relevant information from the Complainant. It is essential that the Complainant provide sufficient information to enable the Subject Member and those responsible for assessing the complaint to understand the substance of the complaint. If the Complainant is unable or unwilling to provide any further information, the Monitoring Officer will determine whether it is appropriate to proceed with consideration of the complaint. The Monitoring Officer may decide not to progress a complaint or it may be referred to the Standards Assessment Sub Committee for consideration. It is ultimately the responsibility of the Complainant to provide the supporting evidence for their complaint to justify a the complaint progressing.
- 3.4 Once the Monitoring Officer is satisfied that sufficient information has been provided, the Subject Member will be notified of the complaint and given the opportunity to respond. The Subject Member will normally be given a reasonable period of time to respond (usually two weeks).
- 3.5 Once the Subject Member has provided comments the Monitoring Officer may consider whether there is scope for informal resolution (see Section 4.5 'Other action' for more detail) which, if successful, may resolve the complaint. If successful the matter is concluded.
- 3.6 Once the Subject Member's views have been provided or the deadline has passed and no comments have been received and / or any attempts at informal resolution have been unsuccessful, the complaint will then be placed before the next available Standards Assessment Sub-Committee for a decision on how the complaint is to progress.
- 3.7 A Complainant will be kept informed of how the complaint progresses and the date of the Standards Assessment Sub-Committee. It is expected that the Standards Assessment Sub-Committee will consider the matter within six weeks of the confirmation of the initial assessment referred to in Section 3.2 above.

#### **4. Standards Assessment Sub-Committee (Stage 2)**

- 4.1 Meetings of the Assessment Sub-Committee will generally be held in private given that the information to be discussed relates to individuals, is subject to confidentiality at this stage (see Section 8.3 below) and has not been subject to any formal findings and may therefore be potentially unfounded and damaging.
- 4.2 The Assessment Sub-Committee will be drawn from members of the Standards Committee as detailed in the Council's Constitution. The process to be followed at the Assessment Sub-Committee is detailed in Appendix 3.
- 4.3 The Standards Assessment Sub-Committee will receive reports from the Monitoring Officer to assess any valid complaint and determine the appropriate action to be taken. The Monitoring Officer's report will summarise the complaint, the Subject Member's views (if any) and will provide such documentation as is appropriate and will detail any attempts at informally resolving the complaint. The report will make a recommendation to the Assessment Sub-Committee but it will be for the Assessment Sub-Committee to consider and determine how the matter progresses. At this stage, the Assessment Sub-Committee will not normally consider any further representations or correspondence from either the Complainant or Subject Member.
- 4.4 The report of the Monitoring Officer will be written having regard to the 'Local Assessment Criteria' (Appendix 2).
- 4.5 The Assessment Sub-Committee will consider the Monitoring Officer's report and, having regard to the 'Local Assessment Criteria' and the views of the Independent Person, it will take a decision on how a complaint progresses, on the basis of one or more of the following options:

##### **(1) No further action**

Circumstances where 'no further action' may be appropriate:

- Behaviour not subject to the Code of Conduct.
- The complaint is the same or substantially the same as a complaint previously dealt with.
- The period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue.
- The complaint discloses such a minor or technical breach of the Code of Conduct that it is not in the public interest to pursue.
- The complaint is or appears to be trivial, malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and the complaint is not considered to disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration.
- The complaint is covered by the Council's persistent and vexatious complaints policy and the complaint is not considered to disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration.
- The Member has provided a satisfactory remedy to the complaint.

- The complaint is about a person who is no longer a Member of a relevant council.
- There is evidence to suggest a potential breach of the Code of Conduct but the circumstances do not warrant further action.

The case is closed and a letter will be sent to both the Complainant and Subject Member with an explanation as to why. The Subject Member has the option to request that details of the complaint and outcome be published on the Council's website. If not, details of the complaint remain confidential.

The Monitoring Officer will deal with actions arising from a decision of 'no further action'.

## **(2) Monitoring Officer Investigation**

The Assessment Sub-Committee decide that the complaint should be investigated. The Monitoring Officer carries out an appropriate investigation into the complaint under Stage 3.

