

# Hoey Ainscough Associates Ltd

Supporting Local Governance

## **Review of Swindon Borough Council's procedures for handling complaints that members may have breached the Code of Conduct**

### Introduction

1. The Localism Act 2011 introduced new arrangements from July 2012 for handling complaints that members of a local authority may have breached the local Code of Conduct. This moved away from a central statutory framework but allowed councils to develop their own framework within certain statutory parameters.
2. Swindon Borough Council decided to review their processes after some eighteen months of operation in light of local experiences of handling cases in practice. In carrying out the review, they wanted to benchmark their arrangements against emerging best local practice elsewhere to ensure that it was the best possible arrangements achievable under the legislation, bearing in mind local context.
3. Hoey Ainscough Associates Ltd was therefore commissioned to carry out the review as independent national experts. Hoey Ainscough Associates Ltd was set up in April 2012 to support local authorities in managing their arrangements for handling councillor conduct issues. The company was co-founded by Paul Hoey, who had been director of strategy at Standards for England from 2001 until its closure in 2013, and Natalie Ainscough who had worked as his deputy. We have now worked with over 200 authorities in one form or another through provision of training, investigative support and wider governance advice and were therefore uniquely placed to bring that national perspective.
4. In carrying out our review, we laid down four criteria for a successful standards process:
  - a) it should enhance the reputation of the council through demonstrating that there is a culture of high standards and that any lapse from high standards in individual cases will be dealt with fairly, effectively and efficiently;

- b) it should ensure that the process is transparent and accountable, so that the public can see that misconduct has been dealt with, and members are able to demonstrate, where appropriate, that their name has been fairly cleared;
  - c) it should have independent rigour and be free from party political interference; and
  - d) it should comply with any legal requirements and ensure that members have the right to a fair hearing.
5. During the course of the review, we spoke to several different interested groups to understand their perceptions of the current arrangements, how the council dealt with complaints in practice and where they felt the key areas for improvement could be. These groups consisted of:
- i) a sample of council members;
  - ii) council officers who dealt with the standards process and members on a day-to-day basis;
  - iii) members of the standards committee (including lay members) and the two Independent Persons appointed under the Localism Act;
  - iv) a group of residents who had some experience of the standards process;
  - v) a sample of parish councillors;
  - vi) a sample of parish clerks;
  - vii) the Council Leader and Leaders of the other two political groups; and
  - viii) an informal discussion with Robert Buckland MP.
6. While all groups had different perspectives, common themes emerged from these discussions. These were in particular concerns about delays under the current arrangements; a perceived lack of transparency and failure to communicate what was happening or had happened; and concerns that the process could be used politically and therefore needed to be seen as more independent from the council.
7. While some of these concerns cannot be fully addressed because of constraints in the legislation – for example it is no longer possible to have lay members of a standards committee with voting rights – we have therefore

concentrated on these specific concerns in reviewing the process, as well as dealing with some more minor 'technical' angles.

8. We have therefore re-drawn a process which now has particular emphasis on timely completion of cases and communication to all relevant parties woven throughout the process.
9. The process itself is of course, however, only one aspect of effective arrangements. It also relies on effective implementation and support of the process. We are therefore making some recommendations as to how implementation can be better supported. One of the underlying themes from our review was that, under the current arrangements, the Monitoring Officer (MO), while doing his best to manage the process and being seen to be doing as good a job as he could, had too many responsibilities, some of which could be more effectively discharged elsewhere. Our recommendations reflect this.

## Recommendations

10. We recommend that the standards committee approve the procedure attached as **Appendix A** to this paper. Where significant changes have been suggested these are explained in further detail in the following section of the paper.
11. We are also making a series of other recommendations to support the process. These are outlined in sections of the paper below. They relate to the development of a new officer role to give greater support to the standards arrangements, including acting as a channel of communication for the parties in a case and ensuring effective case management; recommendations about how the Independent Persons can be better used; the composition of the standards committee; and the effective management of an investigation. We also recommend ways are sought to enhance the take-up of appropriate training. **Appendix B summarises all our recommendations.**

## Case-handling process

12. There are three key stages to the case-handling process. These are:
  - a) upon receipt of a complaint, deciding whether or not any further action is appropriate;
  - b) where further action is appropriate, carrying out an investigation or some other action; and

- c) where an investigation has been carried out, reaching a finding and taking any appropriate action.

