



Standards Committee 13 June 2012

New Standards Regime

1. Purpose of Report

- 1.1 This report responds to the provisions in the Localism Act with regard to standards and proposes recommendations for consideration by the Committee, which will then proceed to full Council on 19 June 2012.
- 1.2 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes is 1 July 2012.

2. Standards Committee

- 2.1 The authority remains under a statutory duty to promote and maintain high standards of conduct for its Members.
- 2.2 The Act repeals Section 53 of the Local Government Act 2000, meaning that there is no statutory requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so it is proposed to retain for the time being a Standards Committee comprising the existing Borough Council members, but with a view to joint arrangements being entered into with Forest Heath District Council.
- 2.3 The current co-opted independent members will cease to hold office. The Act establishes a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as Independent Persons for 5 years.
- 2.4 The Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils, but the current Parish Council representatives cease to hold office.
- 2.5 **It is therefore RECOMMENDED that, subject to the approval of full Council, :-**

- (1) **the Council establish a Standards Committee comprising the three current elected members of the Council; and**
- (2) **the Monitoring Officer be authorised to work with her counterpart at Forest Heath District Council towards the establishment of a Joint Standards Committee and to report back to full Council on 27 September 2012.**

3. The Code of Conduct

3.1 The Council is required to adopt a new Code of Conduct governing elected and co-opted Members' conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles:-

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

3.2 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. The Suffolk Monitoring Officers considered that one Code for the whole county would be desirable to avoid confusion among twin- and triple-hatted members. Attached at Appendix A is a draft Code which it is proposed will be adopted by all the Suffolk authorities. Parish Councils will also be encouraged to adopt it.

3.3 Regulations to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), broadly equating to the current prejudicial interests. However, it is important for Members to note that contraventions of the provisions of the Act that relate to DPIs will now be a **criminal offence**, not just a Code of Conduct matter. The provisions of the Act also require an authority's Code to contain "appropriate" requirements for the registration (and disclosure) not just of DPIs but of other types of interest, known as Local Non-Pecuniary Interests. At the time of writing the regulations have been issued in draft only so it is not possible yet to draft Code provisions which reflect the final definition of DPIs.

3.4 The Act prohibits Members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room.

3.5 It is therefore RECOMMENDED that, subject to the approval of full Council, :-

- (3) the draft Code of Conduct, attached as Appendix A to Report D32, be approved for adoption;**
- (4) when the Disclosable Pecuniary Interests (DPIs) Regulations are published, the Monitoring Officer, after consultation with the Chairman of the Standards Committee and the Independent Person, be authorised to add to that draft Code provisions which she considers to be appropriate for the registration and disclosure of interests other than DPIs to be known as Local Non-Pecuniary Interests; and**
- (5) the Monitoring Officer, in consultation with the Chairman of the Standards Committee, be given delegated authority to make any**

minor typographical, grammatical or factual amendments to the Code.

4. Action in response to a Hearing finding of failure to comply with Code

4.1 The Act does not give the Council or its Standards Committee any powers to impose on Members sanctions such as suspension or requirements for training or an apology. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the Member is limited and might include the following:-

- (i) reporting its findings to Council *[or to the Parish Council]* for information;
- (ii) recommending to the Member's Group Leader (or in the case of un-grouped Members, to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- (iii) recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (iv) instructing the Monitoring Officer to *[or recommending that the Parish Council]* arrange training for the Member;
- (v) removing *[or recommending to the Parish Council that the Member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
- (vi) withdrawing *[or recommending to the Parish Council that it withdraws]* facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- (vii) excluding *[or recommending that the Parish Council exclude]* the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

4.2 It should be noted that, in respect of Parish Councils, the Localism Act gives the Standards Committee no power to do any more in respect of a Member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the Member. Parish Councils will be under no obligation to accept any such recommendation.

4.3 A chart showing the proposed procedure for dealing with complaints of breach of the Code of Conduct is attached as Appendix B.

4.4 It is therefore RECOMMENDED that, subject to the approval of full Council,:-

- (6) the procedure for dealing with complaints, set out at Appendix B to Report D32, be adopted;**
- (7) the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;**

- (8) the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation or not, and if so, to arrange such investigation and be authorised to refer complaints to political group leaders and to seek resolution of complaints without formal investigation wherever practicable, and to report to Standards Committee on the discharge of this function;
- (9) where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be authorised to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the Member concerned, and to the Independent Person, and report the findings to the Standards Committee for information;
- (10) where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer be authorised to consult with the Independent Person on the appropriate sanction to be recommended to the Standards Committee ;
- (11) the Standards Committee be authorised to take decisions on the action to be taken in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include:-
- (i) reporting its findings to Council *[or to the Parish Council]* for information;
 - (ii) recommending to the Member's Group Leader (or in the case of un-grouped Members, to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - (iii) recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - (iv) instructing the Monitoring Officer to *[or recommending that the Parish Council]* arrange training for the Member;
 - (v) removing *[or recommending to the Parish Council that the Member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
 - (vi) withdrawing *[or recommending to the Parish Council that it withdraws]* facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or

- (vii) **excluding [or recommending that the Parish Council exclude] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.**

5. Independent Person(s)

5.1 The "arrangements" adopted by Council must include provision for the appointment by the Council of at least one Independent Person.

