

## **8.3 Member Complaints Procedure**

### **1. Context**

- 1.1 These “Arrangements” set out how a complaint may be made that a Member of this Council has failed to comply with the Council’s Members’ Code of Conduct, or in the case of a Parish or Town Councillor, that Parish or Town Council’s Code of Conduct, and sets out how the Council will deal with it.
- 1.2 These Arrangements include the appointment of at least two Independent Persons, whose views must be sought by the Council before it takes a decision on an allegation which it has decided warrants investigation, and whose views can be sought by the Council at any other stage, or by a Member against whom an allegation has been made.
- 1.3 Appendix 1 summarises the roles of various individuals involved in the Member Complaints Procedure.

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

- 2.1 The Council has adopted a Code of Conduct for Members, which is set out elsewhere within the constitution.

### **3. Making a complaint**

- 3.1 A person who wishes to make a complaint may write to:

The Monitoring Officer  
West Northamptonshire Council  
One Angel Square  
Angel Street  
Northampton  
NN1 1ED

or e-mail the Monitoring Officer at: [monitoringofficer@westnorthants.gov.uk](mailto:monitoringofficer@westnorthants.gov.uk).

- 3.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the process in respect of complaints of alleged Member misconduct.
- 3.3 In order to ensure that we have all the information which we need to be able to process the complaint, we ask complainants to use the complaint form, which is available on request or can be downloaded from the Council’s website, next to the Code of Conduct.
- 3.4 The complainant is required to provide us with their name and a contact address or email address, so that we can acknowledge receipt of the complaint and keep them informed of its progress.
- 3.5 Requests from complainants for the Monitoring Officer to withhold their identity so

that they remain anonymous to the Member complained about will only be granted in exceptional circumstances. The Monitoring Officer must balance the right of the Member to properly understand the complaint against them and respond to it, with the rights of the complainant. This normally means that the Member will need to be told who is making the complaint. If a complainant does want to request that their identity is withheld, they must indicate this and the reason that they are making the request in the space provided on the complaint form. The Monitoring Officer will contact the complainant in writing to advise whether their request has been granted.

- 3.6 The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so and the Monitoring Officer considers that a fair investigation could be carried out if the complaint was to be dealt with by way of investigation
- 3.7 The Monitoring Officer will acknowledge receipt of a complaint as soon as possible after receiving it.

#### **4. Initial Assessment of Complaints Received**

- 4.1 The Monitoring Officer will review all complaints received by the Council and may consult with at least one of the Independent Persons (see section 13 below) at this stage.
- 4.2 The Monitoring Officer must determine whether the complaint is in scope and whether it:
  - (a) warrants investigation,
  - (b) may be suitable for alternative resolution without investigation, or
  - (c) does not warrant any further action.

Complaints will be taken seriously and dealt with appropriately. However, investigating a complaint involves spending public money as well as the cost of officer and Member time. The Council, therefore, takes a proportionate approach to the issue of whether or not a complaint merits investigation bearing in mind the sanctions which can be imposed if a Member is found to be in breach of the Code, and the costs to the Council and, therefore, to the public of undertaking an investigation.

- 4.5 In making the determination referred to in paragraph 4.2, the Monitoring Officer and Independent Person (when consulted) will have regard to a range of factors including the following:
  - (a) Is the complaint against one or more named [current] Members of the authority or of a parish or town council within the West Northamptonshire area?
  - (b) Was the Member in office at the time of the alleged conduct?
  - (c) Does the complaint relate to matters where the Member was acting in their official capacity?

- (d) Would the complaint, if proven, be a breach of the Code under which the Member was operating at the time of the alleged misconduct?
- (e) Does the complaint relate to conduct that occurred within the last six months or, if not, is there good reason for the delay in the submission of the complaint?
- (f) How serious is the alleged complaint?
- (g) Is the complaint politically motivated, vexatious or tit for tat?
- (h) Is there sufficient information upon which to base a decision?
- (i) Is the matter considered suitable for alternative resolution and are either the Member concerned or the complainant not prepared to accept alternative resolution as a solution?
- (j) Was the complaint made by one Member against another, in circumstances where a greater allowance for robust political debate should be given?
- (k) Would it be proportionate and in the public interest to carry out an investigation?;
- (l) Is the conduct something which it is possible to investigate?
- (m) Is there evidence which supports the complaint?
- (n) Would the complaint, even if proven, be unlikely to be serious enough to warrant any sanction?
- (o) Has the behaviour that is the subject of the complaint already been adequately dealt with eg. through an apology at the relevant meeting?
- (p) Does the complaint actually relate to dissatisfaction with a local authority decision rather than the conduct of a specific Member?

