

APPENDIX C - Ethical Governance *Panel and process for dealing with complaints*

Arrangements must be in place for the investigation and determination of allegations. An allegation must be written and concern a member of the Authority or Parish Council failing to comply with the Code of Conduct. Where there is a determination of a failure to comply the Authority must determine whether to take action and what action to take. The Act repeals the requirements for separate Assessment, Review, Consideration and Determination Sub Committee's and enables the Council to establish its own processes. The Council must delegate appropriate powers to any Committee or the Monitoring Officer.

This council has already decided to appoint a separate Ethical Governance Panel to deal with these complaints. This will ensure the separation of duties between Governance and the Complaints process as there could potentially be a conflict if the Governance committee was to identify an area of concern regarding a Councillors behaviour e.g. as part of its audit function.

The Ethical Governance Panel will effectively be a committee, although it would work effectively more like a series of committees hearing complaints. It will require political balance and a minimum of 5 members would need to consider any complaint, unless Full Council decides, without dissent, that political balance is not required for this purpose. A lower number (3) would be more effective in terms of the administration of meetings required to consider complaints and members need to consider what structure they wish to propose to Full Council for this committee. A larger number of members for any panel would also potentially cause difficulty in terms of conflicted out members and therefore increase the number of members that would need to be on the Panel and available to be called. These issues have been experienced in the existing system where only 3 members are required for an assessment sub-committee.

The Panel members will need to be trained in dealing with complaints in the context of any new code adopted and how to conduct hearings. The Chairman would need to be appointed at each Panel meeting to consider any complaints.

It is recommended that members consider what approach they wish to recommend to Full Council in respect of the constitution of the Ethical Governance Panel which will need to deal with any complaints post 1st July 2012.

Investigation and Determination Processes

It was recognised by the Standards Committee that any informal resolution, fact-finding or investigation should balance the need to deal with allegations promptly and without undue delay, with the need to ensure natural justice for the member concerned. It was also felt that a much simpler set of processes was desirable and an initial process is attached at Attachment 1. This process has been circulated and

commented upon by all County Monitoring Officers, the main themes in respect of which are:

- An opportunity for the Monitoring Officer to seek informal resolution of the matter between the parties.
- Early sharing of the detail of the complaint with the subject member and hopefully creating a desire to resolve the position. This was a huge area of concern with the previous system. However this information would be shared confidentially with the member.
- Initial fact finding by the Monitoring Officer to see if the member has a case to answer in order to make a recommendation in consultation with the allocated Independent Person.
- The fact finding report would be considered by the committee of the authority with delegated authority to determine whether or not the member has a case to answer.
- Where there is no case to answer that would be the end of the matter, although one route of review for the complainant might be via the ombudsman.
- Where there is a case to answer the committee can determine an investigation is warranted and would then determine the matter (with the power to adjourn as necessary) and impose any necessary sanction.
- The member could have a right of appeal against the sanction to the appeals committee of the authority, which would take advantage of existing infrastructure in place.
- Parish Councils do not have to respond to findings of MBC in respect of any complaints that are dealt with by us.
- The new Panel is an ordinary committee so the only provisions for the exclusion of the public and press is under normal arrangements Part 5A of the Local Government Act 1972.

There are many different options that might be adopted for the process and Members are asked for their views.

RECOMMENDATION:

Members are asked to consider the draft process suggested for dealing with complaints and provide their views on it.

Parish Representation

Currently the parishes have three representatives that sit on assessment, review and hearing panels when a complaint against a parish council is being considered. Members could consider co-opting parish representatives – number to be determined – to provide their views on complaints when they are being dealt with by

