

# **NHDC Complaints Handling Procedure for matters relating to the Councillors' Code of Conduct**

## **1. Context**

- 1.1 These "Arrangements" set out how a formal complaint against a Councillor can be made and will be handled. This covers complaints that an elected or co-opted Member of this authority (*or of a Parish/ Town or Community Council within its area*) has failed to comply with the that authority's Councillors' Code of Conduct. ~~can be made, 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/ Town or Community Council within the authority's area*), ~~or of a Committee or Sub-Committee of the authority,~~ has failed to comply with the applicable Councillor's Code of Conduct, so this can be, considered, investigated if appropriate and decisions made on such allegations.
- 1.3 Such arrangements must ~~include provide for the authority to appoint~~ at least 1one appointed 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.~~ NHDC has an Independent Person whose views will be sought on all formal allegations (as part of the assessment of the complaint – pre any investigation), as well as seeking their views (as it legally must) at any other stage during an investigation or determination of a formal complaint. NHDC also has a Reserve Independent Person who can be contacted by the Member who is subject to a formal complaint for procedural advice.

## **2. The Code of Conduct**

- 2.1 ~~NHDC~~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 / Town or Community Council is also required to adopt a Code of Conduct. These should be available –on the Parish / Town or Community Council's website and/or by request to the Parish Clerk}.~~

## **3. Making a complaint**

- 3.1 Complaints can be made in writing 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](mailto:monitoring.officer@north-herts.gov.uk)

Or by eform: Making a complaint about a Councillor

- 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 within the North Hertfordshire District.
- 3.3 In order to ensure that NHDC has all the information required to process the complaint, please complete and send a complaint form. This can be made via the e-form link on the 'Complaining about a Councillor' page. A hard copy can also be requested, which can be downloaded from the authority's website, next to the Code of Conduct. It is available on request from at the Reception desk at the Council Offices. On receipt of this, the matter will be considered a formal complaint, and the process described relates to how this complaint will be handled.
- 3.4 A complainant will need to provide their/his/her name and a contact address or email address, so that the authority can acknowledge receipt of the complaint and keep a complainant informed of its progress. It is possible to keep the complainant's name and address confidential, although this may hamper/ and ultimately prevent any assessment or investigation. If this is required, this can be entered on the complaint form with an explanation as to why this is required. The Monitoring Officer will consider the request and if granted will not disclose the complainant's name and address to the Member without the complainant's prior consent. The only exception to this may be if other regulatory bodies (for example the Police) become involved, and in that case disclosure will be a matter for those bodies.
- 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 the complaint within 5 working days of receiving it, and will keep a complainant informed of the progress of the complaint.
- 3.7 The Complaints Handling Procedure Flowchart is annexed at Appendix 1. The only exception will be a direct referral back to Standards Sub-Committee for failure to comply with a sanction (as per 5.156 below).

#### **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 The Council has appointed at least one Reserve Independent Persons who carries out the role of the Independent Person when they are/he is unavailable, or has a conflict of interest. References to the Independent Person in this

document include the Independent Person and the Reserve Independent Persons, unless otherwise stated.

## 5. How will my formal complaint be handled?

- 5.1 The Monitoring Officer<sup>1</sup> will acknowledge receipt of the complaint.
- 5.2 The Monitoring Officer will review every complaint received and will may consult the Independent Person before taking an assessment decision on any complaint as to whether it:
  - 5.2.1 Merits no further investigation;
  - 5.2.2 Merits informal action (including mediation or training or suggested apology);
  - 5.2.3 Merits further investigation; or
  - 5.2.4 Should be referred to the Standards Sub-Committee.
- 5.3 This assessment decision will normally be taken within 28 working days of receipt of the complaint and considered in accordance with the Assessment Criteria annexed at Appendix 2.
- 5.4 Where the Monitoring Officer requires additional information in order to come to a decision, ~~s/he~~they may request this information.
- 5.5 A copy of the complaint and documentation will be forwarded to the Member for consideration and comment. The Member will be given 14 days to provide any comments on this (unless there are reasons why this deadline needs to be extended, for example for holidays, sick leave, a criminal or whistleblowing investigation).
- 5.6 If the complaint relates to a Parish/ Town or Community Councillor, the Monitoring Officer may also inform the ~~ate Parish~~ Council of the complaint and seek the views of the relevant Parish Council Clerk before deciding whether the complaint merits informal action or formal investigation. Such views would again be expected within 14 days (unless there are reasons why this deadline needs to be extended, such as holiday or sick leave).
- 5.7 Once the Member's response (and any Clerk's response) has been received and/or the deadline has expired for such comments (and none has been forthcoming), the Monitoring Officer will may consult the Independent Person. This consultation may result in the request for further information from any relevant party, and further consultation will take place. Following this and the Monitoring Officer will make one of the initial assessment decisions set out under in 5.2. above

<sup>1</sup> Reference to the Monitoring Officer during the preliminary assessment or investigation is deemed to include the Deputy Monitoring Officer, who may undertake any of the steps set out in this process if instructed to do so. Acknowledgements or communication may also come from the Monitoring Officer's PA.

