
FINANCE & ASSETS HEARINGS SUB-COMMITTEE – REVIEW OF TERMS OF REFERENCE & PROCEDURE

Committee: Finance & Assets Committee

Date: 7 June 2021

Author: Monitoring Officer/Deputy Monitoring Officer

[W16]

1.0 ISSUE

- 1.1 To review the Terms of Reference and Procedure for the Hearings Sub-Committee which considers investigation reports relating to complaints of potential breaches of the Members Code of Conduct by District and Parish Councillors.

2.0 RECOMMENDATION(S)

- 2.1 That the Terms of Reference and Procedure for the Finance & Assets (Ethical Governance) Sub-Committee attached at Appendix A and B and the revisions to the Monitoring Officer Protocol and Flowchart and Independent Person Protocol attached at Appendix C be approved.
- 2.2 That the Monitoring Officer be authorised to undertake measures to recruit a replacement non-voting Co-opted Town/Parish Council Member to fill the current vacancy.

3.0 BACKGROUND/OPTIONS

- 3.1 In July 2014, the Corporate Governance & Finance Committee approved Terms of Reference and a procedure for a Hearings Sub-Committee/Panel to consider investigation reports relating to complaints of potential breaches of the Members Code of Conduct by District and Parish Councillors. This Hearings Sub-Committee/Panel has never been required to meet since the adoption of a revised Code of Conduct under the Localism Act 2011 by this Council on 26 July 2012. Therefore, this Procedure has never been tested in practice or reviewed.
- 3.2 However, discussions with Monitoring Officers from neighbouring Councils who have held Committees/Sub-Committees to consider reports of this nature, have led the ECDC Monitoring Officer and Deputy Monitoring Officer to question whether our current Sub-Committee Terms of Reference and Procedure are 'fit for purpose'. In particular, these seem unduly complex, bureaucratic and adversarial. Therefore, the opportunity has been taken to review the Terms of Reference and Procedure to simplify the process, based upon the tried and tested good practice of other neighbouring Councils. In addition, the remit of the Sub-Committee has been slightly widened to give it an ethical governance oversight and monitoring role, having regard national developments to review the current Code of Conduct and associated guidance. The proposed revised

Terms and Reference and Procedure are attached at Appendix A and B, which you will see includes a change in the name of the Sub-Committee to Finance & Assets (Ethical Governance) Sub-Committee.

3.3 These amendments require slight corresponding revisions to the Monitoring Officer Protocol and Flowchart and Independent Person Protocol, copies of which are attached at Appendix C.

3.4 The revisions to the Standards regime under the Localism Act 2011 also required the appointment of an Independent Person and Deputy Independent Person to assist with Code of Conduct complaints, and appointment of 2 non-voting Co-opted Town/Parish Council Members to serve on the Finance and Assets Sub-Committee in the case of consideration of complaints of breach of the Code of Conduct by Parish/Town Councillors. There is currently a vacancy for a non-voting Co-opted Town/Parish Council Member, since one of the previous Co-opted Members resigned as a Parish Councillor. An E-mail will be circulated to all Parish Councils in an attempt to recruit a replacement Co-opted Member.

4.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT/CARBON IMPACT ASSESSMENT

4.1 There are no additional financial implications arising from this report.

4.2 Equality Impact Assessment (INRA) not required.

4.3 Carbon Impact Assessment (CIA) not required.

5.0 APPENDICES

5.1 Appendix A – draft Terms of Reference for F&A (Ethical Governance) Sub-Committee

Appendix B – draft Procedure for F&A (Ethical Governance) Sub-Committee

Appendix C – revised Monitoring Officer Protocol and Flowchart and Independent Person Protocol

Background Documents

Agenda and Minutes of
Council meeting 26 July
2012 and 14 May 2013

Agenda and Minutes of
Corporate Governance &
Finance Committee 21 July
2014

Location

Room 214B
The Grange
Ely

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FINANCE & ASSETS (ETHICAL GOVERNANCE) SUB-COMMITTEE

1. Constitution

- 1.1 The Sub-Committee shall comprise of 7 Members of the Council, who shall be appointed annually from the full Membership of the Council, and up to 2 Co-opted non-voting Town or Parish Councillors.
- 1.2 The Sub-Committee quorum is 3 Members, and the appointed Independent Person for a Members Code of Conduct complaint also may be in attendance. Where the Sub-Committee considers a complaint against a Town or Parish Councillor, one of the Town or Parish Co-Optees will be in attendance.

