



Audit and Standards Committee

Tuesday 8 September 2020 on the rising of the Audit and Standards Advisory Committee

This will be held as an online virtual meeting.

The press and public are welcome to attend this online virtual meeting. The link to attend and view the meeting will be made available [here](#).

Membership:

Members

Councillors:

Long (Chair)

Donnelly-Jackson
Hassan
Naheerathan
Nerva
Kansagra

Substitute Members

Councillors:

S Choudhary, Kabir and Lo

Councillors:

Colwill and Maurice

For further information contact: Craig Player, Governance Officer
Tel: 020 8937 2082; Email: craig.player@brent.gov.uk

For electronic copies of minutes, reports and agendas, and to be alerted when the minutes of this meeting have been published visit:

www.brent.gov.uk/committees

Notes for Members - Declarations of Interest:

If a Member is aware they have a Disclosable Pecuniary Interest* in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent and must leave the room without participating in discussion of the item.

If a Member is aware they have a Personal Interest** in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent.

If the Personal Interest is also significant enough to affect your judgement of a public interest and either it affects a financial position or relates to a regulatory matter then after disclosing the interest to the meeting the Member must leave the room without participating in discussion of the item, except that they may first make representations, answer questions or give evidence relating to the matter, provided that the public are allowed to attend the meeting for those purposes.

***Disclosable Pecuniary Interests:**

- (a) **Employment, etc.** - Any employment, office, trade, profession or vocation carried on for profit gain.
- (b) **Sponsorship** - Any payment or other financial benefit in respect of expenses in carrying out duties as a member, or of election; including from a trade union.
- (c) **Contracts** - Any current contract for goods, services or works, between the Councillors or their partner (or a body in which one has a beneficial interest) and the council.
- (d) **Land** - Any beneficial interest in land which is within the council's area.
- (e) **Licences**- Any licence to occupy land in the council's area for a month or longer.
- (f) **Corporate tenancies** - Any tenancy between the council and a body in which the Councillor or their partner have a beneficial interest.
- (g) **Securities** - Any beneficial interest in securities of a body which has a place of business or land in the council's area, if the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body or of any one class of its issued share capital.

****Personal Interests:**

The business relates to or affects:

- (a) Anybody of which you are a member or in a position of general control or management, and:
 - To which you are appointed by the council;
 - which exercises functions of a public nature;
 - which is directed is to charitable purposes;
 - whose principal purposes include the influence of public opinion or policy (including a political party or trade union).
- (b) The interests a of a person from whom you have received gifts or hospitality of at least £50 as a member in the municipal year;

or

A decision in relation to that business might reasonably be regarded as affecting the well-being or financial position of:

- You yourself;
- a member of your family or your friend or any person with whom you have a close association or any person or body who is the subject of a registrable personal interest.

Agenda

Introductions, if appropriate.

Item	Page
1 Apologies for absence and clarification of alternate members	
2 Declarations of Interests	
Members are invited to declare at this stage of the meeting, the nature and existence of any relevant disclosable pecuniary or personal interests in the items on this agenda and to specify the item(s) to which they relate.	
3 Deputations (if any)	
To hear any deputations received from members of the public in accordance with Standing Order 67.	
4 Minutes of the previous meeting	1 - 2
To approve the minutes of the previous meeting as a correct record.	
5 Complaints & Code of Conduct	3 - 44
To receive a report on the annual review of the Members' Code of Conduct Complaints procedure, to be approved by the Committee following its consideration by the Audit & Standards Advisory Committee.	
6 Statement of Accounts & External Auditors Report	To follow
To receive the Council's annual statement of accounts, as well as a report highlighting the key issues raised by the Council's external auditors Grant Thornton. The Committee is asked to approve the statement of accounts following its consideration by the Standards & Audit Advisory Committee.	

Date of the next meeting: Tuesday 11 May 2021

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Brent

MINUTES OF THE AUDIT AND STANDARDS COMMITTEE

Held as an online virtual meeting on Tuesday 5 May 2020 on the rising of the Audit & Standards Advisory Committee at 8.00 pm

PRESENT (in remote attendance): Councillor Long (Chair) and Councillors Donnelly-Jackson, Hassan, Naheerathan, Nerva, Kansagra and Kabir

Also Present: Councillor McLennan (Deputy Leader and Cabinet Member for Resources) and David Ewart (Independent Chair of the Audit & Standards Advisory Committee).

1. **Apologies for absence and clarification of alternate members**

An apology for absence was received from Councillor Choudry (with Councillor Kabir attending as a substitute).

2. **Election of Chair**

Given the apologies for absence received from Councillor Choudry, the Committee **RESOLVED** to elect Councillor Long as Chair for the duration of the meeting.

3. **Declaration of Interests**

None received.

4. **Deputations (if any)**

There were no deputations.

5. **Minutes of the previous meeting**

RESOLVED that the minutes of the Audit and Standards Committee held on Wednesday 10 July 2019 be approved as an accurate record.

6. **Annual Governance Statement 2019-20**

The Committee received the report from the Director of Legal, HR, Audit & Investigations setting out the draft Annual Governance Statement (AGS) for 2019/20, as required under the Accounts and Audit Regulations 2015.

Members noted that the AGS had been referred on to the Committee for formal approval following its detailed consideration at the preceding meeting of the Audit & Standards Advisory Committee.

On the basis of the discussion and comments made at the preceding Audit & Standards Advisory Committee it was **RESOLVED** to approve the 2019/20 Annual Governance Statement for formal sign off.

The meeting closed at 8.03 pm

COUNCILLOR JANICE LONG
Chair

	<p>1) Audit and Standards Advisory Committee</p> <p>2) Audit & Standards Committee</p> <p>8 September 2020</p>
	<p>Report from: Director of Legal, HR, Audit & Investigations</p>
<p>Complaints & Code of Conduct</p>	

Wards Affected:	All
Key or Non-Key Decision:	Not applicable
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	<p>Three:</p> <ol style="list-style-type: none"> 1) Appendix A – Complaints received over the last 24 months 2) Appendix B – LGA Consultation documentation 3) Appendix C- Members’ Code of Conduct Complaints Procedure
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	<ol style="list-style-type: none"> (1) Debra Norman, Director of Legal, HR, Audit & Investigations (ext. 1578) (2) Biancia Robinson, Senior Constitutional & Governance Lawyer (ext. 1544)

1.0 Purpose of the Report

1.1 This report provides an annual review of the Members’ Code of Conduct Complaints procedure; and updates the Committee on the Local Government Association (LGA) draft Member Code of Conduct consultation.