- 5.8 When the Monitoring Officer has taken a decision, ~~s/he~~they will inform the complainant and the Member (and in cases involving a Parish/Town or Community Councillor) the ~~Parish~~-Clerk (or Chairman as may be appropriate) of ~~his/her~~the decision and the reasons for that decision.
- 5.9 Note that this will be the preliminary assessment of whether there appears to be a case to answer and whether to investigate, or consider alternative action. Further action will require a complainant's co-operation during the investigation and, if necessary, any full hearing, which is likely to be in public.
- 5.10 There is no further right of internal review or appeal by a complainant following a decision on the preliminary assessment not to investigate, [unless further / new evidence is then submitted and this ~~shall~~will, in any event, be subject to the Assessment Criteria in Appendix 2].
- 5.11 For the avoidance of doubt, a decision to investigate does not imply that this will be the final decision on the complaint. The Member would be expected to co-operate with any of the steps in the Complaints Handling Procedure, as failure to do so could be a breach of the Code of Conduct.
- 5.12 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation (as per 5.2.2). The Monitoring Officer ~~will~~may consult the Independent Person on such action. Informal resolution may involve the Member accepting that ~~their~~his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Member or the authority makes a reasonable offer of informal resolution, but the complainant is not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits any further investigation. Equally, if a Member refuses to engage with such an informal approach (for example by not apologising, or attending training), the Monitoring Officer may reconsider the decision and decide whether to refer the complaint (and failure to co-operate) for investigation.
- 5.13 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer this call into the Police or other regulatory agencies. If this relates to an alleged Disclosable Pecuniary Interests offence<sup>2</sup>, then this will be dealt with under any agreed Protocol with Hertfordshire Constabulary, and the Police (and finally the Director of Public Prosecutions) will be the relevant body that determines whether further action should be taken on such a complaint.
- 5.14 Please note that, with the exception of a Police/ regulatory referral, the complainant may decide to withdraw the complaint at the assessment stage. No further action is then likely to be taken on the matter. If the complainant wishes to withdraw the complaint during the investigation, then this will be considered by

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<sup>2</sup> Under s34 Localism Act 2011

the Monitoring Officer in consultation with the Independent Person as to whether the investigation will continue. The decision to terminate an investigation will, for example, depend on the nature of the allegations and the parties involved.

- 5.15 Similarly if the Member resigns or is not re-elected during this assessment or a later stage of the Complaints Handling Procedure, the Monitoring Officer in consultation with the Independent Person may decide to terminate *or suspend* further steps for up to 14 months from the date on which ~~they~~~~he~~ ceases to be a Member. This is because the Complaints Handling Procedure only applies to elected and co-opted Councillors. Further action *may be taken* on the complaint during that 14 month period if the Councillor is re-elected / or is co-opted back to the Council during that period. This decision will be taken by the Monitoring Officer in consultation with the Independent Person. If the Councillor is not re-elected/co-opted during that period, further action on the complaint will automatically cease.
- 5.16 **NOTE:** if a Member has been subject to a finding of the Standards Sub-Committee and sanctions have been imposed under 9.1.6 or by Council under ~~9.1.8 or 9.1.9 (or by his/her Parish Council)~~ and the Member has failed, without reasonable excuse, to comply with ~~at~~~~his~~ sanction, then the Monitoring Officer will refer this directly back to the Standards Sub-Committee ('direct referral') for determination.

## 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 decides that a complaint merits investigation, ~~s/he~~~~they~~ may appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. This Officer's purpose is to conduct an objective investigation on the merits of the complaint and whether there appears to be a case to answer that will be presented to the Standards Sub-Committee. The Officer is not there to represent the complainant or the Member and there is no difference in the status of the report prepared by an Investigating Officer and that of the Monitoring Officer.
- 6.3 Any investigation should be completed within 3 months, and parties must co-operate to ensure that this deadline can be met (unless there are extenuating circumstances to justify extending this). Any failure by the Member complained of to co-operate may, as previously indicated, be considered a potential breach of the Code of Conduct.
- 6.4 The Investigating Officer or Monitoring Officer will decide whether ~~they~~~~he~~ needs to interview a complainant to understand the nature of the complaint, events and consider what documents need to be seen, (and any other party who needs to be interviewed). This interview may be by telephone or in person and is likely to be recorded and that record used/ produced as part of the witness evidence

(together with any other relevant evidence that has been produced). If any witnesses to the alleged breaches of the Code have been identified, the Monitoring Officer/ Investigating Officer will decide whether to interview those witnesses. Again, these interview arrangements may be by telephone or in person and will be recorded/ used as part of witness evidence. This is to prevent disagreements as to what has or has not been said at interview.

- 6.5 The Investigating Officer or Monitoring Officer will provide the Member with a copy of the complaint, and ask the Member to provide their/his/her explanation of events, and to identify what documents they/s/he needs to see and who they/s/he needs to interview. The Member and any of their witnesses are likely to be interviewed on the same basis as under 6.4. The Member is expected to cooperate with any investigation. Failure to do so may ~~to~~ be cited as a potential breach of the Code of Conduct.
- 6.6 In exceptional cases, where it is appropriate to keep the identity of a complainant confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete names and addresses from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently. Anonymised complaints are, however, difficult to investigate effectively and if the Monitoring Officer or Investigating Officer believes that this is hampering the investigation, they may (after consulting the Independent Person) decide to terminate the investigation. The complainant will be given the opportunity to change their/his/her mind and disclose their/his/her details. If that does not occur then further action is unlikely to be taken on the complaint.
- 6.7 At the end of their/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 the complainant and to the Member concerned (and where relevant the Monitoring Officer), so that there is an opportunity to identify any inaccuracies and any matter in that draft report of dispute or which the parties believe require more consideration. The Independent Person will also see a copy of the report. Relevant parties will be given 21 days to respond. The complainant / Member will be expected to raise issues with the draft report at this stage.
- 6.8 Equally parties are encouraged to acknowledge or accept any findings at the draft report stage, so that the issues can be narrowed to those that remain in dispute. It is possible that parties will disagree with the findings / reasons on whether there is a case to answer in the report. Comments and issues will be considered by the Monitoring Officer/ Investigating Officer; errors will be corrected, however, this does not mean the report findings will be changed. A summary of these comments from the complainant/ Member are likely to be included in the final report.