2. Objectives

- 2.1 To support the Finance & Assets Committee in its duty to promote and maintain high standards of ethical governance and Councillor conduct.

3. Terms of Reference

- 3.1 To make recommendations to full Council on the adoption or revision of the Members Code of Conduct.
- 3.2 To monitor the operation of the Members Code of Conduct.
- 3.3 To receive monitoring reports on ethical Standards matters, e.g. summary reports on Declarations of Interests, Gifts and Hospitality, Dispensations.
- 3.4 To consider investigation reports resulting from allegations of possible breaches of the Members Code of Conduct and determine those cases referred by the Council's Monitoring Officer.
- 3.5 When considering investigation reports resulting from allegations of possible breaches of the Members Code of Conduct, the Sub-Committee:
 - 3.5.1 Will hold the meeting in private session under the Local Government Act 1972 to hold in exempt session, unless representations have been received from the complainant and/or the Councillor subject to the complaint, by the Monitoring Officer/Deputy Monitoring Officer not to do so. .
 - 3.5.2 Will ensure that this is conducted having regard to the procedure and any government guidance, or guidance issued by the Monitoring Officer, Deputy Monitoring Officer, or legal advisor.
 - 3.5.3 Will take into account the views of the Independent Person *before* making its final determination on the matter.
 - 3.5.4 **[in cases where the complaint relates to a Town or Parish Councillor]** Will seek and take into account the views of the Town or Parish Co-optee at the Panel Hearing *before* making its final determination on the matter.
 - 3.5.5 Will determine whether the Councillor subject to the complaint has breached their Authority's Code of Conduct and provide reasons for any decision.

- 3.6 If the Sub-Committee concludes that the Councillor subject to the complaint has breached their Authority's Code of Conduct, it may impose the following sanctions:
- 3.6.1 No action.
 - 3.6.2 That the Councillor apologises.
 - 3.6.3 That the Councillor be trained.
 - 3.6.4 That the Councillor seeks to restore relationships with other parties (e.g. through mediation).
 - 3.6.5 That the Councillor be censured.
 - 3.6.6 That a recommendation is made to the District Council's full Council to censure the District Councillor.
 - 3.6.7 **[in the case where the complaint relates to a Town or Parish Councillor]** recommend to the Town or Parish Council that the Town or Parish Council censures the Councillor at a Town or Parish meeting.
 - 3.6.8 That a Press Notice be issued.
 - 3.6.9 Any other form of sanction which does not prevent the Councillor from undertaking their duty to attend Council meetings, or infringe their Human Rights
- 3.7 To consider any further report from the Monitoring Officer regarding the failure of a Councillor to comply with any sanction(s) imposed upon them for breach of the Members Code of Conduct or imposed upon them as a result of informal resolution by the Monitoring Officer in consultation with the Independent Person.
- 3.8 Generally to assist with good ethical governance, if requested by Finance & Assets Committee.

4. Delegation to Officers

- 4.1 The Monitoring Officer is authorised to act in relation to any matter of immediate urgency, which must be dealt with before the next meeting of the Sub-Committee provided the Chairman or Vice-Chairman of the Sub-Committee is consulted prior to delegated decisions being made.
- 4.2 There shall be delegated to the Monitoring Officer, the exercise of any power or function of the Council in routine matters related to the implementation District, Town and Parish Councillor complaint procedures.

This delegation shall not be taken to include any matter reserved by law to the Finance & Assets Committee or the Full Council.

- 4.3 There are further delegated to the officers indicated below the exercise of any power or function of the Council set out below:

In respect of Sub-Committees to consider investigation reports resulting from allegations of possible breaches of the Members Code of Conduct:	
To make arrangements for convening a Sub-Committee including, where relevant, Town or Parish Co-optee's attendance	Democratic Services Manager or Democratic Services Officer
To make arrangements for the Sub-Committee to be held in exempt session, unless representations are received and there is a legal basis for the exempt session under the Local Government Act 1972	Monitoring Officer or Deputy Monitoring Officer or Democratic Services Manager
To undertake any preparation for the Sub-Committee and any actions required following the Sub-Committee	Monitoring Officer or Deputy Monitoring Officer
To undertake any post Sub-Committee training and/or mediation, or instruct/engage others (internally or externally) to do so	Monitoring Officer or Deputy Monitoring Officer