13. We will deal with each of those three stages in turn, followed by comments on more general themes.

### **Initial assessment of a complaint**

14. Under Swindon's current arrangements, when a complaint about member misconduct is received the MO takes the allegation to a sub-committee of the standards committee and asks them to decide what action to take. This reflects the statutory arrangements that were in place prior to the Localism Act whereby these initial decisions had to be taken by a standards committee or sub-committee.

15. Under the Localism Act, councils have greater scope as to how this function is discharged. Broadly there are two options – to retain some form of member panel as Swindon has done, or delegate the decision, usually to the MO, either alone or in consultation with an Independent Person (IP) and/or chair of the standards committee.

16. Nearly all authorities we have worked with have delegated this initial decision to the MO. Retaining a committee as Swindon has done is the practice in only a handful of authorities.

17. There are of course advantages and disadvantages to both approaches. Delegation to the MO means decisions are taken more quickly, as there is no need to convene a committee, and can mean that matters which do not merit further investigation for whatever reason can therefore be quickly struck out. On the other hand, some councils wish to involve members in these decisions to demonstrate that politicians are taking responsibility for policing their own behaviour and also because there may be a risk (real or perceived) that an officer could be put under undue pressure to make a particular decision, particularly in a high-profile or politically contentious case. There is also a danger that a decision delegated to an officer will seem less transparent than a matter being dealt with by a committee.

18. However, the key concern we received from all our discussions in Swindon was the need for the decision to be made quickly. There was general confidence that the MO would be able to take the decision fairly and be resistant to pressure. However, the IP's views should be sought before a decision is reached. Some authorities also require that the MO seek the views

of the chair of the standards committee at this stage. However, we do not think this is necessary as it can again slow down the process.

19. The MO should also be able to refer a matter to a sub-committee if he so wishes, for example where the matter is high-profile or politically contentious.
20. **We therefore recommend that the initial decision on whether to take any action be delegated to the MO, as set out in our draft process. He should consult with the IP before reaching his decision.**
21. Another key issue at this stage is whether the member against whom an allegation has been made should be able to comment at this stage to help the MO reach a decision. This can often be helpful to provide context and give an early indication as to whether a matter could be resolved amicably. In many cases, the member may anyway have been made aware of a complaint and may attempt to comment. On the other hand, there is a risk of a perception that a member's comments may have unduly influenced a decision, particularly where no further action is taken.
22. However, on balance, we think it makes for more effective and quicker decision making if a member is invited to comment at an early stage. **We therefore recommend that members be invited to comment on an allegation (except where there is a clear risk to the integrity of the evidence) before a decision is made.**
23. As mentioned above, two key concerns we found were speed of decision-making and communication/transparency. **We have therefore included in our process strict timelines and communication requirements which should be adhered to when the process is in operation. The timelines should only be missed when there are clear and acceptable reasons (for example genuine illness or pre-planned absence on holiday may delay comments) and then only after consultation with the relevant IP.**
24. For example, if a member has been given ten days to give initial comments on an allegation but has not done so, this should not delay the decision being made by the MO unless there are exceptional over-riding reasons why the member had been unable to meet that deadline.
25. **We therefore recommend that the MO should be making the decision within ten working days of receipt of a complaint or within a further five working days if a member has submitted comments which need to be considered.**

26. In any case, this initial decision must be made within a maximum of fifteen working days (with a presumption that it is made within ten days) unless there are exceptional reasons why it cannot be.

