

Standards Committee

Agenda

Date: Monday, 26th September, 2011
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach
CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given. It is not required to give notice of the intention to make use of public speaking provision, however, as a matter of courtesy, a period of 24 hours notice is encouraged.

Please contact Diane Moulson on 01270 686476
E-Mail: diane.moulson@cheshireeast.gov.uk any apologies or requests for further information or to give notice of a question to be asked by a member of the public

4. **Minutes of Previous meetings** (Pages 1 - 10)

To approve the Minutes of the meetings held on 28 March 2011 and 25 July 2011.

5. **Future of Local Standards Regime** (Pages 11 - 16)

On 5 August 2011, the Chairman and Vice Chairman of the Standards Committee wrote to the political Group Leaders on Cheshire East Council enclosing a discussion paper on the future of local Standards Committees which sought elected Members views.

The response of the Conservative Group is attached; responses from the Labour Group, Independents and Liberal Democrat Groups will be reported orally at the meeting.

6. **Standards Regime and Localism Bill: Dealing with Complaints under any Voluntary Code of Conduct** (Pages 17 - 34)

The report of the Monitoring Report/Borough Solicitor outlines alternative procedures for the determination of future complaints following the abolition of the current Standards regime, which the Committee is invited to debate.

7. **Register of Members' Interests**

To receive an oral report from the Monitoring Officer/Borough Solicitor on the present position with respect to Members' Register of Interests.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Standards Committee**
held on Monday, 28th March, 2011 in Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Mr D Sayer (Vice-Chairman)

Councillors Rhoda Bailey, B H Dykes, J Goddard, J Hammond, M Hollins,
M Parsons, L Smetham, Eatough and Edwards

Independent Member:

Mr R Pomlett

OFFICERS

Caroline Elwood	Borough Solicitor and Monitoring Officer
Julie Openshaw	Deputy Monitoring Officer
Carol Jones	Democratic Services Officer

APOLOGIES

Mr N Briers, Mr I Clark, Mr M Garratt, Mrs P Barnett and Councillor M A Martin

36 DECLARATIONS OF INTEREST

No declarations of interest were made.

37 PUBLIC SPEAKING TIME/OPEN SESSION

There were no questions from members of the public.

38 MINUTES OF PREVIOUS MEETING

RESOLVED: That the Minutes of the Meeting held on 24 January 2011 be approved as a correct record, subject to the inclusion of Councillor J Goddard's name in the list of apologies.

39 IMPROVEMENTS AND ISSUES WORKING GROUP

The report of the Improvements and Issues Working Group provided an update on the work being undertaken. The Group held a meeting on 22 February 2011, at which time Members had focused on the abolition of the Standards regime. Options for an alternative system had been explored and were presented to the Committee.

The Group had concluded that the Council should adopt a voluntary Code of Conduct for the following reasons –

- i) ensure compliance with the duty to promote and maintain high standards of conduct for Members and co-opted Members;
- ii) promote transparency within local government and retain the support of local people; and
- iii) reduce the number of cases which might otherwise result in litigation.

The Group had recommended the preparation of a simple draft Code of Conduct for wider consultation (the draft to be based on the current Code of Conduct) and the establishment of an inexpensive democratically-run committee to deal with complaints quickly, fairly and transparently.

Members discussed the Group's proposals and agreed, in principle, to the recommendations, commenting as follows:

- Where complaints were of a serious nature, a structured robust system would be essential to deal with such complaints, and a "simple" system was aspirational but may not be adequate.
- The composition of a committee should broadly mirror the composition of the current Standards Committee.

The draft Code would be submitted to the Standards Committee for comment, following which it would be issued for consultation purposes. The Committee would consider the responses to the consultation and would make any appropriate amendments.

A second draft of the document would be submitted to the Constitution Committee and then to full Council for adoption.

RESOLVED:

1. That the Borough Council's Monitoring Officer and the Chief Officer of the Cheshire Association of Local Councils prepare a draft voluntary Code of Conduct for consultation purposes, based on discussions at this meeting; and
2. That the draft Code be submitted to an early meeting of the Standards Committee.

40 CHESHIRE ASSOCIATION OF LOCAL COUNCILS

Mrs Jackie Weaver, Chief Officer of the Cheshire Association of Local Councils, who was in attendance for this item, addressed the issue of the abolition of the Standards regime, emphasising that the Code was still in existence and was likely to remain so for some time.

She also offered advice and responded to questions which were related to the Code of Conduct and alternative systems which could be introduced, as discussed under Minute No. 39 above.

The role of parish and town councils was raised. It was understood that some parish councils within Cheshire West and Chester were proposing to introduce individual Codes which would be applied to their own parish or town councils. Members acknowledged that this would be unwieldy and cause confusion amongst the public if there were numerous Codes within one Borough Council area. If a voluntary Code were to be introduced, it should be for application Cheshire East-wide and parish and town councils should be encouraged to adopt the Cheshire East model.

Following her presentation, Mrs Weaver was thanked for her contribution to the meeting.

41 ANNUAL REPORT

The draft Annual Report of the Standards Committee was submitted. This would be presented by the Chairman to the Council meeting to be held on 21 April 2011.

No amendments were suggested and it was –

RESOLVED: That the report be noted.

42 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED: That the press and public be excluded from the meeting during consideration of the following item pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that it involved the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 7C of Part 1 of Schedule 12A to the Local Government Act 1972 and the public interest would not be served in publishing the information.

43 COMPLAINTS UNDER THE CODE OF CONDUCT

The Committee received a report about complaints made against serving Cheshire East Councillors (Complaint Nos. CEC/10/02, CEC/10/03, CEC/10/04, CEC/10/05 and CEC/10/06).

Complaints Nos. CEC/10/02 and CEC/10/04 had been considered by a Hearings Sub-Committee on 18 March 2011, sitting in its “consideration” role to consider the reports of the Investigating Officer.

- The Sub-Committee had agreed with the Investigator’s finding of “no breach” in respect of Complaint No. CEC/10/04 and no further action was to be taken.

- CEC/10/02: The Sub-Committee agreed that in the light of the Investigator's finding that there had been a breach of the Code of Conduct by the Subject Member, arrangements be made for a full Hearing before the Sub-Committee.

Complaint No. CEC/10/03 had been considered by a Review Sub-Committee on 26 August 2010, at which time the Sub-Committee had resolved that the decision of the Assessment Sub-Committee be upheld and no action be taken in respect of the allegation.

Complaint No. CEC/10/05 had been considered by an Assessment Sub-Committee on 26 August 2010, at which time the Sub-Committee had resolved to refer the complaint to the Monitoring Officer for action other than an investigation.

CEC/10/06: This complaint had been considered by an Assessment Sub-Committee on 9 December 2010 at which time the Sub-Committee had concluded that the Subject Member may have breached the Code of Conduct and referred the matter to Standards for England.

RESOLVED: That the report be received and noted.

