

Council meeting 12 April 2012

04.12/C/07

Public business

Review of Raising Concerns policy

Purpose

To consider a revised version of the GPhC's policy on Raising Concerns, as recommended by the Audit & Risk Committee.

Recommendation

The Council is asked to approve the revised version of the Raising Concerns policy at Appendix 1.

1.0 Background

1.1 In April 2010, the Council ratified its *Raising Concerns* policy, describing how internally-generated concerns about staff or Council members should be routed and dealt with within the GPhC and externally. That policy is now due for review. A draft updated version of the policy was considered by the Audit & Risk Committee in February and is now recommended to the Council for approval.

2.0 Key considerations

2.1 The current version of the *Raising Concerns* policy describes routing by which Council members may raise concerns about staff and by which either Council members or staff may raise concerns about a Council member. No concerns have been raised with the Chair of the Council or the Chair of the Audit & Risk Committee under this policy to date.

- 2.2 The draft policy has been updated with regard to the external context, particularly the reference to whistleblowing arrangements in recent sessions of the House of Commons Health Select Committee. The policy refers to the Privy Council's role in suspension and removal of Council members, currently delegated to the Appointments Commission. Arrangements for these functions once the Appointments Commission is disbanded are as yet unclear but the draft policy is worded in such a way that it should remain applicable if these functions are undertaken elsewhere.
- 2.3 The opportunity has been taken to expand the scope of the draft policy to cover the routing for any concerns that associates (non-employee groups that assist the GPhC in fulfilling its regulatory functions) may wish to raise about any aspect of the GPhC's operations. Concerns would be raised initially with the Chief Executive & Registrar and may then be raised with the Chair of the Council or the Chair of the Audit & Risk Committee. Any concerns not resolved at that stage may be raised with the Audit & Risk Committee or the Council.
- 2.4 As stated in the draft policy, it should be clearly understood that the routing set out in the flowcharts attached to the draft policy should not preclude the attempt and intention to resolve matters informally where possible and appropriate. Staff, Council members and associates will be encouraged to attempt internal resolution of concerns before taking the exceptional step of referring them externally, although this will not be mandatory and may not always be appropriate eg. in the light of the Privy Council functions of suspension and removal of Council members.
- 2.5 The Public Interest Disclosure Act 1998 (PIDA) provides statutory protection to employees who disclose information in good faith where they have a reasonable belief that the information relates to one of five categories of 'protected disclosures', covering criminal offences, failure to comply with legal obligations, miscarriage of justice, health and safety, and environmental damage. There are three levels of exposure which PIDA protects: to a responsible person (ie. the employer), to a prescribed body (a regulator) or a wider disclosure eg. to the media or an MP.
- 2.6 The PIDA also includes a schedule of 'prescribed bodies'. Qualifying disclosures to these bodies do not have to meet the general requirements that the particular disclosure was reasonable, the malpractice was serious, or the worker should have first raised the matter internally. However, disclosures under this provision must meet a higher evidential burden than is generally required for internal whistleblowing and the disclosure must be made in good faith. Public Concern at Work, a charity which provides advice on whistleblowing, has flagged up to us that the GPhC is not prescribed under the

PIDA as a body, disclosure to which attracts this additional protection under the Act. The list of regulators prescribed under the Act includes the Care Quality Commission, the General Social Care Council, the Care Council for Wales and the Scottish Social Services Council <http://www.pcaw.co.uk/law> .

2.7 We have contacted the Department of Health to say that, while we assume that the absence of the health professions regulators from this list was a deliberate omission, we do not believe this is right in the GPhC's case. We explained that we are keen to make it easy and straightforward for people to raise concerns with us on any matters within our remit, and that, while we were not talking about all the health professions regulators, our responsibility for regulating pharmacy premises, many of which have corporate owners who are not registered with us, meant that becoming a prescribed body under the PIDA could be a helpful step in encouraging people to raise relevant concerns with us. The DH has advised that it would wish to proceed with the GPhC becoming a prescribed body under the PIDA and we are waiting to hear further on this point.

