

## Appendix B



## **Localism Act 2011**

### **Promoting and Maintaining High Standards of Conduct in Local Government**

#### **CODE OF CONDUCT FOR MEMBERS**

# **Colchester Borough Council**

---

## **Code of Conduct for Members**

### **PART 1 GENERAL PROVISIONS**

#### **Introduction and Interpretation**

This Code of Conduct was adopted by the full council at its meeting on 25 June 2012 and is effective from 1 July 2012.

As a Member you are a representative of Colchester Borough Council ("the Authority") and the public will view you as such. Therefore, your actions impact on how the Authority as a whole is viewed and your actions can have both positive and negative impacts on the Authority.

This Code is consistent with the "Nolan Principles" which are set out in Appendix 1 and the provisions of S29 (1) Localism Act 2011.

In this Code-

"meeting" means any meeting of:

- (a) the Authority
- (b) the Executive of the Authority
- (c) any of the Authority's or its Executive's committees, sub-committees, joint committees, joint sub-committees or areas committees whether or not the press and public are excluded from the meeting in question by virtue of a resolution of Members
- (d) any briefings by officers and site visits organised by the Authority "relevant period" means the period of 12 months ending with the day on which you give notification to the Authority's monitoring officer of any disclosable pecuniary interests you had at the time of the notification.

"profit or gain" includes any payments or benefits in kind which are subject to Income Tax.

"beneficial interest" means having an economic benefit as a legal owner or holding it on trust for the beneficial owner, having a right to the income from the land or securities or a share in it or the right to the proceeds of sale or share of part of the proceeds of sale.

"Member" includes a co-opted member.

**1. Who does the Code apply to?**

- (1) This Code applies to all Members of the Authority including co-opted members.
- (2) It is your responsibility to comply with the provisions of this Code.

**2. What does the Code apply to?**

- (1) You must comply with this Code whenever you -
  - (a) conduct the business of the Authority, or
  - (b) you are acting as a representative of the Authority.
- (2) This Code has effect in relation to your conduct in your official capacity.
- (3) Where you act as a representative of the Authority –
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with the Authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

**3. General obligations**

- (1) You must treat others with respect.
- (2) You must uphold the law.
- (3) You must not –
  - (a) do anything which may cause the Authority to breach any of the equality enactments;
  - (b) bully any person;
  - (c) intimidate or attempt to intimidate any person who is or is likely to be: –
    - (i) a complainant;
    - (ii) a witness; or
    - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a Member

(including yourself) has failed to comply with the Authority's code of conduct; or

- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

#### **4. Confidential Information**

You must not –

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –
  - (i) you have the consent of a person authorised to give it;
  - (ii) you are required by law to do so;
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is –
    - (aa) reasonable and in the public interest; and
    - (bb) made in good faith and in compliance with the reasonable requirements of the Authority;
- (b) prevent another person from gaining access to information to which that person is entitled by law.

#### **5. Conferring an advantage or disadvantage**

You must –

- (a) not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
- (b) when using or authorising the use by others of the resources of the Authority –
  - (i) act in accordance with the Authority's reasonable requirements;
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes);
- (c) have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

## **PART 2 MEMBERS INTERESTS**

### **6. Disclosable Pecuniary Interests<sup>1</sup>**

**6.1** You have a Disclosable Pecuniary Interest in any business of the Authority if it is of a description set out in 6.2 below and is either:

- (a)** An interest of yours; or
- (b)** An interest (of which you are aware) of a spouse, civil partner or a person you are living with as a spouse or civil partner ("known as Relevant Persons").

**6.2** A Pecuniary Interest is an interest which relates to or is likely to affect:

- (a)** Any employment, office, trade, profession or vocation carried on by you or a Relevant Person for profit or gain;
- (b)** Any payment or provision of any other financial benefit (other than from the Authority) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a Member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992;
- (c)** Any contract for goods, services or works which has not been fully discharged between you or a Relevant Person and the Authority or a body in which you or they have a beneficial interest;
- (d)** A beneficial interest in any land in the Authority's area
- (e)** A licence of any land in the Authority's area (alone or jointly with others) that you or a Relevant Person occupy for a month or longer
- (f)** any tenancy where to your knowledge (i) the landlord is the Authority and (ii) the tenant is a body in which you or a Relevant Person has a beneficial interest
- (g)** Any beneficial interest in securities of a body where –
  - (i)** that body (to your knowledge) has a place of business or land in the area of the Authority and
  - (ii)** either:

---

<sup>1</sup> The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 set out the pecuniary interests specified for the purposes of Chapter 7 of Part 1 Section 30(3) of the Localism Act 2011  
June 2012

- (aa) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- (bb) the beneficial interest exceeds one hundredth of the total issued share capital of the share capital of that body, if of more than one class, the total nominal value of the shares of any one class.

