

Standards Committee

Agenda

Date: Monday, 21st November, 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
E-Mail:

Diane Moulson on 01270 686476
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 Meeting** (Pages 1 - 4)

To approve the Minutes of the meeting held on 26 September 2011.

5. **Standards Regime and Localism Bill: Dealing with Complaints under a Future Code of Conduct** (Pages 5 - 28)

The report seeks to provide the latest position in respect of the Localism Bill and to further the debate on what type of procedures Members may wish to see in the future following changes to the Standards regime.

6. **Appointment of Parish Council Member to Standards Committee** (Pages 29 - 32)

The Committee is requested to consider a nomination from the Cheshire Association of Local Councils (ChALC) for the vacant position of Parish Member on the Standards Committee.

7. **Exclusion of the Press and Public**

The report relating to the remaining item on the agenda has been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matter may be determined with the press and public excluded.

The Committee may decide 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 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.

PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT

8. **Complaints Received under the Code of Conduct** (Pages 33 - 36)

To receive an update on complaints received under the Code of Conduct.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Standards Committee**
held on Monday, 26th September, 2011 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Mr N Briers Independent Chairman
Mr D Sayer Independent Vice Chairman

Councillors R Fletcher, P Groves, J Hammond, F Keegan, M Martin, D
Marren, H Murray and M Parsons

In Attendance

Councillors D Brickhill, D Flude and P Findlow

Independent Member

Mr I Clark

Parish Representative

Mrs T Eatough

OFFICERS

Caroline Elwood	Borough Solicitor and Monitoring Officer
Julie Openshaw	Deputy Monitoring Officer
Diane Moulson	Senior Member Development Officer

APOLOGIES

Mrs P Barnett (Parish Representative), Mr M Garratt and Mr R Pomlett
(Independent Members)

12 DECLARATIONS OF INTEREST

No declarations of interest were made in any item of business on the agenda.

13 PUBLIC SPEAKING TIME/OPEN SESSION

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

Councillor David Brickhill addressed the Committee, speaking to a paper produced by the Department of Communities and Local Government concerning the current standards regime; a regime he considered to be ineffective. He then made reference to local arrangements, commenting on the length of time and cost involved in bringing a complaint against him to fruition. Item 6 on the agenda suggested a new procedure for dealing with complaints but, in his opinion, this was a like-for-like replacement which did not bring about the improvements sought.

Having made his address, Councillor Brickhill withdrew from the meeting.

14 MINUTES OF PREVIOUS MEETINGS

The Committee was invited to approve the Minutes from the meetings held on 28 March 2011 and 25 July 2011.

15.1 28 March 2011

Subject to the removal of Mrs Eatough's name from the list of Councillors present and separate inclusion as Parish Representative –

RESOLVED: That the Minutes of the meeting held on 28 March 2011 be approved as a correct record.

15.2 25 July 2011

Minute 11 made reference to a letter which had been sent to a Subject Member, who had declined to undergo training, as directed by the Assessment Sub-Committee following consideration of a complaint. A Member stated that whilst this approach had been debated at the meeting, it had not been formally approved by the Committee and the letter should not have been sent. He requested that a letter of apology be forwarded to the Member concerned.

RESOLVED: That i) Minute 11 b) be removed from the records; and ii) a letter of apology be sent to the Subject Member.

15 FUTURE OF LOCAL STANDARDS REGIME

At the Committee's meeting in July 2011, Members had discussed the future of the standards regime in light of proposals set out in the Localism Bill. To gauge opinion from Councillors on whether there was support for retaining a voluntary Code of Conduct and/or voluntary Standards Committee, the Chairman and Vice Chairman had undertaken to write to the Group Leaders on the Council to obtain their views.

The response received from the Conservative Group was appended to the agenda and in summary i) supported the retention of a voluntary Code of Conduct; ii) suggested that informal inquiries into complaints received be conducted by the political groups, with more serious complaints referred to a Sub-Committee of Audit and Governance Committee for determination; and iii) that the main point of contact remain the Monitoring Officer.