2.0 Recommendations

2.1 That the:

- a) Audit and Standards Advisory Committee consider and note the contents of the report and make recommendations to the Audit and Standards Committee in respect of the proposed changes to the Member Code of Conduct Complaints Procedure set out in Appendix C.
- b) Audit and Standards Committee consider the contents of the report and approve the proposed changes to the Member Code of Conduct Complaints Procedure set out in Appendix C.
- c) Committee note that upon approval by the Audit and Standards Committee, the Monitoring Officer will implement the changes in accordance with her delegated powers.

3.0 Detail

Members' Code of Conduct Complaints Procedure (MCCCP)

Background

- 3.1 The Council has a duty to promote and maintain high standards of conduct by Members and Co-opted Members pursuant to section 27(1) of the Localism Act 2011. As required by section 27(2) of the Localism Act 2011, the Council has adopted a Code of Conduct (Code) dealing with the conduct that is expected of Members and Co-opted Members when they are acting in that capacity.
- 3.2 Section 28 of the Localism Act requires the Council to have arrangements under which it can investigate and make a decision on an allegation of a breach of the Code. The MCCCP complies with this statutory obligation. Any alleged breach of the Brent Code is considered in accordance with the MCCCP, which is used as guidance in the consideration and determination of complaints and reviews.
- 3.3 In accordance with:
 - a) para 1.10 of the MCCCP, "*the Standards Committee will convene from time to time to review the handling of complaints, reviews and decisions made with a view to identifying trends or any improvements in this procedure and the application of it that may be desirable*"; and
 - b) annexe 1, para 1.3 of the MCCCP, the complaint Assessment Criteria are subject to "*an annual review by the Standards Committee*". This report sets out the annual review.

Complaints

- 3.4 In terms of background, in the last 24 months, the Monitoring Officer has received complaints and made determinations regarding six councillors allegedly in breach of the Members' Code of Conduct. Four complaints were received against one of the councillors about a single matter (treated as one complaint) and two complaints were received against another councillor about two separate but related matters. Four of these complaints have been received since May 2020. Of these complaints:
 - a) three have been resolved at Initial Assessment Stage;

- b) three have been resolved at Assessment Criteria Stage;
- c) one has been upheld as in breach of the Code;
- d) four have been subject to review requests; and
- e) none have escalated to hearing/formal investigation stage.

Attached as Appendix A is a summary of the complaints received in the last 24 months.

Overview

- 3.5 The MCCCCP has a two stage assessment process. The first, **the Initial Assessment Stage**, requires an assessment of whether the alleged behaviour falls within the ambit of the Code of Conduct and in turn the Council's procedure. In particular it considers:
- a) the complaint is about a Member of the authority?
 - b) the Member was in office at the time of the alleged complaint? and
 - c) if proven, the complaint would disclose a breach of the Code?

If the alleged behaviour falls outside of the ambit of the Code or within one of the nine criteria set out in the procedure to be considered at the Initial Assessment Stage (see 3.2 of the MCCCCP), it will not progress to Assessment Criteria Stage, and, subject to a request for a review being received by the specified deadline, is concluded.

- 3.6 The **Assessment Criteria** apply where the allegations appear to fall within the Code and are not excluded by the Initial Assessment Criteria. At this stage, further readily available details are sought to ascertain the facts, and the member who is the subject of the allegations is provided with the opportunity to provide a written response to the complaint. This is then considered and, following consultation with the Independent Person, a determination in respect of the complaint is made in accordance with the seven options set out in the Assessment Criteria in Annex 1 of the MCCCCP. This may conclude the matter (subject to a review request), or may lead to a referral for detailed formal investigation of the complaint.

Decision Making

- 3.7 The Assessment Criteria are intended to be a guide and promote consistency in the decision-making. Consistency is also ensured as all complaints alleging breach of the Code are considered by the Monitoring Officer, (or in her absence the Deputy Monitoring Officer). This ensures a consistency of assessment and application of the criteria as the same officers are involved analysing and weighing up the allegations made in complaints. External scrutiny provided by the Independent Person involved in each complaint that reaches this stage provides double check on the thoroughness and fairness of the decision-making.
- 3.8 An advantage of Brent's MCCCCP is that it is very detailed in the procedure and guidance it provides. This is helpful for the Monitoring Officer, complainants and

Members who are complained about and supports a higher degree of transparency and consistency than might arise in a less detailed high level procedure.

- 3.9 The Committee will see from Appendix A that the main finding at Initial Assessment Stage in respect of the complaints over the past 2 years is that the complaints “*do not disclose a sufficiently serious breach of the Code to merit further consideration*”. The main rationale for this finding has been that no evidence has been submitted to support the allegations made; and when considering the allegations in context, the Councillors concerned were entitled to express the views which they did, be that orally or in writing.
- 3.10 Recurring factors in relation to escalating complaints to the Assessment Criteria Stage have been:
- (a) it is unclear whether the allegation relates to the Councillor in their personal or private capacity; or
 - (b) further information is required in order to understand the allegations, which necessitates making basic additional enquiries and seeking comment from the member concerned.
- 3.11 The Committee will be aware that the Code only permits the investigation of complaints against Members made in their “official capacity or when giving the impression [they] are acting as a member of the Council”, unless it relates to a serious criminal offence conducted in the Member's private capacity. Accordingly, any decision that purports to find a breach of the Code whilst the Member in question was acting in their private capacity, would be liable to challenge.
- 3.12 In the last 24 months, one complaint has been upheld as a breach of the Code. The Committee will be familiar with the facts of that complaint having considered and noted the Decision Notice at its last meeting. All Standards complaints which are upheld are normally published on the Council's website, which is important for transparency, accountability and demonstrating the commitment to “maintain a high standard of conduct” from all members.
- 3.13 As the Committee is aware, following implementation of the Localism Act 2011, the Council has limited powers against a Member who has been found to have breached the Code. Any changes to strengthen a sanction for breach of the Code requires a change to the existing legislation. Consequently, the sanctions presently available are:
- a) censuring or reprimanding the Member
 - b) publishing a notice in respect of the findings in a local newspaper, or on the Council's website.
 - c) asking the Member to apologise
 - d) asking the Member to undergo training
 - e) recommending to Council/Cabinet that the Member be removed from an outside body
 - f) recommending to the Member's group Leader (or if independent – full Council) that they be removed from Cabinet/portfolio responsibilities

- g) recommending to the Member's Leader (or if independent – full Council) that the Committee recommends that they be removed from a Committee.
- h) Excluding the Member from the Council's offices or other premises, with the exception of meeting rooms necessary for attending Council and Committee meetings.

Reviews

- 3.14 Step 6 of Paragraph 3.5 of the MCCCCP provides that a "*complainant and the subject member of the complaint will ordinarily be given 10 working days from the date of notification of the decision to make a written request*" that the decision is reviewed. Of the nine Member complaints received and not upheld, four complainants have sought a review. One complainant submitted their request outside of the 10 working days timeframe by an excess of 20 working days. The remaining three requests did not provide any supporting documentation that was relevant and/or had not previously been considered.