3.0 **Equality and diversity implications**

3.1 No specific equality and diversity implications have been identified.

4.0 **Communications implications**

4.1 Information for staff about the appropriate routing for complaints and whistleblowing arrangements, is readily available on the GPhC intranet and has been highlighted in a personal note from the chief executive on the home page. If the revised policy is agreed, that will provide another opportunity to raise awareness in this way, and the revised policy will also be communicated proactively to the GPhC's associate groups.

5.0 **Resource implications**

5.1 There are no new resource implications.

6.0 **Risk implications**

6.1 The existence of a clear and properly communicated route map for the handling of concerns should help to mitigate risks to the GPhC in the event of any external challenge to its findings in respect of concerns raised internally (eg. resulting from an attempt to whistleblow to an external authority, should a complainant be unhappy with the result of the internal procedure).

Recommendation

The Council is asked to approve the revised version of the Raising Concerns policy at Appendix 1.

Christine Gray, Head of Governance
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22 March 2012

Appendix 1

DRAFT

Raising Concerns**1.0 Introduction**

1.1 This policy has been informed by: the First and Tenth Nolan reports; the provisions of the Public Interest Disclosure at Work Act 1998; the report of the Public Administration Select Committee (PASC) into Leaks and Whistleblowing in Whitehall¹ and the government response to that report²; the Health Select Committee accountability hearings for the General Medical Council and Nursing & Midwifery Council³; the Health Select Committee session on professional responsibility of healthcare practitioners⁴, and advice provided by the Public Concern at Work charity.

2.0 Scope of the Policy

2.1 This policy relates to GPhC Council members, staff and associates (non-employee groups that assist the GPhC in fulfilling its regulatory functions). The policy covers the mechanisms for:

- Council members or staff to raise concerns about a Council member;
- Council members to raise concerns about staff; or
- Associates to raise concerns about any aspects of the GPhC's operations.

2.2 The policy does not cover mechanisms for dealing with concerns about an associate's performance: these are covered by the governance arrangements for associates agreed by the Council. Similarly, the policy does not cover the handling of externally-generated complaints about the GPhC: this is covered by a separate procedure. Nor does it touch on complaints by one staff member about another, as these would be dealt with within the GPhC's normal employment grievance processes as generated by HR, the final recourse for the individual being an employment tribunal. Finally, although it mentions the option of the grievance procedure available to staff who have a concern about a Council member, and that of the disciplinary procedure that might be invoked during the course of a complaint by a Council member against a member of staff, it does not attempt to describe those grievance or disciplinary processes (which would include the right of reply/recourse of the person being complained about) as these, again, are within the province of HR.

¹ As its name suggests, this report is aimed at the Civil Service, with read-across to NDPBs etc, but the majority of its recommendations would seem relevant to independent bodies of a public nature such as the GPhC.

² <http://www.official-documents.gov.uk/document/cm78/7863/7863.pdf> accessed 21 December 2011

³ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/news/11-07-26-nmcreportpublished/> accessed 21 December 2011

⁴ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/news/11-12-01-prhp-ev/> accessed 21 December 2011

