



East Herts District Council

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

Document Control

Organisation	East Hertfordshire District Council
Title	Complaints Handling Procedure for matters relating to the Councillors' Code of Conduct
Author – name and title	James Ellis, Head of Legal & Democratic Services
Owner – name and title	James Ellis, Head of Legal & Democratic Services
Date	January 2023
Approvals	Standards Committee and Council
Version	1.0
Next Review Date	No later than January 2026

Contents

1. Introduction.....	1
2. The Code of Conduct.....	1
3. Making a complaint	1
4. Who is the Independent Person?.....	4
5. How will my formal complaint be handled?.....	4
6. How is the investigation conducted?.....	8
7. What happens if the Monitoring Officer or Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct? ...	10
8. What happens if the Monitoring Officer or Investigating Officer concludes in the report that there is evidence of a failure to comply with the Code of Conduct?	11
9. What action can the Standards Sub-Committee take where a Councillor has failed to comply with the Code of Conduct?.....	15
10. Revision of these arrangements.....	17
APPENDIX 1	18
APPENDIX 2	19
APPENDIX 3	20
APPENDIX 4	27

1. Introduction

- 1.1 These Procedures set out the arrangements for how a formal complaint against a Councillor can be made and thereafter handled. This covers complaints that an elected or co-opted Councillor of East Herts Council (or of a Parish, Town or Community Council within the East Hertfordshire area) has failed to comply with that authority's Councillors' Code of Conduct. This does not cover complaints against East Herts or local Councils as a whole, nor employees of those Councils. Note that in respect of the latter, East Herts Council has no legal remit to consider such complaints and would instead be an internal HR matter for that local Council.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a Councillor or co-opted Councillor of East Herts Council (or of a Parish, Town or Community Council within the authority's area), who is acting or appears to be acting as a Councillor at that time, has failed to comply with the applicable Councillor's Code of Conduct. Those arrangements must allow for such complaints to be considered, and where appropriate, investigated and decided upon.
- 1.3 Any such complaint received by East Herts Council will be assessed against the criteria set out in Appendix 1. Where this is a complaint against a Parish, Town or Community Councillor, *there will be an expectation that this has at least been attempted to be resolved locally in the first instance.*

2. The Code of Conduct

- 2.1 East Herts Council has adopted a Code of Conduct for Councillors, which can be found in [Section 14](#) of the Council's Constitution.
- 2.2 Each Parish/Town or Community Council is also required to adopt a Code of Conduct. These should be available on the Parish, Town or Community Council's website and/or by request to the relevant council's Clerk.

3. Making a complaint

- 3.1 If you wish to make a complaint, the '[Complaints about Councillors](#)' page provides details as to how you can do so and what information you should provide. ***Please note that the complaint must relate to a sitting***

Councillor's conduct and their role as a Councillor. This is not the correct process to use if you are unhappy with a Council decision (which would, at District level, be the [Comments, Compliments and Complaints](#) page. At Parish, Town and Community Council level, this would be their own local policy).

3.2 The information you should provide in the complaint is:

3.2.1 which Councillor you are complaining about and the name of the Council of which they are a member,

3.2.2 their alleged misconduct and the dates on which it is alleged to have taken place, and

3.2.3 how you consider their alleged misconduct breaches the relevant authority's Councillor Code of Conduct.

PLEASE NOTE that, while you may disapprove of the way you believe a Councillor has acted, there are a number of issues that would preclude further action, as set out at Appendix 1, as it will not be in the public interests to pursue some complaints that the Council cannot legally or should not deal with.

Complaints can be made by eform:

[Making a complaint about a Councillor](#)

Or in writing to:

The Monitoring Officer, East Hertfordshire District Council, Wallfields, Pegs Lane, Hertford, SG13 8EQ

monitoring.ehcofficer@eastherts.gov.uk

3.3 The Monitoring Officer is a senior East Herts Council officer responsible for overseeing the administration of the Council's complaints handling arrangements against District and local Councillors. Under this Procedure, however, reference to the Monitoring Officer during the assessment or investigation is deemed to include a Deputy Monitoring Officer, including an external one who may undertake any of the steps set out in this process. Complaints may be referred to an external Deputy Monitoring Officer to consider if further action is warranted. Circumstances in which a referral to an external Deputy Monitoring Officer or Investigator might arise include when:

- 3.3.1 The complaint comes from a senior officer of the Council, such as the Chief Executive, Chief Finance Officer or the Monitoring Officer and it would be inappropriate for the Monitoring Officer or an internal Deputy to investigate, or
- 3.3.2 The complaint is about a high-profile Councillor such as the Leader, or an Executive Member of East Herts Council and it would be inappropriate for the Monitoring Officer or an internal Deputy to investigate.
- 3.4 A complainant will need to provide their name and a contact address, preferably also with an e-mail address and telephone number, so that East Herts Council can acknowledge receipt of the complaint and keep a complainant informed of its progress. If requested, it may be possible to keep a complainant's name and locality confidential, although it is likely to hamper and, ultimately, prevent any effective assessment or investigation. It is also in the interests of transparency and fairness that a Councillor accused of misconduct generally has a right to know who has made the allegations. A complainant can ask for their name and contact details to remain confidential on the complaint form, along with an explanation for the request, for example where there is a real and credible risk of violence or intimidation against the complainant if their identity was disclosed.
- 3.5 Assessment of an anonymous complaint is only likely where the Monitoring Officer considers that this is likely to result in intimidation or violence. The Monitoring Officer will consider the request and, if granted, they will not provide the complainant's name and locality to the Councillor without the complainant's prior consent. Exceptions to this will be if this is referred to the Police, or if other regulatory bodies such as auditors or external fraud investigators, require the information. In these circumstances a request for confidentiality would be a matter for those bodies to consider.
- 3.6 East Herts Council does not normally consider/investigate complaints that are anonymous from the outset unless there is a clear public interest in doing so. In any event, East Herts Council's ability to do so would be severely limited, as it is impossible in such situations to request further information from a complainant or provide confirmation of any decision.
- 3.7 Appendix 1 includes the complaint and assessment criteria that the Monitoring Officer takes into account before deciding whether to consider the complaint further.