5.2 "Independence"

5.2.1 The Independent Person must be appointed through a process of public advertisement and application.

5.2.2 A person is considered **not** to be "independent" if:-

- (i) he/she is, or has been within the last 5 years, an elected or co-opted Member or an officer of the District Council or of any of the Parish Councils within its area; or
- (ii) he/she is a relative or close friend of a current elected or co-opted Member or officer of the District Council or any Parish Council within its area, or of any elected or co-opted Member of any Committee or Sub-Committee of such Council.

5.3 Functions of the Independent Person

5.3.1 The functions of the Independent Person(s) are that:-

- (i) they **must** be consulted by the authority before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member;
- (ii) they **may** be consulted by the authority in respect of a standards complaint at any other stage; and
- (iii) they **may** be consulted by a Member or co-opted Member of the District Council or of a Parish Council against whom a complaint has been made.

5.3.2 It would be inappropriate for an Independent Person who has been consulted by the Member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint. The Act gives discretion to appoint more than one Independent Person, but provides that **each** Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person.

5.3.3 The Suffolk local authorities have collaborated in a joint recruitment process. The intention is to select eight Independent Persons, each of whom will be appointed by one of the participating councils. The recruitment process will not be completed until 3 July 2012 but it is a statutory requirement that Members approve his/her appointment. Therefore, Council on 27 September 2012 will be asked to do this and in the meantime it is proposed that we take advantage of transitional provisions to appoint an existing member of the Standards Committee to be the Council's Independent Person for the interim period from 1 July to 27 September 2012.

5.4 **Remuneration**

5.4.1 As the Independent Person is not a Member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of Members' Allowances, and can therefore be determined without reference to the Independent Remuneration Panel. It is proposed that the remuneration for Independent Persons be consistent across the County and comprise an annual allowance of £300 to £500, and a fee of £30 to £50 for each case he or she considers.

5.5 **It is therefore RECOMMENDED that, subject to the approval of Council,:-**

(12) a nominated member of the current Standards Committee be appointed as the Independent Person; and

(13) the Independent Person receive an annual allowance of £300 and a fee of £30 for each case considered.

6. **The Register of Members' Interests**

6.1 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the District Council offices and on the District Council's website, as well as on the Parish Council's website, if it has one.

6.2 As stated above, only draft regulations have been issued, but it appears that DPIs are to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the Member's own interests, but also those of the Member's spouse or civil partner, or someone living with the Member in a similar capacity.

6.3 Each elected or co-opted Member must register all DPIs within 28 days of becoming a Member. Failure to register is made a criminal offence. There is no continuing requirement for a Member to keep the register up to date, except on re-election or re-appointment, but if Members register new interests from time to time they will avoid the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

6.4 It is therefore RECOMMENDED that, subject to the approval of full Council,:-

(14) the Monitoring Officer be authorised to prepare and maintain a new Register of Members Interests to comply with the requirements of the Act, and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act; and

(15) prepare and maintain new Registers of Members' Interests for each Parish Council to comply with the Act, and any Code of Conduct adopted by each Parish Council, and ensure that it is available for inspection as required by the Act.

7. Disclosure of Interests and Withdrawal from Meetings

7.1 The duty to disclose and withdraw arises whenever a Member attends any meeting of Council, a committee or sub-committee, or of Cabinet or a Cabinet committee, and is aware that he/she has a DPI in any matter being considered at the meeting.

7.2 Where these conditions are met, the Member must disclose the interest to the meeting by declaring the existence and nature of the interest. However, in a change from the current requirements, the Member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a "pending notification"). Failure to comply with the requirements becomes a criminal offence, rather than leading to sanctions for breach of the Code.

7.3 The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs. Failure to comply with these requirements would be a breach of the Code of Conduct but not a criminal offence.

8. Sensitive Interests

8.1 Where a Member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the Register of Members' Interests would lead to the Member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".

8.2 If the Monitoring Officer agrees, the Member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the Register of Members' Interests.

