



# *Basingstoke and Deane*

## **Arrangements for dealing with complaints against Councillors**

Title	Arrangements for dealing with complaints against Councillors
Owner	Monitoring Officer
Version	4
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Next Revision Date	One year from the date of issue or sooner if required to comply with legislation.

## 1. Introduction

- 1.1 These arrangements set out how a complaint can be made against an elected or co-opted member of the Borough, Town or Parish Council who is believed to have breached the code of conduct. The arrangements are adopted in accordance with the Localism Act 2011.
- 1.2 The Code of Conduct is the ethical standards framework that governs the conduct that is expected of councillors. The Borough Council has adopted a [Code of Conduct](#) which is available on the Borough Council's website.
- 1.3 Each Parish/Town Council may adopt their own Code of Conduct and a copy of their Code should be found on the relevant Parish/Town Council website.
- 1.4 Where reference is made in these arrangements to "the parties", this includes the complainant, the councillor whom the complaint has been made against ("the Subject Member") and where the matter relates to a Parish Council matter, the parish clerk.
- 1.5 All decisions relating to this complaints process will be reported to the Standards Committee for noting.

## 2. Making a complaint

It should be noted that under these arrangements steps may be taken, whenever possible to resolve complaints by way of an informal settlement.

If you wish to make a complaint please write to:

[Monitoring.officer@basingstoke.gov.uk](mailto:Monitoring.officer@basingstoke.gov.uk)

Monitoring Officer  
Basingstoke and Deane Borough Council  
Civic Offices  
London Road  
Basingstoke  
Hampshire  
RG21 4AH

All complaints must be made in writing or via the [online form](#) at [www.basingstoke.gov.uk](http://www.basingstoke.gov.uk) A hard copy complaints form can be obtained by calling us on 01256 844475 or e-mailing [monitoring.officer@basingstoke.gov.uk](mailto:monitoring.officer@basingstoke.gov.uk)

We can assist you if you have a disability that makes it difficult for you to put your complaint in writing or if English is not your first language.

Where a complaint is made against more than one Councillor, a separate complaint form must be completed for each respective Councillor.

### **3. People Involved in the Complaints Process**

- 3.1 The Monitoring Officer - is a statutory appointed Officer of the Borough Council who is responsible for maintaining the register of councillors' interests and for administering the arrangements in respect of complaints relating to the conduct of councillors. The Monitoring Officer appoints a Deputy Monitoring Officer.
- 3.2 The [Independent Standards Assessors](#) are individuals who are independent lay members of the Standards Committee. Their role is to determine alleged breaches of the Code of Conduct by Councillors and where proportionate, to impose a sanction to ensure the promotion of high standards of conduct.
- 3.3 An [Independent Person](#) is appointed under section 28 (7) of the Localism Act 2011. Their view is sought and taken into consideration before any decision is taken on whether a Councillor has failed 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. The Independent Person's view may also be sought by a Subject Member.
- 3.4 The [Parish/Town Councillor representative](#) is appointed at the annual general meeting of the Basingstoke and District Association of Parish and Town Councils. Their view is sought before any decision is taken on whether a Parish/Town councillor has failed 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.
- 3.5 Where the complaint merits a formal investigation, the Deputy Monitoring Officer will appoint an Investigation Officer. They may be a senior officer of the authority, a senior officer of another authority or an external investigator with a recognised qualification.

### **4. The Complaint Process**

#### **Stage 1**

- 4.1 A flow chart detailing the complaint process can be found at [Annex 2](#).
- 4.2 The Deputy Monitoring Officer will acknowledge receipt of the complaint within 7 working days.
- 4.3 In certain straightforward circumstances, the Deputy Monitoring Officer, in consultation with an Independent Standards Assessor, is entitled to dismiss the complaint at the outset. The complaint is likely to be dismissed if:
- a) the Subject Member is no longer a councillor;
  - b) The conduct complained about happened more than six months ago;
  - c) the conduct complained about happened in the councillor's private life, not when they were acting as a councillor;

- d) the complaint is essentially against the action of the council as a whole and cannot properly be directed against individual councillor(s);
- e) the complaint is made anonymously;
- f) there is no prima facie evidence that the Code has been breached or there is not enough information to take the matter further;
- g) the same, or substantially the same issue has been the subject of a previous Code of Conduct allegation and there is nothing further to be gained;
- h) the complaint is frivolous or vexatious;
- i) the complaint is relatively minor or tit for tat; or
- j) The complaint is against an officer of the Council.

