

Part 5

3. MEMBERS COMPLAINTS PROCEDURE

1.0 Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of this authority (or of a Town or Parish council within its area) has failed to comply with the Councillors’ Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Councillors’ Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the authority (or of a Town or Parish council within the authority’s area), or of a Committee or Sub-Committee of the authority, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member (or a Member or co-opted Member of a Town or Parish council) against whom an allegation has been made.
- 1.4 Attached to this document are the following appendices:
 - Appendix 1 – Complaints Flowchart. The content of this is self-explanatory
 - Appendix 2 – Standards Complaints Assessment Criteria. This sets out complaints which would normally not be referred for investigation under this procedure
 - Appendix 3 – Standards Complaints Investigation Procedure. This sets out the procedure to be adopted when a complaint is to be investigated
 - Appendix 4 – Complaints – Standards Sub-Committee Procedure. This sets out the procedure to be adopted when the Standards Sub-Committee is considering a complaint referred to it

2.0 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available for inspection on the authority’s website and on request from Reception at the Council Offices.
- 2.2 Each Town and Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should inspect any website operated by the Town or Parish Council and request the Town or Parish Clerk to allow you to inspect the Town or Parish Council’s Code of Conduct.

3.0 Making a complaint

3.1 If you wish to make a complaint, please write or email to:

The Monitoring Officer, Winchester City Council, Colebrook Street,
Winchester, Hampshire SO23 9LJ, email: lhall@winchester.gov.uk

3.2 The Monitoring Officer is a senior officer of the authority 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 In order to ensure that the Council has all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from the Reception at the Council Offices.

3.4 Please provide the Council with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the Member against whom you make the complaint, without your prior consent.

3.5 The Authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

3.6 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

3.7 The Complaints Procedure Flowchart is annexed at Appendix 1 for your assistance. The Council will endeavour to deal with a complaint within 3 months.

3.8 On receipt of a complaint the Monitoring Officer will consider whether the complaint falls within a category that would normally not be referred to investigation. The categories are set out in Appendix 2.

4.0 Will your complaint be investigated?

4.1 Where the Monitoring Officer requires additional information in order to come to a decision, she may come back to you for such information, and may request information from the Member against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Town or Parish Council before submitting it to the Sub-Committee.

- 4.2 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Member or the authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.
- 4.3 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

5.0 How is the investigation conducted?

- 5.1 If the Monitoring Officer decides that a complaint merits further investigation, she may appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether they need to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who they need to interview.
- 5.2 The Investigating Officer will normally write to the Member against whom you have complained and provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, and to identify what documents they need to see and who they needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.
- 5.3 At the end of the investigation, the Investigating Officer will produce a draft report ("the Investigation Report") and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 5.4 Having received and taken account of any comments which you may make on the draft Investigation Report, where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer.
- 5.5 Appendix 3 sets out in table form the complaints investigation procedure.

6.0 What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

- 6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned and to the Town or Parish Council, where your complaint relates to a Parish Councillor, notifying you that she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, she may ask the Investigating Officer to reconsider their report.

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

- 7.1 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Hearing Sub-Committee or, after consulting the Independent Person, seek local resolution.

7.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, she will consult with the Independent Person and with you as complainant and seek to agree what you may consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee and the Town or Parish Council for information, but will take no further action.

7.1.2 Hearing

In cases where the Monitoring Officer refers a complaint for a hearing, this will be dealt with by the Standards Hearing Sub-Committee. This is a public hearing before a panel of three Council Members. The procedure to be adopted by the sub-committee is set out in Appendix 4.

The Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and give pre hearing directions to help the hearing stage move forward smoothly.

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. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person and/or the Monitoring Officer, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Committee will then consider what action, if any, the Committee should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Committee will give the member an opportunity to make representations to the Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter

The Council has agreed a procedure for the hearings, which is attached as Appendix one to these arrangements.