6.9 Having received and considered any comments made on the draft Investigation Report, it will then be finalised. Where an Investigating Officer has been appointed, the Investigating Officer will send ~~their/his/her~~ final report (again in confidence) to the complainant, the Member and to the Monitoring Officer. Note that this report will remain confidential until or unless the Monitoring Officer notifies parties otherwise.

**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 Where an Investigating Officer has been appointed ~~by~~ the Monitoring Officer to conduct an investigation, the Monitoring Officer will review the Investigating Officer's report in consultation with the Independent Person. If the Monitoring Officer is satisfied that the Investigating Officer's report is sufficient and there is no apparent case to answer of a failure to comply with the Code, the Monitoring Officer will write to the parties (*and to the ~~Parish Council e~~Clerk, if the complaint relates to a Parish/Town or Community Councillor, or Chairman as may be appropriate*), to notify them that ~~they are/he is~~ satisfied that no further action is required.

7.2 Where an Investigating Officer has been appointed and if the Monitoring Officer and Independent Person are not satisfied that the investigation has covered the issues sufficiently the Monitoring Officer may ask the Investigating Officer to reconsider ~~their/his/her~~ report. The Monitoring Officer, in consultation with the Independent Person, will review any revised report and may decide that there remains no case to answer or further action is required, as set out below.

**8. What happens if the Investigating Officer or Monitoring Officer concludes in the report that there is a case to answer of 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 Alternative remedy.

**Alternative remedy**

8.2. The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, ~~they/s/he~~ will consult the Independent Person and the 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 acknowledging that ~~their/his/her~~ conduct was unacceptable and offering an apology, and/or other remedial action (such as training or mediation) 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. If the Member fails to abide by the Alternative remedy the Monitoring Office may re-open the issue and refer the case to the Standards

Sub-Committee for a hearing to determine whether there has been a breach of the Code of Conduct.

### **Hearings**

- 8.3. Normal Committee rules apply as to whether the Sub-Committee meets in public or private.
- 8.4. In all but straightforward cases there will be a preliminary administrative hearing of the Standards Sub-Committee, to case-manage the preparation and arrangements for the hearing (called a **Case Management Hearing – (“CMH”)**), followed by a **Final Determination Hearing (“FDH”)**. The Membership of those hearings may or may not be the same.

### **CMH**

- 8.5. The CMH will deal with administrative issues, such as fixing a date for the final hearing/ length of the hearing/ final evidence or representations that may be presented at the FDH.
- 8.6. This CMH should be arranged between 35 - 42 calendar days after the report has been sent to the parties.
- 8.7. As part of the investigation, the Member will have been asked and should have informed the Investigating Officer of any witnesses that the Member wishes to rely on / and evidence obtained as part of the Investigation. However, if this has not taken place the Member will be expected to confirm 14 days prior to the CMH:
- a. the evidence (including the names of any witnesses) that ~~s/he~~ they intend to produce that is relevant to the complaint;
  - b. whether ~~s/het~~ they will be represented at the final hearing (and details of that representative); and
  - c. any of the areas of the Investigating Officer’s report that the Member disagrees with (and the factual reasons for doing so).
- 8.8. If the Member fails to confirm the above information by a date specified prior to the CMH or fails to attend the hearing without reasonable explanation, then this may be considered a further potential breach of the Code of Conduct (for failure to co-operate). The CMH may take place in the absence of Member, in the event that the Member fails (with or without excuse) to attend. The Member may be represented or accompanied during the hearing by a Solicitor, Counsel or, with the permission of the Sub-Committee, another person.

- 8.9 The Members of the Sub-Committee, Independent Person, Investigating Officer, Monitoring Officer, or Legal Adviser may ask questions of the Member and complainant, if present.
- 8.10 The Sub-Committee may take legal advice from its Legal Adviser, or seek the opinion of the Independent Person at any time during the CMH and may retire to deliberate in private before it comes to its decision. The Legal Adviser will retire with the Members of the Committee and the substance of any legal advice provided when the Sub-Committee retires, will be shared with the Member and the Investigating Officer if they are present when the Members return to the hearing. The Independent Person will not retire with the Sub-Committee. If the Sub-Committee requires the opinion of the Independent Person on CMH matters, this should be requested prior to retiring to consider the decision/ or in any event before the decision is taken. **Note:** as the CMH is an administrative hearing and not the determination of the complaint, such opinion *may* rather than *has to be* sought prior to the decision being made.
- 8.11 Any further witness evidence that the Member wishes to rely upon at the final hearing should be sent to the Monitoring Officer within 14 days of the CMH hearing. This is to ensure fairness for all the parties concerned and to (where appropriate) narrow issues facts/ evidence and arguments that are in dispute. The FDH should be arranged at the CMH, within 35-42 calendar days of the CMH.