4.6 A single event may give rise to similar complaints from a number of complainants. Where possible these complaints will be considered by the Monitoring Officer at the same time. Each complaint will, however, be determined separately. If an investigation is deemed to be appropriate, the Monitoring Officer may decide that in the interests of efficiency, only one complaint should go forward for investigation, with the other complainants being treated as potential witnesses in that investigation.

4.7 If a complaint has been made but does not fall within the scope or intent of these arrangements, the Monitoring Officer may still decide to take informal action in order to resolve the matter.

4.8 The initial assessment of the complaint will be held as soon as possible after receipt of the complaint and the complainant and the Member that has been complained about will be informed, in writing, of the outcome by the Monitoring Officer as soon as reasonably practicable or within [30] working days of receipt by the Monitoring Officer of the complaint. If it is not possible for this timeframe to be met, the

complainant and the Member will be advised of this in writing by the Monitoring Officer together with the reason for the delay and the revised, expected decision date. The complainant and the Member will be kept informed of progress throughout the process.

4.9 Unless exceptional circumstances exist that indicate otherwise, within 10 working days of receipt of the complaint, the Monitoring Officer will inform the Member concerned of the receipt and nature of the complaint and invite their comments. If it is not possible for this timeframe to be met, the complainant will be updated in writing by the Monitoring Officer.

#### 4.10 Member Wellbeing

(a) Subject Members will be kept informed of progress throughout the Member Complaints Process.

(b) At the point the Member is advised of the receipt of the complaint they will also be informed of the following:

- i. that they may choose to seek the views of one of the Council's Independent Persons in respect of the allegation that has been made against them, and how to obtain contact details;
- ii. the details of a named Member contact within the Council's Democratic Services Department, who supports the whole Member Complaints process; and
- iii. details of the wellbeing support available to a Member who is the subject of a Code of Conduct complaint.

#### 4.11 Initial Enquiries

Where the Monitoring Officer requires additional information in order to come to a decision, they may refer back to the complainant for such information and may request information from the Member against whom the complaint is directed (in addition to inviting the Member to make comments in response to the complaint as set out in paragraph 4.9).

It should be noted that it is **not** the purpose of this stage to gather and analyse evidence. The initial enquiry stage is **not** an investigation. Therefore, neither the complainant nor the subject Member will be interviewed. It is the responsibility of the complainant to provide sufficient information to the Monitoring Officer to illustrate how they consider the Code of Conduct has been breached.

The following are examples of the type of initial enquiries the Monitoring Officer may make:

- Seeking minutes of a meeting where an alleged incident occurred.
- Checking whether the subject Member was present at a meeting where they are alleged to have made a comment that breached the relevant Code of

Conduct.

- Seeking details from a complainant of what was alleged to have been said, when a complainant has alleged that a Member has been bullying and disrespectful towards them during an exchange of views, but not provided any further information.
- Requesting screen shots from social media where a complainant has alleged that a Member has breached the relevant Code when posting on social media.
- When a complainant has alleged that a Councillor has failed to declare a certain category of Disclosable Pecuniary Interest but with no further information, asking the complainant to provide details of the interest they believe has not been declared.
- In parish and town council cases, the Monitoring Officer may also notify the Clerk and ask for relevant factual information to assist with the assessment of the complaint.
- Seeking clarification from the complainant where it is not possible to understand the content of the complaint document that has been submitted.

4.12 If, during the assessment of the initial complaint, it becomes clear that either the Monitoring Officer or the Independent Person have a conflict of interest in relation to the complaint, they will not play any further role in the assessment of the complaint. In order that the complaint can be assessed, steps will be taken to appoint a Monitoring Officer (or suitably qualified person) or an Independent Person from another authority to assess the complaint and take any further steps required under this procedure.

