



Governance and Audit Committee – 2 February 2015

Consideration of a Change to the Procedure for the Assessment of Complaints Against Councillors

Purpose of report:

This report presents comments on aspects of the Procedure for the Assessment of Complaints against Councillors (Parts 9 of the Constitution) from the Joint Standards Complaints Committee and the Independent Persons following representations by a party involved in a recent complaint.

Attachment(s)

Appendix A – Part 9 of the Constitution - Procedure for Assessment of Complaints against Councillors.

1.0 Background

- 1.1 Councillors may recall that at the September 2014 meeting of this committee consideration was given to a change to the Code of Conduct Complaints Assessment Procedure (part 9 of the constitution). The proposed change would make it optional, where a complaint is made by councillors against other councillors in the same political party at the same council, for the complaint to be referred the relevant Group Leader or local party branch in situations where this would not be in the interests of ensuring a satisfactory outcome to the complaint.
- 1.2 This change was recommended by this committee to full Council and was subsequently approved on 6th October 2014.
- 1.3 Recently comments have been made by a Councillor involved in a recent complaint that there remain issues with this aspect of the procedure and one other aspect of the assessment process. Because of data protection considerations the complaint and the comments have not been reproduced in this report but are summarised below

2.0 Background to the complaint

- 2.1 The complaint was made in respect of the behaviour of councillors by another councillor at the same council. All councillors involved were of the same political party and, in line with the assessment procedure that existed at the time, the outcome of the initial assessment was that the complaint should be referred to the relevant political party. The initial assessment decision was made within the 20 working days required by the procedure.
- 2.2 This outcome was then appealed by the complainant Cllr within the designated 20 working days. The Appeal Panel meeting was delayed by the need to appoint an independent legal advisor to advise the Appeal Panel, as both the Monitoring Officer (MO) and one of the Deputy Monitoring Officers (DMO) had previously given advice to both parties on related matters. The other DMO had made the initial assessment and could not therefore advise the Panel. As a result of this delay, the appeal process took about 3 ½ months to complete (over the summer months). This was longer than the target 20 working days in the procedure.
- 2.3 The outcome of the appeal was to uphold the initial assessment made by the DMO, but with clarification that, because of the particular circumstances of this specific complaint, the complaint should be referred for resolution to the central administration

of the political party concerned, rather than the local branch. Subsequently, however, the political group's central administration did not feel that it was their responsibility to police the activities of Town or Parish Council members. They referred the matter to the local association which subsequently declined to take any action it was felt it was "a historical matter which really has no bearing on the current situation" at the council concerned.

- 2.4 With the exception of the delay on hearing the appeal, the complaint was otherwise handled in line with the agreed procedure in Part 9 of the Constitution. The initial assessment and appeal process took five months from receipt of complaint to the notification of the Appeal Hearing outcome. The political party took a further 2 months to make their decision not to take action.

3.0 Comments by the Cllrs involved.

- 3.1 One of the councillors who was the subject of the complaint feels that the option to refer to the political party in the circumstances specified in Part 9 is not satisfactory and wrote to the JSCC seeking its removal as an option from the Assessment Procedure. The argument made for this change is that it takes the handling of complaints outside of this council's procedure, and was therefore unreasonable as there was no control on the process or timing.

- 3.2 This councillor is also concerned by the overall length of time that the complaint took to resolve, which he feels places unnecessary stress on those involved and is seeking a total time limit for resolution of all stages of a complaint of three months

- 3.3 It should also be noted that referral to the political party was not an outcome which the complainant was particularly happy with from the outset, partly because of the specific circumstances of this complaint. Indeed it was a factor in an appeal being made. The subsequent failure of the political party to take any action left the complainant particularly unhappy because in their view the complaint was unresolved

4.0 View of the Chair of the Joint Standards Committee (JSCC) and Independent Persons

- 4.1 The comments referred to in paragraph 3.1 were sent direct to the Monitoring Officer by letter in a report for distribution to the JSCC. However they arrived too late for formal consideration at the last committee. The Chair of the JSCC therefore informally consulted members of the JSCC after the last meeting for their views having given them an opportunity to view the letter. The consensus, which the Chair supports, was they did not see any need to change the provisions in relation to referral to the political group, given that it was now optional.

- 4.2 They were also not supportive of the proposed total time limit as they felt that it was not achievable. In arriving at this view they looked at the current performance on complaint response times (see para 5.1) and the target times for (in the worst case scenario) a complaint which may require initial assessment, appeal, investigation, hearing and appeal. The individual target times prescribed in the Assessment Procedure are not considered unreasonable but they would total 125 working days (approx. six months) in that worst case scenario. Members of the JSCC did support the referral of the issues raised in this letter to this committee for formal consideration

- 4.3 The Council's Independent Person and Reserve Independent Person were also present and subsequently confirmed their views as follows:

"It was unfortunate that the Joint Standards Complaints Committee on 19th November was not able to consider the report from Councillor X as part of its formal agenda. Nevertheless, I think that the discussion the Committee had after the meeting enabled Councillors to consider the two points raised in general terms. I gave my view to the meeting which I now confirm here.

