

Notice of Meeting

Member Conduct Panel



Date & time
Friday, 30
November 2018 at
1.30 pm

Place
Committee Room G,
County Hall,
Penrhyn Road,
Kingston

Contact
Angela Guest, Regulatory
Committee Manager
Room 122, County Hall
Tel 020 8541 9075

Chief Executive
Joanna Killian

angela.guest@surreycc.gov.uk

If you would like a copy of this agenda or the attached papers in another format, eg large print or braille, or another language please either call 020 8541 9068, write to Democratic Services, Room 122, County Hall, Penrhyn Road, Kingston upon Thames, Surrey KT1 2DN, Minicom 020 8541 8914, fax 020 8541 9009, or email angela.guest@surreycc.gov.uk.

This meeting will not be held in public.

Elected Members

Mr Ken Gulati, Mr Tim Hall, and Mrs Hazel Watson

AGENDA

- 1 APOLOGIES FOR ABSENCE**
- 2 DECLARATION OF INTERESTS**

All Members present are required to declare, at this point in the meeting or as soon as possible thereafter

- (i) Any disclosable pecuniary interests and / or
- (ii) Other interests arising under the Code of Conduct in respect of any item(s) of business being considered at this meeting

NOTES:

- Members are reminded that they must not participate in any item where they have a disclosable pecuniary interest
- As well as an interest of the Member, this includes any interest, of which the Member is aware, that relates to the Member's spouse or civil partner (or any person with whom the Member is living as a spouse or civil partner)
- Members with a significant personal interest may participate in the discussion and vote on that matter unless that interest could be reasonably regarded as prejudicial.

3 EXCLUSION OF THE PUBLIC

Recommendation: That under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information under the relevant paragraphs of Part 1 of Schedule 12A of the Act.

4 INVESTIGATOR'S REPORT IN RESPECT OF AN ALLEGATION THAT A MEMBER FAILED TO COMPLY WITH THE CODE OF CONDUCT

(Pages 1
- 56)

To inform the Member Conduct Panel about the outcome of an investigation into alleged breaches of the Code of Conduct by a member and to invite the Panel to make decisions as to the future progress of the complaint.

Confidential: Not for publication under paragraph 1:
Information relating to any individual.

5 PUBLICITY FOR PART 2 ITEMS

To consider whether the items considered under the confidential part (part 2) of the agenda should be made available to the Press and public.

Joanna Killian
Chief Executive

Published: 22 November 2018

MOBILE TECHNOLOGY AND FILMING – ACCEPTABLE USE

Those attending for the purpose of reporting on the meeting may use social media or mobile devices in silent mode to send electronic messages about the progress of the public parts of the meeting. To support this, County Hall has wifi available for visitors – please ask at reception for details.

Anyone is permitted to film, record or take photographs at council meetings with the Chairman's consent. Please liaise with the council officer listed in the agenda prior to the start of the meeting so that the Chairman can grant permission and those attending the meeting can be made aware of any filming taking place.

Use of mobile devices, including for the purpose of recording or filming a meeting, is subject to no interruptions, distractions or interference being caused to the PA or Induction Loop systems, or any general disturbance to proceedings. The Chairman may ask for mobile devices to be switched off in these circumstances.

It is requested that if you are not using your mobile device for any of the activities outlined above, it be switched off or placed in silent mode during the meeting to prevent interruptions and interference with PA and Induction Loop systems.

Thank you for your co-operation

Index of Papers attached:

- Page 3 Surrey County Council Member Code of Conduct
- Page 11 Arrangements for dealing with Allegations of Breaches of the Member Code of Conduct
- Page 19 Investigators Final Report
- Page 51 Letter to Chief Executive
- Page 53 Letter to Complainant
- Page 55 Press Statement

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A. Surrey County Council Member Code of Conduct

As a Member or co-opted member of Surrey County Council you shall have regard to the following Principles of Public Life (also known as the Nolan Principles) – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a Member or co-opted member:

