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Jeff Hughes

*Head of Democratic and Legal
Support Services*

MEETING : STANDARDS SUB-COMMITTEE
VENUE : MEETING ROOM A AND B - CHARRINGTONS
HOUSE, BISHOP'S STORTFORD
DATE : TUESDAY 18 DECEMBER 2012
TIME : 2.30 PM

PLEASE NOTE TIME AND VENUE

MEMBERS OF THE SUB-COMMITTEE

Councillors K Crofton, S Rutland-Barsby, M Wood.

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DISCLOSABLE PECUNIARY INTERESTS

1. A Member, present at a meeting of the Authority, or any committee, sub-committee, joint committee or joint sub-committee of the Authority, with a Disclosable Pecuniary Interest (DPI) in any matter to be considered or being considered at a meeting:
 - must not participate in any discussion of the matter at the meeting;
 - must not participate in any vote taken on the matter at the meeting;
 - must disclose the interest to the meeting, whether registered or not, subject to the provisions of section 32 of the Localism Act 2011;
 - if the interest is not registered and is not the subject of a pending notification, must notify the Monitoring Officer of the interest within 28 days;
 - must leave the room while any discussion or voting takes place.
2. A DPI is an interest of a Member or their partner (which means spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they were civil partners) within the descriptions as defined in the Localism Act 2011.
3. The Authority may grant a Member dispensation, but only in limited circumstances, to enable him/her to participate and vote on a matter in which they have a DPI.

4. It is a criminal offence to:

- fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register;
- fail to notify the Monitoring Officer, within 28 days, of a DPI that is not on the register that a Member disclosed to a meeting;
- participate in any discussion or vote on a matter in which a Member has a DPI;
- knowingly or recklessly provide information that is false or misleading in notifying the Monitoring Officer of a DPI or in disclosing such interest to a meeting.

(Note: The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.)

AGENDA

1. Appointment of Chairman
2. Apologies
3. Chairman's Announcements
4. Declarations of Interest
5. Complaint in Respect of a Councillor, Reference EHDC/09/2011
(Pages 5 - 42)
6. Complaint in Respect of a Parish Councillor, Reference HORM/01/2012
(Pages 43 - 98)
7. Complaint Against a District Councillor (Pages 99 - 118)
8. Urgent Business

To consider such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration and is not likely to involve the disclosure of exempt information.

EAST HERTS COUNCIL

STANDARDS SUB COMMITTEE - 18 DECEMBER 2012

REPORT BY THE MONITORING OFFICER

COMPLAINT IN RESPECT OF A COUNCILLOR, REFERENCE EHDC/09/2011

WARD(S) AFFECTED: NONE

Purpose/Summary of Report

- To consider a complaint in respect of Councillor M Alexander, a Member of East Herts Council.

1.0 Background

- 1.1 The Council has received a complaint alleging that a District Councillor has breached the Authority's Code of Conduct.

2.0 The Report

- 2.1 The Council has agreed a procedure for considering complaints.
- 2.2 The Sub-Committee will consider the report and decide what action to take.

3.0 The Complaints

- 3.1 A complaint was made that Councillor Alexander breached the Council's Code of Conduct.
- 3.2 Details of the complaint are set out in the Investigating Officer's report.

4.0 The Investigating Officer's Report

- 4.1 An investigating officer was appointed to carry out an investigation. Following the investigation, the Investigating Officer concluded that in all the circumstances of this case is that there has not been a failure to comply with the Members' Code of Conduct.

5.0 Pre-Hearing

5.1 In preparation for this hearing, Councillor Alexander has been provided with a copy of the Investigating Officer's report.

6.0 Procedure for the Hearing

6.1 A copy of the procedure which the Council has adopted for the conduct of such hearings is contained in **Essential Reference Paper B**. A copy of the Investigating Officer's report is attached at **Essential Reference Paper C**.

7.0 Implications/Consultations

7.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Local Government Act 2000

Localism Act 2011

Contact Officer: Simon Drinkwater- Director of Neighbourhood Services
01992 531405
simon.drinkwater@eastherts.gov.uk

Report Author: Simon Drinkwater

ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.
Consultation:	None
Legal:	The procedures are in accordance with the regulations.
Financial:	None
Human Resource:	None
Risk Management:	The case should be determined in accordance with the regulations having regard to the relevant guidance.

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Complaints Procedure

1.0 Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of this authority (or of a Town or Parish council within its area) has failed to comply with the Councillors’ Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Councillors’ Code of Conduct.
- 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 member or co-opted member of the authority (or of a Town or Parish council within the authority’s area), or of a Committee or Sub-Committee of the authority, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the authority to appoint at least 1 Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member (or a Member or co-opted Member of a Town or Parish council) against whom an allegation has been made.

2.0 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available for inspection on the authority’s website and on request from Reception at the Council Offices.
- 2.2 Each Town and Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should inspect any website operated by the Town or Parish Council and request the Town or Parish Clerk to allow you to inspect the Town or Parish Council’s Code of Conduct.

3.0 Making a complaint

- 3.1 If you wish to make a complaint, please write or email to:

The Deputy Monitoring Officer - Jeff Hughes
East Herts Council
Council Offices
Wallfields
Pegs Lane

- 3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of Members' interests and who is responsible for administering the system in respect of complaints of Member misconduct.
- 3.3 In order to ensure that the Council has all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from the Reception at the Council Offices.
- 3.4 Please provide the Council with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the Member against whom you make the complaint, without your prior consent.
- 3.5 The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.6 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.
- 3.7 The Complaints Procedure Flowchart is annexed at Appendix 1 for your assistance

4.0 Will your complaint be investigated?

- 4.1 The Monitoring Officer will review every complaint received and, may consult with the Independent Person before referring it to the Standards Sub-Committee
- 4.2 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria annexed at Appendix 2. The Standards Sub-Committee will make a recommendation as to whether the complaint should be investigated. Where the Sub-Committee requires additional

information in order to come to a decision, the Monitoring Officer may come back to you for such information, and may request information from the Member against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Town or Parish Council before submitting it to the Sub-Committee.

- 4.3 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Member or the authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Sub-Committee will take account of this in deciding whether the complaint merits further investigation.
- 4.4 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

5.0 How is the investigation conducted?

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix 3 to these arrangements.
- 5.2 If the Council decides that a complaint merits further investigation, the Council may appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
- 5.3 The Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and from the papers given to the member, or delay notifying the Member until the investigation has progressed sufficiently.

- 5.4 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 5.5 Having received and taken account of any comments which you may make on the draft Investigation Report. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer.
- 6.0 What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report and, if he is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the Member concerned and to the Town or Parish Council, where your complaint relates to a Parish Councillor, notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring Officer will then report to the Standards Sub-Committee which will make a recommendation based on the report.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.
- 7.0 What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**
- 7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report and will then either send the matter for a hearing before the Standards Sub-Committee and in consultation with the Independent Person seek an informal resolution.
- 7.1.1 Informal Resolution
- The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you may consider to be a fair

resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee and the Town or Parish Council for information, but will take no further action.

7.1.2 Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Sub-Committee which may conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for hearing complaints, which is attached as Appendix 4 to these arrangements.

At the hearing, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should recommend as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the Member an opportunity to make representations to the Sub-Committee and will consult the

Independent Person, but will then decide what action, if any, to recommend in respect of the matter.

8.0 What action can the Standards Sub-Committee recommend where a Member has failed to comply with the Code of Conduct?

8.1 The Sub-Committee may make recommendations to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may recommend:-

- 8.2
 - i. A formal letter to the Councillor found to have breached the code;
 - ii. Formal censure by motion;
 - iii. Removal by the authority of the Member from Committee(s) subject to statutory and constitutional requirements;
 - iv. Press release or other appropriate publicity;

8.3 The Sub-Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

9.0 What happens at the end of the hearing?

9.1 At the end of the hearing, the Chairman will state the recommendation of the Standards Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to recommend.

9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a report to Council which will consider the recommendations. Council will consider the recommendations and make a decision. The Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Council, and send a copy to you, to the Member and to the Town or Parish Council, making that decision notice available for public inspection.

10.0 Who are the Standards Sub-Committee?

10.1 It is a Sub-Committee comprising Members.

10.2 The Independent Person is invited to attend all meetings of the Sub-Committee and their views are sought and taken into consideration before the 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.

11.0 Who is the Independent Person?

11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the Members of Council.

11.2 A person cannot be “independent” if he/she:

11.2.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;

11.2.2 *(Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority’s area), or*

11.2.3 Is a relative or close friend, of a person within paragraph 11.2.1 or 11.2.2 above. For this purpose, a “relative” means:

11.2.3.1 Spouse or civil partner;

11.2.3.2 Living with the other person as husband and wife or as if they were civil partners;

11.2.3.3 Grandparent of the other person;

11.2.3.4 A lineal descendent of a grandparent of the other person;

11.2.3.5 A parent, sibling or child of a person within paragraphs 11.2.3.1 or 11.2.3.2; or

11.2.3.6 A spouse or civil partner of a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5; or

11.2.3.7 Living with a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5 as husband and wife or as if they were civil partners.

12.0 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Sub-Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

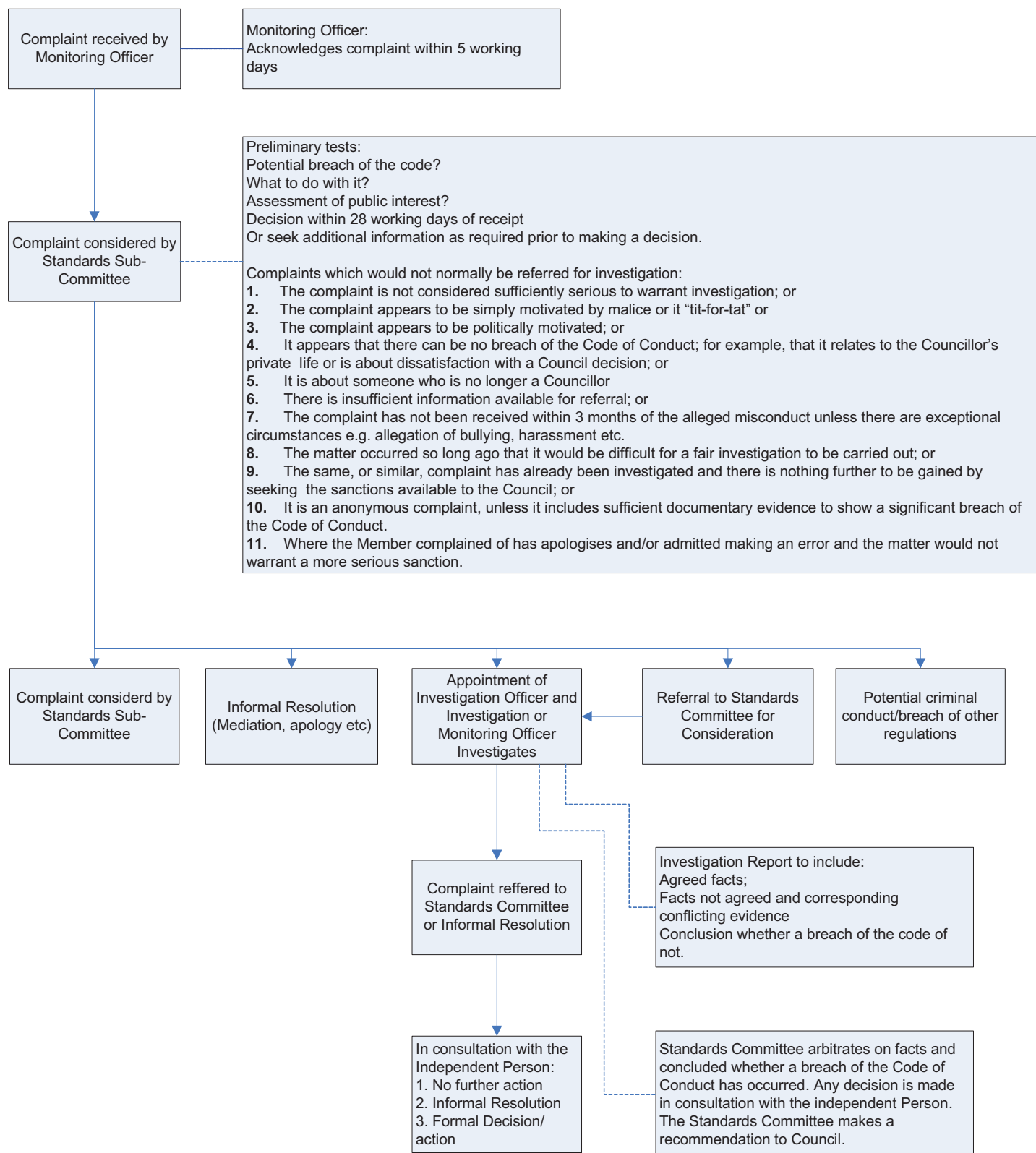
13.0 Appeals

13.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or of the Sub-Committee.

- 13.2 If you feel that the authority has failed to deal with your complaint properly, you can make a complaint to the Local Government Ombudsman.

