



Council – 16 July 2012

New Standards Arrangements

Purpose of report

To present for consideration by Members amendments to the Constitution to enable appropriate changes to be made to comply with the requirements of the Standards Regulations that came into effect on 1 July 2012.

Attachment(s)

Appendix A – Code of Conduct for Councillors approved for adoption on 1 July by East Northamptonshire Council on 16 May 2012

Appendix B - Terms of Reference for Council Committees and Sub-Committees

Appendix C - Proposed new Part 9 of the Constitution – Process for Complaints against Councils and Dispensations

1.0 Background

- 1.1 The Localism Act 2011 proposed changes to the standards arrangements, including the Code of Conduct for Councillors and the disclosure of interests. The final detailed regulations in relation to these changes were published in early June, with the abolition of the previous arrangements taking place on 1 July 2012. In order to put in place new arrangements there is a need to update the constitution to reflect the necessary changes. The process and necessary changes have been agreed with the Second Standards Working Party (except where indicated in paragraph 15.2)
- 1.2 The late publication of the transitional arrangements created two issues for this council (and many others). Firstly they did not provide any process for any adoption of a proposed code to take effect from 1 July before their publication – something that many councils like ourselves seeking to be ready for the new Code had done. On further legal advice it is proposed that, in order to avoid any doubt, the council should re-confirm that it is adopting the Code agreed in May (**Appendix A**). (It should be noted that the primary aim of providing a model for East Northamptonshire Town and Parish Councils to adopt does appear to have been met with several councils adopting the same code to date and others indicating they plan to do so.)
- 1.3 The second issue relates to the appointment of the Independent Persons. The regulations did, as previously suggested, permit the appointment of former Independent Members of the Standards Board as the new Independent Person but omitted to also rescind the requirement to advertise the post first. An advert has therefore been placed in the most recent edition of Nene Valley News seeking possible candidates. However, since the selection process is proposed to involve members of the Joint Standards Complaints Committee and appointment must be agreed by a meeting of council, it is unlikely that an appointment will be able to be confirmed until September. This will result in an initial delay to the handling of any complaints received before this date. Complainants will be notified accordingly.
- 1.4 Members may wish to note that under the new arrangements there is no provision for any process to consider any complaint of potential breach of the Code of Conduct that relates to an event that occurred before 1 July.
- 1.5 The convention used for the proposed changes is - text in red is new whilst struck-through text is to be deleted. Once this council agrees what changes are necessary, a new copy of the Constitution will be circulated to all Councillors.

2.0 Index

- 2.1 Two additional parts are required to be added to the index for the Constitution. The first, Part 8 (see **Appendix B**), formally add to the Constitution the previously agreed informal Terms of Reference (roles and responsibilities) of each council committee. This is likely to be amended from time to time (eg main committees will be responsible for agreeing and amending Sub-Committee TOR). Part 9 (See **Appendix C**) is the proposed new process for managing complaints in relation to any alleged breach of the Councillor Code of Conduct under the new arrangements .
- 2.2 It is therefore proposed to add to the Index:

Part 8 – Terms of Reference for East Northamptonshire Committees

Part 9 – Procedure for Assessment, Investigation Determination and Appeal of Complaints against Councillors and Dispensations

3.0 **Part 1 : Summary and Explanation**

- 3.1 **Index** reference for Article 9 is proposed to be changed from ~~The East Northamptonshire Standards Board~~ to the ***East Northamptonshire Joint Standards Complaints Committee***
- 3.2 **How the Council operates** section:

It is proposed to change the following from:

~~All Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The East Northamptonshire Standards Board promotes excellence, probity and transparency in public service and provides training and advice for Councillors on the code of conduct.~~

To:

All Councillors have to agree to abide by this Constitution, which includes a code of conduct for councillors, in order to help the council ensure high standards of good governance and transparency in the way it operates and to help discharge its duty to promote and maintain high standards of conduct by members. The Council promotes excellence, probity and transparency in public service and provides training and advice for Councillors governance matters, including the code of conduct.

- 3.3 **Committee Structure** - The committee structure diagram requires amendment to change the reference to ~~East Northamptonshire Standards Board~~ to ***Joint Standards Complaints Committee (JSCC)***. The membership of the JSCC will also require alteration to reflect the new make-up of the committee which will be seven ENC Councillors and seven Town and Parish Councillors
- 3.4 In the event of a complaint being received from a citizen where they believe a councillor has failed to follow the Council's code of conduct, in all cases the Monitoring Officer should be the initial recipient of the complaint.

Citizens' Rights

It is proposed to make the following amendment:

complain to the Council's Monitoring Officer ~~or the East Northamptonshire Standards Board~~ if they have evidence which they think shows that a councillor has not followed the Council's code of conduct;

4.0 **Part 2 : Articles of the Constitution**

4.1 Part 2 of the Constitution covers the basic rules of the council. Four of the articles will require amendment; Article 3 is in relation to Citizens and the Council, Article 7 relates to the function of the Scrutiny Committee, Article 9 pertains to the Standards function of ENC and Article 11 deals with the functions of the Monitoring Officer.

4.2 **Index reference to Article 9**

The proposed changes to the index are as follows:

Article 9 - The East Northamptonshire <i>Joint Standards Complaints and Committee and Independent Person</i>	19
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9.05 <i>Appointment of the Independent Person</i>	
9.06 <i>Remuneration of the Independent Person</i>	

4.3 **Article 3 - Paragraph 3.01 Citizens' Rights**

Changes are proposed as follows:

- (e) **Complaints.** Citizens have the right to complain to:
- (i) the Council itself under its complaints procedures;
 - (ii) the Local Government Ombudsman after using the Council's own complaints procedure; or
 - (iii) the council's Monitoring Officer ~~or the East Northamptonshire Standards Board~~ about a breach of the Councillor's Code of Conduct.

4.4 **Article 7 – Scrutiny Committee**

Change paragraph 7.01 b) v) as follows:

liaise with the ~~Joint Standards Board~~ *Complaints Committee* to ensure adequate arrangements for the review of the codes of conduct *for councillors and the procedure for handling complaints against councillors;*

Add to 7.01 b) the following from the former Standards Boards Terms of Reference as new items and renumber remaining items accordingly:

- (ix) reviewing the outcome of Ombudsmen investigations;
- (x) promoting and maintaining the Member/Officer Protocol;
- (xi) overseeing the operation of the whistle blowing policy;

Change 7.01 b) as follows:

- (vi) monitor Council policies on ~~'Raising Concerns at Work'~~ and the anti-fraud and anti-corruption strategy

4.5 **Article 9 - The East Northamptonshire Standards Committee**

Replace Article 9 with text reflecting the change to East Northamptonshire Joint Standards Complaints Committee. This article would also cover the role, appointment and remuneration of the Independent Person.

The proposed new text would be as follows:

Article 9 - The East Northamptonshire Joint Standards Complaints Committee and Independent Person (Part 2 of the ENC Constitution)

9.01 Terms of Reference

- a) *This joint committee, to be known as the East Northamptonshire Joint Standards Complaints Committee, will be constituted for the discharge of the duties as provided under the Localism Act 2011 section 18. It will act, under powers delegated under section 101 of the Local Government Act 1972, to implement the arrangements agreed by East Northamptonshire (as Part 9 of the Constitution) for the investigation and determination of allegations.*
- b) *The East Northamptonshire Joint Standards Complaint Board will have the following roles and functions in addition to the provision of Panels for the Hearing and Appeal stages of a complaint or a Dispensations Panel when necessary under Part 9:*
- i) *Receive a quarterly activity report from the Monitoring Officer which includes for the preceding quarter:*
- *the level of advice on the Code and Complaints procedure*
 - *summary outcome of any complaints determined (with appropriate written report/summary as an appendices)*
 - *feedback on any 'other action' taken in respect of complaints*
 - *details of the dispensations granted and refused by the Monitoring Officer and Dispensations Panels*
- ii) *advising East Northamptonshire Council on the adoption or revision of the Members' Code of Conduct or arrangements for the review of its procedures for handling complaints against councillors*
- iii) *advising, training or arranging to train Councillors on matters relating to the Members' Code of Conduct;*
- iv) *granting dispensations to Councillors from requirements relating to interests set out in the Members' Code of Conduct;*
- v) *provision of an appointments panel to select an Independent Person and reserve for recommendation to East Northamptonshire Council for appointment.*
- c) *In addition, in accordance with part 9 of the ENC Constitution the Chairman or Vice Chairman may be consulted by the Monitoring Officer when decisions are taken on:*
- *Initial assessment of a complaint*
 - *If an Investigation Report concludes there is evidence of failure and it is proposed that other action is to be taken*
 - *Shortlisting of candidates for Independent Person*
- d) *Political Balance: As a joint committee, membership of this committee is*

9.02 Composition

- a) *The joint committee shall consist of 14 members of whom 7 members shall be appointed by East Northamptonshire Council (ENC) from its Members.*
- b) *The remaining seven members will be elected by vote, with one vote per council from the town and parish councils within the East Northamptonshire District. Up to one nomination per council will be sought in advance of the election. Nominees must be currently serving as town or parish councillors. The seven nominees with the greatest number of votes in any election will be elected to serve on the joint committee. In the case of a tie in numbers of votes cast, membership shall be decided by drawing of lots by the Monitoring Officer*
- c) *All members of the joint committee shall serve for no more than two consecutive terms of four years or for a shorter period of time. Such a shorter period shall end upon them ceasing to be eligible to act as a member of that committee or them ceasing to be a District or Town or Parish Councillor.*
- d) *The Independent Person, as required under Section 18 of the Localism Act 2011, shall be eligible to attend all meetings and panels of the joint committee. That person will not be co-opted or have voting rights, but will be able to remain for any discussions and debate when the public and press are excluded in order to discharge the advice giving role as outlined in the Act.*

9.03 Proceedings of the Committee

- a) *The Chairman of the Committee shall be elected by majority vote of those present at the first meeting of the Civic Year. If the elected Chairman is an ENC Councillor then an election for the Vice Chairman shall be held from the Town and Parish members. If the elected Chairman is a Town or Parish councillor then an election for the Vice Chairman shall be held from the ENC members.*
- b) *A meeting of the Joint Standards Complaints Committee shall not be quorate unless at least five members (including one District Councillor, and one Town or Parish Councillor) are present for its duration*
- c) *The meetings and proceedings of the joint committee shall be conducted in accordance with the rules set out in Part 4 of the East Northamptonshire Council Constitution.*
- d) *The Committee will meet at least every quarter, with panels being convened as and when required*
- e) *When Hearing, Appeal or Dispensation Panels are required, the three councillors required will generally be drawn from members of this committee who serve on the same tier of council. Exceptionally, where this is not possible because of conflict of interest or other reasons such as illness, such panels will have a majority of members from the same tier. The Monitoring Officer and Deputy Monitoring Officer have delegated authority to select the members of panels on the basis of availability and experience.*
- f) *Each member of the joint committee shall be entitled to recover from East Northamptonshire Council any expenses he incurs in connection with the discharge of the joint committee's functions (as per the travel and expenses procedures outlined in Part 6 of the Council's Constitution). No further*

allowance will be payable. The expenses incurred by the joint committee shall be defrayed by East Northamptonshire Council.

- g) When serving on the JSCC, all councillors are expected to follow the Code of Conduct adopted by the East Northamptonshire Council*
- h) Support for the administration of the Joint Committee will be provided by East Northamptonshire Council.*

9.04 Role of the Independent Person

- a) The Localism Act 2011 provides that the Independent Person*
 - must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);*
 - may be consulted by the authority in respect of a standards complaint at any other stage; and*
 - may be consulted by a member or co-opted member of the District Council or of a Parish Council against whom a complaint has been made.*
- b) East Northamptonshire Council will appoint, by agreement of the majority of councillors at a Council meeting, one person to carry out the duties of an Independent Person in relation to its adopted procedure for dealing with Complaints against Councillors. It will also appoint by the same process a reserve Independent Person to act if the Independent Person is unavailable to act due to illness or holiday or other circumstance (including conflict of interest in the case of appeals).*
- c) The 'call to action' of the reserve Independent Person will be made by the Monitoring Officer and will be reported in their Quarterly Activity Report to the Joint Standards Complaints Committee.*
- d) The Independent Person (and reserve) will be offered, and expect to undertake, appropriate training for their role.*
- e) The Independent Person, when acting in this role, is expected to abide by the Cllrs Code of Conduct outlined in the East Northamptonshire Council Constitution and will sign an undertaking to that effect on appointment.*

9.05 Appointment of the Independent Person

- a) The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.*
- b) The Localism Act 2011 states that a person cannot be "independent" if he/she:*
 - Is, or has been within the past 5 years, a member, co-opted member or officer of the authority, OR*
 - Is or has been within the past 5 years, a member, co-opted member or officer of any other local government council (except former Independent Members of Standards Committees) OR*
 - Is a relative, or close friend, of a person within the paragraphs*

above

For this purpose, "relative" means:

- (a) the candidate's spouse or civil partner;
 - (b) any person with whom the candidate is living as if they are spouses or civil partners;
 - (c) the candidate's grandparent;
 - (d) any person who is a lineal descendent of the candidate's grandparent;
 - (e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
 - (f) the spouse or civil partner of anyone within Paragraphs (c), (d) or (e);
 - (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person
- c) In addition this council requires that an Independent Person should:
- not be a member of a political party
 - be resident within the District or within 10 miles of the border of the District
- d) The Independent Person and reserve will be appointed for a maximum period of two terms of four years.
- e) When the appointment of the Independent Person (and reserve) is required, an advertisement will be placed on the council's website and in Nene Valley News (or equivalent) outlining the role and seeking expressions of interest together with details of relevant experience, allowing three weeks for response.
- f) A shortlist of candidates will then be prepared by the Monitoring Officer in consultation with the Chairman and Vice Chairman of the Joint Standards Complaints Committee (JSCC). Five members of the JSCC (chaired by, and with a majority of, ENC Councillors) will interview the shortlisted candidates and select the chosen candidate and reserve candidate for recommendation to Council for appointment.

