

Constitution Committee



SOUTH
KESTEVEN
DISTRICT
COUNCIL



Monday, 7 September 2020 at 10.30 am
Virtual meeting - This meeting is being held remotely using
Skype for Business

Committee Members: Councillor Linda Wootten (Chairman)
Councillor Mike Exton (Vice-Chairman)

Councillor David Bellamy, Councillor Paul Fellows, Councillor Breda Griffin, Councillor Anna Kelly and Councillor Mark Whittington

Supplementary Papers

Virtual Meeting - Joining Arrangements

Councillors should access the meeting using the link in their calendar.

Members of the press and public can gain access to the meeting by using the following link:

[Constitution Committee - 7 September 2020](#)

If you are using a smartphone or tablet it may be necessary to download the Skype for Business app before you can enter the meeting; please allow yourself time to do this. If you are using a laptop or desktop computer, you should be able to access the meeting via your web browser.

When you follow the link to the meeting you will enter a virtual lobby; you will be invited into the meeting from the lobby just before the meeting begins. Members of the public should not use the Chat function in Skype for Business. This is for use by Councillors, who will use it to indicate that they would like to speak.

If you have any questions about how to join the meeting, e-mail democracy@southkesteven.gov.uk.

5. Review of arrangements for dealing with allegations regarding breaches of the Members' Code of Conduct (Pages 3 - 30)

The Committee will receive a presentation focussed around the review of arrangements for dealing with complaints about Councillors who are alleged to have breached the Members' Code of Conduct.

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Arrangements for dealing with standards allegations under the Localism Act 2011

Constitution Committee, 7 September 2020



SOUTH
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The Localism Act

• Section 28 of the Localism Act requires that:

6) *A relevant authority other than a parish council must have in place*

a) *Arrangements under which allegation can be investigated, and*

b) *Arrangements under which decisions on allegations can be made*

7) *Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person –*

a) *Whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and*

b) *Whose views may be sought*

i. *By the authority in relation to an allegation in circumstances not within paragraph (a)*

ii. *By a member, or co-opted member, of the authority of that person's behaviour is the subject of an allegation, and*

iii. *By a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority*

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Case Law

- R (Harvey) v Ledbury Town Council [2018] found that s.28 of the Localism Act contemplates a 4 stage process:
 1. The making of an allegation
 2. (optionally) a non-formal investigation or mediation stage or a pause pending other relevant steps being taken (e.g. criminal proceedings)
 3. A formal stage involving an IP leading to a decision on breach
 4. (if breach is found) a formal stage, again involving the IP, dealing with action



Arrangements for dealing with complaints – the broad picture

- LAs must put in place arrangements to deal with complaints of breach of its code of conduct, including arrangements for investigation of complaints and arrangements ‘under which decisions on allegations can be made’
- Most authorities have retained a standards committee in some form or added functions to an existing committee
- District Councils must make arrangements to investigate and determine allegations against parish councillors
- Parish councils are under no obligation to have regard to any findings of the district council
- Authorities have discretion to set their own processes but they must involve an Independent Person (IP)



Arrangements for dealing with complaints – the broad picture

- There is no requirement for a review stage
- There is no statutory requirement for a hearing
- The authority could determine a member has broken the Code without having conducted an investigation (although it would be usual to expect local authorities to ensure the principles of natural justice are observed)
- There is greater scope for the MO to seek local resolution of a complaint before a decision is taken as to whether the complaint merits formal investigation

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Checklist – does SKDC’s procedure do these things?

- The internal resolution process should:
 - Make it clear how allegations of breaches of the Code of Conduct are to be handled
 - The role of the IP
 - The appeals process
 - The role of any standards committee (or other committee fulfilling that role)



SKDC's arrangements

- MO reviews every complaint and, after consultation with the Independent Person (IP), takes a decision as to whether it merits formal investigation
- There are 3 possible outcomes to this review:
 - – No breach of the Code of Conduct
 - Informal resolution
 - Investigation
- If the complaint identifies criminal conduct or other breach of Regulation by any person, the MO has the authority to call in the police and other regulator agencies
- Do we need an earlier filter - criteria?