Independent Persons

- 3.15 Step 1 of paragraph 3.5 of the MCCCCP states: "*The Monitoring Officer will write to the subject member with details of the complaint, including those of the complainant unless any confidentiality request has been agreed, and also the name and contact details of the Independent Person who has been nominated for the complaint and who the subject member may contact to seek their views.*"
- 3.16 Presently this suggest the Monitoring Officer and Councillor would seek advice from the same Independent Person, which could place them in a difficult decision. For the purposes of ensuring impartiality, fairness and objectivity, it is recommended to amend Step 1, as per the wording below, so that it is clear that a Councillor can speak to a different Independent Person in relation to a complaint made against them:

*"...and also the name and contact details **for one of the Independent Persons** who has been nominated for the complaint and who the subject member may contact to seek their views."*

- 3.17 It is also proposed to make a few minor changes by way of including sanctions into the sub-heading at Annex 2, para 10 (in order to make a search for the word "sanctions" easier to utilise for complaints and Members) and updating the department/service details following previous organisational changes. Attached to this report as Appendix C is the MCCCCP with proposed changes marked in red.
- 3.18 Changes to the MCCCCP requires formal approval of the Audit and Standards Committee and this committee is asked to recommend the changes to the MCCCCP in Appendix 1 to that committee.

Local Government Association Draft Model Code of Conduct

- 3.18 The Committee will recall from its meeting on the 26.05.2020 that The Local Government Association (LGA) launched its consultation on a draft Model Member Code that could be a template for councils to adopt in whole and/or with local amendments on the 08.06.2020. This was in response to the Committee of Standards in Public Life's (CSPL) report of January 2019 on the Local Government Ethical Standards recommendation that "*the Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government*". The consultation lasted 10 weeks and closed on the 17.08.2020.
- 3.19 A copy of the LGA Consultation draft and principles was noted by this committee at its meeting on the 26.05.2020. The LGA have since issued the Consultation documentation including the draft Model Code. It covers its purpose and application, refers to the seven Principles of Public life, states what model Member conduct as a Councillor is expected and sets out the minimum requirements through specific obligations of general conduct. In addition, under each of the specific obligations the LGA created additional guidance. A copy of the consultation documentation is attached as Appendix B.
- 3.20 The Monitoring Officer has considered the draft updated Model Code and notes that it is closely aligned to the current version that the Council already has in place.
- 3.21 The Lawyers in Local Government organisation, which represents Monitoring Officers, has prepared a collective response from Officers. Their initial concerns are around not including seeking statutory officers' advice on matters, the inability to sanction by way of suspension or disqualification and the rights of appeal to an independent body. The LGA also hosted a series of consultation webinars on the draft Model Member Code of Conduct that discussed the draft code. These webinars also explored a range of points, including the distinction between personal and private conduct of members especially in relation to the use of social media, recording unpaid interests on the register, using the term 'civility' as means of representing "the behaviour" the Code is seeking to promote, as well as sanctions and the need for the latter to be changed by legislation.
- 3.22 At present, there is no indication as to when a new updated Model Code of Conduct will be finalised; but the ability to tailor the Code to specific Councils' needs still appears to be an option that will be included.
- 3.23 The Committee will be kept informed as to the consultation outcome.

4.0 Financial Implications

- 4.1 There are no financial implications arising out of this report.

5.0 Legal Implications

5.1 The legal implications are contained within the body of this report.

6.0 Equality Implications

6.1 There are no equality implications arising out of this report.

7.0 Consultation with Ward Members and Stakeholders

7.1 Not applicable.

8.0 Human Resources/Property Implications (if appropriate)

8.1 Not applicable.

Report sign off:

Director of Legal, HR, Audit & Investigations

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Complaints Received over the last 24 months

Resolved at Initial Assessment Stage

	Ref	Complainant (s)	Details of Complaint	Outcome	Review Requested	Review Outcome
1	23.10.18	x6 Councillor(s)	Complaint regarding comments made, and published on social media (blog) by a Cllr about his removal from a committee.	Decision under Initial Assessment Criteria: Complaint was not considered to disclose sufficiently serious potential breach of the Code to merit further consideration as the Cllr was entitled to express the views he did as a matter of freedom of speech.	No	N/A
2	18.04.20	Member of Public	Complaint regarding email conduct of Cllr.	Decision under Initial Assessment Criteria: Complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration. The email concerned was perhaps intemperate but was not intimidating, threatening of abusive as alleged.	Yes	N/A – submitted out of time
3	7.11.19	Member of Public	Complaint about wording of a Cllr’s response to a previous complaint	Decision under Initial Assessment Criteria: Complaint was not considered to disclose any conduct within the ambit of the Code. The complaint was trivial and the Cllr expressed views she was entitled to hold in a way which could not reasonably be interpreted as bullying or intimidation.	No	N?A

Resolved at Assessment Stage

	Ref	Complainant (s)	Details of Complaint	Findings/Outcome	Review Requested	Review Outcome
4	11.10.19	Member of the Public	Complaint regarding breach of conduct by Cllr in relation to declarations of interest and conduct with others.	Decision under Assessment Criteria: No breach of the Code. The Cllr's dealing with officers concerning the business referred to in the complaint were not inappropriate and there was no evidence of bullying.	Yes	Initial Decision upheld - No new or different information provided
5	29.02.20	Member of the public	Complaint regarding breach of conduct by Cllr in an interaction with members of the public.	Decision under Assessment Criteria: No breach of the Code. The Cllr's dealing with officers concerning the organisation referred to in the complaint were not inappropriate. The Cllrs communication could have more temperate but was not intimidating or threatening and an apology had been made.	Yes	Initial Decision upheld - No new or different information provided
6	27.05.20	Member of the Public	Complaint regarding failure to advocate effectively on behalf of the complaint and others and disclosure of information.	Decision under Assessment Criteria: No breach of the Code. The Cllr had acted appropriately and had apologised for missing one meeting.	Yes	Initial Decision upheld - No new or different information provided

Upheld

	Ref	Complainant (s)	Details of Complaint	Findings/Outcome	Review Requested	Review Outcome
7	06.05.20	x4 Members of the public	Complaint regarding breach of conduct by Cllr in relation to material posted on social media (WhatsApp)	Decision under Assessment Criteria: Finding of a breach of the Code without an investigation. Inadequate care had been taken in posting material to a residents WhatsApp group and offensive material had been posted.	No	N/A

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Local Government Association Model Member Code of Conduct

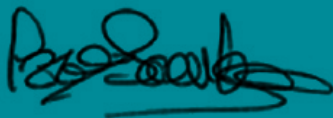
Introduction

The Local Government Association (LGA) is providing this Model Member Code of Conduct as part of its work on supporting the sector to continue to aspire to high standards of leadership and performance.