Appendix 1

Complaints Procedure Flowchart



APPENDIX 2

STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation

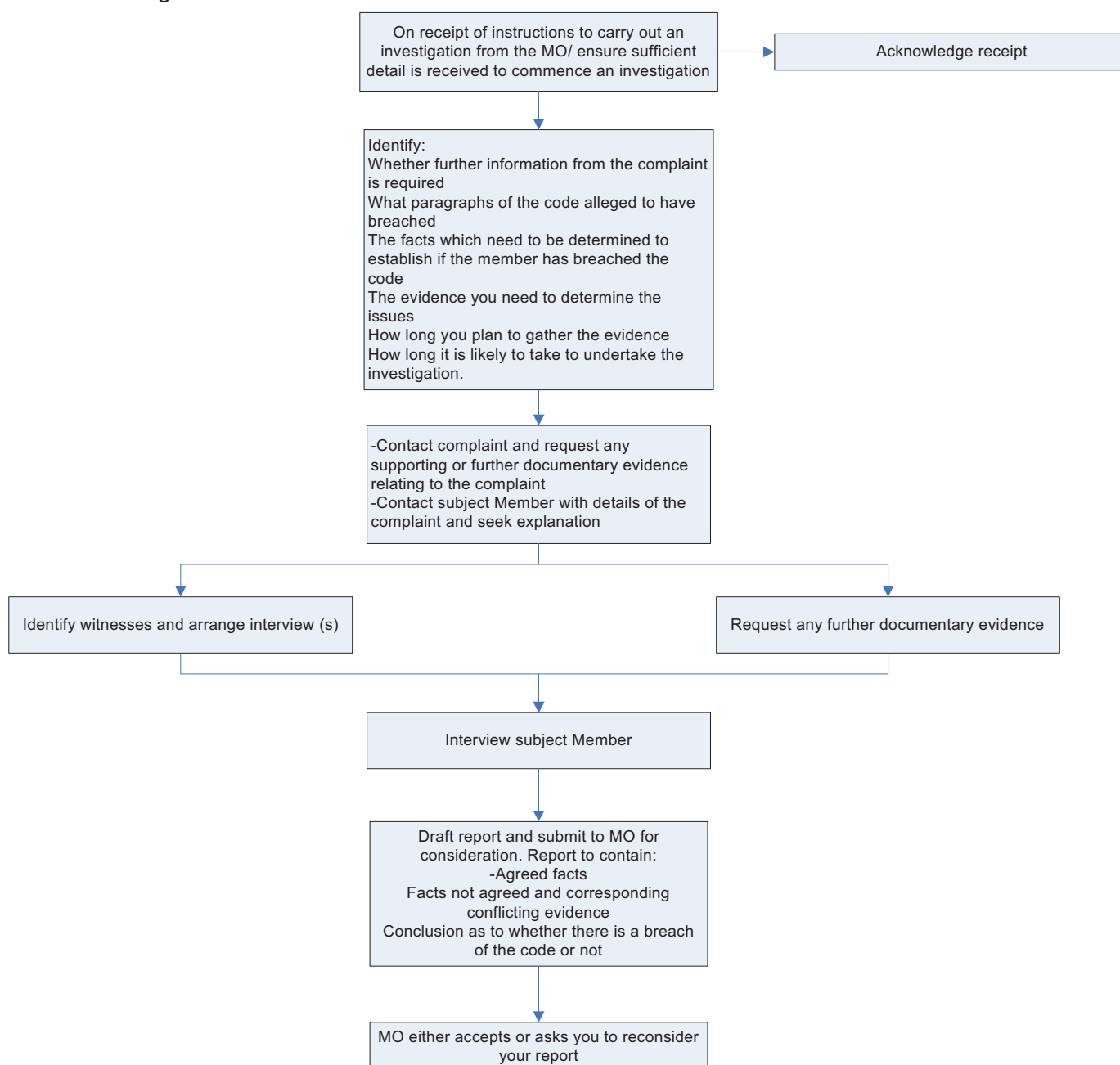
1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. it is about someone who is no longer a Councillor
5. There is insufficient information available for a referral; or
6. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc.
7. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
8. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Council; or
9. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct.
10. Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction

APPENDIX 3

STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

You should maintain a written record to demonstrate what was considered at the start of each investigation and plan how you intend to carry out the investigation, the paragraphs of the code that may have been breached, the facts you need to determine to establish, the evidence you will need, how you plan to gather the evidence and how long it will take to conclude your investigation. Remember there is no provision in the Localism Act 2011 co-operate with your investigation.

A written Investigation Report will need to be prepared for consideration by the Council's Monitoring Officer.



Appendix 4

Complaints Standards Sub-Committee Procedure

<u>Item No.</u>	<u>Procedure</u>
1	<p><u>Quorum</u></p> <p>1.1. Three Members must be present throughout the hearing to form a quorum.</p> <p>1.2. The Sub-Committee shall elect a Chairman for the meeting</p>
2	<p><u>Opening</u></p> <p>2.1 The Chairman explains the procedure for the hearing and reminds all parties to turn off mobile phones.</p> <p>2.2 The Chairman asks all present to introduce themselves</p> <p>2.3 The Councillor will be asked whether they wish to briefly outline their position</p>
3	<p><u>The Complaint</u></p> <p>3.1 The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>3.2 The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor's opportunity to ask questions rising from the Investigators report and not to make a statement)</p> <p>3.3 Members of the Sub-Committee may question the Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer</p>
4	<p><u>The Councillor's case</u></p> <p>4.1 The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative)</p>

	<p>4.2 The Investigating Officer may question the Councillor and/or any witnesses</p> <p>4.3 Members of the Sub-Committee may question the Member and/or any witnesses</p>
5	<p><u>Summing Up</u></p> <p>5.1 The Investigating Officer may sum up the Complaint</p> <p>5.2 The Member (or their representative) may sum up their case.</p>
6	<p><u>Decision</u></p> <p>6.1 Members of the Sub-Committee will deliberate in private to consider the complaint in consultation with the Independent Person prior to reaching a decision</p> <p>6.2 Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:-</p> <p>6.2.1 The Sub-Committee decides that the Member has failed to follow the Code of Conduct or</p> <p>6.2.2 The Sub-Committee decides that the Member has not failed to follow the Code of Conduct</p> <p>6.2.3 The Sub-Committee will give reasons for their decision</p> <p>6.3 If the Sub-Committee decides that the Member has failed to follow the Code of Conduct the Panel will consider any representations from the Investigator and/or the Member as to:</p> <p>6.3.1 Whether any action should be taken and</p> <p>6.3.2 What form any action should take</p> <p>6.4 The Sub-Committee will then deliberate in private to consider what action if any should be taken in consultation with the Independent Person</p> <p>6.5 On the Sub-Committee's return the Chairman will announce the Sub-Committee's recommendation (in relation to a Parish Councillor a recommendation to the Parish Council)</p> <p>6.6 The Sub-Committee will consider whether it should make any recommendations to the Council or in relation to a Parish Councillor to the Parish Council with a view to promoting high standards of conduct among Members.</p>

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East Herts District Council

Complaint reference: EHDC/09/2011

Report of an investigation

Under Section 59 of the Local Government Act 2000 – by Maria Memoli, of Local Governance Limited, solicitor, MBA, Accredited Mediator, and independent investigator appointed by the Monitoring Officer for East Herts District Council into an allegation concerning Councillor Malcolm Alexander

10th August 2012



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1 Executive Summary

1.1 The allegation is that Councillor Malcolm Alexander is in breach of paragraphs 3 (1) and 5 of the Code of Conduct of East Hertfordshire District Council ("The Council") adopted by the Council on the 12th September 2007 (and was in force as at August 2011) for:

- Failing to treat others with respect (paragraph 3 (1))
- Bringing the Councillor's office or authority into disrepute (5)

1.2 The investigation finding is that Councillor Alexander:

- Was not in breach of paragraphs 3 (1) of the Code of Conduct of the Council.
- Was not in breach of paragraph 5 of the Code of Conduct of The Council.

2 Councillor Alexander's Official Details

2.1 Councillor Alexander is a District Councillor with The Council. He was elected to office in May 1999; is Ward Member for Ware (Trinity); is Deputy Leader of the Council and is Executive Member of the Council with responsibility for Community Safety and Environment.

2.2 Councillor Alexander is a member of the following:

- Development Control Committee
- The joint meeting of Executive, Committees, Sub-Committees and Panels
- Local joint Panel
- Riversmead Housing Association

2.3 Councillor Alexander gave a written undertaking to observe the Code of Conduct upon being elected to office in May 1999.

- 2.4 Councillor Alexander has received training on the Code of Conduct and on the Members' Planning Code of Good Practice, and the Council hold details of such training.

3 The Relevant Legislation and Protocols

- 3.1 The Council has adopted a Code of Conduct in which the following paragraphs are included:

Paragraph 3

(1) You must treat others with respect

Paragraph 5

You must not conduct yourself in a manner, which could reasonably be regarded as bringing your office or authority into disrepute

4 The Evidence Gathered

4.1 The Decision Notice of the Assessment Sub- Committee of the Council

- 4.1.1 The Decision Notice of the Council dated 27th October 2011 identified two potential breaches of the Code of Conduct which may apply:

- Failing to treat others with respect -paragraph 3(1);
- Bringing the Councillor's office or authority into disrepute – paragraph 5

- 4.1.2 As Investigator, I have been instructed to conduct an investigation in accordance with the Decision Notice referred to in 4.1.1 above.

4.2 Documents taken into account

I have taken into account the following documents:

- 4.2.1 Decision Notice of the Assessment Sub- Committee of the Standards Committee of the Council dated the 27th October 2011.
- 4.2.2 The Code of Conduct for Members relevant at the time of the complaint adopted by The Council on the 12th September 2007 (Part 5 of the Council's Constitution at pages 310 – 322 May 2010).

- 4.2.3 Members' Planning Code of Good Practice (part 5 of the Council's Constitution at page 372.
- 4.2.4 The complaint made against Councillor Malcolm Alexander by Mr. P. A. Elliot dated the 17th September 2011.
- 4.2.5 Report of the Council's Director of Neighbourhood Services accompanying the agenda items under discussions of the Planning Applications at the meeting on the 25th August 2011.
- 4.2.6 The Statement made by Councillor Malcolm Alexander.
- 4.2.7 Summary of Heads of Terms dated 6th August 2008 between The Council and Henderson UK Property Fund, referred to as the overage agreement in the Complaint.
- 4.2.8 The Agenda item and Minutes of the Executive Meeting held on 17th March 2009 relating to the Causeway Site
- 4.2.9 Minutes of the Council Meeting held on 25th March 2009.
- 4.2.10 Agenda and Minutes of the Development Control Committee Meeting held on 25th August 2011.

4.3 Other Material taken into account

In addition, I took into account the following:

- 4.3.1 A copy of the video recording of the proceedings of the Development Control Committee meeting held on 25th August 2011.
- 4.3.2 A conversation between the Investigator and the Democratic Services Officer, Peter Mannings.
- 4.3.3 A conversation between the Investigator and The Senior Planning Officer Kevin Steptoe.
- 4.3.4 A Conversation between the Investigator and Mr. P. A. Elliot

4.4 Unused Material

In gathering the evidence, there are a number of documents I referred to but have not used as part of the evidence per se, but as background material, such as:

- East Herts Local Plan second review,
- Corporate strategic plan for 2009-2012,
- Grant Thornton's Property Appraisal Review,
- Lambeth Smith Hampton Report and Advice,
- National and Local planning policies
- Audit Reports of the Council

5 Summary of the Material Facts

5.1 Councillor Alexander is Ward Member for Ware (Trinity).

5.2 Councillor Alexander's Responsibilities:

5.2.1 As Executive Member for Community Safety and Environment, Councillor Alexander's key duties and responsibilities are:

- Licensing
- CCTV Partnership Board
- Building Control
- Environmental Health
- Planning Enforcement
- Police liaison
- Development Control
- Emergency Planning Environment

- Street Scene

5.2.2 As a Council Member:

The Council, comprising all 50 Members of the Council, meets on a regular basis and has overall responsibility for agreeing new policies recommended by the Executive.

Council also makes major decisions such as setting the Council Tax, adopting the policy framework and appointing the Leader of the Council. It is at Council meetings where the actions of the Executive can be questioned and debated. Reports from the Council's other committees are also received and discussed.

5.2.3 The responsibilities of the Development Control Committee are:

- Functions relating to town and country planning and development control as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the Functions Regulations).
- Within the framework of Council policy, and having regard to the Development Plan, other planning guidance and development briefs approved by the Council to consider and determine applications for permission required under development control, control of advertisements, tree and building preservation and conservation, hazardous substances consent and to authorise the making of Orders and Agreements and the issue of Notices in connection with development control, trees and listed buildings.

5.3 Councillor Alexander's Terms of office are:

- 06/05/1999 - 05/05/2003
- 01/05/2003 - 07/05/2007
- 03/05/2007 - 09/05/2011
- 05/05/2011 - 11/05/2015

5.4 Councillor Alexander, as Member of the Development control Committee, was present and addressed the Meeting of Development Control Committee ("The Committee") held on Thursday 25th August 2011 when planning applications 3/10/1964/OP (Outline Planning permission for a mixed use development comprising retail, leisure hotel, food and drink, residential, community uses, car parking, servicing and access arrangements together with alterations to the public highway and/or public realm works and flood mitigation measures on Land North of Link Road) and 3/10/1965/LC (Conservation area consent to the

Demolition of 1 The Causeway; 1,2 & 3 Old River Lane; Church Hall Water Lane; Boundary Wall north of Church Hall and Substation at Old River)(“The Planning Applications”) were debated at the Main Hall, Charis Centre, Water Lane, Bishop’s Stortford.

- 5.5 The Report of Director of the Director of Neighbourhood Services, (“The Accompanying Report”) details the proposals (the subject of the Planning Applications). The Accompanying report is shown as Document 14; and the Minutes of that Committee meeting is shown as Document 15.

Attendance and speaking at the Development Control Committee,

As a Member of the Committee

- 5.6 The Complainant states in his letter of complaint (Document 4) that *“the Chairman of the Committee reminded Members that the vote was to be taken on the issues and not on emotion”*. He claims that this statement *“only applied to those who were opposed rather than those who were for the motion”*.
- 5.7 Councillor Alexander in his statement (Document 8) says he is familiar with the Council’s Code of Conduct. Furthermore he has been on the Development Control Committee of the Council for over 13 years (paragraph 3 of Document 8). He does not believe he acted outside of the Code of Conduct.
- 5.8 Councillor Alexander as a member of the Committee had a right to attend and speak at the Committee meeting on the 25th August 2011. All members of the Development Control Committee are required to observe an additional Code – the Members’ Planning Code of Good Practice (Document 2). (Documents 9 and 10 relate).
- 5.9 In his statement (paragraph 5 of Document 8) Councillor Alexander states:

“Both applications could have been deferred by the Committee, as a number of additional representations were made at the last minute such as comments from the Environment Agency, an outline of the proposed s. 106 planning obligations, and a number of issues concerning flooding and Waitrose’s’ land to name a few. In the final analysis if the Committee resolved to grant outline planning permission and conservation area consent; the applications would nevertheless have to be referred to the Secretary of State for approval. The Committee would not be the final Decision-Maker”.