- 2.3 The route for raising concerns involving Council members (either as subject or complainant) is at appendix A. It should be clearly understood that the routing as set out in the flowcharts should not preclude the attempt and intention to resolve matters informally where possible and appropriate. Staff, Council members and associates will be encouraged to attempt internal resolution of concerns before taking the exceptional step of referring them externally, although this will not be mandatory and may not always be appropriate e.g. in the light of the Privy Council functions of suspension and removal of council members.
- 2.4 This policy takes into account that:
- the Privy Council has the function of suspension and removal of Council members (currently delegated to the Appointments Commission but may be undertaken elsewhere in future) in certain specified circumstances;
 - any member or employee may, and the Chair shall, notify the Privy Council if they are of the view that the Privy Council may need to exercise these functions (i.e. if they think that any of the circumstances listed in the constitution order has occurred);
 - the GPhC Council may provisionally suspend members from office as a neutral, interim measure pending a Privy Council decision on the above;
 - the GPhC may carry out preliminary investigation and information gathering exercises in cases where it is not clear whether or not there is any case for the Privy Council to consider.
- (see GPhC policy Suspension and removal of Council members).
- 2.5 The flowcharts in appendix A provide an umbrella process that could apply to all levels of concerns raised by Council members or staff, whether severe or lower-level, and relating to either behaviour (such as bullying or aggression) or probity. Obviously, the nature of the concern will need to be taken into account when deciding on routing; for example, an allegation against a Council member of low-level inappropriate behaviour that is not resolved by early informal action might not, of itself, be a matter that could lead to suspension or removal, and so would be appropriate for internal resolution (e.g. by GPhC Council direction) rather than referral to the Privy Council.
- 2.6 Flowchart (1) in appendix A provides for Council member to raise any concerns relating to the Chief Executive & Registrar with the Chair of the Council or the Chair of the Audit & Risk Committee. Concerns should normally be raised with the Chair of Council. However, if the Chair of Council is unavailable or the concern also relates to the Chair of Council, it should be raised with the Chair of the Audit & Risk Committee.
- 2.7 Flowchart (2) in appendix A illustrates the routing for a member of staff to raise any concerns about a Council member. Staff are encouraged to use the GPhC procedure for resolving grievances informally or formally, as appropriate – this can be found in the Staff Handbook, together with the Whistleblowing policy for staff.

- 2.8 The flowchart in appendix B illustrates the routing for any concerns an associate may wish to raise about the GPhC's operations. Concerns would be raised initially with the Chief Executive & Registrar and may then be raised with the Chair of the Council or the Chair of the Audit & Risk Committee. Any concerns not resolved at that stage may be raised with the Council or the Audit & Risk Committee. Again, any such concerns should be resolved informally where possible and appropriate, and associates will be encouraged to attempt internal resolution of concerns before taking the exceptional step of referring them externally.
- 3.0 **Whistleblowing**
- 3.1 The PASC report contains the following statement, which would seem translatable in essence to bodies such as the GPhC and its staff: "There is a strong public interest in a Civil Service which is able to act impartially to support the government of the day. Leaks by civil servants undermine the trust that is necessary to this relationship. Leaks for partisan political reasons are especially deplorable.... Despite this, there are exceptional circumstances in which a civil servant could be justified in leaking material in order to expose serious wrongdoing. This would need to have followed a failure of proper channels both of disclosure and challenge within government. In short, it must be a last resort."
- 3.2 GPhC employees, though not Council members, are covered by the Public Interest Disclosure Act 1998 (PIDA), which offers protection from dismissal and victimisation to workers who raise genuine concerns about 'malpractice' in the workplace.
- 3.3 PIDA is designed to reassure employees that it is safe and acceptable for them to raise their concerns within their organisation. It encourages workers to approach their employer first by making this the easiest way to obtain legal protection and making it more likely that a subsequent disclosure of the same information to an outside body will be protected.
- 3.4 It is not mandatory for an employee to go to their employer first. As there can be legitimate reasons why a worker in a particular organisation would need or want to raise their concern first outside their workplace, PIDA protects such disclosures providing the worker acts in the responsible ways set out in the Act. Essentially, the Act covers disclosures where the concerns fall into certain categories (crime, civil offences, miscarriage of justice or danger to health and safety or the environment), and where the worker either has the reasonable belief that his/her employer will 'respond badly' to the disclosure or s/he has already unsuccessfully raised his/her concern through the proper internal channels. The person making the disclosure must not do so for personal gain and it must be reasonable, in all the circumstances, for them to have made the disclosure. Full guidance can be found on or accessed through the website of the charity Public Concern at Work www.pcaaw.co.uk.
- 3.5 GPhC guidance to staff on whistleblowing notes the exceptional option of external routing as a last resort and provides PCAW contact details, while encouraging staff to use the internal routing (e.g. the employee grievance

procedure) first wherever appropriate. It is important to avoid misuse of these special provisions through making frivolous claims or using them as an alternative to the grievance procedure. The internal routing should include an alternative to the line management chain. Possible alternatives could include the Chief Executive and/or Chair, as appropriate, although the PASC report makes the point that some staff might find the seniority of such people off-putting, and suggests that 'nominated officers' at varying levels in the organisation could provide a 'friendly face' from whom staff could seek advice without being seen to be necessarily raising a complaint.

