

Central
Bedfordshire
Council
Priory House
Monks Walk
Chicksands,
Shefford SG17 5TQ



**TO ALL MEMBERS OF THE
GENERAL PURPOSES COMMITTEE**

30 May 2012

Dear Councillor

GENERAL PURPOSES COMMITTEE – THURSDAY, 7 JUNE 2012

Further to the agenda and papers for the above meeting, previously circulated, please find attached the following report which was marked to follow:-

8. The Localism Act 2011 and Ethical Standards

To consider arrangements for the handling of complaints, including the appointment of independent persons.

Should you have any queries regarding the above please contact me.

Yours sincerely

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Committee Services Officer

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Meeting: General Purposes Committee
Date: 7 June 2012
Subject: The Localism Act 2011 and Ethical Standards
Report of: Head of Legal & Democratic Services
Summary: The purpose of this report is to ensure that the Council has in place the arrangements required in by Chapter 7 of the Localism Act 2011 in advance of the implementation of this part of the Act on 1 July 2012.

Advising Officer: John Atkinson, Head of Legal and Member Services
Contact Officer: Leslie Manning, Committee Services Officer
Public/Exempt: Public
Wards Affected: All
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

1. The effectiveness of the Council's governance arrangements contributes to the achievement of all the Council's priorities.

Financial:

2. The proposals in this report have no immediate financial implications. However, the arrangements adopted by the Council may have financial implications in due course. This is especially the case given that the Council is responsible for maintaining a register of interests for all 78 Town and Parish Councils in the District and for handling any complaints that may be made against parish councillors.

Legal:

3. The proposals contained in this report comply with the requirements in relation to Standards contained in the Localism Act 2011.

Risk Management:

4. The main operational risks concern the responsibility for supervising the arrangements for ethical standards adopted by parish councils. This is likely to impose a considerable burden on the Council's Monitoring Officer and staff in the Legal and Democratic Services Team.

Staffing (including Trades Unions):

5. Not Applicable.

Equalities/Human Rights:

6. The Code of Conduct adopted by the Council recognises the Council's responsibilities in relation to Equalities and Human Rights.

Public Health

7. Not applicable

Community Safety:

8. Not Applicable.

Sustainability:

9. Not Applicable.

Procurement:

10. Not applicable.

RECOMMENDATION(S):

The Committee is asked to:

1. **approve the arrangements for handling complaints set out in Appendix A to the report, including deciding whether the Standards Sub-Committee should be consulted before an investigation takes place and on the measures that are available to the Sub-Committee following a hearing;**
2. **appoint members to serve on a panel from which Standards Sub-Committees to be appointed by the Monitoring Officer as and when required;**
3. **approve the proposal to collaborate with Bedford, Luton and Milton Keynes Councils to appoint a joint panel of independent persons and to nominate one member of the Committee to take part in the selection process on behalf of the Council, together with a substitute in case the nominated member is unavailable;**
4. **recommend to the Council that provisions be included in the Council's Procedure Rules governing the business of the Council, the Executive and all Committees and Sub-Committees requiring (as now) that:**
 - (a) **any Member who has a interest in an item of business on the agenda of the body concerned and is present at a meeting must declare the interest; and**
 - (b) **where the interest constitutes a "disclosable pecuniary interest" must withdraw from the meeting during the consideration of that item of business.**

Background

11. The Committee received a report on the requirements of the Localism Act 2011 at its last meeting. Subsequently, at the Annual Meeting on 19 April 2012, the full Council agreed the Committee's recommendation to adopt the draft Code of Conduct developed by the Ethical Standards Task Force. The new Code of Conduct will come into effect on 1 July 2012.
12. There are a number of other steps that the Council must take before 1 July to ensure that it is ready for the implementation of the relevant provisions of the Localism Act from that date. The Council delegated responsibility for taking these decisions to the General Purposes Committee.
13. The following arrangements must be put in place by 1 July 2012:
 - Procedures for investigating and making decisions about complaints, including identifying any sanctions that may be imposed.
 - Appointing independent persons whose views can (and in some circumstances must) be sought about complaints relating to the Code of Conduct.
 - Establishing a register of interests relating to Members and Co-opted Members of this Authority and Members of Town and Parish Councils in the District.