#### 4.13 Criminal conduct/breach of other regulation

If a complaint identifies any criminal conduct or a breach of other regulations by any person, the Monitoring Officer may refer the matter to Police or any other relevant regulatory agency for consideration, in accordance with any agreed protocol (where a protocol exists). In such cases, the Monitoring Officer, in consultation with the other body will [consider pausing] [pause] the assessment of the complaint pending conclusion of any criminal/regulatory investigation, proceedings or process of the other body.

Section 34 of the Localism Act 2011 creates a number of criminal offences in relation to the disclosure of Disclosable Pecuniary Interests ('DPIs') as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. [In summary only these offences relate to:

- not disclosing DPIs on taking office;
- not disclosing DPIs in a matter being considered at a meeting, to the meeting where the Member is aware they have a DPI in the matter, (where the DPI is not already registered);

- failing to notify the Monitoring Officer of a DPI in a matter considered at a meeting, where the Member is aware they have a DPI in the matter (and where the DPI was not already registered or subject to a pending notification);
- failing to notify the Monitoring Officer of a DPI in a matter where the Member is acting alone, where the Member is aware they have a DPI in the matter (and where the DPI is not already registered or subject to a pending notification);
- unless they have a dispensation, participating in a vote or discussion in circumstances where the Member is aware they have a DPI in a matter being considered at a meeting;
- taking any steps, or any further steps, in relation to a matter (except for the purpose of enabling the matter to be dealt with otherwise than by the Member) where the Member is acting alone or is to act alone on the matter, and is aware they have a DPI in the matter; and
- providing false or misleading information either knowingly or recklessly in relation to the disclosure / notification of DPIs.]

## **5 Alternative Resolution**

- 5.1 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. The Monitoring Officer must consult with an Independent Person about this course of action. In considering the appropriateness of alternative resolution, the Monitoring Officer [may have][will have] regard to the guidance produced by the Local Government Association on informal resolution [contained within its Guidance on Member Model Code of Conduct Complaints Handling].
- 5.2 Informal resolution could either be directed at the Member who is the subject of the complaint, both the complainant and the Member, or at the authority more generally.
- 5.3 The Monitoring Officer will inform both the complainant and the Member who is the subject of the complaint if they consider that the complaint can be dealt with through informal resolution. It is possible that the Member complained about may themselves make an offer of informal resolution.
- 5.4 Where a reasonable proposal of informal resolution has been made, but either the complainant or the Member are not willing to accept that offer, the Monitoring Officer (and Independent Person) will take account of this in deciding whether the complaint warrants a formal investigation. The Monitoring Officer could nevertheless decide that the alternative resolution is reasonable and the best use of resources in the circumstances, (for example if an apology is offered).
- 5.5 Informal resolution could take many forms. The following are examples of alternative resolution:
- the Member accepting that their conduct was unacceptable and offering an apology;

- the Member agreeing to undertake training;
- training for all Members as a whole where the allegation highlights a wider issue;
- mediation facilitated by an independent mediator; or
- other remedial action by the Council.

[5.6 Where alternative resolution is to take place and the Monitoring Officer is satisfied that they need have no further involvement or where alternative resolution has taken place and the Monitoring Officer is satisfied with the outcome, all parties will be notified and the complaint will be closed.

5.7 Where alternative resolution has taken place and the Monitoring Officer is not satisfied with the outcome, they will consult the Independent Person as to whether the matter should nevertheless be closed or whether further action should be taken. All parties will be notified of the Monitoring Officer's decision.

5.8 It should be noted that when alternative resolution is used at initial assessment stage, there is no finding of fact to reach a conclusion about what happened because there is no formal investigation, meaning no decision is made about whether the Member failed to comply with the relevant Code].

## **6 If the Complaint is referred for Investigation how is the investigation conducted?**

6.1 If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Council or an external investigator. The Monitoring Officer will agree an Investigation Plan with the Investigating Officer.

6.2 The agreed Investigation Plan will include a timeframe in which the investigation and draft investigation report must be completed. This timeframe will differ from case to case depending on matters such as the complexity and number of allegations, the number of Members involved or how quickly key evidence is provided by an outside body. The complainant and the subject Member will be advised of the deadline for conclusion of the investigation. If the Investigating Officer finds that the deadline cannot be met as their investigation progresses, they must seek the written consent of the Monitoring Officer to amend the Investigation Plan to extend the deadline. The complainant and the subject Member will be advised [by the Investigating Officer] of the reason for the delay and of the revised deadline for conclusion of the investigation and draft report.