“The real issue was the flood plain especially in relation to the underground car parking. The Committee decided to go ahead and hear arguments for and

against this issue rather than defer the matter, for the benefit of those present at the Committee meeting” (paragraph 7 Document 8)

- 5.10 Councillor Alexander in his statement makes reference to the great concern to all Members of the Committee, of the flood plain and how Hendersons were going to address these concerns.
- 5.11 The Heads of Terms (Document 6) were already in the public domain and were referred to in the Agenda and Accompanying Report to the Committee (Document 14). Therefore Councillor Alexander was not introducing something new in the Committee, when referring to the agreement with Hendersons
- 5.12 Councillor Alexander says he wanted the Committee to know that as far as he was aware Hendersons are a reputable company with a vast experience of this type of development. He felt that some members of the public were of the opinion that Hendersons would take more from the Town than they were giving back. That the company was not fly-by night, but reputable and it is this message he wanted to get across.
- 5.13 As far as Councillor Alexander was concerned the Heads of Terms Agreement was not discussed in any great detail at the Committee meeting since it is not a planning consideration per se, although he believes it was *“useful to show the commitment by Hendersons and their long term investment with the Council and the people of East Herts”*. He says that he in no way sought to persuade the Committee.
- 5.14 The principle of development at the Causeway was already established subject to planning permission and this is evidenced by Documents 11 – 15 inclusive.
- 5.15 The Committee were informed that the planning applications would have to nevertheless be referred to the Secretary of State regardless of the outcome of the decision taken by Committee, shown in the Accompanying Report (Document 14)
- 5.16 The Committee were minded to refuse the Planning Applications, and upon seeking grounds for refusal and unable to find any, the Members of the Committee voted in favour of the recommendations in the Accompanying Report to grant planning permission in respect of the Planning Applications, subject to a number of conditions and an appropriate s. 106 Agreement being entered into by the Developer. This is reflected in the Minutes of the Meeting of the 25th August 2011 (Document 15). Councillor Alexander refers to 27 conditions being imposed on the planning permission, which was also subject to the referral to the Secretary of State.

- 5.17 The Committee, in their deliberations, took account of the relevant Planning Policies, and the Accompanying Report, as well as the debate at the Committee Meeting, both for and against the Recommendations in the Accompanying Report, upon reaching their decision.
- 5.18 Therefore I conclude the Committee came to their own conclusions based on the information and professional and legal advice given to them at the Committee Meeting on the 25th August 2011.

Attendance as Deputy Leader

- 5.19 Whether Councillor Alexander, as Deputy leader should have been present at the Committee Meeting on 25th August 2011 when discussing the Planning Applications, is a question that should be addressed.
- 5.20 Paragraph 1.3 of the Accompanying Report (Document 14) states *"As part of decisions in relation to its land holdings, the Council has disposed of its land owning interest in the public car parks to the applicant. These land disposal decisions have enabled the applicant to bring forward the development proposals."*
- 5.21 The Accompanying Report also stated that due to significant public interest, the subject of the planning applications, were formally brought before Council in November 2010.
- 5.22 The Members' Planning Code of Good Practice (Document 2) states at paragraphs 3.2 – 3.4:

"Do be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)" (Paragraph 3.2)

"Don't speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances". (Paragraph 3.3)

"Do explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the

right to judge) the matter elsewhere, so that this may be recorded in the minutes". (Paragraph 3.4)

- 5.23 Paragraph 3.2 of the Members' Planning Code of Good Practice specifically caters for applications for planning permissions, which involve the Council's land as being relevant to those Members sitting on the Development Control Committee. This is relevant not only to Councillor Alexander, but all Council Members sitting on that Committee.
- 5.24 I am aware that, to the public it must be confusing to understand the separation in the Council's roles both as Landowner and Local Planning Authority. It is not an unusual situation in Local Government. Indeed the Members' Planning Code of Good Practice makes provision for this situation as indicated in paragraph 5.23 above.
- 5.25 The Council as landowner are at liberty to dispose of their interests in their land subject to their statutory powers and for statutory purposes.
- 5.26 The Council as Local Planning Authority has an obligation to deal with all planning applications in accordance with planning legislation, and policy guidance of the Secretary of State. Anyone can make an application for a planning permission – it does not have to be the actual landowner. Often however, it is the landowner that makes the application.
- 5.27 The Council is in no different a position as a private individual under the planning regime. Extra care does need to be taken by the Council as Local Planning Authority to ensure the pre-application and the actual planning decision-making process is fair and adhered to in accordance with the Council's procedure. This is particularly so, if the application concerns the Council's land, as the Members' Planning Code of Good practice indicates.
- 5.28 The public must be confident that all planning applications are dealt with fairly.
- 5.29 In respect of the Planning Applications, it was the Developer who was the applicant. Not the Council. However the Planning Applications do relate to land owned by the Council. Therefore the Council should be extra vigilant to ensure the usual procedures are followed at the Development Control Committee Meetings, especially so, when the planning applications refer or concern land owned by the Council; to show equality of treatment and give the public confidence in the decision-making.
- 5.30 Councillor Alexander as a member of the Development control Committee has a right to attend and speak and vote on matters before the committee. The fact that he is an Executive Member does not preclude him from participating in the

decision-making process of the Committee as the Members' Planning Code of Conduct indicates.

- 5.31 Special mention has been made in the Members' Planning Code of Conduct, regarding "fettering the discretion" of a Member when wearing two hats – when dealing with a planning application concerning land belonging to the Council, (one as Development Control Committee Member and a Council Member, or other Member of a decision-making committee) when the Council's land is involved.
- 5.32 There is no evidence to suggest that Councillor Alexander fettered his discretion at the Development control Committee meeting on the 25th August 2011.
- 5.33 However the fact that Councillor Alexander is deputy leader of the Council, in my opinion, extra precaution could have been taken about addressing the Development Control Committee, when discussing the Planning Applications, particularly as those Planning Applications, concern the Council as Landowner. It could be perceived by a member of the public that Councillor Alexander did not act impartially and could possibly amount to a breach of paragraph 5 of the Code of Conduct in conducting himself in a manner, which could reasonably be regarded as bringing his office or authority into disrepute.

Cavalier response by Councillor Alexander

- 5.34 The Complainant alleges that Councillor Alexander quoted "*Hendersons are serious players and were prepared to put £105m into the town and had been here for 15 years*"
- 5.35 The Complainant goes on to say that the quote in paragraph 5.34 above is "*not a planning issue, but a money issue*". Furthermore that Councillor Alexander "*was unable to comment on the merits or otherwise of the planning issue.... It was an utterly cavalier response to a situation which will have an impact on the town for decades to come*"
- 5.36 The Complainant alleges that given the way in which Councillor Alexander addressed the Committee, he was being disrespectful and therefore in breach of paragraph 3 (1) of the Council's Code of Conduct, for failing to treat others with respect, thereby conducting himself in a manner, which could reasonably be regarded as bringing his office or authority into disrepute.

6 Reasoning as to whether there have been failures to comply with the Code of Conduct

Failing to treat others with respect paragraph 3 (1) of the Code of Conduct

- 6.1 Treating others with respect is one of the fundamental principles in the Code of Conduct. In politics, a certain amount of rivalry is to be expected. Councillors who are responsible for particular issues, or portfolio holders will campaign for their ideas; this is part of the democratic process. However, in itself, the concept does not amount to failure to treat someone with respect.
- 6.2 A certain level of demand or unreasonable demands by the public may be directed to Councillors; and Councillors, should, as far as possible, treat the public with courtesy and consideration. Rude and offensive behaviour tends to lower the public's expectations and confidence in elected Councillors.
- 6.3 The test is whether Councillor Alexander was rude and offensive either in the language he used or his behaviour.
- 6.4 I have read carefully the words referred to by the Complainant, and used by Councillor Alexander as well as viewing the Video Recording and have taken particular notes of the words used...

"Hendersons were serious players and were prepared to put £105m into the town and had been here for 15 years".

Whilst ideas and policies can be robustly defended in the political world, having observed the behaviour in the Video recording, I do not consider the words used, or his behaviour amount to being rude or disrespectful and therefore I do not consider Councillor Alexander failed to treat others with respect and therefore is not in breach of paragraph 3 (1) of the Council's Code of Conduct.

Disrepute – paragraph 5 of the Code of Conduct

- 6.5 Paragraph 5 states:

"You must not conduct yourself in a manner in which you could reasonably be regarded as bringing your office or authority into disrepute"

- 6.6 The test is not whether Councillor Alexander's conduct, in his remarks about the planning proposal for the Causeway site, did actually bring his office or that of the Council into disrepute. Often in Local Government, both officers and

Councillors are required to take difficult decisions in the interest of the public. So a pragmatic view must be taken in relation to the political arena within which a Councillor operates within his or her authority. In deed it would be a very difficult task for Councillors not to use certain words, which are subject to controversy. The test is whether a member of the public, with knowledge of the circumstances in which those remarks were being made, could reasonably conclude at the time when the remarks were made that they were likely to bring his office of that of the Council into disrepute.

- 6.7 The first point to consider is whether it was appropriate for Councillor Alexander to address the Committee in the manner in which he did.
- 6.8 It is important for the public to have confidence that all planning applications are treated fairly and robustly.
- 6.9 Councillor Alexander is a Member of the Executive. He is also a Member on the Development Control Committee. In addition, he is Deputy Leader of the Council.
- 6.10 The Members' Planning Code of Good Practice (Document 2) deal with the question of twin-hatted members on the Development control Committee and other committees when dealing with land belonging to the Council.
- 6.11 Specific reference is made to twin-hatted members particularly about fettering their discretion if the Member concerned has actively been "significantly" involved personally in the application.
- 6.12 There is no evidence that Councillor Alexander has fettered his discretion, as there is nothing to suggest he had a significant personal involvement in the proposals put by Hendersons.
- 6.13 The Complainant suggests that Councillor Alexander:

"Was unable to comment on the merits or otherwise of the planning issue because he was probably completely ignorant of the effects of the proposed development on the Main Site and the proposed Flood Compensation Area (FCA)"

This would appear to indicate the Complainant was not of the opinion that Councillor Alexander had a significant personal involvement in the proposals put by Hendersons, the subject of the Planning Applications debated at the Committee on the 25th August.

- 6.14 The test is whether an ordinary member of the public would perceive Councillor Alexander's attendance and address to the Committee as having fettered his discretion?
- 6.15 I have established that Councillor Alexander had a right to attend and address the Committee as a member of the Committee.
- 6.16 The more important question is whether Councillor Alexander (as Deputy Leader of the Council) should have addressed the Committee; on the Planning Applications, bearing in mind they concerned the Council's land. Councillor Alexander has commented on the draft of this report suggesting it is not necessary to include this paragraph. I have considered his comments, but feel I must refer to his Executive position and thus this paragraph and the subsequent paragraph 6.17 should be read together.
- 6.17 The Members' Planning Code of Conduct makes provision for this kind of situation. Therefore it is implied that Councillor Alexander could address the Committee, also in his capacity as Deputy Leader.
- 6.18 The further more specific question is the perception of the public. The Complainant indicates in his Complaint that probably Councillor Alexander was not aware of the effects of the proposed development; that Councillor did not comment and probably unable to comment on the merits.
- 6.19 My own view is that given the provision in the Members' Planning Code of Good Practice, there should nonetheless have been more caution exercised by Councillor Alexander in his twin-hatted role, but in the absence of any further evidence suggesting that he had fettered his discretion by having a "significant" personal involvement in the Planning Applications, I conclude that he did have a right to attend and address the Committee and vote. In conclusion therefore I consider there was no breach of either paragraph 3 (1) or paragraph 5 of the Council's Code of Conduct.

7 Finding

- 7.1 I therefore find in accordance with East Hertfordshire District Council's Code of Conduct that Councillor Alexander:

Paragraph 3 (1)

Did not fail to comply with paragraph 3 (1)

Paragraph 5

Did not fail to comply with paragraph 5



10th August 2012

**Maria Memoli, solicitor, MBA, Accredited Mediator
Independent Investigator,
Local Governance Limited**

8 Appendix A – Schedule of evidence taken into account and list of unused material

Schedule of Evidence taken into Account/Unused		
Core Documents		
1	Code of Conduct adopted by East Herts District Council	
2	Members' Planning Code of Good Practice	
3	Written undertaking to Observe the Code of Conduct	
4	Complaint by Mr. P. A. Elliot	
5	Assessment Sub-committee Decision Notice	
6	Summary – Heads of Terms	
Notes of telephone Conversations, letters and interviews with Witnesses		
7	Note of Conversation with Mr. P. A. Elliot	
8	Statement of Councillor Malcolm Alexander	
9	Note of Conversation with Democratic Services officer	
10	Note of Conversation with Chief Planning Officer	
Agendas, Minutes of Meetings and Reports		
11	Agenda Item 14 – Executive meeting 17 th March 2009	

12	Minutes of Executive Meeting 17 th March 2009;0	
13	Minutes of Council Meeting 25 th March 2009	
14	Agenda/report – Accompanying Report – Development control committee meeting 25 th August 2011	
15	Minutes of Development Control Committee Meeting of the 25 th August 2011	
16	Video Recording of Development Control Committee Meeting of the 25 th August 2011	
Other Documentary Evidence – Unused		
17	East Herts Local Plan second review	
18	Corporate strategic plan for 2009-2012	
19	Grant Thornton's Property Appraisal Review	
20	Lambeth Smith Hampton Report and Advice	
21	National and Local planning policies	
22	Audit Reports of the Council	

9 Appendix B – Chronology of events

6 th Aug 2008	Summary of Heads of Terms between The Council and Henderson UK Property Fund, subject to planning approval
17 th March 2009	Executive Meeting to discuss proposals, including the Heads of Terms – sensitive documents withheld due to commercial sensitivity
25 th March 2009	Full Council Meeting to approve inter alia, the Heads of Terms and other negotiations under way between the Developer and the Council. Sensitive documents withheld due to commercial sensitivity
Early 2010	Sensitive documents released and published – Summary of Heads of Terms
15 th Nov 2010	Planning application 3/10/1964/OP and 3/10/1965/LC lodged with The Council
June 2011	Amendments lodged to the planning applications 3/10/1964/OP and 3/10/1965/LC following public consultations
25 th Aug 2011	Development Control Committee Meeting to consider planning applications 3/10/1964/OP and 3/10/1965/LC – motion moved to refuse, but lost.

Approval of application 3/10/1964/OP subject to referral to Secretary of State re: flooding, and subject to s. 106 planning agreement regarding a number of matters.
Approval of application 3/10/1965/LC subject to one condition

17th Sept 2011	Complaint made by Mr. P. A. Elliot
20 th Oct 2011	Council Assessment Sub-Committee referred complaint for investigation
27 th October 2011	Assessment Sub-committee Decision Notice issued

EAST HERTS COUNCIL

STANDARDS SUB COMMITTEE - 18 DECEMBER 2012

REPORT BY THE MONITORING OFFICER

COMPLAINT IN RESPECT OF A PARISH COUNCILLOR, REFERENCE HORM/01/2012

WARD(S) AFFECTED: NONE

Purpose/Summary of Report

- To consider complaints in respect of Councillor John Kilby, a Member of Hornead Parish Council.

1.0 Background

- 1.1 The Council has received a complaint alleging that a Parish Councillor has breached the Parish Council's Code of Conduct.