8.0 What action can the Standards Sub-Committee take where a Member has failed to comply with the Code of Conduct?

8.1 The Sub-Committee may decide to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may consider:-

8.2

- i. A formal letter to the Councillor found to have breached the code;
- ii. Formal censure by motion;
- iii. Publish its findings that a member has broken the code of conduct in respect of the member's conduct;
- iv. Report its findings to the Authority [or to the Parish Council] for information;
Advise the member's Group Leader of the finding;
Instruct the Monitoring Officer to [or recommend that the Parish Council] arrange training for the member;
Withdraw [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
- v. Issue a press release or other appropriate publicity;

8.3 The Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' or special responsibility allowances.

9.0 What happens at the end of the hearing?

- 9.1 At the end of the hearing, the Chairman will state the decision of the Standards Hearing Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.
- 9.2 The Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Sub Committee, and send a copy to you, to the Member and to the Town or Parish Council, making that decision notice available for public inspection.

10.0 Who are the Standards Hearing Sub-Committee?

It is a Sub-Committee comprising three Members of the Council's Audit and Governance Committee.

- 10.1 The Independent Person is invited to attend all meetings of the Committee and his/her views are sought and taken into consideration before the Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11.0 Who is the Independent Person?

- 11.1 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.
- 11.2 A person cannot be "independent" if he/she:
- 11.2.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
 - 11.2.2 (Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area), or
 - 11.2.3 Is a relative or close friend, of a person within paragraph 11.2.1 or 11.2.2 above. For this purpose, a "relative" means:
 - 11.2.3.1 Spouse or civil partner;
 - 11.2.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.2.3.3 Grandparent of the other person;

- 11.2.3.4 A lineal descendent of a grandparent of the other person;
- 11.2.3.5 A parent, sibling or child of a person within paragraphs 11.2.3.1 or 11.2.3.2; or
- 11.2.3.6 A spouse or civil partner of a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5; or
- 11.2.3.7 Living with a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5 as husband and wife or as if they were civil partners.