9.06 Remuneration of the Independent Person

- a) As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel.
- b) In comparison to the current Chairman of the Standards Committee, the role of Independent Person is likely to be less onerous. The key activities will be:
- being available for consultation by the Monitoring Officer at the following stages of a complaint-
 - initial assessment
 - after production of an Investigation Report where the Monitoring Officer is considering 'other action'.
 - Attendance by invitation at Hearing Panels in order to present their views (they will not be voting or co-opted members)
 - Being available for consultation by members against whom a complaint has been made.
- c) The Independent Person will be paid at 25% of the basic councillor's allowance (plus mileage) to reflect the above responsibilities. The reserve

will be paid a retainer of 10% which would include:

- *attendance by invitation at the quarterly meetings of the Joint Standards Complaints Committee (for training purposes only)*
- *carrying out the duties of the Independent Person for up to 4 calendar weeks in any 12 months*

Duties for longer periods than 4 weeks would be paid pro-rata to the allowance for the Independent Person.

4.6 Article 11 - Functions of the Monitoring Officer

Amend Article 11 as follows:

11.04 Functions of the Monitoring Officer

(c) Supporting the Standards Arrangements. The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct by providing support **to the Council and Scrutiny Committee in relation to the effective operation of the overall framework including Codes of Conduct and to the Joint Standards Complaints Committee in relation to the handling of complaints.**

~~**(f) Conducting investigations.** The Monitoring Officer will conduct, and may appoint persons to conduct, investigations into matters referred by the Assessment Sub-Committee or Review Sub-Committee of the Standards Board and make reports or recommendations in respect of them to the Standards Board.~~

Management of Complaints against Councillors. *The Monitoring Officer will conduct the assessment, investigation, hearing and appeal of complaints that Councillors may have breached the Code of Conduct in accordance with the provisions of Part Nine of this Constitution and in accordance with the delegated powers in Part Three*

5.0 Part 3 : Responsibility for Functions

5.1 Paragraph 1 - Delete reference to the Standards Committee in the Responsibility for Functions table.

5.2 Paragraph 2 – Insert new paragraph 2.4

In accordance with Article 10, Paragraph 10.02, of this Constitution, the Council has agreed to establish joint arrangements with the Town and Parish Councils in the district to deliver the specific function of the assessment, investigation, hearing and appeal of complaints that any Councillors of the said councils may have breached the Code of Conduct for Councillors and for the determination of certain requests for dispensation, in accordance with the provisions of Part Nine of this Constitution.

5.3 Part 3.2 – Scheme of Delegation – insert new section D (and renumber accordingly)

D: Delegations Related to Standards Matters following the Localism Act 2011

(to be carried out in accordance with the provisions of Part Nine of this Constitution)

243. To receive complaints of potential breaches of the Councillors Code of Conduct **Monitoring Officer or Deputy Monitoring Officer**

244. To make an initial decision on a complaint to take either no **Monitoring Officer or Deputy Monitoring Officer, in**

	<i>further action, informal action or refer for investigation</i>	<i>consultation with the Independent Person and the Chair or Vice Chair of the Joint Standards Complaints Committee</i>
245.	<i>Appoint an investigating officer or refer the investigation report to a hearing panel</i>	<i>Monitoring Officer or Deputy Monitoring Officer</i>
246.	<i>After an investigation to make a decision as to whether to take no further action</i>	<i>Monitoring Officer or Deputy Monitoring Officer</i>
247.	<i>After an investigation to make a decision as to whether to take informal action</i>	<i>Monitoring Officer, in consultation with the Independent Person and the Chair or Vice Chair of the Joint Standards Complaints Committee</i>
248	<p><i>To agree the following actions on behalf of the council after Hearing or Appeal Panel consideration:</i></p> <ul style="list-style-type: none"> <i>• Take no further action</i> <i>• Recommend to the relevant council that the Councillor(s) be censured for their breach of the Code of Conduct</i> <i>• Recommend an apology to be made by the Member to the complainant (and/or others)</i> <i>• Publish its findings in respect of the member's conduct.</i> <i>• Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to the relevant Council) that the member be removed from any or all Committees or Sub-Committees of the Council</i> <i>• Instruct the Monitoring Officer to arrange training for the member</i> <i>• Recommend to the relevant Council the removal from some or all outside appointments to which the member has been appointed or nominated by the relevant council</i> <i>• Withdraw some or all facilities provided to the member by the Council, (including access to</i> 	<i>Hearing or Appeals Panel of the Joint Standards Complaints Committee</i>

buildings) provided this does not prevent the Councillor(s) carrying out the member role,

249. Agree a dispensation for East Northamptonshire Councillors on the grounds that so many members of the decision-making body have Disclosable Pecuniary Interests in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result or On the grounds that without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.

250. Agree a dispensation for East Northamptonshire Councillors on the grounds that it is considered that the dispensation is in the interests of persons living in the authority’s area or On the grounds that it is considered that it is otherwise appropriate to grant a dispensation

Monitoring Officer or Deputy Monitoring Officer

Dispensations Panel of the Joint Standards Complaints Committee

6.0 Part 4.1 : Council's Procedure Rules (Standing Orders)

6.1 Paragraph 1.1 (Timing and Business of Annual Council) to be amended as follows:

- (vii) appoint the Scrutiny Committee, the elected members of the East Northamptonshire **Joint Standards Complaints Committee** ~~Board~~ and such other policy, regulatory and other committees as the Council considers appropriate to deal with matters which are not reserved to the Council (as set out in Article 4 of this constitution);

6.2 Paragraph 2 (Ordinary meeting of Council) to be amended as follows:

- (v) receive any **new or existing** declarations of interest from Members and Officers **under the provisions of the Localism Act 2011 or the Councillors Codes of Conduct for Councillors or Officers relevant to the matters under discussion.** ~~of section 50 of the Local Government Act 2000~~

6.3 Paragraph 9.1 (Public Time at Meetings) - to be amended as follows:

- (a) General

Members of the public who have given notice of their intention to speak may address the Council at all meetings of the Council and committees in accordance with the Council's published procedures. A period of not more than 15 minutes will be allowed before the formal business of the meeting during which members of the public may speak for up to 3 minutes on a matter due for consideration at the meeting. A 'member of the public' includes a local resident, a Parish or Town Council representative, ***an East Northamptonshire Councillor with a Disclosable Pecuniary Interest or other interest as a result of which they have withdrawn from the debate or decision on a related matter***, and an applicant (in the case of the Development Control Committee, this can be an agent). This right reflects Articles 6 and 10 of the European Convention of Human Rights (Right to be heard and Freedom of Expression).

- 6.4 Paragraph 13 (Rules of Debate). Add an additional section to cover Councillor's participation in debates.

13.15. Under the Localism Act, Members with a Disclosable Pecuniary Interest (DPI) in a matter may not participate in the debate or decision about the matter. The Member may remain in the room (unless the matter to be decided related to a regulatory function) but should physically withdraw from the Councillors making the decision. If the matter relates to a regulatory function then the Member should leave the room (including the public gallery after any speech as a member of the public). Members should also be mindful of any other interests they wish to declare under paragraph 2.5.3 of the Councillors Code of Conduct. If they have relevant interests they should consider whether participating in the debate or discussion might be perceived as biased as a result. If this is the case then they should consider following the same rules as for a DPI.

7.0 Part 4.5 : Financial Procedure Rules

- 7.1 Paragraph 3.6.4 (Members and Officers) to be amended as follows:

Members and Officers should maintain the highest standards of financial probity and provide information or explanations on matters within their responsibility to the Monitoring Officer, ~~the Standards Committee~~, the Chief Finance Officer, and the Council's internal and external auditors

8.0 Part 5.1 : Member Code of Conduct

- 8.1 To be replaced in its entirety with the Code of Conduct for Members agreed by Council on 16 May 2012; to take effect from 1 July 2012.

9.0 Part 5.3 : Protocol for Member and Officer Relations

- 9.1 Amend Paragraph 1.6 (of the Introduction) as follows:

This Protocol is ~~an local~~ extension of the ~~national~~ codes for member and officer conduct and should be read in conjunction with those codes. ~~Consequently breach of the provisions of this Protocol may also constitute a breach of national codes.~~ This Protocol should also be read in conjunction with any rules or

guidance that may from time to time be issued by the East Northamptonshire **Joint Standards Complaints Committee, Scrutiny Committee** Board or the Council's Monitoring Officer.

9.2 Amend Paragraph 2.7 (General Conduct) as follows:

It is unacceptable for Members or senior Officers to take unfair advantage of their position within the local authority. Where the behaviour complained of is regarded by the Chief Executive, Chief Officer, or Monitoring Officer (as appropriate) to be a form of bullying, intimidation or harassment intended to influence unfairly a person's actions, thoughts or deeds, the matter will be the subject of action, either

- under the Council's grievance or disciplinary procedures, in respect of Officers, or
- by way of a complaint to the ~~East Northamptonshire Standards Board~~ **Monitoring Officer**, in respect of Members, **if breach of the Councillors Code of Conduct is alleged.**

10.0 Part 5.4 : (Planning Procedures)

10.1 Amend Section 1 (Role of Members), paragraph 1 as follows:

1. In making decisions on applications, Members will:
 - act fairly and openly;
 - approach each application with an open mind;
 - carefully weigh up all the material planning considerations;
 - ~~avoid undue contact with interested parties;~~
 - ensure that reasons for decisions are clearly stated

10.2 Amend Section 4 (Lobbying) paragraphs as follows to clarify the position in relation to predetermination as amended by the Localism Act.

20. Quite apart from Member involvement in pre-application and post-application discussions, applicants and others may wish to discuss a proposed development with Members before an application is determined. This can aid understanding of the issues involved. ~~However, to avoid compromising their position before they have received all the relevant information, evidence and arguments, Members of the Committee will:~~ *The Localism Act did not abolish the common law concept of pre-determination - or its application at the point of decision making. However it sought to clarify the evidence that could be used to 'prove' pre-determination if a decision is challenged. This means that if councillors have campaigned on an issue or made public statements about their approach to an item of council business, they he or she will be able to participate in discussion of that issue in the council and to vote on it **provided they retain an open mind and are prepared to change their mind in the light of the debate.***

- ~~not make it known in advance whether they support or oppose a proposal;~~
- ~~not express an opinion which could be taken as support for or opposition to a proposal;~~
- ~~not organise support for or opposition to a proposal or lobby other Members (other than when addressing Committee);~~
- ~~restrict their response to giving procedural advice;~~

In the interests of a transparent and evidenced decision making process, Councillors are asked to direct lobbyists or objectors to the case officer and

advise the Head of Planning Services or the Chairman of the Committee of the existence of any lobbying interests.

In the interests of a transparent and evidenced decision making process, Councillors are asked to direct lobbyists or objectors to the case officer and advise the Head of Planning Services or the Chairman of the Committee of the existence of any lobbying interests.

21. Members of the Committee may express support for a particular body of opinion in advance of the matter being considered by the Committee, provided they make it clear that they will not reach a **final and irrevocable** view on a proposal until such time as they are in possession of all the relevant information, evidence and arguments.
22. Arrangements exist for the public (an applicant or agent; a local resident **or other interested party**; a Parish/Town Council representative) to speak for or against a planning application at meetings of the Committee. Members of the Council who are not members of the Committee will not be permitted to speak on behalf of planning application supporters or objectors during the public speaking session, but may address the meeting in their capacity as a District Ward, Parish or Town Councillor.
23. Any member of the Committee who wishes to express publicly a **final and irrevocable** view on an application prior to the meeting of the Committee at which a decision is to be taken will declare an interest and will not **participate in the debate or** vote on that particular application. ~~A Member in this position whose impartiality has otherwise been compromised will also need to consider whether to participate in or withdraw from the decision-making process.~~ If a member of the Committee considers it inappropriate to fully participate and vote on an application affecting his/her ward, that Member may, subject to the normal rules relating to declaration of ~~personal and private~~ interests, address the Committee.
24. In accordance with the ~~model~~ code of conduct, Members should avoid placing themselves in a position that could lead the public into thinking that they have received preferential treatment for themselves, for friends or relatives or for any firm or body with which they are personally connected.

10.3 Amend section 7 (Declarations of Interest) as follows:

36. The law and the ~~model~~ Code of Conduct set out the requirements and guidance for Members on declaring ~~personal and prejudicial~~ **Disclosable Pecuniary and other** interests and the consequences of having such interests. **(Members are reminded that Disclosable Pecuniary Interests relate to both the Member and their spouse/partner)** Members should regularly review their situation with regard to interests. Under the ~~model~~ Code, not only should impropriety be avoided but also any appearance, or grounds for suspicion of improper conduct or bias.
37. Members and officers are discouraged from receiving hospitality or gifts from people with an interest in a planning proposal. If a gift or hospitality is received or is unavoidable, Members and officers must declare its receipt to the Council's Monitoring Officer. Under the ~~model~~ code of conduct for Members, the receipt of a gift or hospitality with an estimated value of £25 **50** or more ~~is regarded as a personal interest, which~~ must be declared at a meeting at which the planning matter is discussed and registered with the Monitoring Officer within 28 days. In the case of officers, receipt or offer of a gift or hospitality, must be declared to the Council's Monitoring Officer as soon as possible and recorded in the register held by the Monitoring Officer for the purpose.
38. As referred to in paragraph 20 (section 4) of this Code, any Member of the Committee who wishes to express publicly a **final and irrevocable** view on a planning application prior to the meeting of the Committee at which a decision is to be taken will declare an interest and will not vote on that particular application.