The role of councillor in all tiers of local government is a vital part of our country's system of democracy. In voting for a local councillor, the public is imbuing that person and position with their trust. As such, it is important that as councillors we can be held accountable and all adopt the behaviours and responsibilities associated with the role. The conduct of an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to and want to participate with. We want to continue to attract individuals from a range of backgrounds and circumstances who understand the responsibility they take on and are motivated to make a positive difference to their local communities.

All councils are required to have a local Member Code of Conduct. This Model Member Code of Conduct has been developed in consultation with the sector and is offered as a template for councils to adopt in whole and/or with local amendments. The LGA will undertake an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code, whilst the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

As a councillor we all represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent everyone (in our ward/town/parish), taking decisions fairly, openly, transparently and with civility. Councillors should also be treated with civility by members of the public, other councillors and council employees. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations. This Code, therefore, has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.



Councillor Izzi Seccombe OBE
Leader, LGA Conservative Group



Councillor Nick Forbes CBE
Leader, LGA Labour Group



Councillor Howard Sykes MBE
Leader, LGA Liberal Democrats Group



Councillor Marianne Overton MBE
Leader, LGA independent Group

Purpose

The purpose of this Code of Conduct is to assist councillors in modelling the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken. It is also to protect yourself, the public, fellow councillors, council officers and the reputation of local government. It sets out the conduct expected of all members and a minimum set of obligations relating to conduct. The overarching aim is to create and maintain public confidence in the role of member and local government.

Application of the Code

The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting]¹ in [public or in]² your capacity as a member or representative of your council, although you are expected to uphold high standards of conduct and show leadership at all times. The Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and via social media, [including where you could be deemed to be representing your council or if there are potential implications for the council's reputation.] Model conduct and expectations is for guidance only, whereas the specific obligations set out instances where action will be taken.

The seven principles of public life

Everyone in public office at all levels – ministers, civil servants, members, council officers – all who serve the public or deliver public services should uphold the seven principles of public life. This Code has been developed in line with these seven principles of public life, which are set out in appendix A.

Model member conduct

In accordance with the public trust placed in me, on all occasions I will:

- act with integrity and honesty
- act lawfully
- treat all persons with civility; and
- lead by example and act in a way that secures public confidence in the office of councillor

In undertaking my role, I will:

- impartially exercise my responsibilities in the interests of the local community
- not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently and in the public interest

Specific obligations of general conduct

This section sets out the minimum requirements of member conduct. Guidance is included to help explain the reasons for the obligations and how they should be followed. These obligations must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media.

As a councillor I commit to:

Civility

- 1. Treating other councillors and members of the public with civility.**
- 2. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.**

Civility means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a civil manner. You should not subject individuals, groups of people or organisations to unreasonable or excessive personal attack.

In your contact with the public you should treat them courteously. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return you have a right to expect courtesy from the public. If members of the public are being abusive, threatening or intimidatory you are entitled to close down any conversation in person or online, refer them to the council, any social media provider or if necessary, the police. This also applies to members, where action could then be taken under the Member Code of Conduct.

Bullying and harassment

- 3. Not bullying or harassing any person.**

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.

The Equality Act 2010 defines harassment as 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'. The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

Impartiality of officers of the council

- 4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.**

Officers work for the council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. Although you can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

Confidentiality and access to information

- 5. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.**
- 6. Not preventing anyone getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and

printed materials are open to the public except in certain circumstances. You should work on this basis but there will be times when it is required by law that discussions, documents and other information relating to or held by the council are treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

Disrepute

7. Not bringing my role or council into disrepute.

Behaviour that is considered dishonest and/or deceitful can bring your council into disrepute. As a member you have been entrusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on other councillors and/or your council.

Your position

8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the council provides you with certain opportunities, responsibilities and privileges. However, you should not take advantage of these opportunities to further private interests.

Use of council resources and facilities

9. Not misusing council resources.

You may be provided with resources and facilities by the council to assist you in carrying out your duties as a councillor. Examples include office support, stationery and equipment such as phones, and computers and transport. These are given

to you to help you carry out your role as a councillor more effectively and not to benefit you personally.

Interests

10. Registering and declaring my interests.

You need to register your interests so that the public, council employees and fellow members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest. The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise.

It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained. Discuss the registering and declaration of interests with your Monitoring Officer/Town or Parish Clerk and more detail is set out in appendix B.

Gifts and hospitality

11. Not accepting significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.

12. Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.

You should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you

because you are a member. However, you do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you may wish to notify your monitoring officer of any significant gifts you are offered but refuse which you think may have been offered to influence you.

Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life and may be part of a future Government consultation. This includes possible future sanctions and appeals processes.

Breaches of the Code of Conduct

Most councillors conduct themselves appropriately and in accordance with these standards. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

Section 27 of the Localism Act 2011 requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person', and sanctions to be imposed on any councillors who breach the Code.

The 2011 Act also requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the Code of Conduct, and arrangements under which decisions on allegation may be made.

Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence.

Political parties may have its own internal standards and resolution procedures in addition to the Member Code of Conduct that members should be aware of.

Example

LGA guidance and recommendations

Internal resolution procedure

Councils must have in place an internal resolution procedure to address conduct that is in breach of the Member Code of Conduct. The internal resolution process should make it clear how allegations of breaches of the Code of Conduct are to be handled, including the role of an Independent Person, the appeals process and can also include a local standards committee. The internal resolution procedure should be proportionate, allow for members to appeal allegations and decisions, and allow for an escalating scale of intervention. The procedure should be voted on by the council as a whole.

In the case of a non-criminal breach of the Code, the following escalating approach can be undertaken.

If the breach is confirmed and of a serious nature, action can be automatically escalated.

1. an informal discussion with the monitoring officer or appropriate senior officer
2. an informal opportunity to speak with the affected party/ies
3. a written apology
4. mediation
5. peer support
6. requirement to attend relevant training
7. where of a serious nature, a bar on chairing advisory or special committees for up to two months
8. where of a serious nature, a bar on attending committees for up to two months.

Where serious misconduct affects an employee, a member may be barred from contact with that individual; or if it relates to a specific responsibility of the council, barred from participating in decisions or information relating to that responsibility.

