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## **STANDARDS PROCEDURE RULES**

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### **1.0 INTRODUCTION**

- 1.1 This procedure is only to be used for the assessment and investigation of complaints of alleged failures by Members to comply with the Council's Code of Conduct for Members.

### **2.0 MAKING A COMPLAINT**

- 2.1 Complaints should be made in writing to the Monitoring Officer.

### **3.0 INITIAL ASSESSMENT OF COMPLAINT**

- 3.1 On receipt of a complaint, the Monitoring Officer will notify the Subject Member that a complaint has been received (unless the Monitoring Officer considers that it would be contrary to the public interest or would prejudice the consideration of the complaint to do so).
- 3.2 The Monitoring Officer will make an initial assessment of the complaint within 20 working days of receipt of all relevant information to enable an initial assessment to be made. In making an initial assessment, the Monitoring Officer shall consult with an Independent Person, and inform the Group Leader.
- 3.3 Having carried out an initial assessment of a complaint, the Monitoring Officer will decide on one of the following courses of action:
- Decide to take no action
  - Decide that the Monitoring Officer shall resolve the complaint informally
  - Decide to refer the complaint for investigation

### **4.0 DECISION TO TAKE NO ACTION**

- 4.1 Where the Monitoring Officer decides to take no further action in respect of the complaint, the Complainant and the Subject Member shall be advised of that decision in writing. The Monitoring Officer may decide to take no action if for example, the Code of Conduct was not engaged (the Member was not acting as a Member at the time of the alleged breach of Conduct took place), or where the matter took place more than six months ago (except in exceptional circumstances), or where the allegations are anonymous, or the complaint appears to be malicious, vexatious, politically motivated, tit for tat, or is so minor, that there is

no overriding public benefit in carrying out an investigation. Also whilst framed as a code of conduct matter, a challenge to an expression of fact or opinion made during a debate at a council meeting is fundamentally a challenge to the underlying merits of a Council determination (e.g. a planning application). These are just some examples, but the list is not exhaustive. The Monitoring Officer in consultation with the Independent Person may decide that a complaint does not merit further consideration for any other reason which appears to them to be relevant.

## **5.0 PARISH COUNCIL MEMBERS**

- 5.1 If you are a Parish Council Member and the Subject Member (or one of them) is a Member of the same Parish Council, the Monitoring Officer may, in consultation with the Independent Person, refer the entire complaint to the Sussex Association of Local Councils (SALC) if appropriate. SALC will appoint a Panel to hear your complaint and decide whether it is sufficiently serious to be put through the procedure set out below or whether it should be settled in some other way within the Parish Council.
- 5.2 Where the Monitoring Officer has taken the decision that the complaint does not merit further consideration or is to be referred to SALC, if appropriate, for mediation/conciliation the Monitoring Officer will inform the Complainant of that decision and the reasons for that decision.
- 5.3 In the alternative, any formal complaints about the conduct of a Parish Council Member towards a clerk should be made by the chair or by the Parish Council as a whole, rather than the clerk in all but exceptional circumstances.

## **6.0 DECISION TO RESOLVE COMPLAINT INFORMALLY**

- 6.1 Where the Monitoring Officer decides to resolve the complaint informally, the Complainant and the Subject Member shall be advised of that decision in writing. In deciding to resolve the complaint informally, the Monitoring Officer may pursue any of the following courses of action:
- Provide further training and guidance to the Subject Member
  - Mediate between the Complainant and the Subject Member
  - Require the Subject Member to write a personal apology to the Complainant
  - Write an advisory letter to the Member
- or such other action agreed between the Monitoring Officer and the Independent Person.

- 6.2 If informal resolution is able to resolve the complaint, then no further action is required.
- 6.3 Where informal resolution does not resolve the complaint, the Monitoring Officer may, following consultation with the Independent Person, decide to refer the complaint for investigation.

## **7.0 DECISION TO INVESTIGATE COMPLAINT**

- 7.1 Where the Monitoring Officer decides to refer the complaint for investigation, the Complainant and the Subject Member shall be advised of that decision in writing. The Monitoring Officer shall also advise the Chairman of the Joint Governance Committee that a complaint has been referred for investigation.
- 7.2 Where the Monitoring Officer decides to refer the complaint for investigation, the Subject Member shall be provided with the details of an Independent Person should they require guidance on the process for investigation of the complaint. The Independent Person shall be a different Independent Person to the one that the Monitoring Officer has previously consulted with.
- 7.3 Within 14 days of deciding to refer the complaint for investigation, the Monitoring Officer shall appoint an Investigating Officer to investigate the complaint. The Investigating Officer may be an officer of the Council, an officer of another local authority, or an external person.