The meeting commenced at 2.00 pm and concluded at 3.00 pm

Mr D Sayer (Chairman of the Meeting)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Standards Committee**
held on Monday, 25th July, 2011 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Mr N Briers Independent Chairman
Mr D Sayers Independent Vice Chairman

Councillors D Flude (Substitute for Cllr M Martin), P Groves, J Hammond,
D Marren, H Murray and M Parsons

Parish Representatives

Mrs P Barnett and Mrs T Eatough

Independent Members

Mr I Clark, Mr M Garrett and Mr R Pomlett

OFFICERS

D Moulson Democratic Services Officer
J Openshaw Deputy Monitoring Officer

APOLOGIES

Councillors R Fletcher and M Martin

1 DECLARATIONS OF INTEREST

Parish Council Representative Mrs P Barnett declared a personal and prejudicial interest in item 6 (Application for dispensation from Twemlow Parish Council) as Chairman of Twemlow Parish Council and as a named applicant.

2 PUBLIC SPEAKING TIME/OPEN SESSION

In accordance with Procedure Rules Nos. 11 and 35, a total period of 10 minutes was allocated to members of the public to address the Committee on any matters relevant to its work.

There were no members of the public in attendance and the Committee proceeded to its next item of business.

3 MINUTES OF PREVIOUS MEETING

RESOLVED: That the Minutes of the meeting held in 6 April 2011 be approved as a correct record and signed by the Chairman.

4 PRESENTATION ON THE WORK OF THE STANDARDS COMMITTEE

Having welcomed new Members to the meeting, the Deputy Monitoring Officer made a short presentation to the Committee on the role of the Standards Committee, its terms of reference and responsibilities under the Model Code of Conduct.

A short question and answer session followed seeking points of clarification on matters referred to in the presentation.

5 APPLICATION FOR DISPENSATION FOR TWEMLOW PARISH COUNCIL MEMBERS

The Committee was invited to determine an application submitted by six Members of Twemlow Parish Council for a dispensation which, if granted, would enable them to take part in debate and vote upon matters relating to the old Ministry of Defence Oil Storage Depot, Twemlow. The application had been made in anticipation of a forthcoming planning application concerning the Depot; the Parish Councillors stating that they each had a personal and prejudicial interest in the site as they knew well/were personal friends of the applicant and/or lived directly opposite the site.

The Deputy Monitoring Officer explained that it was the role of the Committee to determine whether the application should be granted. In accordance with the Code of Conduct and in the absence of any dispensation, the Parish Councillors would be required to declare a personal and prejudicial interest in any planning application, which would render the Council inquorate, unable to perform its role as a statutory consultee to the planning application and would prevent the Parish Council from representing the views of its residents.

A copy of the Standards for England Dispensation guidance was attached to the report for information. Members noted that the applicants had no right of appeal against the decision of the Committee and that, if members were minded to support the application, a reasonable time limit should be applied.

RESOLVED: That i) a dispensation be granted to the members of Twemlow Parish Council named in the report (subject to the correction of Graham Holborn's name to Graham Holburrow); members to be permitted to speak and vote thereon on matters concerning the Oil Storage Depot, Twemlow; and ii) the dispensation to remain in force until the end of April 2015.

(Note: Having previously declared a personal and prejudicial interest and in accordance with the Code of Conduct, Parish Councillor P Barnett left the meeting and took no part in the discussion and voting on the item.)

6 THE PLANNING PROTOCOL

The Council had adopted a Planning Protocol in February 2009 with a view to refreshing the document at a later date following receipt of updated guidance and to reflect emerging operating practices of the Council's three Planning Committees.

Standards Committee had considered a revised document in September 2010 since when it had been subject to detailed consideration by the Constitution Committee. Having made some changes to the form of the document, the Protocol was submitted to Strategic Planning Board on 20 April 2011 which resolved that the amended version should be recommended to both the Standards Committee and Constitution Committee for adoption by the Council and inclusion in the Constitution.

The document set out the rules governing public speaking, stipulating that non-committee members should not communicate with Committee members during meetings. Reference was made to an apparent absence in the protocol of rules which governed speaking at site inspections. It was confirmed that this matter had been addressed under the Council's Site Inspection Protocol but, as the Planning Protocol would need to be amended again in light of the Localism Bill, the inclusion of a secondary reference could be reconsidered at that time.

Paragraph 13.1 of the Protocol stated that "*you should attend the mandatory planning training prescribed by the Council before you participate in decision-making at meetings*". It was considered that use of the word 'should' was at variance with actual practice as Members were not permitted to take part in meetings until they had undergone the training. It was proposed that the sentence should be amended with the word 'should' being replaced with 'must'.

RESOLVED: That a) the comments of the Standards Committee concerning the amended Planning Protocol be submitted for consideration by the Constitution Committee; and b) subject to these comments the Protocol be commended for inclusion in the Council's Constitution.

7 THE STANDARDS REGIME - UPDATE ON THE LOCALISM BILL

The Committee considered the report of the Borough Solicitor and Monitoring Officer which sought to update members on the progress of the Localism Bill.

Amongst other matters contained in the Bill were proposals to abolish the Standards regime; the Standards for England website indicating that it was likely that it (Standards for England) would cease to investigate complaints in late 2011 or early 2012 and be formally abolished during 2012. Whilst local Councils would remain under a duty to promote and maintain high standards of conduct by Members and co-opted Members of the authority; the position relating to the Code of Conduct was the subject of ongoing parliamentary debate although the retention of Standards Committees remained voluntary at this time.

Members had previously expressed the view that the Council should adopt a voluntary code and retain its Standards Committee but a formal recommendation had not yet been submitted to Council. The Chairman confirmed that it would be considered good practice to have in place a Code of Conduct and support for the continuation of a local standards regime existed amongst Council Members.

A discussion ensued about the form a future Standards Committee could take, which included -

- the role of independent members on the Committee;
- potential for combining the ethical governance role with the work of a compatible body i.e. Audit and Governance Committee;
- the involvement of the Cheshire Association of Local Councils in the process; and
- future powers.

As the sanctions which could be imposed would remove the right to suspend, partially suspend or disqualify Councillors, there was concern that a future Committee would lack 'teeth' and could be viewed as an additional level of bureaucracy, a perception which would need to be addressed.

To ensure that the Committee was able to consider the views of those affected by the changes, it was suggested that a short discussion paper be drafted by the Chairman and Vice Chairman setting out the arguments for and against the retention of a local Standards Committee and voluntary Code of Conduct. Following consultation with the Monitoring Officer, the paper would be submitted to the political Group Leaders on the Council, with a request that comments on the matter be submitted to the Committee's September meeting for consideration.

RESOLVED: That a) the report be noted; and b) the Chairman and the Vice Chairman be invited to draft a discussion paper for consideration by the Political Groups on Cheshire East Council on the future of the local standards regime, feedback to be submitted to the Committee for discussion at its meeting on 26 September 2011.

