

COMPLAINTS AGAINST DISTRICT, PARISH AND TOWN COUNCILLORS: COMPLAINT HANDLING PROCEDURE

1. CONTEXT

Under Section 28 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 parish/town council (the “Subject Member”) within the authority’s area has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

2. THE CODE OF CONDUCT

The Council has adopted a Code of Conduct for Members, which is published on the Council’s website and available for inspection on request from the Council’s Offices (see address below).

Each parish/town council is also required to adopt a Code of Conduct. If you wish to inspect a parish/town council’s Code of Conduct, it should be available on any website operated by the parish/town council or request the Clerk to allow you to inspect a copy at their offices.

3. MAKING A COMPLAINT

If your complaint is about a district councillor, you should submit your complaint to the Monitoring Officer preferably by email to CodeofConduct@huntingdonshire.gov.uk.

If you need to make a complaint by post, please write to:

The Monitoring Officer
Huntingdonshire District Council
Pathfinder House
St Mary’s street
Huntingdon
PE29 3TN

If your complaint is about a parish/town councillor, you should submit your complaint directly to the clerk of the relevant council in order to allow the parish/town councillor to seek to resolve the complaint locally.

You must provide your name and a contact address or email address, so that you can be kept informed of the complaint’s progress.

As a matter of fairness, the Subject Member will be told who has complained about them and receive details of the complaint.

However, **in exceptional circumstances**, you may ask for your identity and any identifying details in your complaint to be withheld. You must provide reasonable grounds for doing so e.g. evidence to suggest that you or any witness relevant to the complaint may be at risk of physical harm or intimidation, or their employment may be jeopardised if their identity is disclosed.

If your request for anonymity is refused, you will be offered the option to withdraw the complaint, rather than proceed with your identity being disclosed.

4. SCOPE OF COMPLAINTS

The Code of Conduct does not apply to Councillors 24 hours a day, 7 days a week, but only covers Councillors when they are acting in their official capacity as a Member or giving the impression that they are. The Code does **NOT** apply when acting in their capacity as a private individual. For example, if you live next to a Councillor and your complaint relates to a neighbour dispute, then the Councillor will not be subject to the Code of Conduct. If someone who happens to be a Councillor, is offensive or abusive in their private life, they are not covered by the Code of Conduct.

In addition, it is not the purpose of the Code to restrict political debate. The requirements of the Code of Conduct have to be assessed against Article 10 of the European Convention on Human Rights – the right to freedom of expression. In a High Court case relating to this issue, the Judge stated that the “traditions of robust debate” may include “some degree of lampooning of those who place themselves in public office”, which would necessarily require politicians to have “thicker skins than others”.

Furthermore, complaints can only be dealt with under the Code of Conduct procedure where they relate to the alleged misconduct of an individual Councillor, **NOT** against a decision made by the Council, the parish/town council or any of its Committees.

5. COMPLAINT PROCESS

If you have complained about a district councillor, the Monitoring Officer will acknowledge receipt of your complaint (normally within five working days of receiving it) and will keep you informed of the progress of your complaint. The complainant has primary responsibility for providing relevant, supporting evidence, but if the Monitoring Officer considers that the evidence is inadequate or unclear, they may require the complainant to provide further evidence before proceeding with the complaint.

If you have complained about a parish/town councillor, the clerk of the relevant council will contact you to explore whether a local resolution of your complaint is possible. Complaints about parish/town councillors which are submitted directly to the Monitoring Officer will normally be referred to the relevant council in the first instance to see if they can achieve a local resolution of the matter. Where a local resolution is not possible (for whatever reason), your complaint will be referred to the Monitoring Officer for assessment.

Within five working days of receiving a valid Code of Conduct complaint about a district councillor, or if the complaint relates to a town or parish councillor and a satisfactory local resolution has not been achieved, the Monitoring Officer shall:

- (a) contact the subject Member to provide a copy of the complaint and evidence; and
- (b) ask the subject Member to provide a written response to the complaint within ten working days.