4.4 If the complaint is rejected at stage 1 the Deputy Monitoring Officer will write to the complainant and the Subject Member to confirm why the complaint has not been progressed. A copy of the complaint will be provided to the Subject Member. If the complaint relates to a Town/Parish Council the clerk to that council will be provided with the same information as the Subject Member. If the complaint identifies criminal conduct at any time during this procedure, the Monitoring Officer will notify the police or other regulatory authority. Where such a notification is made the Monitoring Officer will only confirm the notification to the complainant or Subject Member when it is appropriate to do so.

4.5 No further action will be taken in relation to such complaints until any related criminal/regulatory investigation, proceedings or processes have been concluded.

## **5. Informal Settlement**

5.1 At any point in this procedure the Independent Standards Assessor/Deputy Monitoring Officer may elect to try and deal with the complaint by way of an informal settlement.

5.2 Informal settlement is a means of resolving complaints informally in appropriate cases without the need for a formal investigation. Every effort should be made to try and resolve complaints by way of informal settlement.

5.3 Such informal settlement may involve setting up a meeting between the complainant, the Subject Member, the Independent Standards Assessor/Deputy Monitoring Officer, the Independent Person and, where appropriate, the Parish Representative.

5.4 The Subject Member may accept that his/her conduct was unacceptable and offer an apology or other remedial action.

5.5 It is desirable that any informal settlement is agreed by the complainant and the Subject Member. If the Independent Standards Assessor, in consultation with the Independent Person and, where appropriate, the

Parish/Town representative, is satisfied that an informal settlement is reasonable in all the circumstances.

- 5.6 The Independent Standards Assessor/Deputy Monitoring Officer may decide to take no further action or may contact the Subject Member and complainant to see if they will accept any other action which is appropriate, to resolve the complaint and to prevent any similar issues arising in the future. Where this is determined, a decision notice shall be prepared and sent to all parties. The decision notice shall be made available for public inspection and will be placed on the council's website unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.
- 5.7 Where either party is aggrieved by the decision of the Independent Standards Assessor to take no further action they may appeal this decision to the Monitoring Officer.

## **6. Stage 2**

- 6.1. Complaints will be referred to an Independent Standards Assessor/Deputy Monitoring Officer for determination. The Independent Standards Assessor/Deputy Monitoring Officer will consult the Independent Person prior to making a decision. The Independent Standards Assessor will then make a recommendation to the Deputy Monitoring Officer, as to whether there is a breach of the Code of Conduct and what sanction (if any) should be given.
- 6.2. The Independent Standards Assessor/Deputy Monitoring Officer may decide to take no further action or may contact the Subject Member and complainant to see if they will accept any other action which is appropriate, to resolve the complaint and to prevent any similar issues arising in the future. Where this is determined, a decision notice shall be prepared and sent to all parties. The decision notice shall be made available for public inspection and will be placed on the council's website unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.
- 6.3. The Independent Standards Assessor may request additional information from either party (to be supplied within 10 working days of the information or documents being requested). These documents can include the minutes of meetings and, where available, webcasts and recordings. This information will be reviewed in consideration of the complaint.
- 6.4. If the Subject Member fails to respond to correspondence, the complaint will be determined on the basis of the information available. If the complainant fails to respond, the complaint will be treated as withdrawn. All parties are encouraged to respond promptly to any correspondence in relation to the complaint. All parties will be kept regularly updated as to how the complaint is progressing.
- 6.5. Once the Independent Standards Assessor is satisfied that he/she has all the information available to him/her, consideration will be given as to whether to determine the complaint, commence a formal investigation or

take no further action. In reaching these conclusions, the Independent Standards Assessor will have regard to the following criteria:

- a) the public benefit in investigating the alleged complaint;
- b) nature of the allegation and whether using public funds to examine the matter further would be disproportionate;
- c) whether the information submitted is sufficient to make a decision or whether to refer for investigation;
- d) whether the complaint is the same or substantially the same as a previous complaint and in that case, whether there is anything further to be gained;
- e) whether the complaint involves conduct too trivial to warrant further action;
- f) whether the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member;
- g) whether the complaint appears to be vexatious, malicious, politically motivated, a 'tit for tat' retaliation or made by a persistent complainant;
- h) whether the matter complained of is an individual act or part of a continuous pattern of behaviour which should be considered cumulatively;
- i) whether any steps have been taken or proposed to remedy the action complained of, for example, an apology has already been made by the Subject Member;
- j) the complainant's view of the action taken or proposed;
- k) where the Subject Member has made a reasonable offer of informal settlement, but the complainant is not willing to accept that offer, this may be taken into account in deciding whether the complaint merits formal investigation; and
- l) whether the complainant has requested that their identity as complainant be withheld from the Subject Member and the matter cannot reasonably be taken further in these circumstances.

6.6. A consultation meeting will be convened (either in person or electronically) with the Independent Standards Assessor, an Independent Person, the Deputy Monitoring Officer and, where appropriate, the Parish/Town

Representative. At this meeting the Independent Standards Assessor/Deputy Monitoring Officer in consultation may conclude one of the following:

- a) That no further action should be taken;
- b) Determine on the papers whether the Subject Member has breached the code of conduct and if appropriate the relevant sanction; or
- c) Refer the matter for a formal investigation.

6.7. One or more of the following sanctions, where appropriate to the breach may be imposed. No sanction can prevent a councillor functioning as a councillor.

- a) Censure or reprimand of the Subject Member;
- b) Publish the findings in respect of the Subject Member's conduct;
- c) Report the findings to Full council or Parish/Town council;
- d) Recommend training for the Subject Member;
- e) Withdraw facilities that have been provided to the Subject Member, such as limiting access to available IT tools;
- f) Exclude the Subject Member from council premises or part of (excluding committee or other meetings where appropriate);
- g) Make a recommendation to the leader of the political group that the Subject Member should be removed from a Committee or Committees or Sub-Committees of the Council.
- h) Recommend to Council that the Subject Member be replaced on appointments made by the Council; and/or
- i) Recommend to Council to remove the Subject Member from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish/Town Council.

6.8. Following this meeting a decision notice will be issued. A copy of which will be provided to all parties and where appropriate to the Clerk of the Subject Member's Parish/Town Council. A copy of the decision notice will be made available on the council website, unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.

6.9. Where either party is aggrieved by the decision of the Independent Standards Assessor/Deputy Monitoring Officer they may appeal this decision to the Monitoring Officer.

## 7. **Stage 3**

- 7.1. A formal investigation will be carried out in circumstances where the Independent Standards Assessor decides that a complaint requires further and more thorough consideration before any decision can be made.
- 7.2. A complaint should usually be referred for investigation in the following circumstances:
  - a) the Subject Member has denied the allegation, but the information presented indicates there may be a breach of the Code; and
  - b) if on the information provided, the potential breach of the Code of Conduct is sufficiently serious and taking into account the public interest, an investigation should be undertaken to establish the facts to facilitate the determination of whether there has been a breach and determine what sanction, if any, is appropriate; and taking into account the public interest, the cost of undertaking an investigation would be proportionate.
- 7.3. If the Independent Standards Assessor decides that a complaint merits formal investigation, the Deputy Monitoring Officer will appoint an Investigation Officer, who may be a Senior Officer of the authority, a Senior Officer of another authority or an external investigator, with a recognised qualification. The Investigation Officer will produce a timetable and plan for the investigation process. They will also decide what documents they wish to see and who they will need to interview.
- 7.4. At the end of his/her investigation, the Investigation Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and the Subject Member and provide an opportunity for them to identify any matter in that draft report which they disagree with or which they consider requires more consideration (In both cases any comments are to be supplied within 10 working days of the draft report being sent).
- 7.5. If the Subject Member fails to respond to correspondence from the Investigation Officer, the complaint will be determined. If the complainant fails to respond, the complaint will be treated as withdrawn. All parties are encouraged to respond promptly to any correspondence in relation to the complaint.
- 7.6. Having received and taken account of the comments made on the draft report, the Investigation Officer will send his/her final report to the Independent Standards Assessor/Deputy Monitoring Officer and Independent Person for information as well as the complainant and Subject Member. The Independent Standards Assessor and Deputy Monitoring Officer will review the report. If the report concludes no breach and this is supported by the Independent Standards Assessor/Deputy Monitoring, in consultation with the independent person and where appropriate a parish