8 THE BRIBERY ACT 2010

The Committee considered the report of the Borough Solicitor and Monitoring Officer which sought to update Members on the passage of the Bribery Bill into legislation.

A report was first presented to the Standards Committee outlining the draft legislation in March 2010. Having gone through due parliamentary process, the Bribery Act 2010 had come into force on 1 July 2011, its purpose to provide a more effective legal framework to combat bribery in the public and private sectors.

In introducing the report, the Deputy Monitoring Officer briefly identified the aims of the Act and outlined the new offences which had been created under it. She confirmed that Councils were not considered to be commercial organisations for the purposes of the Act but that they must take reasonable steps to prevent instances of this kind. None of Cheshire East Council's current policies would need to be amended in light of the changes although the procurement procedures would reflect the new legislation.

RESOLVED: That the report be noted.

9 STANDARDS COMMITTEE MEMBERSHIP

The composition of the Standards Committee was/is 8 elected members, 5 non-council independent members and 3 parish representatives. Following the local government elections on 5 May 2011, one of the three parish representatives appointed to the Committee had been successful in his candidacy for the Borough Council. As a result, he could no longer sit on the Committee in this capacity which has resulted in a vacancy being created. It was reported that an approach had been made to the Cheshire Association for Local Councils (ChAIC) to secure a nomination for the post.

10 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED: That the press and public be excluded from the meeting during consideration of following item pursuant to Section 100(A)(4) of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 2 and 7c of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

11 TRAINING ON THE CODE OF CONDUCT

The Committee considered the report of the Borough Solicitor and Monitoring Officer which reported on action taken following a request to organise training as part of other action directed by the Assessment Sub Committee.

The training session in question, which had originally been scheduled for July 2011, was to have been attended by a Councillor who had been the subject of an allegation of misconduct following which the Assessment Sub Committee had concluded that the matter should be referred to the Monitoring Officer for 'other action'. However, the session had been deferred until September due to the high number of apologies received, which included those of the Subject Member concerned.

Under the Code of Conduct, there was no recourse possible if a Subject Member failed to comply with the 'other action' required. The Chairman suggested that the matter could be addressed under a future voluntary Code of Conduct but, in order to resolve the current situation, the views of the Committee were sought as to an appropriate way forward.

Members considered that, under the circumstances, it would be futile to pursue the Subject Member for non-compliance but that a letter should be sent expressing the Committee's regret in respect of the actions of the individual concerned.

RESOLVED: That a) no further action be taken in respect of the Subject Member referred to in the report; and b) a letter be sent to the Subject Member expressing the Committee's disappointment in respect of their non-attendance at training.

The meeting commenced at 2.00 pm and concluded at 3.20 pm

Mr Nigel Briers (Independent Chairman)

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For the Attention of Cheshire East Council
Group Leaders

Diane Moulson
Senior Member Development Officer
Legal & Democratic Services
Westfields, Middlewich Road
Sandbach, Cheshire
CW11 1HZ

Tel: 01270 686476
email: diane.moulson@cheshireeast.gov.uk

DATE: 5 August 2011

OUR REF:

YOUR REF:

Dear Group Leader

LETTER SENT ON BEHALF OF THE CHAIRMAN AND VICE CHAIRMAN OF THE STANDARDS COMMITTEE

Following the meeting of the Standards Committee held on Monday 25th July 2011, a request was made that the Chairman and Vice-Chairman produce a short briefing paper for issue to the Group Leaders regarding the future within Cheshire East of adopting a Voluntary Code of Conduct with a Standards Committee and the place, if any, of Independent Members. It is suggested that the attached briefing paper could form the basis of a group discussion, the feedback from which to be submitted to Diane Moulson, Democratic Services no later than close of business on Wednesday 14 September 2011 for consideration at the Committee's next meeting.

Members can find more detailed information by referring to Agenda Item 7 contained with the agenda and notes for the Standards Committee held on Monday 28th March 2011. There is also some reference in the Chairman's Introduction to the Standards Committee Annual Report presented to Council on Thursday 21st April 2011. Both of these papers were approved by the full Standards Committee. There is also a wealth of information on the Standards for England Website.

We would hope that in the future we will be able to produce arrangements that are inexpensive, quicker to resolve complaints and less bureaucratic than at present and indeed simpler to understand by both the public and Councillors.

Members will of course have noted that current Government proposals abolish the Standards for England organisation and propose to limit the powers of any future Standards Committees by removing the powers of suspension.

Yours sincerely

Nigel Briers (Chairman Cheshire East Standards Committee)
David Sayer (Vice-Chairman Cheshire East Standards Committee)

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STANDARDS – WHAT NEXT?

As the Decentralisation and Localism Bill (“the Bill”) approaches and with it the demise of the standards regime as we know it Councils in England will have to decide what (if anything) of the existing system they wish to retain and how will that be achieved and maintained. In Cheshire East the consensus view seems to suggest (a) that a Standards Committee should be retained and (b) that a voluntary Code of Conduct be adopted. Reasons:

- If public confidence is to be retained the Council has a duty to provide a mechanism for the receipt and handling of complaints
- This would provide a framework for elected members to work within and afford guidance to those members on ethical governance
- Additionally such would provide protection for members from frivolous and vexatious complaints
- The proposal, as yet in principle, has the support of the Chief Executive and Council Leader
- The Council would be vulnerable to criticism if problems arose and there are no appropriate systems in place to deal with complaints
- The Bill ranges from ‘no system at all’ at one extreme to the creation of a new criminal offence involving breaches of regulations yet to be drafted at the other with no intermediate forum to deal with complaint handling and the day to day issues of local governance and conduct

The Standards Committee (“the Committee”) as presently constituted via a Working Group appointed to deliberate at length on these questions formed the conclusion that Cheshire East should appoint a Standards Committee and adopt a voluntary Code of Conduct to:

- Ensure compliance with the duty to promote and maintain high standards of conduct for members and co-opted members
- Promote transparency within local government and retain the support and confidence of local people; and
- Reduce the number of cases which might otherwise result

in litigation

- To maintain the links with Chalc thereby ensuring that the time and effort put into securing the Pilot Compact have not been entirely wasted and that a conduit stays in place for the crossflow of information between Parish and Town Councils and the Standards Committee and the

The Working Group in its deliberations was dealing very much with first principles faced with the tsunami of changes propounded in the Bill and did not expand greatly on the question of independent members (a mandatory feature of the present regime) and their role (if any) in the proposed regime. Feedback to date suggests that an independent element is generally seen as an enhancement to a future Standards Committee and a voluntary Code. The reasons (not yet debated at any length and unpublished) include :

- Avoidance of any political dimension to the role and management of the Committee and interpretation of the Voluntary Code
- The experience of independents gained not only within the life of Cheshire East but as members of other authorities prior to unification
- Independents frequently provide a neutral unbiased line of communication between Council Staff and elected members
- The absence of independents will detract from public confidence in the Standards regime (however constituted) and any complaints procedure implemented

These brief notes provided by the Chair and Vice Chair will hopefully provide an opportunity for open discussion and debate at group level prior to submission to full Council of firm proposals and recommendations.