Finance & Assets (Ethical Governance) Sub-Committee

Sub-Committee Procedure: Members Code of Conduct Complaints

1. The Monitoring Officer shall produce a summary report, which includes the investigation report and provides the view of the Independent Person on the complaint and the evidence considered by the Independent Person.
2. The Monitoring Officer shall circulate their report to the complainant, and the subject of the complaint, and provide them at least 5 clear days in which to provide any additional "submission" to the Finance & Assets (Ethical Governance) Sub-Committee, and to identify any matters that they believe to be factually inaccurate within the report. They shall not have the right to modify the finding of the investigation report or the view of the Independent Person.
3. The Monitoring Officer shall provide the report, and any additional information provided by the subject and complainant, to the meeting of the Sub-Committee convened in order to consider the matter, in accordance with normal Access to information rules.
4. It would usually be expected that such reports would be treated as confidential, and not available to the press and public, in advance of the Sub-Committee meeting.
5. The Sub-Committee will meet at the date, time and venue stated. They will consider whether the press and public should be excluded from the meeting.
6. The first item of business for the Sub-Committee will be the appointment of a Chairman.
7. The Monitoring Officer will summarise the report for the Sub-Committee and allow the Investigating Officer to speak on their investigation report, if they are present and wish to. The Sub-Committee Members can ask questions of the Monitoring Officer and Investigating Officer.
8. If present, the Complainant and Subject Member can speak on the report and the Sub Committee Members can ask them questions of clarification.
9. The Chair then shall invite discussion and views from Sub-Committee Members on the report.
10. The Chair shall be responsible for drawing together the debate and seeking a proposer and seconder to any findings or recommendations from the Sub-Committee.
11. The Sub-Committee should seek to draw a clear conclusion on whether or not the Code of Conduct has been breached giving grounds for their conclusion(s), and, if a breach is identified, any sanctions that are recommended.

Sanctions that the Sub-Committee may recommend:

- 1 No action.
- 2 That the Councillor apologises.
- 3 That the Councillor be trained.

- 4 That the Councillor seeks to restore relationships with other parties (e.g. through mediation).
- 5 That the Councillor be censured.
- 6 That a recommendation is made to the District Council's full Council to censure the District Councillor.
- 7 **[in the case where the complaint relates to a Town or Parish Councillor]** recommend to the Town or Parish Council that the Town or Parish Council censures the Councillor at a Town or Parish meeting.
- 8 That a Press Notice be issued.
- 9 Any other form of sanction which does not prevent the Councillor from undertaking their duty to attend Council meetings, or infringe their Human Rights



MONITORING OFFICER PROTOCOL

1.0 INTRODUCTION TO STATUTORY RESPONSIBILITIES

- 1.1 The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged.
- 1.2 The role of the Monitoring Officer rests with the Legal Services Manager.
- 1.3 A summary list of the Monitoring Officer's responsibilities appears in the Annex attached. The Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:-
 - (a) complying with the law (including any relevant Codes of Conduct);
 - (b) complying with any general guidance, codes or protocols issued from time to time, by the Monitoring Officer;
 - (b) making lawful and proportionate decisions; and
 - (d) generally, not taking action that would bring the Council, their offices or professions into disrepute.

2.0 WORKING ARRANGEMENTS

- 2.1 Having good working relations with Members and Officers will assist in the discharge of the statutory responsibilities by the Monitoring Officer. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council) will assist in fulfilling those responsibilities. It must also be recognised that the Monitoring Officer and his/her Deputy have a role that is akin to policing the system and become involved in reviewing and deciding whether there have been contraventions of legislation / rules or protocols – by Officers and Members. Officers and Members therefore realise that the working relationship cannot interfere with those duties. Members and Officers must, therefore, work with the Monitoring Officer (and his/her staff) to discharge the Council's statutory and discretionary responsibilities.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members and Management Team are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:-
 - 2.2.1 **Resources:**
 - (a) report to the Council, as necessary on the staff, accommodation and resources s/he requires to discharge his/her statutory functions;
 - (b) have sufficient resources to enable him/her to address any matters concerning his/her Monitoring Officer functions;
 - (c) have control of a budget sufficient to enable him/her to seek Counsel's opinion on any matter concerning his/her functions;
 - (d) have an appointed deputy and keep him/her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer. The Monitoring Officer may also deputise in the event of conflict or perceived conflict of interest (see below).



