

**Hertfordshire County Council
Complaints Procedure for handling allegations that Members of the
Council have breached the Council's Code of Conduct for Members**

1 Context

- 1.1 This document sets out the process by which allegations that an elected or co-opted Member of Hertfordshire County Council ("the Council") has failed to comply with the Council's Code of Conduct for Members ("the Code") are handled.
- 1.2 The Council's Chief Legal Officer is responsible for the administration of the procedures for dealing with complaints against Members of the Council.

Independent Person

- 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 the initial assessment of a complaint. The Independent Person's views must also be sought by the Council before it makes a decision on a complaint which it has decided to investigate. A Member against whom a complaint has been made ("the Subject Member"), may also seek the views of the Independent Person.

2. The Code of Conduct

- 2.1 The Council has adopted the Code, which is available for inspection on the Council's website or on request from the Chief Legal Officer via email:
quentin.baker@hertfordshire.gov.uk

3. Making a complaint

- 3.1 Anyone wishing to make a complaint is requested to either: -
- (i) complete the complaints form on the Council's website
<https://www.hertfordshire.gov.uk/About-the-council/Complain-or-comment/Make-a-complaint.aspx>, or
 - (ii) submit a written complaint by email to
quentin.baker@hertfordshire.gov.uk

or post 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 a complaint, it is helpful if Complainants use the complaints form which is available on the Council's website.
- 3.3 Complainants are requested to provide their name and a contact address or email address, so that we can acknowledge receipt of the complaint and provide updates on its progress.
- 3.4 In the interests of fair process, the identity of the Complainant would normally be disclosed to the Subject Member along with details of the alleged breach. However, if the Complainant would prefer to keep their name and address confidential, they are requested to indicate this in the space provided on the complaint form and provide supporting reasons. The Chief Legal Officer will consider the request and may in appropriate circumstances agree to withhold the Complainant's name and address from the Subject Member.
- 3.5 The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.6 The Chief Legal Officer will acknowledge receipt of a complaint within 5 working days of receiving it and will keep the Complainant Informed of the progress of their complaint.
- 3.7 A Complaints Procedure Flowchart is annexed at **Appendix 1**.

4. Initial Assessment of Complaint

- 4.1 The Chief Legal Officer will review all complaints received by the Council and shall, in consultation with the Independent Person, undertake an initial assessment of the complaint to determine firstly, whether the complaint is admissible and if so, to decide whether: -
 - a) it warrants referral for investigation or;
 - b) it may be suitable for alternative resolution without investigation, (e.g. apology, mediation, training) or;
 - c) it does not warrant any further action;
 - d) it should be referred to the Standards Committee for consideration.
- 4.2 The initial assessment will normally be completed within 28 working days of receipt of the complaint. When considering your complaint the Chief Legal Officer and Independent Person will have regard to the assessment criteria set out in Appendix 2 to this document.
- 4.3 Once the Chief Legal Officer has made a decision, he/she will inform the Complainant and the Subject Member of his/her decision and their reasons.

Alternative Dispute Resolution

- 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 Subject Member offering an apology, or other remedial action.

Where the Subject Member or the Council make a reasonable offer of informal resolution, but the Complainant isn't willing to accept the offer, the Chief Legal Officer may take this into account in deciding whether the complaint warrants investigation.

- 4.5 If a complaint alleges criminal conduct or breach of other regulation by any person, the Chief Legal Officer may refer the matter to the Police or other regulatory agencies.

5. How is the investigation conducted?

- 5.1 Where it is decided that a complaint should be investigated, the Chief Legal Officer will arrange for an Investigation to be carried out.
- 5.2 The Investigating Officer will decide whether he/she needs to interview the Complainant to understand the nature of the complaint and in order that they are able to explain their understanding of events.
- 5.3 The Chief Legal Officer will write to the Subject Member to provide him/her with a copy of your complaint and invite them to provide their explanation of events. The Complainant will also be asked to identify relevant documents and suggest potential witnesses who may need to be interviewed. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Chief Legal Officer may withhold your name and address from the information given to the Subject Member, or delay notifying the Subject Member until the investigation has progressed sufficiently.
- 5.4 At the end of his/her investigation, the Investigating Officer will produce a draft report ("the Draft Investigation Report") and will send copies of the Draft Investigation Report, in confidence, to the Complainant and Subject Member to give them both an opportunity to comment on the findings.
- 5.5 The Investigating Officer may amend the Investigation Report in the light of representations received and produce a Final Investigation Report. Alternatively, the Investigating Officer may in his or her sole discretion proceed directly to a Final Investigation Report.