## **7. Other Pecuniary Interests**

You have a pecuniary interest in any business of the Authority where it relates to or is likely to affect:

- (a) any person or body who employs or has appointed you;
- (b) any contract for goods, services or works made between the Authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specific in paragraph 6.2.(g) which has been fully discharged within the last 12 months;

## **8. Non-Pecuniary Interests**

**8.1** You have a non-pecuniary interest in any business of the Authority where it relates to or is likely to affect -

- (a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority;
- (b) any body –
  - (i) exercising functions of a public nature;
  - (ii) directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union); of which you are a member or in a position of general control or management;
- (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;
- (d) a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of a relevant person to a greater extent than the majority of:-

- (i) (in the case of authorities with electoral divisions or wards) other council taxpayers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
- (ii) (in all other cases) other council taxpayers, ratepayers or inhabitants of the Authority's area.

## **9. Disclosure of Interests (Disclosable Pecuniary Interests, Other Pecuniary Interests and Non-Pecuniary Interests)**

- 9.1 Subject to sub-paragraphs 9.2 to 9.3, where you have a Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.
- 9.2 Sub-paragraph 9.1 only applies where you are aware or ought reasonably to be aware of the existence of the Relevant Person's Interest.
- 9.3 Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 9.1 but by virtue of paragraph 12 (Sensitive Information) details of the interest are not registered in the Authority's published Register of Members' Interests and the interest is a Disclosable Pecuniary Interest you need not disclose the nature of the interest to the meeting.
- 9.4 Where you have a Pecuniary Interest in any business of the Authority and a function of the Authority may be discharged by you acting alone in relation to that business, you must ensure you notify the Authority's monitoring officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business.
- 9.5 Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 9.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest. In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

## **10. Effect of Interests on participation**

### **10.1 Disclosable Pecuniary Interests**



- (a) If you are present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and you are aware of that Interest:
  - (i) You must not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting.
  - (ii) You must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the Authority's proper officer.
- (b) If you have a Disclosable Pecuniary Interest in any business of the Authority you must not:
  - (i) exercise executive functions in relation to that business; and
  - (ii) seek improperly to influence a decision about that business
- (c) If a function of the Authority may be discharged by a Member acting alone and you have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself).

## **10.2 Other Pecuniary Interests**

If you have another Pecuniary Interest in any business of the Authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement in the public interest and you are present at a meeting of the Authority at which such business is to be considered or is being considered you must:

- (a) disclose the existence and nature of the interest in accordance with paragraph 9.1 (but subject to paragraph 9.3 ) and;
- (b) withdraw from the room or chamber where the meeting considering the business is being held unless you have obtained a dispensation from the Authority's proper officer.

### **PART 3 REGISTER OF MEMBERS INTERESTS**

#### **11. Registration of Members' Interests**

Subject to paragraph 12, you must, within 28 days of –

- (a) this Code being adopted by or applied to the Authority; or
- (b) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the Authority

register in the Authority's Register of Members' Interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:

- (i) Disclosable Pecuniary Interests as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time.
- (ii) Pecuniary Interests referred to in paragraph 7 that you have.

Subject to paragraph 12, you must within 28 days of becoming aware of any new Disclosable Pecuniary Interest as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner or change to any Disclosable Pecuniary Interest registered under paragraphs 11.(a) (i) or (ii) above by providing written notification to your authority's Monitoring Officer.

#### **12. Sensitive Information**

**12.1** Where you have a Disclosable Pecuniary Interest referred to in paragraph 6 or pecuniary interest referred to in paragraph 7 and the nature of the interest is such that you and the Authority's monitoring officer consider that disclosure of details of the Interest could lead to you or a person connected with you being subject to violence or intimidation If the interest is entered in the Authority's Register then copies of the register available for inspection and any published version of the Register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.