Arrangements for Handling Complaints

14. Appendix A sets out some draft arrangements for handling complaints relating to Members' conduct. Appendix B is a flowchart of the process. The Committee is asked to consider whether these arrangements should form the basis on which complaints are handled from 1 July 2012. In particular, the Committee is asked to consider the following aspects:
 - (a) Whether, and if so, to what extent Members should be involved in the assessment of complaints. In particular, should the Standards Sub-Committee be consulted before the Monitoring Officer decides to investigate a complaint?
 - (b) What measures should be available to the Standards Sub-Committee following a hearing? These are set out in paragraph 11 of Appendix A.

Appointment of Standards Sub-Committees

15. The complaints procedure in Appendix A envisages for investigations to be authorised and for hearings to be conducted by a Standards Sub-Committee. The Committee is asked to appoint a panel of members from amongst the Committee's membership from whom Sub-Committee can be appointed to handle complaints as and when required. It is suggested that a Sub-Committee should comprise three members of the panel and that the Monitoring Officer should be authorised to make the appointments. We will need at least 6 people on the panel to allow for the appointment of a Hearing Sub-Committee and three different members to form a Review Sub-Committee.
16. The normal rules will apply to meetings of the Sub-Committee. Thus, co-opted members will have no right to vote. There is no automatic requirement for a town or parish council representative to take part when the Sub-Committee considers complaints about town or parish councillors.

Appointment of Independent Persons

17. The drafting of the Localism Act 2011 means that existing independent members of this Council's Standards Committee are ineligible to serve as independent persons in the new arrangements. It is possible that the government will relax this restriction for a transitional period but the Council will need to put in place arrangements to appoint independent Persons before the relevant provisions come into force on 1 July 2012.
18. The role of the independent person is to provide an external perspective on complaints. The independent person's views must be sought and taken into account before any decision is made on a complaint that the Council has decided to investigate. He/she can also be consulted by a member whose behaviour is the subject of an allegation.
19. The Ethical Standards Task Force suggested that the Council should appoint three independent persons.
20. The Monitoring Officers of Central Bedfordshire, Bedford, Luton and Milton Keynes Councils have met to consider the requirements of the Localism Act and how the four councils might collaborate in preparing for the Act's implementation. As a result of those discussions, it is proposed that the four councils should appoint a joint panel of at least eight independent persons who will be available to undertake this role for any of the authorities. The combined fire authorities for Bedfordshire and Buckinghamshire are also interested in taking part in this initiative.
21. If the concept of a joint panel of independent persons is adopted, we will need to agree between the six authorities what level of allowance will be paid to the independent persons and how the costs will be shared.

22. A job description for this new role is currently being prepared by the Monitoring Officer of Milton Keynes Council with a view to an advertisement appearing in June. If the Committee agrees to this joint approach, it is invited to nominate a member to be involved in the selection process. It may also be prudent to nominate a substitute should the nominated member be unavailable for any reason.

Register of Interests

23. Under the Localism Act, the Council's Monitoring Officer is required to establish and maintain a register of members' interests. The Monitoring Officer is also responsible for establishing and maintaining a register of interests for all parish councils in the District. The Act re-introduces the concept of pecuniary interests and the Act provides that "disclosable pecuniary interests" will be prescribed in regulations. These regulations have not yet been published, so it is difficult for the Council to make any progress towards establishing a register at this time.
24. Apart from "disclosable pecuniary interests", the Council can decide what other interests should be registered. In this respect, it may make sense to establish a list of "personal interests" which Members must disclose in the register, but which do not disqualify them from participating when items of business that relate to those interests are under discussion.
25. Members cannot participate in any discussion relating to an item of business in which they have a "disclosable pecuniary interest" and, if the Council's standing orders so provide, Members can be excluded from a meeting during the consideration of that item. However, it seems that once they have disclosed this interest to the Monitoring Officer, the Act imposes no requirement on members to declare the interest formally at a meeting when the item is under discussion. This aspect may also need to be covered in the Council's standing orders.
26. The Register of Interests for Central Bedfordshire Council and all the parish councils in the District must be published on this Council's website.
27. The Government has yet to publish the regulations prescribing what are to be "disclosable pecuniary interests", though they are apparently in the process of consulting certain bodies on the draft regulations. It is understood that the proposals contain definitions that are similar to the existing descriptions.

