

ITEM 4

Complaints Procedure for matters relating to the Councillors' Code of Conduct

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 parish council within its area*) has failed to comply with the Councillors' Code of Conduct, and sets out how the authority will deal with such complaints.
- 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 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 1 Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided to investigate, 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 Parish Council*) against whom an allegation has been made.

2. 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 Parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council's Code of Conduct, you should inspect any website operated by the parish council and/or request the parish clerk to allow you to inspect the parish council's Code of Conduct*).

3. Making a complaint

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

The Monitoring Officer, North Hertfordshire District Council, District Council Offices, Gernon Road, Letchworth Garden City SG6 3JF

or

monitoring.officer@north-herts.gov.uk

- 3.1 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.
- 3.2 In order to ensure that we have 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 desk at the Council Offices.
- 3.3 Please provide us 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.
- 3.4 The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.5 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.
- 3.6 The Complaints Procedure Flowchart is annexed at Appendix 1 for your assistance.

4 Who is the Independent Person?

- 4.1 The Independent Person is appointed by the Council. A description of their role is set out in Appendix 5.
- 4.2 There are restrictions contained within the legislation that set out who can be an Independent Person. A person can not be "independent" if he/she:
 - 4.2.1 Is, or has been within the past 5 years, a Member, co-opted Member or officer of the authority;
 - 4.2.2 Is a relative or close friend, of a person within paragraph 5.3.1 or 5.3.2 above. Further detailed information is available from the Monitoring Officer regarding what is meant by a "relative".
 - 4.2.3 There is an exception to the 5 year rule contained in regulations for former Members or co-opted Members of the Standards Committee.

- 4.3 The Council has appointed Reserve Independent Persons who carry out the role of the Independent Person when he/she is unavailable, or has a conflict of interest. References to the Independent Person in this document includes the Independent Person and the Reserve Independent Persons.

5 How will my complaint be handled?

- 5.1 The Monitoring Officer will acknowledge receipt of your complaint.
- 5.2 The Monitoring Officer will review every complaint received and may consult the Independent Person before taking a decision as to whether it:
- 5.2.1 Merits no further investigation;
 - 5.2.2 Merits further investigation; or
 - 5.2.3 Should be referred to the Standards Sub-Committee.
- 5.3 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria annexed at Appendix 2. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, he/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 Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council clerk before deciding whether the complaint merits formal investigation).*
- 5.4 After the Monitoring Officer decides whether there is a case to answer, the Member complained of will be contacted (and in the case of a Parish Councillor also the clerk) to notify them as to whether the complaint is proceeding or not and, if so, what the next steps are.
- 5.5 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. The Monitoring Officer may consult the Independent Person on such action. 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.
- 5.6 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.

6 How is the investigation conducted?

- 6.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix 3 to these arrangements.
- 6.2 If the Monitoring Officer, in consultation with the Independent Person, decides that a complaint merits further investigation, he/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 or Monitoring Officer will decide whether he/she needs 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 need to be seen, and who needs to be interviewed.
- 6.3 The Investigating Officer or Monitoring 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 he/she needs to see and who he/she needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.
- 6.4 At the end of his/her investigation, the Investigating Officer or Monitoring 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.
- 6.5 Having received and considered 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.

7 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?

- 7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report and, if he/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 Parish Council clerk, where your complaint relates to a Parish Councillor*), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report.

7.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

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

8.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Sub-Committee or, in consultation with the Independent Person, seek an informal resolution.

8.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult the Independent Person and you as complainant and seek to agree 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 Standards Committee (*and the Parish Council*) for information, but will take no further action.

8.1.2 Hearing

Normal Committee rules apply as to whether the Sub-Committee meets in public or private.

If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will present the Investigation Report to the Sub-Committee which may conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

The Council has agreed a procedure for hearing complaints, which is attached as Appendix 4 to these arrangements.

At the hearing, the Investigating Officer or the Monitoring Officer will present her/his report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring 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, 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 Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the Member an opportunity to make representations to it and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

Please note that in accordance with section 28(7) of the Localism Act 2011 the views of the Independent Person are to be sought, and taken into account, by the Sub-Committee before it makes its decision on an allegation that it has decided to investigate.