**12.2** You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 12.1 is no longer sensitive information, notify the Authority's monitoring officer.

**12.3** In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

### **13. Register of Gifts and Hospitality**

**13.1** You must within 28 days of receipt, notify the Authority's monitoring officer in writing of any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a member from any person or body other than the Authority.

**13.2** The Monitoring Officer will place your notification on a public register of gifts and hospitality.

**13.3** This duty to notify the monitoring officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

### **14. Review of Code**

**14.1** This Code will be kept under annual review.

**THE NOLAN PRINCIPLES  
and Section 28(1) of The Localism Act 2011**

**Selflessness**

To serve only the public interest and never improperly confer an advantage or disadvantage on any person

**Integrity**

Not to place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour

**Objectivity**

Make decisions on merit, including when making appointments, awarding Contracts or recommending individuals for rewards or benefits.

**Accountability**

To be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their Office.

**Openness**

To be as open as possible about their actions and those of the Council and should be prepared to give reasons for those actions.

**Honesty**

Not to place themselves in situations where their honesty may be questioned, should not behave improperly and should, on all occasions, avoid the appearance of such behaviour.

**Leadership**

Should promote and support these principles by leadership and by example and should always act in a way that secures or preserves public confidence.



**Colchester Borough Council**  
**Governance and Audit Committee**  
**Councillor Code of Conduct**

**Arrangements for dealing with complaints**

**1. Introduction**

- 1.1 These "Arrangements" came into effect on 1 July 2012 detail the process for making a complaint that an elected or co-opted member of Colchester Borough Council or of a parish council, town council or community council (referred to as a parish council in this document) within the Borough of Colchester has failed to comply with the Councillors' Code of Conduct. It also sets out how the Borough Council will deal with allegations of a failure to comply with the Councillors' Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Borough Council must have in place "Arrangements" under which allegations that a member or co-opted member of the Borough Council or of a parish council within the Borough of Colchester, has failed to comply with Councillors' Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such Arrangements must provide for the Borough Council to appoint at least 1 Independent Person, whose views must be sought by the Borough Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Borough Council at any other stage, or by a member or a co-opted member of a parish council against whom an allegation has been made. Both members and co-opted members are referred to as Councillors in this document for ease of reference.

**2. The Code of Conduct**

- 2.1 The Borough Council has adopted a Code of Conduct for Councillors, which is published on the Borough Council's website.  
[www.colchester.gov.uk/standards](http://www.colchester.gov.uk/standards)
- 2.2 Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council's Code of Conduct, you should inspect

any website operated by the Parish Council or request the parish clerk to allow you to inspect the Parish Council's Code of Conduct.

### **3. Making a complaint**

- 3.1** If you wish to make a complaint, please email:  
[andrew.weavers@colchester.gov.uk](mailto:andrew.weavers@colchester.gov.uk) or write to:

The Monitoring Officer  
Colchester Borough Council  
Rowan House, 33 Sheepen Road  
Colchester, CO3 3WG.

- 3.2** The Monitoring Officer is a senior officer of the Borough Council who has statutory responsibility for maintaining the register of Councillors' interests and who is responsible for administering the system in respect of complaints of Councillor misconduct.
- 3.3** In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the Borough Council's website, next to the Code of Conduct.
- 3.4** Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the Councillor against whom you make the complaint, without your prior consent.
- 3.5** The Borough Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.6** The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it and will keep you informed of the progress of your complaint.
- 3.7** The Complaints Procedure Flowchart is attached at Appendix 1.
- 3.8** The Borough Council has agreed a Press Policy in relation to complaints made against Councillors and this is attached at Appendix 2.

#### **4. Will your complaint be investigated?**

- (1) The Monitoring Officer will review every complaint received and, may consult with the Independent Person before taking a decision as to whether it:

  - (a) merits no further investigation; or
  - (b) merits further investigation; or
  - (c) should be referred to the Governance and Audit Committee,
- (2) This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Borough Council's Assessment Criteria contained at Appendix 3. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information and may request information from the Councillor against whom your complaint is directed.
- (3) Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.
- (4) 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 Councillor accepting that their conduct was unacceptable and offering an apology, or other remedial action by the Authority. Where the Councillor or the Authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.
- (5) If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

#### **5. How is the investigation conducted?**

- (1) The Borough Council has adopted a procedure for the investigation of allegations, which is attached as Appendix 4 to these Arrangements.