Case study: criteria (North Kesteven)

- North Kesteven DC has two sets of criteria
- In the first instance, a complaint must meet all of the following criteria otherwise it will be rejected:
 - The complaint is against one or more named Councillor or co-opted Members of the Council or of a Parish Council within the District
 - The respondent was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
 - The subject of the complaint relates to the Respondent in their capacity as a Councillor
 - The complaint, if proven, would be a breach of the Code of Conduct under which the respondent was operating at the time of the alleged misconduct



Case study: criteria (North Kesteven)

- If appropriate, the MO and IP will apply the following criteria in deciding whether a complaint should be accepted for investigation, for other action, dealt with informally or rejected:
 - Sufficiency of information
 - Seriousness of the complaint
 - Duplication
 - Time passed since the alleged breach
 - Public interest
 - Other action that could be taken
 - Whether the complaint could indicate wider issues across the Council

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Case study: criteria (Ashfield)

- Before assessment of the complaint begins, the MO must be satisfied that the complaint:
 - Is against one or more named members of the authority or an authority within their jurisdiction
 - Is about a member who was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
 - If proven would be a breach of the Code under which the member was operating at the time of the alleged misconduct

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Case study: criteria (Ashfield)

- When deciding if an investigation is necessary, the MO must have regard to the duty to promote and maintain high standards of member conduct. Relevant factors include but are not limited to:
 - Whether the available evidence suggests that the member was acting in their official capacity when the alleged conduct took place
 - Whether the information provided is sufficient to justify a referral for investigation
 - Is the complaint too trivial to warrant further action?
 - Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
 - Is the complaint already the subject of an investigation or other action related to either the Code of Conduct or another disciplinary process?
 - Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?
 - Is the complaint anonymous?
 - Would an investigation serve any public benefit?

Case study criteria: Bassetlaw

- Before assessment of a complaint begins, the complaint has to meet the following tests:
 - It is a complaint against one or more named Members of Bassetlaw District Council or one or more named Members of one of the Parish Councils within the Bassetlaw District Council area
 - The Subject Member was a Member at the time of the alleged conduct
 - The behaviour took place within the last 90 days
 - The complainant has given their name and address
 - The complaint is an allegation under the Code rather than a service, officer or a statement of policy disagreement
 - The complaint is not an allegation that could constitute a criminal offence (Section 34 of the Localism Act 2011)
 - The complaint is not being dealt with by the police, ombudsman or another complaint process (in this case the complaint will not be processed until after the other process has been completed)

Case study criteria: Bassetlaw

- The complaint is not being made within 6 weeks prior to an election (no action will be taken in relation to any complaint within this period)
- The complaint is not the same or substantially similar to a complaint that has already been assessed even if this was prior to 1 July 2012

If the complaint fails one or more of these tests it cannot be considered for Assessment and the complainant will be informed that no further action will be taken in respect of the complaint. The Subject Member concerned will also be told of the complaint and that it had failed the Initial Intake Test. The MO may advise the complainant that the complaint needs to be referred elsewhere, if appropriate

If the complaint passes the Initial Intake Test, it will proceed to the Assessment Test, which considers the sufficiency of the complaint, evidence, suitability for investigation, extenuating circumstances and possible defences



Investigating an allegation

- An investigating officer will be appointed
- The investigating officer will decide who they need to interview, the documents they need to see.
- The investigating officer would normally write to the Member against whom the complaint is made and provide them with a copy
- At the end of the investigation, the investigating officer will produce a draft report
- Copies of the draft report will be sent to the complainant and the subject to review. Both parties can identify any matter in the report with which they disagree or they feel requires further consideration



Investigation outcome: no breach

- If the MO is satisfied the report is sufficient the MO will write to the complainant, the Member concerned and the relevant Council to confirm that they are satisfied no further action is required
- If the MO is not satisfied the report is sufficient, they could ask the investigating officer to reconsider their report