9. Dispensations

- 9.1 The provisions on dispensations are significantly changed by the Localism Act, so that a dispensation will be able to be granted in the following circumstances:-
- (i) where so many Members of the decision-making body have DPIs in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
 - (ii) where, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
 - (iii) where the authority considers that the dispensation is in the interests of persons living in the authority’s area;
 - (iv) where, without a dispensation, no member of the Cabinet would be able to participate on this matter; or
 - (v) where the authority considers that it is otherwise appropriate to grant a dispensation.
- 9.2 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
- 9.3 The Localism Act gives discretion for the power to grant dispensations to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer. As very few dispensations have been sought in the past and they are seldom controversial, it is proposed that authority be given to the Monitoring Officer, who will of course have discretion to refer the matter to the Standards Committee if it is considered necessary. A right of appeal against decisions of the Monitoring Officer will be given to the Committee.
- 9.4 It is RECOMMENDED that, subject to the approval of full Council,–**
- (16) the power to grant dispensations be delegated to the Monitoring Officer, who may at her discretion refer the matter to the Standards Committee for a decision; and**
 - (17) there be a right of appeal to the Standards Committee from decisions made by the Monitoring Officer.**

For further information, please contact:-
Joy Bowes, Head of Legal and Democratic Services,
Telephone: (01284) 757141, or email: joy.bowes@stedsb.gov.uk

Suffolk Local Code of Conduct for Members 2012

In accordance with S 26 to 37 of the Localism Act 2011 on [date] XXXX Council (the Council) resolved to adopt the Suffolk Local Code of Conduct for the purposes of discharging its duty to promote and maintain high standards of conduct within its area.

Until otherwise amended or replaced by a decision of the Council, the Suffolk Local Code of Conduct set out below shall hereafter apply to all elected members and any co-opted members entitled to vote on any decisions of the council or its committees, sub committees or joint committees when acting in their capacity as a member of the Council.

Preamble

The Suffolk Local Code of Conduct shall be interpreted in accordance with the following 7 principles of public life identified by the Committee on Standards in Public Life chaired by Lord Nolan:

Selflessness - Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity - Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity - In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability - Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership - Holders of public office should promote and support these principles by leadership and example.

1. Operative parts of the Code - General obligations on a member

You must:

- 1.1 Treat others with respect.
- 1.2 Not do anything that might cause the Council to breach any equalities legislation.
- 1.3 Not bully any person.

- 1.4 Not intimidate (or try to intimidate) any person who is likely to be a complainant, a witness or involved in the investigation or proceedings arising from an allegation that a member has breached the Council's code of conduct.
 - 1.5 Not do anything which compromises (or is likely to compromise) the impartiality of those working on behalf of the Council
 - 1.6 Not prevent another person from accessing information to which that person is legally entitled.
 - 1.7 Not disclose confidential information (or information which the member believes to be confidential), except where:
 - the consent of a person authorised to give consent has been given;
 - the law requires the information to be disclosed;
 - the disclosure is made to a third party to obtain professional advice (provided that the third party agrees not to disclose the information to any other person); or
 - the disclosure is reasonable, in the public interest, and made in good faith. In other words, the disclosure must be made in compliance with any reasonable requirements of the authority.
 - 1.8 Not conduct yourself in a way that could reasonably be seen as bringing your office into disrepute.
 - 1.9 Not use (or attempt to use) their position to improperly secure an advantage or disadvantage for yourself or any other person.
 - 1.10 When using Council resources, you must do so in accordance with the Council authority's reasonable requirements and ensure that such resources are not used improperly for political purposes (including party political purposes); and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
 - 1.11 When reaching decisions on any matters, consider any relevant advice provided to you by the authority's chief financial officer or monitoring officer acting under their statutory duties.
 - 1.12 Give reasons for all decisions under any statutory requirements, and any reasonable additional requirements imposed by the Council.
- 2. Registration of your interests (**provisional pending issue of the Regulations**)**
- 2.1 You must register within 28 days of becoming a member of the Council (and notify the Council's Monitoring Officer of any changes within 28 days) any Disclosable Pecuniary Interests (DPIs) you may have for publication in the Register of Members' Interests.
 - 2.2 You may not at any time discharge any function or participate in any Council business or discussions, or vote on any issues that relate to or concern any of your DPIs where

you are aware that you have a relevant DPI. You may not remain in the chamber or meeting room or in the public gallery when any matter that relates to any of your DPIs is under discussion or debate unless you have requested and obtained a written dispensation from your [Council's Monitoring Officer or other arrangement] in advance of the relevant meeting.