39. It is the Member's responsibility to disclose his or her financial **Disclosable Pecuniary and other** interests and that of his or her spouse, whether direct or indirect in any application being considered by Committee. Any interest should be disclosed on every occasion.
40. There shall be a standing separate agenda item for declarations of interest at the beginning of meetings of the Committee.

10.4 Amend Section 9 (Applications by Members and Officers) as follows:

45. The Member concerned, if present at the meeting at which the application is to be determined, will declare **either a Disclosable Pecuniary or other** personal and prejudicial interest as appropriate. **The Member concerned** will have the opportunity of addressing the Committee if he/she wishes, under paragraph 12(2) of the Council's code of conduct **paragraph 9.1, Part 4.1 of this Constitution**. He/she will withdraw from the meeting for the discussion and determination of the application **in accordance with paragraph 13.15**.

11.0 Part 5.7 : (Code of Practice – Licensing Procedures)

11.1 Amend Section 1 (Role of Members), paragraph 1 as follows to reflect the changes arising from the Localism Act changes to the evidence for pre-determination:

1. In making decisions on applications, Members will:
 - act fairly and openly;
 - approach each application with an open mind;
 - carefully weigh up all relevant considerations;
 - ~~avoid undue contact with interested parties;~~
 - ensure that reasons for decisions are clearly stated

11.2 Amend paragraph 6 as follows to take into account the impact of the changes to the Councillor Interests.

6. Licensing Committee Members shall be entitled to sit on a Panel which is to determine a licence which is within their ward or which will have a significant impact on that ward, provided that both of the following conditions are met:
 - (a) they must not have a prejudicial **Disclosable Pecuniary Interest (DPI)** or other interest. For example, if they live near the premises, then ~~their well-being or financial position may be affected~~ **they may have a DPI. Alternatively they may know the applicant so well that others may view their position as biased as a result.**
 - (b) they must adopt an open mind about the application ~~in advance of~~ **at** the hearing and, in accordance with the rules of natural justice, be fully prepared to listen to both sides of the argument at the hearing before coming to a judgement. This is to avoid any complaints about pre-determination or bias

11.3 • Amend Section 4 (Lobbying) as follows:

20. 17. Applicants and others may seek to discuss an application with Members of a Panel before an application is determined. **This can aid understanding of the issues involved.** ~~However, to avoid any perception of bias before they have received all the relevant information, evidence and arguments, Members of a Panel~~ *However the Localism Act did not abolish the common law concept of pre-determination - or its application at the point of decision making. (The Localism Act sought to clarify the evidence that could be used to 'prove' pre-determination if a decision is challenged.) Although a Councillor a councillor*

may have been consulted or campaigned on an issue, or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it **provided they retain an open mind and are prepared to change their mind in the light of the debate.**

- ~~○ must not make it known in advance whether they support or oppose a proposal;~~
- ~~○ must not express an opinion which could be taken as support for or opposition to~~
- ~~○ a proposal;~~
- ~~○ must not organise support for or opposition to a proposal or lobby other Members~~
- ~~○ must restrict their response to giving procedural advice~~

In the interests of a transparent and evidenced decision making process, Councillors are advised to direct lobbyists or objectors to the Head of Environmental Services, as the Council's Licensing Officer, Councillors must also advise the Head of Environmental Services or the Chairman of the Licensing Committee of the existence of any lobbying interests.

~~Applicants making an approach will be advised that Panel Members are unable to depart from the above instructions as it may be construed as bias and will be likely to prejudice the fairness of the hearing.~~

18. Any member of a Panel who expresses, or wishes to express, a **final and irrevocable** view on a licensing application prior to the meeting of the Panel at which a decision is to be taken must declare an interest to the Monitoring Officer and should do so at least one week before the hearing. The Member will step down from the Panel. The Democratic **and Electoral** Services Manager will ensure that an approach is made to a reserve Member to serve in place of the Member with an interest. As the potential exists for any other Member serving on the Licensing Committee to be asked to sit on the Panel, this paragraph applies to all 12 members of the Committee.
 19. Arrangements exist for parties (an applicant, the holder of a premises licence, a club representative, a person making representations, a chief officer of police or his representative) to speak for or against a licensing application at panel hearings provided they have given requisite notice under the Hearings Regulations. A ward member not hearing the application is permitted to speak on behalf of licensing application supporters or objectors during the hearing provided the premises the subject of the application are situated in their ward (or in close proximity to their ward) and provided they have made representations on behalf of those supporters or objectors during the objection period and have indicated by notice that they will appear. If they have not made representations/given notice, they will be entitled, unless they have declared a **Disclosable Pecuniary** ~~prejudicial~~ interest, to attend the hearing as an observer, or, provided they meet both of the conditions in paragraph 6, and serve on the Licensing Committee, appear as a panel member to determine the application.
 20. In accordance with the ~~model~~ Code of Conduct, Members should avoid placing themselves in a position that could lead the public into thinking that they have received preferential treatment for themselves, for friends or relatives or for any firm or body with which they are personally connected.
- 11.4 Delete Section 6 (Site Visits)
- ~~25. No site visits will be undertaken by Panel Members before the commencement of a hearing. To do so may put Members of a Panel at risk of accusations of bias.~~

11.5 Amend Section 7 (Disclosures of Interest) as follows:

27. The law and the adopted Code of Conduct set out the requirements and guidance for Members on declaring ~~personal and prejudicial~~ **Disclosable Pecuniary and other** interests and the consequences of having such interests. ~~(Members are reminded that Disclosable Pecuniary Interests relate to both the Member and their spouse/partner)~~. Members should regularly review their situation with regard to interests. Under the adopted Code, not only should impropriety be avoided but also any appearance, or grounds for suspicion of improper conduct or bias. This is particularly important in relation to the licensing process ~~and for this reason~~ **Dispensations are unlikely to be granted for Licensing Panels.**
28. Panel Members will have to consider very carefully whether or not they have a **non Disclosable Pecuniary or other** ~~personal~~ interest. Examples are:
(a) Members living very close to premises the subject of the application;
(b) Members who are frequent visitors to the premises in a personal capacity, ~~such that the outcome of the licensing decision may be regarded affecting their well being or financial position;~~
(c) Members who are frequent visitors to a competing establishment in the same locality
(d) Members who serve on a body which has submitted the application (such as Cultural Community Partnerships).
Participation as a member of a hearing Panel in these circumstances may give rise to a perception of bias and it may be better to step down, in accordance with the procedure set out in paragraph 18.
29. Members with a clear **Disclosable Pecuniary** ~~prejudicial~~ interest – whether or not they serve on a Panel – should not attend the hearing, unless they are entitled, under ~~paragraph 12(2) of the code of conduct~~ **paragraph 9.1, Part 4.1 of this Constitution** and have given notice under the Hearings Regulations, to speak. The Member should withdraw from the room immediately after speaking **in accordance with paragraph 13.15**. Guidance should be sought from the Council's Monitoring Officer if there is any doubt.
29. Members and officers must not accept hospitality or gifts from any person involved in, or affected by, a current application coming before the Council for determination. This is important to avoid potential perceptions of bias. If such gifts or hospitality have been accepted in the past 12 months **and/or declared as an interest as required by the Council's Code of Conduct** then Members are advised that this creates an interest which should be declared and dealt with as in paragraph 28.
30. As referred to in paragraph 18 (section 4) of this Code, any Member of a Panel who wishes to express publicly a **final or irrevocable** view on a licensing application prior to the hearing at which a decision is to be taken will declare an interest in good time before that hearing and will not participate in the meeting of that particular Panel.
31. It is the Member's responsibility to disclose **their** ~~his or her financial~~ interests ~~and that of his or her spouse or family, whether direct or indirect~~, in any application being considered by the relevant Panel. Any interest should be disclosed on every occasion.

12.0 Part 5.8 : Protocol for the Monitoring Officer

12.1 Amend Paragraph 2 as follows:

- (f) The Monitoring Officer is expected to develop good liaison and working relations with the ~~Standards Board for England, its Ethical Standards Officers,~~ **the Scrutiny Committee, the Joint Standards Complaints Committee,** the

District Auditor and the Local Government Ombudsman, *to ensure that the council's duty to uphold promote and maintain high standards of conduct by members is discharged and ensure high standards of good governance and transparency in the way the council operates. This will include* including giving and receiving relevant information, whether confidential or otherwise, whether requested or not

- (h) The Monitoring Officer will be expected to *receive complaints about, and* make or commission enquiries into, allegations of misconduct referred by the ~~Standards Board for England~~ and if appropriate will make a written report to the East Northamptonshire *Joint Standards Committee Board* ~~Board~~ *in accordance with the provisions of Part 9 of this Constitution.* ~~unless the Monitoring Officer and Chairman of the Standards Board agree that a report is not warranted.~~
- (i) In carrying out any investigation (~~whether under Regulations or otherwise~~) the Monitoring Officer will have unqualified access to any information held by *this* the Council and *any East Northamptonshire Council* employee who can assist in the discharge of his/her functions. *The Monitoring Officer may request such access to any of the Town and Parish Councils in East Northamptonshire.*
- (l) The Monitoring Officer will be responsible for preparing a training programme for Members of the Council on the *Code of Conduct and other matters relating to the governance and* ethical framework, for approval by the *Scrutiny Committee. A similar programme will be prepared for Town and Parish Councillors for consideration by the* East Northamptonshire *Joint Standards Complaints Committee Board.*
- (n) ~~In consultation with the Chairman of the East Northamptonshire Standards Board, the Monitoring Officer may defer the making of a formal report under Section 5 of the LGHA 1989 where another investigative body is involved.~~

The Monitoring Officer will ~~make an annual~~ report to the Council *as necessary* on *any changes required to* the staff, accommodation and resources required to discharge his/her functions.

12.2 Make the following changes to the Summary of Monitoring Officer Functions table as follows:

	Description	Source
1	Report on contraventions or likely contraventions of any enactment of rule of law	Section 5, Local Government and Housing Act 1989
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5, Local Government and Housing Act 1989
3	Personal appointment of Deputy	Section 5, Local Government and Housing Act 1989
4	Report on resources	Section 5, Local Government and Housing Act 1989
5	<i>Receive and</i> investigate <i>complaints of Councillor</i> misconduct in compliance with Part 9 of this Constitution regulations made and directions of Ethical Standards Officers	Localism Act 2011 and Part 3.2 of this Constitution.
6	Establish and maintain registers of Members' interests and gifts and hospitality	Section 81 LGA 2000, Localism Act and Part 5.1 of this Constitution and Model Code of Local Government Conduct
7	Advice to Members on the interpretation	Parts 3.2, 5.1 and 9 of this

	of the Code of Conduct and Local Protocols	Constitution. Model Code and title of Regulations
8	Key role in promoting and maintaining high standards of conduct through support to the Scrutiny Committee and East Northamptonshire Joint Standards Complaints Committee Board	Parts 3.2, 5.1 and 9 of this Constitution Statutory Guidance, paragraph 8.20
9	Liaison with Standards Board and Ethical Standards Officers	New ethical framework, practical implications
10	New ethical standards framework functions in relation to Town and Parish Councils	Section 83 (12) LGA 2000 Localism Act 2011 and associated regulations together with Parts 3.2, 5.1 and 9 of this Constitution
11	Compensation for maladministration	Section 92 LGA 2000
12	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all elected Members	DETR guidance; Council Constitution 2007

13.0 **Part 6 : Members Allowances Scheme**

13.1 Amend Summary as follows:

1.1 Members are entitled to -

- o Basic allowance of £4,290 per annum
- o Special Responsibility Allowance (for Chairman and Vice Chairman of Policy, Regulatory, Performance and Scrutiny Committees; ~~Chairman of Standards Board~~; the Leader of the Council, Deputy Leader; Leader of the Opposition Group; Chairman of Licensing Panel; Council Champions; “Co-opted” Members of Standards Board – see Schedule 1). These are annual sums.
- o Travelling and subsistence expenses linked to approved staff casual user travelling rates under the NJC national conditions of service (Green Book) (see Schedule 2).
- o a carers’ allowance of £5.55 per hour for the approved duties (see travel and subsistence schemes for approved duties) in Schedule 2 of the Council’s current scheme.

~~1.2 Independent or Town/Parish Council representative Members of the East Northamptonshire Standards Board are entitled to a Special Responsibility Allowance of £805 per annum.~~

13.2 Amend Schedule 1 – Table of Allowances Payable, to remove line relating to Independent Chairman of the Standards Board.

14.0 **Part 8 : Terms of Reference**

14.1 Delete the reference to the Standards Committee in the Terms of Reference.

15.0 **Part 9 : Procedure for Assessment, Investigation Determination and Appeal of Complaints against Councillors and Dispensations**

15.1 Add all of Appendix C - Procedure for Assessment, Investigation Determination and Appeal of Complaints against Councillors and Dispensations.

15.2 Councillors are asked to note that paragraph 3.6 d) has been added to the Procedure since the Working Party discussion as a result of recent legal advice which noted the need to provide for consideration of complaints about failure to register DPIs if no action is proposed by the Police.