The Leader of the Labour Group was in attendance at the meeting and was invited to verbally report her Group's views. Councillor Flude began by stating that any opinions expressed on the standards regime could be influenced by a Member's personal experiences and she asked that this be borne in mind when considering representations. Notwithstanding her comments, the Labour Group supported the retention of a voluntary Code of Conduct and voluntary Standards Committee provided that the new framework was efficient, rigorous and was fair and equitable to the Complainant and Subject Member. Retention of Independent Members on the Standards Committee was also supported.

Councillor Parsons reported that the Independent Group had not discussed the matter and he was therefore unable to speak on behalf of the Group.

As Leader of the Liberal Democrats, Councillor Fletcher reported that there was acceptance that some form of structure needed to be in place to deal with complaints. Whilst the current system had its flaws, it would be unfortunate if it was lost completely.

It was the opinion of some Members that the current complaints system was open to abuse by individuals who could make false and vexatious claims with impunity. A voluntary Code of Conduct could only be supported if there was some form of redress available against such Complainants.

The Chairman sought to establish whether there was a consensus amongst Councillors for adopting a voluntary Code of Conduct but an agreement could not be reached. Whilst some Members strongly opposed the continuation of the standards regime in any form, those in support conceded that any new framework had to be simpler, quicker and more cost effective than at present. Given that the next item on the agenda attempted to address this point, the Chairman invited the Monitoring Officer to present her report.

16 STANDARDS REGIME AND LOCALISM BILL: DEALING WITH COMPLAINTS UNDER ANY VOLUNTARY CODE OF CONDUCT

In setting the context, the Monitoring Officer explained that the report sought to stimulate debate as to how the Council should move forward following the abolition of current standards practices. Members also noted that during passage of the Localism Bill through Parliament, the House of Lords had proposed a number of amendments which could eventually result in the retention of a mandatory Code of Conduct.

The Monitoring Officer first reminded Members of the procedures which were currently in place for determining complaints made under the Code of Conduct before moving on to describe a more streamline approach which presupposed the adoption of a voluntary Code of Conduct. Whilst the revised framework was not 'set in stone', it was important that any future Code or investigation process was robust, had the support of elected Members and gave confidence to Complainants and members of the public.

Members' initial thoughts about the proposal reflected the range of views expressed earlier in the meeting. To give free rein to the debate, the Chairman proposed that a meeting of the Standards Committee Issues and Ideas Working Group should be convened to enable Members to have a full and frank discussion about Standards issues. Given the shifting position in respect of the Localism Bill, it was suggested that the meeting should be held in October, following the Third Reading of the Bill.

RESOLVED: That a meeting of the Standards Committee Issues and Ideas Working Group be held on Tuesday 25th October at 10.00am, venue to be confirmed.

17 REGISTER OF MEMBERS' INTERESTS

The Monitoring Officer confirmed that each of the authority's 82 Councillors had now completed a Register of Interest form. In response to a question raised, it was noted that whilst forms had to be updated as and when a Member's personal circumstances changed, it was considered best practice for Members to be given the opportunity to refresh their entries at the beginning of each Municipal Year.

The meeting commenced at 2.00 pm and concluded at 3.30 pm

Mr N Briers

CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 21 November 2011

Report of: Borough Solicitor/Monitoring Officer

Subject/Title: Standards Regime and Localism Bill – Dealing with
Complaints under a Future Code of Conduct

1.0 Report Summary

- 1.1 In September, the Standards Committee considered what was then the current position regarding the future law on standards for local authority members. It also considered what arrangements might be put in place for the future. A presentation was given to the Standards Committee (followed by one for Members in general) outlining possible ways in which the future legal requirements in relation to Standards might be approached.
- 1.2 The emerging law under the Localism Bill has changed since September and is detailed within the report. This paper seeks to provide the latest position and further the debate on what type of procedures Members may wish to see in the future, noting that whatever is implemented will need to comply with the anticipated legislation.

2.0 Decision Requested

- 2.1 Members are asked to note the report and consider the way forward. This might include broadening the debate through the Issues and Ideas Working Group which was suggested in September (paragraph 11.1).

3.0 Reasons for Recommendation

- 3.1 To continue the debate on what type of procedures Members may wish to see in the future following the changes to the Standards Regime.

