

ESSENTIAL REFERENCE PAPER 'D'

Complaints Procedure

1.0 Context

- 1.1 These "Arrangements" set out, as required by law, how to 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 describe how the Authority will deal with such complaints.
- 1.3 Such arrangements must provide for the Authority to appoint at least one "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, again as required by law, a Code of Conduct for Councillors, which is available on the Authority's website and on request from Reception at the Council Offices.
- 2.2 Each Town or Parish Council is also required to adopt a Code of Conduct. Most of the councils of towns and parishes in East Herts have adopted a Model Code that differs only in detail from that adopted by the District Council. The Model Code, together with a list of those local councils that have adopted it, is on the Authority's website and is available from the Council Offices. Otherwise, potential complainants should either look on any website operated by the Town or Parish Council concerned or ask the Town or Parish Clerk to allow sight of the Town or Parish Council's Code of Conduct.

3.0 Making a complaint

- 3.1 In order to provide all the information necessary to process a complaint, a complainant should complete and send in the complaint form, which can be downloaded from the Council's website and is available on request from the Reception at the Council Offices. It can also be obtained by

writing or telephoning the Council's Deputy Monitoring Officer (Jeff Hughes) at:

East Herts Council Offices, Wallfields, Pegs Lane, Hertford SG13 8EQ (Tel: 01279 655261)

The form is accompanied with detailed advice on how to fill it in. If the complainant wants his or her name kept in confidence, the form provides for that to be requested. The Monitoring Officer, who is a senior officer of the Authority with responsibility for administering the system in respect of complaints of Member misconduct, will consider the request and, if granted, the complainant's name will not be disclosed, without prior consent, to the Member who is the subject of the complaint (the "subject Member") or to anyone not directly involved in the processing of the complaint. If the complainant has serious concerns, on grounds, for example, of victimisation or intimidation, the Council has a 'whistle-blowing' procedure that offers a high degree of confidentiality [REFERENCE].

- 3.2 The Authority does not normally pursue anonymous complaints unless clear factual evidence is provided of a breach of the Code of Conduct.
- 3.3 The Monitoring Officer will acknowledge receipt of a complaint within 2 working days of receiving it, and will keep the complainant informed of the progress of the complaint.
- 3.4 The Complaints Procedure Flowchart is annexed at Appendix 1.

4.0 Will your complaint be investigated?

- 4.1 The Monitoring Officer will review every complaint received, to establish that the matter is within the jurisdiction of the Standards Committee. If a complaint appears to disclose 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. If, for any other reason, the complaint is not appropriate to be dealt with by the Council's Standards Committee, it will be directed into whichever procedure is available, if there is one, and the complainant will be told.
- 4.2 The subject Member will normally receive details of the complaint, including the name of the complainant (unless the Monitoring Officer has agreed not to disclose the complainant's name). The subject Member will be given the opportunity to respond to the complaint. In exceptional

cases, where disclosure of details of the complaint to the Member might prejudice the investigation of the complaint, because, for example, evidence might be destroyed, the Monitoring Officer may delay notifying the Member until the investigation has progressed sufficiently. The complaint, together with any response from the subject Member, 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 summarily dismissed, or, if there appears to be evidence of a significant breach of the Code, referred to the Monitoring Officer with a recommendation for formal investigation or for other specified action. Where the Sub-Committee requires additional information in order to make a recommendation, the Monitoring Officer may refer back to the complainant or to the subject Member for such information.

4.3 In appropriate cases, there may be a decision to attempt to resolve the complaint informally, without the need for a formal investigation. Such informal resolution might, for example, involve the Member accepting that his/her conduct was unacceptable and offering an apology, or the Sub-Committee might recommend other remedial action by the Authority, such as the issue of a caution by the Monitoring Officer. Where the Member or the Authority makes a reasonable offer of informal resolution, but the complainant is not willing to accept the offer, the Sub-Committee will take account of this in deciding whether the complaint merits further investigation. If the subject Member refuses to co-operate with the attempt at informal resolution, the complaint may be referred for formal investigation and a further complaint of a breach of the Code may also be considered.

4.4 Unless the complaint is complicated, the expectation is that the assessment will be completed and the recommendation notice issued within 28 days of receipt of the complaint.

