

TITLE OF REPORT: **REVIEW OF COUNCILLOR COMPLAINTS HANDLING PROCEDURE**

REPORT OF: **SERVICE DIRECTOR: LEGAL & COMMUNITY / MONITORING OFFICER**

COUNCIL PRIORITY: Sustainability

1. EXECUTIVE SUMMARY

- 1.1 The report covers a further review of the Complaints Handling Procedure, as requested in June 2022. These are minor changes to the Procedure to cover issues that have arisen since October 2021, when it was last updated. The proposed amendments are summarised and set out under 8.4 of this report (and shown as tracked changes in Appendix B).
- 1.2 The report also briefly covers the updated Protocol with the Police regarding referrals to them for potential offences under the Localism Act 2011 (in respect of Disclosable Pecuniary Interests). The Protocol is at Appendix C.

2. RECOMMENDATIONS

- 2.1. That the Standards Committee considers and adopts the updated Councillor Complaints Handling Procedure at Appendix A¹;

Or in the event that further amendments are required, following discussion at the meeting:

- 2.2. That the Standards Committee delegates to the Service Director: Legal & Community the authority to make any consequential amendments to the Procedure, in consultation with the Chair of Standards Committee, Independent Person and Reserve Independent Persons.
- 2.3. That the Committee notes the updated Protocol recently signed with the Hertfordshire Constabulary regarding referrals/ complaints relating to Disclosable Pecuniary Interests (Appendix C).

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure an updated Procedure is in place and to maintain effective arrangements within the Council.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The current Procedure could be retained; however, this would not be the most effective option.

¹ Tracked change version shown as App B

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 Consultation has taken place with the Chair, Chair, Independent Person, and Reserve Independent Persons and on redrafts before this came to the Committee.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on an Executive key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1. As Members are aware, the Committee approved an updated Procedure on 19 October 2021 [\[CLICK HERE\]](#). The Procedure was then compared with the LGA Guidance on the Code of Conduct Complaints Handling in June 2022 [\[CLICK HERE\]](#), and the Committee resolved to allow the Procedure to 'bed in' and review the Procedure at its meeting on 22 March 2023.

- 7.1. Since that time there have been a number of complaints (40), and in the light of these and a recent LGO decision on Teignbridge District Council's complaint handling arrangements², North Herts Procedure has been reviewed.

8. RELEVANT CONSIDERATIONS

- 8.1. On 22 June the Committee resolved:

(2) That the Committee considered the points made at 8.3-8.6 and will review the Complaints Handling Procedure at its meeting on 23 March 2023.

<https://srvmodgov01.north-herts.gov.uk/documents/s19389/Standards%20Matters%20report%20final.pdf>

- 8.2. The Procedure has been reviewed after being in place for just over a year/ having considered further complaints under the process. There is no recommendation to adopt the LGA complaints procedure, which for the reasons outlined in June 2022, is as much a guidance to the procedure for professionals, as an actual one for the public. The recommendation at 2.1 follows the principle that this Council retains its own Complaints Handling Procedure with the amendments identified in tracking in Appendix B and summarised at 8.4 below.

- 8.3. Otherwise, the Committee should note that in January, the LGO published its conclusions regarding a flawed procedure that Teignbridge District Council was said to have followed. The LGO raised a number of issues regarding the case, many specific to the case concerned; however, the following is relevant generally and where relevant have been considered in terms of North Herts processes and the Procedure:

- **Proceeding with a formal complaint without a formal written complaint** (*note North Herts requires this – albeit there is a suggested amendment to section 3.1*).
- **Having a record of complaints being made in writing** (*North Herts has a confidential complaints spreadsheet record of all complaints and outcomes*).

² <https://www.lgo.org.uk/information-centre/news/2023/jan/council-investigation-into-member-s-conduct-flawed-says-ombudsman>

- **Having a clear written record of consultation with an Independent Person to include their response** (*North Herts has a supporting assessment decision document; however, the document has been reviewed and updated as a precedent*).
- **recording when the written complaint has been shared with the councillor complained of, or a clear written record as to the reasons why not** (*North Herts template notification letters set out that details of the complaint should be included*).
- **ensuring that where an investigation expands to consider further allegations arising during the investigation, it keeps a clear written record of and a record that this has been explained to the Councillor complained about** (*that will be considered as part of any future complaint where appropriate, although wording included at 6.5*); and
- **that in all appropriate cases it considers the rights of the councillor complained about to free expression under Article 10 of the Human Rights Act, as part of any investigation report and subsequent committee decision making** (*North Herts takes into consideration relevant LGA guidance on the code of conduct and case law*).