## **(3) Other action**

Where a decision of 'other action' may be appropriate:

- Less serious complaints where the Member wishes to put their actions right or where it would be beneficial to remind a Member(s) of the requirements of the Code of Conduct, matters that should be included on their Register of Interests or declarations of interest at meetings.
- A general breakdown in relationships at the Council where other action such as mediation might help.
- Complaints where the public interest in conducting an investigation does not justify the costs of such an investigation.
- Where there is behaviour indicating a lack of experience or the Member(s) may benefit from additional training or mentoring.
- Where the issue appears to be in the political arena and therefore appropriate for referral to a leader(s) of a political group to deal with.
- Where it appears that the town/parish council would be best placed to resolve the issue.
- Where there is the same alleged breach of the Code of Conduct by many of the Council's Members, indicating a poor understanding of the Code of Conduct and / or authority's protocols and procedures.

'Other action' affords an opportunity for informal resolution between the Complainant and the Subject Member – such as an apology, commitment to undertake training or mediation. It does not represent a finding of whether there has been a breach of the Code of Conduct.

Where 'other action' is decided a letter is sent to the Complainant and the Subject Member setting out the action taken with an explanation. The Subject Member has the option to request that details of the complaint and outcome be published on the Council's website. If not, details of the complaint remain confidential.



The Monitoring Officer will deal with actions arising from a decision of 'other action'. Where there is a clear expectation from the Assessment Sub-Committee of an informal resolution being achieved but the Monitoring Officer is unable to achieve this, the complaint will be referred back to the Assessment Sub-Committee for a further decision on the complaint under this stage. If there is no clear expectation of an outcome then the complaint will not be referred back.

#### **(4) Referral to Independent Investigation**

This is likely to be considered where the complaint has raised an issue which is serious enough to warrant a detailed investigation, there is a conflict of interest or it is otherwise appropriate in the circumstances.

If a matter is referred to independent investigation, the complaint progresses to Stage 4.

#### **(5) Refer to the Police**

Where the Complainant alleges criminal conduct (including failure to register or declare a Disclosable Pecuniary Interest, or voting at a council meeting where such an interest exists), this is a criminal offence as well as potentially being a breach of the Code of Conduct. It may be considered appropriate to refer the matter to the Police in isolation or for the matter to be considered as a breach of the Code of Conduct as well. If to be considered as a potential breach of the Code of Conduct, consideration will be given as to whether the matter is held pending any other investigations and their outcome being known.

*[NOTE: Complainants may refer criminal allegations directly to the Police]*

The Monitoring Officer will deal with actions arising from a decision of 'referral to the Police'.

## **5. Monitoring Officer Investigation (Stage 3)**

- 5.1 The Monitoring Officer, or a sufficiently experienced officer of the Council or an external investigator, will conduct an appropriate investigation into the complaint.
- 5.2 The investigation will be proportionate and will include interviews with everyone the investigating officer decides will help them assess the complaint and reach a conclusion on whether there has been a breach of the Code of Conduct.
- 5.3 The Independent Person is consulted on the complaint prior to a decision being reached. Their views will be recorded in the decision.
- 5.4 If no breach is found the case is closed and parties notified why. The Subject Member has the option to request that details of the complaint and outcome be published on the Council's website. If not, details of the complaint remain confidential.
- 5.5 If a breach is found then the Monitoring Officer seeks to agree an appropriate resolution and / or sanctions with the parties. Where this cannot be agreed, the Monitoring Officer will determine an appropriate resolution and / or sanctions and if the Subject Member accepts them then the matter is concluded. The decision, detailing the findings, paragraphs of the Code of Conduct breached, reasoning, views of the Independent Person and outcome / sanctions will be sent to the Complainant and the Subject Member. The decision will be published on the Council's website.
- 5.6 Where the Subject Member does not agree the resolution and / or sanctions, the Monitoring Officer refers the complaint for Independent Investigation (Stage 4).
- 5.7 Normally an outcome from the Monitoring Officer Investigation is likely to be obtained within two months of the referral by the Assessment Sub-Committee. More complex cases may well take longer.