Endnotes

1. CSPL recommend that “Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority”.
2. CSPL recommend that “councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.”
3. Subject to footnotes 1 and 2 above
4. See CSPL website for further details www.gov.uk/government/news/the-principles-of-public-life-25-years
5. ACAS’s definition of bullying

Appendices

Code Appendix A

The principles are :

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Code Appendix B

Registering interests

1. Within 28 days of this Code of Conduct being adopted by the council or your election or appointment to office (where that is later) you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) and Table 2 (Other Registerable Interests).
2. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest in Table 1 or 2, or of any change to a registered interest, notify the Monitoring Officer.

Declaring interests

3. Where a matter arises at a meeting which directly relates to an interest in Table 1, you must declare the interest, not participate in any discussion or vote on the matter and must not remain in the room unless granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
4. Where a matter arises at a meeting which directly relates to an interest in Table 2, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

5. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest) or a financial interest or well-being of a relative or close associate, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
6. Where a matter arises at a meeting which affects –
 - a. your own financial interest or well-being;
 - b. a financial interest or well-being of a friend, relative, close associate; or
 - c. a body covered by table 1 below

you must disclose the interest.

7. Where the matter affects the financial interest or well-being to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

Table 1: Disclosable Pecuniary Interests

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain. [Any unpaid directorship.]
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 .
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council — (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the council. ‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.
Corporate tenancies	Any tenancy where (to the councillor’s knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where— (a) that body (to the councillor’s knowledge) has a place of business or land in the area of the council; and (b) either— (i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

*'director' includes a member of the committee of management of an industrial and provident society.

*'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registerable Interests

Any Body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council;	
Any Body—	(a) exercising functions of a public nature;
	(b) directed to charitable purposes; or
	(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
of which you are a member or in a position of general control or management.	



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We consider requests on an individual basis.



AUGUST 2020

LONDON BOROUGH OF BRENT

MEMBERS' CODE OF CONDUCT COMPLAINTS PROCEDURE

1 Introduction

- 1.1 It is a requirement of the Localism Act 2011 that all Councils must adopt a Code of Conduct, which deals with the conduct expected of its elected and co-opted members when they are acting in their official capacity. The Code of Conduct is also required to include appropriate provisions relating to the registration and disclosure of pecuniary and other interests.
- 1.2 Brent Council is responsible for administering its own Code of Conduct and the Council is required to have in place arrangements under which allegations can be investigated and decisions on allegations can be made.
- 1.3 Brent Council is required to appoint at least one Independent Person whose views may be sought by the Council, usually through the Monitoring Officer, or by subject members. The Council must seek the views of an Independent Person before making a decision on an allegation that has been referred for investigation. There is no right for the complainant to seek the views of the Independent Person and no such contact will be tolerated. We have appointed a small number of Independent Persons.
- 1.4 The Independent Persons do not represent and nor are they advisors to the subject member or the Council. They must remain completely impartial and objective and they cannot take sides. Their only role is to assess complaints and form a view on them.
- 1.5 The 2011 Act provides that an allegation is *"a written allegation that a member or co-opted member of the authority has failed to comply with the authority's code of conduct"*.
- 1.6 This document sets out the procedure for submitting a complaint alleging that the Code of Conduct has been breached and the procedures that will be followed in dealing with such complaints. It also sets out the criteria for assessing a complaint and when a request may be made for the decision taken on a complaint to be reviewed.
- 1.7 All allegations will be dealt with objectively, fairly and consistently. We will also have regard to what is in the public interest and our fiduciary duty to the tax payers.
- 1.8 Within this procedure references to the "Monitoring Officer" include his or her duly appointed representative(s).
- 1.9 In this procedure the term 'subject member' means the member against whom the allegation has been made.
- 1.10 The Standards Committee will convene from time to time to review the handling of complaints, reviews and decisions made with a view to identifying trends or any improvements in this procedure and the application of it that may be desirable.

2 Submitting a complaint

- 2.1 All complaints must be submitted in writing and this includes electronic submissions. We will assist you if you have a disability that prevents you from making or makes it difficult for you to submit your complaint in writing. We can also help if English is not your first language.
- 2.2 Complainants are encouraged to use our complaints form which we can send out as a hard copy or which is available in electronic format from our web site. Further information and the complaint form are available on the [Complaints](#) page on our website. If the complaints form is not used the required information will still need to be provided in writing.
- 2.3 If a verbal complaint is made we will ask that the complaint is confirmed in writing providing all the required information. If you are unable to make a written complaint we will offer to transpose your complaint onto a complaint form with an accompanying written statement (if required) which you will then be asked to sign or otherwise indicate to our satisfaction that you wish to make a complaint in those terms. If you are unwilling to sign the documentation or otherwise indicate to our satisfaction that you wish to make a complaint in those terms we will not take any further action on the complaint unless the Monitoring Officer is satisfied that the circumstances justify a departure from this position. If you make a verbal complaint and simply decline to confirm the complaint in writing for reasons which we do not consider to be justifiable we will take no further action on the complaint.
- 2.4 Anonymous complaints will be rejected. This does not include complaints where the complainant requests confidentiality and which is dealt with further in section 7 below and on the complaint form.
- 2.5 Some complaints against a member will represent a complaint against the Council but will fall outside the scope of this procedure. If that happens the complaint will be forwarded to the relevant officer(s) in the Council and the complainant will be advised of the action taken.
- 2.6 To submit complaints electronically please use the on-line form at the link in paragraph 2.2 above or e-mail [email address]. All other submissions must be sent or delivered to:
- The Monitoring Officer
Resources Chief
Executive's Department
Brent Civic Centre,
Engineers Way,
Wembley, Middlesex,
HA9 0FJ

3. Processing and determination of complaints

- 3.2 When a complaint is received which is within the scope of this procedure we will aim to acknowledge receipt within 3 working days.
- 3.3 The Monitoring Officer will carry out an initial assessment of whether the alleged behaviour falls within the Code of Conduct and, therefore, this procedure. This will normally be done within 10 working days. If the allegation is about a matter which falls outside of the Code of Conduct or is considered to be within one of the criteria set out below the complaint will not progress beyond this initial assessment stage.

Initial assessment criteria

- If the complaint is the same or substantially the same as a complaint previously dealt with
- If the period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue
- If the complaint is trivial
- If the complaint is not considered to disclose a sufficiently serious potential breach of the Code to merit further consideration
- If the complaint discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
- If the complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and the complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
- If the complaint is vexatious
- If the member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter and the complaint does not disclose sufficiently serious potential breaches of the Code to merit further consideration
- If the complaint is about a person who is no longer a member of the Council and there are no overriding public interest reasons to merit further consideration

3.4 At this stage, if the complaint is not to progress further the Monitoring Officer will notify the complainant in writing of that fact and with the reasons. She/he will also write to the subject member with details of the complaint, the decision made and the reasons for the decision. The name of the complainant will be disclosed to the subject member unless confidentiality has been requested and the Monitoring Officer considers the request to be justified. When confidentiality has been granted that will be confirmed to the subject member along with the reasons for granting it but not so as to enable the complainant to be identified.