4.0 Wards Affected

- 4.1 All.

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 is likely to need to be reviewed in the light of the changes to the legislation.

7.0 Financial Implications

- 7.1 None identified but issues may emerge from the Committee's discussions.

8.0 Legal Implications

- 8.1 There has been no change to the original announcement that Standards for England will be abolished. However, contrary to earlier expectations that there would be no national model Code of Conduct or requirement to have a Standards Committee, the position has now changed following debate on the Localism Bill in the House of Lords. It is now clear that there will be a need to have a Code of Conduct which complies with the Nolan Principles although it does not seem that there will be a Model Code. Local Authorities will still have a duty to promote and maintain high standards of conduct by Elected Members and to have processes for dealing with complaints.
- 8.2 The legal position is further detailed within the report.

9.0 Risk Management

- 9.1 Thorough consideration by the Standards Committee, Members in general and ultimately full Council of the legal requirements and the way in which they are to be met, will mitigate the risk of having a non-compliant system.

10.0 Background and Options

10.1 Developing Legislation

- 10.1.1 In May 2010, the Coalition Government announced its intention as part of the wide-ranging Localism Bill to scrap the current Standards regime including the Code of Conduct and complaints system, and abolish Standards for England as a regulatory body. Since then, there has been substantial debate in Parliament surrounding the Standards regime as part of the process of developing the emerging legislation.

10.1.2 During a recent debate in the House of Lords at the Report stage of the Bill, some members of the House made it clear that they would press for some form of mandatory Code to be retained and this has transpired at Third Reading stage. The Bill has now passed through the full process in both Houses, and the Third Reading (the final stage in each House) took place in the Lords on 31 October. The Lords' final amendments were approved by the House of Commons on 7 November and it is expected that Royal Assent, the very final stage which makes a Bill into law (an Act of Parliament) will in the near future enact the refined Standards provisions agreed following the 31 October debate.

10.1.3 Broadly, the current future Standards provisions in the Bill, which are now expected to be enacted, are:

- All authorities will be required to have a Code of Conduct
- The Code must be in accordance with the Nolan Principles
- The Code must include a requirement for members to register and disclose pecuniary and non pecuniary interests
- Local authorities will have to put in place a system to deal with allegations that members have breached the Code
- A local authority must appoint an Independent Person through a transparent process and, where a local authority has investigated an allegation, it must seek the Independent Person's view before reaching a decision about the allegation. It must then have regard to that view
- A person against whom a complaint is made may also seek the views of the Independent Person. Debate in the Lords commented that: *'This will ensure that if a Councillor feels victimised or pressured by a member or members of the Council or the authority, he or she can have access to the Independent Person for a view.'*
- Parish Councils must have a Code, but may adopt their principal Council's Code (thereby satisfying the obligation to ensure it meets the above requirements)
- Principal Councils are to deal with allegations of breach in relation to Parish Councillors

10.1.4 It can be seen that the main changes to anticipated requirements involve the investigation process rather than necessarily the content of the Code itself. Although there is no obligation to do so, it would be possible for authorities, if they preferred to do so rather than attempt to draft a new Code, to retain the current Model Code of Conduct, as this would meet the new requirements. Indeed, Lord Tope, speaking in the Third Reading debate, commented that his expectation was that: *"the great majority of local authorities will simply keep the Code that they already have"*.

10.1.5 The Lords' debate also contained the following comment in relation to sanctions: *"In an investigation, where a complaint was dismissed, that would be the end of the matter. Where a complaint was upheld, a council would then have a number of options open to it under existing provisions. These are not there by amendment; they are existing provisions. In relatively minor cases, the council might conclude that a formal letter or other form of recording the matter was appropriate. Where a case involved a bigger breach of the rules, a council might conclude that formal censure-for example, through a motion on the floor of the council-was required. In more serious cases of misconduct, the council might go further and use its existing powers to remove the member from the committee or committees for a time. We believe that this approach provides effective and robust sanctions, ensuring that the high standards of conduct in public life can be maintained, while avoiding the unnecessary bureaucracy of the Standards Board regime."*

10.2 The Current Procedure on Receiving Complaints

10.2.1 In September, the Standards Committee considered the current procedure, which is set out below:

- 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.