1. You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
2. You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
3. When carrying out your public duties you must make all choices (such as making public appointments, awarding contracts or recommending individuals for rewards or benefits) on merit, and must be impartial and be seen to be impartial.
4. You must co-operate fully with whatever scrutiny is appropriate to your office.
5. You must be as open as possible about your decisions and actions and the decisions and actions of Surrey County Council and should be prepared to give reasons for those decisions and actions.
6. You will on occasions be privy to confidential and sensitive information, such as personal information about someone, or commercially sensitive information which, if disclosed, might harm the commercial interests of the Council or another person or organisation. This information must not be revealed without proper authority.
7. You should be mindful of the requirement to declare and record any disclosable pecuniary or personal interests in a manner conforming with the procedures set out in the provisions below.
8. You must, when using or authorising the use by others of the resources of the Council, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986. For guidelines on the personal use of Council IT resources by Members, please refer to the IT Code.

9. You must promote and support high standards of conduct (characterised by the above requirements) by leadership and example when serving in your public post.
10. In addition to compliance with the Member Code of Conduct, you are expected to comply with the following codes:
 - (a) Member/Officer Protocol
 - (b) Planning Code of Best Practice

And to comply with any reasonable request by the Council that you complete a related party disclosure

B. Registering and declaring disclosable pecuniary interests

1. You must, within 28 days of taking office as a member or co-opted member, notify the Council's Monitoring Officer of your disclosable pecuniary interests. A disclosable pecuniary interest is an interest of yourself or your partner ("partner" means a spouse, civil partner, or a person with whom you are living as husband and wife or as civil partners) falling within the descriptions set out in regulations made by the Secretary of State and set out, for ease of reference, in part C of this Code. Any such interests will then be included in the Council's Register of Members' Interests. A copy of the Register will be available for public inspection and will be published on the Surrey County Council website
2. Where you consider that disclosure of the details of a disclosable pecuniary interest could, if the interest is entered on the register, lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but will state that you have a disclosable pecuniary interest, the details of which are withheld.
3. In accordance with this Council's requirement that Members will be as open as possible about their decisions and actions, it is good practice to ensure that your entries in the Council's Register of Members' Interests are kept up to date. You are advised to notify the Monitoring Officer promptly of any changes occurring to your interests whilst you remain in office so that these may be recorded in the Register. There are also occasions when you may be required to update the Register in accordance to comply with B 6 of this Code
4. If you are present at a meeting of the Council, the Cabinet, a committee, sub-committee or joint committee of the Council, and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting, unless you have obtained a dispensation, the following apply:

- I. You must not participate in any discussion of, or any vote taken on, the matter at the meeting and you must leave the room where the meeting is held while any discussion or voting takes place.
 - II. You should either declare the interest to the meeting or notify the Chairman of the reason you intend to withdraw before leaving the meeting. If the interest is not registered, you must disclose the existence and nature of the interest at the meeting
5. Where you are a Cabinet Member discharging a function alone and you become aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by you
- I. You must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.
 - II. If the interest is not registered, you must disclose the existence and nature of the interest at the meeting
6. When you have disclosed a disclosable pecuniary interest which was not already recorded on the Register and it is not the subject of pending notification, you must then notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
7. The Council's Audit and Governance may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest. Part 6 of the Constitution sets out how to apply for a dispensation and the criteria that will be used to consider your request.
8. You should be aware that it is a **criminal offence** if, without reasonable excuse, you
- (a) fail to disclose a disclosable pecuniary interest as set out above;
 - (b) participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
 - (c) take any steps as a single member discharging a function of the Council, when you have a disclosable pecuniary interest in a matter you are dealing with
 - (d) provide information in relation to your disclosable pecuniary interests that is false or misleading and you know that the information is false or misleading, or are reckless as to whether the information is true and not misleading.