16.0 Equality and Diversity Implications

16.1 There are no known equalities issues arising from the changes proposed in this report.

17.0 Legal Implications

17.1 This report brings the council's arrangements and Constitution into alignment with the proposals for standards under the Localism Act 2011 and related regulations.

18.0 Risk Management

18.1 The proposals in this report reduce the risk of non-compliance with legislation, particularly the duty to promote . If the new Code of Conduct is followed it will reduce the risk to the council of councillors participating inappropriately in council decisions resulting in additional cost to the council from legal challenge.

19.0 Financial Implications

19.1 There are no known additional financial implications arising from implementation of these changes. It is too early to assess whether the overall resources required to process complaints against Councillors will reduce, although it is possible there may be an initial increase until the new arrangements have bedded down.

20.0 Corporate Outcomes

20.1 The duty to promote high standards of ethical governance links to the following Corporate Outcomes:

- Employees and members with the Right Knowledge, Skills and Behaviours
- Effective Management – legal compliance
- Value for money

21.0 Recommendations

21.1 Council is asked to

(1) approve the changes to the Constitution proposed in paragraphs 2-15, including confirmation of adoption of the Code of Conduct as outlined in Appendix A.

(2) Nominate seven East Northamptonshire Councillors to serve on the Joint Standards Complaints Committee

Legal	Power: Localism Act 2011 and related regulations
	Other considerations: Council's Existing Constitution
Background Papers:	New Code of Conduct – Report to Council 16/5/12
Person Originating Report:	Sharn Matthews, Executive Director and Monitoring Officer smatthews@east-northamptonshire.gov.uk
Date:	5/7/2012

(Committee Report Normal Rev. 22)

Draft Code of Conduct for East Northamptonshire Councillors

This Code applies to all Councillors when they act in their role as Councillors of the Council. This Code is a requirement of the Localism Act 2011 and forms part of the Constitution of ENC which all Councillors will follow. This code is based on the seven Nolan¹ principles of public life:

1.0 Introduction

As a Councillor you are a representative of the Council, and the public and other stakeholders will form a view of East Northamptonshire Council as a result of your actions. As such you must conduct yourself in a manner which is consistent with the Council's duty to promote and maintain high standards of conduct of Councillors.

2.1 Selflessness

As a public figure, your public role as a Councillor may overlap with your personal or professional life and interests. However, as a Councillor you will serve only the public interest and will never improperly confer an advantage or disadvantage on any person. At all times you will act in accordance with the trust that the public is entitled to place in you.

2.2 Integrity and honesty

You will consider your actions carefully to avoid placing yourself in situations where your honesty and integrity may be questioned and will on all occasions avoid improper behaviour or the appearance of improper behaviour.

2.3 Objectivity (in decision making)

You will make decisions on merit, including when making appointments, awarding contracts or recommending individuals for rewards or benefits. You must approach decisions with an open mind and listen to the views of others and assess the information presented at the decision making meeting. You must then reach your own conclusions on issues and act accordingly. Failure to do so may expose the decision to challenge on the basis of pre-determination.

2.4 Accountability

Everything East Northamptonshire Council does must be able to stand the test of scrutiny by the public, the media, other stakeholders, and the courts. You are accountable to the public for your actions and the manner in which you carry your responsibilities, and will cooperate fully and honestly with any scrutiny appropriate to your particular office.

2.5 Openness

2.5.1 East Northamptonshire Council strives to maintain an atmosphere of openness throughout the organisation to promote confidence of the public, stakeholders, staff and regulators.

You will be as open as possible about your actions and those of the council, and should be prepared to give reasons for those actions.

2.5.2 You will review your Register of Interests (including Disclosable Pecuniary Interests as required by the Localism Act and related regulations) at least annually to ensure ongoing accuracy

¹ The Committee on Standards in Public Life (the Nolan Committee) recommended in 1996 seven principles of conduct that should underpin the work of public authorities.

2.5.3 You need to reconsider carefully your position before participating in any decisions or activity, especially those relating to regulatory activities such as planning or licensing. Where the decision or activity is so closely tied to your personal or professional life that your ability to make an impartial decision may be called into question you must consider whether you need to declare, at any relevant meeting, any new Disclosable Pecuniary Interests (DPI) or other conflict of interest or circumstance. These will be added to your Register of Interests after the meeting.

2.5.4 The law says that if you have a DPI you must **not** become involved in the discussions nor must you **vote** in relation to such matters. If you have other interests in the matter you should also consider if it is appropriate for you to take part in the discussions or debate.

2.5.5 You must declare any gifts or hospitality valued over £50 (on one occasion or from the same donor within one year) given in respect of your role as a Councillor in your Register of Interests.

2.6 Leadership

You will promote and support these principles by leadership and by example, and should act in a way that secures or preserves public confidence and avoids bringing your role or the council into disrepute

3.0 Other obligations

In addition to the above principles, you will:

- a) strive to establish respectful and courteous relationships with everyone you come into contact with as Councillors. You will also respect the political impartiality and professional role(s) of the council's statutory officers and its other employees.
- b) uphold the law in relation to the policies of the council and its legal obligations
- c) not disclose or use confidential information for any purpose other than that provided for by the law.
- d) use those particular council resources provided for the undertaking of council duties in accordance with council policies or constitution and not for any other purposes.

4.0 Training

Participation in training and development activities is not a legal requirement to be a Councillor. However this council expects that you will participate, in induction and other training and development activities in relation to standards matters.

5.0 Summary

This code is intended to provide a guide and protection for councillors in carrying out their duties. However, a breach of any part of this code may result in a complaint being made. A complaint will be assessed according to the arrangements outlined in Part 9 of the Council's Constitution.

East Northamptonshire Council

Terms of Reference

of

Committees, Sub-Committees Panels and Working Parties

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TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Policy and Resources Committee

Approved by Council - 1 March 2007 - Minute 391 and amended as a result of the introduction of the Planning Policy Committee in May 2008

Amended by Council - 26 April 2010 – Minute 472(c)

Amended by P & R as result of change of Finance Sub Committee to a working party (11 October 2010)

Amended by Council 23 April minute 487 change of Finance Working Party to a Sub-Committee

- 1 The Policy & Resources Committee is a policy committee within the meaning of Article 8.01 of the Constitution.
- 2 The Policy & Resources Committee comprises 15 members appointed by the full Council at the Annual meeting, in accordance with the statutory political balance requirements, to be responsible for the formulation and development of the Council's overall strategic policy (with the exception of the strategies and plans which together comprise the Local Development Framework), the formulation and development of its budgetary and financial management framework and its capital and revenue programme.
- 3 The Policy & Resources Committee coordinates the implementation of policy and strategic objectives across the Council and implements strategy in respect of the social, economic and environmental well-being of the citizens of East Northamptonshire, and the functions and services not otherwise the responsibility of the full Council or the Planning Policy Committee. In doing so, the Committee is responsible for formulating and resourcing the capital programme and for ensuring that the policies and strategic objectives of the Council support the Community Plan and take account of crime and disorder matters pursuant to the Police & Justice Act 2006.
- 4 Functions which are delegated on, for example to a standing Sub Committee or an Officer, and the limits of that delegation, are defined in Table 1 of the Constitution.
- 5 The Committee's terms of reference are
 - (i) To consider and make recommendations to the Council on all questions of major policy in accordance with the Budget and Policy Framework Procedure Rules and the Financial Rules in Parts 4.3 and 4.5 of the Constitution, and generally to promote a corporate approach to all of the Council's functions;
 - (ii) To consider the financial impact of policy decisions, including the allocation and reallocation of resources and future levels of local taxation;
 - (iii) To develop the budget and policy framework, identifying any strategic policy or resource issues on which studies by the Scrutiny Committee may be required, in accordance with the Budget and Policy Framework Procedure Rules in Part 4.3 of the Constitution/continued
 - (iv) To oversee the finances of the Council, and the implementation of the budgetary framework and the approval and implementation of the medium term financial strategy, considering the resourcing of policy decisions and the

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

financing of capital expenditure, in accordance with the Financial Procedure Rules set out in Part 4.5 of the Constitution;

- (v) To publish an annual programme for establishing the budget and policy framework for the following year, for Council approval, taking into account any policy studies previously undertaken by the Scrutiny Committee and the outcomes of any service reviews or customer surveys;
 - (vi) To co-ordinate, on behalf of the Council, the implementation of the Council's strategic aims and priorities, determining policies to deliver the Council's objectives;
 - (vii) To review the need for existing services, and the method of provision.
 - (viii) To carry out the duties imposed by the Council's financial regulations and any statutory obligations, including recommending the council tax to be levied for the ensuing year;
 - (ix) To oversee and monitor matters determined by a Personnel Sub Committee relating to conditions of service, health and safety and employment policies relating to all council employees, and changes to the establishment, setting up a standing Sub Committee for that purpose;
 - (x) To establish a Finance Sub Committee to manage revenue and capital expenditure and the progress of the capital programme and undertake other specific duties as set out in the Sub-Committee's Terms of Reference.
 - (xi) To deal with applications for financial assistance not otherwise delegated;
 - (xii) To consider recommendations from the Finance Sub Committee in respect of the sale of the Council's land, buildings or assets or the acquisition thereof;
 - (xiii) To receive an Annual Asset Management Position Statement within the agreed Council Outcome RES02 (Well Maintained Assets – measure % of assets rated as in good/satisfactory condition).
 - (xiv) To liaise with the Audit Commission over the appointment of the Council's external auditor
 - (xv) To approve the annual statement of accounts
- 6 Proceedings of the Committee take place in accordance with the Procedure Rules set out in Part 4 of the Constitution.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Planning Policy Committee

Approved by Planning Policy Committee – 5 June 2008 – Minute 39

Amended by Council – 11 January 2010 – Minute 311(a)

- 1 The Planning Policy Committee comprises 15 members appointed by the full Council at the Annual meeting, in accordance with the statutory political balance requirements, to be responsible for the formulation and development of the Council's Local Development Framework within the meaning of the Planning and Compulsory Purchase Act 2004.
- 2 The Planning Policy Committee coordinates the implementation of spatial planning policy and determines the strategic planning objectives for East Northamptonshire within the framework provided by the agreed North Northamptonshire Core Spatial Strategy.
- 3 Functions which are delegated, for example to a standing sub committee, working party or an Officer, and the limits of that delegation, are defined in Table 1 of the Constitution.
- 4 The Committee's terms of reference are:
 - (i) To lead the preparation of the Local Development Framework (LDF) for East Northamptonshire;
 - (ii) To determine a Local Development Scheme for East Northamptonshire, in conformity with the Core Spatial Strategy for North Northamptonshire, including the approval of the timetables, programmes and development plan documents forming the LDF;
 - (iii) To consider the community's response to consultation on land use policy issues in accordance with the Statement of Community Involvement;
 - (iv) To agree the strategic policies, area strategies and allocations, and monitoring frameworks that comprise the LDF for East Northamptonshire,
 - (v) To establish (unless reserved to the full Council) appropriate area working parties to guide the preparation of plans for various parts of the District;
 - (vi) To receive the minutes of, and consider recommendations for area strategies and allocations, and monitoring frameworks arising from the work of, the area working parties;
 - (vii) To approve draft policy documents for public consultation and Plans for submission;
 - (viii) To consider the timing and prioritisation of Plans and proposals recommended by the area working parties;
 - (ix) To respond to consultations on planning policy matters and proposed legislative changes,
 - (x) To adopt new Conservation Areas and review existing ones following public consultation;
 - (xi) To consider the financial impact of its decisions, and make recommendations for the allocation or reallocation of resources to the Policy & Resources Committee;

Proceedings of the Committee take place in accordance with the Procedure Rules set out in Part 4 of the Constitution.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Licensing Committee

Approved by Licensing Committee - 25/01/07 - Minute 328

Amended by Council - 21/04/08 – Minute 418

Amended by Council - 26 April 2010 – Minute 472(c)

The Committee is a statutory Committee within the meaning of the Licensing Act 2003 and the Gambling Act 2005

- 1 To consider delegation arrangements to Sub-Committees or Panels and appoint Members to serve thereon, and to make recommendations to Council on the matters which will be delegated to officers.
- 2 To consider three yearly revisions to the Council's Statement of Licensing Policy for both the Licensing Act 2003 and the Gambling Act 2005 and any interim amendments and make recommendations to Council.
- 3 To receive reports on grants of Premises and Licences, club premises certificates and grants of Personal Licences delegated to officers and activities taking place under Temporary Event Notices for information only.
- 4 To receive reports as appropriate on
 - (a) the needs of the local tourist economy and cultural strategy and
 - (b) the local employment situation and need for new investment and employment where appropriate and make any necessary recommendations.
- 5 To make reports as appropriate to the Planning Committee on the situation regarding licensed premises in the area including the impact of alcohol related crime and disorder (reports on matters affecting community safety will also be submitted to the relevant policy committee).
- 6 Any other related licensing matters within the scope of Section 7 of the Licensing Act 2003, any matters not covered by delegation to officers under the Gaming Act 2005.
- 7 To agree arrangements for Member involvement in the effective monitoring of compliance with licensing decisions.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Development Control Committee

Approved by Council – 12/05/04 – Minute 12(a)

Amended by Council – 17/01/05 – Minute 330(b)

- 1 The Development Control Committee is a Regulatory Committee within the meaning of Article 8.03 of the Constitution.
- 2 The Committee comprises 18 members appointed by the full Council at the Annual meeting, in accordance with the statutory political balance requirements, to be responsible for the functions relating to town and country planning and development control, as specified in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 3 Functions which are delegated on, for example to an Officer, and the limits of that delegation, are defined in Table 1 of the Constitution.
- 4 The Committee acts in a quasi-judiciary manner to determine applications made, balancing the consideration of private proposals against the wider public interests and its members are bound by the Council's Code of Practice for Planning Procedures at Part 5.4 of the Constitution.
- 5 All members of the Committee are required to attend training in planning procedures as a prerequisite of membership.
- 6 Proceedings of the Committee take place in accordance with the Procedure Rules set out in Part 4 of the Constitution.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Scrutiny Committee