Dated 27th July 2011

Nigel Briers Chair
David Sayer Vice Chair

Submission of the Conservative Group in response to a Letter from the Chairman and Vice Chairman of the Standards Committee concerning the future of the Local Standards Regime

The Conservative Group considered the future of Standards at a meeting on Saturday 10 September. The Group as a whole very much appreciated the opportunity to consider this and I would be grateful if you could convey their thanks to the current Chairman and Vice Chairman of Standards, Nigel Briers and David Sayers.

There was no appetite to retain Standards Committee in its current format but it was felt that the Audit and Governance Committee provided the ideal structure for any issues in that it could oversee the formation of a “Standards Sub Group” albeit on an ad-hoc basis only.

In particular the good work of the Independent Members of the current Standards Committee was noted and Members were keen to see their continued involvement particularly as legislation moves towards independent representation on the Audit and Governance Committee.

General concern was expressed about the opportunity the current Standards system provides for repetitive vexatious complaints, which are invariably dismissed. This resulted in the recommendation to create the opportunity for political groups to consider the issue in the first instance.

In summary:

- Retain a revised Voluntary Code of Conduct.
- The opportunity for informal inquiry/resolution within a political group be created. The circumstances of an issue would steer the representation of the political sub-group. If a political group prefers not to conduct an initial inquiry, the complaint/issue goes directly to the ad-hoc Audit Sub-Committee.
- Should further investigation be required there is the opportunity of referral to an ad-hoc Standards Sub-Committee of the Audit and Governance Committee; there would be no formal Standards Committee.
- If an issue looks to be criminal it could be referred to the Police.
- Point of contact for the public : The Monitoring Officer

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CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 26 September 2011

Report of: Borough Solicitor/Monitoring Officer

Subject/Title: Standards Regime and Localism Bill – Dealing with complaints under any voluntary code of conduct

1.0 Report Summary

1.1 The Local Standards Framework was introduced in May 2008 when Local Authorities themselves assumed responsibility for receiving and assessing complaints about Elected Members (including members of Parish Councils). The Standards Board, re-titled Standards for England (SfE), became a Strategic Regulator, investigating only the most serious cases, and providing advice and guidance to Local Authorities.

1.2 Under the Localism Bill Standards for England will be abolished. There will be no national model Code of Conduct or requirement to have a Standards Committee. However, Local Authority's will still have a duty to promote and maintain high standards of conduct by Elected Members and the Bill provides that Authorities may adopt a voluntary Code of Conduct and may continue to appoint to a Standards Committee. This report seeks to stimulate a debate on what type of procedures Members may wish to see in the future.

2.0 Decision Requested

2.1 Members are asked to note the position and to comment upon the initial draft procedure.

3.0 Reasons for Recommendations

3.1 To stimulate a debate on what type of procedures Members may wish to see in the future following the abolition of the Standards Regime.

4.0 Wards Affected

4.1 Not Applicable.

5.0 Local Ward Members

5.1 All Members are required to observe the Code of Conduct.

**6.0 Policy Implications including - Carbon reduction
- Health**

6.1 The Constitution will need to be reviewed in the light of the abolition of the Standards Regime.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

7.1 None have been identified.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Under the Localism Bill Standards for England will be abolished. There will be no national model Code of Conduct or requirement to have a Standards Committee. However, Local Authority's will still have a duty to promote and maintain high standards of conduct by Elected Members and the Bill provides that Authorities may adopt a voluntary Code of Conduct and may continue to appoint to a Standards Committee.

9.0 Risk Management

9.1 No risks have been identified.

10.0 Background and Options

10.1 The Current Procedure on Receiving Complaints

10.1.1 The Standards for England (SfE) has produced a tool kit designed to ensure a consistent approach across Local Authorities. The toolkit provides detailed guidance and standard templates for use in the Local Assessment of Complaints.

10.1.2 A brief overview of the current process is as follows:-

- An Initial Assessment Sub-Committee of the Standards Committee chaired by an independent member is formally convened within 4 weeks of receiving a complaint and decides whether to take no action / refer the matter for "other action"/ refer to the SfE for investigation / refer for local investigation.
- If the decision is to take "no action" the complainant has a right of appeal (within 30 days) to a Review Sub-Committee.
- Where the matter is referred for a local investigation a detailed report must be produced within 6 months. The subject member and complainant have the opportunity to comment on the draft report.

- The Investigating Officer concludes whether there has been a breach of the code on the balance of probabilities but makes no recommendation as to sanctions.
- If the report finds there has been no breach of the code a Hearings Sub-Committee of the Standards Committee is formally convened to decide whether or not to accept the recommendations.
- It may conclude that there may have been a breach in which case a separate meeting must take place to hear the evidence and determine any appropriate action.
- If the report finds that there has been a breach a Hearings Sub-Committee must be convened within 3 months. Witnesses may be called and the investigator and subject member are present and may make representations.
- There is a right of Appeal against the decision to the 1st tier Tribunal (Standards for England).
- The Hearing is in public and the outcome should be made public.

10.1.3 A note setting out the detailed process is set out at Annex A together with a series of flowcharts summarising the process at Annex B.

10.2 Complaints under a Voluntary Code – Streamlined Process

10.2.1 It is very important that any Voluntary Code and any process of investigation of complaints under the Code is robust, has the support and respect of all Elected Members and that the integrity of the process also gives confidence to complainants and members of the public.

10.2.2 The existing process, as prescribed by Regulations and in guidance by SfE, is a very thorough and fair process but it is a long winded and technical procedure which can take many months. Under the Localism Bill the Council may determine its own procedures for investigation of any complaints under the Voluntary Code and a draft streamlined procedure is set out at Annex C and a flowchart at Annex D, for Member's initial comments.

10.2.3 A brief overview of the suggested process is as follows:

- An initial Gateway Procedure within 2 weeks to decide whether to take no action / refer to the relevant Group Leader for informal action / refer the matter for formal investigation by an external investigator

- No right of appeal or review against this initial decision
- An external investigation by a firm of Solicitors or experienced investigator with a Monitoring Officer background with a final report to be produced within 8 weeks
- The opportunity for the subject member and complainant to comment on any factual inaccuracies in the report
- The report to make final determination on whether there has been a breach and the sanction to be imposed (sanctions are likely to be very limited anyway the Council probably won't be able to suspend or disqualify elected Members)
- The right of appeal by either the subject member or complainant within 14 days of receiving the final report on the findings of breach of the code (but not solely on the sanction)
- The appeal to be determined by a Panel consisting of the Leader, Chief Executive, relevant Group Leader, Independent Chair of Standards Committee advised by the Monitoring officer. No oral hearing or calling of witnesses etc all to be dealt with by written representations and consideration of the report
- No further right of appeal
- All meetings to be in private

10.2.4 It is important to stress that this is very much an initial draft suggesting a very different process to act as a starting point to stimulate debate. There are a number of issues which Members may wish to consider and these are also set out at Annex C.