3.5 Notwithstanding paragraph 3.2, the Council will in appropriate circumstances pass to the police or Director of Public Prosecutions any allegations it receives which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.

3.6 For those complaints which are to be taken beyond the process detailed in the preceding paragraphs, the following steps will be followed. The Monitoring Officer shall seek the views of the nominated Independent Person at Steps 3, 4, 9 and 10 of the process below and the subject member may seek the views of an Independent Person at any time during this process. If considered necessary by the Monitoring Officer she/he may consult with the Chair of Standards Committee and/or any Vice Chair of Standards Committee if appointed Standards Committee to assist her/him with the consideration and determination of the complaint. She/he may do this at any time during the process. The Monitoring Officer may also consult the Leader of the Council or Group Leaders, the Chief Executive or any other officers.

Step	Action
1	<p>The Monitoring Officer will write to the subject member with details of the complaint, including those of the complainant unless any confidentiality request has been agreed, and also the name and contact details of for one of the Independent Persons who has been nominated for the complaint and who the subject member may contact to seek their views. When confidentiality has been granted that will be confirmed to the subject member along with the reasons for granting it but not so as to enable the complainant to be identified. At this stage the subject member will be given an opportunity to provide the Monitoring Officer with a written response to the complaint. Ordinarily we will ask the subject member to restrict their written comments to two sides of A4 but they will be permitted to provide copies of supporting documents. A time limit for providing a written response will be imposed. Ordinarily this period will be 10 working days.</p>
2	<p>The subject member will provide their written comments, with supporting documentation if relevant, notify the Monitoring Officer that they do not wish to provide a written response to the complaint or the time limit for the submission of a written response will lapse.</p>
3	<p>The Monitoring Officer, following consultation with the Independent Person, will consider the complaint again in the context of any written submissions and supporting documentation provided by the subject member.</p>
4	<p>The Monitoring Officer will, following consultation with the Independent Person, determine the complaint in accordance with the Assessment Criteria set out in Annex 1 to this Procedure. The options the Monitoring Officer has are:</p> <ul style="list-style-type: none"> (i) to make no finding as to whether there has been a breach of the Code and take no further action; (ii) to make no finding as to whether there has been a breach of the Code but determine that some action other than an investigation is appropriate; (iii) to find no breach of the Code; (iv) to find a breach of the Code without an investigation but impose no sanction; (v) to find a breach of the Code without an investigation and impose a sanction; (vi) to require that the complaint be investigated to determine whether there has been a breach of the Code and the seriousness of the breach; (vii) to conclude that the circumstances of the complaint indicate that an offence under Chapter 7 of Part 1 of the Localism Act 2011 may have been committed and that the complaint ought to be investigated, by the police where appropriate, to determine whether a prosecution should be brought.
5	<p>The outcome of the determination of the complaint will be notified in writing to the complainant and the subject member within 5 working days.</p>

6	<p>The complainant and the subject member will ordinarily be given 10 working days from the date of notification of the decision to make a written request to the Monitoring Officer that the decision is reviewed. In either case the person requesting the review must provide reasons to support the request for review and provide any supporting documentation that is relevant but which was not previously provided. The following limitations on review requests apply:</p> <p>(i) the complainant may only request a review where the finding is either of paragraphs (i) and (iii) in Step 4 above;</p> <p>(ii) the subject member may only request a review where the finding is either of paragraphs (iv) and (v) in Step 4 above</p>
7	<p>Following a written request for review being received within the time limit the Monitoring Officer will acknowledge the review request within 3 working days and notify the other interested parties of the review request. She/he will write to the complainant or subject member as appropriate with details of the review request. At this stage the complainant or subject member as appropriate will be given an opportunity to provide the Monitoring Officer with a written response to the review request. Ordinarily we will ask the complainant or subject member as appropriate to restrict their written comments to two sides of A4 but they will be permitted to provide copies of supporting documents. A time limit for providing a written response will be imposed.</p>
8	<p>The complainant or subject member as appropriate will provide their written comments, with supporting documentation if relevant, or notify the Monitoring Officer that they do not wish to provide a written response to the complaint or the time limit for the submission of a written response will lapse.</p>
9	<p>The Monitoring Officer, following consultation with the Independent Person, will consider the complaint again in the context of any written submissions and supporting documentation provided by the subject member at Step 2 as well as the review request and any written response to it.</p>
10	<p>The Monitoring Officer will, following consultation with the Independent Person, determine the review in accordance with the Assessment Criteria set out in Annex 1 to this Procedure. The options the Monitoring Officer has are as set out in Step 4.</p>
11	<p>The outcome of the determination of the review will be notified in writing to the complainant and the subject member within 5 working days.</p>

3.7 Steps 1 to 4 in the table in paragraph 3.5 will normally be concluded within 28 days of receipt of the complaint. If it is not possible to do this within this time the complainant and the subject member will be contacted and advised of the delay and when the Steps will be completed.

3.8 Steps 7 to 10 in the table in paragraph 3.5 will normally be concluded within 28 days of receipt of the review request. If it is not possible to do this within this time the complainant and the subject member will be contacted and advised of the delay and when the Steps will be completed.

- 3.9 The sanctions that may be imposed where the Code is found to have been breached are set in in section 10 of Annex 2.

4 What happens following assessment or review of complaints?

- 4.1 Any action or investigation will be implemented. If other action is determined as appropriate and either party declines to comply that will be reported to the Monitoring Officer who may decide to treat the facts as a complaint for determination through the process set out in paragraph 3.5 above.
- 4.2 If potential criminal offences are identified and the complaint referred for investigation with a view to prosecution, the appropriate procedures of the police or Council will be followed so as to protect the integrity of the investigation.
- 4.3 A report setting out all the complaints and requests for reviews received and what action was taken regarding them will be forwarded to the Standards Committee on a 6 monthly basis for consideration and comment.
- 4.4 The procedures for any investigations and hearings following investigation are annexed to this document as Annex 2 and 3.

5 Complainant confidentiality

- 5.1 The subject member will, in normal circumstances, be told from the outset who has complained about them. If a complainant asks for their identity to be withheld their request will be considered by the Monitoring Officer prior to the member being notified that a complaint has been made.
- 5.2 Each request for confidentiality will be considered on its merits and in determining such a request the following will be considered:
- (i) Whether the complainant reasonably believes that they, or those connected to them, will be at risk of harm if their identity is disclosed;
 - (ii) That the complainant is reasonably concerned about the consequences to their employment, or those connected to them, if their identity is disclosed;
 - (iii) That the complainant, or somebody closely connected to them, suffers from a medical condition and there is evidence of medical risks associated with their identity being disclosed or confirmation from an appropriate medical professional that that is the case; and
 - (iv) The public interest. In some cases the public interest in proceeding with the complaint may outweigh the complainant's wish to have their identity withheld.
- 5.3 If it is not considered appropriate to grant a request for confidentiality the complainant will be offered the opportunity to withdraw the complaint rather than proceed with it but this is subject to paragraph 6.