10.2.2 The detailed process is set out at Annex A together with a series of flowcharts summarising the process at Annex B.

10.3 The Future for the Complaints Process

10.3.1 As noted above, in September, briefing sessions were held for Standards Committee and Members generally, to look at a possible new system for examining complaints. It was noted that it is very important that any Code and any process of investigation of complaints under a 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.

10.3.2 A brief overview of the suggested future process is set out in Annexes C and D 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

10.3.3 It is important to stress that this process (which suggested a very different process) was intended to act as a starting point to stimulate debate. Further debate will be necessary to develop the Council's future Code and complaints process, particularly in light of the subsequent changes to the anticipated legislation.

11.0 The Way Forward

11.1 In order to take the matter forward, it is suggested that the Issues and Ideas Working Group of the Committee be convened to consider, with contributions invited from Members generally, the following matters in addition to this report -

- Existing Model Code of Conduct
- Reports submitted to the Standards Committee on 26 September 2011: Future of Standards Regime plus Chairman's letter and Political Group's responses
- Dealing with Complaints under any Voluntary Code: Presentation by Monitoring Officer (appended to this report)
- Submissions received from elected Members on the future of Standards
- Streamline Procedure as outlined in the Monitoring Officer's presentation of 26/27 September 2011.

12.0 Access to Information

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

Name: Julie Openshaw
Designation: Legal Team Leader (Places) / Deputy Monitoring Officer
Tel No: 01270 685846
Email: julie.openshaw@cheshireeast.gov.uk

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

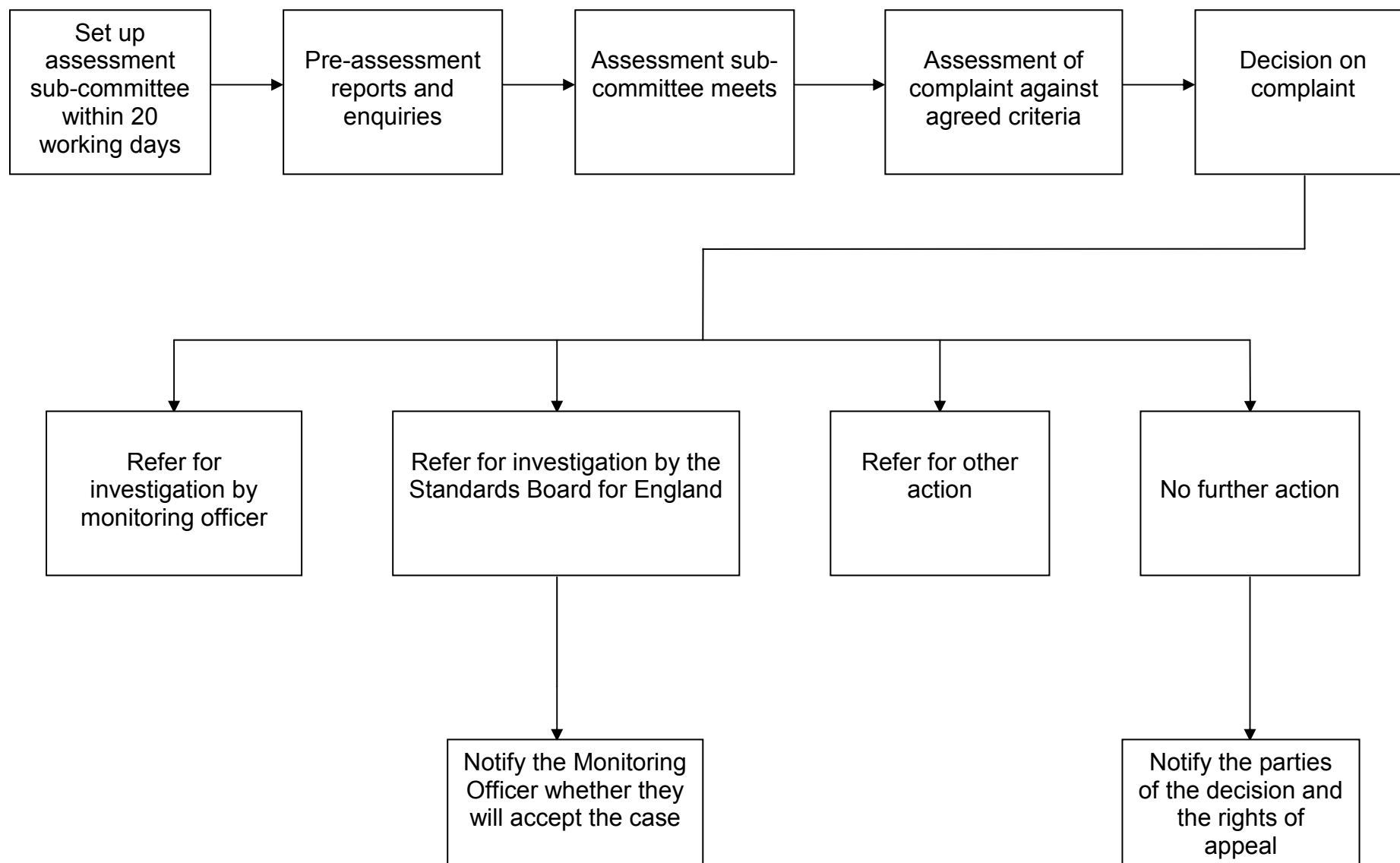
21. The decision should be announced at the end of the Hearing and a full written decision issued within 14 days. A summary of the decision should be published in the local newspaper and on the Council's website. However, if the Committee found that there had been no breach of the Code the Subject member 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.