10.3 Voluntary Code and Sanctions

10.3.1 As a separate issue Members will need to consider the terms of any Voluntary Code of Conduct. Sanctions are likely to be limited and will probably only include -

- Censure
- Restricted access to council premises and resources (provided this does not unduly restrict the ability to perform the functions of a member)
- Submission of a written apology in an approved format
- Specified Training
- Conciliation

10.3.2 Regulations will specify the requirement to establish and maintain a Register of Member's Interests and in future it will be an offence to fail to register or disclose a financial or other interest.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Caroline Elwood
Designation: Monitoring Officer/Borough Solicitor
Tel No: 01270 685882
Email: caroline.elwood@cheshireeast.gov.uk

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Complaints under the Code – Current Procedure

1. The Monitoring Officer receives a written complaint, acknowledges receipt and advises the relevant member a complaint has been received.

Initial Assessment Sub Committee

2. Within 20 working days an initial Assessment Sub Committee is convened (three members of Standards Committee including an independent member as chair).
3. The Assessment Sub Committee receives a formal report and considers the complaint against a list of criteria previously approved as guidance by the standards committee and determines either to:
 - **Take no action in respect of the complaint**
 - **Refer the matter for ‘other action’ (training, conciliation, change in process and procedures)**
 - **Refer the complaint to Standards for England (SfE) for investigation**
 - **Refer the complaint for local investigation**

No Action and Review Sub Committee

4. If the decision has been to take ‘No Action’ the subject member and complainant must be notified and the complainant advised of his/her right to ask for a review of the decision within 30 days from the date on the Initial Assessment Decision Notice. The notice must set out in full the Assessment Sub-Committee’s reasons.
5. If a complainant seeks a formal review of the decision not to investigate the complaint the Monitoring Officer must convene a meeting of the Review Sub-Committee within a maximum of three months of receiving the request (but ideally within 20 working days).
6. The Review must be seen to be independent of the original decision and so members who made the original decision must not take part in the review. Accordingly the Review Sub Committee must consist of three different members of the Standards Committee with an independent chair.
7. The Review Sub Committee will apply the same criteria available to the Assessment Sub Committee and may either uphold the decision to take no action or refer to the matter for investigation and ‘other action’.

8. The decision of the Review Sub Committee should be sent out to the complainant and subject member within five working days.

Referral for “Other Action”

9. The Assessment Sub Committee may conclude that it is not in the interests of good governance to undertake a full investigation into an allegation of misconduct and it may refer the matter to the Monitoring Officer for alternative action to be taken, for example arranging for conciliation, training or a review of policy and procedures. This is known as “Other Action “. It is important that both the complainant and the subject member appreciate that the decision has been made as an alternative to investigation of the complaint and that no conclusion has been reached on whether there has been any breach of the Code.

Referral to Standards for England (SfE)

10. If the matter is referred to SfE they will normally inform the Monitoring Officer within 10 working days whether they will accept a case or whether they intend to refer it back to the Standards Committee with reasons for doing so. There is no appeal against the decision of the SfE.
11. If the SfE declines to investigate a case the Assessment Sub Committee must re-convene within 20 working days to determine what action to take. Although it has the discretion to take no action or ‘other action’ the most likely outcome will be to refer for Local Investigation.

Access to Information Requirements

12. Initial Assessment decisions and any subsequent reviews must be carried out in closed meetings and are exempt from the notice and publicity requirements under Access to Information provisions since the Sub Committee may be considering unfounded and potentially damaging complaints about elected members. Instead the Regulations provide that a written summary must be produced setting out the main points considered, the conclusions on the complaint and reasons. The summary must be available for the public to inspect at the Council’s offices for six years and to be given any Parish and Town Council concerned.

Referral for Local Investigation

13. Where the matter is referred for Local Investigation the Monitoring Officer must arrange for a full investigation to be concluded within 6 months of the Initial Assessment decision. SfE provide detailed guidance on how to undertake the investigation including the interviewing of witnesses, examination of background documents and computer records, and evaluation of evidence. A draft report must be produced and circulated to both the complainant and subject member

for comments. The final report should incorporate their relevant comments and indicate whether in the investigators opinion there has been a breach of the Code of Conduct.

14. SfE have prescribed a detailed template setting out the information to be incorporated in the final report as follows:

- **Title Page** – the author and date of the report
- **Executive Summary** – the full allegation ,who it was made by , the relevant provisions of the Code, the findings and whether there has been a breach
- **Members Official Details** – when the member was elected, his term of office, details of committees served on, the date member signed the undertaking to observe the Code and any relevant training
- **Evidence Gathered and the Investigator’s Consideration** – a summary of the information, chronological facts, undisputed facts, disputed facts and the investigators conclusions based on the balance of probabilities
- **Summary of the Material Facts** – a summary of the facts to support conclusions reached
- **Subject Members Additional Submissions** – outline of additional submissions from the subject member and their relevance
- **Reasoning as to whether there has been a failure to comply with the Code of Conduct** – dealing with each alleged breach in turn an outline of which section of the Code is relevant and a detailed explanation of whether the Investigator considers there has been a breach
- **Finding** – a detailed explanation of the Investigators decision together with any aggravating or mitigating facts
- **Schedule** – a list of ,and copies ,of all documents relied upon in reaching a conclusion

Hearing Sub Committee

15. The final report should be sent to the Monitoring Officer on behalf of the Standards Committee, the subject member and is also usually sent to the complainant. A meeting of the Hearings Sub Committee of the Standards Committee should be convened to consider the report.

16. If the Investigator has found that there has been no breach of the regulations then the Hearings Sub Committee must decide whether to accept that recommendation. It may conclude that it appears likely that there has been a breach of the Code in which case a separate meeting of the Hearings Sub Committee must take place to hear all the evidence and determine what action, if any, is appropriate.
17. Where the Sub Committee concludes that there has been no breach the Authority should arrange to publish a notice stating that the Standards Committee has found that there has been no failure to comply with the Code, unless the subject member would prefer no notice to be issued.
18. Where the Investigator has concluded that there is a breach of the Code the Monitoring Officer should convene a Hearings Sub Committee within 3 months of the date of receiving the report. Hearings normally take place in public. Detailed guidance from the SfE sets out a pre hearings procedure designed to identify what facts or evidence are in dispute, whether the subject member is to be represented and what witnesses are to be called.
19. The Standards Committee Hearing is a formal meeting of the authority and not a court of law. Evidence is not given on oath and factual evidence is determined on the balance of probabilities. It is important that the hearing is conducted in a fair, independent and impartial way.