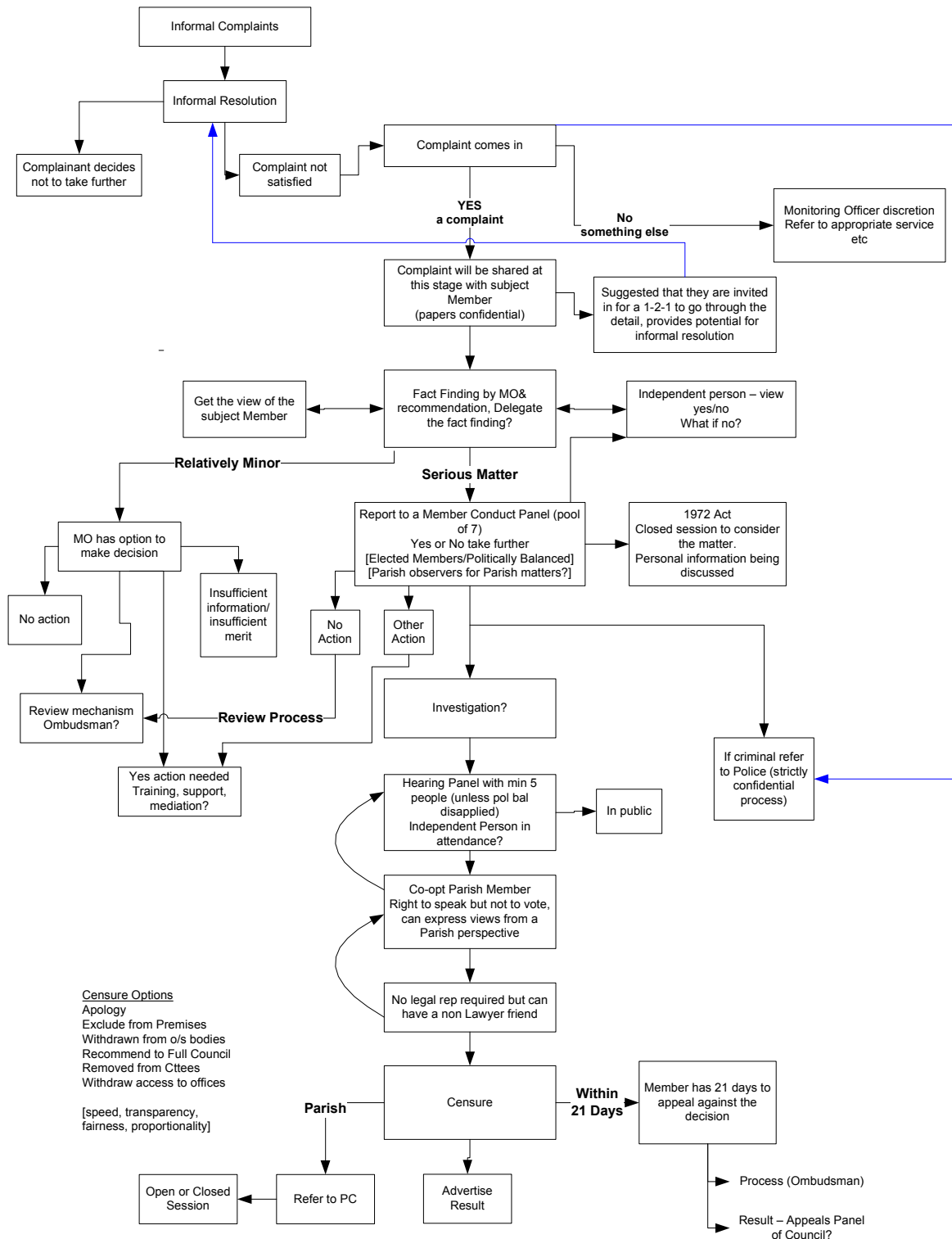
the Ethical Governance Panel. Any co-opted members are non-voting and would only be advisory.

Representations have been made at the Standards Committee and to County Monitoring Officers by Parish Council representatives that this type of arrangement should continue.

RECOMMENDATION

That Members consider whether or not they wish to propose to Full Council that a number of parish council representatives be nominated to fulfil an advisory role on the Ethical Governance Panel when Parish Council complaints are being dealt with.

Proposed Process



NB: Council function that cannot be delegated
 Panel – min 5 quorate 3
 Status of first tier tribunal?
 MO only conflicted out when has expressed a view on the matter