## Appeals

27. We have made it explicit here (and at other relevant points of the procedure) that there should be no right of appeal against decisions. This is the norm in nearly all councils we work with and is in line with the spirit behind the Localism Act which removed the right of appeal which had previously existed.
28. There is an argument that a right of appeal should be allowed, at least when there has been a final determination after a hearing in order to avoid 'miscarriages of justice'. The Government believes that no right of appeal is necessary because the sanctions permissible no longer involve removal of a councillor from office and therefore, given the outcome is now purely an administrative sanction, this does not warrant the further expense and delay incurred in constructing an appeals mechanism. If a decision is genuinely considered to be unfair, the Government believes that judicial review should be the route pursued. There may also be the possibility of referring a matter to the Local Government Ombudsman if it is felt there has been maladministration leading to injustice.
29. It is for these reasons we are not recommending any appeal. The clear overriding concern was to ensure matters were dealt with speedily and an appeal would slow this down, and may have little discernible benefit given potential outcomes. However, if the council considers it does want an appeal mechanism built in at certain stages, we would stress that grounds for appeal should also be made clear – along the lines of the decision clearly being perverse or biased (rather than simply one may have taken a different view) or else that new evidence has come to light – and strict timelines should again be imposed.

## Informal resolution

30. The three options open at the initial decision-making stage are: to take no further action; to carry out an investigation; or to seek to resolve the matter in some other way. This latter approach is commonly known as 'informal resolution' and is an increasingly common remedy for these cases.
31. We have built informal resolution into our proposed process in a way we think it can work most effectively, with emphasis on decisions to be taken by the MO,

depending on the outcome of the informal resolution, and with emphasis on timeliness and communication.

## Investigation

32. Where a matter is being sent for investigation, **our key recommendation is that there should be a rigorous timeframe imposed on the length of the investigation. We have set this at three months.** While not all cases will be completed in that timescale for example further more serious issues may emerge which may need additional investigation - it is our experience both from our time at Standards for England and through work with local authorities that the vast majority of cases can be completed within this timescale if the process is rigorously managed. It should therefore only be an exception, and with appropriate agreement, that cases extend beyond this.
33. A three month investigation means broadly that the investigator has a month to six weeks to gather relevant facts and evidence, up to the end of the second month to produce a draft report and a final month to take on board any comments and finish the report. Where investigations are contracted out, there will need to be clear expectations set out in the contract as a 'Service Level Agreement' about how the case will be managed. In particular, **we believe these timelines need to be written into any investigations contract.** Where an investigation is being outsourced, estimated completion times should be required to be included in any tender made for the work.
34. One of the key factors in causing delay has often been difficulty in arranging interviews with key individuals, and it has been our experience in many places that there can sometimes be deliberate attempts to avoid being interviewed. However, delay was seen as the number one concern in Swindon so it needs to be managed rigorously. While reasonable attempts should be made to interview key people, if these reasonable attempts are rebuffed – through refusal to agree dates, respond to emails etc. – this should be reflected in the report and drawn to the standards committee's attention. There should be a clear emphasis in Swindon that investigations should be taken seriously and that timeliness is the key factor.
35. We have again also given emphasis to the importance of communication with relevant parties and transparency of the process.
36. **We also recommend that, as well as the statutory right for the subject member to seek views of an IP, the complainant should also have some access to the IP.** We have qualified this slightly by allowing the IP some

discretion in these circumstances. This is reflected further in our general section about the role of the Independent Person below.

37. We believe at the end of an investigation, an MO should be able to close a case where there has been no breach found rather than refer it to a committee, again to allow swifter resolution. We have also included further attempts at informal resolution at this stage.
38. We have also written into the process a power for the MO to cease an investigation before its conclusion, though only in exceptional circumstances – for example the death or serious long-term illness of a member or where a member loses his or her seat following an election and it is deemed no longer in the public interest to pursue the matter further.

## Hearing

39. Where cases are referred to a hearing, the matter should be referred to a sub-committee of the standards committee. We have again placed emphasis on the importance of the openness of the procedure and the role of the IP in giving their views to the sub-committee in a transparent way. We have also set out those sanctions we believe are available to the sub-committee, or, where appropriate, recommendations they may make.
40. In particular we stress that the hearing should be held in public unless there is an overwhelming requirement for certain parts of it to be in private (for example, where information might relate to a minor or vulnerable adult). This would mean that all interested parties, including the complainant, would be able to reassure themselves that the process was fair and justice was seen to be done.

