

Hertfordshire County Council (the 'Council')

Complaints Procedure relating to complaints that members of the Council have failed to comply with the Council's Code of Conduct for Members

Context

- 1.1 This document sets out how complaints that an elected or co-opted member of the Council has failed to comply with the Code of Conduct for Members (the 'Code of Conduct') can be made, and how the Council will deal with allegations of a failure to comply with the Code of Conduct.
- 1.2 The Council's Chief Legal Officer as monitoring officer for the Council is responsible for the administration of the procedures for dealing with complaints against members and also for considering complaints when they are first made to the Council.
- 1.3 In compliance with the Localism Act 2011 the Council has appointed an Independent Person whose views will be sought by the Chief Legal Officer on the action that he/she proposes to take following receipt of a complaint. The Independent Person's views must also be sought by the Council before it takes a decision on an allegation which it has decided to investigate and may be sought by a member against whom an allegation has been made.

2. The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members, which is available for inspection on the Council's website and on request from quentin.baker@hertfordshire.gov.uk .

3. Making a complaint

- 3.1 If you wish to make a complaint, please either (i) complete the complaints form on the Council's website <http://www.hertsdirect.org/your-council/councillors/complaintsagainstmembers> or (ii) email quentin.baker@hertfordshire.gov.uk or (iii) write to:
Quentin Baker,
Chief Legal Officer,
Hertfordshire County Council
County Hall,
Hertford,
SG13 8DE
- 3.2 In order to ensure that we have all the information which we need to be able to process your complaint, it is helpful if you complete the complaints form on the Council's website or the hard copy form which is available from the Chief Legal Officer.

- 3.3 Please provide us 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 Chief Legal Officer will consider your request and if he/she agrees to your request we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.
- 3.4 The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.5 The Chief Legal 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.
- 3.6 A Complaints Procedure Flowchart is annexed at Appendix 1 for your assistance

4. Will your complaint be investigated?

- 4.1 The Chief Legal Officer will review every complaint received and, will consult with the Independent Person before taking one of the following decisions:
 - 4.1.1 to take no action
 - 4.1.2 to take action other than an investigation (e.g. to ascertain whether the member may be willing to apologise, undergo training or undergo mediation)
 - 4.1.3 to require an investigation
 - 4.1.4 to refer the complaint to the Standards 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. Not all complaints will be passed for action or investigation.
- 4.3 Where the Chief Legal Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Chief Legal Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed.
- 4.4 In appropriate cases, the Chief Legal Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member offering an apology, or other remedial action by the Council. Where the member or the Council make a reasonable offer of informal resolution, but you are not

willing to accept the offer, the Chief Legal Officer will take account of this in deciding whether the complaint merits further investigation.

- 4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Chief Legal Officer may call in the Police or other regulatory agencies.

5. Procedure if complainant not satisfied with a decision not to investigate

- 5.1 If the Chief Legal Officer decides to take no action in relation to your complaint then you can ask that your complaint be referred to the Chief Executive and Director of Environment for re-consideration. You should do this in writing and within 28 working days of receipt of the letter from the Chief Legal Officer informing you of the decision to take no action.
- 5.2 The Chief Executive and Director of Environment will consider your request for a re-consideration of the decision to take no action in consultation with the Group Leaders at the Council. Such re-consideration will normally take place within 28 working days of receipt of your request.
- 5.3 The Chief Executive and Director of Environment will write to you informing you of his decision on your request.

6. How is the investigation conducted?

- 6.1 Where it is decided that a complaint should be investigated, the Chief Legal Officer will arrange for an investigation to be carried out.
- 6.2 The Investigating 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.
- 6.3 The Investigating 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 Chief Legal Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.
- 6.4 At the end of his/her investigation, the Investigating 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.

6.5 The Investigating Officer may or may not amend the Investigation Report in the light of representations received. Alternatively, the Investigating Officer may in his or her sole discretion proceed to a final report.

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

7.1 If an Investigating Officer has been appointed the Chief Legal Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Chief Legal Officer will write to you and to the member concerned notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report.

7.2 If an Investigating Officer has been appointed and if the Chief Legal Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

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

8.1 If an Investigating Officer has been appointed the Chief Legal Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Committee or Sub-Committee or in consultation with the Independent Person seek an informal resolution.

8.1.1 Informal Resolution

The Chief Legal 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 Council. If the member complies with the suggested resolution, the Chief Legal Officer will report the matter to the Standards Committee for information, but will take no further action.

8.1.2 Hearing

If the Chief Legal Officer considers that informal resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Chief Legal Officer will report the Investigation Final Report to the Standards Committee or 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.