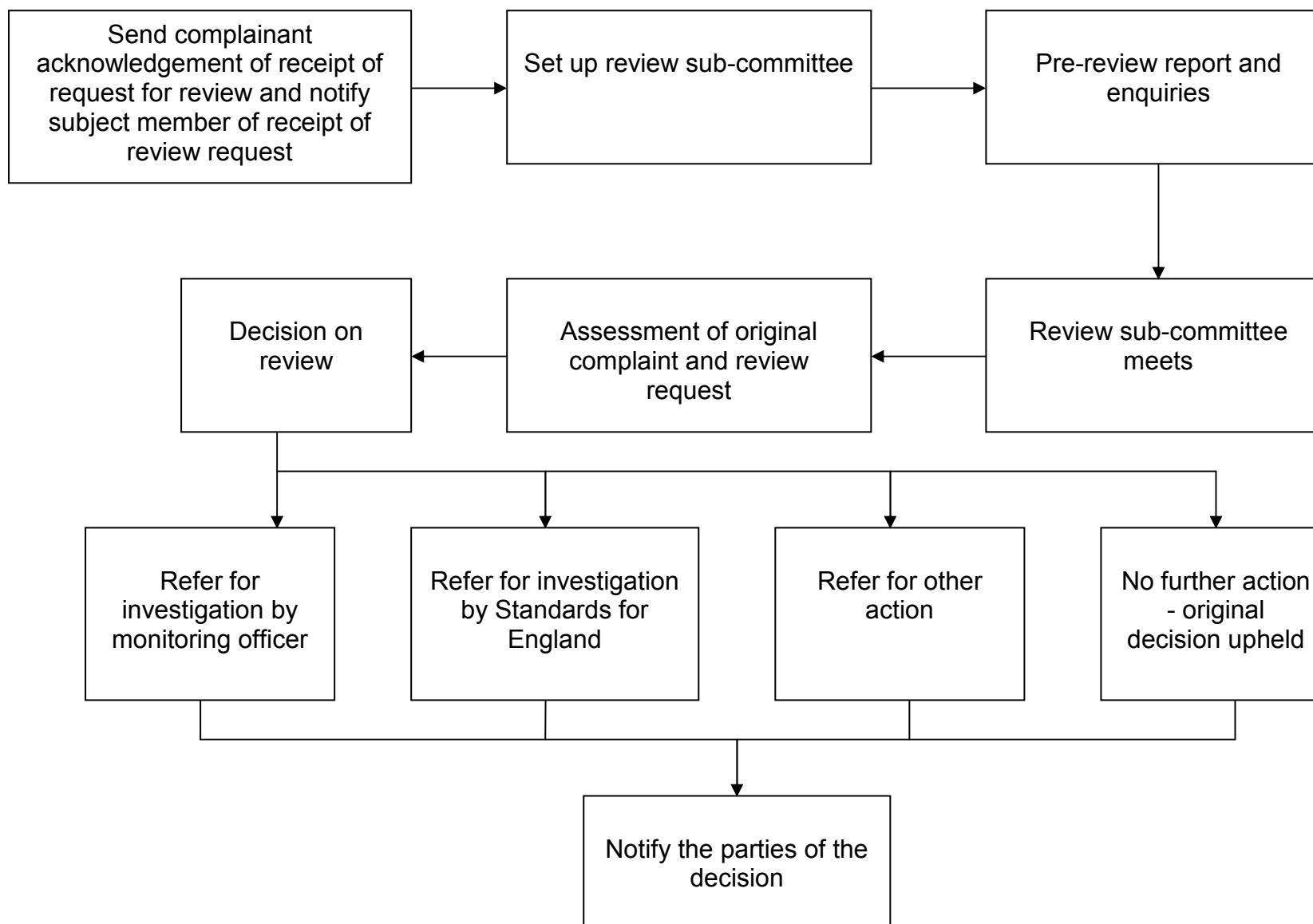
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Assessment Flowchart – Current Procedure