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of your complaint and the subject Member's response. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

6. CRITERIA FOR ASSESSMENT

The cost of carrying out a formal investigation and hearing can be significant. Taking account of the limited potential remedies available in the event of a breach of the Code of Conduct ultimately being found, only serious allegations which raise matters of real public interest are likely to be referred for investigation.

The Monitoring Officer has the discretion not to take any further action on complaints, which will generally be the case for complaints which:

- (a) contain no or insufficient evidence to demonstrate a breach of the Code of Conduct;
- (b) are capable of being resolved informally or by alternative means;
- (c) relate to what a councillor said during a political debate (including online), particularly where the complaint is submitted by another councillor;
- (d) do not allege serious misconduct, or are malicious or tit for tat;
- (e) are anonymous, unless accompanied by a request for anonymity with sufficient justification;
- (f) where an investigation would not be in the public interest or the matter would be unlikely to warrant any sanction;
- (g) where a substantially similar complaint has previously been considered and no new material evidence has been submitted;
- (h) relate to allegations concerning the Subject Member's private life;
- (i) relate to conduct which occurred more than three months prior to the complaint being made;
- (j) relating to dissatisfaction with a Council or parish/town council decision; and

(k) about someone who is no longer a councillor or who is seriously ill.

7. INFORMAL RESOLUTION

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 Subject Member accepting that their conduct was unacceptable and offering an apology, or other remedial action which the Monitoring Officer considers to be appropriate.

Where the Subject Member has agreed a reasonable proposal for informal resolution is proposed, but the complainant is not willing to accept that offer, the Monitoring Officer is likely to conclude that the complaint does not merit further action. This will be considered on a case-by-case basis.

8. CRIMINAL CONDUCT

If your complaint identifies grounds to suspect criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police or any other relevant regulatory agency. In such cases the complainant and subject Member will be notified in writing. Where such a referral is made, the Monitoring Officer will decide whether it is appropriate to suspend consideration of the complaint pending the outcome of police/regulatory action.

9. HOW IS THE INVESTIGATION CONDUCTED?

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer ("IO"), who may be another senior officer of the Council, an officer of another authority or an external investigator. The IO will decide whether they need 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 the IO needs to see, and who else the IO needs to interview.

The IO will write to the Subject Member, provide them with a copy of your complaint, and ask the Subject Member to provide their explanation of events, to identify what documents the IO needs to see and who else the IO needs to interview.

At the end of the investigation, the IO will produce a draft report and will send copies of that draft report, in confidence, to you and to the Subject Member, to give you both an opportunity to identify any matter in that draft report which you disagree with or which should be reconsidered.

Having received and taken account of any comments which you may make on the draft report, the IO will submit a final report to the Monitoring Officer.

10. WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS NO EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

The Monitoring Officer will review the IO's report and, if satisfied that the IO's report is sufficient, the Monitoring Officer will write to you and to the Member concerned and to the parish council, where your complaint relates to a parish councillor, notifying you that they are satisfied that no further action is required, and give you both a copy of the IO's final report. If the Monitoring Officer is not satisfied with any particular aspect of the investigation or report, they may ask the IO to reconsider his/her report.

11. WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

The Monitoring Officer will review the IO's report and, after consulting the Independent Person, will either attempt informal resolution or refer the complaint for a hearing before the Council's Hearings Panel.

(a) Informal Resolution

Depending on the IO's findings, the Monitoring Officer may consider that the complaint can reasonably be resolved informally without the need for a hearing. In such a case, they will consult with the Independent Person and with you as complainant and seek to agree what the Monitoring Officer considers to be a fair resolution.

Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action e.g. training. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Corporate Governance Committee and the parish/town council where appropriate for information, but will take no further action.

If the complainant or the Subject Member refuses informal resolution in principle or to engage with the agreed outcome, the Monitoring Officer may refer the matter for a hearing.