C. Definition of disclosable pecuniary interests

Current legislation states that any of the following is a disclosable pecuniary interest if it is your interest or an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you are civil partners, and you are aware that that other person has the interest:

1. Any employment, office, trade, profession or vocation carried on for profit or gain.
2. Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out 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.
3. Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest¹) and Surrey County Council
 - (a) under which goods or services are to be provided or works are to be executed; and
 - (b) which has not been fully discharged.
4. Any beneficial interest in land which is within the area of Surrey County Council.
5. Any licence (alone or jointly with others) to occupy land in Surrey for a month or longer.
6. Any tenancy where (to your knowledge):-
 - (a) the landlord is Surrey County Council; and
 - (b) the tenant is a body in which the relevant person has a beneficial interest.
7. Any beneficial interest in securities of a body where:-
 - (a) that body (to your knowledge) has a place of business or land in Surrey; and
 - (b) either:-
 - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

¹ "body in which the relevant person has a beneficial interest" means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

D. Registering and declaring gifts and hospitality

1. In considering whether it is appropriate to accept offers of a gift hospitality Members will need to take account of the Council's requirement that you do not "place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties"²
2. You must notify the Monitoring Officer of any gift or hospitality with a value of £100 or above which you have been offered and accepted in your role as a member within 28 days of the offer being made to you. Any such interests will then be included in the Council's Register Gifts and Hospitality. All entries on the Register will be maintained for three years and a copy of the Register will be available for public inspection.
3. You must, during that three year period, declare the acceptance of any such gift or hospitality at any discussion of vote on or discharge on any function relating to the donor

E. [Registering and] declaring Personal interests

1. In addition to the disclosable pecuniary interests dealt with in parts B and C of this Code, you will have a personal interest in any organisation, operating in Surrey of which you are in a position of general control or management, even if you were appointed or nominated to that organisation by the Council. This includes public and voluntary sector organisations, such as other councils, schools, charities and some companies. It also includes political parties and campaigning groups.
2. You must, within 28 days of taking office as a member or co-opted member notify the Council's Monitoring Officer of your personal interests. Any interests you declare will be included in the Council's Register of Members' Interests. A copy of the Register will be available for public inspection and will be published on the Surrey County Council website. You must also notify the Monitoring Officer of any changes in your interests arising after you have completed your initial notification.
3. In accordance with this Council's requirement that you are as open as possible about your decisions and actions³, where you have a personal interest in any matter to be considered or being considered at a meeting of the Council, the Cabinet, a committee, sub- committee or joint committee of the Council and you speak at that meeting, you must, unless the chairman of the meeting rules it unnecessary, disclose to that meeting the existence and nature of that interest.

² See A 2 above

³ See A5 above

4. You can participate in any discussion and vote on any matter in which you have a personal interest unless you consider, having taken advice from the Monitoring Officer where relevant, that the interest is one that would reasonably be regarded as prejudicial⁴, in which case you should withdraw from the room or chamber when it becomes apparent that the matter is being considered at that meeting
5. If you are discharging a function of the Council as a member acting alone (e.g as a Cabinet member) you will need to consider whether you have a personal interest in any matter you are dealing with, in the course of discharging that function. If you do have such an interest you must ensure that a record of the existence and nature of the interest is recorded in the minutes of the meeting.
6. If, having taken advice from the Monitoring Officer where relevant, you consider that the interest is one that would reasonably be regarded as prejudicial⁵ and therefore inappropriate for you to continue to take any steps in relation to the matter, you should not do so (except for the purpose of enabling the matter to be dealt with by someone else).

F. Prejudicial Interests

7. A prejudicial interest is an interest which meets the following condition:

The interest is so significant that a member of the public who knew the relevant facts would reasonably think that your interest would prejudice your judgment of the public interest and prevent you from participating in any council business that affected or related to the interest whilst continuing to comply with the Nolan principles or the requirements of this Council's code. In particular those requirements that:

- I. "You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate⁶."

And/or

- II. "When carrying out your public duties you must make all choices (such as making public appointments, awarding contracts or recommending individuals for rewards or benefits) on merit, and must be impartial and be seen to be impartial"⁷

8. You must not participate in any business of the Council in which you have a prejudicial interest. If you are present at a meeting of the Council, the Cabinet, a committee, board, sub-committee or joint committee of the Council, and you have a prejudicial interest in any matter to be considered or being considered at the meeting, you, or the chairman of the meeting, should declare that you have an interest in the matter. You must not participate in any discussion of, or any vote

⁴ See section F below

⁵ See section F below

⁶ See A 1 above

⁷ See A 3 above

taken on, the matter at the meeting and you must leave the room where the meeting is held while any discussion or voting takes place.