## Other recommendations/considerations

### Composition of the standards committee

41. There is no longer a legal requirement to have a standards committee. However, in practice all councils have given responsibility for standards issues either to a dedicated committee as previously, or else as part of the remit of another committee, such as an audit committee. Swindon has kept a dedicated standards committee and we see no reason to change this. We also believe that any hearings should be held by a sub-committee drawn from that committee.



42. Because it is no longer a statutory committee, it is regarded as an 'ordinary committee' of the authority. This means, *inter alia*, that only elected members can have voting rights and that the committee must reflect the political balance of the council as a whole, unless the whole council has resolved to waive the political proportionality rules.
43. Standards is clearly a matter which should stand above party politics. It is also important that it is seen to have the trust of all, including members of the public and officers as well as councillors, who would all need to have confidence that their complaints will be handled fairly and transparently. In other councils where we have worked, having a politically-controlled standards committee with a perceived lack of independence has been one of the biggest factors in restricting public trust in the process.
44. Swindon has waived the political proportionality rules. It has also co-opted two lay members on to the committee (and two parish council representatives). We think this is commendable and the best that can be achieved to demonstrate some form of independence under the current legislative framework. **We therefore recommend that the committee continue to reflect this non-partisan approach and hearings sub-committees do likewise.**
45. In some places the council has gone one step further and asked the lay member to chair the hearing sub-committee, even though they do not have voting rights, as a further sign that they want the decision-making to be seen as removed from party political considerations. There can be some technical issues with this – for example, if there were a tied vote there can be no casting vote of the chair – but the committee would either have an odd number of voting members or else seek to reach a decision by consensus. It can also be seen as allowing councillors potentially to distance themselves from what may often be personally difficult decisions – seeking to 'judge' a colleague – and leaving the matter to lay members, when the Government's intention in the legislation was to make members responsible for policing their own conduct. We have therefore made no particular recommendation along these lines, but the council may wish to consider whether they wish to ask a lay member to chair hearings sub-committees.

### Independent Persons

46. The Localism Act removed the powers for independent representatives to have a vote on the standards committee because, as said above, the Government wished to pass decisions about member misconduct back to elected members

themselves to be the arbiters. Instead a new category of 'Independent Person' was introduced by the legislation. They are there not to take decisions on standards matters but to 'give views' and act as a guarantor that a case has been handled fairly and without political interference. They are different from any lay members which a council may appoint to a standards committee as it is not a statutory requirement to have lay members.

47. Under the Localism Act, councils must appoint 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 if 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.

48. This lays out the minimum duty of IPs. Some councils have kept the role of the IP at this minimum (giving views to the council on a case under investigation and being consulted by the subject member). Many more, however, have extended the role to other parts of the process. This has been the case in Swindon and is also reflected in our proposals.

49. Above all, an IP is there to give those involved in a case a reassurance that the matter is being handled fairly and appropriately. We have therefore built into the process checks from the IP at various stages – for example, the MO consulting the IP before reaching an initial decision.

50. We have also suggested in our process that the complainant have some right of access to the IP. While this is different from the right guaranteed by law to the subject member, we do nevertheless think it is important that a complainant can also raise concerns if they believe the process may be lacking independence.