Town and Parish Councils

28. A modified version of the Code of Conduct adopted by this Council on 19 April has been distributed to all Town and Parish Council Clerks for consideration by their Councils at the Councils' Annual Meetings. A number of Town and Parish Councils have decided to adopt the Central Bedfordshire Code of Conduct, though the National Association of Local Councils has now issued its own model Code of Conduct.
29. Once the Regulations relating to the Register of Interests are available, we will need to arrange for Town Parish Councils to produce provide declarations form their members for registration and publication on the Council's website.

Conclusion and Next Steps

30. The Committee is asked to consider the proposals set out in this report and agree the recommendations proposed at the beginning of the report in order that the Council is ready (subject to the enactment of regulations relating to the Register of Interests) to implement the provisions contained in Chapter 7 of the Localism Act 2011 when these come into force on 1 July 2012.

Appendices:

Appendix A – Draft Arrangements for Handling Complaints

Appendix B – Complaints Procedure Flowchart

Background Papers: (open to public inspection)

None

CENTRAL BEDFORDSHIRE COUNCIL

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011

1 Context

These “Arrangements” are made in accordance with section 28 (6) and (7) of the Localism Act 2011. They set out how to make a complaint that an elected or co-opted member of this Council or of a parish council within its area has failed to comply with the relevant authority’s Code of Conduct. They also set out how the Council will deal with any complaints about such failures.

2 The Code of Conduct

Central Bedfordshire Council has adopted a Code of Conduct for members, and this Code is available for inspection on the Council’s website or on request from the Monitoring Officer at Priory House, Chicksands.

Each town and parish council in the area is also required to adopt a Code of Conduct. Copies of these Codes are available on the relevant council’s website or on request from the town or parish clerk.

3 The Independent Person

The Council is required to appoint at least one independent person. The Council must consult an independent person and take his/her views into account before making a decision on a complaint that it has decided to investigate.

The independent person may be consulted by the Council at various stages in the complaints process and can also be consulted by a member who is the subject of a complaint.

4 Making a complaint

A complaint that a Member of Central Bedfordshire Council or of a town or parish council in the District has failed to observe the Council’s Code of conduct should be submitted to:

The Monitoring Officer
Central Bedfordshire Council
Priory House
Monks Walk
Chicksands
Shefford
Bedfordshire
SG17 5TQ

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the arrangements for complaints about member misconduct.

In order to ensure that the Monitoring Officer has all the information needed to process complaints, they should be submitted using the model complaint form. The complaint form can be downloaded from the Council's website. A copy of the form is also available on request from the Monitoring Officer.

Complainants must provide their name, postal address and, where possible, their email address. The Council will not normally investigate an anonymous complaint, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will keep complainants informed about the progress of their complaint.

5 Initial Assessment

The Monitoring Officer will assess every complaint received and, after consultation with the Independent Person, will take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of a complaint.

Where the Monitoring Officer requires additional information in order to come to a decision, he/she may ask the complainant to provide further information, and may also request information from the member against whom the complaint is directed.

Where the complaint relates to a parish councillor, the Monitoring Officer may also inform the Parish Council about the complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

6 Informal Resolution

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other appropriate remedial action. Where the member or the authority makes a reasonable offer of informal resolution, but the complainant is unwilling to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

7 Investigation

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator.