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**ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF BREACHES OF THE
MEMBER CODE OF CONDUCT**

1 Context

- 1.1 Surrey County Council is committed to promoting and maintaining high standards of conduct amongst its 81 elected Councillors, known as Members, and has adopted a Code of Conduct setting out the conduct it expects of its Members and Co-opted Members as they carry out that role.
- 1.2 These are the Council’s arrangements for dealing with any complaint it receives alleging that an elected or co-opted Member of Surrey County Council has failed to comply with its Code of Conduct. These arrangements will form the basis for investigating and deciding any such complaints.
- 1.3 The Council will appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on any allegation which it has decided should be investigated. The Council may also seek the view of the Independent Person at any other stage it chooses and a Member against whom an allegation as been made can also consult the Independent Person.

2 The Code of Conduct

- 2.1 A copy of the Council’s Code of Conduct for Members is set out within the Constitution which is available for inspection on the Council’s website and upon request from Democratic Services.
- 2.2 The Code applies to Members when they go about the work of the Council or their role as a Member. The Council will not investigate complaints relating to a Member’s private life.

3 Making a complaint

- 3.1 Anyone wishing to make a complaint about the behaviour of a Surrey County Councillor (“Member”), should write or email to –

The Monitoring Officer
Surrey County Council
County Hall
Kingston Upon Thames
KT1 2DN
Or email monitoringofficer@surreycc.gov.uk

- 3.2 The Monitoring Officer is the member of the Council's staff 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.
- 3.3 Only written complaints will be investigated and the Council will require a name and a contact address or email address to acknowledge receipt of the complaint and keep the complainant informed of its progress. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. The Monitoring Officer will disclose the name of the complainant to the Member unless specifically asked to withhold it. Only in very exceptional cases will the Council be able to progress a complaint to an investigation without disclosing the identity of the complainant to the Member.
- 3.4 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will keep the complainant informed of the progress of the complaint. The Monitoring Officer will also inform the Member that a complaint has been received.

4 How a complaint is resolved

- 4.1 The Monitoring Officer will review every complaint received. Where they are of the view that your complaint, if proven, would not amount to a breach of the Member Code of Conduct they will notify you of this and will not progress the matter further.
- 4.2 Wherever possible the Monitoring Officer will seek to resolve your complaint through informal resolution. Informal resolution may avoid the need for a formal investigation and could, for example, consist of the Member accepting that their conduct was unacceptable and offering an apology, or other remedial action by the Council. The Monitoring Officer will consult the Chairman of the Member Conduct Panel before recommending informal resolution and will notify you and the Member concerned of any recommendation and how that will be progressed.

5 When a complaint will be investigated

- 5.1 On some occasions informal resolution will not be possible, because one of the parties does not agree to cooperate with an informal process. If this happens the Monitoring Officer will seek a ruling from the Independent Person, who will decide whether the matter proceeds to an investigation or progresses no further. In order to inform that decision the Monitoring Officer will disclose information to the Independent Person, including details of the complaint, steps taken to achieve informal resolution and why this has not been successful. The complainant and the Member will be notified of the outcome.

- 5.2 On some occasions the Monitoring Officer may consider that the conduct alleged, if proved to have occurred, would amount to a breach of the Members Code of Conduct and would not be capable of informal resolution. If this is the case, after consultation with the Chairman of the Member Conduct Panel, the Monitoring Officer will decide whether the complaint merits formal investigation. In making that decision the Monitoring Officer will take into account both the seriousness of the alleged breach and the information provided in support of the complaint. Where the Monitoring Officer requires additional information in order to come to a decision, they may contact either the complainant or the Member to request that information.
- 5.3 If a complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

6 How is the investigation conducted?

- 6.1 If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer. This may be a member of the Council's staff or an external investigator. The Investigating Officer will decide whether to speak to the complainant and to any other witnesses and may collect written evidence, such as correspondence, or minutes of meetings.
- 6.2 The Investigating Officer will contact the Member and provide them with a copy of the complaint, and ask the Member to provide his/her explanation of events, and to identify what documents the Investigating Officer needs to see and anyone they should interview. In very exceptional cases, where the Monitoring Officer, after consulting the Independent Person, considers that disclosing details of the complaint to the Member might prejudice the investigation, these will be withheld from the Member until the investigation has progressed sufficiently.
- 6.3 At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the member concerned, to give them both an opportunity to identify any inaccuracies in the report and to comment on their findings. Having received and taken account of any comments that you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.
- 6.4 The investigation and the Investigating Officer's report will be kept confidential at this stage.