4. Who is the Independent Person?

- 4.1 The Independent Person is a statutory office holder appointed by East Herts Council. A description of their role is set out in Appendix 4.
- 4.2 The Procedural arrangements must include at least one appointed Independent Person. East Herts Council has an Independent Person whose views will be sought on all formal allegations (as part of the assessment of the complaint – before any investigation), as well as seeking their views at any other stage during an investigation or determination of a formal complaint.
- 4.3 East Herts Council may or may not, from time to time, have a Reserve Independent Person who can be contacted by a Councillor who is subject to a formal complaint for procedural advice, or who may be involved at other stages if the Independent Person is unable to participate. This will be set out in any formal letter to the complainant and Councillor confirming that a complaint has been received. An Independent Person or Reserved Independent Person cannot give advice on the Councillor's proposed response to the complaint, or act as the Councillor's advocate at any stage in the process.
- 4.4 References to the Independent Person in this document include the Independent Person and the Reserve Independent Person, unless otherwise stated.

5. How will my formal complaint be handled?

- 5.1 The complaint will first be acknowledged through the contact information provided by the complainant as described at 3.4 above.
- 5.2 The Monitoring Officer will review every complaint received and will consult the Independent Person. The following Stages will be applied:
 - 5.2.1 **Local Resolution Referral:** If it is a complaint against a Parish, Town, or Community Councillor, then as per Appendix 1, confirmation will be sought from the complainant that they have first tried to resolve this issue at a local level. As a first step, the complainant will be referred to a local resolution unless this is

impractical or unreasonable for either party to do so. This does not prevent a formal complaint being progressed at a later date if the first step is unsuccessful, but it encourages a quicker localised resolution as, depending on the complexity, this formal process can take in excess of 6 months from receipt of a formal complaint to conclude.

5.2.2 **Initial Assessment Stage:** Where it relates to an East Herts Councillor (or a Parish, Town, or Community Councillor complaint which could not be resolved locally under 5.2.1 above) the tests under Appendix 1 will be considered and an initial assessment decision taken, which can be one of the following:

5.2.2.1 no further action,

5.2.2.2 informal action (including but not limited to mediation, training, apology),

5.2.2.3 further investigation (the **Investigation Stage**),

5.2.2.4 referral to the Standards Sub-Committee (the **Sub-Committee Stage**).

The Monitoring Officer does not have to take the steps in 5.2.2.1 to 5.2.2.4 in the order in which they are listed.

5.3 This initial assessment decision described at 5.2.2 above will be taken as quickly as possible but could take up to 3 months from receipt of the formal complaint and considered in accordance with the Assessment Criteria in Appendix 1.

5.4 Where the Monitoring Officer requires additional information before coming to a decision, they will request this information.

5.5 Once the complaint has moved to the **Initial Assessment Stage**, a copy of the complaint and any relevant documentation will be forwarded to the Councillor for consideration and comment. The Councillor will be given 14 days to respond unless there are reasons to extend this deadline, for example holidays, sick leave, a criminal or a whistleblowing investigation. The Councillor is expected to co-operate with the Monitoring Officer and not to attempt to interfere with, impede or obstruct any part of the process. They should also not seek to intimidate any person involved in this process.

Failure to co-operate can itself be a breach of the Code, in addition to the original complaint.

- 5.6 Where the complaint at the **Initial Assessment Stage** relates to a Parish, Town or Community Council, the Monitoring Officer may also seek the views of the relevant Clerk, in confidence, before coming to an initial assessment decision. Such views would again be expected within 14 days (unless there are reasons to extend the deadline on grounds such as those at 5.5 above).
- 5.7 If witnesses are identified by either the complainant or the Councillor subject to the complaint (or, where appropriate, the Clerk), the Monitoring Officer may, if they consider that useful information might be gleaned from doing so, contact them for comment as well. Such views would again be expected within 14 days (unless there are reasons to extend the deadline on grounds such as those at 5.5 above).
- 5.8 Once the Councillor's response (and Clerk and witness responses if any) has been received and/or the deadline for such comments has expired without a response being forthcoming, the Monitoring Officer will consult the Independent Person. This consultation may result in the request for further information from any relevant party, and further consultation will take place. Following this the Monitoring Officer will make one of the assessment decisions set out under 5.2.2. above.
- 5.9 When the Monitoring Officer has taken a decision, they will inform the complainant and the Councillor, and in cases involving a Parish, Town or Community Councillor, the Clerk or Chairman as may be appropriate, of that decision and the reasons for it. These will remain confidential.
- 5.10 Complainants should note that if the initial assessment decision is to move to the **Investigation Stage**, that it will require their co-operation during the investigation and, if necessary, any hearing which is likely to be held in public. The complainant would be required to attend such a hearing and provide their evidence and/or answer questions relating to the complaint.
- 5.11 Where the Monitoring Officer seeks to resolve the complaint informally, without the need for a formal investigation (as per 5.2.2.2) they will consult the Independent Person on such action. Informal resolution may involve the Councillor agreeing that their conduct was unacceptable and offering an apology, or other remedial action. Where the Councillor makes a reasonable offer of informal resolution, but the complainant is not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits any further action. Equally, if a