- (2) If the Monitoring Officer decides that a complaint merits further investigation, they may appoint an Investigating Officer, who may be another senior officer of the Borough Council, an officer of another Authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether they need to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
  - (3) The Investigating Officer or Monitoring Officer will normally write to the Councillor against whom you have complained and provide them with a copy of your complaint and ask the Councillor to provide their explanation of events, and to identify what documents are required and who needs to be interviewed. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Councillor might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Councillor, or delay notifying the Councillor until the investigation has progressed sufficiently.
  - (4) At the end of their investigation, the Investigating Officer or Monitoring Officer will produce a draft report ("the Investigation Report") and will send copies of that draft report, in confidence, to you and to the Councillor concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
  - (5) Having received and taken account of any comments which you may make on the draft Investigation Report. Where an Investigating Officer has been appointed the Investigating Officer will send their final report to the Monitoring Officer.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- (1) If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Councillor concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that no further action is required, and give you both a copy of the Investigation Final Report.



- (2) If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report.

**7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

- (1) If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Hearings Sub-Committee or in consultation with the Independent Person seek an informal resolution.

(a) Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Councillor accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Borough Council's Governance and Audit Committee (and the Parish Council) for information but will take no further action.

(b) Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Hearings Sub-Committee which will conduct a hearing before deciding whether the Councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Councillor.

The Borough Council has agreed a procedure for hearing allegations, which is attached as Appendix 5 to these Arrangements.

At the hearing, the Investigating Officer or the Monitoring Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Hearings Sub-Committee. The Councillor will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Sub-Committee as to why they consider that they did not fail to comply with the Code of Conduct.

The Hearings Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the Councillor did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Hearings Sub-Committee concludes that the Councillor did fail to comply with the Code of Conduct, the Chair will inform the Councillor of this finding and the Hearings Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the Councillor's failure to comply with the Code of Conduct. In doing this, the Hearings Sub-Committee will give the Councillor an opportunity to make representations to the Hearings Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

**8. What action can the Hearings Sub-Committee take where a Councillor has been found to have failed to comply with the Code of Conduct?**

- 8.1** The Borough Council has delegated to the Hearings Sub-Committee its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct.

Accordingly, the Hearings Sub-Committee may: -

- (a) Report its findings to Council (or to the Parish Council) for information;
- (b) Recommend to Council (or to the Parish Council) that the Councillor be issued with a formal censure or be reprimanded
- (c) Recommend to the Councillor's Group Leader (or in the case of ungrouped Councillors, recommend to Council or to Committees) that

**the Councillor be removed from any or all Committees or Panels of the Council;**

- (d) Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;**
- (e) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Councillor;**
- (f) Recommend to Council to remove (or recommend to the Parish Council that the Councillor be removed) from all outside appointments to which they have been appointed or nominated by the Council (or by the Parish Council);**
- (g) Recommend to Council to withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Councillor by the Council, such as a computer, website and/or email and internet access; or**
- (h) Recommend to Council to exclude (or recommend that the Parish Council exclude) the Councillor from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.**

**8.2 The Hearings Sub-Committee has no power to suspend or disqualify a Councillor or to withdraw a Councillor's basic allowance or any special responsibility allowances.**

**8.3 Any actions recommended by the Hearings Sub-Committee should be proportionate and commensurate with the circumstances of the particular case.**

## **9 What happens at the end of the hearing?**

**9.1 At the end of the hearing, the Chair will state the decision of the Hearings Sub-Committee as to whether the Councillor failed to comply with the Code of Conduct and as to any actions which the Hearings Sub-Committee resolves to take.**

**9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Sub-Committee, and send a copy to you, to the Councillor (and to the Parish Council), make that decision notice available for public**

inspection and report the decision to the next convenient meeting of the Council.