2.0 The Report

- 2.1 The Council has agreed a procedure for considering complaints.
- 2.2 The Sub-Committee will consider the report and may make recommendations.

3.0 The Complaints

- 3.1 Complaints were made that Councillor Kilby breached the Parish Council's Code of Conduct.
- 3.2 Details of the complaints are set out in the Investigating Officer's report.

4.0 The Investigating Officer's Report

- 4.1 An investigating officer was appointed to carry out an investigation. Following the investigation, the Investigating Officer concluded that in all the circumstances of this case is that there has not been a failure to comply with the Members' Code of Conduct.

5.0 Pre-Hearing

5.1 In preparation for this hearing, Councillor Kilby has been provided with a copy of the Investigating Officer's report.

6.0 Procedure for the Hearing

6.1 A copy of the procedure which the Council has adopted for the conduct of such hearings is contained in **Essential Reference Paper B**. A copy of the Investigating Officer's report is attached **at Essential Reference Paper C**.

7.0 Implications/Consultations

7.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Local Government Act 2000

Localism Act 2011

Contact Officer: Simon Drinkwater- Director of Neighbourhood
Services
01992 531405
simon.drinkwater@eastherts.gov.uk

Report Author: Simon Drinkwater

ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.
Consultation:	None
Legal:	The procedures are in accordance with the regulations.
Financial:	None
Human Resource:	None
Risk Management:	The case should be determined in accordance with the regulations having regard to the relevant guidance.

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Complaints Procedure

1.0 Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of this authority (or of a Town or Parish council within its area) has failed to comply with the Councillors’ Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Councillors’ Code of Conduct.
- 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 member or co-opted member of the authority (or of a Town or Parish council within the authority’s area), or of a Committee or Sub-Committee of the authority, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the authority to appoint at least 1 Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member (or a Member or co-opted Member of a Town or Parish council) against whom an allegation has been made.

2.0 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available for inspection on the authority’s website and on request from Reception at the Council Offices.
- 2.2 Each Town and Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should inspect any website operated by the Town or Parish Council and request the Town or Parish Clerk to allow you to inspect the Town or Parish Council’s Code of Conduct.

3.0 Making a complaint

- 3.1 If you wish to make a complaint, please write or email to:

The Deputy Monitoring Officer - Jeff Hughes
East Herts Council
Council Offices
Wallfields
Pegs Lane

- 3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of Members' interests and who is responsible for administering the system in respect of complaints of Member misconduct.
- 3.3 In order to ensure that the Council has all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from the Reception at the Council Offices.
- 3.4 Please provide the Council with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the Member against whom you make the complaint, without your prior consent.
- 3.5 The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.6 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.
- 3.7 The Complaints Procedure Flowchart is annexed at Appendix 1 for your assistance

4.0 Will your complaint be investigated?

- 4.1 The Monitoring Officer will review every complaint received and, may consult with the Independent Person before referring it to the Standards Sub-Committee
- 4.2 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria annexed at Appendix 2. The Standards Sub-Committee will make a recommendation as to whether the complaint should be investigated. Where the Sub-Committee requires additional

information in order to come to a decision, the Monitoring Officer may come back to you for such information, and may request information from the Member against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Town or Parish Council before submitting it to the Sub-Committee.

- 4.3 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Member or the authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Sub-Committee will take account of this in deciding whether the complaint merits further investigation.
- 4.4 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

5.0 How is the investigation conducted?

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix 3 to these arrangements.
- 5.2 If the Council decides that a complaint merits further investigation, the Council may appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
- 5.3 The Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and from the papers given to the member, or delay notifying the Member until the investigation has progressed sufficiently.

- 5.4 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 5.5 Having received and taken account of any comments which you may make on the draft Investigation Report. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer.
- 6.0 What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report and, if he is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the Member concerned and to the Town or Parish Council, where your complaint relates to a Parish Councillor, notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring Officer will then report to the Standards Sub-Committee which will make a recommendation based on the report.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.
- 7.0 What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**
- 7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report and will then either send the matter for a hearing before the Standards Sub-Committee and in consultation with the Independent Person seek an informal resolution.
- 7.1.1 Informal Resolution
- The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you may consider to be a fair

resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee and the Town or Parish Council for information, but will take no further action.

7.1.2 Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Sub-Committee which may conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for hearing complaints, which is attached as Appendix 4 to these arrangements.

At the hearing, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should recommend as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the Member an opportunity to make representations to the Sub-Committee and will consult the

Independent Person, but will then decide what action, if any, to recommend in respect of the matter.

8.0 What action can the Standards Sub-Committee recommend where a Member has failed to comply with the Code of Conduct?

8.1 The Sub-Committee may make recommendations to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may recommend:-

- 8.2
 - i. A formal letter to the Councillor found to have breached the code;
 - ii. Formal censure by motion;
 - iii. Removal by the authority of the Member from Committee(s) subject to statutory and constitutional requirements;
 - iv. Press release or other appropriate publicity;

8.3 The Sub-Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

9.0 What happens at the end of the hearing?

9.1 At the end of the hearing, the Chairman will state the recommendation of the Standards Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to recommend.

9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a report to Council which will consider the recommendations. Council will consider the recommendations and make a decision. The Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Council, and send a copy to you, to the Member and to the Town or Parish Council, making that decision notice available for public inspection.

10.0 Who are the Standards Sub-Committee?

10.1 It is a Sub-Committee comprising Members.

10.2 The Independent Person is invited to attend all meetings of the Sub-Committee and their views are sought and taken into consideration before the 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.

11.0 Who is the Independent Person?

- 11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the Members of Council.
- 11.2 A person cannot be “independent” if he/she:
- 11.2.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
 - 11.2.2 *(Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority’s area), or*
 - 11.2.3 Is a relative or close friend, of a person within paragraph 11.2.1 or 11.2.2 above. For this purpose, a “relative” means:
 - 11.2.3.1 Spouse or civil partner;
 - 11.2.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.2.3.3 Grandparent of the other person;
 - 11.2.3.4 A lineal descendent of a grandparent of the other person;
 - 11.2.3.5 A parent, sibling or child of a person within paragraphs 11.2.3.1 or 11.2.3.2; or
 - 11.2.3.6 A spouse or civil partner of a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5; or
 - 11.2.3.7 Living with a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5 as husband and wife or as if they were civil partners.

12.0 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Sub-Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

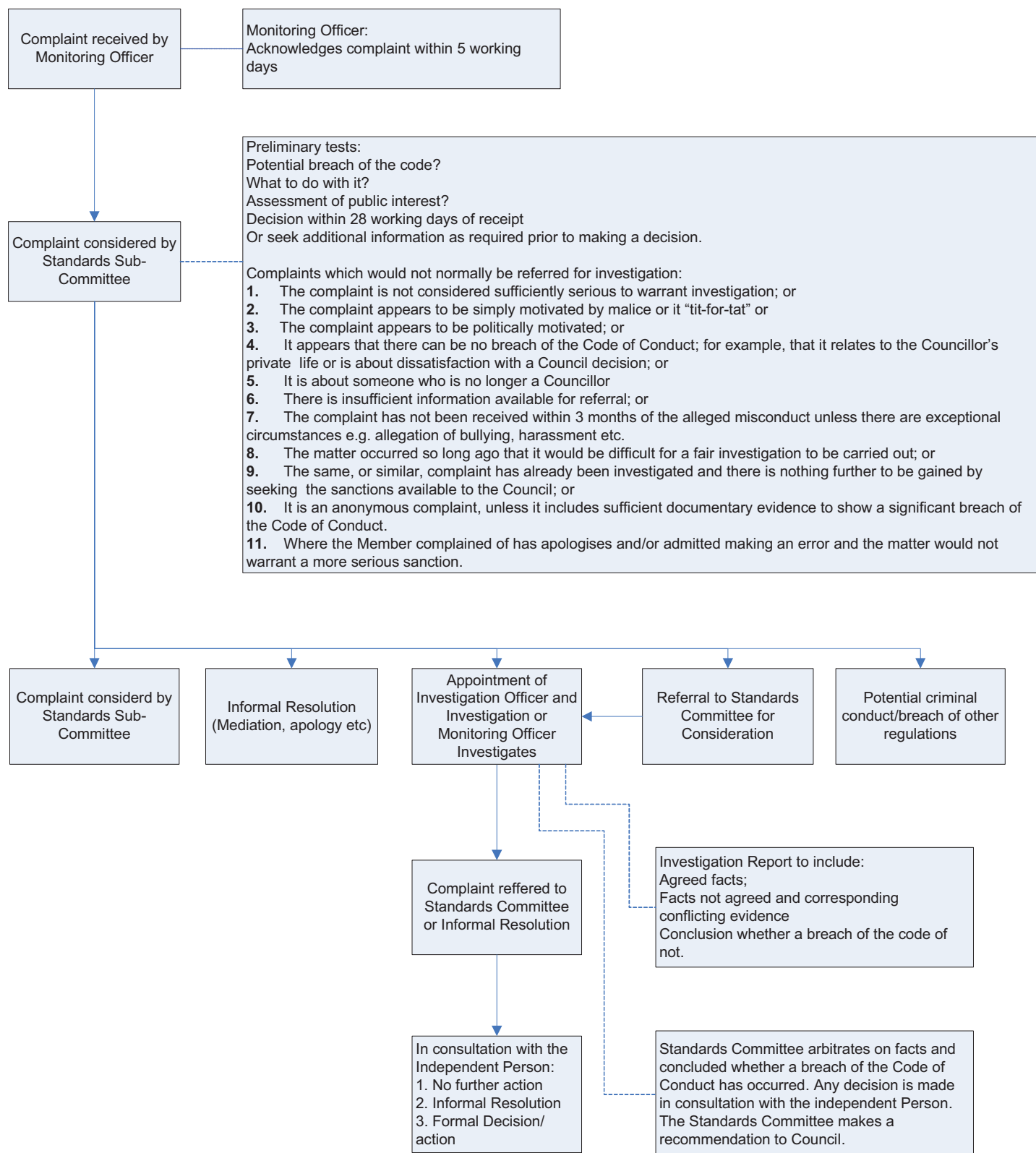
13.0 Appeals

- 13.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or of the Sub-Committee.

- 13.2 If you feel that the authority has failed to deal with your complaint properly, you can make a complaint to the Local Government Ombudsman.

Appendix 1

Complaints Procedure Flowchart



APPENDIX 2

STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation

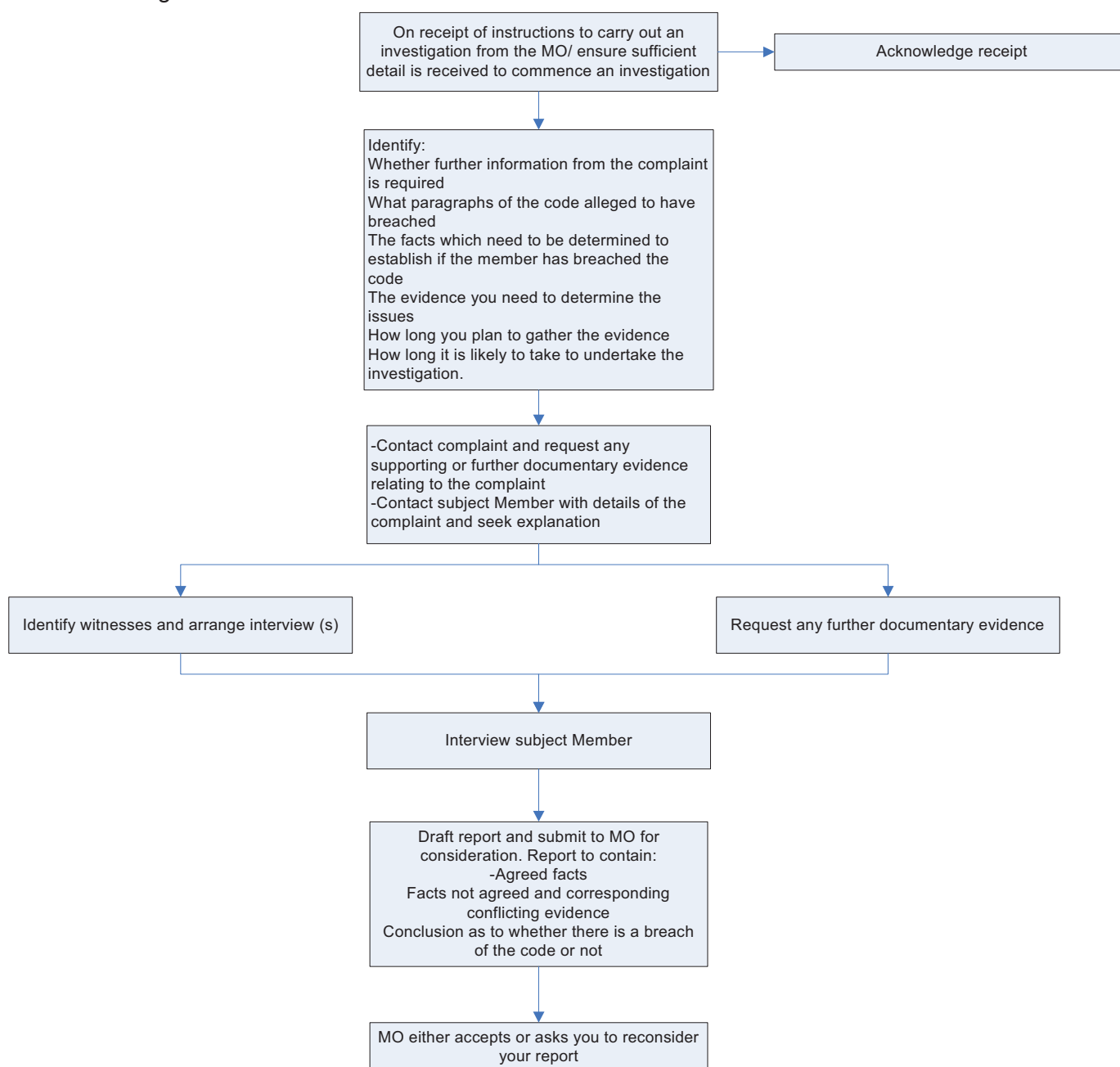
1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. it is about someone who is no longer a Councillor
5. There is insufficient information available for a referral; or
6. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc.
7. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
8. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Council; or
9. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct.
10. Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction

APPENDIX 3

STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

You should maintain a written record to demonstrate what was considered at the start of each investigation and plan how you intend to carry out the investigation, the paragraphs of the code that may have been breached, the facts you need to determine to establish, the evidence you will need, how you plan to gather the evidence and how long it will take to conclude your investigation. Remember there is no provision in the Localism Act 2011 co-operate with your investigation.