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

- 9.1 The Council has delegated to the Sub-Committee such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. The Sub Committee will impose sanctions (or a combination of sanctions) commensurate with the nature and gravity of the breach of the Code of Conduct. Accordingly the sanctions available to the Sub-Committee are:-
 - 9.1.1 Publish its findings in respect of the Member's conduct;
 - 9.1.2 Report its findings to Council (*or to the Parish Council*) for information;
 - 9.1.3 Recommend to Council (*or to the Parish Council*) that the Member be issued with a formal censure or be reprimanded;
 - 9.1.4 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that the Member be removed from any or all Committees or Sub-Committees of the Council;
 - 9.1.5 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - 9.1.6 Instruct the Monitoring Officer to (*or recommend that the Parish Council*) arrange training for the Member;

- 9.1.7 Recommend to Council the removal (*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 authority (*or by the Parish Council*);
- 9.1.8 Recommend to Council that (*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 be withdrawn;
- 9.1.9 Recommend to Council that (*or recommend that the Parish Council exclude*) the Member be excluded from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings; or
- 9.1.10 Take no further action.
- 9.2 The Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' basic or special responsibility allowances.

10 Who are the Standards Sub-Committee?

- 10.1 Your complaint may be considered by a Sub-Committee comprising Councillors sitting on the authority's Standards Committee.
- 10.2 The Standards Sub-Committee will comprise a maximum of three Councillors of the Standards Committee, with the aim of achieving cross party political representation wherever practicable. If the Councillor complained about is a Member of a Parish Council, a Parish Councillor who is a Member of the Standards Committee will also be invited to attend the Sub-Committee. The Parish Councillor's role is to advise the Sub-Committee and provide a Parish perspective, he/she does not take part in the decision making process.
- 10.3 An Independent Person is invited to attend all meetings of the Sub-Committee and his/her views are sought and taken into consideration before the Sub-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 What happens at the end of the hearing?

- 11.1 At the end of the hearing, the Chair will state the decision of the Standards Sub-Committee with reasons as to whether or not the Member failed to comply with the Code of Conduct and, if the member did fail to comply, any actions which the Sub-Committee resolves to take.
- 11.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the Member (*and to the Parish Council*), make that

decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

12 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 Appeals

Complainant

- 13.1 There is no right of appeal for you as complainant 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 may make a complaint to the Local Government Ombudsman.

Member

- 13.3 In the event that a Member or Co-opted Member is found to have breached the Code of Conduct the Member shall have a right to Appeal against the finding, or against any sanction imposed, or both. Such appeal will be heard by a further meeting of the Standards Sub-Committee comprising a panel of Members and an Independent Person not involved in the initial Sub-Committee hearing.
- 13.4 A Member wishing to exercise this right of appeal must write to the Monitoring Officer within 21 days of the date of despatch of the Decision Notice of the Standards Sub-Committee confirming that the Member is exercising his/her right of appeal and the grounds for that appeal. The grounds of appeal may be one or more of the following grounds:-
- i. Any findings of fact which the Member feels have been wrongly made, explaining why it is considered the Sub-Committee was in error.
 - ii Any error of procedure or law which the Member feels has been made, explaining why it is considered the Sub-Committee was in error.
 - iii Any other relevant grounds for believing that the Sub-Committee came to a wrong decision that the Member failed to follow the provisions of the Code of Conduct.
 - iv Appealing about a decision to sanction or to require the Member to take some other action, explaining why it is considered that the decision was inappropriate.

- 13.5 The Sub-Committee considering the Appeal shall conduct a re-hearing following the same procedure as the initial Sub-Committee, whilst considering the grounds of appeal and any new evidence available.
- 13.6 The Sub-Committee considering the Appeal shall have available to it the same range of findings and sanctions as the first Sub-Committee.
- 13.7 There shall be no further right of Appeal after the decision of the Sub-Committee which considered the Appeal. If the Member is still not satisfied the Member may make a complaint to the Local Government Ombudsman.