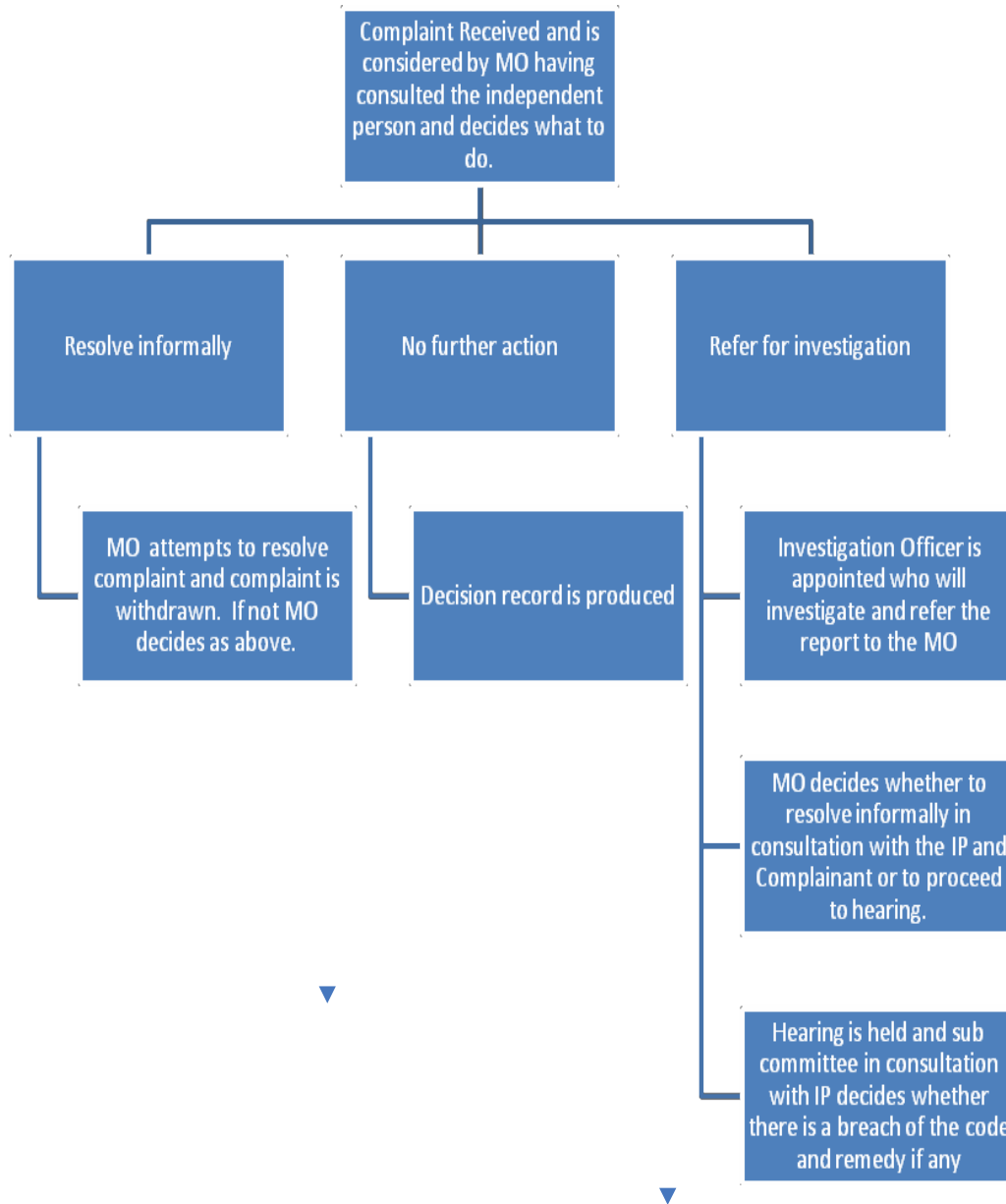
12.0 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Sub-Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13.0 Appeals

- 13.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or of the Sub-Committee.
- 13.2 If you feel that the authority has failed to deal with your complaint properly, you can make a complaint to the Local Government Ombudsman.

