

## **APPENDIX 3**

### **DACORUM BOROUGH COUNCIL**

#### **CODE OF CONDUCT FOR MEMBERS- COMPLAINTS PROCEDURE**

##### **1. Introduction**

- 1.1 This Complaints Procedure sets out how you can make a complaint that a Member or Co-opted Member of Dacorum Borough Council has failed to comply with the Borough Council's Code of Conduct For Members, and explains how the complaint will be dealt with. It also sets out how you can make a complaint that a Member or Co-opted Member of a Town or Parish Council within the Borough has failed to comply with their own Council's Code of Conduct For Members.
- 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 or Town Council within the Council's area, has failed to comply with the 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 one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by the member or co-opted member against whom an allegation has been made.

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

- 2.1 The Borough Council has adopted a Code of Conduct for Members, which is available for inspection on the Council's website and on request from the Council's Monitoring Officer (see below).
- 2.2 Each Parish and Town Council has also adopted their own Code of Conduct. If you wish to inspect a Parish or Town Council's Code of Conduct, you should inspect any website operated by the Parish or Town Council or request the Parish or Town Clerk to allow you to inspect their Code of Conduct.

##### **3. Making a Complaint**

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

Steven Baker  
Monitoring Officer  
Dacorum Borough Council  
Civic Centre, Marlowes

Hemel Hempstead, HP1 IHH

[steve.baker@dacorum.gov.uk](mailto:steve.baker@dacorum.gov.uk)

Tel: 01442 228229

- 3.2 The Monitoring Officer is a senior officer of the Borough Council 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.
- 3.3 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 relevant complaint form, which can be downloaded from the Council's website, next to the Code of Conduct, or is available on request from the Monitoring Officer. Please note that there are two separate complaint forms depending on whether the complaint is about a member of the Borough Council or a member of a Town or Parish Council.
- 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 member against whom you make the complaint, without your prior consent.
- 3.5 The Council will 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 five working days of receiving it, and will keep you informed of the progress of your complaint. Unless there are exceptional circumstances, the Monitoring Officer will also immediately inform the member concerned that a complaint has been made about them and provide them with a copy of the complaint or a summary.
- 3.6 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, will 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 Committee

The decision will normally be taken within 20 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria 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.

- 4.2 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. Where your complaint relates to a Parish or Town Councillor, the Monitoring Officer will also inform the Clerk of the Parish or Town Council of your complaint.
- 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 potential criminal conduct or breach of other regulations 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 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 Council, 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.
- 5.2 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/she needs to see and who he/she 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 harm 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.

5.3 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a Draft 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.

5.4 Having received and taken account of any comments which you may make on the draft report, where an Investigating Officer has been appointed, the Investigating Officer will send his/her Final Investigation 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?**

6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report and, after consulting the Independent Person, he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned (and to the Parish or Town Council where your complaint relates to a Parish or Town Councillor), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Final Investigation Report. Alternatively, the Monitoring Officer may refer the Investigating Officer's report to the Standards Committee if he/she considers it appropriate to do so.

6.2 If an Investigation 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 Final Investigation Report and will then either send the matter for a hearing before the 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 consider to be a fair resolution which also helps to ensure higher standards

of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee (and the Parish or Town Council where appropriate) for information, but will take no further action.

### 7.1.2 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 refer the Final Investigation Report to the Standards Sub-Committee which will 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.

The Council has agreed a procedure for hearing complaints, which is attached as Appendix 3 to this Complaints Procedure.

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 representations 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 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 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:-
- 8.1.1 Publish its findings in respect of the member's conduct;
  - 8.1.2 Report its findings to Council (or to the Parish/Town Council) for information but recommending that no sanction be applied;
  - 8.1.3 Recommend to Council (or to the Parish/Town Council) that he/she be issued with a formal censure or be reprimanded;
  - 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 or Sub-Committees 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 (or recommend that the Parish/Town Council) arrange training for the member;
  - 8.1.7 Recommend to Council (or recommend to the Parish/Town Council) that the member be removed from all outside appointments to which he/she has been appointed or nominated by the Council (or by the Parish/Town Council)
  - 8.1.8 Recommend to Council (or recommend to the Parish/Town Council) that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
  - 8.1.9 Recommend to Council (or recommend to the Parish/Town Council) that it excludes 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.
  - 8.1.10 Recommend to Council (or recommend to the Parish/Town Council) that it prevents the member from having access to a particular officer or officers.
- 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 state the decision of the Standards 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 (to the Clerk of the Parish/Town Council if applicable), 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 It is a Sub-Committee comprising of Members sitting on the Council's Standards Committee.
- 10.2 The Standards Committee has decided that it will comprise of five Members of the Standards Committee. If the Councillor complained about is a member of a Parish or Town Council, one of the five members of the Sub-Committee will be a Parish or Town Councillor member of the Standards Committee.
- 10.3 The Independent Person will attend all meetings of the Sub-Committee and their views are sought and taken into consideration before the Sub-Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **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 the Council.
- 11.2 A person cannot be "independent" if he/she:
  - 11.2.1 is, or has been within the past 5 years, a member, co-opted member or officer of the Council;
  - 11.2.2 is or has been within the past 5 years, a member, co-opted member or officer of a Parish or Town Council within the Borough), or
  - 11.2.3 Is a relative or close friend of a person within paragraph 11.2.1 or 11.2.2 above. For this purpose a "relative" means:
    - 11.2.3.1 Spouse or civil partner;

