



# Local Assessment Procedure 2021

*Version 3.4 – February 2023 February 2024 (incorporating changes discussed by Standards Committee at their meeting on 23.02.23 18.01.24) and approved by Full Council at their meeting on*

Version 3.0.4



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## CASE HANDLING PROCEDURE

### BACKGROUND

Under Section 28 of the Localism Act 2011, Arun District Council must have in place “arrangements” under which allegations that an elected or co-opted ~~member~~ councillor of the authority or of a town or parish council within the authority’s area (hereinafter referred to as the ‘subject member’) has failed to comply with the authority’s Code of Conduct can be considered and decisions made on such allegations.

These arrangements provide for the council to appoint at least one Independent Person whose views must be sought by the council before it takes a decision on an allegation that it has decided to investigate, and whose views can be sought by the council at any other stage, or by the subject member against whom an allegation has been made.

The council has adopted a Members’ Code of Conduct, which is published on the council’s website and is available for inspection on request from the council’s office (see below).

Each town and parish council is also required to adopt a Code of Conduct which should be available on their website.

### Initial assessment

1. All allegations, including those against a town or parish councillor, must be made in writing to the Monitoring Officer of Arun District Council (MO)<sup>1</sup>.
2. Anonymous complaints will not be accepted unless the MO concludes that there is a compelling public interest why a serious allegation made anonymously may be taken forward.
3. The MO may refer the matter to the standards committee to take the decision in his or her place and he or she may delegate the matter to his or her deputy(ies) or another officer (~~or an officer from another authority~~) if, for example he or she believes there is a conflict of interest. This power is at the discretion of the MO.
4. The MO will apply an initial filter to an allegation – for example, to check that the complaint is against a ~~member~~ councillor, that they were in office at the time of the alleged incident and that the matter would be capable of being a breach of the Code. If the MO is of the view that the complaint does not fundamentally relate to a Code of Conduct matter, then he/she will decline to progress it further under this Procedure. It is generally considered that

**Commented [SQ1]:** Addition suggested by John Thompson

**Commented [SQ2]:** Changed 'member' to 'councillor' throughout (apart from when referring to Subject Member) for consistency - as suggested by Cllr Turner

<sup>1</sup> As defined by the Local Government & Housing Act 1989, Part 1, Section 5

complaints relating to the consideration of planning and/or licensing applications will not be dealt with under this procedure if there is an alternative legal remedy. The council has no authority to deal with complaints which relate solely to a member councillor's private life or things they do which are not related to their role as a member councillor.

5. Complaints which identify criminal conduct or breach of other regulations by any person may be referred by the MO to Sussex Police for consideration, in accordance with an agreed protocol as set out in Appendix B, or any other regulatory agency. In such cases the MO may at his or her discretion pause the consideration of the complaint pending action by the other body or commence a parallel investigation into the alleged Code of Conduct breach.
6. Complaints by a district councillor about another district councillor(s) will be referred by the MO to the relevant group leader(s) for resolution in the first place. If either the sSubject mMember or the complainant declines to engage with this informal process, or resolution is not possible, within 10 working days from the date of receipt of the complaint, the MO will progress from paragraph 7 below. (For the avoidance of doubt, group leaders do not take on the functions of the MO in this process, which is purely an informal process which has the aim of resolving 'councillor-against-councillor' complaints at the earliest opportunity and reducing the resolution time for complaints).
7. If the MO decides the matter is within scope of this Procedure, he or she will invite an Independent Person (IP)<sup>2</sup> to give his or her views on what action should be taken at this stage. That IP will then remain the IP who will be consulted on that case throughout this process, except in exceptional circumstances. A councillor against whom an allegation has been made has the right to consult with another Independent Person, should they wish to do so at any stage.
8. Where a complaint is accepted by the MO, the MO will notify the subject member of the complaint unless there are compelling reasons not to and invite him/her to submit any relevant comments. The subject member will be given 10 working days to respond, from the date of the notification. In parish cases the MO may also notify the clerk and may ask for relevant factual information. However, the MO, in consultation with an IP, may withhold the complainant's identity if they can be satisfied that there are reasonable grounds for granting confidentiality, for example a belief that the complainant or any witness to the complaint may be at risk of physical harm or intimidation, or that their employment may be jeopardised if their identity is disclosed.
9. At the end of the 10 working days (regardless of whether any comments have been received by the subject member), and no later than 20 30 working days from the date of receipt of the complaint, the MO will decide upon one of the following outcomes:

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<sup>2</sup> The Independent Person is a person who has applied for the post and is appointed by Councillors of the Council. The definition of an Independent Person can be found in Section 28 of the Localism Act 2011.

- a) to take no further action;
- b) to seek to resolve the matter informally; or
- c) to refer the matter for investigation.