## 6. Independent Investigation (Stage 4)

- 6.1 The Monitoring Officer will instruct a suitable investigator who will be independent of the Council and the parties involved. The investigation will be proportionate and will include interviews with everyone the investigator decides will help them assess the complaint and reach a conclusion on whether there has been a breach of the Code of Conduct.
- 6.2 Where the complaint progresses straight from Stage 2 to this stage, the Independent Person will be consulted prior to a decision being reached. Their views will be incorporated into the decision.
- 6.3 Where the Independent Investigation finds that the Member hasn't breached the Code of Conduct then this is the end of the matter. The Monitoring Officer will write to the Subject Member and the Complainant to confirm the outcome. Where the decision follows referral from Stage 2 the Subject Member has the option to request that details of the complaint and outcome be published on the Council's website. If not, details of the complaint remain confidential. Where the decision follows referral from Stage 3 the decision (detailing the findings, paragraphs of the Code of Conduct breached, reasoning, views of the Independent Person and outcome / sanctions) will be published on the Council's website.
- 6.4 Where the Investigator concludes that there has been a breach of the Code, the Monitoring Officer will try to seek agreement with the Subject Member on resolution and / or sanction. Where agreement is reached the decision (detailing the findings, paragraphs of the Code of Conduct breached, reasoning, views of the Independent Person and outcome / sanctions), will be sent to the Complainant and the Subject Member. The decision will be published on the Council's website.
- 6.5 Where the Subject Member does not accept the outcome or it is not appropriate or possible to agree resolution and / or sanctions, the Monitoring Officer will arrange for a Standards Hearing Sub Committee under Stage 5.
- 6.6 Normally an outcome from Independent Investigation is likely to be obtained within two months of the referral by the Assessment Sub-Committee. More complex cases may well take longer.

## **7. Standards Hearing Sub-Committee (Stage 5)**

- 7.1 Meetings of the Hearing Sub-Committee will generally be held in public unless the Subject Member persuades the hearing that there are legitimate reasons for holding the Hearing in confidential session.
- 7.2 The Hearing Sub-Committee will be drawn from members of the Standards Committee as detailed in the Council's Constitution. There is a written procedure to be followed by the Hearing Sub-Committee which is contained at Appendix 4.
- 7.3 To seek to protect the principles of natural justice, no member may sit on a Hearing Sub-Committee if they sat on the Assessment Sub-Committee that considered the complaint initially, save where through conflicts of interest it is not otherwise possible to convene a panel of members to sit.
- 7.4 The Independent Investigator will present their report to the Hearing Sub-Committee and the Subject Member, the Complainant and Independent Person will be able to make representations to the Hearing Sub Committee members before the Sub-Committee decides whether there has been a breach of the Code of Conduct and what, if any, sanctions are appropriate.
- 7.5 Decision notices from hearings are published on the Council's website.
- 7.6 Normally a Standards Hearing Sub-Committee will be held within six weeks of the outcome from the preceding stage.

## **8. General matters**

### **8.1 *Multiple complaints***

- 8.1.1. A single event may give rise to similar complaints from a number of Complainants. This may relate to one Subject Member or multiple Subject Members. Complaints may relate to the same set of facts.
- 8.1.2 Where it is logical and appropriate to do so - e.g. multiple complaints relating to the same set of facts against one Subject Member - the complaints will be combined and dealt with as one.
- 8.1.3 Where possible complaints relating to a single event will be considered by the Assessment Sub-Committee / Hearing Sub-Committee at the same time. Where it isn't appropriate to combine complaints they will be considered by the Assessment Sub Committee / Hearing Sub-Committee separately.
- 8.1.4 If an investigation is deemed to be appropriate the Monitoring Officer may determine that, in the interests of efficiency, only one complaint should go forward for investigation, with the other Complainants being treated as potential witnesses in that investigation.