representative, a decision notice will be issued.

- 7.7. A copy of the decision notice will be provided to the complainant and the Subject Member. The decision notice will be made available for public inspection and placed on the council's website, unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.
- 7.8. If the report finds a breach of the Code and this conclusion is supported by the Independent Standards Assessor/ Deputy Monitoring Officer the matter will be referred to a hearing by the Standards Hearing Panel.
- 7.9. Where such a referral is made the Monitoring Officer will notify the Subject Member, the complainant, the Independent Person and the complainant of the referral, the outcome of the investigation report, and that a formal decision notice will not be issued until after the Hearing Panel meeting.

## 8. **Referral of the Complaint to the Standards Hearing Panel**

- 8.1 If in accordance with paragraph 7.8 the complaint is referred to a Hearing Panel then the Monitoring Officer will have delegated authority to organise the hearing.
- 8.2 The Hearing Panel will be made up of the Monitoring Officer, three Independent Standards Assessors. The Independent Person and, if it relates to a Parish/Town Council matter, a Parish/Town representative may also be present.
- 8.3 A Legal Advisor to the Hearing Panel will be appointed to advise at the hearing. The Legal Advisor will advise on legal issues and will have no involvement in the decision making process.
- 8.4 Within 5 working days of appointment, the Legal Advisor to the Hearing Panel will arrange for the hearing forms to be sent to the Subject Member, who will have 10 working days to complete the forms.
- 8.5 The Legal Advisor to the Hearing Panel will forward the completed hearing forms to the Hearing Panel within 5 working days of receipt, together with the following:
  - 8.5.1 The report of the Deputy Monitoring Officer on his/her conclusions in relation to the complaint; and
  - 8.5.2 Any additional documents received since that date.
- 8.6 On receipt of the papers the Hearing Panel may, in consultation with the Legal Advisor and Independent Person (and a Parish/Town Representative where the matter relates to a Parish/Town Council), decide to determine the matter based on the papers before them. The sanctions at paragraph 6.7 are available to the Hearing Panel. If the Hearing Panel confirms that a

hearing is necessary it will determine case management issues such as the following:

- i. whether witnesses are permitted to be called;
- ii. any evidence that should be excluded;
- iii. allocated time for the hearing;
- iv. whether any documents need to remain confidential; and
- v. whether any part of the hearing needs to be held in private.

- 8.7 If a hearing is necessary, where possible, this will be convened within a minimum of two months of the decision made at paragraph 7.8. 10 working days prior to the hearing, all the documents referred to at paragraph 8.5 and an agenda will be served on the complainant, the Deputy Monitoring Officer and the Subject Member. 5 working days prior to the hearing all the documents (unless excluded) will be made available for public inspection and placed on the council's website.
- 8.8 If a hearing is convened the procedure at [Annex 1](#) will be followed.
- 8.9 The Monitoring Officer will give effect to any decisions of the Standards Hearing Panel. There is no right of appeal against this decision.