51. The IP is not there to explain the process (which can be done by an officer), nor are they there to advocate for one or other of the parties or give legal advice. They are there to act as a guarantor. A member, who is subject to a complaint, risks reputational damage if found to be in breach of the Code, so has been guaranteed a right by the Government to have somebody with whom they can raise concerns. The complainant has a slightly different role, as their public reputation will not be damaged by the outcome of a complaint. Nevertheless they too need some guarantee of fairness, so we think it is right that the IP has the power to engage with them if the complainant has some legitimate concerns about the way the case is being dealt with.
52. The key role of the IP is to ensure that the case has been handled fairly throughout. The council must take account of their views and the IP must be of sufficient standing that they can legitimately raise concerns and be listened to if there are issues that need addressing.
53. Councils must appoint at least one IP. The post must be externally advertised and the appointment must be ratified by the full council. Swindon has appointed two IPs. This is typical of most councils. **We think it is important, however, that for any particular case, the responsibility for discharging duties rests with one IP. Although there is a risk that the IP may be perceived as arbiter, which is not the role of the IP, this would allow the IP to take an over-arching view of the process for an individual case, and minimises the risk of IPs taking on the role of advocate for particular sides rather than having an holistic view.**
54. **We therefore recommend that Swindon continues to have two IPs but is clear who is the designated IP for each case and communicates that to all parties in a case, together with an explanation of their role and what they can and cannot express views on.** A simple document explaining what an IP is and what they are expected to do should be produced. The existing IP protocol in place in Swindon should also be reviewed in the light of any new arrangements adopted.

### **Standards officer**

55. Common themes to emerge from the review, as stated above, were timeliness and communication. Some of these concerns arose because the Monitoring Officer was seen as having too many responsibilities in a case, and was unable always to dedicate time to managing a case effectively because of other pressures. Both those who had made a complaint and had been the subject of

a complaint felt that there needed to be a clear source of communications and contact for them as to how a case was progressing, who could help explain the procedure and be responsible generally for day-to-day case management.

56. In some authorities we have worked with, the council has somebody designated to discharge this role – sometimes called a ‘standards officer’, either sitting in Democratic Services or else reporting to the Monitoring Officer. They are typically responsible for ensuring members have received adequate standards training, liaising with the parties involved in a case to keep them informed of the case progress, managing on a day-to-day basis any investigation contract to ensure time targets are being met. They also typically have responsibility for supporting town and parish councils in the area and acting as a liaison point between the principal authority and its parishes. Their role in advising the subject member and complainant is different from that of the IP as their focus is primarily on case management and communication, rather than any broader overview of the case.

57. **We recommend that Swindon consider appointing somebody to such a role or designating an existing officer as having this role as part of his or her duties.** It can typically help the Monitoring Officer ensure cases are progressed swiftly, deal with all relevant enquiries and support the Investigator through, for example, meeting organisation, as well as ensuring there is effective training in place and any follow-up recommendations arising from cases are followed through. If the Council adopts this recommendation, some of the functions in the attached process ascribed to the Monitoring Officer relating to case management should in practice be delegated to the standards officer.

## Training

58. Another question which was raised with us through the course of our work was whether the existing training provided was adequate and covered the right areas. From what we have seen, the training members currently receive seems to be reasonable and typical of what we see in other authorities, covering both the Code of Conduct and the arrangements for case handling. However, there are three issues which are common to most authorities we work with:

- a) Attendance at training. It is our experience that a training take-up of a third of members on standards training, which is what we are advised has been the take up in Swindon, would be at the higher end of most authorities.

However, training cannot be mandated and that means that two-thirds of councillors do not take up the invitation. We have seen some authorities where group leaders make specific efforts to 'require' their members to attend, and the training will be re-run to ensure everybody does. **Swindon may want to consider taking a more proactive approach politically to ensuring councillors attend training and understand the system;**

- b) Case involvement. Even where a councillor has attended training, there is still a feeling that, once they are party to a case, they need to be refreshed about how the arrangements work. While information is provided, **there may be better scope for somebody such as a standards officer as above to sit down with a member at the start of a case and talk the steps and likely timescale through;** and
- c) The public as complainants. Inevitably members of the public who make a complaint will not have received training in understanding the Code or process. Again, while they are given information once a case has been submitted, **there may be greater scope as at b) above for an officer to explain the steps and likely timescale face-to-face.**