Amended by Council – 1 March 2010 – Minute 385(b) and 1 November 2010 – minute 245(b)

- 1 The Council has appointed a single Scrutiny Committee, comprising 15 members of the Council appointed at the Annual Meeting. The Committee's purpose is to manage and co-ordinate the overview and scrutiny process in accordance with the Scrutiny Procedure Rules set out in Part 4.4 of the Constitution and to monitor statutory and local performance indicators and set standards and targets for performance improvement. The Scrutiny Committee has the power to appoint time-limited working parties, review teams and panels as necessary.
- 2 The Terms of Reference of the Scrutiny Committee are set out in Article 7 of the Constitution. These were approved and adopted by the Council on 1 March 2010 in accordance with Article 4.1 (c) of the Constitution and amended as above.
- 3 The Scrutiny Committee terms of reference are to
 - (i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
 - (ii) make reports and/or recommendations to the full Council, the Policy and Resources Committee and/or any joint or area committee in connection with the discharge of any functions;
 - (iii) consider any matter affecting the area or its inhabitants;
 - (iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by a policy committee and/or any joint committees;
 - (v) liaise with the Standards Board to ensure adequate arrangements for codes of conduct and behaviour;
 - (vi) monitor Council policies on 'Raising Concerns at Work' and the anti-fraud and anti-corruption strategy;
 - (vii) oversee the production of the authority's Annual Governance Statement and to recommend its adoption as part of the annual accounts;
 - (viii) consider the Council's arrangements for corporate governance and agree necessary actions to ensure compliance with best practice;
 - (ix) consider the Council's compliance with its own and other published standards and controls
 - (x) consider reports including the external auditor's annual letter, relevant reports, and the report to those charged with governance and consider any other specific reports as agreed with the external auditor. Specifically to consider whether there are concerns arising that need to be brought to the attention of the Policy and Resources Committee.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

- (xi) consider the Head of Internal Audit's annual report and opinion, and a summary of internal audit activity (actual and proposed) and the level of assurance it can give over the Council's corporate governance arrangements. Specifically to consider whether there are concerns arising that need to be brought to the attention of the Policy and Resources Committee;
- (xii) consider summaries of internal audit reports produced in accordance with the Annual Internal Audit Plan;
- (xiii) consider and accept the Annual Internal Audit Plan. Specifically to consider whether there are concerns arising that need to be brought to the attention of the Policy and Resources Committee;
- (xiv) commission work from internal and external audit including value for money and efficiency reviews.
- (xv) receive reports on the council's performance framework, which includes monitoring of:
 - high level risks where actions to mitigate have not been completed on time
 - high level internal audit recommendations that have not been implemented on time
 - emerging financial risks and significant budget variations
 - national and/or local performance indicators which are consistently not achieved
 - key service area achievements (see minute 323 of Scrutiny Committee 15 December 2010)
- (xvi) provide independent assurance of the council's risk management framework and the associated control environment;
- (xvii) To monitor the effective development and operation of risk management and corporate governance in the Council; to endorse the Business Continuity Plan and Risk Management Strategy; and to review the RISK Register.
- (xviii) assist the Council in the development of the Council's Budget and Policy Framework by in-depth analysis of policy issues;
- (xix) conduct research, community and other consultation in the analysis of policy issues and possible options;
- (xx) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (xxi) question Members of the Council and the Policy & Resources Committee, and Chief Officers and Heads of Council Services, about: their views on issues and proposals affecting the area; and, in relation to particular decisions, initiatives or projects;
- (xxii) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working;

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

- (xxiii) review and scrutinise the decisions made by and performance of, the Policy & Resources Committee and Chief Officers both in relation to individual decisions and over time;
 - (xxiv) review and scrutinise the performance of the Council in relation to its policy objectives;
 - (xxv) within the Council's published Petitions Scheme, consider petitions which call for a senior officer of the Council to attend the Committee to answer questions on how a particular service is being delivered; and also to review the Council's response to petitions in cases where the petition organiser feels this is inadequate;
 - (xxvi) make recommendations to the Council and/or appropriate policy committee arising from the outcome of the scrutiny process;
 - (xxvii) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Committee and local people about their activities and performance;
 - (xxviii) question and gather evidence from any person (with their consent).
 - (xxix) receive reports from Council Champions.
- 4 The Constitution requires the Scrutiny Committee to report annually to the full Council on the operation and effectiveness of scrutiny arrangements.
- 5 Proceedings of the Scrutiny Committee and any Sub Committee, working party or scrutiny panel appointed by it take place in accordance with the Procedure Rules set out in Part 4.1 of the Constitution and the Scrutiny Procedure Rules set out in Part 4.4 of the Constitution.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Standards Committee¹

The Council will establish a Standards Committee to be known as the East Northamptonshire Standards Board to discharge the functions conferred by Part III of the Local Government Act 2000 and Regulations made thereunder.

9.02 Composition

Political Balance

The political balance rules in section 15 of the Local Government & Housing Act 1989 do not apply to the Standards Board.

The Standards Board will comprise:

- four Councillors being elected members of East Northamptonshire Council;
- four independent Members who are not a Councillor or an Officer of the Council or any other body having a Standards Committee;
- two members of a Parish Council in the East Northamptonshire district ;and
- two members of a Town Council in the East Northamptonshire district.

Independent Members

Independent Members will have equal rights on the Board and will be entitled to vote at meetings of the Standards Board. They will be appointed by the Full Council on the recommendation of a Panel made up of a majority of District Councillors. They must not be a member of a political party and must take up residence within the District or within 20 miles of the border of the District within six months of their appointment otherwise their appointment will be terminated.

Parish Members

At least one Town or Parish Council Member must be present when matters relating to Parish or Town Councils or their Members are being considered.

Term of Office of Independent and Parish Members

Independent and Town and Parish Council Members will serve for a maximum period of two 4 year terms from the date of election or appointment. Independent Members will retire by turns, after, potentially, six, seven and eight years' service.

Chairing the Board

The Standards Board will elect a chairman and vice chairman from its Independent Members.

Quorum

A meeting of the Standards Board shall not be quorate unless at least *four* members (including an Independent member, District Councillor, and Town or Parish Councillor) are present for its duration.

¹ Extract from East Northamptonshire Council Constitution - Article 9

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

9.03 Key Role and Function

The East Northamptonshire Standards Board will have the following roles and functions:

- a) promoting and maintaining high standards of conduct by Councillors and co-opted Members;
- b) assisting the Councillors and co-opted Members to observe the Members' Code of Conduct;
- c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- d) monitoring the operation of the Members' Code of Conduct;
- e) advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- f) granting dispensations to Councillors and co-opted Members from requirements relating to interests set out in the Members' Code of Conduct;
- g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer or any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer to the Monitoring Officer;
- h) the exercise of these functions in relation to the town and parish councils wholly or mainly in East Northamptonshire and the members of those town and parish councils.

9.04 Additional Roles and Function

Beyond the matters set out in Article 9.03, the East Northamptonshire Standards Board will be responsible for

- a) reviewing, as necessary, the arrangements for the handling of complaints against the Council;
- b) reviewing the outcome of Ombudsmen investigations;
- c) promoting and maintaining the Member/Officer Protocol;
- d) overseeing the operation of the whistle blowing policy and
- e) the maintenance of professional standards

and recommending any changes to procedures, or to the codes or protocols of this Constitution in respect of probity issues arising from their considerations or in the light of matters referred by the Standards Board for England.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Finance Sub Committee

Approved by Council – 1 March 2007 - Minute 391

Amended by:

- Policy & Resources Committee 21 January 2008 (Minute 291)
- Council – 21 July 2008 – (Policy & Resources Committee 16/06/08 Recommendation R2 - Minute 56)
- Council - 26 April 2010 – Minute 472(c) to replace with Working Party
- Policy and Resources Committee 12 October 2010
- Council – 1 November 2010 – minute 212

Amended by

- Council – 23 April 2012 – minute 487 to return to Sub-Committee

The Finance Sub Committee is a standing sub committee comprising 6 members of the Council's Policy & Resources Committee established to manage the financial resources of the Council. It will meet quarterly, with additional meetings as and when required.

Terms of Reference:

1. To monitor and manage the capital programme and revenue expenditure and report to the Policy and Resources Committee accordingly (with power to vary the capital programme during the year and manage under-spending).
2. To consider the capital and revenue budgets and recommend to the Policy and Resources Committee the revenue budget, capital programme and fees and charges
3. To consider and make recommendations to the Policy and Resources Committee on the financial aspects of the long and medium term financial strategies of the Council.
4. To recommend to the Policy and Resources Committee any changes in the financial management arrangements set out in the Budget and Policy framework.
5. To review and approve Financial Regulations every three years, taking into account any recommendation by the Scrutiny Committee on de minimis figures.
6. To review and develop the detailed financial and procurement rules and recommend changes to the Policy and Resources Committee
7. To recommend, to Policy and Resources Committee, approval of the Treasury Management Policy Statement (TMPS) and Treasury Management Strategy Statement (TMSS); to consider the annual report on investments and borrowing; and to review and scrutinise treasury management strategy and policy.
8. To ensure the Council maintains adequate and appropriate insurance cover.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

9. To be responsible for the strategic management of all Council land and property assets and co-ordinate the disposal and acquisition of any capital assets, making appropriate recommendations to the Policy and Resources Committee.

Personnel Sub Committee

Approved by Council - 1 March 2007 - Minute 391

The Personnel Sub Committee is a standing sub committee comprising 6 members of the Council's Policy & Resources Committee established to determine matters relating to personnel and the health and safety of Council employees.

Terms of Reference:

- 1 To consider and determine matters relating to salaries and conditions of service, and health and safety and employment policies relating to all employees of the Council.
- 2 In line with the Council's strategic objectives, to recommend to the Policy and Resources Committee, any changes in the Council's establishment resulting from a management review of the structure.
- 3 To receive reports from the Chief Executive on changes in the Council's staff and recommendations relating to training.
- 4 To consider and make recommendations to the Policy and Resources Committee on the appointment of the Chief Officers (SMT) and on any matter relating to the conditions of employment of the Chief Executive and Chief Officers.
- 5 To make recommendations to the full Council on the appointment or dismissal of the Chief Executive/Head of the Paid Service and on the dismissal of the Chief Officers.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Licensing (Liquor & Gambling) Panels

Amended by Council – 11 January 2010 – Minute 311(a)

Liquor & Gambling Licensing Panels function as sub-committees of the Licensing Committee (a statutory Committee) and operate under powers initially delegated to them by the Licensing Committee on 26 January 2005 (Minute 349) and 25 January 2007 (Minute 328) but amended by Council on 21 April 2008 (Minute 418).

The membership of each Panel varies. All Panels consist of 3 Members of the Licensing Committee (who have had training) and determined under delegated powers exercised by the Democratic Services Manager.

Panels conduct hearings which follow the rules of natural justice and are governed by The Licensing Act 2003 (Hearings) Regulations 2005 and The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007.

Panels have the power to –

- determine applications under the Licensing Act 2003:
 - for personal licence if a representation made;
 - for personal licence with unspent convictions;
 - for premises licence/club premises certificate if a representation made;
 - for provisional statement if a representation made;
 - to vary premises licence/club premises certificate if a representation made;
 - to vary designated personal licence holder if a police representation;
 - to be removed as designated personal licence holder;
 - for transfer of premises licence if a police representation;
 - for Interim Authorities if police representation;
 - review premises licence/club premises certificates.
- determine police representations to a temporary event notice;
- determine applications under the Gambling Act 2005:
 - for a premises licence where representations have been received and not withdrawn
 - for a variation to a licence where representations have been received and not withdrawn
 - for a transfer of a licence where representations have been received from the Commission
 - for a provisional statement where representations have been received and not withdrawn
 - for a review of a premises licence
 - for club gaming/ club machine permits where objections have been made (and not withdrawn)
 - for the cancellation of club gaming/ club machine permits
 - for a decision to give a counter notice to a temporary use notice

Minutes will be submitted for information to either the Licensing Committee or to the full Council.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Licensing (Taxi & Miscellaneous) Panels

Amended by Council – 11 January 2010 – Minute 311(a)

These Panels are effectively “Committees” in legal terms and originally operated for taxi licensing matters under powers initially delegated to them by the Council in January 2005 (Resources Committee minute 264 – 15 November 2004) and confirmed by the Council on 21 April 2008 (Minute 418). The remit of the Panels was extended to other miscellaneous licensing matters in January 2010

The membership of each Panel varies. All Panels consist of 3 Members drawn from the membership of the Licensing Committee (who have had appropriate training) and determined under delegated powers exercised by the Democratic Services Manager.

The Panels conduct hearings which are not governed by statutory rules but nevertheless follow the rules of natural justice.