Councillor refuses to engage with such an informal approach (for example by not apologising, or attending training), the Monitoring Officer may reconsider the decision and decide whether to move the complaint to the **Investigation Stage**, or directly to the Standards Sub-Committee for the original complaint (and failure to co-operate) to be determined.

- 5.12 If the complaint identifies potential criminal conduct or breach of other regulation, the Monitoring Officer is likely to refer it to the Police or other regulatory agencies. If the complaint relates to an alleged Disclosable Pecuniary Interest offence, it will be dealt with under an agreed Protocol with Hertfordshire Constabulary and the Police (and finally the Director of Public Prosecutions) will be the relevant body that determines whether further action should be taken on such a complaint. The Council cannot influence any decisions taken by the Police or other regulatory body, would have no role in their decision, and would not wish to prejudice such bodies' consideration or enquiries other than to co-operate with them.
- 5.13 Please note that where a complainant wishes to withdraw the complaint the Monitoring Officer is unlikely to take further action on the matter, with the exception of a referral to the Police/other regulatory body - where a withdrawal of a complaint would be for them to consider. If the complainant wishes to withdraw the complaint during the investigation, then this will be considered by the Monitoring Officer in consultation with the Independent Person as to whether the investigation will continue. The decision to terminate an investigation will, for example, depend on the nature of the allegations and the parties involved.
- 5.14 Similarly, if the Councillor subject to a complaint ceases to be a Councillor during this assessment or at a later stage of the Complaints Handling Procedure, the Monitoring Officer in consultation with the Independent Person may decide to terminate or suspend any further steps for up to 14 months from the date on which they cease to be a Councillor. This is because the Complaints Handling Procedure only applies to elected and co-opted Councillors. Further action may be taken on the complaint during that 14-month period if the Councillor is re-elected/co-opted back to the Council during that period. This decision will be taken by the Monitoring Officer in consultation with the Independent Person. If the Councillor is not re-elected/co-opted during that period, further action on the complaint will automatically cease.
- 5.15 If a Councillor has been subject to a finding of the Standards Sub-Committee and sanctions have been imposed under 9.1 below, or by Full Council and the Councillor has failed without reasonable excuse to comply

with a sanction, then the Monitoring Officer will refer this directly back to the Standards Sub-Committee ('direct referral') for determination.

5.16 There is no further right of internal review or appeal by a complainant following a decision at the **Initial Assessment Stage** not to investigate (unless new evidence is then submitted within a reasonable time and this will, in any event, be subject to the Assessment Criteria in Appendix 1). Brief and anonymised versions of the complaints and any outcomes are reported to the Standards Committee and Full Council.

6. How is the investigation conducted?

6.1 The Council has adopted a procedure for the investigation of conduct complaints, which is attached as Appendix 2 to these arrangements.

6.2 If the Monitoring Officer decides that a complaint merits investigation and moves it into the **Investigation Stage**, they may investigate the matter themselves or appoint an Investigating Officer. The Investigating Officer may be;

6.2.1 the Deputy Monitoring Officer,

6.2.2 another senior East Herts Council officer,

6.2.3 an officer of another authority, or

6.2.4 an external investigator

This Officer's role is to conduct an objective investigation on the merits of the complaint and whether there appears to be a case to answer, this will be presented to the Standards Sub-Committee. The Officer is not there to represent the complainant or the Councillor and there is no difference in the status of the report prepared by an Investigating Officer and that of the Monitoring Officer.

6.3 Any investigation should be completed within 4 months, and parties must co-operate to ensure that this deadline can be met (unless there are extenuating circumstances to justify extending this). Any failure to co-operate by the Councillor complained of, or an attempt to interfere with, impede or obstruct any part of the process, or intimidate any person involved in the process, may be considered a separate potential breach of the Code of Conduct, notwithstanding the original complaint. Equally,

should a complainant attempt to interfere with, impede or obstruct any part of the process, or intimidate any person involved in the process, the Monitoring Officer reserves the right to terminate the investigation. Any such decision will be taken in consultation with the Independent Person.