#### **FDH**

- 8.12 The Council has agreed a procedure for the FDH for the complaint, which is attached as Appendix 4 to these arrangements.
- 8.13 At the FDH, the Investigating Officer or the Monitoring Officer (or nominated representative) will present ~~their~~his/her report, call such witnesses as ~~s/het~~they considers necessary and make representations to substantiate ~~their~~his/her conclusion that there is a case to answer that the Member has failed to comply with the Code of Conduct.
- 8.14 At the FDH, the Member will not be able to challenge evidence from a witness that has been contained/ reflected in the Investigation Report, unless the Member has indicated by the specified date prior to the CMH that a particular witness' evidence is disputed and why. Subject to that indication, the Monitoring Officer/ Investigating Officer will be expected to secure the attendance of that witness at the hearing.
- 8.15 For this purpose, the Investigating Officer or Monitoring Officer is likely to ask the complainant to attend and give evidence to the Sub-Committee. The Member will then have an opportunity to ask any relevant questions of the Investigating Officer or witnesses produced at the hearing through the Chairman, give ~~their~~his/her evidence, call witnesses and to make representations to the Sub-Committee as to why ~~s/het~~they considers that ~~theys/he~~ have~~s~~ not failed to comply

with the Code of Conduct. The Members of the Sub-Committee, Independent Person, Investigating Officer, Monitoring Officer, or Legal Adviser may ask questions of any of the witnesses present (including the Member and complainant). The Chairman of the Sub-Committee has the ability to halt any questions that they believe are irrelevant, repetitive or haranguing in nature.

8.16 The Sub-Committee may take legal advice from its Legal Adviser at any time during the FDH and may retire to deliberate in private before it comes to its decision. The Legal Adviser will retire with the Members of the Sub-Committee and the substance of any legal advice given to the Members in private session will be confirmed when the meeting reconvenes in public session. The Independent Person will not retire with the Sub-Committee. The Sub-Committee should request the opinion of the Independent Person prior to retiring to consider the decision/ or in any event before the decision is taken, on whether there has been a breach of the Code of Conduct. 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.

8.17 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.

8.18 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 seek the view of ~~consult~~ the Independent Person on any sanction, but will then decide what action, if any, to take in respect of the matter. The Sub-Committee may retire in private session to deliberate on what, if any, sanctions will be applied. The Legal Adviser will retire with the Members of the Sub-Committee and the substance of any legal advice given to the Members in private session will be confirmed when the meeting reconvenes in public session. .

## **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 and confirm their reasons for doing so. Accordingly the sanctions available to the Sub-Committee are to:-

- 9.1.1 Publish its findings in respect of the Member's conduct (e.g. in a local newspaper, in print or on-line or both), note that any decision will be published on the Council's website in any event;
  - 9.1.2 Report its findings to Council (*or the Parish/Town/ Community Council*) for information;
  - 9.1.3 Report its findings and recommend to Council (*or the Parish/Town/ Community 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 Executive Member responsibilities;
  - 9.1.6 Instruct the Monitoring Officer to arrange (or recommend that the Parish /Town / Community Council should arrange) training for the Member;
  - 9.1.7 Recommend to Council (*or the Parish/Town/ Community Council*) that the Member be removed from all outside appointments to which ~~s/he~~they ~~has~~have been appointed or nominated by the authority;
  - 9.1.8 Recommend to Council (*or the Parish/Town/ Community 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 (*or the Parish / Town/ Community Council*) that 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.

### **What happens at the end of the hearing?**

- 9.3 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.
- 9.4 As soon as reasonably practicable thereafter (and in any event within 7 working days), a formal decision notice will be prepared by the Legal Adviser in consultation with the Sub-Committee, and send a copy to the complainant, the

Member (*and to the Parish Council or Chairman as may be appropriate*), and make that decision notice available for public inspection and available on the Council's website.

- 9.5 There is no further right of internal review or appeal following the determination hearing by either the Member or complainant. Either party may seek independent advice and apply for Judicial Review of the decision or may consider making a complaint to the Local Government Ombudsman.

## **10. Revision of these arrangements**

The full Standards Committee may amend these arrangements, and has delegated to a Chairman of the Sub-Committee the right to depart from these arrangements where ~~s/he~~they considers that it is expedient to do so in order to secure the effective and fair consideration of any matter. Minor amendments may be made by the Monitoring Officer in consultation with the Independent Person under delegated authority.