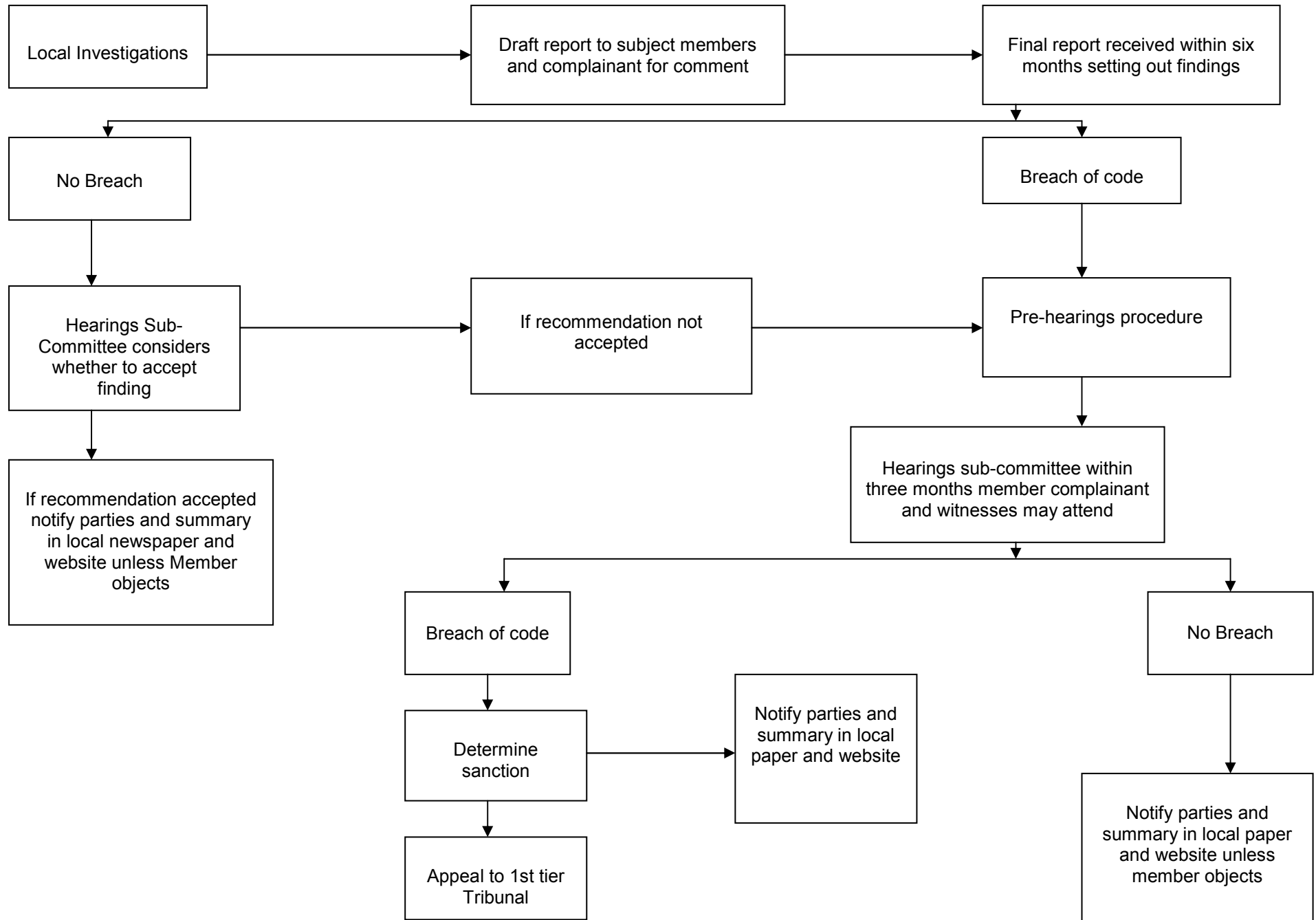
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Review Flowchart – Current Procedure