- 6.4 The Monitoring Officer/Investigating Officer will decide whether they need to interview a complainant to understand the nature of the complaint, any events surrounding it and consider what documents need to be seen. They will also consider if any other party needs to be interviewed as part of the investigation. Such interviews may be by remote means or in person and are likely to be recorded. Those recorded interviews will likely be used/produced as part of the evidence, together with any other relevant evidence that has been produced.
- 6.5 If any witness(es) to the alleged breaches of the Code have been identified, the Monitoring Officer/Investigating Officer will decide whether to interview those witnesses. Again, these interview arrangements may be by remote means or in person and will be recorded/used as part of witness evidence. This is to prevent disagreements as to what has or has not been said at interview. Any witness(es) must be identified by the complainant at this stage of the Procedure, late witnesses will generally not be accepted after the investigation has been concluded.
- 6.6 The Monitoring Officer/Investigating Officer will provide the Councillor with a copy of the complaint and ask the Councillor to provide their explanation of events, and to identify what documents they need to see and the name(s) of any witnesses they believe should be interviewed. The Councillor and any of their witnesses are likely to be interviewed on the same basis as under 6.4. Any witnesses must be identified at this stage of the Procedure as late witnesses will generally not be accepted after the investigation has been concluded. The Councillor is expected to co-operate with any investigation.
- 6.7 At the end of their investigation, the Monitoring Officer/Investigating Officer will produce a draft report ("the Investigation Report") and will send copies of that draft report, in confidence, to the complainant, the Councillor concerned and to the Monitoring Officer where they were not the investigating officer, so that there is an opportunity to identify any inaccuracies, areas of dispute or which the parties believe require more consideration. The Independent Person will also see a copy of the report for comment. Relevant parties will be given 21 days to respond. The complainant/Councillor will be expected to raise any issues with the draft report at this stage.

- 6.8 Parties are encouraged to acknowledge or accept any findings at the draft report stage so that the issues can be narrowed to those that remain in dispute. It is possible that parties will disagree with the findings/reasons on whether there is a case to answer in the report. Comments and issues will be considered by the Monitoring Officer or Investigating Officer; errors will be corrected however this does not mean the report findings will be changed. A summary of these comments from the complainant/Councillor are likely to be included in the final report.
- 6.9 Having received and considered any comments made on the draft Investigation Report, it will then be finalised. Where an Investigating Officer has been appointed, the Investigating Officer will send their final report (again in confidence) to the complainant, the Councillor, the Monitoring Officer and the Independent Person. Note that this report will remain confidential until the Monitoring Officer determines otherwise or, in any hearing, the Standards Sub-Committee determines that this matter shall be heard in public.
- 6.10 Where an Investigating Officer has been appointed, and if the Monitoring Officer and Independent Person are not satisfied that the investigation has covered the issues sufficiently, the Monitoring Officer may ask the Investigating Officer to reconsider their draft report. The Monitoring Officer, in consultation with the Independent Person, will review any revised report and may decide that there remains no case to answer or further action is required, as set out below.

7. What happens if the Monitoring Officer or Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

- 7.1 Where an Investigating Officer has been appointed by the Monitoring Officer to conduct an investigation, the Monitoring Officer will review the Investigating Officer's report in consultation with the Independent Person. If the Monitoring Officer is satisfied that the Investigating Officer's report is sufficient and there is no apparent case to answer of a failure to comply with the Code, the Monitoring Officer will write to the parties (and to the Clerk and/or Chairman, if the complaint relates to a Parish, Town or Community Councillor) to notify them that they are satisfied that no further action is required. The report shall remain confidential and other than those parties who have received a copy, it shall not be disclosed further. An anonymised summary of the complaint and outcome will, however, be reported through to Standards Committee and Full Council during the year.

8. What happens if the Monitoring Officer or Investigating Officer concludes in the report that there is evidence of a failure to comply with the Code of Conduct?

8.1 If the Monitoring Officer is satisfied that the Investigating Officer's report is sufficient and there is an apparent case to answer of a failure to comply with the Code, the Monitoring Officer will write to the parties (and to the Clerk and/or Chairman, if the complaint relates to a Parish, Town or Community Councillor), to notify them that the matter will proceed to the **Sub-Committee Stage** and a hearing before the Standards Sub-Committee or, in consultation with the Independent Person, that the scope for an Alternative Remedy will be considered.

Alternative Remedy

8.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult both the Independent Person and the complainant and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Councillor acknowledging that their conduct was unacceptable and offering an apology, either publicly or privately as may be appropriate in the circumstances, and/or other remedial action (such as training or mediation). If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee (and the Parish, Town or Community Council) for information but will take no further action. If the Councillor fails to abide by the Alternative Remedy, the Monitoring Office may re-open the issue and refer the case to the Standards Sub-Committee for a hearing to determine whether there has been a breach of the Code of Conduct.

Hearing

8.3 The Councillor will be expected to attend unless there is a reasonable excuse for not doing so – as notified to the Monitoring Officer in advance of any hearing.

8.4 Normal Committee rules apply as to whether the Sub-Committee meets in public or private with the presumption that any hearings will be in public at the East Herts Council offices.

8.5 In all but straightforward cases there will be a preliminary administrative hearing of the Standards Sub-Committee to manage the preparation and arrangements for the hearing called a Case Management Hearing (“CMH”), followed by a Final Determination Hearing (“FDH”). The Membership of those hearings may or may not be the same.

CMH

8.6 The CMH will deal with administrative issues, such as fixing a date for the final hearing/length of the hearing/final evidence or representations that may be presented at the FDH.

8.7 This CMH should be arranged between 35 – 42 calendar days after the report has been sent to the parties, and both the Councillor in question and the complainant may be invited to attend.

8.8 As part of the investigation, the Councillor will have been asked and should have informed the Investigating Officer of any witnesses they wish to rely on and evidence obtained as part of the Investigation. However, if this has not taken place, the Councillor will be required to confirm 14 days prior to the CMH:

8.8.1 the areas of the Investigation Report the Councillor disputes (and the factual reasons for doing so), including evidence from current witnesses that are relevant to the matter of dispute; and

8.8.2 whether they will be represented at the final hearing (and details of that representative).