A written Investigation Report will need to be prepared for consideration by the Council's Monitoring Officer.



Appendix 4

Complaints Standards Sub-Committee Procedure

<u>Item No.</u>	<u>Procedure</u>
1	<p><u>Quorum</u></p> <p>1.1. Three Members must be present throughout the hearing to form a quorum.</p> <p>1.2. The Sub-Committee shall elect a Chairman for the meeting</p>
2	<p><u>Opening</u></p> <p>2.1 The Chairman explains the procedure for the hearing and reminds all parties to turn off mobile phones.</p> <p>2.2 The Chairman asks all present to introduce themselves</p> <p>2.3 The Councillor will be asked whether they wish to briefly outline their position</p>
3	<p><u>The Complaint</u></p> <p>3.1 The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>3.2 The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor's opportunity to ask questions rising from the Investigators report and not to make a statement)</p> <p>3.3 Members of the Sub-Committee may question the Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer</p>
4	<p><u>The Councillor's case</u></p> <p>4.1 The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative)</p>

	<p>4.2 The Investigating Officer may question the Councillor and/or any witnesses</p> <p>4.3 Members of the Sub-Committee may question the Member and/or any witnesses</p>
5	<p><u>Summing Up</u></p> <p>5.1 The Investigating Officer may sum up the Complaint</p> <p>5.2 The Member (or their representative) may sum up their case.</p>
6	<p><u>Decision</u></p> <p>6.1 Members of the Sub-Committee will deliberate in private to consider the complaint in consultation with the Independent Person prior to reaching a decision</p> <p>6.2 Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:-</p> <p>6.2.1 The Sub-Committee decides that the Member has failed to follow the Code of Conduct or</p> <p>6.2.2 The Sub-Committee decides that the Member has not failed to follow the Code of Conduct</p> <p>6.2.3 The Sub-Committee will give reasons for their decision</p> <p>6.3 If the Sub-Committee decides that the Member has failed to follow the Code of Conduct the Panel will consider any representations from the Investigator and/or the Member as to:</p> <p>6.3.1 Whether any action should be taken and</p> <p>6.3.2 What form any action should take</p> <p>6.4 The Sub-Committee will then deliberate in private to consider what action if any should be taken in consultation with the Independent Person</p> <p>6.5 On the Sub-Committee's return the Chairman will announce the Sub-Committee's recommendation (in relation to a Parish Councillor a recommendation to the Parish Council)</p> <p>6.6 The Sub-Committee will consider whether it should make any recommendations to the Council or in relation to a Parish Councillor to the Parish Council with a view to promoting high standards of conduct among Members.</p>

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PRIVATE AND CONFIDENTIAL REPORT

MJB/1/2/2012

**REPORT OF AN INVESTIGATION UNDER s60 OF THE LOCAL
GOVERNMENT ACT 2000 INTO AN ALLEGATION CONCERNING
COUNCILLOR JOHN KILBY OF HORMEAD PARISH COUNCIL**

CONTENTS

- 1. Executive Summary**
- 2. Councillor John Kilby's official details**
- 3. Summary of allegations and conclusion on whether there have been failures to comply with the code**
- 3. The Code of Conduct**
- 4. Investigating Officer's summary of facts**
- 5. Reasoning as to whether there have been failures to comply with the Code of Conduct**
- 6. Finding**

Appendix A Schedule of evidence taken into account

1.0 Executive Summary

1.1 Allegation

The complaint is that Councillor John Kilby has failed to treat Colin Marks who is the clerk to Hornead Parish Council with respect as an employee and as the proper officer of the clerk to the Parish Council meeting in public.

It is alleged that Councillor Kilby has failed to treat Colin Marks with respect by accusing him of fraud in a public meeting.

I have investigated the complaint made and in doing so have taken email evidence from Councillors Elizabeth Collery, Elaine Harding, Geoff Abbey, David Ginn, ex Councillor Brian Stone and Councillor John Kilby.

1.2 Finding

My finding is that there is evidence that Councillor Kilby failed to comply with the Code of Conduct adopted by Hornead Parish Council.

2.0 Councillor John Kilby's official details

- 2.1 Councillor Kilby is an elected member of Hornead Parish Council. He was originally co-opted to fill a vacancy in September 2006 and was elected to be a Parish Councillor in May 2007 and again in May 2011. There is no record of Councillor Kilby attending a training course for the Code of Practice.

3.0 Summary of allegations and conclusions on whether there have been failures to comply with the Code of Conduct

- 3.1 Colin Marks, Clerk at Hornead Parish Council, complained that Councillor John Kilby failed to comply with the Code of Conduct as follows:
- Failed to treat Colin Marks with respect both as an employee and as a proper officer of the Town Council in public.

3.2 Specifically Colin Marks complained that Councillor Kilby who is a Councillor with Hornead Parish Council, failed to comply with the Code of Conduct as follows:

- Councillor Kilby accused Colin Marks of fraud in respect of an expenses claim during a meeting of the Hornead Parish Council on 13th October 2011.

3.3 Colin Marks says he did not hear the remarks himself, but Councillors confirmed at the 10th November 2011 meeting that they had heard them, and the minutes of the meeting were subsequently amended to reflect this.

3.4 Colin Marks states that he was stunned to hear of this accusation as the matter had been explained and resolved prior to that meeting, and was not relevant to anything on the agenda.

3.5 He further states that the public record shows that he has been accused of fraud by a Councillor, an accusation that was unwarranted, totally unjustifiable, unacceptable and is a stain upon his character. Furthermore at no time has he received an apology.

3.6 This report investigates whether by his conduct Councillor John Kilby has failed to treat others with respect. The report considers whether Councillor Kilby failed to comply with the paragraph 3 of the Code of Conduct.

3.7 I have also considered whether paragraph 5 of the Code has been breached but do not find any evidence of this.

3.8 My finding is that there is evidence that Mr Kilby made this accusation on 13th October 2011 against Colin Marks and thereby failed to comply with the Code of Conduct paragraph 3.

3.0 The Code of Conduct

3.1 Hertford Town Council has adopted the model Code of Conduct.

3.2 The relevant part of the Code of Conduct is as follows:

- Paragraph 3 of the Code states a Member must 'treat others with respect'.

- Paragraph 5 of the Code states that a Member must not 'conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

3.3 The seventh General Principle of the Annexure to the Code states

- Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

4.0 Investigating Officer's findings of fact

- 4.1 I have relied upon evidence from Councillors Elizabeth Collery, Elaine Harding, Geoff Abbey, David Ginn, ex Councillor Brian Stone, Colin Marks and Councillor John Kilby, together with a copy of the minutes of meetings of Hormead Parish Council held on 13th October, 11th November and 8th December 2011.
- 4.2 Colin Marks was appointed Clerk to Hormead Parish Council in July 2011, the previous clerk having left shortly before. The previous Chairman did not stand for re-election so a new Councillor became Chairman.
- 4.3 On 13th October 2011 Colin Marks was clerking a meeting of the Hormead Parish Council and was asked to leave for an item concerning his contract of employment.
- 4.4 Councillor John Kilby accused Colin Marks of fraud in relation to a previous expenses claim.
- 4.5 A successful application was subsequently made for the minutes of this meeting to be amended to reflect this accusation.

5.0 Reasoning

- 5.1 I must now consider whether the actions of Councillor Kilby failed to comply with paragraph 3 of the Code of Conduct.

- 5.2 Paragraph 1 states that it is the responsibility of a Councillor to comply with the provisions of the code and paragraph 2 confirms that this is whenever a Councillor conducts the business of the Authority in an official capacity. Paragraph 3 of the code states that a Member must treat others with respect.
- 5.3 This paragraph is not intended to stand in the way of lively debate as such discussion is a crucial part of the democratic process. A very clear line has to be drawn between the Code of Conduct and the freedom to disagree with the views and opinions of others. However, I consider that an accusation of fraud goes far beyond this, and is a serious matter, being not only disrespectful but potentially slanderous too, especially when spoken about the Clerk to the Meeting who was not even there to defend himself.
- 5.4 An adjudication Panel in a previous case (APE 0419) has decided that you can be the victim of disrespect even if you did not witness the disrespectful behaviour. Therefore a Member's disrespectful treatment of an officer who is not present may amount to a failure to comply with the Code.
- 5.5 I have found that there is compelling evidence that Councillor Kilby has behaved in a disrespectful manner by accusing the Clerk of fraud in a public meeting. I consider therefore that Councillor Kilby did fail to comply with paragraph 3 of the Code of Conduct.

Finding

My finding on all the circumstances of this case is that in accordance with the Local Government Act 2000 there is evidence of a failure to comply with the code.

APPENDIX A

Schedule of evidence taken into account

<u>Document Number</u>	<u>Description</u>	<u>Page Number</u>
1.	Complaint including	1 - 14
	Minutes of Hornead Parish Council meeting 13th October 2011	15
	Minutes of Hornead Parish Council meeting 10 th November 2011	16
2.	Draft Minutes of Hornead Parish Council meeting 8 th December 2011	17
3.	Code of Conduct adopted by Hornead Parish Council	18 - 23
4.	Evidence of Cllr Collery	24-25
5.	Evidence of Cllr Abbey	26
6.	Evidence of Cllr Stone	27
7	Evidence of Cllr Harding	28
8	Evidence of Cllr Ginn	29
9	Evidence of Cllr Kilby	30
10	Evidence of Colin Marks	31



EAST HERTFORDSHIRE DISTRICT COUNCIL


COMPLAINT FORM : CODE OF CONDUCT FOR MEMBERS

(Please read the 'INFORMATION FOR POTENTIAL COMPLAINANTS' before completing this Form).

**To The Chairman
Assessment Sub-Committee**

A. Your details

1. Please provide us with your name and contact details. Anonymous complaints will only be considered if there is independent evidence to substantiate the complaint.

Title:	Mr
First name:	Colin
Last name:	Marks
Address:	
Contact telephone:	
Email address:	
Signature:	
Date of complaint:	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

The following people will see this form:

- Members of the Assessment Sub-Committee
- Monitoring Officer of the Council
- the Parish Clerk (if applicable)

A brief summary of your complaint may also be shared, by the relevant Sub-Committee with the Member(s) you are complaining against. If you have serious concerns about your name and a summary, or details of your complaint being

EAST HERTFORDSHIRE DISTRICT COUNCIL

released, please complete **Section C** of this Form and also discuss your reasons or concerns with the Council's Monitoring Officer.

2. Please tell us which complainant type best describes you:

- ☐ A member of the public
- ☐ An elected or co-opted Member of the Council
- ☐ An independent member of a Standards Committee
- ☐ A Member of Parliament
- ☐ A Monitoring Officer
- ☒ Other council employee, contractor or agent of the Council (Parish Clerk)
- ☐ Other ()

3. Equality Monitoring Form - please fill in the attached form.

B. Making your complaint

The sanctions available to a Standards Committee are governed by law and more serious sanctions are only available to the Adjudication Panel for England. For a brief summary of sanctions available, please refer to the Information for Complainants.

4. Please provide us with the name of the Member(s) you believe have breached the Council's Code of Conduct:

Title	First name	Last name
Cllr	John	Kilby

5. Please explain in this section (or on separate sheet(s)) what the Member is alleged to have done that you believe breaches the Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done, with dates / witnesses to substantiate the alleged breach.

See attached

EAST HERTFORDSHIRE DISTRICT COUNCIL

It is also important that you provide all the evidence you wish to have taken into account by the Standards Committee when it decides whether to take any action on your complaint or not. For example:

- You should be specific, wherever possible, about exactly what you are alleging the Member said or did. For instance, instead of writing that the Member insulted you, you should state what it was they said or did to insult you.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).
- If the allegation(s) being made occurred over 28 days of the alleged behaviour or conduct, clearly explain why the complaint was not made during that period of time.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

See attached

EAST HERTFORDSHIRE DISTRICT COUNCIL

(Continue on separate sheet(s), as necessary)

C. Confidentiality of complainant and the complaint details

Only complete this next section if you are requesting that your identity is kept confidential

6. In the interests of fairness and in compliance with the rules of natural justice, we believe Members who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against him / her. We are, therefore, unlikely to withhold your personal details or the details of your complaint unless you have good reasons to believe that you have justifiable grounds, for example:
- to believe you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with the same); or
 - may receive less favourable treatment from the Council because of the seniority of the Member against whom you are submitting a written complaint in terms of any existing Council service provision or any tender / contract that you may have or are about to submit to the Council.

Please note that requests for confidentiality or requests for suppression of the personal and complaint details will not automatically be granted. The Assessment Sub-Committee will consider the request alongside the substance of your complaint and the Monitoring Officer will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the opportunity, if you so wish, of withdrawing your complaint.

However, it is important to understand that - in exceptional circumstances, where the matter complained about is very serious - we may proceed with an investigation (or other action) and may have no choice but to disclose your personal and complaint details, because of the allegation(s) made, even if you have expressly asked us not to.

EAST HERTFORDSHIRE DISTRICT COUNCIL

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

(Continue on separate sheet(s), as necessary)

D. Remedy sought

7. Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

If the accusation of fraud is found to be unjustified, I would like a statement that would clear my name.

(Continue on separate sheet(s), as necessary)

E. Additional information

8. Complaints must be submitted in writing. This includes fax and electronic submissions. Frivolous, vexatious and politically motivated tit-for-tat complaints are likely to be rejected.

EAST HERTFORDSHIRE DISTRICT COUNCIL

9. In line with the requirements of the Disability Discrimination Act 1995, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.
10. If you need any support in completing this form, please contact the Monitoring Officer as soon as possible.

F. Process from here

11. Once a valid complaint relating to an alleged breach of the Code of Conduct for Members has been received by the Monitoring Officer, it will be presented to a meeting of the Assessment Sub-Committee for consideration / determination. You and the Member against whom the complaint has been made will not be allowed to attend the deliberations of the Sub-Committee as the matter will be considered in private.
12. The Sub-Committee may resolve to:
 - (a) dismiss your complaint, with reasons;
 - (b) ask you for additional information, with reasons;
 - (c) refer your complaint to the Monitoring Officer for investigation (or other action); or
 - (d) refer your complaint to the Standards Board for England if the complaint does not fall within the jurisdiction of the Standards Committee.
13. You will be notified after the meeting and given information on any further stage(s) in the process at that time.