At the hearing, the Investigating Officer or the Chief Legal Officer will present her/his 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 Chief Legal Officer may ask you as the complainant to attend and give evidence to the Committee or Sub-Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Committee or Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Committee or 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 Chair will inform the member of this finding and the Committee or Sub-Committee will then consider what action, if any, the Committee or Sub-Committee should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Committee or Sub-Committee will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

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

- 9.1 The Council has delegated to the Standards Committee or Sub-Committee such of its powers 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:-
- 9.1.1 Report its findings to Council for information;
 - 9.1.2 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - 9.1.3 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - 9.1.4 Instruct the Chief Legal Officer to arrange training for the member;

- 9.1.5 Remove from all outside appointments to which he/she has been appointed or nominated by the Council
- 9.1.6 Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- 9.1.7 Exclude the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings
- 9.1.8 Request that the member provides an apology
- 9.2 The Committee or Sub-Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

10. What happens at the end of the hearing?

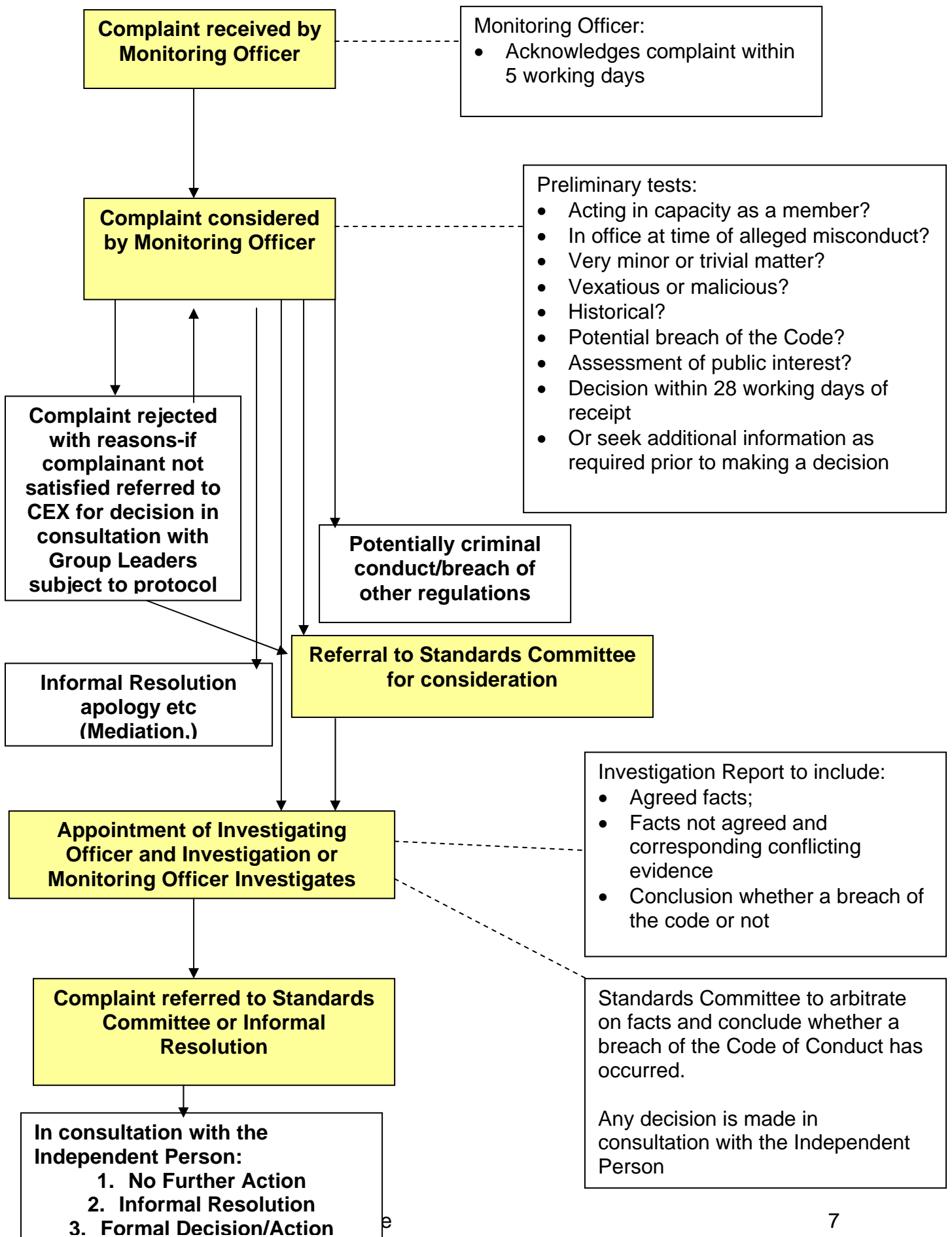
- 10.1 At the end of the hearing, the Chair will state the decision of the Standards Committee or Sub-Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Committee or Sub-Committee resolves to take.
- 10.2 As soon as reasonably practicable thereafter, the Chief Legal Officer shall prepare a formal decision notice in consultation with the Chair of the Committee or Sub-Committee, and send a copy to you, to the member make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

11. Appeals

- 11.1 There is no right of appeal for you as complainant or for the member against a decision of the Chief Legal Officer, the Chief Executive and Director of Environment or of the Standards Committee or Sub-Committee.
- 11.2 If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

August 2012

Appendix 1 – Complaints procedure flow chart



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 Member of the Council
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 Standards Committee; 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

Complaints which may be referred to the Standards Committee

1. It is serious enough, if proven, to justify the range of actions available to the Standards Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation.
2. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Chief Legal Officer and it would be difficult for the Chief Legal Officer to investigate; or

3. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Chief Legal Officer to investigate
4. Such other complaints as the Chief Legal Officer considers it would not be appropriate for him/her to investigate

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and members' time. This is an important consideration where the complaint is relatively minor.