8.9 If the Councillor fails to confirm the above information by a date specified prior to the CMH, or fails to attend the hearing without reasonable explanation, then this may be considered a further potential breach of the Code of Conduct for failure to co-operate. In the event that the Councillor fails, with or without excuse, to attend the CMH, then it may take place in their absence. Where the Councillor attends, they may be represented or accompanied during the hearing by a solicitor, counsel or, with the permission of the Sub-Committee, another person as agreed with the Monitoring Officer.

8.10 Members of the Sub-Committee, the Independent Person, Investigating Officer, Monitoring Officer and/or Legal Adviser may ask questions of the Councillor and of the complainant.

- 8.11 The Sub-Committee may take legal advice from its Legal Adviser or seek the opinion of the Independent Person at any time during the CMH and may retire to deliberate in private before it comes to a decision. The Legal Adviser will retire with Members of the Sub-Committee and the substance of any legal advice provided during this time will be shared with the Councillor and the Investigating Officer if they are present when the Members return to the hearing. The Independent Person will not retire with the Sub-Committee. If the Sub-Committee requires the opinion of the Independent Person on CMH matters, this should be requested prior to retiring to consider the decision or in any event before the decision is taken.
- 8.12 Other than in exceptional circumstances, the date of the FDH must be fixed at the CMH, within 35-42 calendar days of the CMH.

FDH

- 8.13 The agreed a procedure for the FDH is attached as Appendix 3.
- 8.14 At the FDH, the Monitoring Officer or Investigating Officer (or nominated representative) will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that there is a case to answer that the Councillor has failed to comply with the Code of Conduct. The Standards Sub-Committee may set out a timetable for the hearing.
- 8.15 At the FDH, the Councillor will not be able to challenge evidence from a witness that is contained/reflected in the Investigation Report, unless the Councillor has indicated, by the specified date prior to the CMH, that a particular witness' evidence is disputed and why. Subject to that indication, the Monitoring Officer/Investigating Officer will be expected to request the attendance of that witness at the hearing. If the Councillor has not indicated by a specified date that a witness' evidence is disputed, the Monitoring Officer is unlikely to request that witness' attendance at the FDH.
- 8.16 The complainant should be prepared to attend and give evidence to the Sub-Committee. The Councillor will have an opportunity to ask any relevant questions of the Investigating Officer or witnesses produced at the hearing through the Chairman, give their evidence, call witnesses and to make representations to the Sub-Committee as to why they consider they have not failed to comply with the Code of Conduct.

- 8.17 Members of the Sub-Committee, Independent Person, Investigating Officer, Monitoring Officer and/or Legal Adviser may ask questions of any of the witnesses' present (including the Councillor and complainant). The Chairman of the Sub-Committee may halt any questions they believe to be irrelevant, repetitive or haranguing in nature.
- 8.18 The Sub-Committee may take legal advice from its Legal Adviser at any time during the FDH and may retire to deliberate in private before it comes to its decision. The Legal Adviser will retire with the Members of the Sub-Committee and the substance of any legal advice given in private session will be confirmed when the meeting reconvenes in public session. The Independent Person will not retire with the Sub-Committee. The Sub-Committee should request the views of the Independent Person prior to retiring to consider the decision or in any event before the decision is taken, on whether there has been a breach of the Code of Conduct. *Please note that in accordance with section 28(7) of the Localism Act 2011 the views of the Independent Person are to be sought and taken into account by the Sub-Committee before it makes its decision on an allegation that it has decided to investigate.*
- 8.19 The Sub-Committee, with the benefit of any views from the Independent Person, may conclude that,
- 8.19.1 the Councillor did not fail to comply with the Code of Conduct and dismiss the complaint. In these circumstances, the case is at an end, or
 - 8.19.2 the Councillor did fail to comply with the Code of Conduct. In these circumstances the Chair will inform the Councillor of this finding and of the reasons for it.
- 8.20 Where the Sub-Committee concludes the Councillor did fail to comply with the Code of Conduct under 8.19.2 above, the Sub-Committee will then consider what action, if any, it should take as a result of the Councillor's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the Councillor an opportunity to make representations to it and will seek the view of the Independent Person on any sanction, but will itself decide what action, if any, to take in respect of the matter. The Sub-Committee may retire in private session to deliberate on what, if any, sanctions will be applied. The Legal Adviser will retire with the Members of the Sub-Committee and the substance of any legal advice given to the Members in private session will be confirmed when the meeting

reconvenes in public session. The Independent Person will not retire with the Sub-Committee.

9. What action can the Standards Sub-Committee take where a Councillor has failed to comply with the Code of Conduct?

9.1 The Council has delegated (via the Constitution) to the Sub-Committee such of its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct. The Sub-Committee will impose sanctions (or a combination of sanctions) commensurate with the nature and gravity of the breach of the Code of Conduct and confirm their reasons for doing so. Accordingly, the sanctions available to the Sub-Committee are to:

9.1.1 Publish its findings in respect of the Councillor's conduct e.g. in a local newspaper, in print or on-line or both. Any decision will be published on the Council's website in any event,

9.1.2 Report its findings to Council (or the Parish, Town or Community Council) for information,

9.1.3 Report its findings and recommend to Council (or the Parish, Town or Community Council) that the Councillor be issued with a formal censure or be reprimanded,