## 9 **Appeals**

- 9.1 If the complainant or Subject Member is not satisfied with the decision of the Independent Standards Assessor, as described at paragraphs 5.7, 6.2 and 7.6, they have 10 working days from the date the decision notice was sent to them to appeal the decision in writing.
- 9.2 The request for an appeal by the complainant or Subject Member must include the substantive reasons to support their appeal which have not previously been provided, together with the complainant's/Subject Member's desired action following consideration of the appeal
- Reasons for requesting an appeal may include
- a) some part of the complaint was not assessed
  - b) the evidence does not support the outcome
  - c) that the sanction/no action is inappropriate
  - d) a factual or procedural error
- 9.3 Disagreement with the decision without giving substantive reasoning that have not previously been provided will result in the request for an appeal being rejected.
- 9.4 The Monitoring Officer will determine in consultation with the Independent Person (and where appropriate a parish representative) whether there are valid grounds/reasons for an appeal and reasons for this decision will be provided.

- 9.5 If there are legitimate grounds/reasons for an appeal, the Monitoring Officer will review the documents and may request further information if required. The Monitoring Officer may choose to adopt any procedure in the Arrangements in responding to the appeal.
- 9.6 All appeals will be considered on their merits and according to the facts taking into account all relevant submissions and documents and the views of the Independent Person. The assessment criteria set out in these Arrangements will be used as a guide when determining appeals with departures made where appropriate.
- 9.7 The Monitoring Officer will aim to determine the appeal within 28 working days of receiving an appeal or further information where required. If it is not possible the Monitoring Officer will write to the complainant and Subject Member to advise them of the revised timescale.
- 9.8 An appeal decision notice will be sent to the complainant, the Subject Member, and where appropriate, the Clerk of the Subject Member's council within 5 working days of the appeal being determined.
- 9.9 All appeal decision notices will be published on the council website.

#### 10 **Modifications of procedures**

- 10.1 If the parties are in agreement, the Deputy Monitoring Officer/Monitoring Officer may agree to vary this procedure in any particular case where he/she is of the opinion that such a variation is necessary in order to secure the effective and fair consideration of any matter.
- 10.2 The Deputy Monitoring Officer/Monitoring Officer may extend any time limits in these arrangements where it is in the public interest to do so or in order to be fair to both parties.

## **Annex 1**

### **Standards Hearing Panel Procedure**

#### **1. Introduction**

- 1.1 The Chair may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.
- 1.2 The expectation is that the hearing will be in public, unless the Hearing Panel determines that it is necessary for part or all of the hearing to be in private session.
- 1.3 The hearing will be webcast except for any part of the hearing that will be held in private session.
- 1.4 In accordance with other Council Committee meetings, minutes of the meeting will be taken.
- 1.5 Neither party will be able to produce further documents at the hearing without the consent of the Hearing Panel.
- 1.6 Either party may chose to be represented at the hearing.

#### **2. Quorum**

- 2.1 The Hearing Panel shall consist of 3 Independent Standards Assessors, the Monitoring Officer and at least 1 Independent Person. Where the matter relates to a Parish/Town Councillor, the Parish/Town representative must also be present. All members of the Hearing Panel must be present throughout the hearing.
- 2.2 The Hearing Panel shall nominate a Chair for that meeting.

#### **3. Hearing Procedure**

- 3.1 The Chair will introduce the Hearing Panel and identify any parties not present. If a party is not present the Hearing Panel will determine whether the hearing should be adjourned or heard in the absence of a party.
- 3.2. All other parties introduce themselves.
- 3.3 The Chair will then ask if any of the Hearing Panel members has any declarations of interest. The Chair will then ask if there are any objections to the members of the Hearing Panel.
- 3.4 The Chair will advise that:
  - 3.4.1 All representations and procedural questions go through Chair;
  - 3.4.2 Generally, no evidence may be submitted *for the first time* at the hearing unless all parties and the Hearing Panel agree;

- 3.4.3 The Hearing Panel will make its decision after hearing representations; and
- 3.4.4 The hearing will be conducted in public except when (i) exempt information about the complainant or subject member is disclosed and (ii) members of the Hearing Panel agree after considering the matter following hearing representations.
- 3.5 The Deputy Monitoring Officer will be invited to present their report including any documentary evidence and may call witnesses which the Hearing Panel has agreed can attend. The report and documentary evidence must be based on the complaint.
- 3.6 The Subject Member (or their representative) may question the Deputy Monitoring Officer upon the content of the report and any witnesses called. (This is not the Subject Member's opportunity to state their case.)
- 3.7 Members of the Hearing Panel will have the opportunity to ask questions of the Deputy Monitoring Officer and any witnesses.