6 Withdrawal of complaints

- 6.1 Requests to withdraw complaints will normally be granted but in considering such a request from the complainant the Monitoring Officer will consider the following factors:
- (i) Whether the public interest in taking action on the complaint outweighs the complainant's desire to withdraw it;
 - (ii) Whether the complaint is such that action can or should be taken on it without the complainant's participation; and
 - (iii) Whether there appears to be an identifiable underlying reason for the request to withdraw the complaint such as whether there is information to suggest that the complainant may have been pressured into withdrawing the complaint.
- 6.2 Even if a request to withdraw a complaint is granted, the Monitoring Officer may still refer the circumstances for assessment and investigation under the appropriate procedures if those circumstances merit such action in the opinion of the Monitoring Officer such as if they disclose potentially significant probity issues, possible criminal offences or safeguarding issues.

7 Conflicts of interest

- 7.1 If any officer has any personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint other than such reasonable steps as are necessary to ensure that the complaint is dealt with by someone other than them. Any conflicts identified during the course of a matter will be managed appropriately by the Monitoring Officer.
- 7.2 An officer who has previously advised a subject member or has given advice to the complainant about the issues giving rise to a complaint must seek advice from their line manager as to whether they can properly be involved in the conduct of a related complaint. Public perception and the public interest will be considered.
- 7.3 If any Independent Person has any personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint other than such reasonable steps as are necessary to ensure that the complaint is dealt with by someone other than them. Where this occurs another Independent Person will be appointed and the appropriate person(s) notified.

8 Records retention

- 8.1 Brent Council will store all records of complaints in electronic format in a secure environment on a computer network. Records will be stored in accordance with the Brent Council's records management policy and procedures. We may also choose to store hard copies of some or all documents and information.

Annex 1 to the Code of Conduct complaint Assessment and Determination Procedure

Assessment Criteria

1. Introduction

- 1.1 All complaints and reviews will be considered on their merits and according to the facts.
- 1.2 The Monitoring Officer will seek the views of the Independent Person at Steps 3, 4, 9 and 10 of the procedure set out in 3.5 of the main document.
- 1.3 These assessment criteria, which are subject to an annual review by the Standards Committee, will be used as guidance in the consideration and determination of complaints and reviews but the Monitoring Officer is entitled to depart from these criteria when they consider it appropriate to do so.
- 1.4 The assessment criteria are intended to be a guide to promote consistency. Two complaints may be about the same aspect of the Code but differ considerably in terms of the facts, how serious they are and there may be huge differences in the relevance and amount of detail regarding the complaint. For these reasons the assessment criteria can only be a guide.

2. Overriding criteria

- 2.1 These three tests will be applied during the initial assessment of a complaint:
 - Is the complaint about one or more named members of the authority?
 - Was the subject member in office at the time of the alleged conduct?
 - If proven, would the complaint disclose a breach of the Code of Conduct?
- 2.2 **No finding of whether there is a breach of the Code**
If on the facts it is not possible to determine whether there has been or may have been a breach of the Code and the alleged conduct does not merit an investigation, having regard to the public interest, this is the appropriate finding to make.
- 2.3 **No finding of whether there is a breach of the Code but action other than investigation is appropriate**
If on the facts, it is not possible to determine whether there has been or may have been a breach of the Code, the alleged conduct does not merit an investigation, having regard to the public interest, but the allegation and any response from the subject member disclose an underlying issue that action such as mediation or training on the Code or council procedures might assist with, this is the appropriate finding to make. The other action information below needs to be considered in these circumstances.
- 2.4 **Finding of no breach of the Code**
If the facts available demonstrate on the balance of probabilities that there has been no breach of the Code, this is the appropriate finding to make. If there is no breach of the Code a sanction cannot be imposed but other action such as mediation or training might still be considered.

2.5 Finding of a breach of the Code without an investigation

A finding that the Code of Conduct has been breached without the need for an investigation will usually be appropriate in the following circumstances:

- It can clearly be shown that from the information that has been provided by the subject member and the complainant that a breach of the Code has occurred
- The subject member has admitted to the breach of the Code, whether or not they have offered to remedy the breach
- It can be shown that an investigation is unlikely to be able to establish any further independent relevant evidence regarding the complaint or that the cost of obtaining any further evidence would not be justified having regard to the public interest and that on the evidence supplied a breach of the Code can be shown

2.6 A breach of the Code without investigation can only be found if the complaint satisfies the first three initial tests and that it can be clearly shown, on the balance of probabilities that a breach of the Code of Conduct has occurred.

2.7 No Further Action

If a breach of the Code is found but it is trivial, a technical breach or otherwise of limited effect it may be appropriate to take no further action.

2.8 Referral for other action

A complaint may be referred for other action in the circumstances listed below. Other action may be appropriate whether a breach is found or not. However, in general, other action may be used where the complaint discloses a more general rather than a specific problem concerning the member's conduct.

Referring a matter for other action effectively closes the door on a review of the decision as the matter cannot subsequently be referred for investigation if the complainant is dissatisfied with the outcome of the other action. As such, other action should be exercised only where appropriate. If necessary the assessment of a complaint can be deferred while further information is obtained and other action is being considered. In addition, the subject member and the complainant can be contacted to see if they will accept other action as a way of resolving the complaint, such as by way of an apology.

The following should be considered in determining whether it is appropriate to refer a complaint for other action:

- Does taking further action provide an opportunity to resolve the issue and to prevent any similar issues arising in the future and promote good governance?
- Does the complaint present a potentially less serious breach of the Code than would require the matter to be referred for investigation and is any benefit to be gained from referring the matter for investigation?
- Is the subject member a member who appears to have a poor understanding of the

Code and relevant procedures?

- Is the council suffering from a widespread breakdown in internal relationships and trust where a course of action other than an investigation of a complaint may be more appropriate and beneficial to the council?

2.9 **Referral for Investigation**

A complaint should usually be referred for investigation in the following circumstances:

- The complaint has passed all three of the initial tests
- The subject member has denied the allegations but the information presented indicates that there may be a breach of the Code
- On the information provided the potential breach of the Code of Conduct is sufficiently serious that an investigation should be undertaken to discount or substantiate the complaint and to determine what sanction, if any, is appropriate

2.10 **Potential offences under the Localism Act 2011**

If it is considered that the allegation concerned may disclose an offence under the Localism Act it should be referred to the police or other appropriate person(s) for further consideration as to whether there should be an investigation with a view to prosecution. No prosecution can be brought without the consent of the Director of Public Prosecutions.