9.1.4 Recommend to the Councillor's Group Leader (or in the case of ungrouped Councillors, recommend to Council or to Committees) that the Councillor be removed from any or all Committees or Sub-Committees of the Council,

9.1.5 Recommend to the Leader of the Council that the Councillor be removed from the Executive, or removed from particular Executive Member responsibilities,

9.1.6 Instruct the Monitoring Officer to arrange (or recommend that the Parish, Town or Community Council should arrange) relevant training for the Councillor,

9.1.7 Recommend to Council (or the Parish, Town or Community Council) that the Councillor be removed from all outside appointments to which they have been appointed or nominated by the authority,

9.1.8 Recommend to Council (or the Parish, Town or Community Council) that it withdraws facilities provided to the Councillor by the Council, such as a computer, website and/or e-mail,

9.1.9 Recommend to Council (or the Parish, Town or Community Council) that the Councillor be excluded from the Council's Offices or other premises, with the exception of meeting rooms (real or virtual) as necessary for attending Council, Committee and Sub-Committee meetings; or

9.1.10 Take no further action.

9.2 The Sub-Committee has no power to suspend or disqualify the Councillor or to withdraw the Councillors' basic or special responsibility allowances or any other payment made to the Councillor that they are entitled to under legislation.

What happens at the end of the hearing?

9.3 At the end of the hearing, the Chair will state the decision of the Standards Sub-Committee with a summary of the reasons as to whether or not the Councillor failed to comply with the Code of Conduct and, if the Councillor did fail to comply, any actions which the Sub-Committee resolves to take.

9.4 As soon as reasonably practicable thereafter (and in any event within 7 working days), a formal decision notice will be prepared by the Legal Adviser in consultation with the Sub-Committee, and sent to the complainant, the Councillor (and to the Parish/Town Clerk and/or Chairman as may be appropriate) by the Monitoring Officer and make that decision notice available for public inspection and available on the Council's website.

9.5 There is no further right of internal review or appeal by either the Councillor or complainant following the determination hearing. Either party may seek independent advice and apply for Judicial Review of the decision or may consider making a complaint to the Local Government and Social Care Ombudsman (LGO), although there is limited remit for the LGO to consider complaints and cannot revisit any decision taken.

10. Revision of these arrangements

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

APPENDIX 1
STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be initially assessed or referred for investigation:

1. The complaint appears to be minor, trivial or otherwise not sufficiently serious; and/or
2. The complaint appears to be vexatious, malicious, retaliatory or politically motivated; and/or
3. It appears that there can be no breach of the Code of Conduct, for example, the Councillor was not acting in their capacity as a Councillor at the time of the alleged incident, it relates to the Councillor's private life or is about dissatisfaction with a Council decision; and/or
4. It is about someone who is no longer a Councillor; and/or
5. There is insufficient information available nor is it forthcoming upon request; and/or
6. The complaint has not been received within 3 months of the alleged conduct, unless there are exceptional circumstances e.g. allegation of bullying, harassment etc. and/or
7. The matter occurred so long ago that it would be difficult to conduct a fair investigation; or
8. The complaint appears the same or similar to one that has already been considered; and/or
9. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; and/or
10. The Member complained of has already apologised and/or admitted making an error and the matter would not warrant a more serious sanction if considered further; and/or
11. Where it relates to a Parish, Town or Community Council, the complaint hasn't first been attempted to be resolved at a local level.

APPENDIX 2

Investigation Procedure – Information / instructions for an Investigating Officer

On receipt of instructions to carry out an investigation from the MO, ensure sufficient detail is received to commence an investigation.



Identify:

- Whether further information from the complainant is required.
- What paragraphs of the code are alleged to have been breached.
- The facts which need to be determined to establish if the Member may have a case to answer in respect of potential breaches of the code.
- The evidence you need to determine the issues.
- How you plan to gather the evidence.
- How long it is likely to take to undertake and produce the final report of the investigation (the aim being 4 months).



- Contact complainant & request any supporting or further documentary evidence relating to the complaint.
- Contact subject Member with details of the complaint & seek explanation.



- Interview relevant parties, including Member and complainant.
- Identify witnesses and arrange interview(s).
- Request any further documentary evidence.



Produce draft and then final report and submit to complainant, Councillor and MO for consideration. Report to contain:

- Councillor's official detail (election/ co-option/ Committee/ Cabinet & training details).
- The complaint made.
- Relevant Code, protocols, guidance and legislation.
- Evidence gathered.
- Any relevant complaint background.
- The evidence as applied to the alleged breaches and a conclusion on whether there appears to be a case to answer on those allegations. This to include any agreed facts/ disputed facts. Any Code of Conduct Guidance should be taken into account when reaching a conclusion.



MO, in consultation with the IP, either accepts the report or, if it has not sufficiently covered the issues, asks that the report be reconsidered. If it's apparent there may be a case to answer, then consider alternative remedy/refer to Standards Sub-Committee.

APPENDIX 3
THE FINAL DETERMINATION HEARING (FDH) PROCEDURE FOR THE
STANDARDS SUB-COMMITTEE

The Standards Sub-Committee (“the Sub-Committee”) must have an efficient and effective hearing process. This will assist Members of the Sub-Committee to deal with all the issues that need to be resolved in a way that is fair to the Councillor subject to the allegation, any complainant and witnesses involved. This procedure sets out a consistent approach for all concerned.

1. Interpretation

“Complainant”: means the person who referred the allegation to Monitoring Officer.