## **8.0 INVESTIGATION OF COMPLAINT**

- 8.1 The Investigating Officer shall be instructed to investigate the complaint and to report to the Monitoring Officer. The Investigating Officer shall carry out an investigation. The purpose of the investigation is to establish the facts of the case and to form a view on whether there has been a breach of the Members Code of Conduct.
- 8.2 The Complainant and the Subject Member shall cooperate fully with the Investigating Officer, including attending any meetings or interviews and providing all relevant information and documents to the Investigating Officer.
- 8.3 The Subject Member may be accompanied by a friend or an adviser when attending any meeting or interview as part of the investigation of the complaint.
- 8.4 The Investigating Officer may pursue any of the following actions as part of the investigation:

- Interviewing the Complainant
- Interviewing the Subject Member
- Interviewing other relevant witnesses
- Requesting copies of any documents relevant to the investigation

8.5 The Investigating Officer shall produce a draft report of their findings and send a copy to the Monitoring Officer, the Complainant and the Subject Member. The Investigating Officer shall allow 14 days for comments on the draft report and shall take any comments into consideration when producing the final report.

8.6 If during the course of the investigation, the Investigating Officer identifies other breaches of the Code of Conduct the Monitoring Officer shall be advised accordingly.

8.7 The Investigating Officer shall endeavour to complete the investigation within 2 months of appointment.

8.8 The Investigating Officer shall send a copy of the final report to the Monitoring Officer. The report shall include copies of any statements or documents obtained during the course of the investigation.

## **9.0 POST INVESTIGATION PROCEDURES**

9.1 Where the Investigating Officer concludes that there has not been a breach of the Code of Conduct, the Monitoring Officer shall take no further action and the Complainant and the Subject Member shall be advised of that decision in writing.

9.2 Where the Investigating Officer concludes that there has been a breach of the Code of Conduct, the Monitoring Officer shall refer the report to the Hearings Sub-Committee for consideration.

## **10.0 HEARINGS SUB-COMMITTEE**

10.1 Where a Hearings Sub-Committee is required the procedure for the hearing set out in the Appendix to this procedure shall apply.

10.2 The Hearings Sub-Committee shall have the power to decide whether or not to impose a sanction where there has been a finding of a breach of the Code of Conduct for Members.

10.3 The Hearings Sub-Committee may decide not to impose a sanction or it may impose one or more of the following sanctions:

- The Monitoring Officer to send a formal letter to the Subject Member.
- The Subject Member to make a public apology at Full Council. In the event of an apology not being made, the Subject Member may be censured at a meeting of the Full Council.
- The Monitoring Officer to provide further training and guidance to the Subject Councillor.
- The Subject Member to write a personal apology to the Complainant.
- A recommendation to the relevant Group Leader that the Subject Member should not sit on a particular Committee (or Sub-Committee or Working Group) for a period of time and for the relevant Group Leader to appoint a temporary replacement to the relevant Committee.

10.4 The Hearings Sub-Committee will have the benefit of any advice from the Independent Person.

## **Appendix**

### **Hearings Sub-Committee Procedure**

#### **1. Terms of Reference**

The Hearings Sub-Committee is responsible for considering reports of an Investigating Officer into complaints that there has been a breach of the Council's Code of Conduct. The hearing shall be conducted in public whenever possible, unless circumstances require the hearing to be in private, such as personal details, or not in the public interest.

#### **Membership**

A Hearings Sub-Committee shall consist of three District / Borough Councillors (wherever possible from different political groups). The Hearings Sub-Committee shall be advised by the Monitoring Officer, who will be accompanied by the Independent Person. The Independent Person will be present to give independent advice to the Monitoring Officer, or to the Sub-Committee.

#### **2. Procedure**

##### **Pre-hearing process**

The Monitoring Officer will liaise with Democratic Services to arrange for the Hearings Sub-Committee to meet to hear the complaint within three months of receiving the Investigating Officer's report. Sufficient notice will be given to all parties to the Sub-Committee hearing regarding the date fixed for the hearing.