Investigation outcome: breach

- Local resolution
 - Resolving the matter without need for a hearing
 - The MO will consult with the IP and the complainant to agree a fair resolution that will help ensure higher standards of conduct for the future
 - Possible resolutions could include:
 - A member accepting their conduct was unacceptable and offering an apology
 - If the Member complies, the MO will report the matter to the IP and the relevant council for information
 - If the complainant says they do not feel the suggested resolution would be adequate, the matter would be referred for local hearing by the Review Board

Local Hearing

- If the MO concludes that local resolution is not appropriate or the complainant is not satisfied with the proposed action, the investigation report will be presented to the Review Board
- The MO will conduct a pre-hearing process, requiring the Member to give their response to the report
- Is the process for Local Hearing on the next slide sufficiently clear?
- Does it need to follow a similar principle to Alcohol, Entertainment and Late Night Refreshment Licensing Committee?



Local Hearing Process

- The Investigating Officer presents their report, calling such witnesses considered necessary to make representations and substantiate the conclusion
- The member will have an opportunity to give evidence and call witnesses as to why they consider they did not fail to comply with the Code
- The Review Board will receive any advice from the IP
- The Review Board will make its determination on whether the Member failed to comply with the Code of Conduct
- If the Review Board concludes that there has been a failure to comply, the member will have an opportunity to make representations. The Review Board will also take advice from the IP and determine what action, if any to take
- At the end of the hearing the Chair will state the decision of the Review Board and any actions the Board resolves to take.
- The MO shall prepare a formal decision notice in consultation with the Review Board's Chair and send to the complainant, the Member and the relevant Council
- The decision will be made available for public inspection
- Where the decision relates to a district councillor, the decision will be reported to the next convenient Council meeting



Actions the Review Board can take

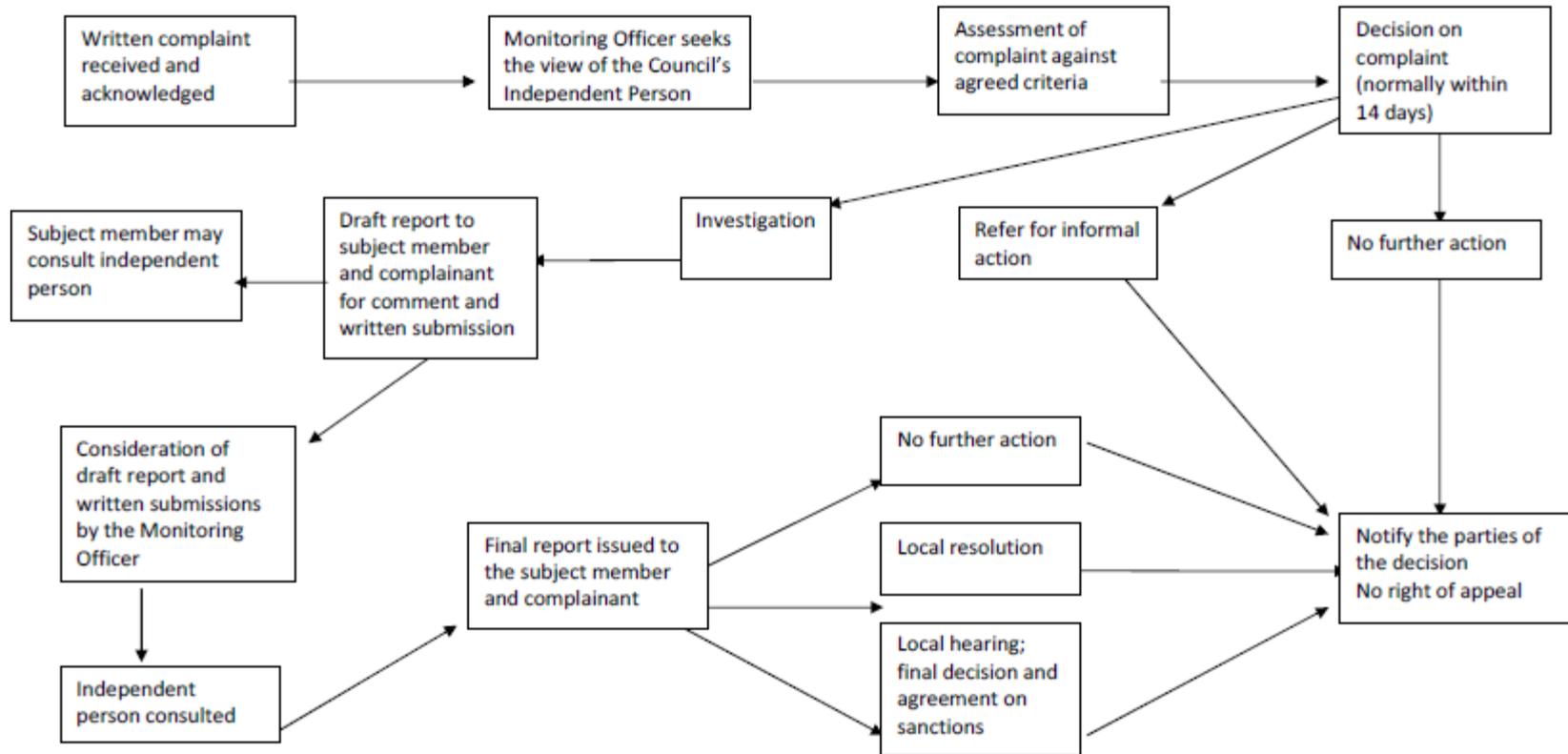
- Censure or reprimand
- Publish its findings in respect of the Member's conduct
- Report its findings to the District Council or to the town or parish council for info
- Recommend to the Member's group leader that he or she be removed from all committees or sub-committees
- Recommend to the Leader of the Council that the member be removed from the Executive or particular portfolio responsibilities
- Recommend to Council that the member be replaced as Executive Leader
- Instruct the MO to, or recommend that, the town or parish council arrange training for the member
- Remove or recommend to the town or 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 town or parish council
- Withdraw or recommend to the town or parish council that it withdraws facilities provided to the Member by the Council, such as a computer, website, email or internet access
- Exclude or recommend that the town or parish council exclude the Member from the Council's officers or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings

