

# Arrangements for dealing with standards allegations under the Localism Act 2011

Constitution Committee, 7 September 2020



SOUTH  
KESTEVEN  
DISTRICT  
COUNCIL

# The Localism Act

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• 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*



# Case Law

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- 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

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- 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

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- 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



# Checklist – does SKDC's procedure do these things?

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- 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

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- 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)

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- 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)

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- 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



# Case study: criteria (Ashfield)

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- 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



## Case study: criteria (Ashfield)

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

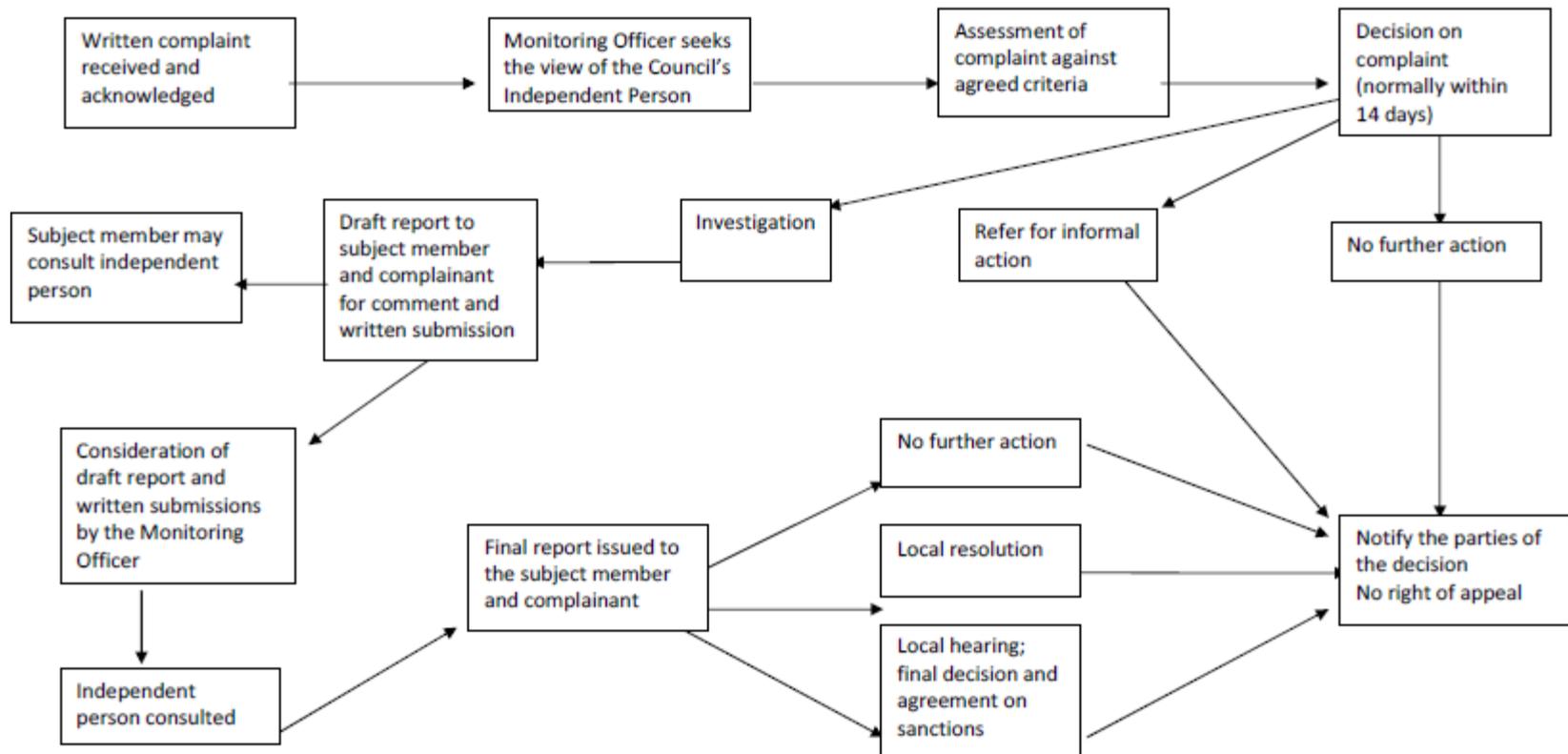
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- There is no right of appeal for complainants for the Member against a decision of the Monitoring Officer of the Review Board
- Any complaints to go straight to the Local Government Ombudsman
- Of other LAs in Lincolnshire and Nottinghamshire that 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?

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