Monitoring Officer Contact details:

The Monitoring Officer – Simon Drinkwater
East Herts Council
Wallfields
Pegs Lane
Hertford
SG13 8EQ

Tele: 01992 531405

EAST HERTFORDSHIRE DISTRICT COUNCIL

Monitoring Form – Local Assessments of Complaints Standards Committee - Assessment Sub Committee

Working towards equal opportunities

East Hertfordshire District Council is committed to a policy of equality of opportunity in both employment and service provision. We seek to ensure that no person receives less favorable treatment on the grounds of gender, race, or ethnic origins, marital status, disability, age, sexual orientation, family responsibilities, religion, trade union involvement or political belief or is disadvantaged by conditions or requirements which cannot be shown to be justifiable.

White	Mixed	Asian	Black	Chinese or other ethnic group
White British	White and Black	Indian	Caribbean	
White Irish	Caribbean	Pakistani	African	
Any other White background	White and Black African	Bangladeshi	Any other Black background	Chinese
<input checked="" type="checkbox"/>	Any other mixed background <input type="checkbox"/>	Any other Asian background <input type="checkbox"/>	<input type="checkbox"/>	Other <input type="checkbox"/>

*Categories used are those utilised by the Office of Population Censuses and Surveys

Do you have a physical or mental impairment which has a substantial and long term adverse effect on your ability that you wish to declare under the Disability Discrimination Act?

Yes

☐

No

☒

Subject: Complaint re Cllr John Kilby, Hornead Parish Council

By: Colin Marks, Clerk to Hornead Parish Council

Preamble

I have decided to make this complaint after a lot of deliberation and having sought advice from several sources. However, the decision to proceed has been entirely my own. My initial reluctance was due to two main factors: 1) I am concerned that a clerk making a complaint against one of his councillors could make the working relationship difficult, whatever the outcome. 2) As a member of the Standards Committee there is a concern that I might be perceived as running to my colleagues for support. However, I believe on balance this complaint needs to be made because of its serious nature.

Background

I was appointed Clerk to Hornead PC in July 2011. The previous clerk had left 2 months earlier. The Chairman of the last 4 years did not stand for election in May and a new councillor became Chairman. With no clerk and little experience he understandably struggled and resigned as Chairman the day of my interview, which was conducted by the latest Chairman. Another councillor resigned the following week.

The new Chairman and I had a huge backlog of work and issues to resolve, and we suffered from the lack of continuity. I reported to him that I was having to spend considerably more time than my allotted 9 hours a week (ave 39 a month) and he told me to submit a claim for extra hours, allowed under my contract, which would be considered by the council.

The Subject: Expenses, September 2011

I sent the agenda and related documents for the 13 October PC meeting (my second as Clerk) to councillors on 8 October. Among them was a daily breakdown of my time and expenses for September, which I provided on my own initiative (document A herewith). I should emphasise that this was NOT required under my contract, and I had never intended it to be a detailed record of how I spent my time, but rather a simple record of the number of hours worked per day. On 10 October, Cllr Kilby queried by email some items with the Chairman (**document B herewith** – emboldened type mine). Among them was my claim for attending the September East Herts Rural Conference. I had previously informed the Council that I would be attending, but that my registration had already been paid for by Standon Parish Council (of which I am a member).

At the Conference I did participate on behalf of Hornead PC (as well as Standon), and a few days afterwards, District Councillor Rose Cheswright telephoned me and asked why Hornead had not been represented. I replied that I had been there, and that I had sat next to her, to which she answered that she had meant why no Parish Councillors had attended. This was quite light hearted, but helped set in my mind that I had indeed represented Hornead PC there. I consequently (but incorrectly) recorded that Conference time and mileage on my daily log.

Cllr Kilby, on 10 October, picked up my mistake of including it in my expenses; the Chairman took it up with me and I immediately amended the expenses sheet (**document C herewith**). The Chairman emailed Cllr Kilby on 11 October (document D herewith – emboldened type mine) to explain that the error had been acknowledged and corrected. The amended expenses sheet (**C**) was submitted to Councillors at the meeting with an apology and explanation. That is what the draft minutes of that meeting briefly recorded.

My Complaint

In the Parish Council meeting on 13 October, Cllr Kilby accused me of fraud in respect of my September expenses claim.

I admit I did not hear the remark, but when approving the Minutes of that meeting in the November PC meeting, a councillor challenged the Minutes as being incorrect and asked for an amendment and the accusation to be included. The Chairman asked councillors to confirm whether they had heard the accusation and whether the minutes should be amended accordingly. It was agreed they should. There followed a recorded vote to approve the Minutes, which was resolved 4:2 in favour of the amendment (**document E herewith**). Cllr Kilby did not attempt to deny or explain the comment, and voted to approve the amended minutes. See draft Minutes for 10 November (yet to be approved – **document F herewith**).

I was stunned and did not challenge the accusation at the time. In agreeing that the comment was heard, no other councillor gave any indication that they agreed with the substance of it; rather, indications were to the contrary. However, after considerable reflection, I believe it right to make this complaint because the comment was defamatory, made in public against a Parish Council employee, was gratuitous since the matter had been explained and resolved before the meeting and was not relevant to anything that was before the Council that evening. I was totally transparent about my expenses – on my own initiative and more so than any previous clerk – submitting them for scrutiny 4 clear days before the meeting. It was a genuine mistake.

The public record shows that I have been accused of fraud by a councillor, an accusation that was unwarranted, totally unjustifiable, unacceptable, and is a stain upon my character. In the intervening time since the remark was made, or recorded, Cllr Kilby has made no attempt at an apology or expressed any indication of regret.

Colin Marks
30 November 2011

Colin Marks, Clerk

Agenda Item 11.231.3 APPENDIX C(2)

Document A

SALARY SEPTEMBER 2011		
Hours	Rate	Salary
39	10.20	£397.80

Timesheet & expenses							Postage & Stationery	cost	Incl VAT
SEPTEMBER 2011									
Date	Time	Actions	Mileage	Phone	mins	Printing \$			
01-Sep	2.0	admin							
02-Sep	5.0	Finalise agenda		RED/EHC/	47	120	Mail Agendas	£ 4.50	
03-Sep	1.5	post agenda notices	12						
04-Sep	2.0	admin							
05-Sep	3.0	Meeting Chairman	8	Mandy Irons	10				
06-Sep	1.0	admin							
07-Sep	2.0	MEADS: check cleaning needs*	9	Spar/EHC/	15		Key tags	£ 1.00	£ 0.16
08-Sep	1.0	post notices	10	HAPTC for advice	35	116	Ink cartridge	£ 17.74	
09-Sep	2.0	admin		Chairman/HAPTC/M. Cavill	90	4			
10-Sep	0.5	admin					Meads cleaning materials*	£ 12.69	
11-Sep	1.5	Notices/fix toilet roll holder/ deliver cleaning items to Mandy*	12	Michelle Cavill re Cricket/ broken toilet roll holder	7				
12-Sep	3.0	Notices	11						
13-Sep	3.0	Admin for planning application							
14-Sep	3.0	HAPTC Finance training course	47						
15-Sep	5.0	EHC Rural Conference	25	Chairman	40				
16-Sep	1.0	admin							
17-Sep	0.5	admin							
19-Sep	2.0	admin							
20-Sep	2.0	admin							
21-Sep	3.0	Meeting Chairman	8						
22-Sep	3.0	SLAA meeting, EHC	18						
23-Sep	2.0	admin							
26-Sep	1.0	admin							
27-Sep	3.0	Meads/RED/DEG	9						
28-Sep	3.0	EHAPTC meeting, Ware	12						
29-Sep	1.0	admin							
30-Sep	1.0	admin							

10

From: John Kilby [mailto: [REDACTED]]
Sent: 10 October 2011 18:19
To: RobbD
Subject: Parish Council

Hi Robbie

Having seen the breakdown of Colin's charges for September, I have the following queries regarding this amount which represents a whole year's clerk's fees for some small parishes:

- 1 I would like to know how many of the admin hours represent receiving telephone calls from councillors. Admin is not an adequate description.
- 2 Why has it taken 7 hours (3rd, 8th, 11th, 12th) to post notices in one week?
- 3 Have we instructed him to attend to the Meads Pavilion (for toilet roll holders)? I thought we agreed at an earlier meeting that these things would be done by councillors.
- 4 **Colin attended the EHC Rural Conference as Standon Councillor. He specifically did not include his presence as the Hornead clerk.**
- 5 Did we request and authorise Colin to attend the EHAPTC meeting at our expense? Did he represent Hornead or Standon?
- 6 Have we agreed £8 per month for broadband and £3 home as office?
- 7 Why does it take 5 hours to finalise the agenda?
- 8 Can we ask Colin to separate any costs for the Meads (which should be minimal) to general clerk work?

We hoped with Colin's extra efficiency that we would save money compared to the previous clerk, instead we are spending even more, which is completely unacceptable

John

Colin Marks, Clerk

Agenda item 11.231.3 APPENDIX C(2)

AMENDED 13 OCT 2011

Document C

SALARY SEPTEMBER 2011		
Hours	Rate	Salary
39	10.20	£397.80

Timesheet & expenses

SEPTEMBER 2011[illegible]

MEADS BREAKDOWN (INCL ABOVE)*				Broadband contribution at £8 per month	£ 8.00
Hours	3.5	10.20	£ 35.70	Space, lighting, heating & electricity at £3 per month	£ 3.00
Mileage	21.0	0.40	£ 8.40		
Cleaning supplies etc**			£ 12.69		
			£ 56.79		
**VAT included			£ -		

SUMMARY		
Mileage	£	58.40
Phone	£	19.52
Postage/Stationery	£	35.93
Broadband	£	8.00
Home office	£	3.00
		£ 124.85
Salary: 39 hours	£	397.80
Additional hours	£	132.60
Total	£	530.40

Additional hours worked September (over basic 39 hours)			
TOTAL	13.0	10.20	£132.60

Document D

Reply

RE: Parish Council - clerk financials

from:

to:

date: Tue, Oct 11, 2011 at 12:28 PM

subject: RE: Parish Council - clerk financials

Hi John

Thank you for your email below. You have reminded me that I need to circulate Colin's Contract of Employment to all. It is completely based on Caroline's and Marty's Contracts (the previous clerks).

I have spoken to Colin and he will answer the details as far as possible. I do not have any more detail than you on your points, beyond the following:

3. Cllr Ginn was elected to deal with Meads requirements but has decided only to report to the Council on this interest group. It was agreed that Colin would deal direct with Meads suppliers at our last meeting, 11.216.

4. Having spoken to Colin, this is an error which he will correct.

6. These were agreed with Caroline and are just repeated for Colin.

8. See bottom of detailed sheet.

As Colin is the first Clerk who has actually volunteered to provide this information, you must realise that Caroline also was paid for excess hours on Council business, mainly on Meads of course but also on additional time for seminars and courses as appropriate. I do feel that, from the time of the Annual Parish Council Meeting onwards, we have asked the Clerk to take a great deal of time seeking advice for the Council on issues peripheral to the normal Council requirements of previous administrations. However, it is Council business, whether or not we have had such difficulties before.

best regards

Robb

The Clerk was accused of fraud by Cllr Killey with regard to his expenses in PC business. RBA

11.231 FINANCE

1. The report of the Council's finances for the period 31 August to 30 September 2011 were received (Appendices A(1) and A(2)).

There was a discussion on the number of additional hours the Clerk had recorded and whether they could be justified. Concerns were raised by one Councillor that the Council would not be able to sustain that level of cost and it had been hoped by him that the new Clerk would be able to reduce previous clerk's additional costs or even reduce the basic hours contracted. The issue was highlighted because the Clerk had, on his own initiative, produced a daily activity log, which was appreciated at the last meeting. However, the consensus was that the basic time was fair and had not been an issue previously. It was accepted there had been a lot of extra work covered recently. A view was expressed that the Meads representative should sort out minor repair work there rather than pay the clerk to do it. It was agreed to monitor the situation and review in November.

ALL

Finance Summary:	£
Opening available balance 31/08/11:	11,414.50
Plus income to 30/09/11:	550.00
Less expenditure to 30/09/11:	<u>3,044.36</u>
Available to Council:	8,920.14
Plus unrepresented September cheque	<u>30.00</u>
(Reconciled to bank statement 309):	<u>8,950.14</u>

RESOLVED: That the Accounts Statement be accepted.

2. The Chairman reported that he had not completed the Expenditure against Budget report.

3. The list of orders for payment was presented. Concerns were raised about contract invoices that were not being submitted on a strictly monthly basis, eg for Meads maintenance and pitch preparation. This created cash flow issues.

RESOLVED: To monitor cash flow issues created by irregular bill patterns.

Clerk

The invoices presented were authorised and it was agreed to defer the signing of cheques to the end of the meeting (Appendices C, C1 and C2).

RESOLVED: To approve all invoices presented for payment.

Clerk

4. The BDO Audit Annual Return was submitted for approval.

RESOLVED: To accept and approve the Annual Return.

Clerk

The Clerk to display the requisite information on one Parish notice board for a minimum of 14 days.

HORMEAD PARISH COUNCIL

**Minutes of the Council Meeting held on Thursday
13 October 2011 in Hornead Village Hall at 8pm**

PRESENT: Cllr Robert Denham (RED), Chairman; Cllr David Ginn (DEG), Vice-Chairman; Cllr Geoff Abbey (GA); Cllr Elaine Harding (EH), Cllr J Kilby (JK), Cllr Brian Stone (BS); Cllr Elizabeth Collery (EC) following her co-option

Clerk: Colin Marks

Mrs Marty Kilby, resident and member of the Village Hall Management Committee (VHMC)

ACTION

11.223

Apologies for absence

1. Councillors: None

2. Other Councillor absences: None

3. Others: District Cllr Rose Cheswright; Reverend Carol Kimberley; PCSO Amanda Higham

11.224

Casual Vacancy

One application for the position had been received, from Mrs Elizabeth Collery. This was discussed and her co-option unanimously agreed.

Resolved: That Mrs Elizabeth Collery be co-opted to the Parish Council

Cllr Collery signed the Declaration of Acceptance of Office and the Register of Members' Interests and was then welcomed to the Council.

11.225

Declarations of Interest

Cllr Harding, Cllr Ginn and Cllr Kilby each declared a personal interest in respect of Hornead Village Hall.

Cllr Denham declared a personal interest in the Village School, being a governor.

Cllr Collery declared personal interests in matters relating to the Toddler Group, which she runs, and Leapfrogs pre-school, being a committee member. She declared a prejudicial interest in Planning Application 3/11/1430/FP Little Horneadbury Farm, which is adjacent to her property.

11.226

Minutes of Parish Council Meeting 8 September 2011

Two amendments to the Draft Minutes were made:

11.204: Cllr Abbey, Cllr Ginn and Cllr Harding requested the words "they all live very close to the Village Hall site" be deleted.