Firstly, the complaints which have come to my attention have been handled in a relatively timely manner. The Code of Conduct does contain specific time periods at various stages which, to my knowledge, have been met. Where a complaint is more complicated it will necessarily take longer to resolve and timely progress does require the commitment and willingness of all parties to act promptly.

I think it is important that all parties to a complaint are kept well informed of its progress but, in my view, it would not be practical to fix a start-to-finish time frame for the length of a complaint.

Secondly, in my view, it is appropriate to keep within the Code of Conduct the option of referring to the relevant Group Leader or local party branch a complaint between councillors of the same party and at the same Council. I believe there are circumstances where this may be a very suitable proposal and there is no benefit to reducing the range of options available.

I have discussed these matters with Andrew Sortwell, Reserve Independent Person, and he shares my views”

5.0 Other considerations

5.1 The average times for the resolution of the complaints received so far under the 2012 arrangements are as follows:

- Initial assessment - 31 working days (target 20 working days)
- Appeal - The average time, including the case noted in this report was 49 days
- Investigation – there have been 2 investigations both conducted by lawyers outside of ENC who have to be briefed. The times from initial decision to receipt of investigation report have been 158 and 104 working days respectively. Both have included holiday periods. (Target - within 3 months for production of report)

5.2 Previous discussions on the Assessment Procedure have also stressed the importance of having an appropriate complaints process with the previously expressed desire not be involved in matters that were more rightly the preserve of political parties themselves where they exist..

6.0 Equality and diversity issues

6.1 There are no known negative equality and diversity issues arising from this paper.

7.0 Legal implications

7.1 Part 9 of the Constitution has been reviewed by LGSS, the council's legal advisers, and no comments have previously been made in relation to the option to refer to political parties or the time limits currently set.

8.0 Risk management

8.1 Reviewing the Code and Complaints process will reduce further the low risk of legal challenge to our processes.

9.0 Financial implications

9.1 It is possible that a decision to remove the option to refer to political parties may increase the number of investigations required but the specific circumstances where this is currently an option are very limited and therefore it is unlikely there would be a significant additional financial impact

10.0 Corporate outcomes

10.1 Part 9 of the Constitution contributes to the Corporate Outcomes of Effective Management.

9.0 Constitution Changes

9.1 Any changes to the Complaints Assessment Procedure would require changes to Part 9 of the Constitution which would require (full) Council approval.

10.0 Recommendations

10.1 The Committee does not recommend to Council any changes to Part 9 of the Constitution

(Reasons Previous changes to this part of the Constitution adequately cover the issues raised)

Legal	Power: Localism Act 2011			
	Other considerations: ENC Constitution Part 9			
Background Papers: Report to Joint Standards Complaints Committee July 2014				
Person Originating Report: Sharn Matthews, Monitoring Officer ☎ 01832 742108 ✉ smatthews@east-northamptonshire.gov.uk				
Date: 8/9/13				
CFO 21/1/15		MO		CX

(Committee Report Normal Rev. 22)

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. The code of conduct for East Northamptonshire councillors can be found at Part 5.1 of this constitution.
- 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 Officer ² 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 a 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 the Act does not provide for this provision to apply to complainants but ENC have chosen to make this facility available.)

¹ This procedure applies to allegations of breach of the council's code of conduct by elected East Northamptonshire Council councillors and, in respect of alleged breaches of the codes of conduct of the Town and Parish Councils councillors in East Northamptonshire, 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 councillors' interests and who is responsible for administering the system in respect of complaints of councillor misconduct.

- 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 have agreed to be bound by its decisions. The terms of reference for the JSCC can be found at Article 8 of Part Two of the Council's Constitution.
- 1.7 Where this procedure makes reference to consultation with the Chairman or Vice Chairman 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, or has a conflict of interest, the other councillor will be consulted.
- 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 a Disclosable Pecuniary 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 the complaint 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 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 councillor 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 Chairman or Vice Chairman of the JSCC, may proceed with an investigation or other action and disclose the 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 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 the 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 further 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 initial assessment 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. In addition it should be noted that if a councillor decides to make an apology at this stage it will not be considered as evidence of breach of the code but may result in early resolution of the complaint.
- 3.6 The Monitoring Officer may decide to take:
 - a) No further action.

- 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 councillor choosing to offer an apology, or other remedial action by the council. Where the councillor or the council 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, and the JSCC (plus Town or Parish Council if relevant)
- c) *start a formal investigation*, leading to the production of an investigation report. (See Section 4).