- 3.6 The external organisation to which any complainant would go would depend on the nature of the complaint. If it is felt that the concern indicates the need for suspension or removal of a Council member for any of the reasons prescribed in the GPhC Constitution Order, then the Privy Council or its agent (e.g. the Appointments Commission) is likely to be the appropriate destination. If however, an organisational failing is indicated (and this could also occur if, for example, the complainant has raised a concern relating to a Council member or member of staff internally but believes that due process has not been followed in the organisation's handling of the concern) then, given that the organisation's accountability is to Parliament it might be that the House of Commons Health Select Committee would be the appropriate destination. Other specific concerns would go to the relevant prescribed body under the Act, e.g. a concern relating to health and safety would go to the Health and Safety Executive while criminal allegations would be taken to the police.
- 3.7 The chair of the Health Select Committee has referred⁵ to health professionals having an obligation to raise concerns when they see practice which does not match acceptable professional standards. These comments related to registrants and others raising concerns with regulators but it would seem surprising if a regulator did not have appropriate mechanisms for persons wishing to raise concerns about the regulator's operations &/or people working within the regulator. The ongoing public inquiry into the role of the commissioning, supervisory and regulatory bodies in the monitoring of Mid Staffordshire Foundation NHS Trust also serves to emphasise the importance of appropriate mechanisms for raising concerns.
- 3.8 The PASC report points out that the existence of the Freedom of Information Act provides a legitimate alternative to leaking information, as there are circumstances in which civil servants could properly take action to prompt a request for information under the Act, and that this should weaken the public interest case for leaking. It qualifies this by saying that this will only be the case if government departments act within the spirit of the legislation, in particular by proactively publishing as much information as possible and by ensuring that requests under the Act are responded to quickly and fully.
- 3.9 The PASC report further notes that a high proportion of leaks by civil servants happen because they feel that information is being ignored or suppressed in policy debate. It recommends that Government departments should foster a

⁵ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhealth/uc1699-i/uc169901.htm> accessed 21 December 2011

culture of vigorous internal policy debate where dissent is encouraged even on the most sensitive of political topics.