- 11.2.3.2 Living with the other person as husband and wife or as if they were civil partners;
- 11.2.3.3 Grandparent of the other person;
- 11.2.3.4 A lineal descendent of a grandparent of the other person;
- 11.2.3.5 A parent, sibling or child of a person within paragraphs 11.2.3.1 or 11.2.3.2; or
- 11.2.3.6 A spouse or civil partner of a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5; or
- 11.2.3.7 Living with a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5 as husband and wife or as if they were civil partners.

## **12. Revision of this Complaints Procedure**

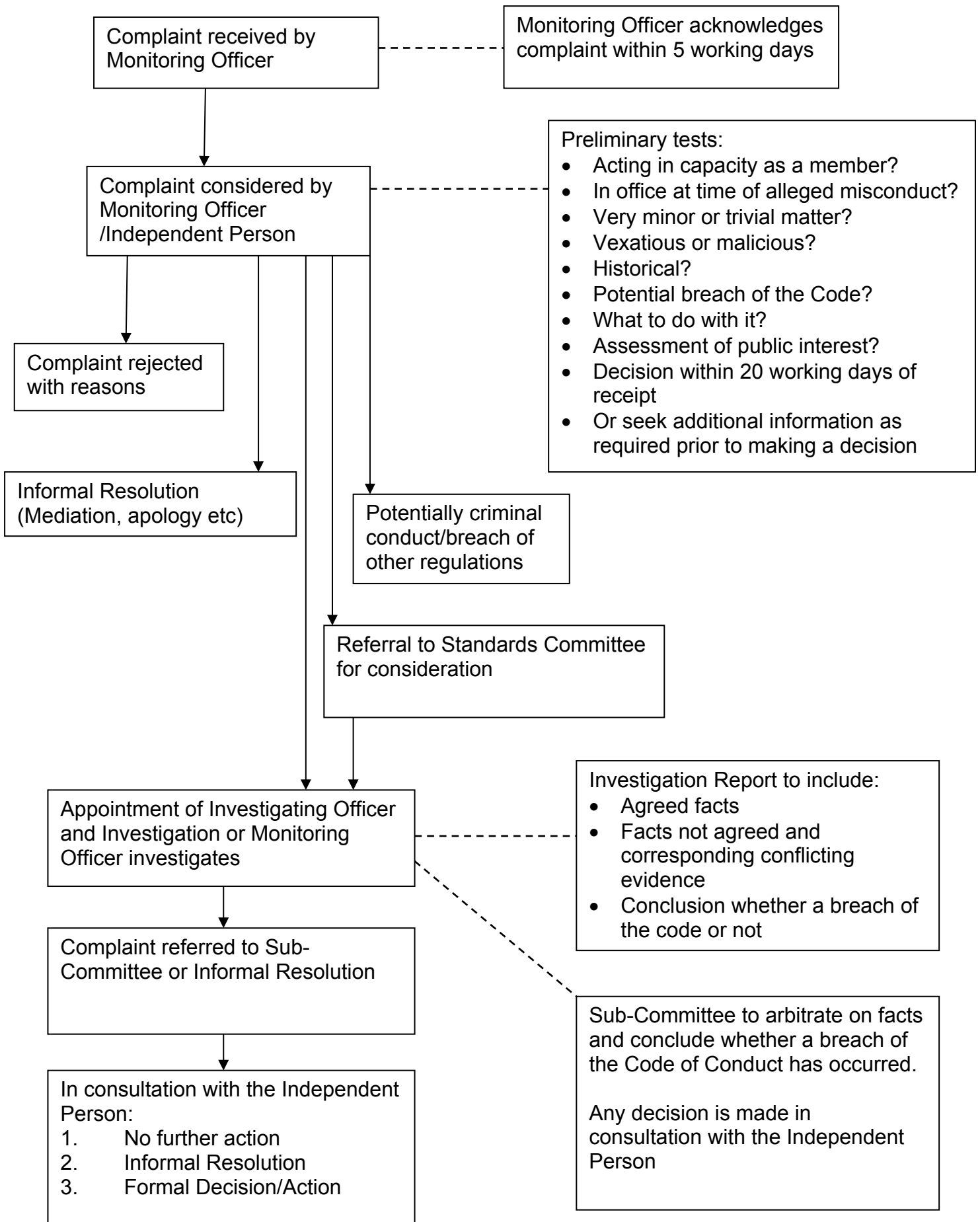
The Standards Committee may agree to amend this Complaints Procedure and has delegated to the Chair of the Sub-Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **13. Appeals**