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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

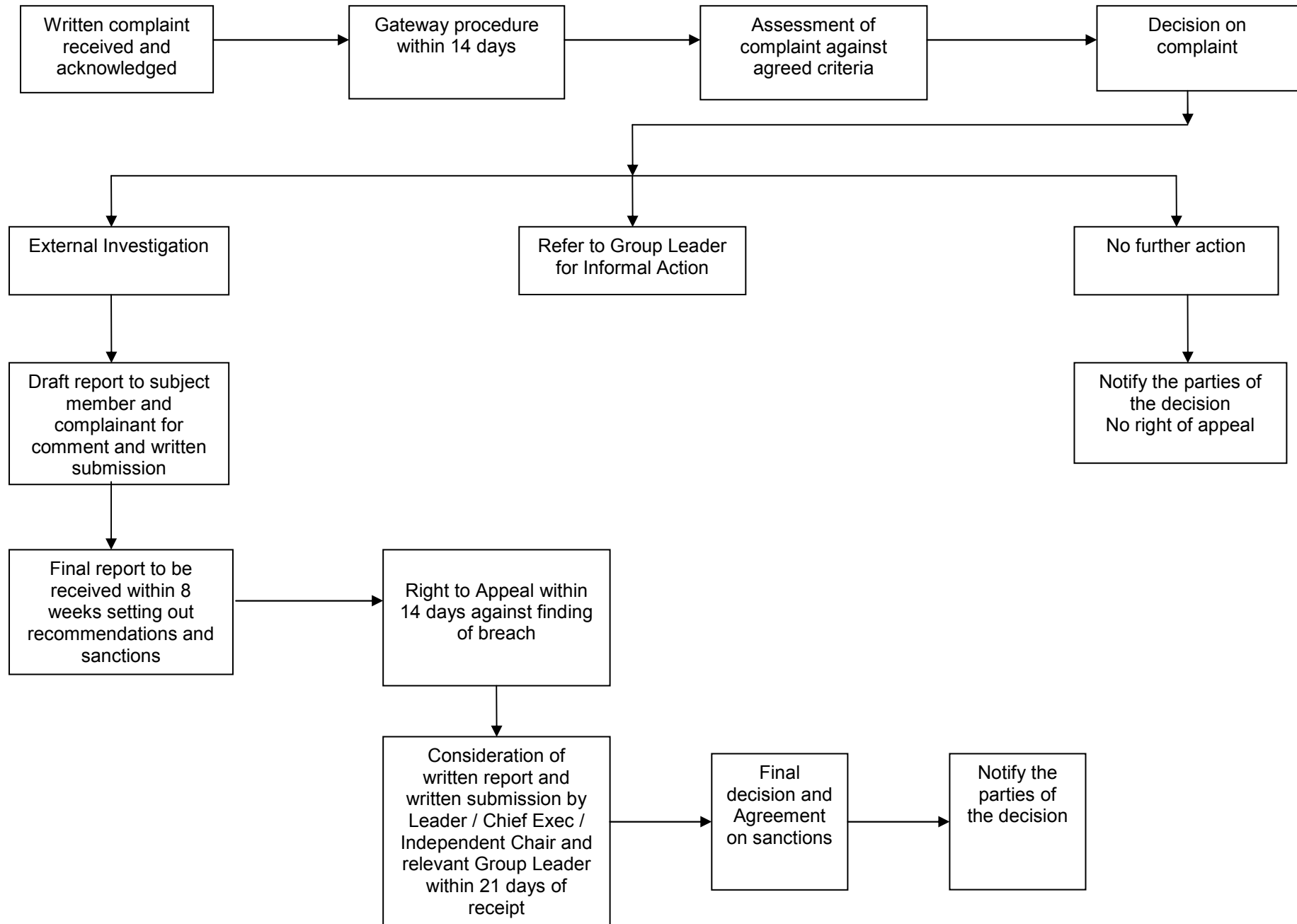
14. There will be no further right of appeal