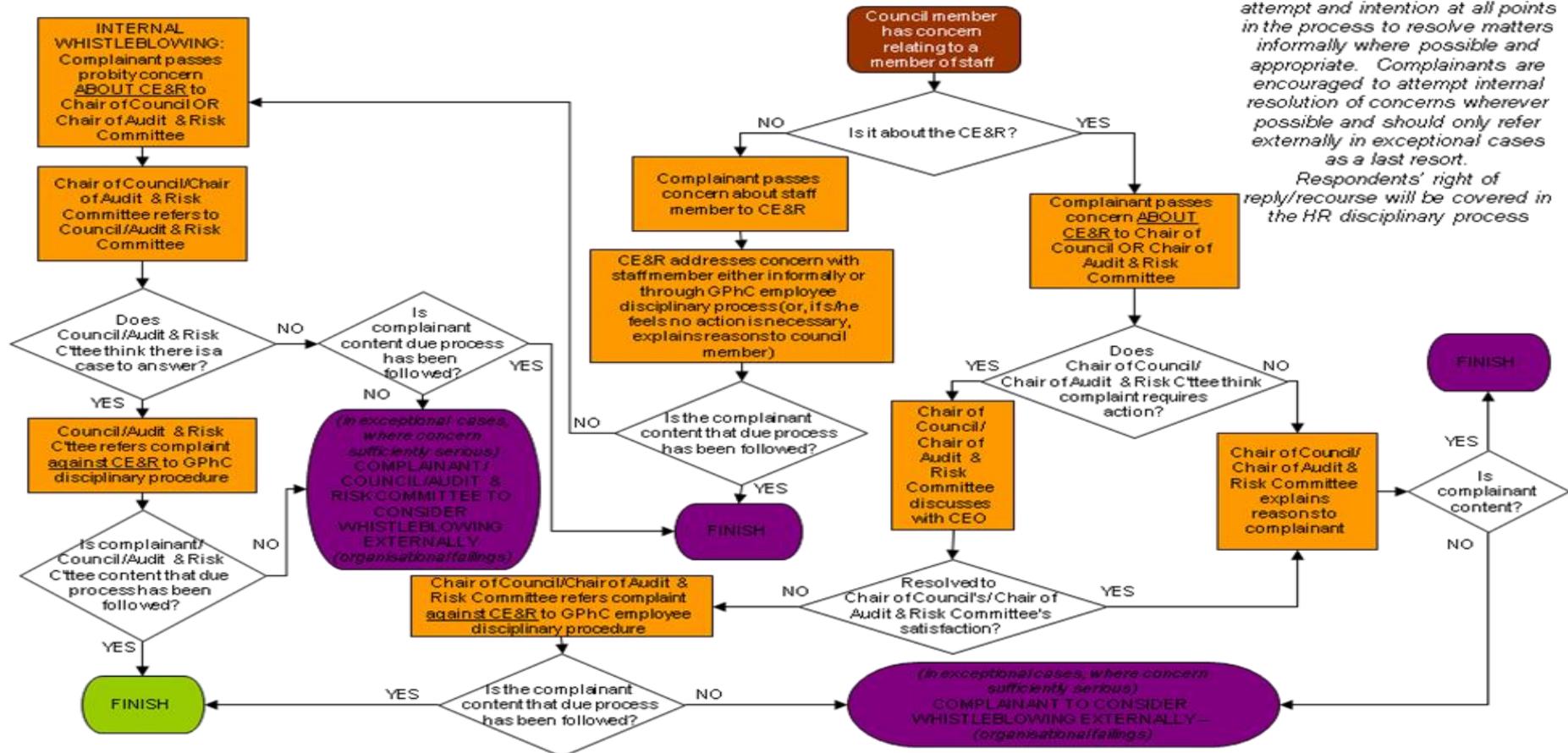
4.0 **Application of policy**

The flow diagrams in appendices A & B summarise how the policy will be applied. The Staff Handbook sets out in more detail the appropriate routing for grievances raised by staff, and provisions for whistleblowing.

Christine Gray, Head of Governance

(1) If a Council member has concerns about staff

IMPORTANT NOTE:
 The routing as set out in this flowchart should not preclude the attempt and intention at all points in the process to resolve matters informally where possible and appropriate. Complainants are encouraged to attempt internal resolution of concerns wherever possible and should only refer externally in exceptional cases as a last resort.
 Respondents' right of reply/recourse will be covered in the HR disciplinary process