8.4. In the light of the cases received, and the LGO decision the following (main) amendments have been proposed (all otherwise identified in Appendix B as tracking):

- **Adding “in writing..”** – to 3.1.
- **Providing examples as to when the Monitoring Officer may not believe it appropriate to consider a complaint ‘in house’** – new at 3.2.3.
- **Repeat complaints of the same or similar nature** – whilst this is potentially covered in the flowchart that this will result in no further action, it is made clearer that that if these are received, no further engagement with a complainant will be necessary, and the complainant potentially dealt with under the Councils unreasonable customer arrangements - new section 3.6.
- **If further allegations/ an expanded complaint is received that this will be made clear to the Councillor subject to the complaint** – wording in section 6.5.
- **Supportive evidence, post Investigation in relation to hearings** - making it clearer that if a Councillor cannot attend a hearing, that evidence would be expected to be presented to support that (section 8.4).
- **Alternative remedy available throughout** – making it clearer that this would potentially be available throughout the process (section 8.3).
- **Minor typographical changes/ rewording** - have been made throughout, to refer to Councillors and reference to North Herts Council, rather than NHC, which was a change to the corporate approach to avoid confusion with North Herts College.

8.5. The version Appended at A to this report is the ‘**clean**’ version – and tracking is not shown. Appendix B shows the potential changes that have been made as tracked changes. The current version is not attached, however can be accessed through this link [North Herts Councillor Complaints Handling Procedure 10.21](#)

Protocol with Herts Police

- 8.6. As the Committee is hopefully aware, there has been a Protocol with Herts Constabulary since on or around 2016. The Protocol outlines the referral process for complaints relating to alleged Disclosable Pecuniary Interest offences as set out under section 34 Localism Act 2011. This was recently updated by the Police and is appended at C for information.

9. LEGAL IMPLICATIONS

- 9.1 The Standards Committee has a function under section 7.5.11 to review and approve the Council's arrangements for dealing with complaints about Member conduct (subject to: minor amendments delegated to the Monitoring Officer in consultation with the Independent Person). The Service Director also has the following delegation under section 14.6.8(a) (v), namely: "To authorise changes to the Governance Policies/ Protocols/ Codes or Guidance (as the case may be) that fall within the remit of the Monitoring Officer and/ or Legal Services (and are not already covered by 14.6.9 to reflect decisions of the Council / Committees and the Cabinet, or minor ones relating to changes of fact and law, or if required for practical purposes, in order to ensure the proper administration of the Council, subject to regular notification to all Members of such changes."
- 9.2 Under s28(6) of the Localism Act 2011, a relevant authority must have arrangements in place under which allegations against Councillors can be considered.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no capital or revenue implications arising from the content of this report at this stage. Complaints are dealt with by the Monitoring Officer and Deputies by and large with some referrals externally should the Procedure indicate that this is appropriate or because of resource implication within the Directorate in dealing with this in-house.

11. RISK IMPLICATIONS

- 11.1 Appropriate policy frameworks help to ensure good governance of the Council and therefore reduce risk of poor practice or unsafe decision making.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. There are no direct equalities implications from this report.
- 12.2 Good governance and high ethical standards of conduct ensure that local government decisions are taken in the public interest.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report, as this is not a procurement or contract.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1 There are no environmental implications to this report.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 The work outlined within the report is within the caseload of the Monitoring Officer and the legal team. Implications are otherwise touched on under financial implications above.

16. APPENDICES

- 16.1 Appendix A Complaints Handling Procedure (as amended) 'clean' version;
Appendix B Complaints Handling Procedure (as amended) with potential changes tracked.
Appendix C Protocol with the Hertfordshire Constabulary

17. CONTACT OFFICERS

- 17.1 Jeanette Thompson Service Director: Legal and Community (& Monitoring Officer):
Jeanette.thompson@north-herts.gov.uk ext. 4370

18. BACKGROUND PAPERS

- 18.1 None other than those referred to/ linked to in the report or associated documents.