APPENDIX 1 COMPLAINTS PROCEDURE FLOWCHART



APPENDIX 2

STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation

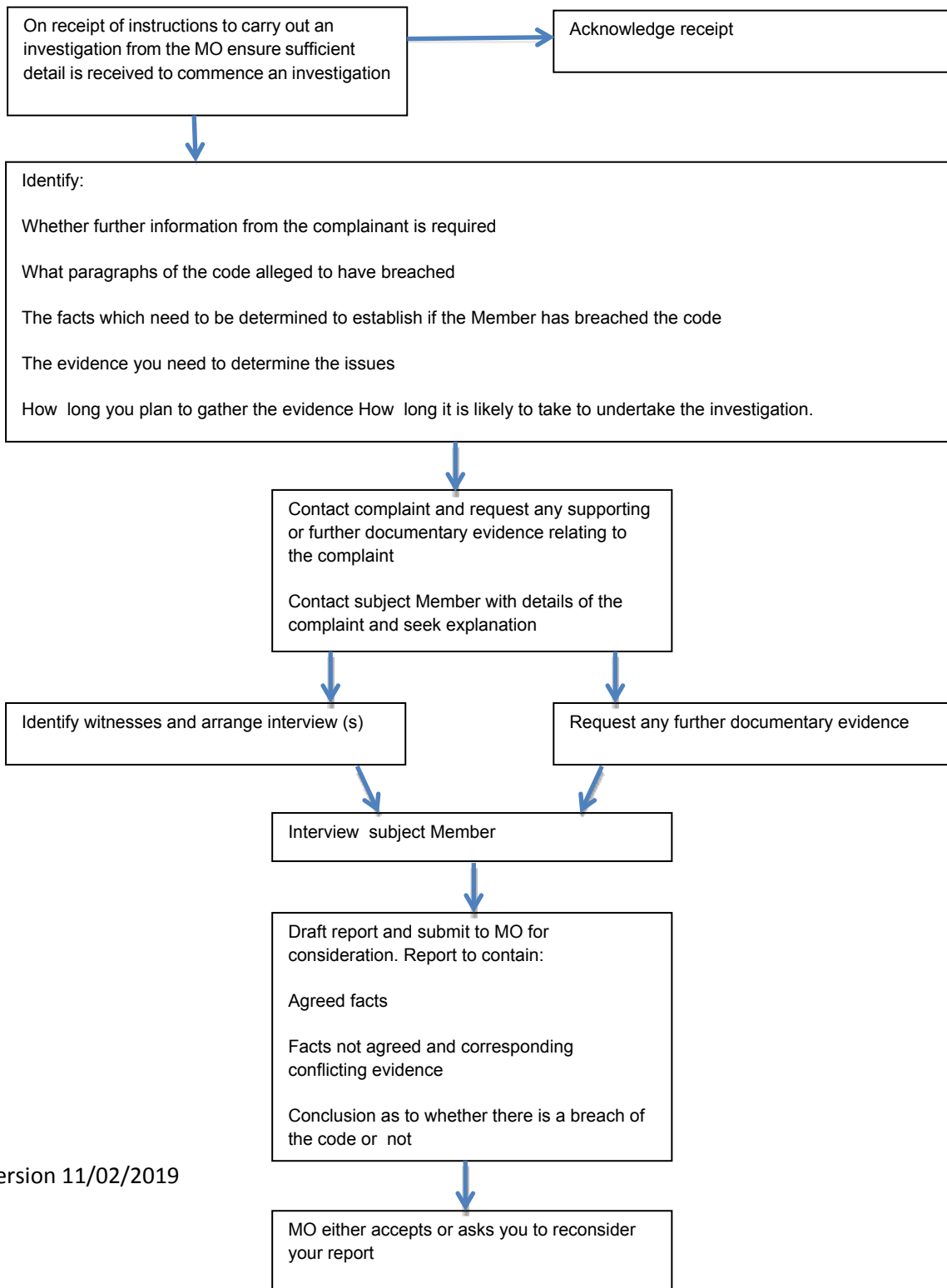
1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. It is about someone who is no longer a Councillor
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Council; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct.
11. Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction

APPENDIX 3

STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

You should maintain a written record to demonstrate what was considered at the start of each investigation and plan how you intend to carry out the investigation, the paragraphs of the code that may have been breached, the facts you need to determine to establish, the evidence you will need, how you plan to gather the evidence and how long it will take to conclude your investigation. Remember there is no provision in the Localism Act 2011 for co-operation with your investigation.

A written Investigation Report will need to be prepared for consideration by the Council's Monitoring Officer.



APPENDIX 4

Complaints Standards Sub-Committee Procedure

1. Quorum

- 1.1 Three Members must be present throughout the hearing to form a quorum. The Sub-Committee shall elect a Chairman for the meeting

2. Opening

- 2.1 The Chairman explains the procedure for the hearing and reminds all parties to turn off mobile phones.
- 2.2 The Chairman asks all present to introduce themselves
- 2.3 The Councillor will be asked whether they wish to briefly outline their position

3. The Complaint

- 3.1 The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.
- 3.2 The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor's opportunity to ask questions arising from the Investigator's report and not to make a statement)
- 3.3 Members of the Sub-Committee may question the Investigating Officer and/or any witnesses

4. The Councillor's case

- 4.1 The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative)
- 4.2 The Investigating Officer may question the Councillor and/or any witnesses
- 4.3 Members of the Sub-Committee may question the Member and/or any witnesses

5. Summing Up

5.1 The Investigating Officer may sum up the Complaint

5.2 The Member (or their representative) may sum up their case.