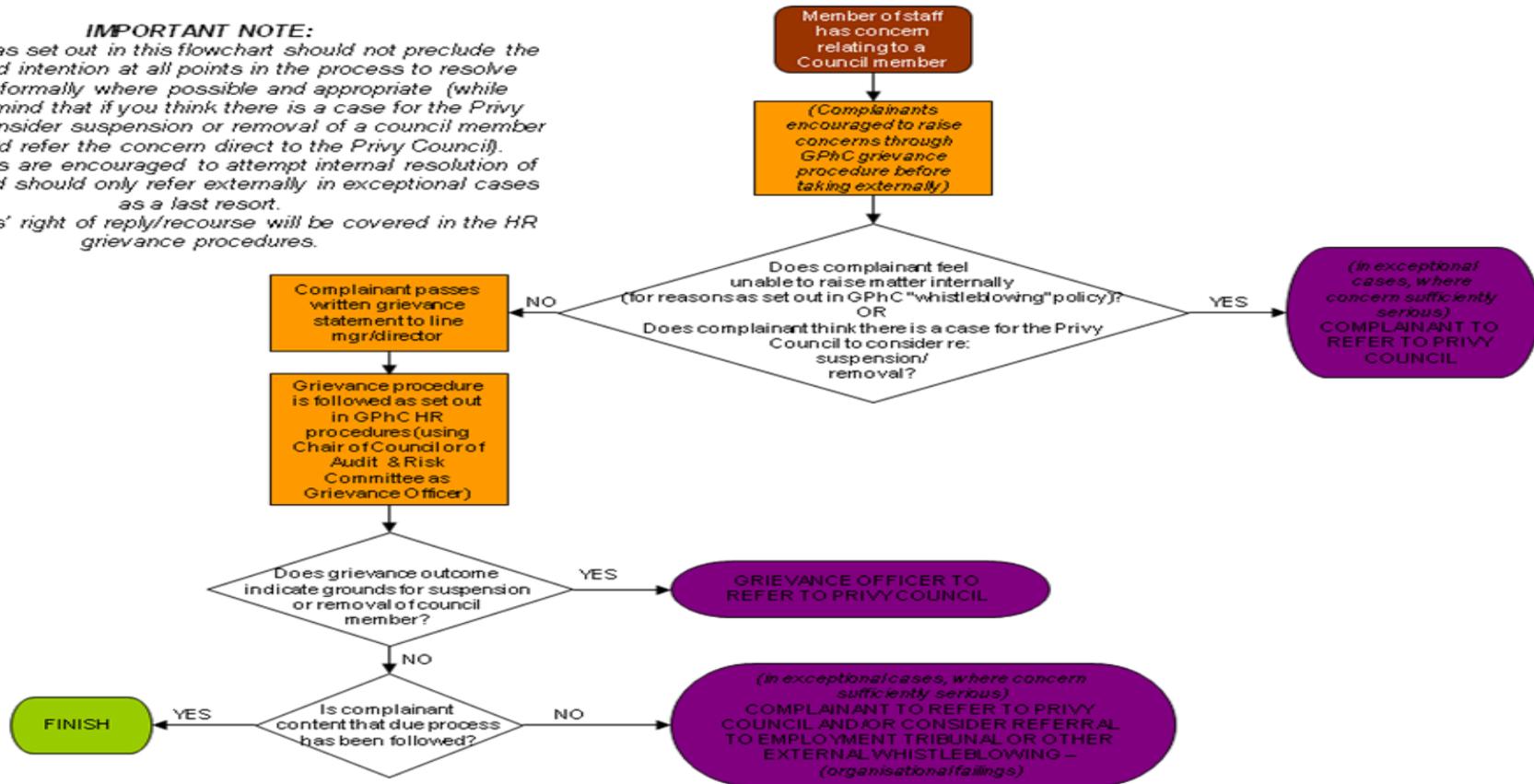


Appendix A cont.

(2) If a member of staff has concerns about a Council member

IMPORTANT NOTE:

The routing as set out in this flowchart should not preclude the attempt and intention at all points in the process to resolve matters informally where possible and appropriate (while bearing in mind that if you think there is a case for the Privy Council to consider suspension or removal of a council member you should refer the concern direct to the Privy Council). Complainants are encouraged to attempt internal resolution of concerns and should only refer externally in exceptional cases as a last resort. Respondents' right of reply/recourse will be covered in the HR grievance procedures.