The Monitoring Officer will require the Subject Member to give their response to the Investigating Officer's report as to what facts are agreed or facts likely to be in contention at the Hearings Sub-Committee.

If the Subject Member wishes to rely on evidence at the Hearings Sub-Committee, then that information should be provided to the Monitoring Officer, in writing.

The Hearings Sub-Committee will not allow new arguments or evidence to be presented at the hearing.

If there are two complaints that relate to the same Member or to the same incident/occasion, then the Monitoring Officer may decide for them to be considered together.

The Subject Member should be provided with the Investigating Officer's report and any evidence which will be heard at the hearing.

The Monitoring Officer should provide the Members of the Hearings Sub-Committee with a report that summarises the allegation. This should include a list of agreed facts, and disputed issues should be outlined.

## **The Hearings Sub-Committee**

The Hearings Sub-Committee will generally take place in public. If the Subject Member is a Parish Member, a Parish Member who is a Co-opted Member of the Joint Governance Committee will attend in an advisory capacity, in addition to the three voting Members of the Sub-Committee.

One of the Independent Persons will be invited to attend the hearing and will be asked to comment on whether there has been a breach of the Code of Conduct and on appropriate sanctions.

If the Subject Member does not attend the hearing, the Hearings Sub-Committee may adjourn the hearing or may continue to reach a decision on the basis of the Investigating Officer's report, and if it decides to do so, any evidence that it hears.

Whilst the Hearings Sub-Committee is a meeting of the Council, it is not a court of law. It does not hear evidence under oath. The rules of natural justice should nevertheless be carefully followed and the Hearings Sub-Committee will have due regard to the seriousness of the proceedings for those involved, the Council and the public, and will adhere at all times to the Equalities Act 2010.

The Hearings Sub-Committee will decide disputed issues and whether the Subject Member has breached the Code of Conduct on the "balance of probabilities".

## **Representation**

The Subject Member may choose to be represented, at their own cost. The Hearings Sub-Committee may refuse to allow any person to remain at the hearing if they are disruptive. The Hearings Sub-Committee will have the discretion to hear opening or closing arguments from the Subject Member and the Investigating Officer, if they feel this will assist them in reaching a decision.

## **Evidence**

The Hearings Sub-Committee will control the procedure and evidence presented at a hearing, including the number of witnesses and the way they are questioned. All matters relating to the evidence and procedure are within its discretion.

Generally, the Subject Member is entitled to present their case as they see fit.

Witnesses of facts that are disputed would normally be expected to attend to be questioned. Character witnesses, if appropriate, will provide written evidence which will be read at the hearing.

Witnesses may be questioned by the Hearings Sub-Committee, the Independent Person, the Investigating Officer and the Subject Member.

The onus is on the Subject Member to ensure the attendance of the witnesses whom they rely on to give evidence to assist them. The Hearings Sub-Committee can limit the number of witnesses or the issues which can be covered by them.

Neither the Hearings Sub-Committee nor the Subject Member will have any power to compel witnesses to give evidence.

## **Making Findings of Fact**

- The Chairperson introduces the Sub-Committee and any other persons present, including the Monitoring Officer, the Independent Person, the Investigating Officer and a Democratic Services Officer.
- The Subject Member introduces any person who is acting as their representative and any witnesses to be called on their behalf.
- The Chairperson shall explain the procedure that shall be followed.
- The Investigating Officer is invited to present their report and to call any witnesses.
- The Subject Member may ask questions of the Investigating Officer and/or any witnesses which are to be put through the Chairperson.
- The Members of the Sub-Committee may ask questions of the Investigating Officer.
- The Subject Member is invited to respond to the Investigating Officer's report and to call any witnesses.
- The Investigating Officer may ask questions of the Subject Member or any witnesses which are to be put through the Chairperson.
- The Members of the Sub-Committee may ask questions of the Subject Member.
- The Chairperson may request advice from the Monitoring Officer, and/or the Independent Person.

## **Decision**

- The Sub-Committee shall adjourn to consider whether there has been a breach of the Members Code of Conduct. The Sub-Committee may request the presence of the Democratic Services Officer during their deliberations. The Monitoring Officer may assist in settling out the reasons for their decisions.
- The Sub-Committee shall reconvene to deliver its decision verbally.
- If the Sub-Committee decides that there has been a breach of the Code of Conduct then the Sub-Committee shall consider whether a sanction should be imposed.