## Communication and understanding

- 59. We also found, among most of the groups we spoke to, a lack of clarity about what the arrangements actually were at present regardless of whether they had attended training in the past, what was possible under the legislation, and what the role of the various players involved were. This is not surprising as it is only when one is involved in a case that inevitably the process gets one's attention, unless training happened coincidentally to have been attended very recently.
- 60. While there is information on the council website, and as we understand it further information is sent out to the parties involved once a complaint is being processed, we would recommend that this information is reviewed, including how easy it can be found in practice. Clearly, if our new procedures are adopted, the basic documentation would anyway need to change so I think that **opportunity should be taken to look at how it can be most effectively communicated.** In particular, while we have written a process as a 'set of rules' it will also need to be translated into a more digestible form such as a simple flowchart explaining the decision-making process. This seems particularly necessary for the 'induction pack' provided to parties at the start of the process as there clearly seemed to be some lack of clarity about the

process and expectations from those we spoke to who had experienced a case at first hand. However, I stress we did not formally review this material.

61. While the Standards Committee at Swindon does issue an Annual Report which contains details of how many cases a year went through the system and what the outcomes were, it is also suggested that some thought could be given as to how this can be better publicised

## Conclusions

62. We believe the process Swindon currently has in place is typical of the Localism Act arrangements we see and already contains some elements of best emerging practice whilst reflecting some of the constraints imposed by the legislation. We therefore do not believe major overhaul in the mechanical steps of the process are needed, though we have made some significant recommendations.
63. The concerns expressed about the system at Swindon are again in line with concerns we hear elsewhere about timeliness, independence and transparency/communication. In some ways, these concerns will always be around to a greater or lesser extent in any complaints-handling system as people will always want matters resolved more quickly than can sometimes be the case and will always have concerns about whether any in-house arrangement can be truly independent. However, there are ways in which these concerns can be mitigated. Effective and rigorous case management, coupled with a proactive approach to keeping the parties informed, is vital to help all sides feel they have had a fair hearing and that their case has been dealt with effectively and efficiently.
64. Many of the recommendations we have made, therefore, are less about the mechanics of the process and more about how the process can be managed more efficiently. Swindon's stated aim to us at the start of this process was to have an independent benchmark to help them have arrangements which reflect best national practice. We believe the package we propose will help Swindon achieve that.

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## ARRANGEMENTS FOR DEALING WITH MEMBER CODE OF CONDUCT COMPLAINTS

### Initial assessment

1. All allegations must be made in writing to the Monitoring Officer (MO). They will be treated as confidential unless both the complainant and the subject member complained against waive confidentiality.
2. The MO is responsible for deciding whether or not any further action is necessary.
3. He may refer the matter to a sub-committee of the standards committee to take the decision in his place and he may delegate the matter to his deputy or another officer if he believes he has a conflict of interest.
4. The MO will apply an initial filter to an allegation – to check that the complaint is against a member, 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.
5. If the MO decides the matter is within scope, he will invite the Independent Person (IP) to give his views on what action should be taken before he reaches a final decision. He will also notify the member (the subject member) of the complaint unless there are compelling reasons not to and invite him/her to submit any relevant comments within 10 working days. In parish cases the MO will notify the clerk and may ask for relevant factual information.
6. Unless referred to a sub-committee, by the end of the above 10 working day period (or 15 working days where comments have been received from the subject member), the MO will decide one of the following outcomes, having regard to the views of the IP and any comments made by the member:
  - a) To take no further action;
  - b) To seek to resolve the matter informally;
  - c) To refer the matter for investigation.
7. Where, due to exceptional circumstances, the MO will be unable to meet this target he should notify the IP and all the parties (including the clerk for parish cases) with a revised timescale for making the decision.

8. Where the MO decides the decision should be made by a sub-committee he will notify the IP and all the parties (including the clerk for parish cases) with an indication of when the sub-committee will meet to make the decision.
9. 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.
10. 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.
11. The MO will report to the standards committee periodically on cases in which there has been no further action taken.