#### **4. The Councillor's case**

- 4.1 The Subject Member (or their representative) may present their case and call any witnesses that the Panel has agreed may attend.
- 4.2 The Deputy Monitoring Officer may question the Subject Member and/or any witnesses.
- 4.3 Members of the Hearing Panel may question the Subject Member and/or any witnesses.

#### **5. Summing up**

- 5.1 The Deputy Monitoring Officer may sum up their case if they wish.
- 5.2 The Subject Member (or their representative) may sum up their case if they so wish.
- 5.3 The summaries of cases must not include any new evidence.

#### **6. Decision**

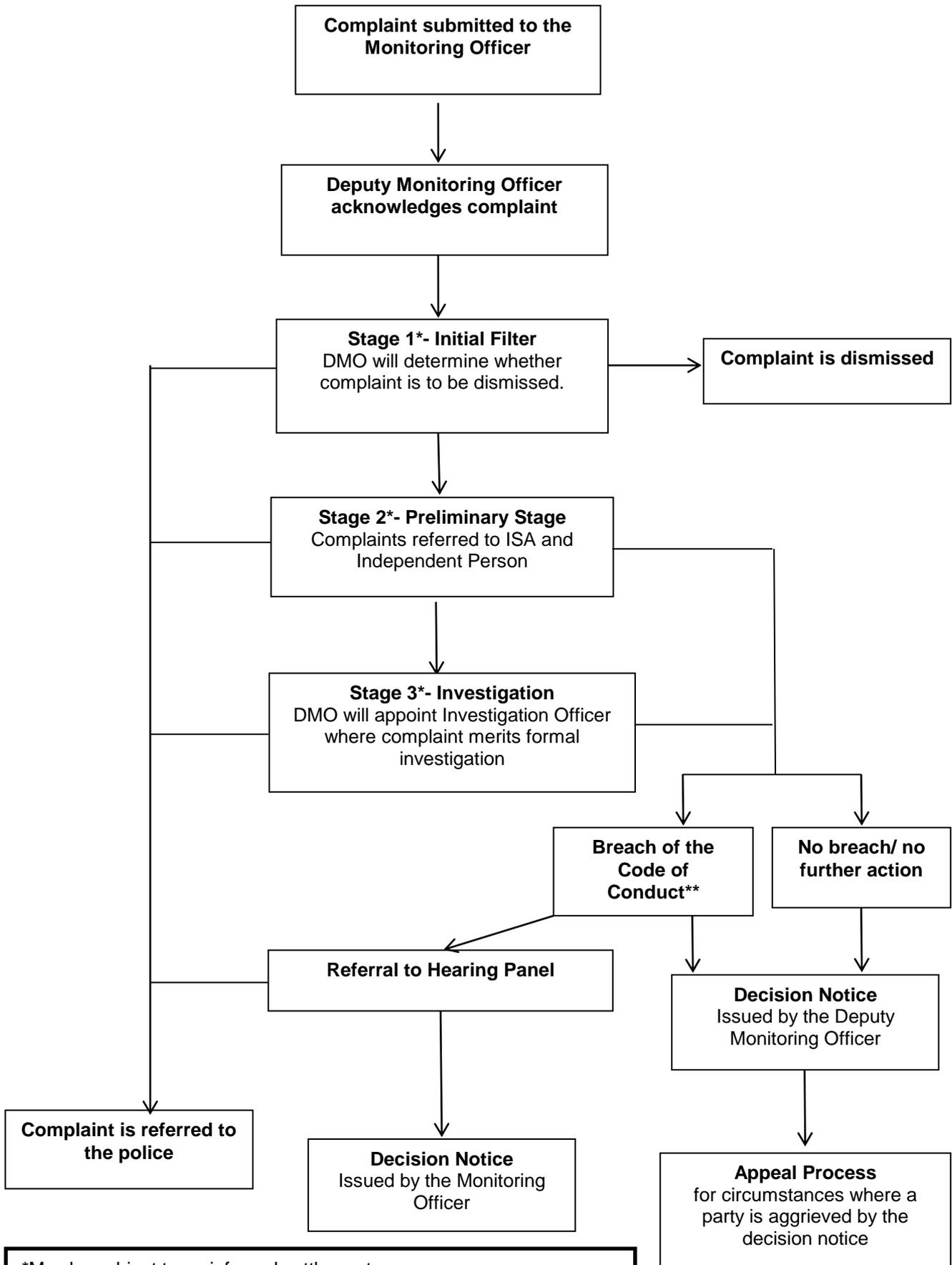
- 6.1 Members of the Hearing Panel will deliberate, with the benefit of advice from the Legal Advisor, in private to consider the complaint. All other parties shall withdraw from the meeting room, leaving only the members of the Hearing Panel and the Legal Advisor.
- 6.2 In the event of uncertainty concerning any evidence or advice already given, all parties will be recalled, regardless of the fact that the point in question relates only to the evidence/advice of one of the parties.
- 6.3 The recommendations of the Hearing Panel shall be announced by the Chair to both parties at the conclusion of the hearing in the following terms:
  - 6.3.1 The Hearing Panel has found that the Subject Member has failed to follow the Code of Conduct or