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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CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting:	21 November 2011
Report of:	Borough Solicitor and Monitoring Officer
Subject/Title:	Appointment of Parish Council Member to Standards Committee

1.0 Report Summary

- 1.1 The report seeks to appoint a Parish Member to the current vacancy on the Standards Committee.

2.0 Decision Requested

- 2.1 That the Standards Committee recommends to Council that -

Councillor Barbara Lawton of Odd Rode Parish Council be appointed to Cheshire East Council Standards Committee as a Parish Member for the same term of office as existing Parish Members.

3.0 Reasons for Recommendation

- 3.1 To fill the vacancy created by the election of the former Parish Member Councillor Ken Edwards to Cheshire East Borough Council in May 2011.
- 3.2 To ensure that the Standards Committee complies with the relevant regulations.

4.0 Wards Affected

- 4.1 None

5.0 Local Ward Members

- 5.1 None

6.0 Policy Implications including - Carbon Reduction - Health

- 6.1 None identified

7.0 Financial Implications

- 7.1 As this appointment will bring the Committee up to its full compliment of members, any financial reimbursement claimed by the post holder in accordance with Paragraph 5.2 of Cheshire East Council's Scheme of Members' Allowances 2011/2012 will be within existing budgets.

8.0 Legal Implications

- 8.1 The Council is required to have at least 25% membership of the Committee who are Independents and also to have Parish Council representation on its Standards Committee. The appointment of a third Parish Member will ensure that the Council is fully compliant with the relevant legislation and that all the places on the Standards Committee are filled.

9.0 Risk Management

- 9.1 The recruitment of Independent and Parish Members manages the risk to the Committee and Council of failing to meet its legal obligations.

10.0 Background to Nomination

- 10.1 Cheshire East Council has set the composition of the Standards Committee as comprising of 5 Independent members, 3 Parish Council members and 8 Cheshire East elected Members forming a membership of 16 in total.
- 10.2 On 9 December 2008, a report was submitted to Council seeking the appointment of three Parish Members to the Standards Committee for a period of four years. The nominations which Council subsequently approved were -
- Councillor Teresa Maureen Eatough, Weston and Basford Parish Council
 - Councillor Patricia Margaret Barnett, Twemlow Parish Council
 - Councillor Kenneth John Edwards, Bollington Parish Council
- 10.3 In May 2011, elections to Cheshire East Council were held and Councillor Ken Edwards was elected to the authority. As a Borough Councillor, by law he could no longer serve as a Parish Member thus creating a vacancy on the Committee.
- 10.4 When the Standards Committee was first appointed in 2008, it had sought nominations to the positions of Parish Member from the Cheshire Association of Local Councils (ChALC). To ensure continuity, an approach was again made to ChALC to seek nominations in respect of the current vacancy.

- 10.5 A job description and person specification was forwarded to the Association to enable it to carry out the required process. Parish Councils were then invited to bring the matter to the attention of their members for them to be able to make a personal decision on whether to apply.
- 10.6 Following the consultation, ChALC received two applications which were put to a ballot. ChALC's recommended appointee is Councillor Barbara Lawton from Odd Rode Parish Council.

11.0 Access to Information

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

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