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2.2.2 Access to information/meetings:

- (a) be alerted by Members and Officers to any issue(s) that may become of concern to the authority, including, in particular issues around legal powers to do something or not, Councillor complaints, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (b) have advance notice, (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the authority (including meetings at which Officer delegated decisions are taken) at which a binding decision may be made (including a failure to take a decision where one should have been taken);
- (c) have the right to attend (including the right to be heard) any meeting of the authority (including meetings at which Officer delegated decisions are taken) before any binding decision is taken (including a failure to take a decision where one should have been taken);
- (d) be one of the Officers on the Management Team and will have advance notice of those meetings, agenda and reports and the right to attend and speak;
- (e) in carrying out any investigation(s), have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his/her functions.

2.2.3 Work in relation to Officers:

- (a) ensure the other statutory Officers (Head of Paid Service and the Section 151 Officer) are kept up to date with relevant information regarding any legal, (Councillor conduct – as may be appropriate), probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (b) meet regularly with the Head of Paid Service and the Section 151 Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (c) have the authority, on behalf of the Council, to complain to the District Auditor and the Local Government Ombudsman, or other relevant Central Government departments or bodies or refer any breaches or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary;
- (d) in consultation as necessary with the Chief Executive and s151 Officer, to defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body (including a Court/Tribunal) is involved;
- (e) make arrangements to ensure effective communication between his/her office and clerks to the Parish and Town Councils on Monitoring Officer and Councillor Conduct issues;
- (f) oversee and suggest amendments to the Employee Code of Conduct and maintain a Register of Employee declarations on gifts/ hospitality and interests in accordance with the Code's requirements. This Register will be available for inspection and may be provided on request from Members, Officers or to the public.



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2.2.4 Ombudsman complaints and Whistleblowing:

- (a) prepare reports as required by the Local Government Act 1974 and the Local Government and Housing Act 1989 in relation to complaints which have been the subject of investigation by the Local Government Ombudsman and which have revealed maladministration;
- (b) have oversight of the Whistleblowing arrangements and consideration of those complaints.

2.2.5 Councillor complaints:

- (a) give informal advice to Members in relation to informal resolution of a complaint;
- (b) deal with in accordance with the agreed procedure (See appendix A Flowchart for Councillor complaints handling) and Complaints procedure Appendix B.
- (c) consider and accept/ reject complaints relating to a District, Town or Parish Councillor (or co-opted Member); and refer complaints to Town or Parish Council for consideration and resolution as may be required;
- (d) re-direct complaints that are unrelated to Councillor Conduct to the appropriate complaints system of the Council/ or other authority (including, where relevant, the Police);
- (e) informally resolve a complaint relating to a District, Town or Parish Councillor (or co-opted Member) with a meeting, mediation or training;
- (f) investigate complaints against a District, Town, or Parish Councillor (or co-opted Member), or appoint internal or external officers or parties to undertake this on their behalf, in accordance with the approved complaints handling procedure having consulted the Independent Person before such a decision is made.
- (g) make arrangements for a Finance & Assets [\(Ethical Governance\)](#) Sub-Committee ~~Hearings Panel meeting~~ (through the Democratic Services Manager), including Members sitting on the [Sub-Committee Panel](#), and, where relevant, Town or Parish co-optees' attendance;
- (h) make arrangements for the hearing to be held in exempt session, [unless if representations are received not to do so and there is a legal basis for the exempt session under the Local Government Act 1972](#);
- (i) (if necessary) agree that a reserve [Sub-Committee Panel](#) Member may substitute for one of the allotted Members at the [Sub-Committee meeting Panel hearing](#), and will undertake/ or instruct others to undertake any pre or post [Sub-Committee meeting Panel hearing](#) preparation for the [meeting hearing](#) including (although not limited to) notifying and requiring attendance of the complainant, the Councillor subject to the complaint and any witnesses;
- (j) undertake any post hearings decision training or instruct others (internally or externally) to do so;



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- (k) be responsible for preparing any training programme for Councillors on the Code of Conduct issues;
- (l) establish, maintain and publish the statutory register of Members' interests for District, Town and Parish Councillors;
- (m) consider written requests for dispensations from Members and Co-opted Members of East Cambridgeshire District Council and to grant these if legally appropriate and reasonable to do so as the Council's Proper Officer.

2.2.6 Constitution:

- (a) consult with the Members and Officers of the Council, review and monitor the Constitution and make recommendations on changes to the Constitution and decision making processes.