7 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 send a copy of the Investigating Officer's report to the Chairman of the Member Conduct Panel and to the Independent Person and seek their views on whether to convene a Member Conduct Panel hearing. Where a hearing is inappropriate the Monitoring Officer will write to the parties, notifying them that they are satisfied that no further action is required. The Monitoring Officer will send them both a copy of the Investigating Officer's final report, which will no longer be confidential at this point.

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

Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct the Monitoring Officer will arrange for the Member Conduct Panel to hold a meeting, within three months of the Investigator's final report being issued, so that it can take a decision on the complaint.

- 8.1 The Monitoring Officer will invite the Member to reply in writing to the Investigation Officer's report, in particular to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Member will be invited to give a view on whether the Panel should meet in public or in private. The Chairman of the Member Conduct Panel will set a date for the hearing and may issue directions as to the manner in which the hearing will be conducted, including whether or not the Member Conduct Panel will meet in public or private.
- 8.2 At the hearing, the Investigating 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.
- 8.3 The Member will also have an opportunity to give evidence, to call witnesses and to make representations to the Member Conduct Panel as to why they consider that they did not fail to comply with the Code of Conduct.
- 8.4 After hearing from all the parties the Member Conduct Panel may conclude either:
 - that the Member did not fail to comply with the Code of Conduct or
 - that the Member did fail to comply with the Code of Conduct, in which case it will also decide what action to recommend or to take.

The Member Conduct Panel will not announce its decision at the Hearing. Before reaching a final decision on the complaint and any sanction, the Chairman of the Member Conduct Panel will report its

finding to the Independent Person, whose views will be sought and taken into account by the Panel before a final decision is made.

9 What action can the Member Conduct Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Member Conduct Panel the power to take such action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Member Conduct Panel may –

- 9.1 Decide that no action is needed
- 9.2 Issue a statement of censure
- 9.3 Recommend to the Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she consider all or any of the following sanctions:
 - the Member be removed from any or all Committees or Sub-Committees of the Council;
 - the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - the Member be removed from all outside appointments to which he/she has been appointed or nominated by the authority.
- 9.4 Report its findings and recommendations to the next available meeting of the County Council.

The Member Conduct Panel has no power to suspend or disqualify the Member or to withdraw members' or special responsibility allowances.

10 How are the Panel's findings communicated to me?

As soon as reasonably practicable after the Panel has made its final decision, the Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Member Conduct Panel, and send a copy to the complainant and to the Member and will make that decision notice available for public inspection.

11 Who is on the Member Conduct Panel?

The Member Conduct Panel is a cross party Panel of Members of the Council chaired by the Chairman of the County Council. Any hearing will be conducted by three of their number, one of whom shall be the Chairman or Vice Chairman of the Council, who will chair the meeting. In the event that neither the Chairman nor Vice Chairman are able to chair the meeting the hearing will be conducted by three members of the Panel and the election of one of their number to chair the hearing will be the first item of business at the meeting.

12 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.

A person cannot be “independent” if he/she –

- is, or has been within the past 5 years, a member, co-opted member or officer of the Council; or
- is a relative, partner or close friend, of a member, co-opted member or officer of the Council; or
- is an active member of a political party.

13 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Member Conduct Panel 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.