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

- 6.1 If an Investigating Officer has been appointed and submitted a Final Investigation Report, the Chief Legal Officer, in consultation with the Independent Person, shall review the Final Investigation Report and, if satisfied that it is sufficient, the Chief Legal Officer will notify the Subject Member and Complainant of the decision and provide a copy of the Final Investigation Report.

7. 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?

- 7.1 If the Investigating Officer concludes that there is evidence of a breach of the

Code the Chief Legal Officer, in consultation with the Independent Person, will either send the matter for a hearing before the Standards Committee or seek an informal resolution if they considered that to be appropriate.

Local Resolution

- 7.2 The Chief Legal Officer and the Independent Person may consider that the matter can be resolved without the need for referral to a hearing. Such resolution may include the Subject Member accepting that his/her conduct breached the Code and offering an apology, or other remedial action by the authority. If the Subject Member complies with the suggested resolution, the Chief Legal Officer will report the matter to the Standards Committee for noting, but will take no further action.

Local Hearing

- 7.3 If the Chief Legal Officer and Independent Person consider that local resolution is not appropriate or is impossible to achieve, the Chief Legal Officer will submit the Investigating Officer's report to the Standards Committee in order for it to conduct a local hearing to decide whether the Subject Member has failed to comply with the Code and, if so, whether to take any action in respect of the finding.

In summary, the Chief Legal Officer will conduct a "pre-hearing process", requiring the Subject Councillor and Complainant to give his/her response to the Investigating Officer's report, in order to identify the issues which are likely to be agreed and disputed at the hearing. The Chairman of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary, and make representations to substantiate his/her conclusion that the Subject Member has failed to comply with the Code. For this purpose, the Investigating Officer may ask the Complainant to attend and give evidence to the Hearings Panel.

The Subject Member will have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel, in their defence. The Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that: -

- i) the Subject Member didn't breach the Code and dismiss the complaint.
- ii) the Subject Member breached the Code, in which case the Chairman will inform the Subject Member of the finding and the Hearings Panel will then consider what sanction or action, if any, should be imposed. Before issuing a decision on sanction the Hearings Panel will consult the Independent Person and give the Subject Member an opportunity to make representations.

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

- 8.1 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 Committee/Sub-Committee may: -

- 8.1.1 Report its findings to Council for information;
 - 8.1.2 Recommend to the Subject Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council or Cabinet Panels;
 - 8.1.3 Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - 8.1.4 Instruct the Chief Legal Officer to arrange training for the Subject Member;
 - 8.1.5 Remove from all outside appointments to which the Subject Member has been appointed or nominated by the Council
 - 8.1.6 Withdraw facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
 - 8.1.7 Exclude the Subject 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; or
 - 8.1.8 Request that the Subject Member provides an apology.
- 8.2 The Committee or Sub-Committee has no power to suspend or disqualify the Subject Member or to withdraw members' or special responsibility allowances.