The Investigating Officer will decide whether he/she needs to meet or speak to the complainant to understand the nature of the complaint, to obtain an understanding of events, to identify what documents the Investigating Officer needs to see and who the Investigating Officer needs to interview.

The Investigating Officer will normally contact the member against whom the complaint has been made to provide him/her with a copy of the complaint and to obtain the member's explanation of events. The member will be invited to identify what documents the Investigating Officer needs to see and who he/she needs to interview.

In exceptional cases, where it is appropriate to keep the complainant's identity confidential or where disclosure of the details of the complaint to the member might prejudice the investigation, the Monitoring Officer may redact the complainant's name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the member concerned, to give them both an opportunity to identify any matter in the report with which they disagree or which requires more consideration.

Having received and taken account of any comments which made on the draft report, the Investigating Officer will submit his/her final report to the Monitoring Officer.

The Monitoring Officer will review the Investigating Officer's report and will decide what action to take. There are three possible courses of action:

- **No action**
- **Local Resolution**
- **Hearing**

8 No Action

If the Investigating Officer concludes that there has been no breach and the Monitoring Officer is satisfied that this conclusion is sound, then he/she may decide that no further action should be taken in relation to the complaint.

9 Local Resolution

If the Investigating Officer concludes that there has been a breach of the Council's Code of Conduct, the Monitoring Officer may, after consulting the Independent Person, seek a local resolution of the complaint.

A local resolution may include the member accepting that his/her conduct was unacceptable and offering an apology and/or other remedial action by the Council.

If the member and the complainant agree to accept the suggested resolution, the Monitoring Officer will report the matter to the Standards Sub-Committee (and the Parish Council) for information, but will take no further action. However, if either the complainant or the member informs the Monitoring Officer that the suggested resolution is not acceptable, then the Monitoring Officer will refer the matter to the Standards Sub-Committee for a hearing.

10 Hearings

If the Monitoring Officer considers that local resolution is not appropriate, or if either the complainant or the Member are not willing to co-operate with the proposal for local resolution, then the Monitoring Officer will submit the Investigating Officer's report to the Standards Sub-Committee which will conduct a hearing into the complaint before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the matter.

The Council has agreed a procedure for hearings, which is attached as Appendix B to these arrangements.

Following the hearing, the Standards Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so will dismiss the complaint.

If the Standards Sub-Committee concludes that the member has failed to comply with the Code of Conduct, the Chair will inform the member of this finding and the Sub-Committee will then consider what action, if any, should be taken as a result of the member's failure to comply with the Code.

Before reaching a decision, the Hearings Panel will give the member an opportunity to make representations and will consult the Independent Person.

11 Sanctions

The Council has delegated to the Standards Sub-Committee authority to take such action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may –

- 11.1 Censure the member.
- 11.2 Publish its findings in respect of the member's conduct;
- 11.3 Report its findings to the Council (or to the Parish Council) for information;
- 11.4 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;

The Standards Sub-Committee has no power to suspend or disqualify the member or to withdraw any special responsibility allowances to which the member may be entitled under the Council's Members' Allowances Scheme.

The Independent Person is invited to attend all meetings of the Standards Sub-Committee and his/her views will be sought and taken into consideration before the Sub-Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and also as to any action to be taken following a finding of failure to comply with the Code of Conduct.

12 Reviews

If either the complainant or the member against whom a complaint has been made is dissatisfied with the outcome, they may ask for the decision to be reviewed. A review will be undertaken by the Standards Appeals Sub-Committee made up of members who have not previously been involved in the consideration of the complaint.