10. In deciding what action is necessary the MO will consider the following non-exclusive factors:

- a) whether the complaint contains sufficient evidence to demonstrate a potential breach of the Code;
- b) whether there are alternative, more appropriate, remedies that should be explored first;
- c) where the complaint is by one ~~member~~ councillor against another, a greater allowance for robust political debate (but not personal abuse or “unparliamentary” language) may be given;
- d) whether the complaint is in the view of the MO malicious, politically motivated, or ‘tit for tat’?;
- e) whether an investigation would not be in the public interest or the matter, even if proven, would not warrant any sanction (see Appendix 2);
- f) whether a substantially similar complaint has previously been considered and no new material evidence has been submitted to support the new complaint;
- g) whether a substantially similar complaint has been submitted and accepted;
- h) whether the complaint relates to conduct in the distant past (over three months prior to the date of submission of the complaint). This would include assessing any reason why there had been a delay in making the complaint;
- i) whether the complaint actually relates to dissatisfaction with a council (or parish council) decision rather than the specific conduct of an individual;
- j) whether the complaint relates to someone who is no longer a member of the council (or relevant parish council) or who is seriously ill; and
- k) where the matter complained of consists of alleged misconduct in the course of a formal council meeting, whether the matter had already been dealt with satisfactorily during the meeting.

11. All parties (and the clerk for parish cases) will be notified of the MO’s decision and there is no right of appeal against that decision.

12. A decision notice will not be published at this stage though the council may issue a public statement if details of the complaint are already in the public domain.

13. The MO will report to the Standards Committee periodically on cases in which there has been no further action taken.

## Informal resolution

14. Where the MO has decided to seek to resolve the matter informally, he or she may do one or more of the following:
  - a) ask the subject member to submit an apology in writing to the complainant;
  - b) convene a meeting between the subject member and the complainant in order to try to resolve the issue informally;
  - c) notify the subject member's group leader (where they are a member of a group) and suggest that they may wish to take some internal party action;
  - d) suggest that the subject member undergo relevant training;
  - e) other such action that the MO deems appropriate.
15. The MO will decide on a timeframe within which the informal resolution must be completed to an acceptable standard.
16. If either the subject member or complainant refuses to engage with the informal resolution proposed by the MO, or the MO deems the action taken by the subject member to be insufficient or the informal resolution does not take place in a timely way, the MO will decide, in consultation with an IP, whether the case should be closed, whether an investigation is necessary, or whether some other action should be taken.
17. The MO will notify the complainant (and clerk in parish cases) of the outcome of the informal resolution.
18. The MO will report to the Standards Committee periodically on the outcome of any informal resolutions proposed and/or implemented.

## Investigation

19. Where a matter is referred for investigation, the MO may carry out the investigation him/herself, delegate it to another officer or appoint an external investigator.
20. The investigation must normally be completed within 3 months of the MO's decision to accept the complaint. If an extension of time is needed, the MO must agree that extension with the Chair of the Standards Committee and the IP and notify the subject member, complainant (and clerk in parish cases) of any extension.
21. The subject member is notified who the relevant IP is for the case and may seek his or her views at any stage during the investigation.
22. The complainant will also be notified who the IP is and may make a request to the MO to seek the views of the IP. However, such a request will only be granted at the discretion of the IP in consultation with the MO.

23. At any time during the investigation the MO, the subject member or the complainant may ask for an informal resolution. The MO will consult with the relevant IP to agree this.
24. Before being finalised, a draft report will be produced and the complainant, subject member and IP will be invited to comment. In the case of multiple complaints, a separate investigation report will be produced for each complaint, relating only to that complaint, in order to observe potential data protection implications. Witnesses may also be asked to comment as appropriate on parts of the draft report relevant to them.
25. Where the investigation has not been personally conducted by the MO, the final decision as to outcome will nevertheless be made by the MO unless there is a conflict of interest, in which case the decision will be taken by a Deputy MO.
26. There may be exceptional circumstances when the MO decides that a case should be closed before a draft or final report has been produced due to a significant change in circumstances. This may include, for example, that the subject member is seriously ill or is no longer a ~~member councillor~~ or other action has led to the matter being resolved. In such cases the MO should consult the IP before deciding that the file be closed. A record of the complaint will be kept on file in the event that the subject member returns to office in the future and a subsequent complaint is lodged against them.
27. At the end of the investigation the MO may conclude:
- a) that there has been no breach of the Code;
  - b) to seek to resolve the matter informally; or
  - c) to refer the matter to the Standards Committee for determination.
28. In cases where the MO has concluded that there has been no breach of the Code all parties (and the clerk in parish cases) will be notified of the MO's decision and there is no right of appeal against that decision. The MO will report the finding to the Standards Committee and issue a public decision notice.
29. Where the MO decides to seek to resolve the matter informally, he or she shall seek the views of the IP and complainant before concluding whether such an outcome is appropriate. The possible actions are those outlined above at paragraph 14. If the subject member or complainant refuses to engage with the informal action directed by the MO, the MO deems the action taken by the subject ~~mMember~~ insufficient or the informal action does not take place in a timely way the MO will decide, in consultation with the IP, whether the case should be closed or whether a hearing is necessary. The MO will notify the complainant (and clerk in parish cases) of the outcome of the informal action.