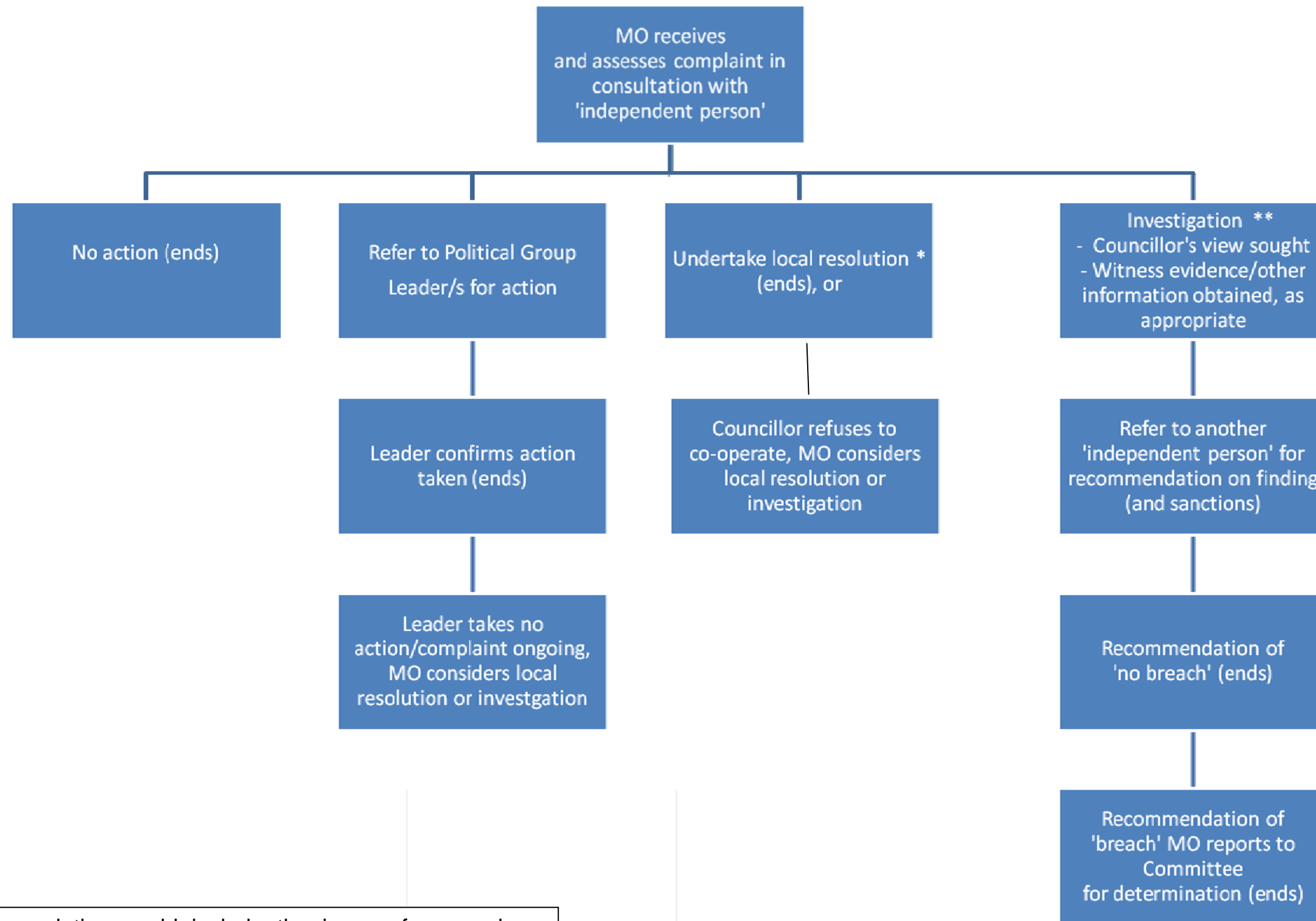
- 2.3 You must register within 28 days of becoming a member of the Council and notify your Council's Monitoring Officer of any changes within 28 days any non statutory Local Non Pecuniary Interests (LNPIs) set out in Appendix A to this code but you may participate in any discussions or debates relating or concerning any of your LNPIs after the date of registration.
- 2.4 You must declare any DPIs or LNPIs to a meeting where business is relevant to those interests, including those interests that are already registered with the Monitoring Officer or where registration is pending.
- 2.5 You must register, within 28 days, any gifts and hospitality received by you in accordance with the instructions issued within your Council by the Monitoring Officer.
- 2.6 The Council's Register of Interests will be available for inspection at its principal offices during normal office hours, and will be published on the Council's website.

2.7 Sensitive Interests

You may also apply to your Council's Monitoring officer for non publication of the full details of any of your DPIs or LNPIs where you reasonably believe that publication of the details of a particular DPI or LNPI could result in you being subjected to violence or intimidation. In considering such applications the Monitoring Officer shall have regard to any representations made by you in determining whether he or she considers the relevant DPI or LNPI should be treated as a Sensitive Interest and excluded from the published version of the Register of Members' Interests.

STANDARDS COMPLAINTS PROCEDURE

APPENDIX B



* local resolution could include the issue of an apology, provision of training or other action

** an investigation is a process dealt with by written representations