Sanctions

20. Sanctions which may be imposed include one or more of the following:
 - **Censure**
 - **Restricted access to Council premises or resources for up to 6 months provided that this does not unduly**
 - **Restrict the ability to perform the functions of a member**
 - **Partial suspension for up to 6 months**
 - **Suspension as a member for up to 6 months**
 - **Submission of a written apology in a form approved by the committee**
 - **Specified Training**
 - **Conciliation**

- **Partial or full suspension for up to 6 months until the member either submits an apology or undergoes specified training or conciliation**

Publicity

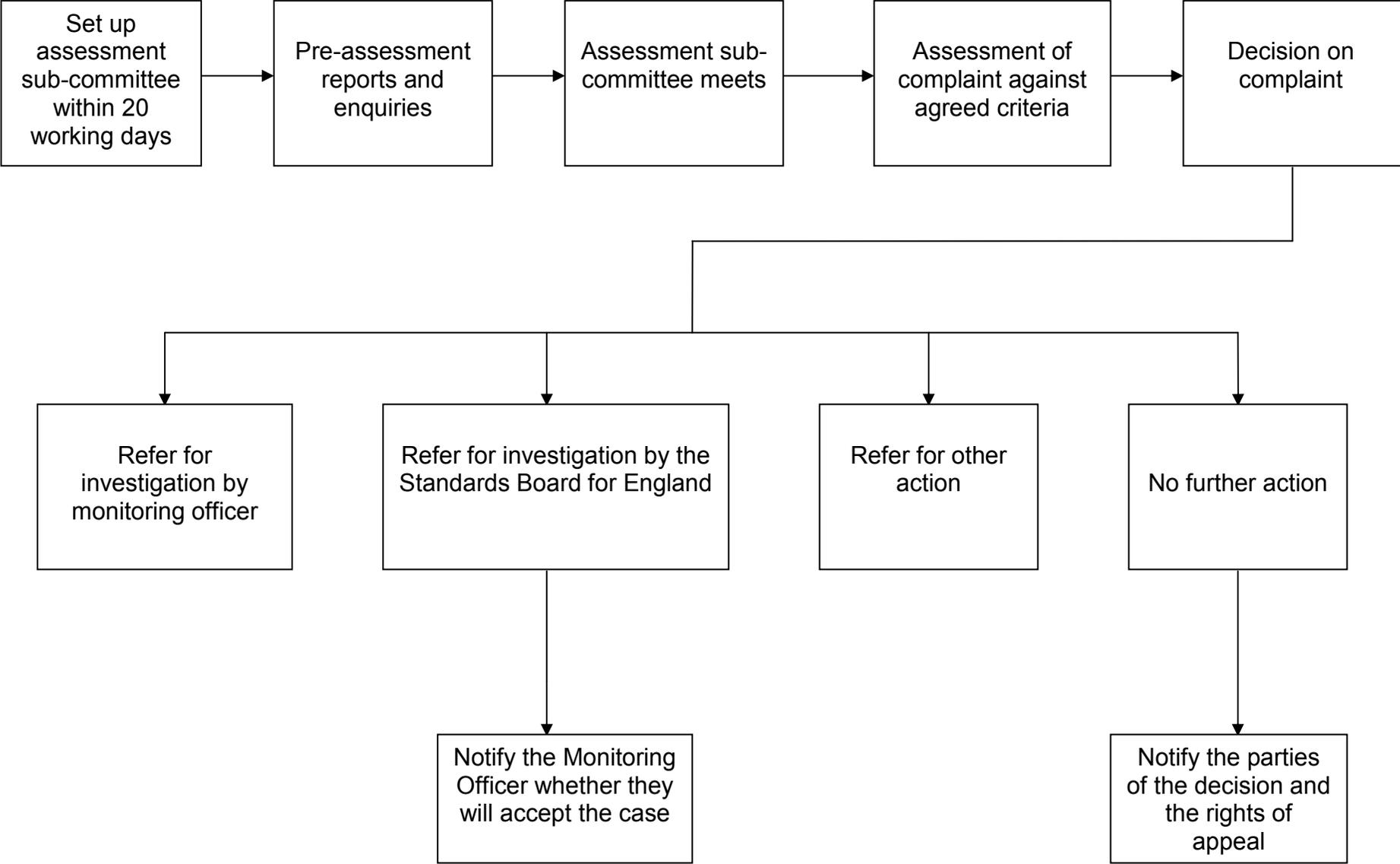
21. The decision should be announced at the end of the Hearing and a full written decision issued within 14 days. A summary of the decision should be published in the local newspaper and on the Council's website. However, if the Committee found that there had been no breach of the Code the Subject member is entitled to request that no summary is published.
22. Reports and Minutes should be available for public inspection for 6 years after the hearing with the exception of any parts of the hearing held in private.

Appeal

23. Permission to appeal any finding of the Standards Committee to the 1st Tier Tribunal (Standards for England) may be sought within 21 days of receiving the Decision notice. The Appeal Tribunal will determine whether to uphold or dismiss the appeal and may either confirm any sanction imposed by the Committee or substitute another sanction. A summary of the decision will be published in a local newspaper.