## **Sanctions**

- The Chairperson shall invite representations from the Investigating Officer as to whether a sanction should be imposed.
- The Chairperson shall invite representations from the Subject Member as to whether a sanction should be imposed.



- The Chairperson shall ask the Monitoring Officer if they wish to express an opinion as to whether a sanction should be imposed, and whether to comment on the appropriate sanctions.
- The Chairperson shall ask the Independent Person if they wish to express an opinion as to whether a sanction should be imposed, and whether to comment on the appropriate sanctions.
- The Sub-Committee shall adjourn to consider whether to impose a sanction.
- The Sub-Committee may request the presence of the Democratic Services Officer during their deliberations.

### **Sanctions- mitigating/aggravating circumstances**

- The Hearings Sub-Committee should consider all the mitigating and aggravating circumstances that appear to be relevant. For example, it may wish to consider:
  - What were the actual and potential consequences of the breach?
  - How serious was the breach?
  - What is the attitude of the Subject Member now? Have they apologised?
  - Has the Subject Member previously been dealt with for a breach of the Code of Conduct?
- The following are examples of mitigating and aggravating factors, (but these are not exhaustive):

#### **Mitigating Factors**

- An honest but mistaken belief that the action was not a breach of the Code of Conduct
- A previous record of good service
- Evidence that they were suffering from ill health at the time of the breach

#### **Aggravating Factors**

- Dishonesty
- Continuing to deny the factors or blaming other people
- Evidence of a failure to follow advice or warnings.

The priority of the Hearings Sub-Committee should be to ensure there are no further breaches of the Code of Conduct and that public confidence is maintained.

#### **The Decision**

- The Sub-Committee shall reconvene to deliver its decision in respect of a sanction verbally.
- The Chairperson will explain that written notice of the decision and the reasons for it shall be sent to all parties within 14 days of the date of the hearing, including the Parish Council, if the Subject Member is a Parish Council Member.

- The Chairperson will formally close the hearing.

## **Appeals**

There is no right of appeal for you as the Complainant, or for the Subject Member against a decision of the Monitoring Officer, or the Hearings Sub-Committee.

## **Withdrawal of a complaint**

In the event that a complainant withdraws a complaint at any time prior to a decision having been made by the Hearings Sub-Committee, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps to be taken in respect of that complaint but shall, in taking such decision take into account any issues which may arise under paragraph 2.1 of the Code of Conduct, particularly any intimidation.

## **Explanation of the roles**

### **Monitoring Officer**

The Monitoring Officer is a statutory role appointed by Council under s. 5 of the Local Government and Housing Act 1989, and in relation to the Code of Conduct for Members, is the responsible person. The Monitoring Officer is also responsible for the operation of the Council's Constitution. When a complaint is received, it is the Monitoring Officer's responsibility to check the form is completed correctly and will decide whether the complaint can move forward or not, in accordance with this Code of Conduct Complaints procedure.

References to the Monitoring Officer should be read to include any representative of the Monitoring Officer. The Monitoring Officer has a key role in ensuring the smooth running of the pre-hearing and hearing process; who will remain neutral throughout and will provide independent advice to the Hearings Sub-Committee.

### **Independent Person**

The Independent Person is a statutory role under s. 28 of the Localism Act 2011 and appointed by Council. The role of the Independent Person is to advise the Hearings Sub-Committee as to whether in their opinion there has been a breach of the Code of Conduct and whether, and what sanctions could be imposed. The Independent Person is consulted by the Monitoring Officer at the initial assessment stage of the complaint. Please note there will be a different Independent Person at the Hearings Sub-Committee. The role also includes giving advice to the Subject Member as to procedural points in the process.

### **Investigating Officer**

May be a Council Officer, an officer from another council or an external investigator. Following the initial assessment, the Monitoring Officer, may appoint an Investigating Officer to carry out an investigation into the

complaints made by the Complainant against the Subject Member in respect of misconduct by a Council Member.

### **Hearings Sub-Committee**

The role of the Hearings Sub-Committee is to hear the Code of Conduct complaints that have been referred to them by the Monitoring Officer, decide on whether or not there has been a breach of the Code of Conduct, and then decide on if and what sanction/sanctions should be imposed.