### **8.2 *Withdrawing complaints***

- 8.2.1 A Complainant may ask to withdraw their complaint before it has been assessed or decided.
- 8.2.2 In deciding whether to agree to the request the Monitoring Officer will consider:
  - a) the Complainant's reasons for withdrawal (e.g. whether there has been undue pressure or an apology given);
  - b) whether the public interest in taking some action on the complaint outweighs the Complainant's wish to withdraw it;
  - c) whether action, such as an investigation, may be taken without the Complainant's participation.

### **8.3 *Confidentiality and anonymous complaints***

- 8.3.1 All information regarding the complaint will remain confidential to the parties involved unless the information is published in accordance with the process detailed in this procedure. The Complainant and Subject Member are expected not to disclose information about the complaint to anyone else unless such publication is in accordance with these rules.
- 8.3.2 Where the Monitoring Officer is of the opinion that there is very good reason to do so the identity of the Complainant may be kept confidential. Examples may include because there is a serious risk to the Complainant's personal safety, there are serious health conditions and there are medical risks associated with the identity being disclosed or fear for the consequences of their employment.
- 8.3.3 The Subject Member under investigation may not immediately be informed of who the Complainant is where it is considered that it may prejudice any investigation.

8.3.4 Save for the exceptionally serious or significant matters, anonymous complaints will not be accepted. An anonymous complaint that is considered to be exceptionally serious or significant will only be considered if it includes documentary or photographic evidence that supports the complaint.

#### 8.4 *Use of alternative Monitoring Officer*

8.4.1 The Monitoring Officer may, at his discretion, refer any complaint to a Monitoring Officer of another authority where it is necessary or expedient to do so. Such examples may include complaints against senior Members.

#### 8.5 *Independent Person*

8.5.1 The Council has two Independent Persons one of whom shall be consulted as part of the consideration of any complaint. Their involvement at the various stages is detailed in the steps outlined above.

8.5.2 Subject Members have the right to consult the Independent Person as part of the complaints process. They will be notified of this as part of the correspondence but can always ask the Monitoring Officer for the relevant contact details.

8.5.3 Where possible the Independent Person giving their views to the Monitoring Officer or Assessment / Hearing Sub-Committees will be different from the one giving views to the Subject Member, although it is acknowledged that this may not always be possible.

#### 8.6 *Complaints against town or parish councillors*

8.6.1 Where there is a complaint against a Member of a town or parish council which results in a finding that they have breached the Code of Conduct, the Clerk of the relevant town or parish council will be notified of the decision.

#### 8.7 *Potential outcomes*

8.7.1 Neither the Monitoring Officer nor the Hearing Sub-Committee has powers to suspend or disqualify Members or to withdraw members' or special responsibility allowances.

8.7.2 Available sanctions include:

- a. Requiring an apology to be given.
- b. That training be undertaken.
- c. Censure or reprimand the Member.
- d. Publish its findings in respect of the Member's conduct.
- e. Report its findings to Council [or to the parish council] for information.
- f. Recommend to the Member's Group Leader (or in the case of ungrouped councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council.
- g. Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
- h. Recommend to Council that the Member be replaced as Executive Leader.

- i. Instruct the Monitoring Officer to [or recommend that the parish council] arrange training for the Member.
- j. Remove [or recommend to the parish council that the Member be removed] from all outside appointments to which he/she has been appointed or nominated by the authority [or by the parish council].
- k. Withdraw [or recommend to the parish council that it withdraws] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access.
- l. Exclude [or recommend that the parish council exclude] 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.

8.7.3 Certain of these sanctions are capable of being imposed by the Council, but in relation to complaints about parish and town Members certain of the sanctions can only be recommended to the relevant parish/town council

8.7.4 Neither the Hearings Sub-Committee nor the Monitoring Officer have the power to enforce compliance. If a member fails to comply with any sanction, this may constitute a further breach of the Code of Conduct. While sanctions, such as withdrawing email facilities or preventing access to a building, can be imposed for the purposes of securing the efficient and effective discharge of the Council's functions, such measures should not interfere with the democratic process nor act as a form of suspension.

8.7.5 Any training requirement imposed in relation to a District Councillor will be funded by the District Council.

## 8.8 *Departure*

8.8.1 While the Council has adopted this procedure, in so doing it is accepting that the Monitoring Officer, the Assessment Sub-Committee or Hearing Sub-Committee may depart from these arrangements where it is considered expedient to do so to secure the effective and fair consideration of any matter.