Appendix 1 – Complaints Handling Procedure Flowchart

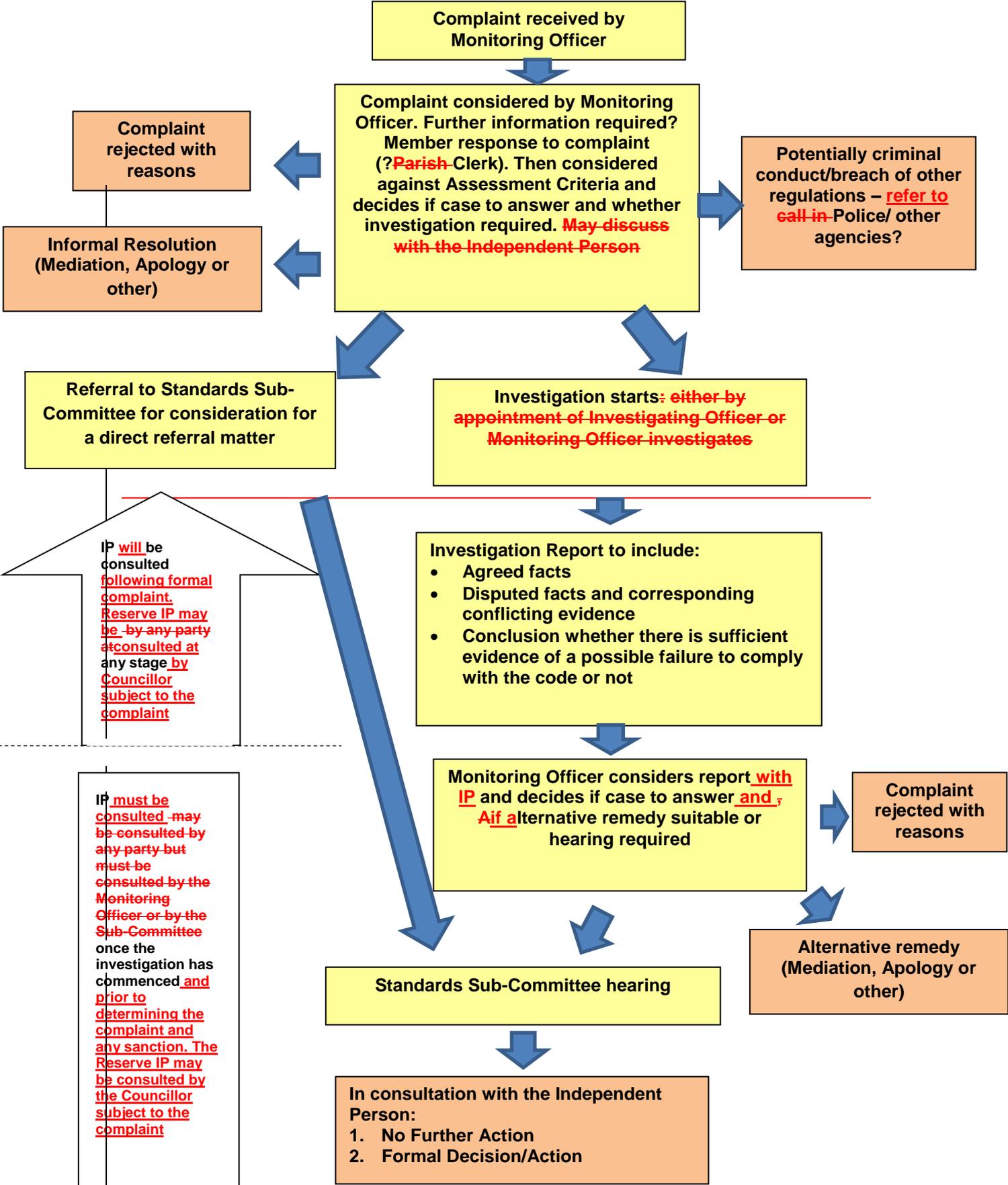
Appendix 2 – NHDC Standard Complaints Assessment Criteria

Appendix 3 – Investigation Procedure – information/ Instructions for Investigating Officer

Appendix 4 – The Final Determination Hearing (FDR) Procedure for Standards Sub-Committee

Appendix 5 – Independent Person and Reserve Independent Persons Role Description

# Appendix 1 Complaints Handling Procedure Flowchart



IP will be consulted following formal complaint. Reserve IP may be by any party at consulted at any stage by Councillor subject to the complaint

IP must be consulted may be consulted by any party but must be consulted by the Monitoring Officer or by the Sub-Committee once the investigation has commenced and prior to determining the complaint and any sanction. The Reserve IP may be consulted by the Councillor subject to the complaint

## Appendix 2

### **NHDC STANDARDS COMPLAINTS ASSESSMENT CRITERIA**

**Assessment and decisions relating to a formal complaint will be taken with the aim of maintaining public confidence in the complaints handling system.**

**In simple terms the Council will review such complaints on a Public Interest Test basis of 'CAN WE' take further action on the complaint, and then, if so, 'SHOULD WE' take further action/ investigate the complaint. This means that the Procedure is applied consistently in the public interest.**

#### **CAN WE TAKE FURTHER ACTION<sup>3</sup>?**

We potentially can if:

1. there appears to be a breach of the Code of Conduct;  
*(things such as failure to respond to correspondence from the public would not be a breach)*
2. the Councillor has to have been acting or given the impression that they were acting as a Councillor;
3. they are still a Councillor;
4. there is sufficient information available to allow the complaint to be considered;

**If the responses to 1-4 above are yes, we will then consider**

#### **SHOULD WE TAKE FURTHER ACTION?**

Generally we will do so unless the complaint:

5. was received more than 3 months after the alleged misconduct;  
*(an exception to this would be allegations of bullying, harassment, or discrimination, as this may demonstrate a pattern of behaviour/ issues)*
6. is not considered sufficiently serious to warrant investigation;
7. relates to a service, policy or Council decision;
8. appears to be minor, trivial, motivated by malice or is vexatious or is "tit-for-tat";
9. appears to be politically motivated;
10. is the same, or similar to one that has already been considered and there is nothing to be gained by further consideration;
11. is anonymous;  
*(an exception to this would be that there is sufficient documentary evidence to show a significant breach of the Code of Conduct);*
12. relates to a Councillor who has already apologised and/or has admitted making an error and the matter would not warrant a more serious sanction;
13. relates to a Councillor or conduct that is subject to an investigation by another regulatory body (e.g. Police, internal grievance or Employment Tribunal claim).