## **10 Who are the Hearings Sub-Committee?**

- 10.1** The Sub-Committee comprises Councillors who are members of the Governance and Audit Committee.
- 10.2** The Governance and Audit Committee has decided that it will comprise a maximum of five Councillors and will comprise Councillors drawn from all political groups. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council. If the Councillor complained about is a member of a Parish Council a parish Councillor who is a co-opted member of the Governance and Audit Committee will also be invited to attend the Sub-Committee.
- 10.3** An Independent Person will also be invited to attend all meetings of the Hearings Sub-Committee and their views are sought and taken into consideration before the Sub-Committee takes any decision on whether the Councillor's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **11 Who are the Independent Persons?**

- 11.1** The Independent Persons are persons who has applied for the post following advertisement of a vacancy for the post and is appointed by a positive vote from a majority of all the members of the Borough Council.
- 11.2** A person cannot be "independent" if they:
  - (a)** are, or have been within the past 5 years, a member, co-opted member or officer of the Borough Council;
  - (b)** (are or have been within the past 5 years, a member, co-opted member or officer of a parish council within the Borough of Colchester), or
  - (c)** are a relative or close friend, of a person within paragraph (a) or (b) above. For this purpose, a "relative" means:
    - (i)** spouse or civil partner;

- (ii) living with the other person as husband and wife or as if they were civil partners;
- (iii) grandparent of the other person;
- (iv) a lineal descendent of a grandparent of the other person;
- (v) a parent, sibling or child of a person within paragraphs (a) or (b); above or
- (vi) a spouse or civil partner of a person within paragraphs (iii), (iv) or (v) above; or
- (vii) living with a person within paragraphs (iii), (iv) or (v) above as husband and wife or as if they were civil partners.

## **12. Revision of these Arrangements**

The Borough Council may by resolution agree to amend these Arrangements, and has delegated to the Chair of the Hearings Sub-Committee the right to depart from these Arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **13. Appeals**

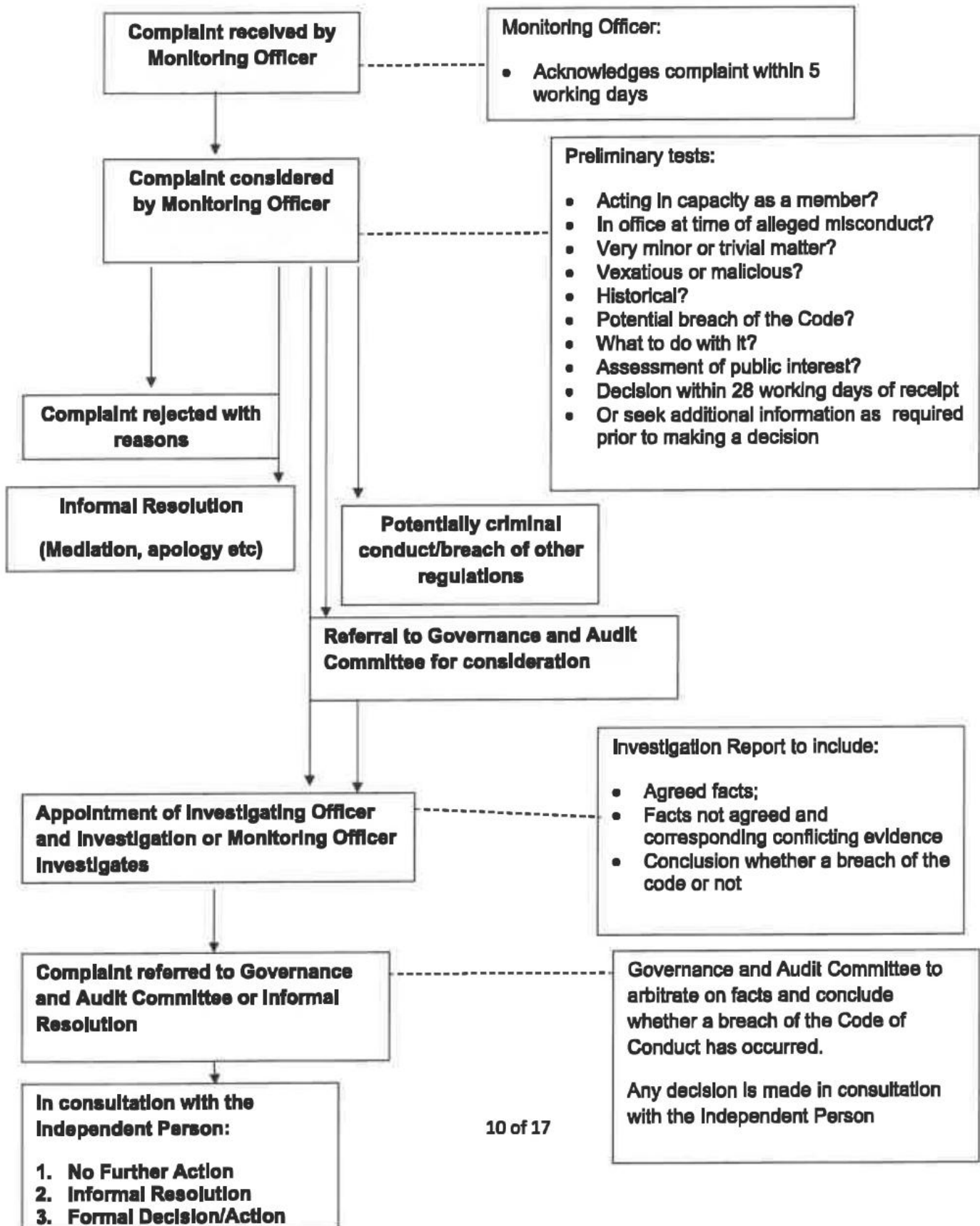
**13.1** There is no right of appeal for you as complainant or for the Councillor against a decision of the Monitoring Officer or of the Hearings Sub-Committee.