Appeals

- There is no right of appeal for complainants for the Member against a decision of the Monitoring Officer of the Review Board
- Any complaints to go straight to the Local Government Ombudsman
- Of other LAs in Lincolnshire and Nottinghamshire that were reviewed, all said that there was no right of appeal to decisions made by the MO or hearings panel. The only way to challenge those decisions is through a complaint to the Local Government Ombudsman or JR

Example process: Ashfield

Standards Procedure



Checklist – does SKDC’s procedure do these things?

- The internal resolution process should:
 - Make it clear how allegations of breaches of the Code of Conduct are to be handled
 - The role of the IP
 - The appeals process
 - The role of any standards committee (or other committee fulfilling that role)



SOUTH KESTEVEN DISTRICT COUNCIL

Arrangements for dealing with standards allegations under the Localism Act 2011

1 Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority or of a town or parish council within its area has failed to comply with the authority’s Code of Conduct, and sets out how the District Council will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority or of a town or parish council within the authority’s area, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the District Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Monitoring Officer at any other stage, or by a member or a member or co-opted member of a town or parish council against whom an allegation has been made.

2 The Code of Conduct

South Kesteven District Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and available for inspection on the authority’s website and on request from the Monitoring Officer of the District Council.

Each town and parish council is also required to adopt a Code of Conduct. If you wish to inspect a town or parish council’s Code of Conduct, you should inspect any website operated by the town or parish council and request the town or parish clerk to allow you to inspect the town or parish council’s Code of Conduct.

3 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer
E-mail – s.ismail@southkesteven.gov.uk

Or write to – South Kesteven District Council
Council Offices, St. Peter's Hill,
Grantham, Lincolnshire. NG32 6PZ

The monitoring officer is an officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

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 authority's website, and is available on request from the District Council Offices. Please do 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, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

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.