<sup>3</sup> 'Further action' means those described under 5.2.2-5.2.4 of the main Procedure document

## Appendix 2

### **NOTE: Complaints which may be referred to an external Deputy Monitoring Officer to consider if further action is warranted:**

1. 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.
2. The complaint is about a high profile Member such as the Leader of the Council and it would be inappropriate for the Monitoring Officer to investigate.
3. Such other complaints as the Monitoring Officer considers it would not be appropriate for them to investigate.

### **~~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, policy or Council decision; or~~
- ~~3. The complaint appears to be minor, trivial, motivated by malice or is vexatious or is "tit-for-tat"; or~~
- ~~4. The Monitoring Officer has reasonable grounds for believing that the complaint is 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~~
- ~~6. The Councillor was clearly not acting or giving the impression that they were acting in his/her capacity as a Councillor; or~~
- ~~7. It is about someone who is no longer a Councillor; or~~
- ~~8. There is insufficient information available to allow the complaint to be considered; or~~
- ~~9. 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; or~~
- ~~10. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or~~
- ~~11. The same, or similar, complaint has already been considered and there is nothing to be gained by further consideration; or~~

~~It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or~~

## Appendix 2

- ~~12. Where the Councillor complained of has apologised and/or has admitted making an error and the matter would not warrant a more serious sanction; or~~
- ~~13. The complaint is subject to an investigation by another regulatory body and nothing more would be gained by further action being taken at this stage (e.g. Police, internal grievance or Employment Tribunal claim).~~

### ~~Complaints which may be referred for investigation~~

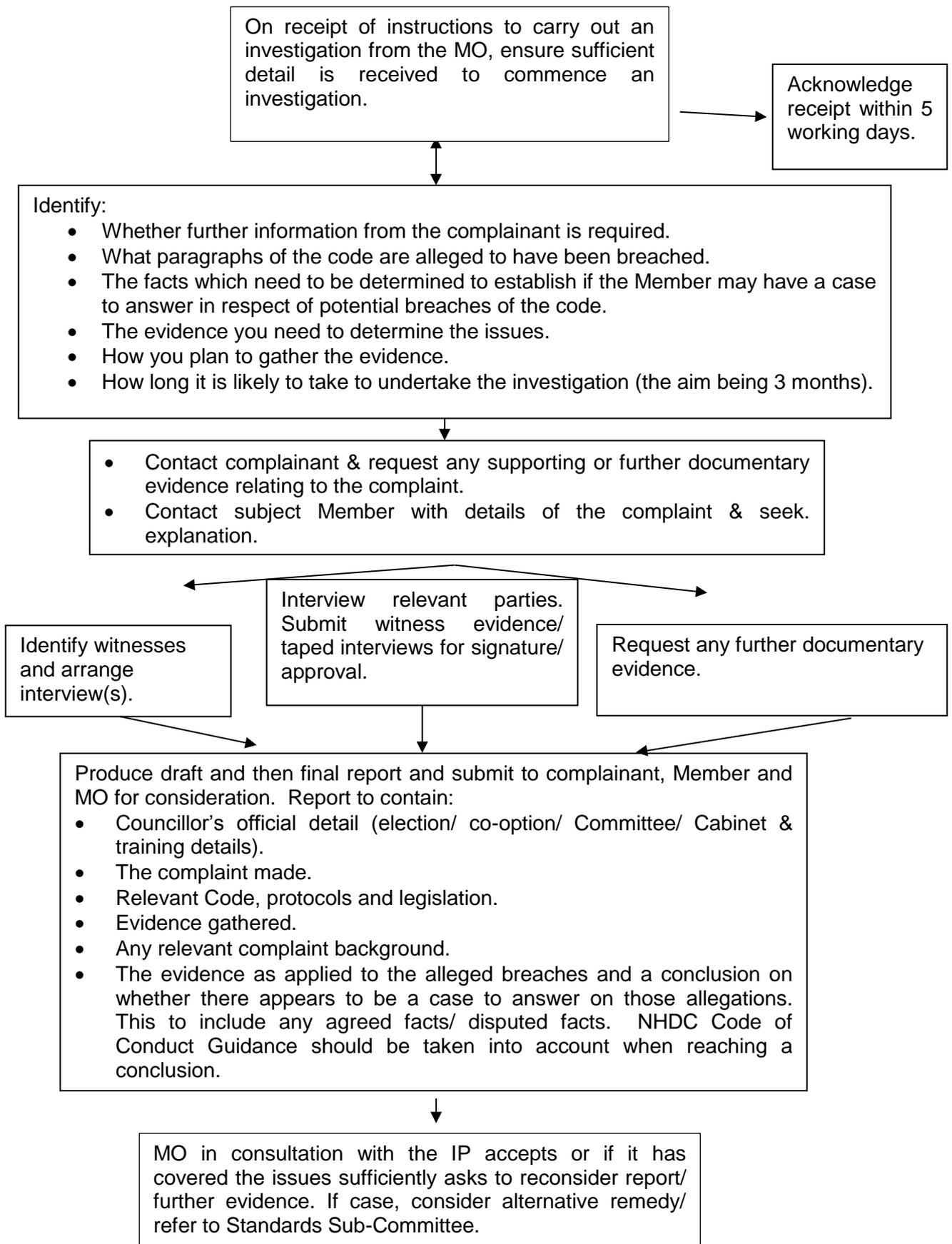
- ~~1. It is serious enough, if proven, to justify the range of actions available to the Standards Committee; or~~
- ~~2. There are individual alleged acts of misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation.~~