Appendix 1 – Complaints Procedure Flowchart

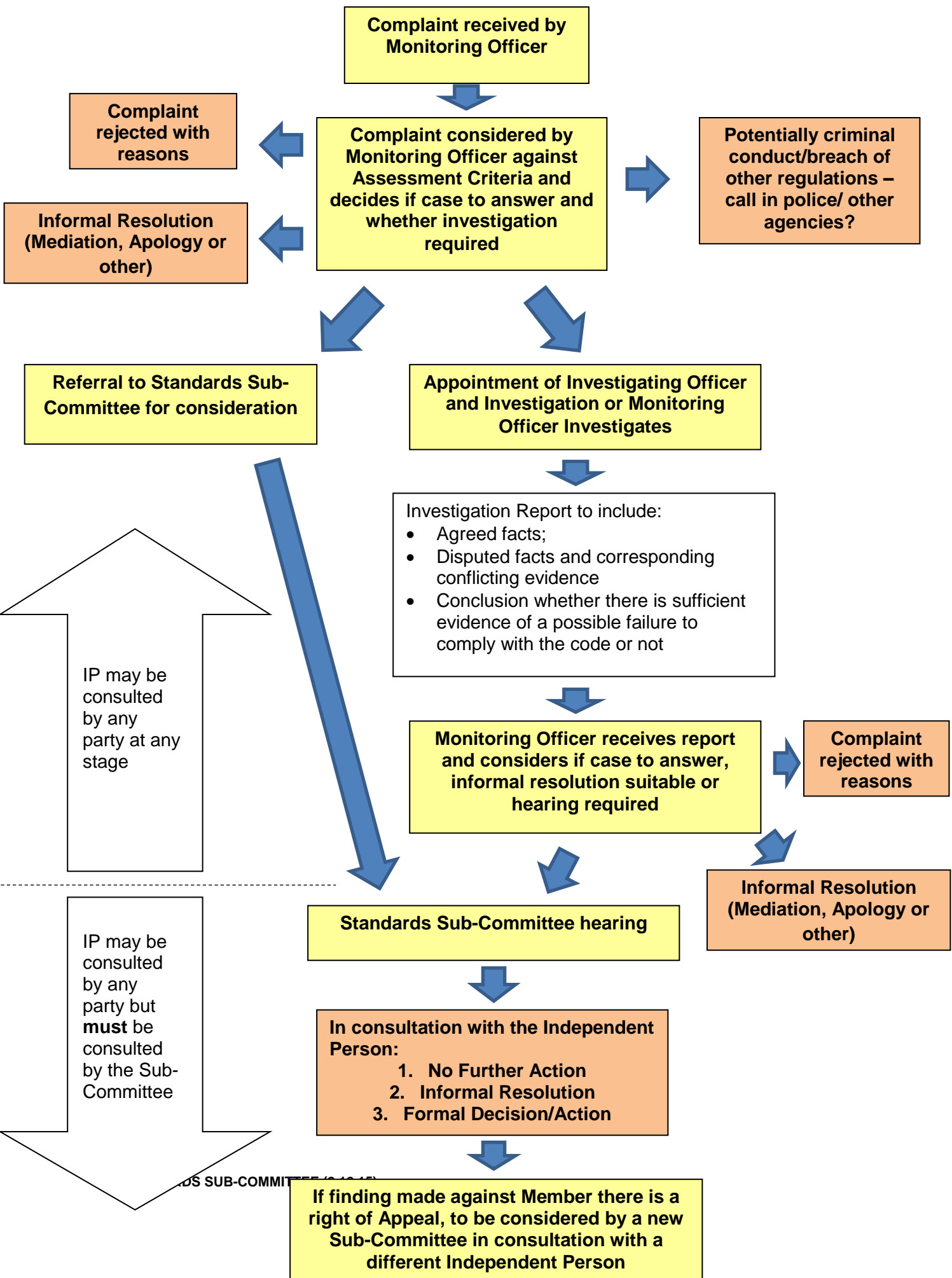
Appendix 2 – Standard Complaints Assessment Criteria

Appendix 3 – Standard Complaints Investigation Procedure

Appendix 4 – Complaints Standards Sub-Committee Procedure

Appendix 5 – Independent Person and Reserve Independent Persons Role Description

**Appendix 1
Complaints Procedure Flowchart**



STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which the Monitoring Officer would not normally decide to refer for investigation

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

Complaints which may be referred to the Standards Committee

1. It is serious enough, if proven, to justify the range of actions available to the Standards Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation.
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate.

Appendix 2

5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/her to investigate.