3.0 MEMBER AND OFFICER RESPONSIBILITIES

To ensure the effective and efficient discharge of the arrangements set out in paragraph 2 above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.

4.0 ADVICE

The Monitoring Officer is also available for Members and Officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (eg Council Procedure Rules, Policy Framework, Terms of Reference, Scheme of Delegations).

5.0 MONITORING THE PROTOCOL

Annually, the Monitoring Officer will report to the Finance & Assets Committee on Councillor complaints and whether the arrangements set out in the Protocol have been complied with and will include any proposals for amendments in the light of any issues that have arisen during the year.

6.0 CONFLICTS AND INTERPRETATION OF THIS PROTOCOL

6.1 Where the Monitoring Officer has received a complaint of conflict relating to another investigation or advice provided, or believes that one may be perceived, or receives a complaint regarding an investigation relating to a complaint against a Councillor (i.e. concerning the investigation/ or the investigator) then the Monitoring Officer may discuss this issue with the Chief Executive ~~or Deputy Chief Executive~~ and/or may refer the matter to the Council's Deputy Monitoring Officer or appoint an external party to act as Deputy in this matter, or in relation to complaints regarding an investigation/investigator will consider this or his/her Deputy will consider this and confirm their decision/response on the complaint.

6.2 The Monitoring Officer will be responsible for interpretation of this guidance.



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ANNEX:

A. SUMMARY OF MONITORING OFFICER FUNCTIONS

Description	Source
1 Report on contraventions or likely contraventions of any enactment or rule of law in relation to the District Council.	Section 5 and 5A Local Government and Housing Act 1989.
2 Report on any maladministration or injustice where Ombudsman has carried out an investigation.	Section 5 and 5A Local Government and Housing Act 1989.
3 Appointment of Deputy.	Section 82A Local Government Act 2000
4 Report on sufficiency of resources.	Section 5 and 5A Local Government and Housing Act 1989.
5 Establish, maintain and publish registers of Members' interests.	Section 29 Localism Act 2011
6 Maintain, review and monitor the Constitution.	Constitution
7 Proper Officer for the receipt of dispensations.	Section 33 Localism Act 2011
8 Proper Officer for access to information guidance.	Constitution
10 Officer (with Deputy) for receipt of Councillor Complaints and determination of whether to reject/ investigate or undertake informal action.	Constitution and Localism Act 2011
11 Advise on vires issues and bias/ predetermination.	Section 5 and 5A Local Government and Housing Act 1989; & Constitution
12 Maintains register of Officer declarations of interests of direct or indirect pecuniary or non-pecuniary interests/ gifts or hospitality or closed membership of organisations.	Employee Code of Conduct & section 117 Local Government Act 1972

APPENDIX A

EAST CAMBRIDGESHIRE DISTRICT, TOWN & PARISH COUNCILLOR COMPLAINTS HANDLING FLOW CHART



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APPENDIX B

Complaints handling/ criteria for rejecting

Any complaint should be on the relevant Councillor complaint form, signed by the complainant. When the Authority receives the complaint, then the form will be directed to the Council's Monitoring Officer. All supporting evidence should be forwarded with the complaint form. If this is a complaint about a Councillor's conduct, then:

Preliminary (within 5 working days):

- The Monitoring Officer will endeavour to acknowledge complaint within 5 working days/ can seek additional information/ supporting evidence if required.

Note that:

- If a complainant does not provide sufficient identifying details about him/herself, or information on the complaint, so that the complaint will be difficult to investigate, or take any other action, then the complaint is likely to be rejected.
- The Councillor who is subject to the complaint will (unless exceptional circumstances apply) be informed that a complaint has been received, and of your name).
- If ~~the~~^{is} complaint is about a Town or Parish Councillor, and a complainant has not already made a complaint to the Town or Parish, then this will usually be referred to the Town or Parish Clerk for the Parish or Town Council to consider under their complaints procedure. This does not prevent a complainant from making a complaint to the District Council, once the complaint has been considered by the Town or Parish Council. However, if a complainant decides to pursue a further complaint on the same matter to the District Council, any action by the Town or Parish Council will be taken into account by the District Council in its decision on whether to take any further action on the complaint. The Town or Parish Council may refer a complaint to the District Council's Monitoring Officer if they demonstrate that it is not practical for them to deal with it.

Stage 1

- The Monitoring Officer will undertake an initial pre-assessment and consideration as to whether this complaint satisfies initial tests.