Panels have the power to determine –

- (a) applications under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 relating to hackney carriage and private hire drivers’ licences not otherwise delegated to officers and to determine applications for driver, vehicle and operator licences where the Head of Environmental Services is minded to refuse
- (b) specifically, applications –

Where a Criminal Records Bureau Check reveals:

- Offences of a sexual nature
- Offences relating to violent conduct
- Offences involving substance abuse
- Offences involving obscene material
- Offences relating to dishonesty
- Offences relating to Motoring Offences, including those listed in the schedule contained within the conditions of licence, as detailed below:-
 - (i) Dangerous driving.
 - (ii) Driving or attempting to drive whilst unfit through drink or drugs.
 - (iii) Unfit through drink or drugs whilst in charge (as opposed to actually driving or attempting to drive) the vehicle.
 - (iv) Driving or whilst in charge of vehicle with excess alcohol in the blood.
 - (v) Motor racing on highway.
 - (vi) Taking and driving away a vehicle without consent.
 - (vii) Using without insurance.
 - (viii) Driving without a licence.
 - (ix) Driving with defective sight (and refusing to submit to eye-sight test).
 - (x) Parking in a dangerous position.
 - (xi) Failure to stop and give particulars after an accident.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

- (xii) Failing to conform with the requirements relating to pedestrian crossing or a school crossing.
- (xiii) Failing to conform with traffic signs (including double white lines) or a policeman's signal.
- (xiv) Breach of traffic regulations i.e. (no waiting, one-way working).
- (xv) Using, causing or permitting to be used, a vehicle in a dangerous condition or with defects (e.g. brakes, steering, tyres).
- (xvi) Permitting a vehicle to be driven without insurance and/or without a licence.
- (xvii) Permitting a person to drive under age if the offence occurred after the first application.
- (xviii) Careless driving, driving without reasonable consideration and driving without due care and attention.
- (xix) Any three current endorsements for speeding.

Where Medical Conditions require specialist medical consultation and .

(All other hackney carriage and private hire licences are determined under delegated powers exercised by the Head of Environmental Services).

- (c) all other applications for licences or registrations (house to house collections, sex establishments etc) which the Head of Environmental Services is minded to refuse.

Minutes of the Panels will be submitted for information to the full Council.

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

Waste and Recycling Working Party

- 1.0 The Waste and Recycling Working Party is a working party comprising 10 members of the Council established by (but not confined to members of) the Policy and Resources Committee to consider waste management arrangements in East Northamptonshire. The formation of the Working Party recognises
- the importance and complexity of waste management and recycling matters,
 - the requirement for in-depth examination of waste and recycling arrangements;
 - the need to renew the waste management contract in August 2011, and
 - the need for effective partnership working in Northamptonshire on waste issues.
- 2.0 In particular, the Working Party will
- review the Council's priorities for waste collection and recycling in East Northamptonshire;
 - consider the implications of the Landfill Allowance Trading Scheme for East Northamptonshire;
 - consider and prepare a response to the Joint Waste Management Strategy for Northamptonshire;
 - consider arrangements for the introduction of kitchen waste collection;
 - examine the options for recycling centres;
 - have five members of the Working Party act as the Project Board in relation to the renewal of the waste management contract, and;
 - consider any other issues in respect of waste and recycling that are of relevance to the District;
- and make recommendations to the Policy and Resources Committee for consideration.
- 3.0 In acting as the Project Board in respect of the renewal of the waste management contract, the Working Party is delegated by the Policy and Resources Committee to
- determine the tender evaluation process, operating within the Council's Financial Regulations, Procurement Procedures and relevant European Union requirements;
 - agree the shortlist of bidders following a pre-qualification process;
 - consider the outcomes of the competitive dialogue;
 - consider and approve the draft tender documents;
 - contribute to the tender evaluation process;
 - identify a preferred contractor, and
 - make a recommendation to the Policy and Resources Committee for approval on the award of the contract commencing 1 August 2011.
- 4.0 The Working Party will also
- keep abreast of waste management developments and trends both in Northamptonshire and nationally (through DEFRA) and inform and advise the Policy and Resources Committee and the Council through the minutes of its meetings;

TERMS OF REFERENCE OF COMMITTEES & SUB-COMMITTEES

- encourage and foster continual dialogue with Northamptonshire Waste Partnership in the spirit of partnership working.
- 5.0 The Terms of Reference of the Working Party will be reviewed at the meeting of the Policy and Resources Committee in June 2011.



East Northamptonshire Council Constitution

**DRAFT FOR PRESENTATION TO COUNCIL –
subject to final legal advice/check**

Part 9: Procedure for Assessment, Investigation Determination and Appeal of Complaints against Councillors and Dispensations

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Annexes:

- 1. Guidelines for the Assessment of Complaints**
- 2. Guidelines for the Conduct of Investigations**
- 3. Guidelines for the Conduct of Hearings**

1.0 Introduction

- 1.1 This procedure sets out the arrangements for the assessment, investigation, determination and appeal of allegations of misconduct by Councillors¹. It explains how we will deal with a complaint that any of the 40 East Northamptonshire Councillors or any of the approximately 350 Town and Parish Councillors in East Northamptonshire has breached, or may have failed to comply with, the code of conduct which has been adopted by the council concerned.
- 1.2 Each Council is required by the Localism Act 2011 to adopt a Code of Conduct for Councillors which is compliant with the Nolan Principles of Public Life. The codes which the councils in the East Northamptonshire district have adopted can be viewed on the East Northamptonshire Council's website.
- 1.3 The process for dealing with complaints will be the same for all Councillors regardless of the code adopted and the Councillor's political affiliations or the tier of local government they represent. No departure from this procedure will be made unless the Monitoring Officer² has first notified the Councillor(s) against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.
- 1.4 The Monitoring Officer will work with the Independent Person and the Joint Standards Complaints Committee (see below) to process and review complaints of possible breach of the Code..
- 1.5 The Localism Act 2011 requires the appointment of at least one Independent Person. The Independent Person is required to be independent of links to any Councillor or council in the district. This council also wishes them to be free of any political party links and to reside in the locality. The Localism Act allows the views of the Independent Person to be sought by any Councillor in relation to complaints covered by this procedure. (It should be noted that this does not apply to complainants.)
- 1.6 The Joint Standards Complaints Committee (JSCC) is composed of seven Councillors from East Northamptonshire Council and seven Councillors nominated by the Town and Parish Councils which has agreed to be bound by its decisions. The terms of reference for the JSCC can be found at Article Nine of Part Two of the Council's Constitution.
- 1.7 Where this procedure makes reference to consultation with the Chair or Vice Chair of the JSCC, the consultation will usually be with the Councillor who represents the same tier as the Councillor(s) complained against. Exceptionally, if this person is unavailable, the other Councillor will be consulted.

¹ This procedure applies to allegations of breach of the council's code of conduct by elected and co-opted members of East Northamptonshire Council and, in respect of alleged breaches of the codes of conduct of the Town and Parish Councils in East Northamptonshire, to members of those councils and the word "Councillor" is to be taken to refer to all such persons. Under Section 28(6) and (7) of the Localism Act 2011 the Council must have in place such a procedure.

² The "Monitoring Officer" is an officer of East Northamptonshire Council who has been designated as the authority's Monitoring Officer under Section 5 of the Local Government and Housing Act 1989. The Monitoring Officer has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of councillor misconduct.

- 1.8 In all cases mentioned in this document the Deputy Monitoring Officer has the same responsibilities and delegated functions in respect of these procedures to act as the Monitoring Officer when the Monitoring Officer is unavailable or has a conflict of interest.
- 1.9 This procedure also sets out the arrangements for determining requests for dispensations where Councillors have an interest in a decision and would otherwise be unable to take part in the decision making process.

2 Making a Complaint

- 2.1 All complaints must be made in writing (by letter or e-mail) to:
The Monitoring Officer
East Northamptonshire Council
Cedar Drive
Thrapston
NN14 4LZ
Or via MO@east-northamptonshire.gov.uk
- 2.2 In order to ensure that all the information needed to be able to process the complaint, complainants will be asked to complete the complaint form, which can be downloaded from the authority's website ([link here](#)) or provide the equivalent information in their written complaint.
- 2.3 Complainants must provide a name and a contact address or email address, so that the Monitoring Officer can acknowledge receipt of the complaint and keep the complainant informed of progress. The Monitoring Officer will acknowledge receipt of complaints within 5 working days of receiving it and provide updates after key stages or a minimum of monthly intervals thereafter.
- 2.4 In the interests of fairness and natural justice, East Northamptonshire Council believes that Councillors who are complained about are entitled to know who has made the complaint against them and the substance of that complaint. The identity of a complainant or the details of a complaint will not be withheld **unless there are exceptional reasons for doing so**. Factors which will be taken into consideration include whether the complainant –
- would be at risk of physical harm;
 - has a serious health condition and there is a medical risk associated with disclosure of his identity, or
 - where there would be practical difficulties in proceeding with an investigation, or the interests of natural justice would be not be met, if the complainant's identity is unknown to the Councillor(s).
- 2.5 If complainants wish to keep their name and address confidential in the circumstances outlined in 2.4, then they should indicate this in the space provided on the complaint form. In such cases the Monitoring Officer will not disclose the complainant's name and address to the member complained against without the complainant's consent. If a request for confidentiality is not granted, the complainant will usually have the option of withdrawing the complaint. Exceptionally, the Monitoring Officer, after consultation with the Independent Person and Chair or Vice Chair of the JSCC, may proceed with an investigation or other action and disclose complainants' names, even if they have expressly asked the Council not to, if it is believed that the matter complained about is extremely serious.

2.6 The authority will not normally investigate anonymous complaints, unless there is an overriding public interest in doing so.

3.0 Stage 1 – Initial Assessment of the Complaint

3.1 All complaints received about Councillor conduct will be passed to the Monitoring Officer, who will take action in accordance with the Guidelines for the Assessment of Complaints (Appendix A). If it is not clear whether the complaint is a substantive allegation of misconduct, the Monitoring Officer will contact the complainant to seek further information. If the complainant alleges criminal conduct or breach of other regulation by any person, the Monitoring Officer will inform the Police or other appropriate regulatory agencies

3.2 The Monitoring Officer will inform Councillor(s) concerned that a complaint has been received and unless the confidentiality provisions apply, provide them with a copy of the complaint letter. The Councillor(s) concerned will then have 5 working days to make a written response unless there is an overriding reason for an extension of time. In the latter circumstance the Monitoring Officer would notify the complainant of the revised timetable.

3.3 Where the Monitoring Officer requires additional information, an approach may be made to the complainant or the Councillor(s) for such information.

3.4 The Monitoring Officer will review the information provided in respect of every complaint received. In reaching the decision the Monitoring Officer will consider relevant case law and other guidance, including the guidelines in Appendix A. The Monitoring Officer will also consult with, and have regard to the views of, the Independent Person and the Chair or Vice Chair of the Joint Standards Complaints Committee (as outlined in paragraph 1.7) The Independent Person will be required to disclose if they have been approached by the complained against Councillor(s) and what advice they provided.

3.5 No decision is made at this stage as to whether a breach has or has not taken place. However when deciding what action to take at this stage consideration will be given to the implications if a breach of the Code were later to be proved.

3.6 The Monitoring Officer may decide to take:

a) *No further action.* The Complainant and Councillor(s) complained against will be provided with a written summary of the decision but no further action will be taken.

b) *Take other/informal action.* In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member choosing to offer an apology, or other remedial action by the authority. Where the member of the authority makes a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation. Where other/informal action is agreed the Monitoring Officer will arrange for the required action to be taken. Once the action is completed, the Monitoring Officer will inform the complainant, Councillor(s) complained against, the JSCC (and Town or Parish Council if relevant).

- c) *start a formal investigation*, leading to the production of an investigation report. (see Section 4)
 - d) Where a complaint alleges non or inappropriate declaration of Disclosable Pecuniary Interests the Monitoring Officer will notify the Police. No further action will be taken under this procedure until the outcome of the Police notification is known. If no Police action is to be taken then the other three options above will be considered in accordance with this procedure.
- 3.7 The decision will normally be taken within 20 working days of receipt of the complaint. The Monitoring Officer, after taking a decision, will normally inform the complainant, relevant Councillor(s) and if appropriate the Town or Parish Council of the decision and the reasons for that decision via a written summary. The summary will include the main points considered, the conclusions reached and the reasons for the decision and will be available for public inspection for a year. No formal publication (on the council's website or in a newspaper) of the outcome will take place unless requested by the Councillor(s) affected.
- 3.8 Exceptionally, in relation to the circumstances in paragraph 2.4, the Monitoring Officer may decide that the Councillor(s) complained against should not receive the written summary if it is considered this would be against the public interest or would prejudice any future investigation. . In such circumstances an appropriately redacted version will be provided. .

4.0 Stage 2 - Investigation

- 4.1 The Monitoring Officer, after deciding that a complaint merits formal investigation, will appoint an Investigating Officer, who may be another senior officer of the authority, an senior officer of another authority or an external investigator. The function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented. The Investigator' report will indicate whether there is a case to answer that the Councillor(s) has failed to comply with the Council's code of conduct.
- 4.2 The Investigating Officer may, with the approval of the Monitoring Officer, appoint other people to assist in conducting the investigation. The Investigating Officer will speak to both the complainant and Councillor(s) complained about to understand their relative perspective on the complaint and to identify which people they need to interview and documents they need access to. (See Appendix B for more detail on the conduct of investigations)
- 4.3 Usually information which the Investigator obtains in the course of the investigation will not be released to individuals or organisations except where it is necessary to allow the complaint to be dealt with properly.
- 4.4 In exceptional cases (under the circumstances outlined in paragraph 2.4),, where it is appropriate to keep the identity of the complainant confidential or disclosure of details of the complaint to the Councillor(s) might prejudice the investigation, the Monitoring Officer can advise the Investigating Officer to withhold details until the investigation has progressed sufficiently.
- 4.5 As soon as reasonably practical, and usually within three months, the Investigating Officer will produce a draft report and will send copies of that draft report, in

confidence, to the complainant and to the Councillor(s) concerned, to give them both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration. Having received and taken account of any comments which have been made on the draft report, the Investigating Officer will send their final report to the Monitoring Officer. Investigating Officers may be asked to reconsider their report if the Monitoring Officer is not satisfied that an investigation has been conducted properly.