## 8.9 *Appeals*

8.9.1 There is no right of appeal for the Complainant or the Subject Member against a decision of the Assessment Sub-Committee or Hearings Sub-Committee. While the Subject Member can disagree with the Monitoring Officer's decision on breach and / or sanction and require a Standards Hearing Sub-Committee to be held, this is not available to Complainants.

## 8.10 *Updates*

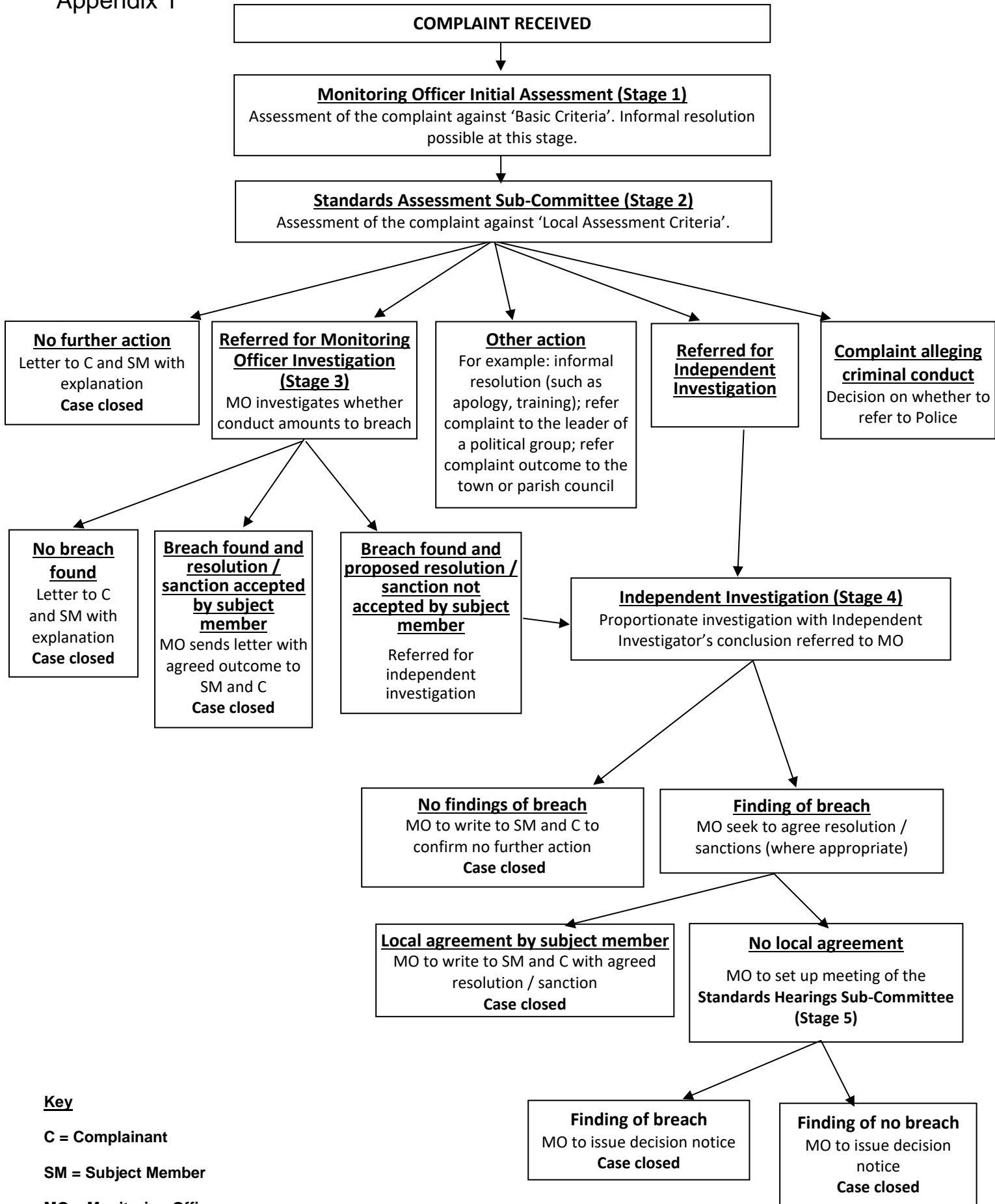
8.10.1 The Standards Committee shall receive regular updates on complaints (level of complaint, brief detail of complaint, paragraph alleged to be breached, decision and sanctions) and it will also include details of the number that have not progressed as they did not meet the Basic Criteria.