Note that likely criteria for rejection at this stage are:

- If the Councillor was not acting in their capacity as a Councillor, or giving the impression of doing so – then the complaint is likely to be rejected.
- If the Councillor is no longer a member of the Authority, or Parish/ Town Council within its area then the complaint will be rejected.
- If this is a complaint that a Councillor has committed an offence under section 34 of the Localism Act 2011, or any other criminal act whilst acting or giving the impression of acting as a Councillor, this will be referred to the Police *and shall not be referred back to the Town or Parish Council or dealt with under the District Council's complaint handling procedure* (as this may prejudice any action that the Police may take).
- If more specific information about the complaint is required, then the Monitoring Officer may write to request this before further determination of the complaint. If that occurs, then the complaint will not have been rejected at that stage, but will not proceed until this further information has been received. Subject to there being exceptional circumstances not to, any further information will be provided to the Councillor for comment. If this information is not provided, then the complaint is likely to be rejected.
- If there is no basis for rejecting ~~then~~ the complaint at this Stage, the Monitoring Officer will inform the Councillor subject to complaint and provide a copy of the complaint form and documents to them unless a complainant has demonstrated that exceptional circumstances



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apply and the Monitoring Officer has accepted that it is possible to progress the complaint anonymously. It will then progress to Stage 2. [The Monitoring Officer will request the Councillor's comments on the complaint made within a reasonable time period.](#)

Stage 2 (this Stage will be undertaken in consultation with an Independent Person ('IP')):

- ❑ The Monitoring Officer will consider the complaint/ supporting information and any response provided by the Councillor subject to the complaint.
- ❑ If the complaint does not demonstrate a potential breach of the Code of Conduct, then it will be rejected.
- ❑ Complaints that appear to be very minor, trivial, tit for tat are also likely to be rejected.
- ❑ If the complaint is vexatious or malicious then the complaint is likely to be rejected.
- ❑ If the complaint relates to an incident that appears to have taken place over 3 months before the complaint was submitted, which may make it difficult to investigate the complaint, or unreasonable to take further action at this stage, then it is likely that the complaint may be rejected.
- ❑ If a similar complaint (to the facts/ or incident) has been submitted and has been subject to an investigation or other action relating to the relevant Code, then it is likely to be rejected.
- ❑ If the complaint been subject to an investigation by another regulatory body/ body and in the opinion of the Monitoring Officer nothing more would be gained by further action being taken, it is likely that no further action will be taken.

Stage 3

- ❑ The Monitoring Officer will confirm the decision with reasons to a complainant in writing and a copy will be sent to the Councillor that is subject to the complaint. The decision may be:
 - no further action;
 - proposal for informal local resolution (meeting, [apology](#), mediation or training); or
 - referral for investigation.
- ❑ Stages 1-3 will usually take place within 20 working days – subject to further information being obtained.

Stages 4-6 (investigation/ consideration of any investigation report and final hearing will involve consultation with an IP² and the final hearing a consultation with a Town/ Parish co-optee where applicable

- ❑ If a decision to investigate is taken, then a complainant and the Councillor subject to the complaint would both be expected to co-operate and assist with this investigation, including, although not limited to, providing witness evidence to an investigator/ attending a final hearing and answering questions at that hearing. Failure to do so may result in no further action.
- ❑ If the investigator finds no breach, then any report detailing this information will be considered by the Monitoring Officer in consultation with the IP. There is unlikely to be any further action. If the report discloses a potential breach, then the matter will be referred to a [Finance & Assets \(Ethical Governance\) Sub-Committee Hearings Panel](#) before elected Councillors from this Authority.
- ❑ The [Sub-Committee Hearings Panel](#) will consider the complaint in consultation with the IP (and in the case of complaint relating to a Parish or Town Councillor, a co-opted Parish or

¹ As defined by s28(8) Localism Act 2011

² Requirement for involvement under section 28(7) Localism Act 2011.