- 4.6 Once satisfied, the Monitoring Officer will ask the Councillor(s) concerned to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Monitoring Officer will then consult the Independent Person and Chair or Vice Chair of the JSCC as to their views as to the next step.
- 4.7 *If the Investigating Officer concludes that there is no case to answer of a failure to comply with the Code of Conduct* and the Monitoring Officer agrees that no further action is required, the Monitoring Officer will write accordingly to the complainant and the Councillor(s) concerned (and to the Town or Parish Council, where the complaint relates to a Town or Parish Councillor). The letter will include a copy of the Investigating Officer's final report
- 4.8 *If the Investigating Officer concludes that there is a case to answer of a failure to comply with the Code of Conduct, the Monitoring Officer will then decide between the following two actions:*
- a) *Other action* - The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the Monitoring Officer will consult the Independent Person and Chair or Vice Chair of the JSCC. Such resolution may include the Councillor(s) choosing to agree that their conduct was unacceptable and offering an apology, and/or other remedial action by the council such as training or changes to council procedures. Where other action is agreed the Monitoring Officer will arrange for the required action to be taken and once completed, the Monitoring Officer will inform the complainant, Councillor(s) complained against, the JSCC (and Town or Parish Council if relevant).
 - b) *Referral to a hearing* - If the Monitoring Officer considers that local resolution is not appropriate the Investigating Officer's report will be submitted to a Hearings Panel which will 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.

5.0 Stage 3 – Hearing

- 5.1 The Monitoring Officer will convene a Hearing Panel from the appropriate tier of Councillors on the JSCC. The Monitoring Officer, in consultation with the Chairman of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. The business of such meetings will usually be conducted in confidence due to the personal nature of the information being considered. (Appendix C details the arrangements for a Hearing Panel.)
- 5.2 The Independent Person will also be present at the Hearing meeting and will give their view on the merits of the case presented. The Independent Person will be required to disclose if they have been approached by the complained against Councillor(s) or the complainant and if so what advice they provided.
- 5.3 It is intended that hearings should be conducted in a formal manner but the attendance of legally qualified representative advisors of the complainant and complained against Councillor(s) is not encouraged. Accordingly no assistance will be given towards the cost of any such legally qualified representatives. The Hearing Panel will act in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor(s) on the balance of the

information available to it, and will be able to commission further investigation or information where it needs to do so in order to come to a decision.

- 5.4 At the hearing the Investigating Officer will present the report, call such witnesses as considered necessary and make representations to substantiate the case that the Councillor(s) have failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Hearing Panel. The Councillor(s) will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearing Panel as to why they consider that they did not breach the Code of Conduct.
- 5.5 Where the Monitoring Officer or the Investigating Officer arranges for someone to attend for interview or as a witness at a Hearing, they may pay that person a sum to cover any reasonable costs incurred.
- 5.6 The Hearing Panel may conclude that the Councillor(s) did not breach the Code of Conduct, and so dismiss the complaint. No formal publication (on the council's website or in a newspaper) of the outcome will take place unless requested by the Councillor(s) affected.
- 5.7 If the Hearing Panel concludes that the Councillor(s) did breach the Code of Conduct, the Chair will inform them of this finding. The Hearing Panel will then give the Councillor(s) an opportunity to make representations to the Panel. The Panel will then consult the Independent Person. Finally the Panel will decide what action, if any, to take in respect of the matter.
- 5.8 If a breach is found to have occurred, the Hearing Panel will choose from one or more of the following list of actions. These actions will be implemented in case of Councillors from those councils who have delegated to the JSCC such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. On all other cases, the Hearing Panel recommendation will be forwarded to the council by the Monitoring Officer, with a recommendation for appropriate.
 - Take no further action
 - Recommend to the relevant council that the Councillor(s) be censured for their breach of the Code of Conduct
 - Recommend an apology to be made by the Member to the complainant (and/or others)
 - Publish its findings in respect of the member's conduct. (Advice will be sought as to the most effective place of publication to attract the attention of the relevant community) If this is on a council website, the publication on the website will be removed after 12 months.
 - Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to the relevant Council) that the member be removed from any or all Committees or Sub-Committees of the Council
 - Instruct the Monitoring Officer to arrange training for the member
 - Recommend to the relevant Council the removal from some or all outside appointments to which the member has been appointed or nominated by the relevant council
 - Withdraw some or all facilities provided to the member by the Council, (including access to buildings) provided this does not prevent the Councillor(s) carrying out the member role,

It should be noted that the Hearing Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances

5.9 At the end of the hearing, the Chairman will state the decision of the Hearing Panel as to whether the member was a breach of the Code of Conduct and any sanction which the Hearing Panel has decided is appropriate. Within 5 working days of the decision being made by the Hearing Panel, the Monitoring Officer will arrange for a formal decision notice to be prepared in consultation with the Chairman of the Hearings Panel, and send a copy to the complainant, the Councillor(s) complained against (and to the Town or Parish Council if relevant) . The outcome will also be reported to the JSCC at the next meeting and recorded in the minutes.

6.0 Stage 4 - Appeal

6.1 An appeal may be made where the complainant or Councillor(s) complained about feels that the process outlined in this procedure has not been followed, the sanction applied is considered inappropriate or that significant new evidence is available which has not been considered during the previous process. Any such appeal should be made in writing (by letter or e-mail) to the Monitoring Officer within 20 working days of the receipt of the notification of the relevant decision.

6.2 If an appeal is made the Monitoring Officer will notify the complainant, Councillor(s) (and Town or Parish Council if appropriate). The Appeal Panel which will consist of three Councillors, normally drawn from the appropriate tier of Councillors on the JSCC who have not previously been involved in the matter. (In exceptional circumstances it may not be possible to find three Councillors from the same tier who have no previous connection to the complainant or Councillor(s) concerned. In these circumstances consideration will be given to an Appeal Panel having only two Councillors from the same tier.) The reserve Independent Person will also be present at the Hearing meeting (to ensure a fresh perspective).

6.3 The business of such meetings will usually be conducted in confidence due to the personal nature of the information being considered. Every endeavour will be made to hold the Appeal Panel within 20 working days of the appeal notification being received.

6.4 The Appeal Panel will be presented with all the information previously considered for the original decision, together with any additional representations received from the complainant or Councillor(s) complained against.

6.5 The Appeal Panel will either:
(i) confirm the original decision and ask that the appropriate action be taken or
(ii) disagree with the original decision and decide that an alternative action (from those available to the original decision makers) should be implemented.

6.6 At the end of the hearing, the Chairman will explain why a particular decision has been made by the Appeal Panel. Within 5 working days of the decision being made by the Appeal Panel, the Monitoring Officer will arrange for a formal decision notice to be prepared in consultation with the Chairman of the Appeal Panel, and send a copy to the complainant, the Councillor(s) complained against, (and to the Town or Parish Council if relevant) . The outcome will also be reported to the JSCC at the next meeting.

7.0 Granting of Dispensations

7.1 The Localism Act provides that dispensations will be able to be granted in the following circumstances –

- a) That so many members of the decision-making body have Disclosable Pecuniary Interests in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
- b) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.
- c) That the authority considers that the dispensation is in the interests of persons living in the authority’s area.
- d) That the authority considers that it is otherwise appropriate to grant a dispensation.

7.2 All requests for such dispensations for East Northamptonshire Councillors should normally be submitted in writing (by letter or e-mail) to the Monitoring Officer in advance of the relevant meeting. Under delegated authority the Monitoring Officer may agree dispensations on the grounds of (a) and (b) in paragraph 7.1 as they are objective in determination and may be required at short notice. A Dispensations Panel of three Councillors, with Members from the appropriate tier of councils will be convened to determine dispensations under grounds (c) and (d).

7.3 The Panel will consult with the Independent Person before making its determination. Any grant of a dispensation will specify how long it lasts for, up to a maximum of four years.

8.0 Assistance to the Monitoring Officer and Investigating Officer

8.1 The Monitoring Officer may arrange for all or any of the Monitoring Officer’s functions under this procedure to be undertaken by any other person or persons. Any such delegations should be reported to the next meeting of the JSCC

8.2 The Monitoring Officer and Investigating Officer may, in conducting the investigation, obtain expert or other advice from any person who, in their opinion is particularly qualified to assist. Their name and experience of such persons will be recorded in the appropriate Hearing or Appeal Panel minutes

9.0 Confidentiality

9.1 No members or officers serving the JSCC shall disclose any information which they have obtained in the course of an investigation or in pursuance of this Procedure except in the circumstances set out in Paragraph 9.2 below. This also applies to the Independent Person.

9.2 The circumstances referred to above are:

- (ii) the disclosure is made for the purposes of enabling the Monitoring Officer or the Investigating Officer to conduct the investigation or otherwise to carry out their functions
- (iii) the person(s) to whom the information relates has consented to the disclosure;
- (iv) the disclosure is made in pursuance of a statutory requirement for disclosure;
- (v) the information has previously been placed in the public domain;
- (vi) the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings.

10.0 Revision of these arrangements

- 10.1 Amendment of these arrangements may only be made by agreement of East Northamptonshire Council by resolution at a Council meeting.
- 10.2 The Monitoring Officer will review these arrangements after the initial 12 months of any changes (to ensure effectiveness) and present to council proposals for any necessary changes to ensure the smooth and effective management of complaints. Otherwise the procedure will be reviewed after five years following the last change

Local Guidelines for the Assessment of Complaints about Councillor Conduct

1. **Preliminary steps:** The Monitoring Officer will confirm that:-

- (a) the complaint is against one or more named East Northamptonshire Councillor, or Member of a Parish or Town Council in East Northamptonshire
- (b) the named councillor was in office at the time of the alleged conduct and a Code was in force at the time
- (c) the complaint submitted sufficient information and specified how the Code is considered to have been breached.
- (d) the complainant's contact details have been provided or, if the complaint is anonymous, that it raises such significant concerns that further consideration is warranted.

The complaint will not be pursued if it fails one or more of these tests.

2. **Summary from the Monitoring Officer:** To assist the Independent Person and Chair/Vice Chair of the Joint Standards Complaints Committee (JSCC), the Monitoring Officer will provide a short written report setting out:

- The paragraphs of the code of conduct which are alleged to have been breached
- Key aspects of the complaint (for lengthy or complex complaints)
- Any relevant further information, including, where relevant:
 - The code in force at the time of the activity which has given rise to the complaint
 - declaration of acceptance of any documents which contain the code e.g. Constitution/standing orders
 - minutes of meetings
 - copy of relevant entry in Register of Interests
 - details from Companies House or the Land Registry
 - whether any Members of the Board or relevant officers are likely to be conflicted out
 - any written representation(s) received from the complained against councillor(s)
 - if the complaint has already been the subject of an investigation or other action relating to the code of conduct, or investigated by other regulatory authorities
 - any relevant matters about the health or circumstances of the relevant parties – to note any relevant points such as resignation, death or serious illness (which could influence a decision to proceed with an investigation)
 -

3 **Criteria to be followed:** Complaints about Councillor conduct will be –

- taken seriously
- dealt with in a way that seeks to ensure fairness for both the complainant and the Councillor(s) complained about
- treated on their merits, and
- with regard to proportionality, and the cost and time of an investigation and possible hearing.

The Monitoring Officer, Independent Person and Chair/Vice Chair of the JSCC will consider the following issues in deciding what action should be taken:-

(a) How long ago did the alleged conduct take place? If there is a lengthy delay in making the complaint, the Monitoring Officer may, having regard to the nature of the complaint, take the view that no further action is required. The Monitoring Officer will not entertain a complaint that is more than a year old unless the evidence of the breach has only become available within the past year.

(b) Is the complaint too trivial to warrant further action? If the answer is Yes, the Monitoring Officer is likely to decide that no further action will be taken.

(f) Does the complaint appear to be simply malicious, politically motivated, vexatious, or tit-for-tat? If the answer is Yes, the Monitoring Officer is likely to decide that further action is not warranted. Where complaints are received from one councillor who is of the same party as the Councillor(s) complained about and on the same Council, the complaint will be passed to the relevant Group Leader or local party branch for resolution.

(g) Are there other factors which could influence the decision such as –

- Incorrect advice given to the councillor
- Exceptional circumstances?

4.0 Complaints which do not raise serious issues: Wherever possible the Monitoring Officer will seek informal resolution for complaints considered to be less serious, rather than refer them for investigation. Examples of other action are conciliation, training, and improved procedures/protocols. Consistent with their duty to uphold standards of conduct, the Monitoring Officer will seek:

- (a) the simplest and most cost-effective way of resolving the issue
- (b) to help the Council (or the Town or Parish Council) to work more effectively
- (c) to avoid similar complaints in the future.

Annexe 2 - Conduct of Investigations

1.0 Initial response of the Councillor(s)

The Investigating Officer will write to ask the Councillor(s), asking for a reply within 10 working days,

- (i) whether the Councillor admits or denies the breach of the code of conduct or local protocol which is the subject of the complaint;
- (ii) to list any documents which the Councillor(s) want to be taken into account in the investigation, and where possible to provide copies of them, or say where the original documents may be inspected;
- (iii) to provide the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Councillor(s) wants to be interviewed as part of the investigation, and
- (iv) to provide any information which the Councillor(s) wants to be obtained from that person or organisation.
- (v) Any other information that the Councillor(s) believes relevant to the investigation

2.0 Conduct of the Investigation

2.1 Purpose

The purpose of the Investigating Officer's enquiries is to enable the preparation of a report which will provide the Monitoring Officer with sufficient information to determine whether the Councillor(s) have a case to answer of breach of the code of conduct or local protocol and, if so, whether action should be taken in accordance with paragraphs 5.8 of Part 9 of the Constitution. The report of the investigation will explain the essential elements of the case and may be used to inform the action recommended by a Hearing Panel.