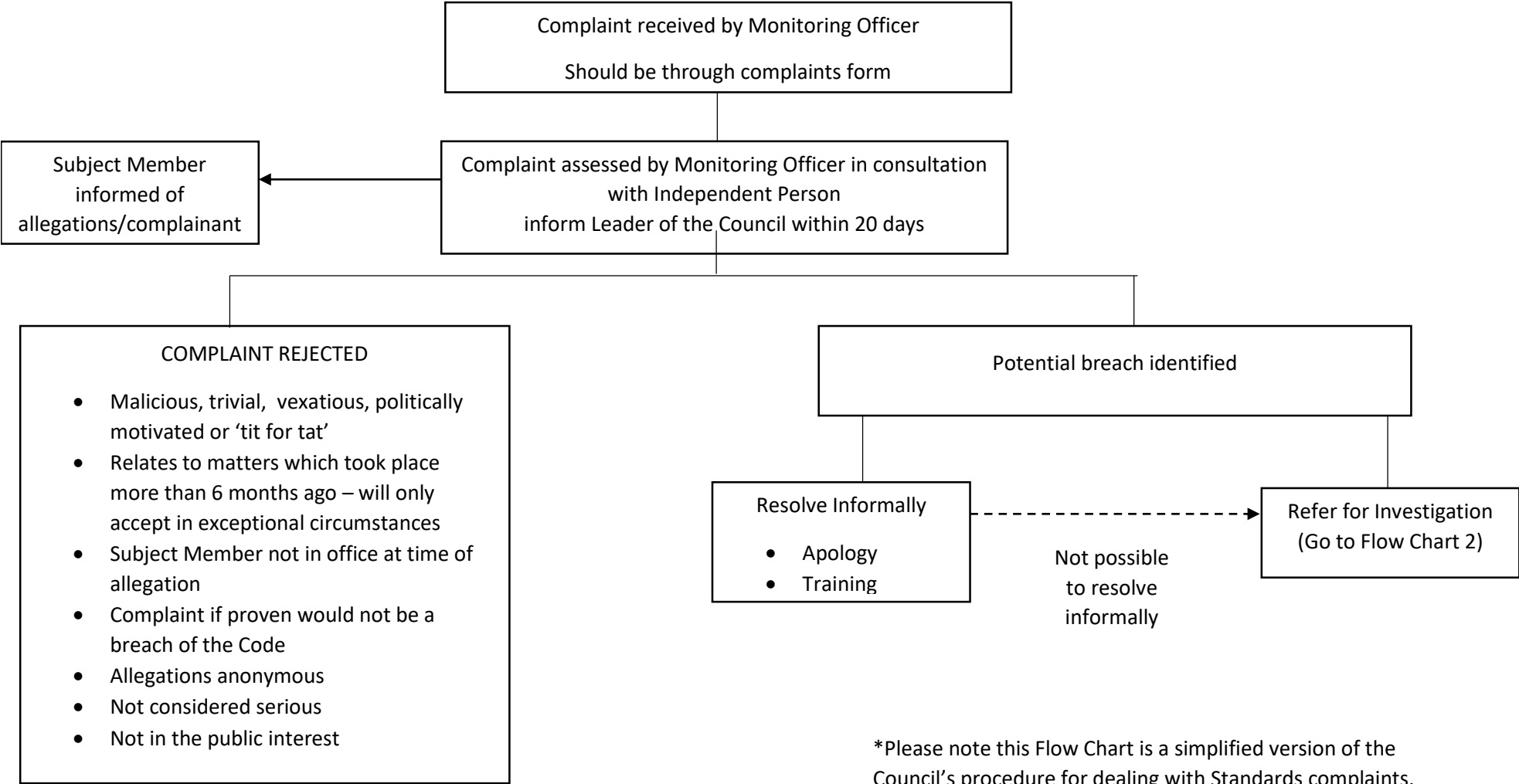
The Independent Person is invited to attend all meetings of the Hearings Sub-Committee and their views are sought and taken into consideration before a decision is made by the Hearings Sub-Committee as to whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of a failure to comply with the Code of Conduct.

### **Revisions of Arrangements for dealing with breaches of the Member Code of Conduct**

The Council may by resolution agree to amend the arrangements for dealing with breaches of the Member Code of Conduct and has delegated to the Monitoring Officer the right to depart from these arrangements where they consider it is expedient to do so in order to secure the effective and fair consideration of any matter.