**13.1.1** If you feel that the Borough Council has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

## **14. Review**

These Arrangements will be kept under annual review by the Governance and Audit Committee.

## Complaints Procedure Flowchart



**Colchester Borough Council**

**Press Policy**

**Complaints against Members**

This Policy sets out how the Borough Council will respond to press enquiries into a complaint made against Councillor(s). This includes Borough Councillors, Parish, Town and Community Councillors.

We like to be as helpful as possible to the press and we will confirm, when requested by a journalist:

- the name of a Councillor(s) involved in an ongoing or past investigation
- the type of person who made the allegation – whether they are a member or Officer of the Authority, or a member of the public
- part of the Code of Conduct potentially breached
- whether the case was referred for investigation and, if not, the reason it was not referred
- approximate dates of when the allegation was received and the date of when a decision was made on whether or not to investigate
- the outcome of any investigation, on issue of the final report

Please note that we will only respond to queries about specific Councillors.

We will not comment on complaints received until a decision has been made on whether a complaint will be investigated; we allow three working days from the date of that decision before confirming it to the press.

We will confirm the outcome of an investigation three working days after the final report has been issued. This policy ensures that the relevant parties involved in the complaint and investigation are notified before the press.

We will always stress that a complaint is just that: while an investigation is ongoing, no decision is made regarding a Councillor's guilt or otherwise.



**Colchester Borough Council**

**STANDARDS COMPLAINTS ASSESSMENT CRITERIA**

**Complaints which would not normally be referred for investigation**

1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is "tit-for-tat"; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; e.g. that it relates to the Councillor's private life or is about dissatisfaction with a Council decision; or
5. It is about someone who is no longer a Councillor; or
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc; or
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Governance and Audit Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the Councillor complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

**Complaints which may be referred to the Governance and Audit Committee**

1. It is serious enough, if proven, to justify the range of actions available to the Governance and Audit Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or



3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
4. The complaint is about a high-profile Councillor such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him to investigate.

**Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and Councillors' time. This is an important consideration where the complaint is relatively minor.**

## STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

### Investigation Procedure

You should maintain a written record to demonstrate what was considered at the start of each investigation and plan how you intend to carry out the investigation, the paragraphs of the Code that may have been breached, the facts you need to determine to establish, the evidence you will need, how you plan to gather the evidence and how long it will take to conclude your investigation. Remember there is no provision in the Localism Act 2011 compelling Members or witnesses to co-operate with your investigation.

A written Investigation Report will need to be prepared for consideration by the Council's Monitoring Officer.