- 6.3.2 The Hearing Panel has found that the Subject Member has not failed to follow the Code of Conduct
- 6.4 The Hearing Panel will give reasons for their findings.
- 6.5 If the Hearing Panel finds that the Subject Member has failed to follow the Code of Conduct, they may consider representations from the Deputy Monitoring Officer and/or the Subject Member as to whether any action should be taken and in what form.
- 6.6 The Hearing Panel will then, if necessary, deliberate in private as per paragraph 6.1 to consider what action (if any) should be taken. The Hearing Panel will discuss any decision with the Independent Person.
- 6.7 On the Hearing Panel's return, the Chair will announce their decision.
- 6.8 The Council has delegated to the Monitoring Officer such of its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct.
- 6.9 No sanction can prevent Subject Member functioning as a Councillor. The Hearing Panel can recommend one or more of the following sanctions; where appropriate to the breach in respect of the Subject Member.
- a) Censure or reprimand of the Subject Member;
  - b) Publish the findings in respect of the Subject Member's conduct;
  - c) Report the findings to Full council or Parish/Town council;
  - d) Recommend training for the Subject Member;
  - e) Withdraw facilities that have been provided to the Subject Member, such as limiting access to available IT tools;
  - f) Exclude the Subject Member from council premises or part of;
  - g) Make a recommendation to the leader of the political group that the Subject Member should be removed from any Committee(s) or Committees or Sub-Committee(s) of the Council;
  - h) Recommend to Council that the Subject Member be replaced on appointments made by the Council; and/or
  - i) Recommend to Council to remove the councillor from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish/Town Council.
- 6.10 The Hearing Panel will consider whether it should make any recommendations to the Borough or Parish/Town Council with a view to promoting high standards of conduct among Councillors.

- 6.11 The Monitoring Officer will implement the decision of the Hearing Panel. The Legal Advisor will issue a full written decision to the Parties within 5 working days following the hearing.
- 6.12 The Hearing Panel's finding will be published on the Borough Council's website.
7. The findings and recommendations of the Hearing Panel (as implemented by the Monitoring Officer) are final.

**Annex 2**

**Procedure for Complaints against Councillors**



\*May be subject to an informal settlement  
\*\* Only where a formal investigation determines a breach of the code