6.3 The Investigating Officer will decide whether they need to meet or speak to the complainant to understand the nature of their complaint. If so, then the complainant can explain their understanding of events and suggest what documents the Investigating Officer needs to see and who the Investigating Officer needs to interview. The Monitoring Officer will consult with an Independent Person about the need for a formal investigation.

- 6.4 The Investigating Officer would normally write to the Member against whom a complaint has been made and provide them with a copy of the complaint. The Member would be asked to provide their explanation of events. The Investigating Officer will identify what documents they need to see and who they need to interview. In exceptional cases, where it is appropriate to keep the complainant's identity confidential, or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete the complainant's name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.
- 6.5 At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the Member concerned, to give both parties an opportunity to identify any matter in that draft report which they disagree with or which they consider requires further consideration.
- 6.6 Having received and taken account of any comments which the complainant or the subject Member may make on the draft report, the Investigating Officer will send it to the Monitoring Officer.

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

- 7.1 The Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant and to the Member concerned, notifying them that no further action is required.

**8 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

- 8.1 The Monitoring Officer will, in consultation with an Independent Person, review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Sub-Committee made up of councillors from the Council's Democracy and Standards Committee or seek an alternative resolution.

**8.2 Local Resolution**

The Monitoring Officer and Independent Person may consider that the matter can be resolved without the need for a hearing. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Democracy and Standards Committee for information, but will take no further action.

**8.3 Local Hearing**

If the Monitoring Officer and Independent Person consider that local resolution is not appropriate or it isn't possible to achieve, the Monitoring Officer will report the Investigating Officer's report to the Hearings Sub-Committee, which will conduct a local hearing to decide whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.



In summary, the Monitoring Officer will conduct a “pre-hearing process”, requiring the Member to give their response to the Investigating Officer’s report. This is in order to identify what is likely to be agreed and what is likely to be contentious at the hearing. The Chair of the Hearings Sub-Committee may issue directions as to the manner in which the Hearing will be conducted.

There is a presumption that a meeting of the Hearings Sub-Committee will be held in public meaning the complainant may attend the meeting as can other members of the public. This is unless “confidential” or “exempt information” (as defined in the Local Government Act 1972) is likely to be disclosed to the public, in which case the press and public would be excluded from the Hearing. (In relation to exempt information, it is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information).

The pre-hearing process will consider whether there are any parts of the Hearing that are likely to be held in private or whether any parts of the Investigation Report or other documents should not be published prior to the Hearing. It should be noted that the final decision will rest with the Hearings Sub-Committee on the day of the Hearing. [If the Monitoring Officer, Investigating Officer or subject Member consider that there are reasons why the press and public should be excluded from the Hearing, the Hearings Sub-Committee will invite representations at the outset of the meeting before making a determination].

It is a legal requirement for the authority to seek and take into account the views of the Independent Person before it makes a decision on an allegation that it has decided to investigate. Therefore, the Independent Person will be invited to the Hearing. (The Independent Person will not be a member of the Hearings Sub-Committee). If the Independent Person cannot attend in person, arrangements will be made for them to attend by video link.

At the Hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Hearings Sub-Committee.

The Member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Sub-Committee as to why they consider that they did not fail to comply with the Code of Conduct.

The Chair will ask the Independent Person if they wish to ask any questions.

Before the Hearings Sub-Committee [retires to] make its decision, the Chair will ask the Independent Person to give their views to the Sub-Committee. (If the Independent Person is attending by video link and the technology fails, it will be acceptable for the Independent Person to provide their views by telephone to the Monitoring Officer who will relay those views to the Hearings Sub-Committee [and those present at the Hearing]).

The Hearings Sub-Committee, with the benefit of any views expressed by the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct and so dismiss the complaint. Alternatively, if the Hearings Sub-Committee finds that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Hearings Sub-Committee will then consider what action, if any, the Hearings Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Hearings Sub-Committee will give the Member an opportunity to make representations to the Panel and will consult an Independent Person.