5.0 How is a formal investigation conducted?

5.1 The Council has adopted a procedure for the formal investigation of misconduct complaints, which is attached as Appendix 3 to these arrangements.

5.2 If the Standards Committee decides that a complaint merits formal investigation, the Monitoring Officer will normally 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 will decide whether he/she needs to meet or speak to the complainant to understand the nature of the complaint, to gain a fuller understanding of events and to identify what documents need to be seen and who needs to be interviewed.
- 5.3 The Investigating Officer will normally contact the subject Member (who will already have a copy of the complaint), and ask the Member to provide his/her explanation of events, and to help further identify what documents may be material and who needs to be interviewed.
- 5.4 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 the complainant and to the Member concerned, to give the protagonists an opportunity to identify anything in that draft report which they disagree with or which they consider requires more consideration.
- 5.5 Having received and taken account of any comments on the draft Investigation Report, the Investigating Officer will send his/her final report to the Monitoring Officer.
- 5.6 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.
- 6.0 What happens to the Investigating Officer’s Final Report, once cleared by the Monitoring Officer?**
- 6.1 The Monitoring Officer will submit the Investigation Report to the Sub-Committee which may either dismiss the complaint summarily if the investigation concludes there is inadequate evidence of a breach of the Code or may conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to recommend any action in respect of the Member.
- 6.2 The Council has agreed a procedure for hearing complaints, which is attached as Appendix 4 to these arrangements.
- 6.3 At the hearing, which will normally be held in public, the Investigating Officer or the Monitoring Officer will present the investigation report, call any necessary witnesses and make representations to substantiate the report's conclusions. For this purpose, the Investigating Officer or

Monitoring Officer may ask 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.

- 6.4 The Sub-Committee may then 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.

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

- 7.1 The Sub-Committee may make recommendations to take such actions in respect of an individual Member as are within the Council's power and may be appropriate to promote and maintain high standards of conduct. Accordingly the Sub-Committee may recommend:-
- 7.2
- 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) and other bodies, subject to statutory and constitutional requirements;
 - iv. Press release or other appropriate publicity
- 7.3 The Sub-Committee may also consider systemic issues relevant to the case, such as a need for training or the issuing of guidance.

8.0 What happens at the end of the hearing?

- 8.1 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.
- 8.2 As soon as reasonably practicable thereafter, the Monitoring Officer will, if the subject Member's authority is the District Council, prepare a report to

Council which 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.

- 8.3 If the subject Member's authority is a Town or Parish Council, the Monitoring Officer will send the report to the clerk of that Council and the clerk will submit the report for the Council's consideration and report back to the Monitoring Officer that Council's decisions.

9.0 Who are the Standards Sub-Committee?

- 9.1 It is a Sub-Committee normally comprising External Members, that is, persons appointed by the Council to the Standards Committee with no political allegiances or other involvement in or with the Authority or with any Town or Parish council in the District.
- 9.2 If the Councillor complained about is a Member of a Town or Parish Council a District Councillor who is a member of the Standards Committee will be invited to attend the Sub-Committee. If the Councillor complained about is a Member of the District Council, a Town or Parish Councillor who is a member of the Standards Committee will be invited to attend the Sub-Committee.

10.0 Who is the Independent Person?

- 10.1 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. He or she is required by law to have no recent involvement with the Council or with any town or parish council either personally or by being related to a member or officer. In addition to the role of the Independent member in the arrangements set out above, he or she will also act as Assessor to the Council and advise on any recommendation or advice to Council from the Standards Committee.

11.0 Revision of these arrangements

- 11.1 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.

12.0 Appeals

- 12.1 There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer or of the Sub-Committee.
- 12.2 A complainant who considers that the Authority has failed to deal with his or her complaint properly 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 formal investigation

1. The complaint is not considered sufficiently serious to warrant investigation or there is simply no case to answer;
2. It appears that the matter is not within the Standards Committee's jurisdiction, since for example, it relates to the Councillor's private life or is about dissatisfaction with a Council decision;
3. There is insufficient information available for a referral; or
4. The complaint has not been received within 1 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc.
5. 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

Appendix 4

Complaints Standards Sub-Committee Procedure