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Town Councillor). The Sub-Committee Hearing will (unless valid reasons Local Government Act reasons apply) be held in private session, unless representations are received not to do so, where the press may also attend. A complainant (and the Councillor subject to the complaint) would be expected to attend any Sub-Committee meeting Panel Hearing where the complaint is considered (unless both a complainant and the Councillor who is subject to the complaint, agree that this can be dealt with as a paper hearing). Note that the IP and co-opted Councillors will not be entitled to vote on the decision, but will be consulted before the final decision is made. If the Sub-Committee Panel finds that the Councillor has breached the Code of Conduct then possible sanctions are:

- no action;
- that the Councillor apologises;
- training ;
- that the Councillor seeks to restore relations with other parties (e.g. through mediation);
- and/or censure of the Councillor;
- recommend censure at full Council.
- where the decision relates to a Parish or Town Councillor, then the Sub-Committee Panel may recommend to the Parish or Town Council that they censure the Councillor at their next Council meeting.
- that a Press Notice be issued; or
- any other form of sanction that does not prevent the Councillor from undertaking their duty to attend Council meetings or infringe their Human Rights.

- A public summary Decision Notice will be produced within 5 working days and published, copies will be sent to relevant parties, including, where relevant the Town/ or Parish Council. Copies will be available for inspection and placed on the Council's website. In the event of a finding of breach of the Member Code of Conduct, the Councillor will be named.



PROTOCOL RELATING TO THE INDEPENDENT PERSON

This Protocol is to clarify the relationships between the Independent Person (IP) and the various parts of the local authority involved in the process of handling Councillor complaints and wider promotion of good Councillor conduct. Its aim is to ensure that responsibility is clear at each stage of the process and set out the expectations and rights of the IP.

It is written with the following assumptions:

- i. There are 2 IPs who can be consulted by the Monitoring Officer/Deputy Monitoring Officer, as appropriate.
- ii. The Monitoring Officer/ Deputy Monitoring Officer takes the initial decision (Stage 1) on preliminary tests applied as to whether or not the complaint is one that can or should be handled by the authority at this stage.
- iii. The Monitoring Officer/ Deputy Monitoring Officer will liaise with the IP from Stage 2 onwards and the IP will be involved in a Stage 6 [Finance & Assets \(Ethical Governance\) Sub Committee meeting Panel hearing](#) if one is required.
- iv. The local procedure allows complainants to have access to the IP by email if the matter is referred to investigation (namely after Stage 3 of the process). This is to reflect the legal obligation to allow access to the IP under the Localism Act 2011.¹

Considering written allegations

1. The Flow chart of complaint handling is attached to this Protocol (Appendix 1).
2. The Monitoring Officer/ Deputy Monitoring Officer will undertake an initial pre-assessment and consideration as to whether this complaint satisfies initial tests (Stage 1).
3. At Stage 2 the Monitoring Officer/ Deputy Monitoring Officer will consider a complaint and consult on the decision with the IP. The Monitoring Officer/ Deputy Monitoring Officer will submit an assessment form, with any relevant evidence for consideration. The IP should respond to the assessment within 5 working days. If the IP is likely to be unavailable for any period, then notification should be provided to the Monitoring Officer/ Deputy Monitoring Officer, so that the other IP may be consulted if necessary.
4. When issuing the decision letter, the Monitoring Officer/ Deputy Monitoring Officer will record that the IP has been consulted. Where the view of the Monitoring Officer/ Deputy Monitoring Officer and IP differ, the Monitoring Officer/ Deputy Monitoring Officer will record the reasons for following a particular course on the summary assessment form. The letter will make clear that it is the Monitoring Officer/ Deputy Monitoring Officer and not the IP who is the decision-maker.