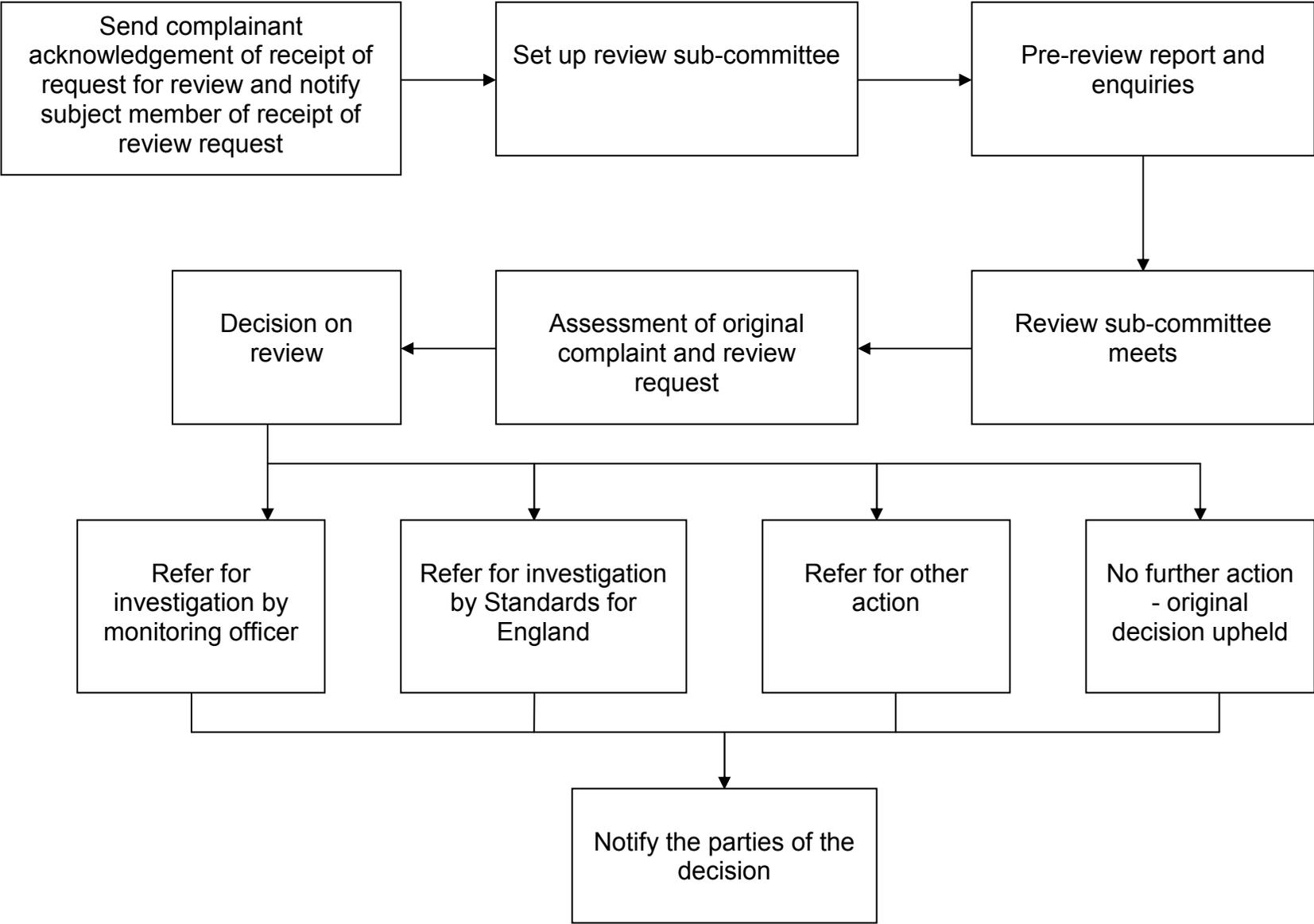
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Assessment Flowchart – Current Procedure



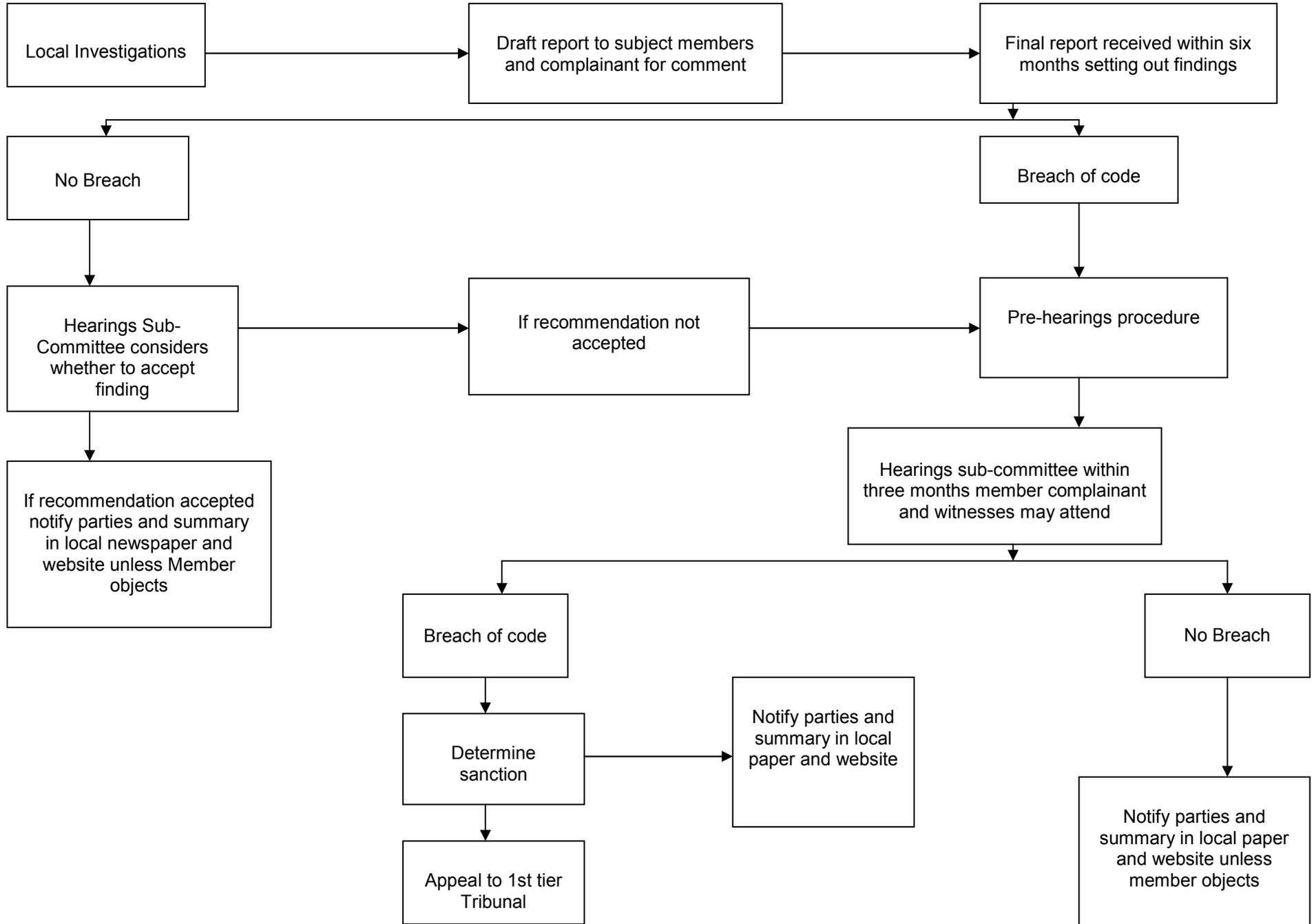
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Review Flowchart – Current Procedure



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Local Investigations Current Process



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Complaints under the New Code - Proposed Streamlined Procedure

1. The Monitoring Officer receives a written complaint and acknowledges receipt.

Initial Assessment / Gateway Procedure

2. The Monitoring Officer refers the complaint to the four Group Leaders (or their nominees), the Independent Chair and Chief Executive to consider the written complaint within 14 days and determine whether to:
 - **Take no action**
 - **Refer the matter to the relevant Group Leader for informal action**
 - **Refer the matter for formal investigation by an external investigator**
3. Criteria will be developed to assist in determining complaints and ensuring consistency.
4. The initial assessment decision to take no action will be final. Accordingly there will be no right of review for either the complainant or subject member.