### ~~Complaints which may be referred to an external Deputy Monitoring Officer to consider whether to investigate~~

- ~~1. 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~~
- ~~2. 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.~~
- ~~3. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/her to investigate.~~

### Appendix 3

#### Investigation Procedure – information / instructions for Investigating Officer



## Appendix 4

### THE FINAL DETERMINATION HEARING (FDR) PROCEDURE FOR THE STANDARDS SUB-COMMITTEE

<p>The Standards Sub-Committee (“the Sub-Committee”) must have an efficient and effective hearing process. This will assist Members of the Sub-Committee to deal with all the issues that need to be resolved in a way that is fair to the Member subject to the allegation, any complainant and witnesses involved. This procedure sets out a consistent approach for all concerned.</p>	
<b>1. Interpretation</b>	
<b>“Complainant”:</b>	means the person who referred the allegation to Monitoring Officer.
<b>“CMH”:</b>	means the Sub-Committee Case Management Hearing that deals with administrative and procedural matters.
<b>“FDH”:</b>	means Sub-Committee Final Determining Hearing that hears evidence; decides if a Member has breached the Code of Conduct; and, if so, the sanction to be imposed.
<b>“Investigating Officer”:</b>	means the Monitoring Officer, Deputy or Investigating Officer or their nominated representative(s).
<b>“Independent Person/ IP”:</b>	means Independent Person and Reserve Independent Persons appointed by the Council under the Localism Act 2011, whose views must be sought by the authority before it takes a decision on an allegation which it has decided to investigate under section 28(7) of the Localism Act 2011, and whose views can be sought by the authority at any other stage, or by a Member ( <i>or a Member or co-opted Member of a Parish Council</i> ) against whom an allegation has been made.
<b>“Legal Adviser”:</b>	means the officer responsible for providing legal advice to the Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
<b>“Member”:</b>	means the Member, co-opted Member of NHDC or a Town or Parish Councillor (within the NHDC area) who is the subject of the complaint.
<b>“Proper Officer”:</b>	means the designated Committee Services officer or nominated representative.
<b>2. Representation</b>	
2.1.	The Member may be represented or accompanied during the hearing by a Solicitor, Counsel or, with the permission of the Sub-Committee, another person. Such person to have been notified to the Standards Sub-Committee, and agreed where applicable, at the CMH.
2.2.	Where a representative has been appointed, reference below to Member will (except in respect of any evidence from the Member concerned) mean the

<p>representative.</p> <p>2.3 Where a representative is present the Member must indicate if the representative is to ask questions on the Member's behalf and make any submissions. Once such arrangements have been confirmed, they will be applied throughout the hearing.</p>
<p><b>3. Legal Advice</b></p>
<p>3.1. The Sub-Committee may take legal advice from its Legal Adviser at any time during the hearing or while they are considering the final decision on the potential breach(es) of the Code and any sanctions.</p> <p>3.2. The Legal Adviser will provide a summary of any legal advice given to the Members of the Sub-Committee in private session, when the meeting reconvenes in public session.</p>
<p><b>4. Voting</b></p>
<p>4.1 Each Member of the Sub-Committee will have one vote, and all matters/issues will be decided by a simple majority of votes cast.</p> <p>4.2 Abstentions will not be permitted. The Sub-Committee's decision will record whether it was unanimous or taken by a majority.</p>
<p><b>5. Quorum</b></p>
<p>5.1. The Proper Officer or <del>their</del><del>his</del><del>her</del> representative will confirm whether the Committee is quorate. A quorum for the Sub-Committee will be three elected Members of the Council.</p> <p>5.2. Where the complaint involves an allegation of misconduct against a Parish Member, then a non-voting Parish member of the Standards Committee should also be present.</p> <p>5.3. The Sub-Committee must nominate a Chairman for the meeting.</p> <p>5.4. The Independent Person <del>must</del><del>should</del> be present throughout the Sub-Committee hearing.</p>
<p><b>6. Opening/ Setting the Scene and Preliminary Procedural Issues</b></p>
<p>6.1. The Chairman must explain the procedure for the hearing and remind all parties to turn off mobile phones, audible alarms and similar devices etc. If the proceedings are in open session they will be recorded.</p> <p>6.2. The Chairman must ask all present to introduce themselves.</p> <p>6.3. Most if not all of the procedural/ administrative issues should have been resolved by the CMH and any Sub-Committee resolutions complied with. The Sub-Committee may, however, resolve any issues (including failure to abide by resolutions from the CMH and absence of parties/ witnesses and whether to proceed).</p>