## 8.11 *Data Protection and document retention*

8.11.1 Personal data will be treated in accordance with the requirements of the Data Protection Act 2018 and the relevant [privacy notice](#).

8.11.2 Documents will be retained in accordance with the requirements of the Local Government Act 1972 and the [Council's retention schedule](#).

Appendix 1



**Key**

**C = Complainant**

**SM = Subject Member**

**MO = Monitoring Officer**



## Appendix 2

### Basic and Local Assessment Criteria

The Basic Criteria are;

- (1) The complaint is about a member of East Devon District Council or of a town or parish council within the administrative area of East Devon and who was a Member at the time of the incident giving rise to the complaint;
- (2) That the Member remains a member of the relevant council at the time of assessment;  
*[NOTE: The Monitoring Officer retains the discretion to refer a complaint for assessment where, in his opinion, it is considered that there are exceptional circumstances to justify a decision that it is in the public interest to continue to consider the complaint despite the Member no longer being in office.]*
- (3) That a Code of Conduct for the relevant council is in force;
- (4) The complaint relates to Member conduct (rather than, for example, the lawful actions of a parish council or the District Council's service provision) such that, if proven, it would be capable of amounting to a breach of the Code of Conduct;
- (5) It can reasonably be said that the Member was acting so that the Code of Conduct was engaged;
- (6) A complaint must be made within 3 months from the date upon which the Complainant became, or ought reasonably to have become, aware of the matter giving rise to the complaint.  
*[NOTE: The Monitoring Officer retains the discretion to refer a complaint for assessment that would otherwise be out of time where, in his opinion, it is justified in the public interest to continue to consider the complaint.]*
- (7) The complaint has not already been considered by the Assessment Sub-Committee.

**All seven of the criteria must be satisfied to be valid.**

The Local Assessment Criteria are;

- (1) *Sufficient evidence of a potential breach*
  - Is there sufficient evidence of a potential breach of the Code of Conduct?
- (2) *Outcomes*
  - Is the matter something which it is possible to investigate?
  - Would an investigation serve a useful purpose or is the complaint related to a 'technical' breach of the Code? Has a remedy already been agreed/put in place or does understanding of the breach appear to have been demonstrated or would 'other action' be more appropriate?
  - Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct?
  - Has the complaint been the subject of, or is it subject to, an investigation by other regulatory authorities which may mean it is not necessary to progress or that the complaint should await the outcome of the other investigation? An example may be a Police investigation into a potential breach of the Disclosable Pecuniary Interest rules.

*(3) Seriousness of the Complaint*

- Does the complaint, on the available information, appear to be trivial, vexatious, malicious, politically motivated or 'tit for tat'.
- Has the Subject Member offered an apology, a reasonable explanation of the issues, or can the complaint can reasonably be addressed by other means?
- Is the complaint part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business and there are no other avenues left to deal with it?

*(4) Public interest*

- Does the complaint have the potential to damage confidence in local democracy?
- Bearing in mind the public interest in the efficient use of resources, referral for investigation is generally reserved for serious complaints where alternative options for resolution are not appropriate
- Whether the Subject Member is no longer a Member of a relevant council.

*(5) Length of Time Elapsed*

- Is the complaint about something that happened so long ago that there would be little benefit or it would not be in the interests of justice to in taking action now?
- Would an investigation be proportionate and in the public interest?

*(6) Anonymity*

- Where an anonymous complaint has been submitted, is there sufficient documentary evidence or photographic evidence, which indicates an exceptionally serious or significant matter, which merits progressing?