External Investigation

5. The matter will be referred for an independent investigation by a suitably experienced investigative officer, for example from a private firm of solicitors or with a Monitoring Officer background. The investigation should be completed within 8 weeks of the referral.
6. The report of the independent investigator should incorporate the following:-
 - **Executive Summary** - An outline of the allegation, who made it, the relevant provisions of the Code and whether there has been a breach.
 - **Member's official details** - A brief outline of when the Member was elected, term of office, details of committees served on and any relevant training.
 - **Summary of facts and evidence gathered**- A summary of the facts and evidence gathered highlighting facts which are in dispute and setting out the investigating officer's conclusions based on the balance of probabilities

- **Reasoning as to whether there has been a failure to comply with the Code and investigator's findings** – Dealing with each allegation in turn and outline of whether the investigating officer considers whether there has been a breach and any aggravating or mitigating facts.
 - **Schedule** - a list of witnesses interviewed and copies of relevant documents
7. A copy of the draft report will be circulated to the subject member and complainant to check for factual accuracy.

Sanctions

8. The investigating officer will make recommendations as to the appropriate sanction in the report. It is likely that the Council will no longer be able to suspend or disqualify a Member accordingly sanctions will be limited to :-
- **Censure**
 - **Restricted access to Council premises or resources for up to 6 months provided that this does not unduly restrict the ability to perform the functions of a Member**
 - **Submission of a written apology in an approved format**
 - **Specified training**
 - **Conciliation**

Final Recommendations and Right to Appeal

9. The recommendations contained in the report are final and will be implemented subject to the complainants and subject members right to appeal within 14 days of receiving a final copy of the report. An appeal may only be against a finding of breach of the Code and not against the recommended sanction.
10. Both the complainant and the subject member will be given the opportunity to make written submissions to the Appeal body.

Appeal and Review

11. Any appeal against the findings in the final report will be considered by the Leader, Chief Executive, relevant Group Leader and Independent Chair of the Standards Committee advised by the Monitoring Officer.
12. The Group will consider the report together with any written representations of the complainant and subject member. There will be

no requirement for the subject member, complainant or any witnesses to attend. The Group will determine whether they are satisfied with the Investigators recommendation and if any sanction recommended is appropriate.

13. The meeting will be in private and not subject to access to information requirements

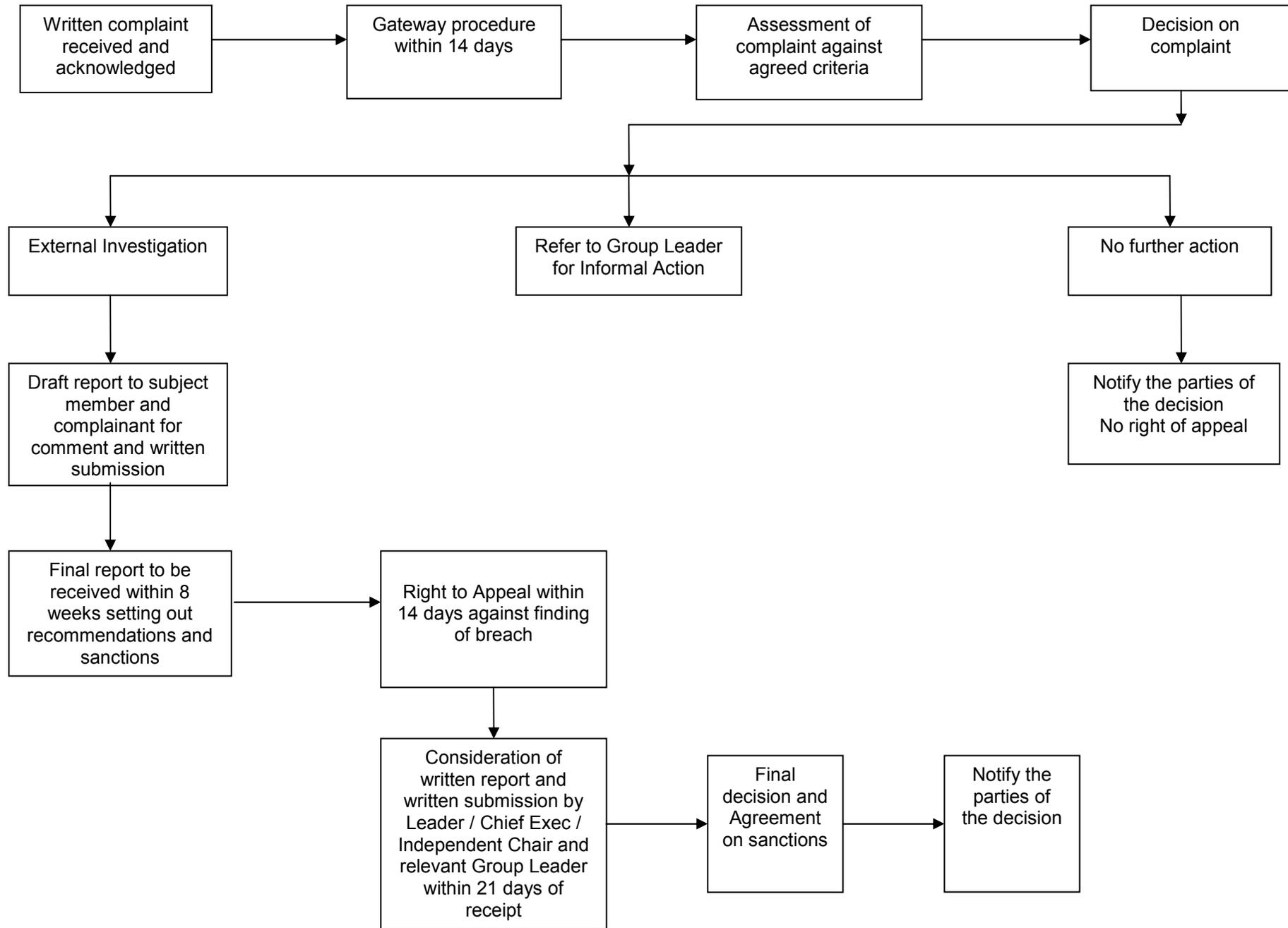
14. There will be no further right of appeal

Issues for Consideration

- a) When the complaint is initially received should the subject member be informed at that stage or only when a decision has been made whether or not to investigate?
- b) Is it appropriate for the Independent Chair/ an Independent Member to be involved in the initial assessment / gateway procedure? Is the elected member involvement appropriate?
- c) Should all meetings be held in private?
- d) Are Members happy that the Independent Investigator circulates the draft report for comment on factual accuracy to the subject member and complainant?
- e) Should the recommendations in the report be final? ie. is there a need for the Council to consider and approve the report internally in any event? (As required by the current procedure)
- f) Should there be the opportunity to appeal the findings in the report?
- g) Is it appropriate for both the Complainant and subject member to have the right of appeal?
- h) Are Members happy with the proposal that any appeal should be dealt with by way of written representation? Is there a view that there ought to be the opportunity for the investigating officer and the subject member and witnesses to appear and give evidence as is the case now?
- i) Are the members of the group considering the final report appropriate?
- j) Should the final outcome be publicised on the Council's website?

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Proposed Streamlined Procedure for Complaints



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