11.213.6, para 2: Cllr Ginn requested the words "needed to be trimmed" be removed.

Cllr Kilby asked to make a comment on the appended report by Cllr Stone; the Chairman said he should put it on the next agenda.

RESOLVED: That the Minutes of 8 September 2011 as amended be agreed and accepted as a true and accurate record of the meeting.
5 agreed, 2 abstained

DRAFT MINUTES, SUBJECT TO APPROVAL BY THE COUNCIL ON 8
DECEMBER

HORMEAD PARISH COUNCIL

Minutes of the Parish Council Meeting held on Thursday 10 November 2011 in Hornead Village Hall at 8pm

PRESENT: Cllr Robert Denham (RED), Chairman; Cllr David Ginn (DEG),
Vice-Chairman; Cllr Geoff Abbey (GA); Cllr J Kilby (JK), Cllr Brian Stone
(BS); Cllr Elizabeth Collery (EC)

Clerk: Colin Marks

PCSO Amanda Higham

ACTION

11.245 Apologies for absence

1. **Councillors:** Cllr E Harding (work)
2. **Other Councillor absences:** None
3. **Others:** District Cllr Rose Cheswright; Reverend Carol Kimberley;
Chrissie Withers

11.246 Declarations of Interest

Cllr Ginn and Cllr Kilby each declared a personal interest in respect of
Hornead Village Hall. Cllr Denham declared a personal interest in the
Village School, being a governor. Cllr Collery declared personal interests
in the Village Hall (joining the committee), the School, and possibly police
matters in respect of her employer, the CPS.

11.247 Minutes of Parish Council Meeting 8 September 2011

Amendments were made as follows:

- 11.230.1 Planning: 3/11/1430/FP: amend No Objection to No Comment
11.231.1 Finance: Cllr Ginn pointed out that Cllr Kilby's comment
regarding the Clerk's expenses was not minuted and asked that the
following be inserted: "The Clerk was accused of fraud by Cllr Kilby with
regard to his expenses on Parish Council business." A discussion
followed; neither the Clerk nor the Chairman had heard the remark, but
following a show of hands it was agreed that it had been said and should
be inserted between the 3rd and 4th sentences of the paragraph.
11.230.3 SLAA Report: Cllrs Stone said he thought the area of land
identified as the Village Hall site in the Clerk's report was in fact the
adjacent site of the farm barn and referred to a Call for Sites map. The
Clerk was adamant that the map produced at the SLAA meeting referred
to the Village Hall site. He was asked to provide a copy of the map for
councillors to inspect.

It was proposed the Minutes be accepted as amended; Cllr Ginn
requested a recorded vote.

**RESOLVED: By 4 votes to 2 that the Minutes of 13 October 2011,
as amended, be agreed and accepted as a true and accurate
record of the meeting.**

Agreed: Cllr Abbey, Cllr Collery, Cllr Kilby, Cllr Stone.

Opposed: Cllr Denham, Cllr Ginn

DRAFT MINUTES, SUBJECT TO APPROVAL BY COUNCIL
HORMEAD PARISH COUNCIL

**Minutes of the Parish Council Meeting held on Thursday
8 December 2011 in Hormead Village Hall at 8pm**

PRESENT: Cllr Robert Denham (RED), Chairman; Cllr David Ginn (DEG), Vice-Chairman; Cllr Geoff Abbey (GA); Cllr Elizabeth Collery (EC); Cllr Elaine Harding; Cllr John Kilby (JK)

Clerk: Colin Marks

PCSO Amanda Higham and one other PCSO
District Councillor Rose Cheswright and 4 other members of the public.

ACTION

11.268 Apologies for absence

- 1. Councillors:** None
- 2. Other Councillor absences:** None
- 3. Others:** County Cllr Jane Pitman

11.269 Declarations of Interest

Cllr Ginn and Cllr Kilby: personal interest in respect of the Village Hall; Cllr Abbey and Cllr Harding: prejudicial interest in respect of the Village Hall; Cllr Collery: personal interests in respect of the Village Hall, the School, and possibly police matters; Cllr Denham: personal interest in respect of the School.

11.270 Minutes of Parish Council Meeting 10 November 2011

There was a discussion following Cllr Kilby saying that he did not make the remark about the Clerk's expenses. However, four Councillors affirmed that he did. It was **RESOLVED by 5 votes to 1 that the Minutes of 10 November 2011 be agreed and accepted as a true and accurate record of the meeting.**

11.271 Minutes of Extraordinary Parish Council Meeting 17 November 2011

Following discussion, it was **RESOLVED by 3 votes to 1 (2 abstained) that the Minutes of 17 November 2011 be agreed and accepted as a true and accurate record of the meeting.**

11.272 Chairman's Announcements:

The Chairman had no announcements.

11.273 PCSO Report

PCSO Higham reported that for the period 10 November to 8 December no crimes were recorded in the parish. Four crimes were reported in the surrounding area, 3 involving cars and 1 a shed, but overall the area remains quiet. In the wider district there is an increase in thefts from white vans. The Chairman thanked her for attending to give the report.

Hormead Parish Council, Herfordshire

Local Authorities (Model Code of Conduct) Order 2007 No.1159

THE MODEL CODE OF CONDUCT
FOR PARISH AND TOWN COUNCILS

Part 1

General provisions

Introduction and interpretation

1.— This Code applies to **you** as a member of an authority.

(1) You should read this Code together with the general principles prescribed by the Secretary of State (see Annexure to this Code).

(2) It is your responsibility to comply with the provisions of this Code.

(3) In this Code—

“meeting” means any meeting of—

(a) the authority;

(b) any of the authority's committees or sub-committees, joint committees or joint sub-committees;

“member” includes a co-opted member and an appointed member.

(4) References to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2.— Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

- (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.— You must treat others with respect.

(1) You must not—

- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006^(*));
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be—
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4. You must not—

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority—
 - (i) act in accordance with your authority's reasonable requirements; and
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes).
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7. Paragraph 7 does not apply to your authority.

^a (*) 2006 c 3.

Part 2

Interests

Personal interests

8.— You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

(ii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9.— Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(1) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(2) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(3) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(4) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

Prejudicial interest generally

10.— Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(1) You do not have a prejudicial interest in any business of the authority where that business—

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
- (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
- (c) relates to the functions of your authority in respect of—
 - (i) this sub-paragraph does not apply to your authority;
 - (ii) this sub-paragraph does not apply to your authority;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

11. Paragraph 11 does not apply to your authority.

Effect of prejudicial interests on participation

12.— Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee; and

(b) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members' Interests

Registration of members' interests

13.— Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14.— Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(1) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(2) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Annexure - The Ten General Principles

The general principles governing your conduct under the *Relevant Authorities (General Principles) Order 2001* are set out below:

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

NOTE ON REMARK MADE BY CLLR JOHN KILBY

I am asked to recount what I heard at a Parish Council meeting on 13th October 2011 regarding remarks made by Cllr John Kilby in respect of an accusation of fraud against the clerk Mr Colin Marks.

I did hear Cllr Kilby say that Mr Marks had made a fraudulent claim or words to that effect. I do not recall the precise words used I am afraid. I believe his comment was in relation to a claim made for expenses which had in fact been incurred on behalf of another council and for which Mr Marks had apologised. On reflection I believe it may have been at a later stage in the council meeting than it appears in the minutes which I imagine you will already have a copy of. Further discussion took place about the Clerk's salary in his absence towards the very end of the meeting and it may well have been at that point that the word fraud was used. I suspect I am led to that conclusion because the next month's minutes record that neither the Clerk nor the Chairman heard the comment. You will have noted that the allegation of fraud did not appear in the original draft of the minutes of 13th October 2011 but was added at the next council meeting.

I do not think it was said more than once or dwelt upon as if it had been I am certain I would more readily recall the detail. It has not been repeated at any council meeting since although there have been further discussions about the Clerk's expenditure generally not least in the preparation of the budget. It is clear that Cllr Kilby believes that the Clerk's income and expenses are too high and feels that the councillors should take more responsibility for jobs that need doing. I mention that because despite ongoing discussions in a similar vein the allegation has not been repeated.

I have no note of any of the above and as this was my first parish council meeting everything was new to me and frankly a complete eye opener as there was a good deal of animosity and bad feeling generally between the councillors. Complaints had previously been made by Cllr Kilby against members of the council about not declaring interests; allegations had been made about Cllr Kilby incorrectly registering the Village Hall land and tensions were palpably running high. It was a very bad tempered meeting all round and anything that was said I do think needs to be analysed against that background.

I am sorry I cannot be more precise but I had literally only just been co-opted onto the Council – at that very meeting – and was not at all au fait with council business and procedure and had to take that on board as well as the content of discussions.

I do not know how far the complaint against Cllr Kilby goes but in my view Cllr Kilby often gets an unwarranted hard time on the council largely relating to his role as Chairman of the Village Hall Committee (which I also joined shortly after joining the Parish Council) which is endeavouring to get a new village hall built. The history is long and tortuous but I certainly do not think he deserves the opprobrium he has engendered in this regard. He has himself faced repeated accusations of dishonesty and unscrupulous behaviour in relation to his efforts which I as a fraud prosecutor do not believe to be borne out. However other councillors believe he has acted inappropriately particularly with regard to registering the land. Given that he has registered it with the Charity Commission, on their advice, such allegations are wrong in my opinion. I mention this because in the context of

everything that has been going on within the Parish Council since I joined it, the allegation that Mr Marks acted fraudulently was but a fragmentary moment. Of course any such allegations must be taken seriously and investigated properly but in my view Cllr Kilby's comment may appear more elevated and serious in the discussion of it now than it ever did at the time. That it was added to the minutes later does not necessarily reflect the tone at the time and may be a reflection more of the animus and the personalities involved.

Elizabeth Collery

17th January 2012

There was an item on the agenda on the 13 October (Item 11.244) to discuss and agree the Clerk's contract of employment.

The Clerk left the room.

There was quite a lot of discussion and Councillor Kilby was not happy about some of the Conditions of Contract.

Earlier in the meeting there had been discussion (under item 11.231) about the Clerks expenses for the previous month and Councillor Kilby had queried some of the details and the need for all the hours carried out by the Clerk.

The Clerk explained that he had attended a meeting relevant to the Parish the previous month and ,as our clerk , had initially claimed expenses.

I believe there had already been discussion between the Clerk and John Kilby (prior to the meeting) and the Clerk had already withdraw these expenses as he had initially attended the meeting as a Councillor of Standon PC.

John Kilby mentioned this again under item 11.244 saying that the Clerk had been fraudulent by initially including expenses for attending the meeting.

I hope my comments are helpful

Geoff Abbey

I was indeed a Hornead Parish Councillor and attended the meeting on 13th October 2011. My clear recollections are that the Clerk, Colin Marks, was asked to leave the room whilst we, the Council, discussed his Contract of Employment. During that discussion Councillor Kilby, who was not happy with some of the terms of the contract nor indeed the appointment of Colin Marks in the first place, considered that Mr Marks had intentionally overclaimed his expenses and that action was committing fraud.

Mr Kilby has a history of such behavior and I have personally been on the receiving end of untrue and unfounded accusations in the past leading to my resignation from the Council.

You may well be aware that there is a lot of controversy in Hornead at the moment regarding the Village Hall and this again is as a result of Mr Kilby's actions and behavior.

Action needs to be taken in order that there is no continuance of this.

Sorry I cannot recollect the exact words used by Councillor Kilby but have no doubt that he accused the Clerk of fraud

Brian Stone

I was present at that meeting on 13th October 2011 and those alleged remarks made by Councillor Kilby in relation to an accusation of fraud against the Clerk Colin Marks regarding his expense claim are correct I did hear it.

Elaine Harding

18.1.12

With reference to the parish council meeting on the 13th October

Yes i did hear Councillor Kilby accuse the clerk (Mr Marks) of fraud. When we come to discuss and agree the clerks expenses Mr Kilby brought up an item that wasn't on the amended agenda. He proceeded then to verberly attack the clerk and repeatedly accused him of fraud, over his expenses when he attended a meeting on council business.

The clerk informed us, that he had already informed the chairman before the meeting that he had made a error on his expenses. Mr Kilby knew about this before the meeting had taken place.

The meeting that the clerk attended was on behalf of Standon and Puckeridge Council, he did also report back on this meeting to the Hornead Parish council as well.

My view over the expenses Mr Marks made, was an mistake, and he was honest about this and informed the chairman and the councillors of his mistake.

Cllr David Ginn 19.1.12

The claim that I made disrespectful remarks was initiated by David Ginn who is running an on-going vendetta against the Village Hall Committee and myself as chairman in particular.

Subsequent minutes of the parish council record that neither the chairman Robbie Denham or the clerk Colin Marks heard me make any derogatory remarks at the meeting. The remark I made was in a frivolous manner and was that if this had been an MP's expenses he could have been accused of fraud, I did not accuse him of fraud directly.

The issue arose when I pointed out that the clerk had charged Hornead parish Council 5 hours plus petrol for attending a meeting which he had specifically attended as a Standon parish councillor. He was on the list of attendees at this meeting as a Standon parish councillor and confirmed to two previous Hornead clerks who were also attending the meeting that he was not representing Hornead parish council. Furthermore, Hornead parish council had not instructed him to attend on their behalf. He was therefore not entitled to charge Hornead parish council and after a weak attempt to justify the claim, he acknowledged that it was out of order and withdrew this item from his expenses.

I can provide copies of the parish council minutes and Mr Marks's original expense claim.

John D Kilby

23.1.12

As I didn't hear it, my information is based upon what councillors affirm was said. So in as simple a summary as I can:

1. The comment was reportedly made at the Parish Council meeting on 13 October.
2. My understanding from the discussion regarding approval of the Minutes is that it was made during Agenda item 11.231, when I was in the room and simply missed the comment in the hum-drum of heated debate.
4. If it was repeated during Agenda item 11.244, I was not in the room; I was invited to leave because the terms of my contract of employment were being discussed.
5. When approving the Minutes for that meeting on 10 November, a councillor (Ginn) requested the comment be recorded. You will see from the amended Minutes I submitted that the amendment was made to agenda item 11.231 Finance. The comment about the number of extra hours I had been required to work (and be paid for) was made by Cllr Kilby. The ensuing discussion was somewhat heated because other councillors did not agree with Cllr Kiby's premise that this was setting a pattern for future expenses levels, but rather accepted that the unusually high work load was in a limited context and would be reviewed at the next meeting. Since the matter was raised in that context, I understood the comment to have been made at that time.
6. When the amendment was proposed, Cllr Kilby did not attempt to deny he made the comment.
7. A recorded vote was requested for the approval of the Minutes to be amended. It was approved by 4:2. Cllr Kilby was among those who approved the amended Minutes. (Cllr Ginn, who proposed the amendment, voted against the approval of the Minutes. When subsequently questioned as to why he proposed an amendment and then did not approve the Minutes, he said that it was a different agenda item with which he disagreed and which he wanted to raise later. I mention this as clarification in case it appears in other testimony).
8. Subsequently, I understand that two councillors (Harding and Stone) say they heard the comment made during discussion on the final agenda item 11.244, the Clerk's Contract of Employment, during which I (and the public) left the room. Whether this was a repeat of the earlier comment, which would therefore have been said twice, I cannot say.
9. At the 8 December meeting, the amendments made in November were agreed by 5:1 to be an accurate record, although Cllr Kilby then denied having made the comment. Five councillors however, confirmed the record as accurate. I provided a draft of those Minutes with my complaint; I can confirm that at the 12 January PC meeting, the December Minutes were approved without amendment.