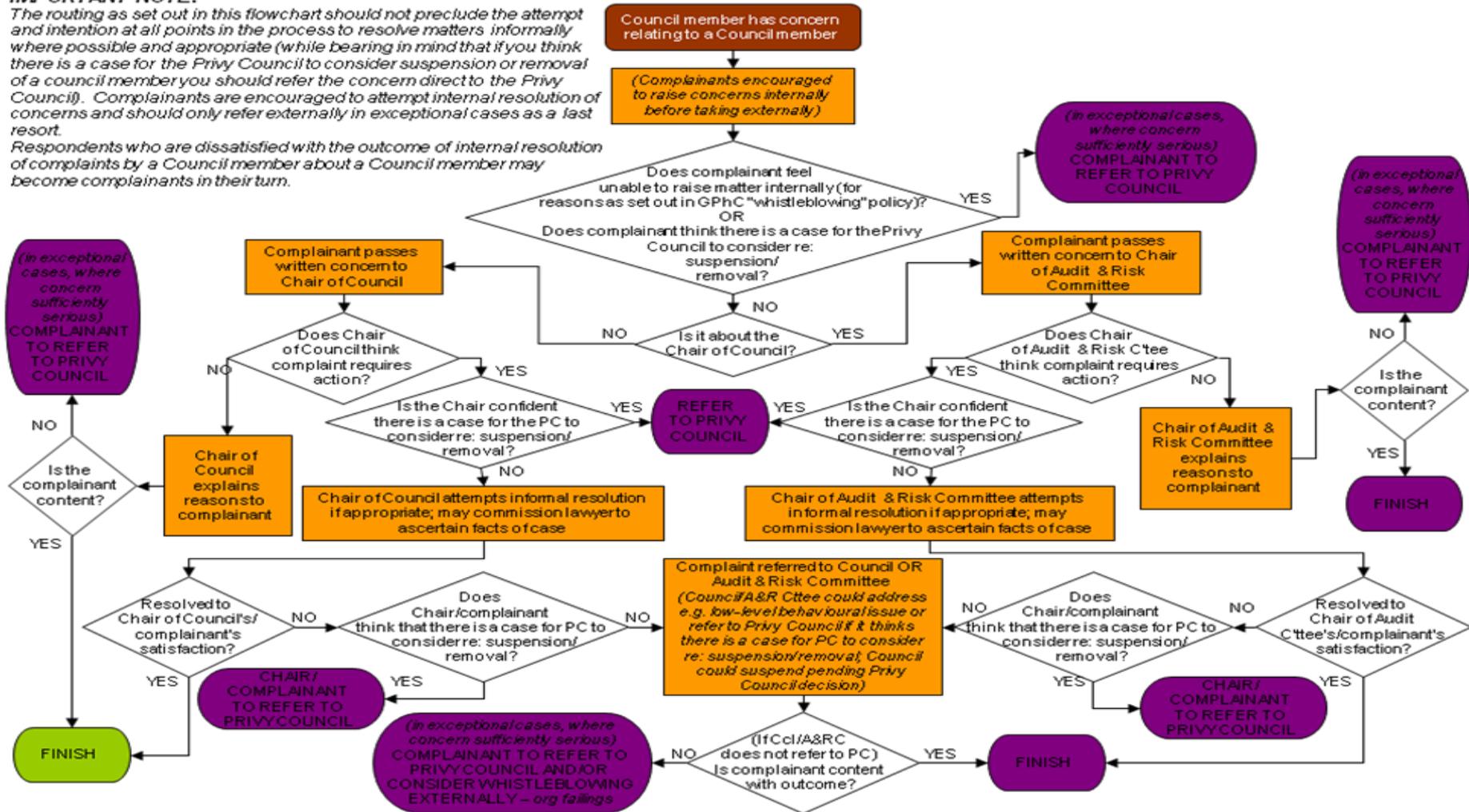
(3) If a Council member has concerns about a Council member

Appendix A cont.

IMPORTANT NOTE:

The routing as set out in this flowchart should not preclude the attempt and intention at all points in the process to resolve matters informally where possible and appropriate (while bearing in mind that if you think there is a case for the Privy Council to consider suspension or removal of a council member you should refer the concern direct to the Privy Council). Complainants are encouraged to attempt internal resolution of concerns and should only refer externally in exceptional cases as a last resort.

Respondents who are dissatisfied with the outcome of internal resolution of complaints by a Council member about a Council member may become complainants in their turn.



Appendix B

If a GPhC associate has concerns

IMPORTANT NOTE:

The routing as set out in this flowchart should not preclude the attempt and intention at all points in the process to resolve matters informally where possible and appropriate. Complainants are encouraged to attempt internal resolution of concerns and should only refer externally in exceptional cases as a last resort.