If the Member wishes to make representations to the Panel and/or consult with an Independent Person the Hearing will adjourn, normally for one week, and reconvene to hear any representation or statement from the Member before either confirming or amending their decision. If the Member does not wish to make representations to the Panel, or consult with an Independent Person, the decision of the Panel will stand as announced.

## **9 What action can the Hearings Sub-Committee take where a Member has failed to comply with the Code of Conduct?**

9.1 The Council has delegated to the Hearings Sub-Committee such of its powers to take action in respect of individual members (including town and parish council members) as may be necessary to promote and maintain high standards of conduct.

9.2 If, following an investigation and hearing, it is established that a member has failed to comply with their council's Member Code of Conduct, one or more of the following sanctions may be applied:

- (a) Publish findings in respect of the Member's conduct;
- (b) Report findings to the relevant council for information;
- (c) Recommend to the relevant council that the Member be issued with a formal censure or be reprimanded;
- (d) Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to the relevant Council or committees) that they be removed from any or all committees or sub-committees of the council;
- (e) Where Executive arrangements exist, recommend to the Executive Leader that the Member be removed from Cabinet, or removed from particular portfolio responsibilities;
- (f) Instruct the Monitoring Officer to arrange or recommend training for the Member;
- (g) Instruct the Monitoring Officer to mediate between the complainant and the Member;
- (h) Remove or recommend the removal of the Member from any outside appointments to which they have been appointed or nominated by their council where the complaint relates to that appointment and for a specified period of

time;

- (i) Withdraw or recommend withdrawal of facilities provided to the Member by their council, such as a computer, website and/or email and internet access, which may have been abused or improperly used;
- (j) Exclude or recommend the exclusion of the Member from their council's offices or other premises, with the exception of meeting rooms as necessary for attending full Council, committee and sub-committee meetings.
- (k) Recommend that the Member concerned makes a formal written or oral apology to the full Council.

9.3 There are no powers that allow the Council to suspend or disqualify a Member or to withdraw Members' basic allowances. However, removing a Member from the Cabinet or other Committee may lead to a loss of a Special Responsibility Allowance that position was entitled to for the period of the suspension.

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

10.1 At the end of the Hearing, the Chair will state the decision of the Hearings Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Hearings Sub-Committee resolves to take.

10.2 [At the conclusion of the Hearing or] as soon as reasonably practicable thereafter and subject to any adjournment as set out in 8.3 above, the Monitoring Officer shall prepare a formal Decision Notice in consultation with the members of the Hearings Sub-Committee. The Decision Notice will be agreed and signed by all Sub-Committee Members and a copy will be provided to:

- a) the complainant;
- b) the subject Member;
- c) the Investigating Officer;
- d) [the Independent Person]; and
- e) [the Town/Parish Council where the subject Member is a Town/Parish Councillor].

10.3 The Decision Notice will contain a statement that the decision of the Hearings Sub-Committee is subject to any request for review made in accordance with this Member Complaints Procedure.

10.4 The Decision Notice will be made available for public inspection [the next working day following the end of the Hearing or] as soon as reasonably practicable after the Monitoring Officer has prepared it.

10.5 The decision will be reported to the next convenient meetings of the Democracy and Standards Committee and of the Council.

