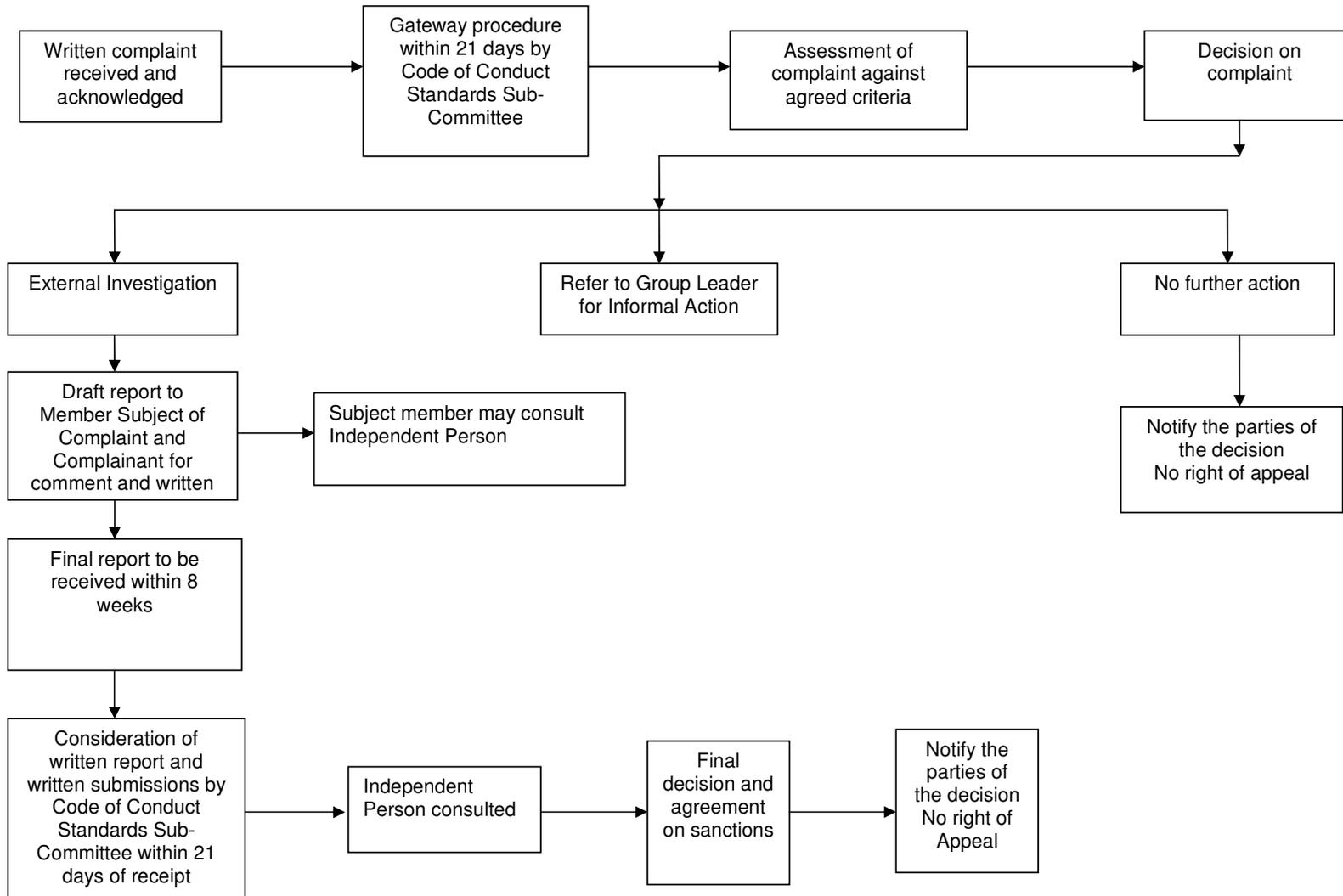


Annex D
Proposed Draft Procedure for Complaints



Complaints about a Breach of the Members' Code of Conduct - Proposed Draft Procedure