4 Will your complaint be investigated?

The monitoring officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the monitoring officer has taken a decision, you will be informed of that decision and the reasons for that decision.

If additional information is required in order to come to a decision, the monitoring officer may come back to you for such information and may request information from the member against whom your complaint is directed. Where your complaint relates to a town or parish Councillor, the monitoring officer will also inform the town or parish Council of your complaint and seek the views of the town or parish Council before deciding whether the complaint merits formal investigation.

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 remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the monitoring officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the monitoring officer has the authority to call in the Police and other regulatory agencies.

5 How is the investigation conducted?

If the monitoring officer decides that a complaint merits formal investigation, an investigating officer will be appointed, who may be another 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 you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the investigating officer needs to see, and who the investigating officer needs to interview.

The investigating officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents they need to see and who they need to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the monitoring officer can delete your 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 the investigation, the investigating officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member 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.

Having received and taken account of any comments which you may make on the draft report, the investigating officer will send a final report to the monitoring officer.

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

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 member concerned and to the town or parish Council, where your complaint relates to a town or parish Councillor, notifying you that they are satisfied that no further action is required, and give you both a copy of the investigating officer's final report. If the monitoring officer is not satisfied that the investigation has been conducted properly, he may ask the investigating officer to reconsider their report.

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

The monitoring officer will review the investigating officer's report and will then either send the matter for local hearing before the Review Board or, after consulting the Independent Person, seek local resolution.

8 Local Resolution

The monitoring officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the monitoring officer 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 member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the monitoring officer will report the matter to the Independent Person and the town or parish Council for information but will take no further action. However, if you tell the monitoring officer that any suggested resolution would not be adequate, the monitoring officer will refer the matter for a local hearing by the Review Board.

9 Local Hearing

If the monitoring officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the monitoring officer will report the investigating officer's report to the Review Board which will conduct a local hearing 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 member.

The District Council has agreed a procedure for local hearings, which is attached as an appendix to these arrangements.

The monitoring officer will conduct a "pre-hearing process", requiring the member to give his/her response to the investigating officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Review Board may issue directions as to the manner in which the hearing will be conducted. At the hearing, the investigating officer will present their report, call such witnesses as they consider necessary and make representations to substantiate the conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the investigating officer may ask you as the complainant to attend and give evidence to the Review Board. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Review Board as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Review Board, 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 dismiss the complaint. If the Review Board concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Review Board will then consider what action, if any, the Review Board should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Review Board will give the member an opportunity to make representations to the hearing and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

10 What action can the Review Board take where a member has failed to comply with the Code of Conduct?

The District Council has delegated to the Review Board such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Review Board may

- (1) Censure or reprimand the member;
- (2) Publish its findings in respect of the member's conduct;
- (3) Report its findings to District Council or to the town or parish council for information;
- (4) Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- (5) Recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
- (6) Recommend to Council that the member be replaced as Executive Leader;
- (7) Instruct the monitoring officer to or recommend that the town or parish council arrange training for the member;
- (8) Remove or recommend to the town or 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 town or parish council;
- (9) Withdraw or recommend to the town or 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
- (10) Exclude or recommend that the town or 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.

The Review Board has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

11 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Review Board as to whether the member failed to comply with the Code of Conduct and as to any actions which the Review Board resolves to take. As soon as reasonably practicable thereafter, the monitoring officer shall prepare a formal decision notice in consultation with the Chair of the Review Board, and send a copy to you, to the member and to the town or parish council, make that decision notice available for public inspection and where the decision relates to a district councillor, report the decision to the next convenient meeting of the Council.

12 Who are the Review Board?

The Council has determined that it will comprise a maximum of three members of the Licensing Committee. The Independent Person is invited to attend meetings of the Review Board when it sits to hear investigations into complaints relating to the Members' Code of Conduct and his views are sought and taken into consideration before the Review Board takes any decision on 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 failure to comply with the Code of Conduct.

13 Who is the Independent Person?

The Independent Person is a person 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 Council to act as the Independent Person in accordance with the Localism Act 2012.

14 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Review Board 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.

15 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Review Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.