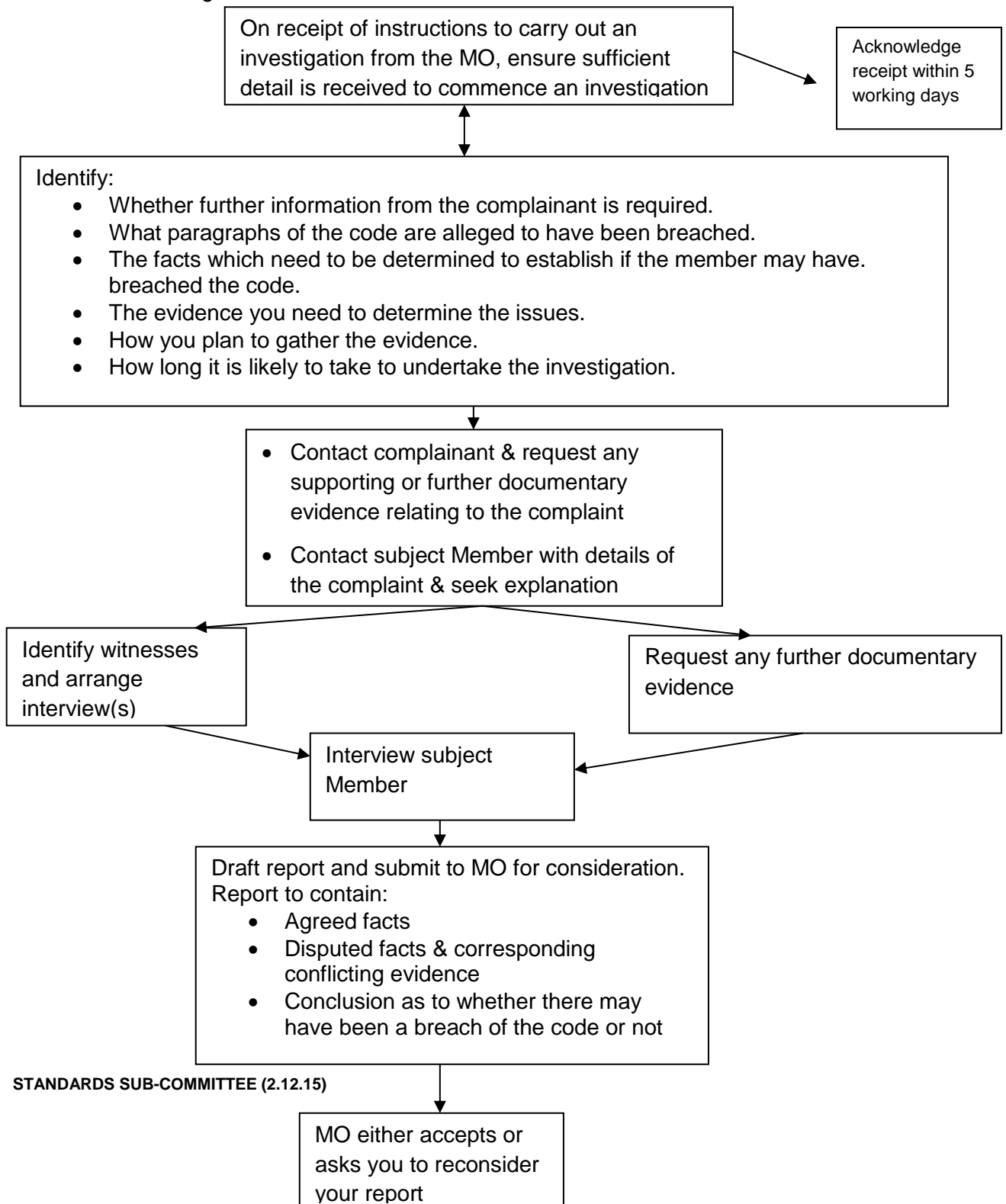
Whilst complainants can be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and members' time. These are important considerations where the complaint is relatively minor.

Appendix 3

Investigation Procedure – information for investigating officer

You must maintain a written record to demonstrate what information was considered at the start of each investigation and plan how you intend to carry out the investigation. As set out in the boxes below, your report should identify the paragraphs of the code that may have been breached, the facts you need to determine to establish whether there may have been a breach, 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 compelling Members or witnesses to co-operate with your investigation.

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



Appendix 3

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Appendix 4

STANDARDS SUB-COMMITTEE HEARING PROCEDURE

<u>Item No.</u>	<u>Procedure</u>
1	<p style="text-align: center;"><u>Quorum</u></p> <p>1.1. Three Members must be present throughout the hearing to form a quorum.</p> <p>1.2. Where the complaint refers to a Parish Member a non- voting Parish member of the Standards Committee may also be present.</p> <p>1.3. The Sub-Committee must nominate a Chairman for the meeting.</p>
2	<p style="text-align: center;"><u>Opening</u></p> <p>2.1 The Chairman must explain the procedure for the hearing and remind all parties to turn off mobile phones, audible alarms and pagers etc.</p> <p>2.2 The Chairman must ask all present to introduce themselves.</p> <p>2.3 The Member must be asked whether he/she wishes briefly to outline his/her position.</p>
3	<p style="text-align: center;"><u>The Complaint</u></p> <p>3.1 The Investigating Officer must present his/her report including any documentary evidence or other material (and may call witnesses). This report and documentary evidence must be based on the complaint made to the Council. No new points will be allowed.</p> <p>3.2 The Member against whom the complaint has been made (or his/her representative) may question the Investigating Officer on the content of the report and question any witnesses called by the Investigating Officer. (This is the Member's opportunity to ask questions arising from the Investigator's report and not to make a statement).</p> <p>3.3 Members of the Sub-Committee may question the Investigating Officer about the content of the report and/or any witnesses called by the Investigating Officer.</p>
4	<p style="text-align: center;"><u>The Member's case</u></p> <p>4.1 The Member against whom the complaint has been made (or their representative) may present his/her case (and call any witnesses).</p> <p>4.2 The Investigating Officer may question the Member and/or any witnesses.</p> <p>4.3 Members of the Sub-Committee may question the Member and/or any</p>