- 13.1 There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Sub-Committee.
- 13.2 If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.



## 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, 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
6. There is insufficient information available for a referral for investigation; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances eg, allegation of bullying, harassment etc
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; 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 Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction

#### **Complaints which may be referred for investigation**

1. It is serious enough, if proven, to justify the range of actions available to the Standards Committee; or
2. There are individual acts of minor misconduct which appear to be 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

**Complaints which may be referred to the Standards Committee for a decision on whether it should be investigated**

1. 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 make a decision as to whether or not it should be investigated.
2. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/her to make a decision as to whether or not it should be investigated.

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. The complaint must be serious enough to justify the public expense and Council resources in investigating it.

## APPENDIX 3

### STANDARDS SUB COMMITTEE HEARING PROCEDURE

Item No	Procedure
<b>1.</b>	<b>Quorum</b>  1.1 Three Members must be present throughout the hearing to form a quorum.  1.2 Where the complaint refers to a Parish/Town Councillor, a non-voting Parish/Town member of the Standards Committee must be present  1.3 The Sub-Committee shall nominate a Chairman for the meeting
<b>2.</b>	<b>Opening</b>  2.1 The Chairman explains the procedure for the hearing and reminds all parties to turn off mobile phones, audible alarms and pagers etc  2.2 The Chairman asks all present to introduce themselves  2.3 The Councillor will be asked whether they wish to briefly outline their position
<b>3.</b>	<b>The Complaint</b>  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.  3.2 The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor's opportunity to ask questions rising from the Investigator's report and not to make a statement)  3.3 Members of the Sub-Committee may question the Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer.

Item No	Procedure
<b>4.</b>	<p data-bbox="363 271 703 300"><b>The Councillor's Case</b></p> <p data-bbox="363 344 1407 454">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)</p> <p data-bbox="363 495 1407 562">4.2 The Investigating Officer may question the Councillor and/or any witnesses</p> <p data-bbox="363 602 1407 672">4.3 Members of the Sub-Committee may question the Member and/or any witnesses</p>
<b>5.</b>	<p data-bbox="363 714 564 743"><b>Summing Up</b></p> <p data-bbox="363 788 1203 817">5.1 The Investigating Officer may sum up the Complaint</p> <p data-bbox="363 857 1326 887">5.2 The Member (or their representative) may sum up their case.</p>
<b>6.</b>	<p data-bbox="363 934 499 963"><b>Decision</b></p> <p data-bbox="363 1008 1407 1117">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</p> <p data-bbox="363 1158 1407 1225">6.2 Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:-</p> <p data-bbox="432 1265 1407 1332">6.2.1 The Sub-Committee decides that the Member has not failed to follow the Code of Conduct or</p> <p data-bbox="432 1373 1407 1440">6.2.2 The Sub-Committee decides that the Member has failed to follow the Code of Conduct</p> <p data-bbox="432 1480 1310 1509">6.2.3 The Sub-Committee will give reasons for their decision</p> <p data-bbox="363 1550 1407 1659">6.3 If the Sub-Committee decides that the Member has failed to follow the Code of Conduct it will consider any representations from the Investigator and/or the Member as to:</p> <p data-bbox="432 1700 1115 1729">6.3.1 Whether any action should be taken, and</p> <p data-bbox="432 1729 1007 1758">6.3.2 What form any action should take</p> <p data-bbox="363 1798 1407 1888">6.4 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 data-bbox="363 1928 1407 2038">6.5 On the Sub-Committee's return the Chairman will announce the Sub-Committee's decision (in relation to a Parish/Town Councillor a recommendation to the Parish/Town Council)</p>

<b>Item No</b>	<b>Procedure</b>
6.6	The Sub-Committee will consider whether it should make any recommendations to the Council or in relation to a Parish/Town Councillor to the Parish/Town Council with a view to promoting high standards of conduct among Members
6.7	The Chairman 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.