<b>7. The presentation of the Complaint and evidence of the case to answer on alleged breach of the Code of Conduct</b>
<p>7.1. The Investigating Officer will be invited to present the report including any evidence or other material and make any representations to support the relevant conclusions on a case to answer from the report. This will be based on the complaint made to the Council and any alleged failure to co-operate with the investigation or hearing preparation (where relevant).</p> <p>7.2. The Member against whom the complaint has been made (or <b>their/his/her</b> representative) may question the Investigating Officer on the content of the report and question any witnesses called by the Investigating Officer.<sup>4</sup> (This is the Member's opportunity to ask questions arising from the report and not to make a statement).</p> <p>7.3. Members of the Sub-Committee, the Independent Person and the Legal Adviser may question the Investigating Officer about the content of the report and/or any witnesses (including the complainant) called by the Investigating Officer.</p>
<b>8. The Member's case</b>
<p>8.1. The Member will then be given the opportunity to present <b>their/his/her</b> case (and call any witnesses) including any evidence or other material and make any representations to address the specific allegations before the Sub-Committee.</p> <p>8.2. The Investigating Officer may question the Member and/or any witnesses.</p> <p>8.3. Members of the Sub-Committee, the Independent Person and the Legal Adviser may question the Member and/or any of the Member's witnesses.</p>
<b>9. Summing Up</b>
<p>9.1. The Investigating Officer will be given the opportunity to sum up the complaint and any relevant representations on the case to answer.</p> <p>9.2. The Member will be given the opportunity to sum up <b>their/his/her</b> case.</p>
<b>10. Consultation with the Independent Person</b>
<p>10.1. Prior to the consultation, the Independent Person may seek a short adjournment of the hearing to prepare/ finalise <b>their/his/her</b> view on whether a breach of the Code of Conduct has occurred.</p> <p>10.2. The hearing will then be reconvened and Members of the Sub-Committee <b>must</b> consult the Independent Person on whether in his/ her opinion a breach has occurred. This view must be taken into account by the Sub-Committee before it</p>

<sup>4</sup> **NOTE** If the Member disputes any relevant fact in the Investigating Officer's report, without having given prior notice of the dispute **they/s/he** will be required to give good reasons for not mentioning it when the draft report was finalised or in any event at the CMH. Such behaviour is likely to affect the weight of the Member's evidence on that issue and/or be treated as evidence of failure to co-operate with an investigation.

makes its decision on an allegation.

**11. The Members of Sub-Committee will deliberate in private session to consider evidence presented and to reach their decision (the Legal Adviser will attend)**

**12. Decision**

12.1. Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:-

12.1.1. The Sub-Committee decides that the Member has not failed to follow the Code of Conduct; or

12.1.2. The Sub-Committee decides that the Member has failed to follow the Code of Conduct;

12.2 The Sub-Committee will give reasons for its decision.

12.3 If the Sub-Committee decides that the Member has not failed to follow the Code of Conduct the Chairman closes the hearing.

12.4 If the Sub-Committee decides that the Member has failed to follow the Code of Conduct, it will consider any representations from the Investigating Officer and/or the Member and will seek the /or the views of views of the Independent Person as to:

12.4.1 Whether any action should be taken and

12.4.2 If so, what form any action (in the form of a sanction) should take.

12.5 As part of their role under 12.4.2, the Sub-Committee will consider whether to impose any of the following sanctions:

12.5.1 Publish its findings in respect of the Member's conduct (e.g. in a local newspaper in print or on-line or both). [Note that any decision will normally be made available for inspection and published on the Council's website in the event that the hearing was held in public];

12.5.2 Report its findings to Council (or the Parish/Town/ Community Council) for information;

12.5.3 Report its findings and recommend to Council (or the Parish/Town/ Community Council) that the Member be issued with a formal censure or be reprimanded;

12.5.4 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;

12.5.5 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Executive Member responsibilities;

12.5.6 Instruct the Monitoring Officer to arrange (or recommend that the Parish/

Town/ Community Council should arrange) training for the Member;

12.5.7 Recommend to Council (or the Parish/Town/ Community Council) that the Member be removed from all outside appointments to which ~~they~~he ~~has~~ve been appointed or nominated by the authority;

12.5.8 Recommend to Council (or the Parish/Town/ Community 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;

12.5.9 Recommend to Council (or the Parish/Town/ Community Council) that 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

12.5.10 Take no further action.

12.6 [NOTE: The Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' basic or special responsibility allowances].

12.7 The Members of Sub-Committee must then deliberate in private to consider what action, if any, should be taken (the Legal Adviser will attend).

12.8 On the Sub-Committee's return the Chairman must announce the Sub-Committee's decision (in relation to a Parish / Town/ Community Member, a recommendation to the Parish / Town/ Community Council). The Chairman will confirm whether and if so, what sanctions will be applied and the reasons for this decision.

12.9 The Sub-Committee must consider whether it should make any recommendations to the Council or in relation to a Parish / Town/ Community Member to the Parish / Town/ Community Council, with a view to promoting high standards of conduct among its Members.

12.10 The Chairman will confirm that a full written decision ~~shall~~will be issued within 7 working days following the hearing and that the Sub-Committee's minutes will be published. The ~~meeting~~hearing will then be closed.

## 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 (except number 8 which is just the Reserve IP). The role is:

1. To assist the Council in promoting high standards of conduct by elected and co-opted Members of North Hertfordshire District Council and Parish/Town/Community 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 local 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 consultations on preliminary assessment of a complaint with the Monitoring Officer
5. 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.
6. 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 Standards Committee in a non-voting advisory capacity.
7. If attending a FDH meeting of the Standards Sub- Committee to confirm the IP's views as to whether a breach of the Code of Conduct has occurred and any subsequent penalty (which will be taken into account).
8. To be available for consultation by any Member, including Parish/ Town or Community Ctown 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. This may be on an ad hoc basis for views on the complaints procedure or process as pre-arranged between the parties, either by telephone or at the Council's offices. It is not the role of the IP to act as advocate for the Councillor who is subject to the complaint, to negotiate complaint matters, or to provide substantive advice (legal or otherwise) on the allegations themselves. This will generally be

## Appendix 5

confidential between the Member and IP, unless there the Member confirms they have acted illegally or has a complaint about the Procedure. This will then be confirmed to the Monitoring Officer.

9. 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.