## Appendix 3

### **Standards Assessment Sub-Committee Procedure**

The Monitoring Officer will prepare a report which summarises the complaint and paragraphs of the Code of Conduct it is alleged have been breached, the Subject Member's views (if any) and will provide such documentation as is appropriate. It will also detail any attempts at informally resolving the complaint. The report will make a recommendation to the Sub-Committee as to how the matter should progress.

The report will be anonymised (referring to a Subject Member by a single letter of the alphabet different from their surname).

The report will be circulated to the Sub-Committee in confidence as part of a formal agenda.

The Sub-Committee will first ask the Monitoring Officer to speak to the report.

The Sub-Committee (or the Representatives or Independent Person) may ask questions of the Monitoring Officer.

The Sub-Committee will hear the views of the Independent Representative, Town / Parish Representative and the Independent Person before taking a decision.

The decision must have regard to the report and recommendations, the Local Assessment Criteria and views of the Independent Person.

The decision of the Sub-Committee will be formally recorded in the minutes which will be a public record.

The decision will be communicated separately to the Complainant and Subject Member.

## Appendix 4

### **Standards Hearing Sub-Committee Procedure**

#### **(a) General Principles**

1. The Standards Hearing Sub-Committee is a formal committee meeting of the Council. However it does act in a quasi-judicial manner in that it is obliged to objectively determine facts and draw conclusions from them so as to provide the basis, where justified, for official action, which may affect the legal rights, duties or privileges of the Subject Member whose actions led to the investigation.
2. Notwithstanding this, the Sub Committee is not a court of law and therefore the general principle (which is subject to the proviso in paragraph 9 below) is that the Sub-Committee will only hear representations directly from the relevant parties as further detailed in Section (c) below. While both the Subject Member and Complainant may have persons attending in support / representation, formal cross-examination of anyone making representations will not be permitted, any questions from the parties shall be directed through the Chairman of the Sub-Committee. The Chair may, at their absolute discretion, permit oral representations from other persons if it is considered necessary and appropriate to do so.
3. The Sub-Committee will comprise a Chair and two other voting members. It will also comprise two non-voting Members being one of the Independent Representatives and one of the Parish Council Representatives. The Committee will be advised by a Legal Officer and supported by a Democratic Services Officer ("the clerk"). The Monitoring Officer (or Deputy) and Investigator will also be in attendance. One of the Independent Persons may be in attendance but it is not essential that they are present for the Sub Committee to proceed.

#### **(b) Prior to the Hearing**

4. In advance of the Hearing the Monitoring Officer (or his Deputy) will write to the Subject Member and ask them to respond indicating the areas of the Investigator's report which they disagree with and to detail other information that they think is relevant to the Sub-Committee's deliberations on the matter ("the Subject Member's Response"). This will enable the Sub-Committee to focus on the relevant areas when the hearing is held.
5. Both the Subject Member and Complainant may provide supporting written statements (either their own or from others) to be provided to the Sub-Committee, although there is no obligation on either of the Subject Member or Complainant to provide their own representations in written form, if they are intending to make oral representations at the hearing.
6. The Monitoring Officer (or his Deputy), having received all the relevant paperwork, will prepare the Hearing Papers which will be presented to the Sub-Committee as part of a formal agenda with a covering committee report. The Hearing Papers comprise a Pre-Hearing Summary Report (providing detail in respect of the allegation including a summary of the allegation and events and also highlighting the areas of disagreement with the Investigator's report), the Investigator's report,

the Subject Member's Response, any written statements provided by the parties and a copy of this procedure.

7. The presumption will be that the hearing will normally be held in public unless the Sub-Committee exercises its discretion to exclude the public from all or part of the hearing in accordance with the Local Government Act 1972. Accordingly once the Hearing Papers have been compiled they will be provided to the Subject Member and Complainant who will have the opportunity to request that the hearing be held in private. If no such request is made, then the agenda, including the Hearing Papers, will be published and made available in the normal way. If such a request is made, then the Sub-Committee will hear representations on the day of the hearing and then determine whether the matter should be held in public or private. Where such a request is made the formal agenda will be published in the normal way but without the committee report / Hearing Papers available to the public. In the event the Sub-Committee determine that the meeting should be held in public then the Chairman will explain that the committee report / Hearing Papers will be published online after the hearing has taken place.