“CMH”: means the Sub-Committee Case Management Hearing that deals with administrative and procedural matters and clarifies the issues for the Final Determination Hearing (FDH).

“FDH”: means Sub-Committee Final Determining Hearing that hears evidence, decides if a Councillor has breached the Code of Conduct and, if so, the sanction to be imposed.

“Investigating Officer”:
means the Monitoring Officer, Deputy or Investigating Officer or their nominated representative(s).

“Independent Person/ IP”:
means Independent Person and Reserve Independent Persons appointed by the Council under the Localism Act 2011, whose views must be sought by the authority before it takes a decision on an allegation which it has decided to investigate under section 28(7) of the Localism Act 2011, and whose views can be sought by the authority at any other stage, or by a Councillor (or a Councillor or co-opted Councillor of a Town, Parish or Community Council) against whom an allegation has been made.

“Legal Adviser”: means the officer responsible for providing legal advice to the Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or

	<p>someone appointed for this purpose from outside the authority.</p> <p>“Councillor”: means the Councillor, co-opted Councillor of East Hertfordshire District Council or a Town or Parish Councillor (within the East Herts area) who is the subject of the complaint.</p> <p>“Proper Officer”: means the designated Democratic Services officer or nominated representative.</p>
2.	Representation
2.1.	The Councillor may be represented or accompanied during the hearing by a solicitor, counsel or, with the permission of the Sub-Committee, another person. Such person to have been notified to the Standards Sub-Committee, and agreed where applicable, at the CMH.
2.2.	Where a representative has been appointed, reference below to Councillor will (except in respect of any evidence from the Councillor concerned) mean the representative.
2.3	Where a representative is present the Councillor must indicate if the representative is to ask questions on the Councillor’s behalf and make any submissions. Once such arrangements have been confirmed, they will be applied throughout the hearing.
3.	Legal Advice
3.1.	The Sub-Committee may take legal advice from its Legal Adviser at any time during the hearing or while they are considering the final decision on the potential breach(es) of the Code and any sanctions.
3.2.	The Legal Adviser will provide a summary of any legal advice given to the Members of the Sub-Committee in private session, when the meeting reconvenes in public session.
4.	Voting
4.1	Each Member of the Sub-Committee will have one vote, and all matters/issues will be decided by a simple majority of votes cast.

4.2	Abstentions will not be permitted. The Sub-Committee's decision will record whether it was unanimous or taken by a majority.
5.	Quorum
5.1.	The Proper Officer or their representative will confirm whether the Committee is quorate. A quorum for the Sub-Committee will be three elected Members of the Standards Committee.
5.2.	Where the complaint involves an allegation of misconduct against a Parish Councillor, then a non-voting Parish Member of the Standards Committee should also be present, albeit they shall remain non-voting.
5.3.	The Sub-Committee must nominate a Chairman for the meeting.
5.4.	The Independent Person must be present throughout the Sub-Committee hearing.
6.	Opening/ Setting the Scene and Preliminary Procedural Issues
6.1.	The Members of the Sub-Committee shall determine whether the hearing will be considered in private session, and shall, where possible, receive representations on this from the parties involved.
6.2.	The Chairman must explain the procedure for the hearing and remind all parties to turn off mobile phones, audible alarms, and similar devices etc. If the proceedings are in open session, they will be recorded.
6.3.	The Chairman must ask all present to introduce themselves.
6.4.	The Sub-Committee may, however, resolve any issues (including failure to abide by resolutions from the CMH and absence of parties/ witnesses and whether to proceed).
7.	The presentation of the Complaint and evidence of the case to answer on alleged breach of the Code of Conduct
7.1.	The Investigating Officer will be invited to present the report including any evidence or other material and make any representations to support the relevant conclusions on a case to answer from the report. This will be based on the complaint made to the Council and any alleged failure to co-operate with the investigation or hearing preparation (where relevant). Witnesses will be called to give evidence or have their

witnesses evidence taken as accepted, where the Councillor has indicated that the witness evidence is not disputed.

7.2. The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer on the content of the report and question any witnesses called by the Investigating Officer¹. This is the Councillor's opportunity to ask questions arising from the report and not to make a statement.

7.3. Members of the Sub-Committee, the Independent Person and the Legal Adviser may question the Investigating Officer about the content of the report and/or any witnesses (including the complainant) called by the Investigating Officer.

8. The Councillor's case

8.1. The Councillor will then be given the opportunity to present their case (and call any relevant witnesses) including any evidence or other material and make any representations to address the specific allegations before the Sub-Committee.

8.2. The Investigating Officer may question the Councillor and/or any witnesses.

8.3. Members of the Sub-Committee, the Independent Person and the Legal Adviser may question the Councillor and/or any of the Councillor's witnesses.

9. Summing Up

9.1. The Investigating Officer will be given the opportunity to sum up the complaint and any relevant representations on the case to answer.

9.2. The Councillor, or their representative, will be given the opportunity to sum up their case.

10. Consultation with the Independent Person

¹ NOTE If the Member disputes any relevant fact in the Investigating Officer's report, without having given prior notice of the dispute they will be required to give good reasons for not mentioning it when the draft report was finalised or in any event at the CMH. Such behaviour is likely to affect the weight of the Member's evidence on that issue and/ or be treated as evidence of failure to co-operate with an investigation.