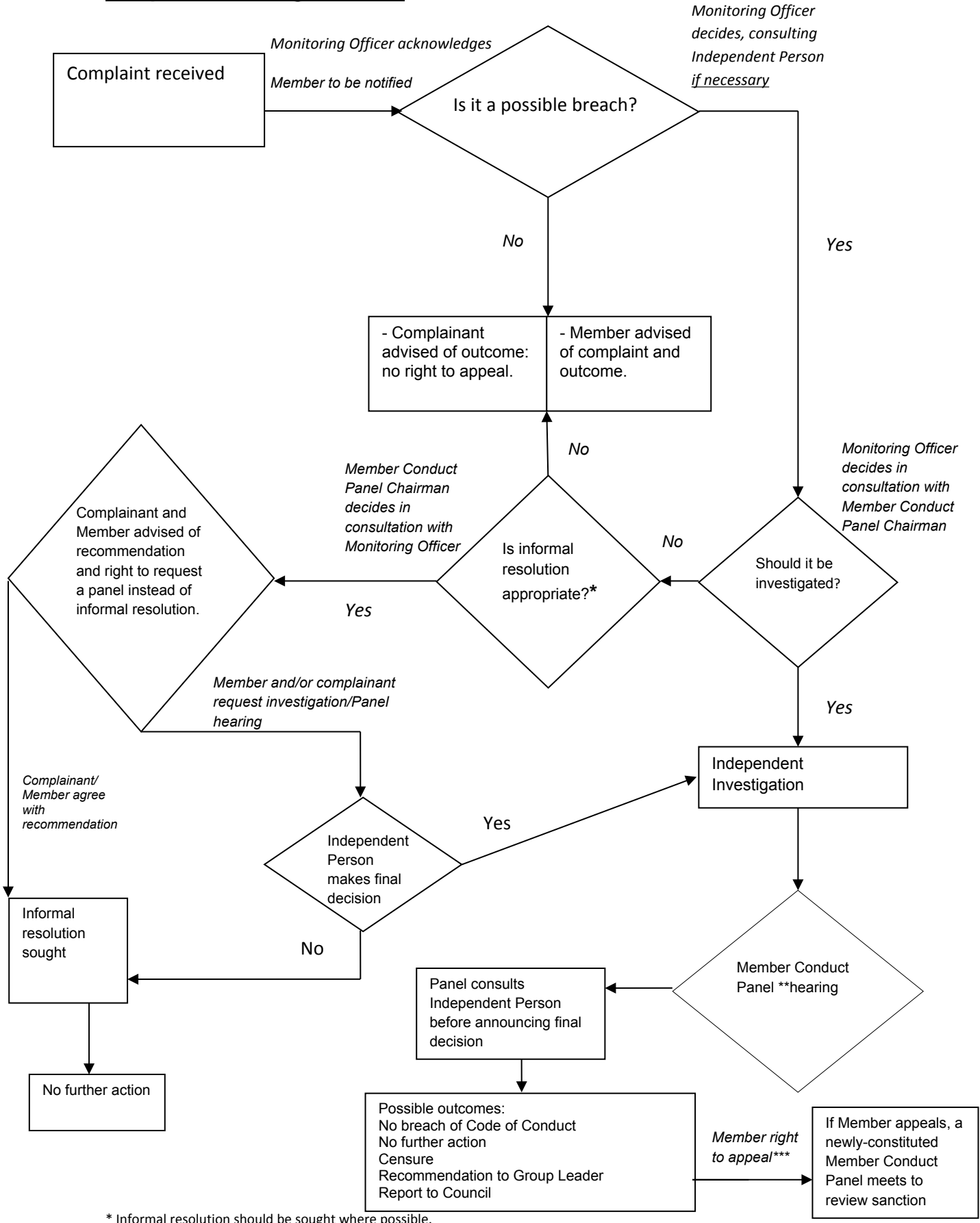
14 Appeals

A Member is expected to comply with the decisions taken through the process and has no right of appeal against a finding of breach of the Code of Conduct. However a Member may require that a further Member Conduct meeting reviews any sanction imposed at a hearing.

15 Local Government Ombudsman

Where a complainant concludes that the authority has failed to deal properly with a complaint they may make a complaint to the Local Government Ombudsman.

Complaints handling flow chart



* Informal resolution should be sought where possible.
 ** Three Members drawn from standing panel, chaired by Chairman of Council
 *** No right to appeal for complainant. Member can appeal to Member Conduct Appeals Panel on Sanction

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