Appendix 4

	of the Member's witnesses.
	<u>Consultation with the Independent Person</u>
5	5.1 Members of the Sub-Committee must consult the Independent Person whose views are to be sought, and taken into account, by the Sub-Committee before it makes its decision on an allegation.
	<u>Summing Up</u>
6	6.1 The Investigating Officer may sum up the Complaint. 6.2 The Member (or his/her representative) may sum up his/her case.
	<u>Decision</u>
7	7.1 Members of the Sub-Committee will deliberate in private to consider the evidence presented at the hearing. 7.2 Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:- 7.2.1 The Sub-Committee decides that the Member has failed to follow the Code of Conduct or 7.2.2 The Sub-Committee decides that the Member has not failed to follow the Code of Conduct. 7.2.3 The Sub-Committee will give reasons for its decision. 7.3 If the Sub-Committee decides that the Member has failed to follow the Code of Conduct, it will consider any representations from the Investigator and/or the Member and/or the Independent Person as to: 7.3.1 Whether any action should be taken and 7.3.2 What form any action should take. 7.4 The Sub-Committee must then deliberate in private to consider what action, if any, should be taken. 7.5 On the Sub-Committee's return the Chairman must announce the Sub-Committee's decision (in relation to a Parish Member, a recommendation to the Parish Council). 7.6 The Sub-Committee must consider whether it should make any recommendations to the Council, or in relation to a Parish Member to the Parish Council, with a view to promoting high standards of conduct among its Members. 7.7 The Chairman will confirm that a full written decision shall be issued within 7 working days following the hearing and that the Sub-Committee's minutes will be published.

Appendix 5

ROLE OF INDEPENDENT PERSON AND RESERVE INDEPENDENT PERSONS – NORTH HERTFORDSHIRE DISTRICT COUNCIL

ROLE DESCRIPTION

Appointed by: The Council

Liaison with: Monitoring Officer, members of the Standards Committee, officers and members of the District Council and Town and Parish Councillors within the district, key stakeholders within the community.

Reference to the IP includes the Independent Person and Reserve Independent Persons

1. To assist the Council in promoting high standards of conduct by elected and co-opted members of North Hertfordshire District Council and town and parish councillors and in particular to uphold the Code of Conduct adopted by the Council and the seven principles of public life, namely selflessness, honesty, integrity, objectivity, accountability, openness and leadership.
2. To assist the Council by acting as advocate and ambassador in promoting ethical behaviour and by developing a sound understanding of the ethical framework as it operates within North Hertfordshire District Council and its town and parish councils.
3. To be available for ad hoc consultation by the Monitoring Officer where the Monitoring Officer is dealing with a matter that has not reached the stage of a formal complaint.
4. To be available for consultation by the Monitoring Officer and/or the Standards Committee before a decision is taken as to whether to investigate a complaint or to seek local resolution of the same.
5. To be consulted by the Council through the Monitoring Officer and/or the Standards Committee before it makes a decision on an allegation that has been investigated and to be available to attend meetings of the Hearing Panel of the Standards Committee for an Initial Hearing or for an Appeal for this purpose.
6. If attending a meeting of the Hearing Panel of the Standards Committee for an Initial Hearing or on Appeal pursuant to paragraph (5) above, the IP's views as to whether a breach of the Code of Conduct has occurred and any subsequent penalty will be taken into account.
7. To be available for consultation by any Member, including town and parish councillors, who is the subject of a standards complaint, unless the IP is involved in the consultation set out at paras 3-6 above in which case another IP shall undertake this function.
8. To participate in training events to develop skills, knowledge and experience and in any networks developed for Independent Persons operating outside the District Council's area. To share information and promote debate and discussion amongst the Standards Committee following such training. To attend training events organised and promoted by the Council's Standards Committee and Monitoring Officer.

STANDARDS SUB-COMMITTEE (2.12.15)