(b) Local Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or it has not been possible informally resolve the complaint, and the Monitoring Officer decides it is in the public interest for the complaint to be considered at a hearing, then the Monitoring Officer will report the IO's report to the Hearings Panel which will conduct a local hearing.

The purpose of the hearing is to decide whether the Subject Member has failed to comply with the Code of Conduct and, if so, what action (if any) should be taken in response.

The Monitoring Officer will conduct a “pre-hearing process”, requiring the Subject Member to give their response to the IO’s report, in order to identify what is agreed and what is likely to be in dispute at the hearing. Advised by the Monitoring Officer, the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

At the hearing, the IO will present their report, may call witnesses and make representations to substantiate their conclusion that the Subject Member has failed to comply with the Code of Conduct. For this purpose, the IO may ask you as the complainant to attend and give evidence to the Hearings Panel.

The Subject Member will then have an opportunity to give evidence, to call witnesses and to make representations to the Hearings Panel.

The Hearings Panel shall then invite comment from the Independent Person as to whether the Subject Member has breached the Code of Conduct.

The Hearings Panel will then deliberate and reach a decision as to whether the Subject Member has breached the Code of Conduct. The Hearings Panel shall give reasons for its decision.

If the Hearings Panel concludes that the Member did not fail to comply with the Code of Conduct, they will dismiss the complaint. If the Hearings Panel concludes that the Member did fail to comply with the Code of Conduct, the Hearings Panel will then consider what action, if any, it should take in response. In doing this, the Hearings Panel will give the Subject Member an opportunity to make representations to the Panel and will consult the Independent Person, before making its decision.

12. WHAT ACTION CAN THE HEARINGS PANEL TAKE WHERE THE SUBJECT MEMBER HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT?

Where the Hearings Panel find that a Member has failed to comply with the Code of Conduct it may:

- (a) issue a censure or reprimand the Member;
- (b) publish its findings in respect of the Member’s conduct;
- (c) report its findings to Council or to the parish/town council for information;
- (d) recommend to the Subject Member’s Group Leader (or in the case of un-grouped councillor, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- (e) in the case of an Executive Member, recommend to the Executive Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (f) in the case of the Executive Leader recommend to Council that the Member be replaced as Executive Leader;

- (g) instruct the Monitoring Officer to or recommend to the parish/town council that it arrange to training for the Subject Member;
- (h) remove or recommend to the parish/town council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council;
- (i) withdraw or recommend to the parish/town council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and Internet access; or
- (j) exclude or recommend that the parish/town council exclude the Subject Member from the Council's offices or other premises, provided that this does not unreasonably interfere with the Subject Member's performance of their duties as a councillor.

The Hearings Panel has no power to suspend or disqualify the Member or to withdraw Members' allowances.

13. WHAT HAPPENS AT THE END OF THE HEARING?

At the end of the hearing, the Chairman will state the decision of the Hearings Panel giving summary reasons as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to the complainant, to the subject Member and to the parish council (where appropriate), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Corporate Governance Committee.

14. WHO ARE THE HEARINGS PANEL?

The Hearings Panel is a sub-committee of the Council's Corporate Governance Committee comprising three members drawn from at least two different political parties. Subject to those requirements, it is appointed in proportion to the strengths of each party group on the Council.

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

15. WHO IS THE INDEPENDENT PERSON?

The Lead and Deputy Independent Persons are appointed by the Council.

A person cannot be "independent" if they:

- (a) are, or have been within the past five years, a Member, co-opted Member or Officer of the authority;
- (b) are or have been within the past five years, a Member, co-opted Member or Officer of a parish council within the authority's area, or
- (c) are a relative, or close friend, of a person within paragraph (a) or (b) above.