### **(c) Formalities at the hearing**

8. The Chair of the Sub-Committee will introduce the members of the Sub-Committee, the officers supporting them, the Subject Member, the Complainant, the Monitoring Officer (or Deputy) the Investigator and Independent Member (if present).
9. The Chair will explain the reason for the meeting and outline the procedure to be followed. The Chair may choose to vary this procedure in any particular instance where s/he is of the opinion that such a variation is necessary in the interests of fairness.
10. The Chair will then confirm that all those involved understand the procedure to be followed and ask if there are any preliminary procedural issues which anyone wishes to raise before the hearing begins. Should either the Complainant or Subject Member have sought to have the meeting held in private, the Sub-Committee will consider that at this stage.
11. If any procedural issues are raised, including whether the hearing should be held in private, the Sub-Committee will hear representations on them, before determining them.
12. If the Subject Member is not present at the start of the meeting, the Sub-Committee will consider any reasons given by them for his/her non-attendance. If the Sub-Committee is satisfied that there is good reason for their non-attendance, it may adjourn to another date, or proceed if it has been requested to do so by the Subject Member.
13. If the Sub-Committee is not satisfied that there is good reason for the Subject Member's non-attendance, or if the Subject Member failed to give any reason for his/her non-attendance, the Committee can decide:
  - whether to consider the matter and make a determination in the absence of the Subject Member, or
  - agree to adjourn the hearing to another date.

#### **(d) The Hearing**

14. The Committee will identify the areas of disagreement between the Investigator and the Subject Member on the Investigation report's facts or conclusions.
15. The Investigator will be invited to make representations in support of his/her report and on anything contained in the Subject Member's Response. The Subject Member shall have the chance to ask questions of the Investigator. The Sub-Committee and the Monitoring Officer (or Deputy) will have the opportunity to ask questions of the Investigator.
16. The Subject Member will then be invited to make representations in support of the fact(s) concerned and whether the evidence gives rise to a breach or breaches of the Code of Conduct. The Investigator shall have the chance to ask questions of the Subject Member. The Sub-Committee and the Monitoring Officer (or Deputy) will have the opportunity to ask questions of the Subject Member.
17. The Complainant will then be invited to comment on representations made by the Investigator and Subject Member.
18. The Sub-Committee has the discretion to question or permit questions of any of the parties at any point, as it sees fit. The Sub-Committee shall seek the views of the Independent Person before reaching any conclusion, although this shall not prevent the Sub-Committee from continuing with the hearing if the Independent Person is not in attendance.
19. The Sub-Committee will consider what it has heard in private accompanied only by its Clerk. The Sub-Committee may ask the Legal Officer to advise them when required.
20. The Chair will then announce to all present at the hearing the Sub-Committee's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, whilst setting out the facts upon which the conclusions have been reached.
21. If the Sub-Committee decides that the Subject Member has not failed to follow the Code of Conduct, the Committee will then consider whether it should make any recommendations to the Council.

#### **(e) Sanction**

22. If the Sub-Committee decides that the Subject Member has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigator, the Monitoring Officer and the Subject Member as to:
  - a. whether or not the Sub-Committee should impose a sanction and/or recommend to Council that a sanction be imposed; and
  - b. what form of sanction(s) is/are appropriate.
  - c. Any mitigation the Subject Member wishes the Sub-Committee to take into account
23. The Sub-Committee will consider in private, accompanied only by its Clerk [and legal advisor if required] whether or not to impose/recommend the imposition of a sanction on the Subject Member and if so, what form.

24. The Sub-Committee will also consider whether or not it should make any recommendations with a view to promoting high standards of conduct among members of the relevant authority.

**(f) Issue of decision**

25. The Sub-Committee will announce its decision in public at the conclusion of the hearing.

26. The Sub-Committee will issue a full written decision including reasons within two weeks of the hearing.