Definitions

Code – means the Code of Conduct adopted by the Fire Authority and in existence at the time of the subject matter leading to the Complaint

Complaint – means a written allegation that there has been a breach of the Code from an identified Complainant

Complainant – means a person lodging a Complaint

Member Subject of Complaint (MSOC) – means the Member who is the subject of the Complaint

Independent Person – means a person drawn from a pool of Independent Persons recruited to service a range of public bodies in Cheshire

Sub-Committee – means the Code of Conduct Standards Sub-Committee

Comment [PL1]: Do we accept anonymous complaints?

1. The Monitoring Officer receives a Complaint and acknowledges receipt.

Initial Assessment / Gateway Procedure

2. The Monitoring Officer refers the complaint to the Sub-Committee to consider the written complaint within 21 days and determine whether to;

- **Take no action**
- **Refer the matter to the relevant Group Leader for informal action**
- **Refer the matter for formal investigation by an external investigator**

Comment [PL2]: Not possible for independent councillors appointed to Fire Authority

3. Criteria will be developed to assist in making decisions, aimed at ensuring consistency.
4. The Independent Person may be consulted and his / her views sought.
5. The initial assessment decision to take no action will be final. Accordingly there will be no right of review for either the Complainant or MSOC.

Comment [PL3]: Drawn from a pool of Independent Person(s). How is the IP chosen for a particular matter?

Independent Person

6. The MSOC has the opportunity to consult the Independent Person at any stage.

External Investigation

7. The Complaint will be referred for an independent investigation by a suitably experienced external investigative officer. The investigation should be completed within 8 weeks of the referral.
8. The report of the external investigator should incorporate the following:-
 - **Executive Summary** - An outline of the allegation, who made it, the relevant provisions of the Code and whether there has been a breach.
 - **MSOC's official details** - A brief outline of when the MSOC was elected, term of office, details of committees served on and any relevant training.
 - **Summary of facts and evidence gathered**- A summary of the facts and evidence gathered, highlighting facts which are in dispute and setting out the external investigator's conclusions based on the balance of probabilities
 - **Reasoning as to whether there has been a failure to comply with the Code and investigator's findings** – Dealing with each allegation in turn and outline of whether the external investigator considers whether there has been a breach and any aggravating or mitigating facts.
 - **Schedule** - a list of witnesses interviewed and copies of relevant documents
9. A copy of the report will be circulated to the MSOC and Complainant to check for factual accuracy.
10. Both the Complainant and the MSOC will have the opportunity to make written submissions/representations to be considered by the Sub-Committee.

Final Determination

11. The Sub-Committee will consider the report together with any written submissions from the Complainant and the MSOC.
12. The Independent Person must be consulted and his/her views taken into account before any decision is made as to whether there has been a breach of the Code and any proposed sanction.
13. There will be no requirement for the MSOC, Complainant, or any witnesses to attend. The matter will be determined purely on the written documentation.

14. There will be no further right of appeal.

Issues for Consideration

- a) When the Complaint is initially received should the MSOC be informed at that stage or only when a decision has been made whether or not to investigate?
- b) Is it appropriate for the Independent Person to be involved in the initial assessment/gateway procedure?
- c) Are Members happy that the external Investigator circulates the draft report for comment on factual accuracy to the MSOC and Complainant?
- d) How many Members should form the Sub-Committee?
- e) Are Members happy with the proposal that the Complaint should be dealt with by way of written representation only? Is there a view that there ought to be the opportunity for the external investigator and the MSOC and witnesses to appear and give evidence - as is the case now (or should this only be in cases which are considered to be complex)?
- f) Should the Independent Person be present at the Sub-Committee as a 'moderator' (he/she may not vote but their views must be sought and taken into account) or should the Independent Person also only make written representations?
- g) Should there be the opportunity to appeal the Sub-Committee's decision?
- h) Should the decision be publicised on the Council's website?