¹ Section 28(7)(b)(ii)(iii) Localism Act 2011



PROTOCOL RELATING TO THE INDEPENDENT PERSON

Matters under investigation

5. A Councillor who is the subject of a complaint may seek the views of the IP (who is being consulted on the matter).
6. A Councillor wishing to contact the IP in should do so via the Monitoring Officer/ Deputy Monitoring Officer who will provide contact E-mail details and/or arrange for a meeting to take place or for the IP to telephone the Councillor who is subject to the complaint. This would allow the IP to prepare for the discussion rather than giving 'off the cuff' opinions. The IP should prepare a note of any meeting or telephone conversation. These arrangements will be communicated to the Councillor who is subject to the complaint by the Monitoring Officer/ Deputy Monitoring Officer in the decision notice letter. The preference, however, shall be E-mail/written communication.
7. Where the IP has given views to the subject Councillor, those views shall be put in writing and will be made available to all relevant parties in the case. This is to ensure transparency and protect independence.
8. In any contact with the Councillor that is subject to the complaint, it is important for the IP to maintain their independence. The IP's role may most usefully be to listen to any concerns being expressed and then reflect on whether these concerns are valid and, if so, whether they are being addressed in the process. The IP should avoid being drawn into becoming an advocate for a party. If the IP believes that they have become conflicted during this process, the IP should let the Monitoring Officer/ Deputy Monitoring Officer know and the other IP will be contacted to act as the official IP on the matter.
9. The Monitoring Officer/ Deputy Monitoring Officer may consult the IP at any stage during the process, particularly on matters which relate to the procedures for handling complaints. Once an investigation has been concluded and a report received, the Monitoring Officer/ Deputy Monitoring Officer will consult the IP before making arrangements for the convening of a Finance and Assets [\(Ethical Governance\) Hearings](#) Sub-Committee [Panel](#) in the event that the report discloses a potential breach of the Code of Conduct. If the report discloses no breach of the Code of Conduct, the Monitoring Officer/ Deputy Monitoring Officer will consult the IP before confirming the outcome to the complainant and Councillor that is subject to the complaint. Under Stage 5 of the process a finding of no breach will mean that no further action is taken (namely that this is the end of the matter as far as the Council is concerned).
10. Where a matter has been referred to a Finance and Assets [\(Ethical Governance\) Hearings](#) Sub-Committee [Panel](#) for determination, the [Sub-Committee Panel](#) must seek the views of the IP before reaching its conclusions. The IP should refer to the [Sub-Committee Hearing](#) Procedure for the Finance ~~&~~ Assets [\(Ethical Governance\) Hearings](#)—Sub-Committee [Panel](#)—with regard to the conduct of [Sub-Committee meetings. Hearings.](#)



PROTOCOL RELATING TO THE INDEPENDENT PERSON

11. The IP shall not make any comments to the media on any matter without prior agreement of the Monitoring Officer/ Deputy Monitoring Officer. Any requests for comments from the media shall be referred in the first instance to the Monitoring Officer/ Deputy Monitoring Officer.
12. Where the IP is unable to act because of a conflict of interest or because they are otherwise unavailable the other IP will carry out the role.

Wider Role of IP in Promoting and Maintaining High Standards of Conduct

13. The IPs may be requested by the Monitoring Officer/ Deputy Monitoring Officer to assist in any training on conduct issues, as appropriate.
14. The IPs shall receive agendas and minutes of any meetings of the Finance & Assets (Ethical Governance) Hearings Sub-Committee convened to assist with good governance and shall be entitled to request items to be added to the agenda and to attend and may speak at the Sub-Committee.
15. The IPs are not members of the Finance & Assets (Ethical Governance) Hearings Sub-committee and therefore are not part of the formal business of the meeting and cannot vote on any matters put to the meeting. They may be invited to observe confidential matters with the agreement of the Chair.

Miscellaneous

16. The IPs have the right to raise any concerns about standards / Councillor conduct issues or implementation of the process with the authority's Monitoring Officer/ Deputy Monitoring Officer or Chief Executive.
17. The Council, through its Monitoring Officer, is responsible for assisting the Council to meet its duty to promote and maintain high standards. However, the IPs shall be consulted on any proposed changes to the Code of Conduct or procedures for handling allegations.
18. The IPs have the right of access to any confidential information required to carry out their role. Access to such information and its storage and destruction arrangements shall be agreed with the Monitoring Officer/ Deputy Monitoring Officer.
19. The IPs have the right of access to Council buildings in order to carry out their role and they can be provided with an access card for the Grange building and car park. When attending for meetings with the Monitoring Officer/ Deputy Monitoring Officer or of the Finance & Assets (Ethical Governance) Hearings Sub-Committee Panel, a designated parking space will normally be provided. Other access arrangements should be agreed with the Monitoring Officer/ Deputy Monitoring Officer.
20. Whilst the IPs are not District Councillors, they will abide by the Council's Member Code of Conduct when conducting their duties, including completing a register of



PROTOCOL RELATING TO THE INDEPENDENT PERSON

interests form to be held by the Monitoring Officer/ Deputy Monitoring Officer and will declare any relevant interests in relation to cases to the Monitoring Officer/ Deputy Monitoring Officer, who will decide whether the interest conflicts them out of involvement in the matter.

21. The IPs are to be considered an office-holder of the authority in accordance with the duty under s28(7) of the Localism Act 2011 and are therefore entitled to be covered by the Council's indemnity insurance provided they act reasonably and within the terms of this Protocol.

~~March 2013 updated August 2019~~ Updated June 2021

Appendix 1 – Flowchart.