### **Informal resolution**

12. Where the MO has decided that a matter is to be resolved informally, he may do one or more of the following:
  - a) ask the member to submit an apology in writing to the complainant;
  - b) convene a meeting between the member and the complainant in order to try to resolve the issue amicably;
  - c) notify the member's group leader and suggest that they may wish to take some internal party action;
  - d) suggest that the member undergo relevant training;
  - e) other such action that the MO deems appropriate.
13. The MO will decide on a timeframe within which the informal action must be completed.
14. If the subject member refuses to engage with the informal action directed by the MO, the MO deems the action taken by the member 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, whether an investigation is necessary or whether some other action should be taken.
15. The MO will notify the complainant (and clerk in parish cases) of the outcome of the informal action.



16. The MO will report to the standards committee periodically on the outcomes of any informal action undertaken.

## Investigation

17. Where a matter is sent for investigation, the MO may carry out the investigation himself, delegate it to another officer or contract it out to an outside body.
18. The investigation must normally be completed within 3 months. If an extension of time is needed, the MO must agree that extension with the chair of the standards committee and the IP. The MO will notify the subject member, complainant (and clerk in parish cases) of any extension.
19. The subject member is notified who the relevant IP is for the case and may seek his views at any stage during the investigation.
20. The complainant is also 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.
21. Before being finalised, a draft report will be produced and the complainant, subject member and IP will be invited to comment.
22. Where the investigation has not been done 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 the deputy.
23. 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. In such cases the MO should consult the IP before deciding that the file be closed.
24. 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.
25. 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.

26. Where the MO decides to seek to resolve the matter informally, he shall seek the views of the IP and complainant before concluding whether such an outcome is appropriate. The possible actions are those outlined above. If the subject member refuses to engage with the informal action directed by the MO, the MO deems the action taken by the member 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.
27. Where the matter is referred for determination, the hearings sub-committee of the standards committee will convene within 28 days. The MO will notify the complainant of the date of the hearing.

### **Standards committee hearing**

28. A matter referred for determination by the MO will be heard by a sub-committee of the standards committee.
29. The sub-committee will meet in public subject to the normal rules on exempt and confidential information. The sub-committee will, however, retire in private to consider its findings and possible action. They may request the attendance of an officer during this period to record their findings and possible action.
30. The views of the IP will be sought by the sub-committee and made public before the sub-committee reaches its decision. The IP will not retire with the sub-committee.
31. The sub-committee 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.
32. If the sub-committee decides that further action is necessary it may:

- a) Report its findings in respect of the 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 member's Group Leader (or in the case of un-grouped 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 member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- e) instruct the MO to (or recommend that the Parish Council) arrange training for the member;
- f) recommend to Council (or recommend to the Parish Council) that the 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 member by the Council, such as a computer, website and/or email and internet access; or
- h) recommend to Council (or recommend that the Parish Council) that it excludes 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 and/or restricts contact with officers to named officers only.

33. All parties (and the clerk in parish cases) will be notified of the sub-committee's decision and there is no right of appeal against that decision.

34. A decision notice will be published on the Council website.

### Key recommendations

While the process we have designed is meant to be adopted as a whole, particular attention is drawn to the following recommendations:

1. That the initial decision on whether to proceed with a case should be delegated to the Monitoring Officer, in consultation with the Independent Person and that a decision should be taken within ten working days (or fifteen where a member has submitted comments) (para 20)
2. That members be invited to comment on allegations at this early stage to seek swift resolution but this should not delay the process (para 22)
3. That there should be no rights of appeal so as not to delay the final outcomes (para 29)
4. That there should be a presumption that investigations will be completed within three months from the date of a decision to investigate a case and that this firm expectation forms part of the investigation contract (paras 32 and 33)
5. That the complainant should be allowed to request the views of the Independent Person (para 36)
6. That Swindon standards committee and sub-committee continue with their current balance of representation (para 44)
7. That there should be a dedicated Independent Person designated to each case and their role should be clearly communicated to all concerned (paras 53 and 54)
8. That Swindon should appoint or designate someone as a standards officer to manage liaison between parties, communication and day-to-day case management (para 57)
9. That the council, and in particular political groups, do more to ensure that members are fully trained and understand the process and that those involved in a case should be fully briefed about the process at the start (para 58)
10. That the council review how it communicates how the process works and how information is collected and made available (para 60)