- 10.1. Prior to the consultation, the Independent Person may seek a short adjournment of the hearing to prepare/ finalise their view on whether, in their view, a breach of the Code of Conduct has occurred.
- 10.2. The hearing will then be reconvened, and Members of the Sub-Committee must consult the Independent Person on whether in his/ her opinion a breach has occurred. This view must be taken into account by the Sub-Committee before it makes its decision on an allegation.

11. The Members of Sub-Committee

- 11.1 Members of the Sub-Committee will deliberate in private session to consider the evidence presented and to reach their decision.
- 11.2 During deliberations, the Legal Adviser will attend to provide any advice needed.
- 11.3 Where the Sub-Committee are minded to decide there has been a breach of the Code of Conduct, they must also consider whether it should make any recommendations to the Council or, in relation to a Parish, Town or Community Councillor, to the Parish, Town or Community Council, with a view to promoting high standards of conduct among its Councillors.

12. Decision

- 12.1. Upon the Sub-Committee’s return the Chairman will announce the Sub-Committee’s decision in the following terms:
 - 12.1.1. The Sub-Committee decides that there is no breach of the Code of Conduct; or
 - 12.1.2. The Sub-Committee decides that there is a breach of the Code of Conduct.
- 12.2 The Sub-Committee will give reasons for its decision.
- 12.3 If the Sub-Committee decides that there is no breach of the Code of Conduct the Chairman closes the hearing. The case is at an end.
- 12.4 If the Sub-Committee decides that the Councillor has breached the Code of Conduct, it will consider any representations from the Investigating

Officer and/or the Councillor and will seek the views of the Independent Person as to:

12.4.1 Whether any action should be taken; and

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

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

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

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

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

12.5.4 Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that the Councillor be removed from any or all Committees or Sub-Committees of the Council,

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

12.5.6 Instruct the Monitoring Officer to arrange (or recommend that the Parish, Town or Community Council should arrange) training for the Councillor,

12.5.7 Recommend to Council (or the Parish, Town or Community Council) that the Councillor be removed from all outside

appointments to which they have been appointed or nominated by the authority,

12.5.8 Recommend to Council (or the Parish, Town or Community Council) that it withdraws facilities provided to the Councillor by the Council, such as a computer, website and/or e-mail,

12.5.9 Recommend to Council (or the Parish, Town or Community Council) that the Councillor be excluded from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings, or

12.5.10 Take no further action.

12.6 The Sub-Committee has no power to suspend or disqualify the Councillor or to withdraw Councillor's basic or special responsibility allowances or any other payment made to the Councillor that they are entitled to under legislation.

12.7 If the Sub-Committee feels that, as a result of the representations made to it under 12.4 above, it needs to retire to further consider what, if any, sanction to impose, then it will so retire (the Legal Adviser will attend).

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

APPENDIX 4
ROLE OF INDEPENDENT PERSON AND RESERVE INDEPENDENT PERSONS –
EAST HERTFORDSHIRE DISTRICT COUNCIL

ROLE DESCRIPTION

Appointed by: The Council

Liaison with: Monitoring Officer, Deputy Monitoring Officer, Members of the Standards Committee, officers, District Councillors, and Town, Parish and Community Councillors within the district, key stakeholders within the community.

Reference to the IP includes the Independent Person and Reserve Independent Persons (except number 8 which is just the Reserve IP, where the Council has one from time to time). The role is:

1. To assist the Council in promoting high standards of conduct by elected and co-opted Councillors of East Hertfordshire District Council and Parish, Town or Community Councillors and in particular to uphold the Code of Conduct adopted by the Council and underpinned by the seven principles of public life, namely selflessness, honesty, integrity, objectivity, accountability, openness and leadership.
2. To assist the Council by acting as advocate and ambassador in promoting ethical behaviour and by developing a sound understanding of the ethical framework as it operates within East Hertfordshire District Council and its local councils.
3. To be available for ad hoc consultation by the Monitoring Officer where the Monitoring Officer is dealing with a matter that has not reached the stage of a formal complaint.
4. To be available for consultations on assessment of a complaint with the Monitoring Officer.
5. To be available for consultation by the Monitoring Officer and/or the Standards Committee before a decision is taken as to whether to investigate a complaint or to seek local resolution of the same.

6. To be consulted by the Council through the Monitoring Officer and/or the Standards Committee before it makes a decision on an allegation that has been investigated and to be available to attend meetings of the Standards Committee in a non-voting advisory capacity.
7. To attend a CMH meeting of the Standards Sub- Committee and an FDH meeting to confirm the IP's views as to whether a breach of the Code of Conduct has occurred and any subsequent penalty (which will be taken into account).
8. To be available for consultation by any Councillor, including Parish, Town or Community Councillor. This may be on an ad hoc basis for views on the Complaints Procedure or process as pre-arranged between the parties, either by telephone, online or at the Council's offices. It is not the role of the IP to act as advocate for the Councillor who is subject to the complaint, to negotiate complaint matters, or to provide substantive advice (legal or otherwise) on the allegations themselves. This will generally be confidential between the Councillor and IP, unless the Councillor confirms they have acted illegally or has a complaint about the Procedure. This will then be confirmed to the Monitoring Officer.
9. To participate in training events to develop skills, knowledge, and experience and in any networks developed for Independent Persons operating outside the District Council's area. To share information and promote debate and discussion amongst the Standards Committee following such training. To attend training events organised and promoted by the Council's Standards Committee and Monitoring Officer.