Commented [SQ3]: Decapitalised for consistency

30. Where the matter is referred for determination, the assessment panel of the Standards Committee will convene within 2 months. The MO will notify the complainant of the date of the hearing.

#### **Assessment Panel**

31. A matter referred for determination by the MO will be heard by an assessment panel, made up of members of the Standards Committee.

32. At the start of the hearing the MO will advise the assessment panel whether the matter should be heard in public or in private, subject to the normal rules on exempt and confidential information and bearing in mind the public interest. The assessment panel will always, however, retire in private to consider its findings and possible action.

33. The views of the IP will be sought by the assessment panel during its meeting and before the panel retires to consider its decision. The IP will not retire with the assessment panel during its private deliberations.

34. The assessment panel may decide:

- a) that there has been no breach of the code;
- b) that there has been a breach but to take no further action; or
- c) that there has been a breach and a relevant sanction should be imposed or recommended.

35. If the assessment panel decides that a relevant sanction should be imposed or recommended it may impose or recommend any one or more of the following:

- a) report its findings in respect of the subject member's conduct to council (or the relevant parish council);
- b) issue (or recommend to the parish council to issue) a formal censure;
- c) recommend to the subject member's group leader (or in the case of ungrouped members, recommend to council) that he/she be removed from any or all committees or sub-committees of the council (or recommend such action to the parish council);
- d) recommend to the leader of the council that the subject member be removed from positions of responsibility.
- e) instruct the MO to (or recommend that the parish council) arrange training for the subject member;
- f) recommend to council (or recommend to the parish council) that the subject member be removed from all outside appointments to which he/she has been appointed or nominated by the council (or by the parish council);
- g) recommend to council (or recommend to the parish council) that it withdraws facilities provided to the subject member by the council for a specified period, such as a computer, website and/or email and internet access;



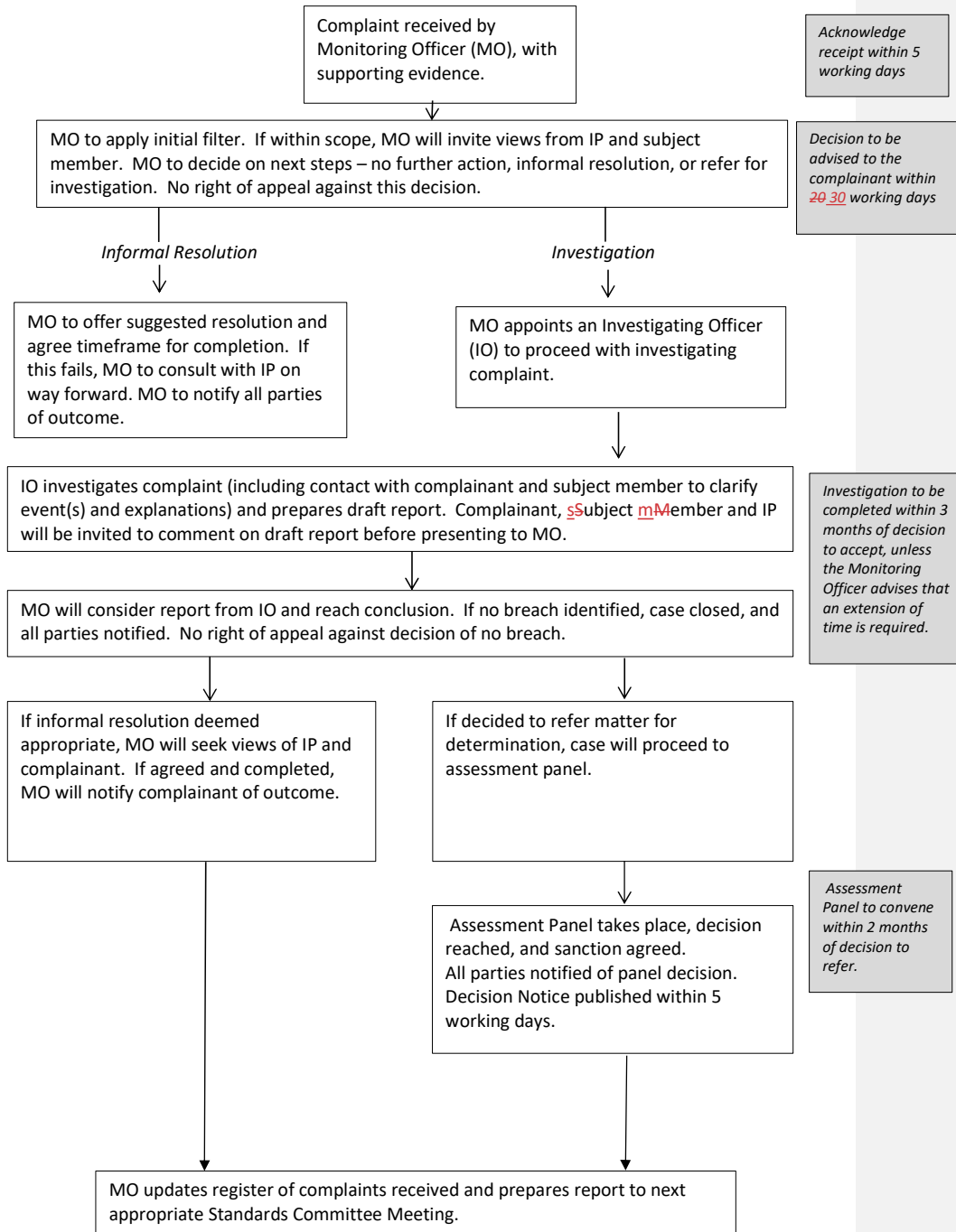
- h) recommend to council (or recommend that the parish council) that it excludes the subject member from the council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings and/or restricts contact with officers to named officers only;
- i) if relevant, recommend to the council that the subject member be removed from their role as leader of the council
- j) if relevant recommend to the secretary or appropriate official of the group that the subject member be removed as group leader or other position of responsibility.