13 Revision of these arrangements

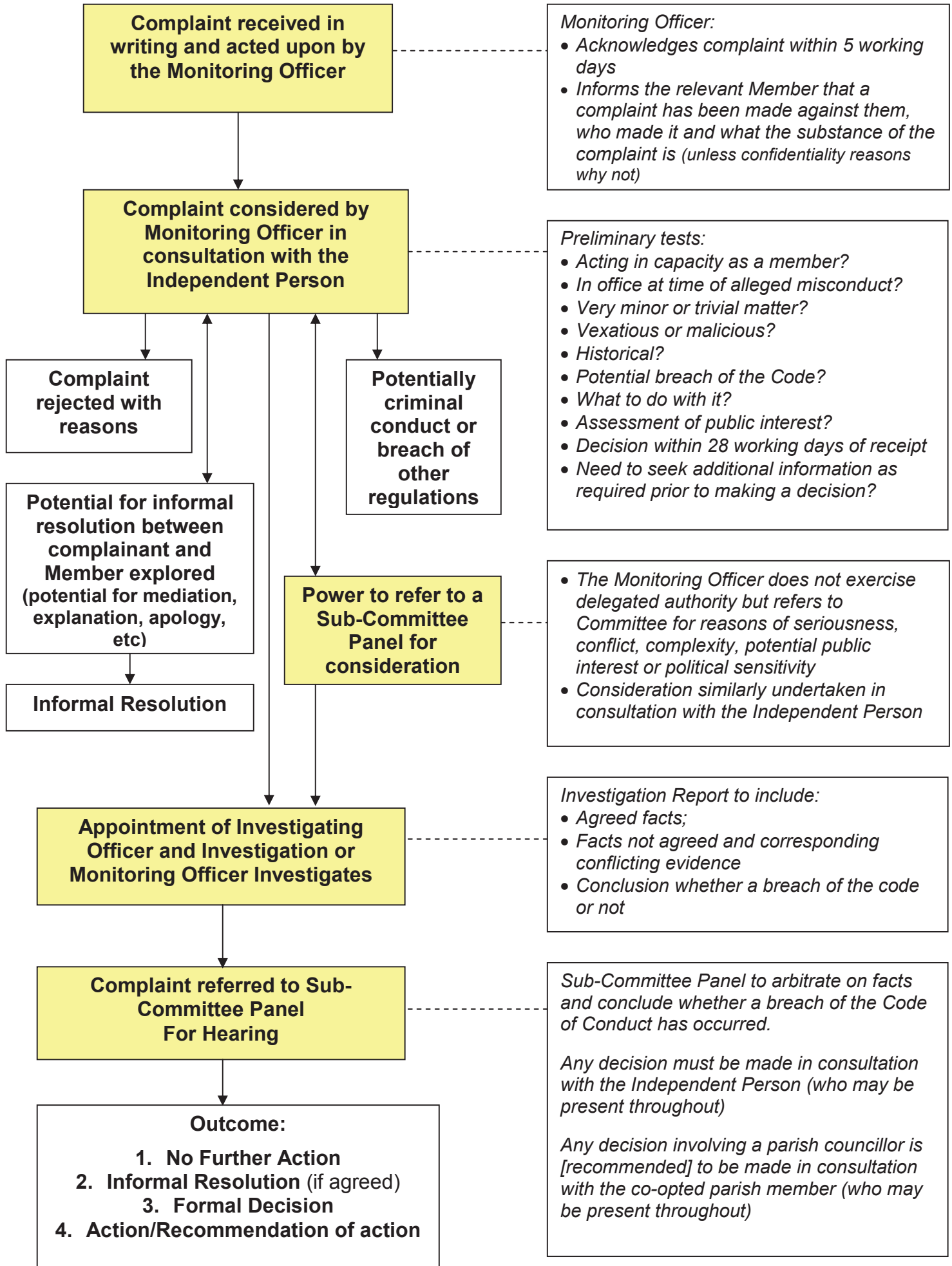
The Council has delegated its responsibilities under Chapter 7 of the Localism Act 2011 to the General Purposes Committee and the General Purposes Committee may therefore decide to amend these arrangements.

Appendix A Central Bedfordshire Council's Code of Conduct

Appendix B Procedure for Hearings

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Complaints Procedure Flowchart



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