16. REVISION OF THESE ARRANGEMENTS

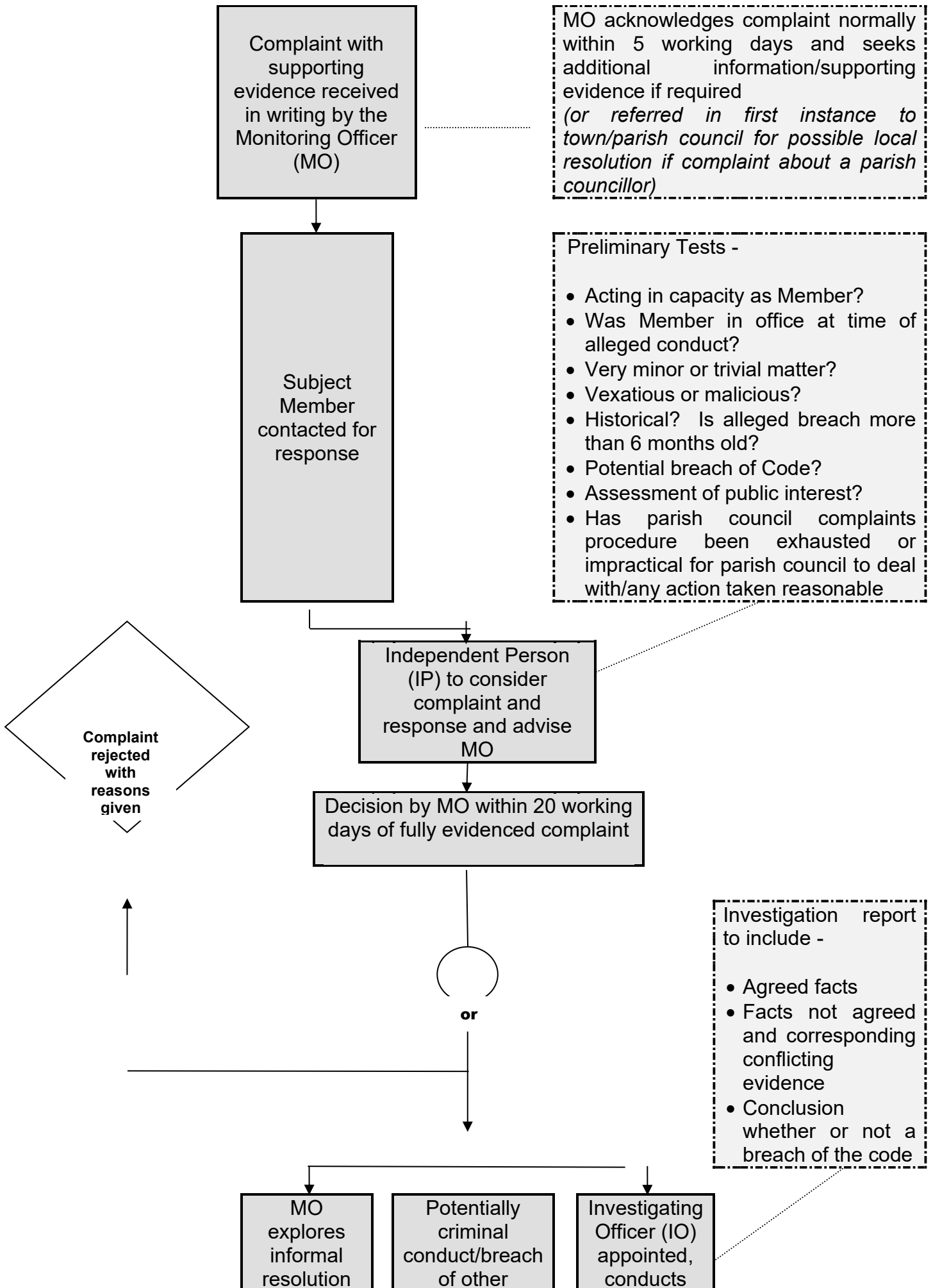
The Council may amend these arrangements, and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

17. APPEALS

There is no right of appeal for you as complainant or for the Subject Member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Huntingdonshire District Council - Complaints Procedure Flowchart



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