## **11 Appeals and Reviews**

11.1 There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer.

- 11.2 However, a review of the decision of the Hearings Sub-Committee may be sought by the complainant or the Member concerned in the following circumstances:
- (a) where the complainant or the Member concerned consider that the Local Hearing was not conducted in accordance with the process set out in these Arrangements or the principles of natural justice (see below); or
  - (b) where significant new evidence is available which has not been considered by the Hearings Sub-Committee.
- 11.3 Any such request for a review should be made to the Monitoring Officer in writing (by letter or e-mail) within 20 working days from the date the decision notice was issued to the parties and:
- (a) if made pursuant to paragraph 11.2a above, must set out specifically how it is considered the Local Hearing was not conducted in accordance with the process set out in these Arrangements or the principles of natural justice; or
  - (b) if made pursuant to paragraph 11.2b above, must include copies of the new evidence or explain what the evidence is.
- 11.4 The Monitoring Officer may reject the request for a review if after consultation with an Independent Person they conclude that substantive reasons have not been provided to support the request or the further evidence provided is insufficient to support a request for a review. Simply expressing disagreement with the Hearings Sub-Committee's decision or repeating the original complaint will result in the request for review being rejected. If the request for review is rejected, the complainant and the Member will be advised in writing of the reasons for rejection.
- 11.5 If a request for a review is received (provided it is not rejected), the Monitoring Officer will notify the complainant and Member concerned and convene a meeting of the Review Panel.
- 11.6 The Review Panel will review the Hearings Sub-Committee's decision. The Review Panel will have the documentation considered by the Hearings Sub-Committee and the decision notice of the Hearings Sub-Committee before it. It will not conduct a re-hearing. It will only consider the request for the review, (including any new evidence presented with the request for review) together with the complainant or subject Member's response to the request for the review and response to any new evidence. The Review Panel will also have the discretion to re-hear any of the original evidence if it considers this necessary
- 11.7 The Review Panel will either:
- (a) confirm the original decision of the Hearings Sub-Committee; or
  - (b) disagree with the original decision of the Hearings Sub-Committee and substitute its own decision (which may only be a decision that was open to the Hearings Sub-Committee).
- 11.8 At the end of the review, the Chair of the Review Panel will explain the Review Panel's reasons for its decision. Within 5 working days of the decision of the Review

Panel, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Review Panel and send a copy to the complainant and to the Member. The decision notice will be made available for public inspection and will be reported to the next convenient meeting of the Democracy and the Council.

11.9 Unless in the opinion of the Monitoring Officer in consultation with an Independent Person exceptional circumstances exist, the Review Panel must make a decision within two calendar months of the receipt of the request for a review.

11.10 There is no right of appeal of the decision of the Review Panel which is final.

11.11 If a complainant considers that the Council has failed to deal with their complaint properly, [or if a subject Member considers the Council has failed to properly deal with a complaint made against them] they may make a complaint to the Local Government Ombudsman or take their own legal advice as to options that might be open to them.

## **12 What is the Hearings Sub-Committee?**

12.1 The Hearings Sub-Committee is a sub-committee of the Council's Democracy and Standards Committee. It will comprise three members of the Democracy and Standards Committee.

12.2 Independent Persons are invited to attend all meetings of the Hearings Sub-Committee and their views are sought and taken into consideration before the Hearings Sub-Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **13 What is the Review Panel?**

13.1 The Review Panel is a sub-committee of the Council's Democracy and Standards Committee. It will comprise three members of the Democracy and Standards Committee who did not sit on the Hearings Sub-Committee, have not previously been involved in the matter concerned and who do not otherwise have any conflict of interest.

13.2 Independent Persons are invited to attend all meetings of the Review Panel and their views are sought and taken into consideration before the Review Panel takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **14 Who are the Independent Persons?**

14.1 The Council has four Independent Persons.

14.2 A person cannot be "independent" if they:

- (a) are, or have been within the past five years, a Member, co-opted Member or officer of the Council or of a parish council within the Council's area; or

- (b) are a relative or close friend of a person involved in making or determining the complaint. For this purpose, “relative” means:
  - (i) the other person’s spouse or civil partner;
  - (ii) living with the other person as husband and wife or as if they were civil partners;
  - (iii) a grandparent of the other person;
  - (iv) a lineal descendant of a grandparent of the other person;
  - (v) a parent, sibling or child of a person within paragraphs (i) or (ii);
  - (vi) the spouse or civil partner of a person within paragraph (iii), (iv) or (v); or
  - (vii) living with a person within paragraph (iii), (iv) or (v) as husband and wife or as if they were civil partners.

## **15 Being accompanied at a Local Hearing or Review Panel meeting**

- 15.1 Both the complainant and the Member complained about may choose to bring another person with them to the Local Hearing and any Review Panel meeting (if one takes place) to support (but not represent) them. It shall be a matter for the Chair of the Hearings Sub-Committee and the Chair of the Review Panel to issue directions as to the manner in which a supporting person may participate in the Local Hearing/Review Panel meeting, to ensure there is a balance between a party’s need to be supported and the need for the Hearings Sub-Committee and/Review Panel to conduct its business fairly and efficiently.