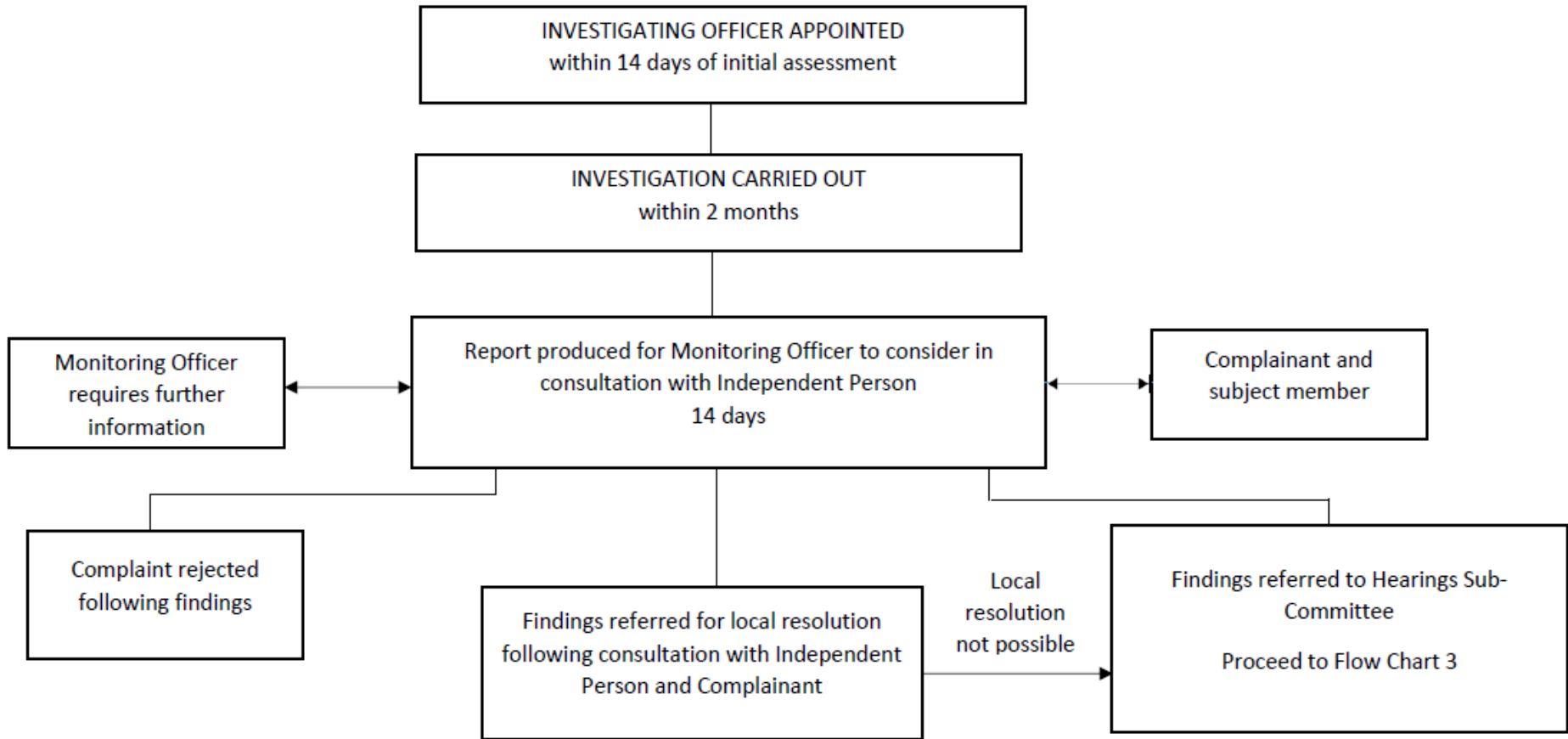
**See the flow charts for ease of reference and to show the time-lines**

**FLOW CHART FOR STANDARDS COMPLAINTS – 1. ASSESSMENTS\***



\*Please note this Flow Chart is a simplified version of the Council’s procedure for dealing with Standards complaints, the detail of which should be referred to where appropriate

**FLOW CHART FOR STANDARDS COMPLAINTS – 2. INVESTIGATION**



Adur subject member – Adur Hearings sub-committee  
 Worthing subject member – Worthing Hearings sub-committee

**FLOW CHART FOR STANDARDS COMPLAINTS – 3. HEARING**