9. What happens at the end of the hearing?

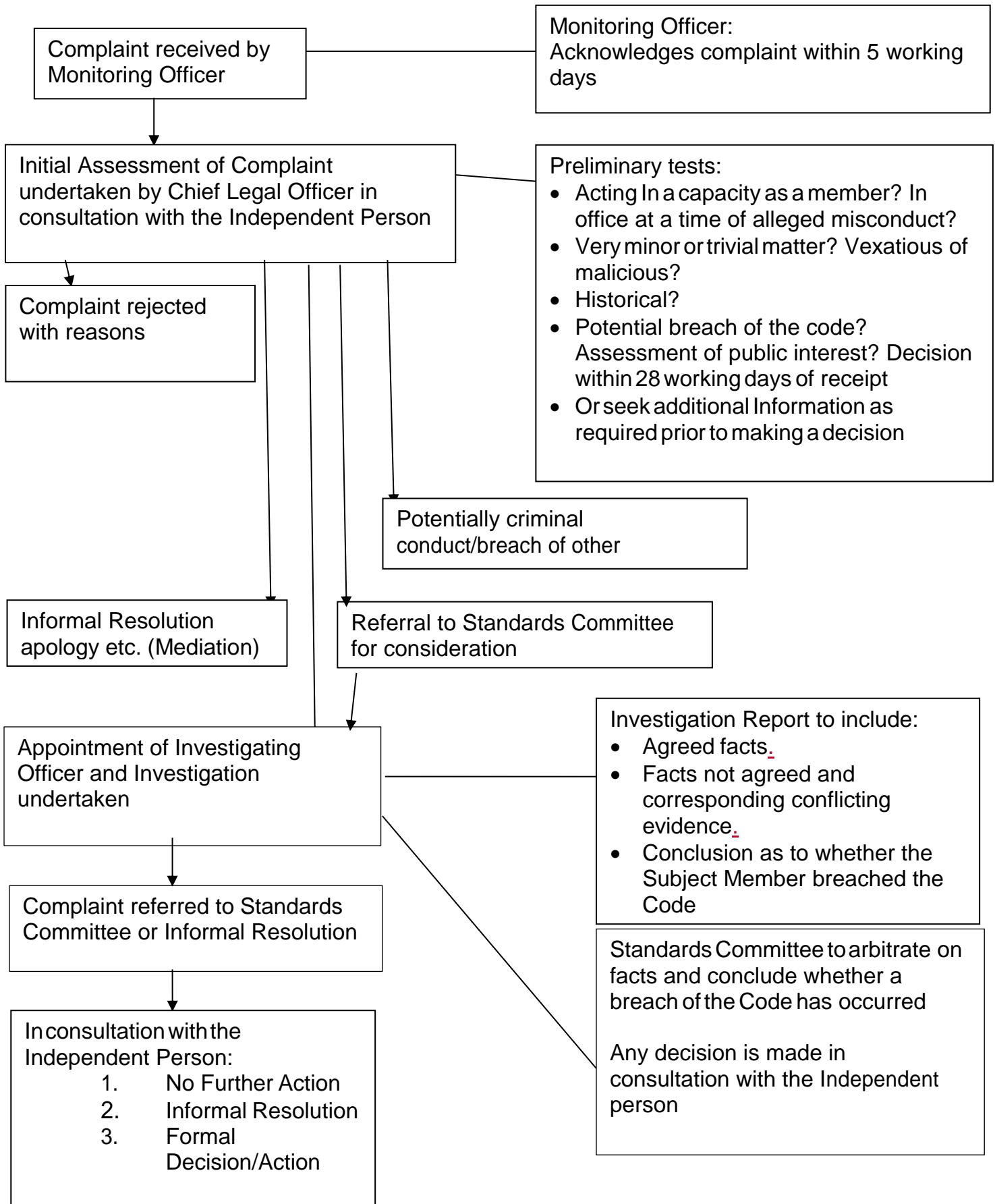
- 9.1 At the conclusion of the hearing, the Chairman will announce the decision of the Standards Committee as to whether the Subject Member breached the Code and if so what sanctions or actions the Standards Committee consider appropriate.
- 9.2 As soon as reasonably practicable thereafter, the Chief Legal Officer shall prepare a formal decision notice in consultation with the Chair of the Standards Committee and send copies to the Subject Member and Complainant. The decision notice will also be published on the Council's website and reported to the next meeting of the Standards Committee.

10. Appeals

- 10.1 There is no right of appeal for the Complainant or the Subject Member in respect of an initial assessment decision of the Chief Legal Officer or a decision of the Standards Committee or sub-committee.

10.2 If a Complainant feels that the Council has failed to deal with their complaint properly they may make a complaint to the Local Government Ombudsman or make an application to the High Court.

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; 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; or
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; or
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 Standards Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code; or
11. 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; or
3. 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

4. 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; or
5. 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.