## **16 Principles of Natural Justice**

- 16.1 For the avoidance of doubt, it is expressly stated that the procedures in these Arrangements must be conducted in accordance with the principles of natural justice. In summary, this means that each party has the right to a fair hearing, the right to make their case to an impartial person/group of people, and that the decision makers in this process act without bias or apparent bias, act impartially and do not create any procedural irregularities.

## **17 Service**

- 17.1 Where it is necessary for any documentation to be sent to a Member against whom an allegation of breach of the Code has been made, those documents may be sent by recorded delivery post to that member’s usual address and/or by e-mail to the e-mail address notified to the Council. Any documents sent by such a method are deemed to be served for the purpose of these arrangements.

## **18 Revision of these arrangements**

- 18.1 The Council may by resolution agree to amend these arrangements and has delegated to the Chair of the Hearings Sub-Committee (and the Chair of the Review Panel in cases where there is a review), 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.

## **19 Procedure Documents**

- 19.1 The Monitoring Officer in consultation with the Chair of the Democracy & Standards Committee may from time to time agree:
- detailed procedure documents that relate to the conduct of the pre-hearing process, a Hearing or a Review; and
  - flow charts to illustrate and summarise aspects of the process and decision-making.

## **Appendix 1**

### Summary of roles of individuals involved in the complaints process

#### **(a) The Monitoring Officer**

The West Northamptonshire Council Monitoring Officer has overall responsibility for administering the process in respect of complaints of alleged Member misconduct in relation to both West Northamptonshire Council Members and Councillors from Town and Parish Councils within West Northamptonshire.

The Monitoring Officer is empowered [through the Member Complaints Procedure] to make an initial assessment decision on each complaint received to determine how it should be dealt with (ie. through investigation, alternative resolution, or no further action).

#### **(b) The Deputy Monitoring Officer**

The Monitoring Officer can delegate responsibility for the exercise of the function of conducting the initial assessment of complaints to another Officer within the authority. In practice, this is usually the Deputy Monitoring Officer (who is also the Deputy Director of Law and Governance), who is then able to make initial assessment decisions for and on behalf of the Monitoring Officer.

The Deputy Monitoring Officer could deputise for the Monitoring Officer in relation to any of the functions of the Monitoring Officer specified within the Member Complaints Procedure.

#### **(c) The Independent Person**

In broad terms, the Independent Person is someone who is not (or has not recently been) an Officer, Member or co-opted Member of West Northamptonshire Council or a Parish/Town Council within the West Northamptonshire area. Certain classes of relatives and close friends of Members and Officers are also prevented by law from being an Independent Person. (The criteria for qualifying as an Independent Person are set out at paragraph 14 of the Member Complaint Procedure).

The law requires that the views of an Independent Person must be sought by the Council before it takes a decision on an allegation which it has decided warrants investigation. (This means that when a complaint has been investigated and proceeds to a hearing, the Independent Person is invited to the Hearings Sub-Committee and to the Review Panel if a review takes place).

The law also states that the views of an Independent Person can be sought by the Council at any other stage, or by a Member against whom an allegation has been made.

The Member Complaints Process states that at the initial assessment stage, the Monitoring Officer (or Deputy Monitoring Officer) can consult with one of the Council's Independent Persons. When the Monitoring Officer consults with the



Independent Person, they will consider their views, but the decision remains the decision of the Monitoring Officer. [If both the Monitoring Officer and subject Member were seeking the views of an Independent Person at initial assessment stage, they would each use a different Independent Person to avoid potential conflicts of interest].

The Independent Person also has a role in being consulted by the Monitoring Officer:

- in cases where alternative resolution is being considered, or where it has been undertaken and the Monitoring Officer is considering whether the outcome was satisfactory
- at the stage where the Monitoring Officer is reviewing the Investigating Officer's draft report following an investigation
- when the Monitoring Officer is considering the request for a review following a Hearing.
- in relation to any decision to extend the timeframe in which the Review Panel must make a decision.

#### **(d) The Investigating Officer**

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Council or an external investigator (ie. somebody appointed by the Council from a specialist external organisation). The Investigating Officer will conduct an investigation into the complaint, prepare a report and, if the matter proceeds to a Hearing, attend the Hearings Sub-Committee to present their report, call witnesses and make representations.