Colin Marks 19.1.12

EAST HERTS COUNCIL

STANDARDS SUB COMMITTEE - 18 DECEMBER 2012

REPORT BY THE MONITORING OFFICER

COMPLAINT AGAINST A DISTRICT COUNCILLOR

WARD(S) AFFECTED: NONE

Purpose/Summary of Report

- To consider complaints in respect of Councillor Michael Newman, a Member of East Herts District Council.

1.0 Background

- 1.1 The Council has received a complaint alleging that a District Councillor has breached the Authority's Code of Conduct. The Standards Sub-Committee will make a decision as to whether the complaint should be investigated.

- 1.2 Details of the complaint can be found in **Essential Reference Paper B**.

2.0 Further information

- 2.1 A copy of the Council's Code of Conduct is attached at **Essential Reference Paper C**.

3.0 Report

3.1 Assessment Criteria

- 3.2 The Council has agreed criteria to assess whether a complaint should be investigated. The criteria are set out below.

3.3 **Complaints which would not normally be referred for investigation**

1. The complaint is not considered sufficiently serious to warrant investigation; or

2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. It is about someone who is no longer a Councillor
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Council; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct.
11. Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

4.0 Action

4.1 The Assessment Sub-Committee can reach one of the following decisions in relation to the complaint:

- (1) to refer it to the Council’s Monitoring Officer for investigation
- (2) to take no action.

4.2 The Monitoring Officer has acknowledged receipt of the complaint and has notified the subject Member that a complaint has been

received.

- 4.3 The Sub-Committee is invited to consider and determine what action should be taken in respect of the complaint.

5.0 Implications/Consultations

- 5.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

Contact Officer: Simon Drinkwater- Director of Neighbourhood Services
01992 531405
simon.drinkwater@eastherts.gov.uk

Report Author: Simon Drinkwater

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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.
Consultation:	None
Legal:	The procedures are in accordance with the regulations.
Financial:	None
Human Resource:	None
Risk Management:	The case should be determined in accordance with the regulations having regard to the relevant guidance.

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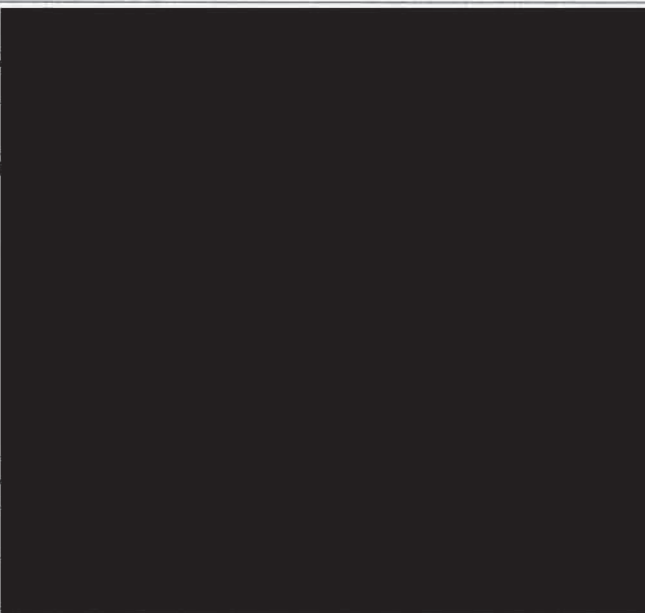


EAST HERTFORDSHIRE DISTRICT COUNCIL

COMPLAINT FORM : CODE OF CONDUCT FOR MEMBERS

A. Your details

1. Please provide us with your name and contact details. Anonymous complaints will only be considered if there is independent evidence to substantiate the complaint.

Title:	
First name:	
Last name:	
Address:	
Contact telephone:	
Email address:	
Signature:	
Date of complaint:	20.11.12

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

The following people may see this form:

- Monitoring Officer of the Council
- Standards Committee members
- Council's Independent Person(s)
- The subject member(s)
- the Parish Clerk (if applicable)

EAST HERTFORDSHIRE DISTRICT COUNCIL

If you have serious concerns about your name and a summary, or details of your complaint being released, please complete **Section C** of this Form and also discuss your reasons or concerns with the Council's Monitoring Officer.

EAST HERTFORDSHIRE DISTRICT COUNCIL

Please tell us which complainant type best describes you:

- ☒ A member of the public
- ☐ An elected or co-opted Member of the Council
- ☐ An independent member of a Standards Committee
- ☐ A Member of Parliament
- ☐ A Monitoring Officer
- ☐ Other council employee, contractor or agent of the Council
- ☐ Other ()

2. Equality Monitoring Form - please fill in the attached form.

B. Making your complaint

3. Please provide us with the name of the Member(s) you believe have breached the Council's Code of Conduct:

Title	First name	Last name
Mr	Michael	Newman

4. Please explain in this section (or on separate sheet(s)) what the Member is alleged to have done that you believe breaches the Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done, with dates / witnesses to substantiate the alleged breach.

It is also important that you provide all the evidence you wish to have taken into account. For example:

- You should be specific, wherever possible, about exactly what you are alleging the Member said or did. For instance, instead of writing that the Member insulted you, you should state what it was they said or did to insult you.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.

EAST HERTFORDSHIRE DISTRICT COUNCIL

- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

See attached document.

The evidence is in the webcast of the Planning Control Meeting of the 7th November 2012.

I would intend calling members of Hunsdon Parish Council at any hearing. Names and addresses will be provided.

I would also call:



EAST HERTFORDSHIRE DISTRICT COUNCIL

C. Confidentiality of complainant and the complaint details

Only complete this next section if you are requesting that your identity is kept confidential

5. In the interests of fairness and in compliance with the rules of natural justice, we believe Members who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against him / her. We are, therefore, unlikely to withhold your personal details or the details of your complaint unless you have good reasons to believe that you have justifiable grounds, for example:
- to believe you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with the same); or
 - may receive less favourable treatment from the Council because of the seniority of the Member against whom you are submitting a written complaint in terms of any existing Council service provision or any tender / contract that you may have or are about to submit to the Council.

Please note that requests for confidentiality or requests for suppression of the personal and complaint details will not automatically be granted. The Assessment Sub-Committee will consider the request alongside the substance of your complaint and the Monitoring Officer will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the opportunity, if you so wish, of withdrawing your complaint.

However, it is important to understand that - in exceptional circumstances, where the matter complained about is very serious - we may proceed with an investigation (or other action) and may have no choice but to disclose your personal and complaint details, because of the allegation(s) made, even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

I do not want my identity protected.

(Continue on separate sheet(s), as necessary)

EAST HERTFORDSHIRE DISTRICT COUNCIL

D. Remedy sought

7. Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

1. Councillor Newman to have no further involvement in the matter of any conditions associated with the Chapel at Hunsdon.

2. Councillor Newman to resign.

(Continue on separate sheet(s), as necessary)

E. Additional information

8. Complaints must be submitted in writing. This includes fax and electronic submissions. Frivolous, vexatious and politically motivated tit-for-tat complaints are likely to be rejected.
9. In line with the requirements of the Disability Discrimination Act 1995, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.
10. If you need any support in completing this form, please contact the Monitoring Officer as soon as possible.

Monitoring Officer Contact details:

The Monitoring Officer – Simon Drinkwater
East Herts Council
Wallfields
Pegs Lane
Hertford
SG13 8EQ

**COMPLAINT AGAINST COUNCILLOR MICHAEL NEWMAN
IN RELATION TO HIS REPRESENTATION AND ACTIONS CONCERNING THE
Chapel - Glebe Land, Acorn St. Hunsdon Planning Ref : 3/12/1440/FP which
was approved at the Planning Control Committee on Wednesday 7th November
(reference 5d)**

INTRODUCTION

I wish to register a complaint against Mike Newman Councillor regarding his conduct in public office in connection with the above planning application approved at Planning Control Committee on 7th November as evidenced by the video recording of the proceedings. I objected the proposals and I am of the view that Councillor Newman did not fairly represent both sides in this matter.

Councillor Newman gave a biased and partisan view of the application in favour of the application from the start of his presentation. He did not appear to reflect the views of the residents of Hunsdon in a balanced manner and did not acknowledge the strength of feeling against the proposal. He did not weigh up the pros and cons. He appeared not to have read the many submissions he received about the planning application and did not refer to them.

Councillor Newman declared at the planning meeting that his wife was a member of the church, whereas he was not. Councillor Newman failed to disclose that his wife is in fact an officer of the church, being a church warden and member of the PCC, which made the application and therefore his wife was in fact an applicant in this matter and had stated publically on a number of occasions her strong support for the proposal.

Councillor Newman had been asked to stand aside in view of an apparent conflict of interest, but declined to do so on the basis that a conflict of interest only related to financial matters. He had stated in public at a previous meeting that he would take a balanced view of the matter and would not be influenced by his wife's views and position in the church. This appears to lack veracity given his performance at the committee meeting of the 7th November.

Councillor Newman misrepresented the concerns in Hunsdon regarding the building of the proposed chapel. He drew attention to a public meeting in Hunsdon regarding the previous application for a Chapel where there was a 50/50, he briefly referred to the recent Parish meeting where the view was 90/10 against but failed to refer to the fact that the number of written submissions to the planning officer was in the ratio of 70/40 against.

In view of Councillor Newman's biased representation of support for the proposal and lack of proper consideration of all the issues he has been seen to act inappropriately and unfairly in public office.

Mr Newman misrepresented the support for a chapel replacement in the parish plan as a final document whereas it is work in progress. The document he referred to supports a replacement for the existing chapel and not a development of a faith facility with a large community facility on that specific site.

Although he addressed one aspect of the conclusion of the officers report relating to the compensatory amenity land he did not address the other and main issue of the scale, design

and appropriateness of the building or make reference to what the exceptional reasons were for the building on agricultural land or the need for a building of this size and place in replacing a much smaller building and having additional facilities as outlined by the planning officer.

Councillor Newman did not raise the concerns expressed about the lack of safety for children in respect of the compensatory amenity land.

The further concern is that Councillor Newman's views will have influenced his fellow Councillors in his role as a local Councillor for the area presenting them with a biased and inaccurate view in advising them about the application, leading them to making their decision.

Mr Newman should have registered a general interest in this matter and stood aside.

It is my contention that Mr Newman has broken the Councillors code of conduct and should stand aside as a Councillor and should have nothing further to do with the setting of any conditions in respect of this development.

It is of relevance that Hunsdon Parish Council passed a "vote of no confidence" in Councillor Newman at their meeting on the 19th November 2012.

EHDC STANDARDS FOR COUNCILLORS

Councillor Newman appears to have breached the East Herts Councillors Code of conduct (East Herts District Council (Code of Conduct Essential paper b) in the following areas:

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

In demonstrating such a partisan attitude Councillor Newman appears not to have acted in the public interest with the suspicion that his aim was to achieve material benefit for his wife in the form of provision of a new chapel for which she was in effect an applicant.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Councillor Newman has not been seen to be acting fairly and has brought the officer of Councillor into disrepute by appearing to favour his wife's views and position in the church above those of Hunsdon residents.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Councillor Newman did not present an objective view critical of the officers report and did not address all the relevant issues in the conclusion to the officers report.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Councillor Newman has not been accountable because he has not made his views on the application clear to his constituents or acknowledging that he had a conflict of interest which might affect his judgement as demonstrated at the Parish Council meeting ofDid not make views known prior to the meeting. Not seen to be fair and balanced. Had been asked to stand aside on this issue in view of interest but did not.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

See above

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Mr Newman did not fully declare the interest that his wife had in the application in that she is an official of Hunsdon PCC who made the application. Mr Newman stated purely that she was a parishioner whereas as an official and member of PCC she was in effect an applicant.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

By his actions Mr Newman has failed to support the principles in the code of conduct

Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.

Mr Newman has not demonstrated that he has put the interests of the majority of his constituents first in this matter.

Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.

Councillor Newman appears to have allowed himself to be unduly influenced by the views of his wife as an applicant in this matter which is demonstrated by is perceived lack of fairness and balance to his presentation and comments.

Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

Councillor Newman appears not to have made his decision on merit does not appear to have balanced up the pros and cons.

Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

Councillor Newman has therefore failed to provide leadership and has not championed the interests of the majority of the community

CONCLUSIONS:

Councillor Newman has failed his constituents in this matter and I have no confidence in him Councillor Newman should have no further involvement regarding the Chapel particularly in relation to any conditions made pending an investigation of his conduct.



ESSENTIAL REFERENCE PAPER 'C'

Code of Conduct

As a member or co-opted member of East Hertfordshire District Council I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

The Act further provides for registration and disclosure of interests and in East Hertfordshire District Council this will be done as follows:

INTERESTS

1 General

A Member, present at a meeting of the Authority, or any committee, sub-committee, joint committee or joint sub-committee of the Authority, with a Disclosable Pecuniary Interest (DPI) in any matter to be considered or being considered at a meeting:

- (a) must not participate in any discussion of the matter at the meeting;
- (b) must not participate in any vote taken on the matter at the meeting;
- (c) must disclose the interest to the meeting, whether registered or not, subject to the provisions of section 32 of the Localism Act 2011;
- (d) if the interest is not registered and is not the subject of a pending notification, must notify the Monitoring Officer of the interest within 28 days;
- (e) must leave the room while any discussion or voting takes place.

2 Register of interests

Any interests notified to the Monitoring Officer will be included in the register of interests.

A copy of the register will be available for public inspection and will be published on the authority's website.

3 Sensitive interests

Where you consider that disclosure of the details an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the

interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

OTHER

As a Member of East Hertfordshire District Council, my conduct will in particular address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the Authority's area or the good governance of the authority in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it

- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.