36. All parties (and the clerk in parish cases) will be notified of the assessment panel's decision and there is no right of appeal against that decision.

37. A decision notice will be published on the council website within 5 working days of the assessment panel's decision.

*Ends....*

**APPENDIX A - PROCEDURE FLOWCHART**



## APPENDIX B – POLICE PROTOCOL

### **PROTOCOL BETWEEN ARUN DISTRICT COUNCIL'S MONITORING OFFICER AND SUSSEX POLICE**

This protocol is in place for the reporting of potential criminal offences arising under Section 34 of the Localism Act 2011 concerning the registration and/or disclosure of disclosable pecuniary interests as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The protocol will work on the following basis:

1. In the event that Arun's Monitoring Officer receives a complaint regarding a potential disclosable pecuniary interest offence, they will make immediate contact with Sussex Police through the Chief Inspector, Arun and Chichester Commander. Current contacts are:

Name	Nick Bowman, Chief Inspector
Email	<a href="mailto:Nick.Bowman@sussex.police.uk">Nick.Bowman@sussex.police.uk</a>
Tel	01273 404535 ext 580223

2. Similarly, if Sussex Police receives a complaint, they will inform the Monitoring Officer at Arun District Council, currently:

Name	Daniel Bainbridge, Group Head of Law & Governance
Email	<a href="mailto:monitoring.officer@arun.gov.uk">monitoring.officer@arun.gov.uk</a>
Tel	01903 737607

3. Sussex Police will register the complaint and conduct an initial assessment but may approach Arun's Monitoring Officer for background information on the complaint. Arun District Council's Monitoring Officer may commence a parallel investigation into the alleged Code of Conduct breach or pause the consideration of the complaint pending action by Sussex Police.
4. If Sussex Police decide not to prosecute the matter, they will normally pass the relevant evidence to Arun's Monitoring Officer so that consideration can be given to an investigation under the Members Code of Conduct Local Assessment Procedure. In the event that Arun District Council's Standards Committee decides to pursue an investigation through the Local Assessment Procedure, they will inform Sussex Police of their decision.
5. Both Arun's Monitoring Officer and Sussex Police will endeavour to keep complainants regularly updated as to the progress of their complaint.

**REVISIONS LOG**

Revision Log		
Version Number	Date	Revision
1.0	18.02.21	Procedure approved by Standards Committee
2.0	Jan 2022	Amendments approved by Standards Committee
2.1	07.03.22	Amended Police Protocol following appointment of new Chief Inspector.
2.2	27.06.22	Updated Police Protocol with new Monitoring Officer details
3.0	February 2023	Annual review of Procedure, amendments approved by Standards Committee at their meeting on 23.02.23. Approved at Full Council 15.03.23.
<u>3.1</u>	<u>March 2024</u>	<u>Annual review of Procedure, amendments agreed by Standards Committee at their meeting on 18.01.24. Approved at Full Council on dd/mm/yy</u>

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