2.2 Termination of the Investigation

The Investigating Officer may conclude the investigation at any point if satisfied that sufficient information has been obtained to enable a report to be prepared. The investigation is regarded as completed when the Monitoring Officer receives the final report and accepts that no further investigation is necessary. Any decision to defer an investigation must be made by the Monitoring Officer.

2.3 Additional Matters/References back to the Monitoring Officer

If, in the course of the investigation, the Investigating Officer

- becomes aware of any other matter which appears to indicate a potential breach of the code of conduct or local protocol or any other legislation by the Councillor(s) other than the complaint which is currently being investigated, or
- believes - as a result of new evidence or information - the matter is materially more, or less, serious, **and** that it would not have been referred for investigation if the Monitoring Officer had been aware of the information or evidence, or

- believes that it is no longer appropriate to continue with the investigation because the Councillor complained of has died, or is seriously ill or has resigned from the Council, or from the Parish or Town Council

the Investigating Officer will immediately report the matter(s) to the Monitoring Officer.

2.4 Production of documents, information and explanations

The Investigating Officer will make enquiries of anyone reasonably believed to have relevant information, and request anyone to provide any document, information or explanation, necessary to carry out the investigation.

2.5 Interviews

- (i) The Investigating Officer may ask anyone reasonably believed to have relevant information to attend an interview or to provide relevant documents. It should be noted that officers or councillors from those councils which have delegated their responsibilities for the determination of Standards Issues to the JSCC are expected to co-operate with any requests from the Investigation Officer. Where a councillor or officer refuses to co-operate in these circumstances further action may be considered, including the completion of the investigation report without their input.
- (ii) Anyone interviewed may be accompanied at their own expense by a friend or legally qualified representative .
- (iii) The Investigating Officer will produce a written note of the material points of interviews, provide two copies of that note to the person interviewed and ask them to return one copy signed as a correct record of the interview, with any corrections or amendments they feel are necessary.

2.6 Costs

Where it is appropriate to facilitate the conduct of the enquiries, the Investigating Officer may, when authorised by the Monitoring Officer, pay anyone who provides documents, information, advice or explanation in response to a request, a reasonable fee or allowance.

3 Report

3.1 When the Investigating Officer is satisfied that sufficient information has been obtained for the purpose, or that as much information has been gathered as reasonably capable of being obtained, a draft report will be prepared, setting out:

- (i) the details of the allegation;
- (ii) the Councillor(s)' initial response to the allegation (if any);
- (iii) relevant information and explanations obtained in the course of the investigation;
- (iv) a chronology and list of any relevant documents;
- (v) a list of interviewees and organisations from whom information has been

sought;

- (vi) a note of anyone or any organisation that failed to co-operate with the investigation;
- (vii) a statement of draft findings of fact, and
- (viii) a recommendation as to whether there is case to answer

AND/OR

- (ix) any other matters arising out of the investigation. This could be the need for a review or reconsideration of the decision which was the subject of the breach of the code, a recommendation for rectifying any deficiency in the Council's decision-making procedures or for training to prevent or deter any breach of the code of conduct.

- 3.2 The Investigating Officer will issue the draft report to the Councillor and the complainant, asking for their comments within 10 working days. At this stage the report is confidential.
- 3.3 After 10 working days (or such extended period as the investigating Officer allows after consulting the Monitoring Officer), the Investigating Officer will reconsider the draft report in the light of the comments received and produce a final report which includes the matters in Paragraph 3.1
- 3.4 The Investigating Officer will send the final report to the Monitoring Officer, together with a list of all background documents including any notes of interviews which have been relied upon in preparing the report, and copies of any documents held that can conveniently be copied, that have been relied on in preparing the report. These papers will be held for one year after the final decision on the complaint.

Annexe 3 – Conduct of Hearings

1.0 Arranging the Hearing

- 1.1 The Hearing must take place within 30 working days of the date on which the investigation is completed or the date the Monitoring Officer received the Investigating Officer's report, but at least 10 working days after the report was sent to the Councillor(s) complained about.
- 1.2 The Monitoring Officer will notify the Councillor(s) complained against at least 10 working days before the date of the Hearing Panel meeting, of the date, time and place of the meeting and will provide a copy of the Investigating Officer's final report and this procedure for the Conduct of Hearing. The Monitoring Officer will have due regard for the availability of the complainant and councillor(s) complained against and any good reason why they may not be available on the date proposed.
- 1.3 Where the Investigating Officer's report finds that the Councillor(s) have a case to answer that there may have been a breach of the code of conduct or local protocol has occurred, the Monitoring Officer will ask the Councillor(s) to:
- provide a written statement in response to the report, within 10 working days of receiving it,
 - state whether the Councillor(s) want their response to be sent to the Hearing Panel at the same time as the report.
 - identify in the written statement any matter(s) in the report which the Councillor(s) proposes to dispute at the Hearing Panel meeting, so that any witnesses or documents necessary to evidence the disputed matter(s) can be invited to attend the meeting,
- 1.4 The Investigating Officer, in securing the attendance of persons to give evidence to the Sub-Committee, may pay their reasonable fees or allowances as appropriate, as authorised by the Monitoring Officer..

2 Committee Agenda and Reports

- 2.1 The following papers will be sent out to the Hearing Panel, complainant and councillor(s) complained against at least 5 clear days before the date of the Hearing.
- The agenda for the meeting of the Hearing Panel;
 - a copy of the Monitoring Officer's covering report
 - a copy of the Investigating Officer's report
 - a copy of any written statement in response to the report received from the Councillor(s)

The provision of any such papers may be conditional upon an appropriate undertaking of confidentiality until such time as the report is agreed to be available to the press and public.

- 2.2 In determining whether the public and the press will be excluded from the meeting, the provisions of Schedule 12A of the Local Government Act 1972 However for the purposes of consultation by the Hearing Panel, the Independent Person will not be excluded along with the press or public if the exclusion of the latter is resolved.

- 2.3 Background papers: Upon request, any member of the Hearing Panel and the Councillor(s) may have access to any background documents that have referenced by the Investigating Officer in the report at any reasonable time between the issue of the agenda and the time of the meeting.
- 2.4 Where the Monitoring Officer considers that the Investigating Officer's report and/or the Councillor(s)' written statement in response is likely to disclose "exempt information"¹, and in consequence that it is likely that the Hearing Panel will, during consideration of these papers, not be open to the public, copies of the agenda or background papers will not be provided to the press or public, or any councillor other than the members of the Hearing Panel, complainant and the complained against Councillor(s), in advance of the meeting. These papers may also not be inspected by the press or public in advance of the meeting.

3 Procedure at the Hearing

3.1 Attendance of the Councillor(s) complained against

- The Councillor(s) may arrange to be accompanied at the meeting by a friend or legally qualified representative but will pay any necessary expenses.
- If the Councillor(s) are not present at the start of the meeting, the Hearing Panel will decide whether to adjourn to enable the Councillor(s) to attend, or to proceed in the absence of the Councillor(s). Where the Panel proceeds in the absence of the Councillor(s), the procedure for the meeting will be adapted as necessary, giving any representative of the Councillor(s) who is present such rights as would otherwise be accorded to the Councillor(s). The minutes will record the reason for proceeding in the absence of the Councillor(s).

3.2 The order of business at the meeting will be

- (i) Quorum. The Monitoring Officer or representative will confirm that the Hearing Panel is quorate (i.e. three members of the JSCC from the appropriate tier are present)
- (ii) Election of a Chairman for the Hearing Panel
- (iii) The Chairman will introduce the Hearing Panel, Monitoring Officer (or representative), the Investigating Officer and the Councillor(s) and any representative(s) of the Councillor(s), and explain how the Hearing will be run
- (iv) disclosures of interest by all relevant persons;
- (v) representations from the Investigating Officer and/or the Councillor(s) as to reasons why the Hearing Panel should exclude the press and public and determination by the Hearing Panel as to whether to exclude the press and public. (Where the Hearing Panel decides that it will not exclude press and public, copies of the agenda and reports will be provided at this point to any members of the press and public who are present);
- (vi) preliminary procedural issues to be resolved, if any;
- (vii) noting of significant disagreements about the facts, if any;

¹ Exempt information" is defined in Schedule 12A to the Local Government Act 1972, as amended by sections 3 and 4 of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 and 2004 respectively.

- (vii) Presentation by the Investigating Officer of the report of the investigation. The Investigating Officer will at this stage address only the issue of whether the Councillor(s) have a case to answer that they breached of the code of conduct or local protocol. The Investigating Officer may introduce any witnesses required to substantiate any matter contained in that report which the Councillor(s) have disputed in their written statement in response. Members of the Hearing Panel may question the Investigating Officer and any witness on their evidence. There will be no cross-examination by the Councillor(s), but the Councillor(s) may request the Chairman of the Hearing Panel to direct appropriate questions to the Investigating Officer or to any witness they have introduced;
- (viii) Presentation by the Councillor(s). The Councillor(s) (or representative(s)) will at this stage address only the issue of whether the actions have breached the code of conduct or local protocol. The Councillor(s) (or representative(s)) may introduce witnesses required to substantiate any matter contained in the written statement in response. Members of the Hearing Panel may question the Councillor(s) and any witness on their evidence. There will be no cross-examination by the Investigating Officer, but that Officer may request the Chairman to direct appropriate questions to the Councillor or to any witness they have introduced.
- (ix) Where the Councillor seeks to dispute any matter in the Investigating Officer's report and no-notice of intention to dispute in the written statement had been given, the Investigating Officer will draw this to the attention of the Hearing Panel, which may then decide:
- to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute and/or to arrange for appropriate witnesses to attend as to the disputed information; or
 - to admit the dispute, but invite the Investigating Officer to respond thereto, recalling any witness as necessary; or
 - any other matters arising out of the investigation. This could be the need for a review or reconsideration of the decision which was the subject of the breach of the code, a recommendation for rectifying any deficiency in the Council's decision-making procedures or for training to prevent or deter any breach of the code of conduct. Where the complaint relates to a Parish or Town Councillor, such matters would be for recommendation by the Hearing Panel to the Parish or Town Council.
- (x) At the conclusion of the presentation by the Councillor, the Chairman will ask the Investigating Officer whether there was any matter raised during the course of the presentation which was not raised in the Councillor's written statement in response. The Investigating Officer may then respond to any new matter, or may request the Hearing Panel to adjourn to enable that Officer to investigate and report on the new matter and /or to secure the attendance of witnesses as to the new matter (but the Hearing Panel will not adjourn on more than one occasion under these provisions);
- (xi) The Hearing Panel is required to come to a decision as to whether the councillor(s) acted in breach of the code of conduct or local protocol. The members have to satisfy themselves that they have sufficient information upon which to take that decision, and they may question the Investigating Officer, the Councillor(s) and any witness in order to obtain sufficient information to enable them to come to a decision on this issue;

- (xii) at the conclusion of the Investigating Officer and Councillor's presentations and any questions from the members of the Panel, members of the Panel will then hear of the views of the Independent Person before considering whether the member has failed to comply with or acted in breach of the code of conduct or local protocol. At any stage in their consideration they may return to ask any further questions of the Investigating Officer or the Councillor(s) or to seek further advice;
- (xiii) the Hearing Panel may seek further advice at any time. Such advice will on all occasions be given in the presence of the Investigating Officer and the Councillor(s);
- (xiv) at the conclusion of their consideration, the Chairman will announce the Panel findings of fact and advise the Councillor(s) of the decision as to whether the Councillor has acted in breach of the code of conduct, and the reasons for that decision;
- (xv) if the Panel concludes that the Councillor has acted in breach of the Code of Conduct or local protocol, it will then hear representations from the Independent Person, Investigating Officer and then the Councillor(s) as to whether the Panel should take any action against the Councillor and what form any action should take. Members of the Panel may ask questions of the Investigating Officer and the Councillor and seek advice in order to satisfy themselves that they have the information upon which to take a proper decision;
- (xvi) the Panel will then consider whether to take any action against the Councillor(s) and what form such action should take (as outlined in Paragraph 5.8 of the Complaints Procedure). The Chairman will advise the Investigating Officer and the Councillor(s) of its decision on whether to take any action against the Councillor(s) and what action it has decided to take and the reasons why;
- (xvii) the Panel will then consider whether there are any recommendations which it should make arising from its consideration of the allegation. For example, for reviewing or reconsidering any decision which was the subject of the breach of the code of conduct or local protocol, for rectifying any deficiency in the relevant Council's decision-making procedures or for preventing or deterring any future breach of the code.

4. Reporting the Decision

4.1 As soon as practicable after the Hearing Panel has completed its consideration and decision in respect of the allegation, the Monitoring Officer will:

- (i) send the Councillor(s) a written notice of the finding of the Panel, and the reasons for it; the statement will include a statement of any rights of appeal against that decision;
- (ii) send a written report of the Panel decision to the next convenient meeting of the JSCC
- (iii) where the complaint relates to a member of a Parish or Town Council, send a written notice of the decision to the Clerk to the relevant Parish or Town Council;

- (iv) send a copy of the decision to the complainant which gave rise to the investigation.