3.7 A decision on the next steps 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, where the complainant's details have been withheld (see paragraph 2.4), the Monitoring Officer may decide that the councillor(s) complained against should not receive the full 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 council, a senior officer of another council 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 investigation 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 the 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 Investigating Officer 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 of appointment, 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 information 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 that the investigation has been completed properly, 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. 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 Chairman or Vice Chairman 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, the councillor(s) complained against, and the JSCC (plus Town or Parish Council if relevant) that the complaint has been dealt with.

b) *Referral to a hearing* - If the Monitoring Officer considers that informal 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 councillor has failed to comply with the code of conduct and, if so, whether to take any action in respect of the councillor.

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 Panel 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 complainant 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, East Northamptonshire Council 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) a final 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 councillors 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 action.

- 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 Councillor to the complainant (and/or others)
- Publish its findings in respect of the councillor'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 will be removed after 12 months.
- Recommend to the councillor's Group Leader (or in the case of ungrouped councillors, recommend to the relevant Council) that the councillor be removed from any or all Committees or Sub-Committees of the Council.
- Instruct the Monitoring Officer to arrange training for the councillor.
- Recommend to the relevant Council the removal from some or all outside appointments to which the councillor has been appointed or nominated by the relevant council.
- Withdraw some or all facilities provided to the councillor by the Council, (including access to buildings) provided this does not prevent the councillor(s) carrying out their democratic role.

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

5.9 At the end of the hearing, the Chairman will restate the decision of the Hearing Panel as to whether the councillor 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:
- a) the process outlined in this procedure has not been followed
 - b) the outcome proposed is considered inappropriate; or
 - c) 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 (including serving on the Hearing Panel if previously convened).

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 Appeal Panel (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 if the dispensation was not granted;
- 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 council considers that the dispensation is in the interests of persons living in the council’s area.
- d) That the relevant council 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 at least 2 days 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 of the JSCC 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 into a complaint, 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 councillors 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:

- i. 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
- ii. the person(s) to whom the information relates has consented to the disclosure;
- iii. the disclosure is made in pursuance of a statutory requirement for disclosure;
- iv. the information has previously been placed in the public domain
- v. 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 in accordance with Part 2 of the Constitution.

10.2 The Monitoring Officer will review these arrangements every 2 years (to ensure effectiveness) and present to council proposals for any necessary changes to ensure the smooth and effective management of complaints.

Amended by Council – 6 October 2014 Minute 195 (g)

Local Guidelines for the Assessment of Complaints about councillor Conduct

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

- (a) the complaint is against one or more named East Northamptonshire councillor, or Parish or Town councillors in East Northamptonshire
- (b) the named councillor was in office at the time of the alleged conduct and a code of conduct was in force at the time
- (c) the complaint submitted sufficient information and specified how the code of conduct 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 Chairman/Vice Chairman 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 of conduct 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 of conduct e.g. Constitution/standing orders
 - minutes of meetings relevant to the complaint
 - copy of the relevant entry in councillor's Register of Interests
 - details from Companies House or the Land Registry that maybe appropriate
 - whether any members of the JSCC 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
- considered with regard to proportionality, and the cost and time of an investigation and possible hearing.

The Monitoring Officer, Independent Person and Chairman/Vice Chairman 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.
- (c) 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.
- (d) 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 may be passed to the relevant Group Leader or party branch for resolution. The Monitoring Officer will ask for a report on the outcome of the referral.
- (e) Are there other factors which could influence the decision such as –
 - Incorrect advice given to the councillor
 - Exceptional circumstances

4. 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.

Conduct of Investigations

1.0 Initial response of the councillor(s)

The Investigating Officer will write to ask the councillor(s) complained about, requesting a reply within 10 working days of their communication,

- (i) whether the councillor admits or denies the breach of the code of conduct 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 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 in consultation with the Independent Person.

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 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. Non response will be treated as agreement to the content.

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 within a professional capacity in response to a request, a reasonable fee or allowance.

3.0 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, of conduct a recommendation for rectifying any deficiency in the Council's decision-making procedures or for training to prevent or deter any further 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 copies 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 four years after the final decision on the complaint.

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,
- 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 the procedure for the conduct of the 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 d, 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.

2.0 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;
- The original complaint and councillor(s) response
- 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"³, 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.

3.0 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 Hearing 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 their 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

³ 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.

- (iii) The Panel 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 Panel 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;
- (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. 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. 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 they 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 Panel 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 panel 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 Hearing Panel, members of the Hearing Panel will then hear of the views of the Independent Person before retiring to consider whether the councillor has failed to comply with or acted in breach of the code of conduct. 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 from the Independent Person or council legal adviser;
- (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 Panel Chairman will announce the Hearing 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 Hearing Panel concludes that the councillor has acted in breach of the Code of conduct, it will then hear representations from the Independent Person, Investigating Officer and then the councillor(s) as

to whether the Hearing 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 Hearing 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 Panel 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 Hearing 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, for rectifying any deficiency in the relevant Council's decision-making procedures or for preventing or deterring any future breach of the code.

4.0 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 Hearing 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 Parish or Town councillor, 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.