If it transpires that no offence was committed, whether following trial or otherwise, the complaint ought to be reintroduced to this procedure for determination of any breach of the code and any appropriate sanction.

Annex 2

How is the investigation conducted?

1. Where, the view of the Monitoring Officer is that a complaint merits formal investigation, the Monitoring Officer will appoint an investigating officer. The timescale for investigation will normally take no more than 12 weeks to complete.
2. The investigating officer will contact the complainant and the member against whom a complaint has been made and undertake such investigation as is appropriate in all the circumstances within the parameters of the complaint that has been made. Where during the course of an investigation new matters arise, the Investigating Officer shall refer those matters back to the Monitoring Officer for a decision on how those matters should be dealt with under these procedures.
3. At the end of the investigation, the investigating officer will produce a draft report and will seek comments and views on the draft report from the member against whom the complaint has been made and, except in exceptional circumstances, the complainant. If a draft report is not sent to the complainant for comment an explanation must be provided in the report.
4. Having received and taken account of any comments which have been made, the Investigating Officer will send a copy of the final report to the Monitoring Officer.
5. If at any time the investigation is frustrated, for example, if significant witnesses are not available for interview, the Monitoring Officer following consultation with the Independent Person can decide what action to take, including terminating the investigation.
6. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?
 - The Standards Committee will review the Investigating Officer's report and if, following consultation with the Independent Person, it accepts the Investigating Officer's conclusion, the Standards Committee will inform the complainant and the member concerned that it is satisfied that no further action is required. A copy of the Investigating Officer's final report will be given to the complainant and the member concerned. Members of the Standards Committee will be advised that the report relates to an individual and will reveal their identity.
 - If the Standards Committee following consultation with the Independent Person is not satisfied that the investigation has been conducted properly, it may ask the investigating officer to reconsider his/her report.
 - If the Standards Committee following consultation with the Independent Person wishes, notwithstanding the views of the investigating officer, it may refer the matter for hearing.
7. What happens if the investigating officer concludes that there is evidence of a failure to comply with the Code of Conduct?
 - (i) The Standards Committee will review the investigating officer's report and following consultation with the Independent Person, will either (a) direct local resolution or (b) refer the matter to Standards Committee for a hearing
 - (ii) Local Resolution

The Standards Committee, following consultation with the Independent Person may consider that the matter can reasonably be resolved without the need for a hearing. In such a case the Standards Committee may direct such fair resolution as it considers 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 authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee for information but will take no further action. If the local resolution recommended by the Standards Committee is not complied with, the Monitoring Officer will refer the matter to the Standards Committee to determine whether there should be a hearing.

(iii) Standards Committee hearing

Meetings of the Standards Committee will be open to the press and public unless confidential or exempt information under Part VA Local Government Act 1972 is likely to be disclosed. The committee will go into private session if it resolves to do so.

If the Standards Committee decides that the matter will proceed to hearing, paragraphs 8 to 11 will apply:

8 Pre Hearing Process

8.1 Prior to a hearing, an officer from the Council's ~~Democratic Services~~ **Executive & Member Services** team will write to the member subject to the complaint proposing a date for the hearing before the Standards Committee.

~~8.2.~~ The Legal Department ~~Services~~ will provide a copy of this procedure note to the member subject to the complaint and request a written response from the member within a set time in relation to whether the member:-

- Wants to be represented at the hearing by a solicitor, barrister or any other person and the identity of that person
- Disagrees with any of the findings of fact in the investigation report and the reasons for it
- Considers he or she has breached the Code of Conduct and, if not, why
- Whether if there is found to be a breach there is anything he or she would like to be taken into account by the committee when it considers whether a sanction should be imposed and what that sanction might be
- Wants to give evidence to the Standards Committee either verbally or in writing
- Wants to call relevant witnesses to give evidence to the hearing and to provide details of the witnesses
- Wants any part of the hearing to be held in private and reasons for the request
- Wants any part of the investigation report or other relevant documents to be withheld from the public and reasons for the request
- Has any special access requirements e.g. interpreter, special print (or the Member's witness(es) or representative requires such)
- Can attend the hearing

8.3 The member's response will be referred to the Monitoring Officer to comment in order to ensure that all parties are clear about the remaining factual disputes and can deal with these issues at the hearing. The Monitoring Officer will also ascertain from the investigating officer whether the complainant will be giving evidence at the hearing and whether the investigating officer will be calling any witnesses to give evidence.

8.4 The Monitoring Officer will prepare a report for the hearing which will:

- Summarise the allegation
- Outline the main facts of the case which are agreed
- Outline the main facts which are not agreed
- Indicate whether the member and the investigating officer will be present at the hearing
- Indicated the witnesses, if any, who will be asked to give evidence
- Include the Investigating Officer's report
- Include the views of the Independent Person

9 The Hearing

9.1 The hearing is before the Standards Committee and the Independent Person will be in attendance to provide his/her views before a decision is made.

9.2 The procedure for local hearings is attached at Annex 3.

9.3 The meeting of the Standards Committee will be open to the press and public unless confidential or exempt information under Part VA Local Government Act 1972 is likely to be disclosed. The Committee will go into private session if it resolves to do so.

9.4 The Standards Committee will decide on the balance of probabilities whether the member is in breach of the Code of Conduct. The Standards Committee must seek the views of the independent person before making a decision on the allegation.

9.5 The Standards Committee can determine the number of witnesses and the way in which witnesses can be questioned.

9.6 If the member fails to attend the hearing, the Standards Committee can decide whether to proceed in the member's absence and make a determination or whether to adjourn the hearing to a later date.

9.7 If the Standards Committee concludes that the member did fail to comply with the Code of Conduct, the Committee will then consider what action, if any, the Committee should take. In doing this, the Committee will give the member the opportunity to make representations to the Committee and will consult the Independent Person.

10. **What action/sanctions can the Standards Committee take where a member has failed to comply with the Code of Conduct?**

10.1 The Council has delegated to the Standards 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 **sanctions available** to the Standards Committee **are**:

- Censure or reprimand the member
- Publish in a local newspaper its findings in respect of the member's conduct
- Report its findings to Council for information
- Recommend that the member apologises
- Recommend that the member undertakes training
- Recommend to the member's Group Leader (or in the case of ungrouped members recommend to Council or to committees) that the member be removed from any or all committees of the council
- Recommend to the Leader that the member be removed from the Cabinet or removed from particular portfolio responsibilities
- Recommend to Council that the member be replaced in any Council appointed roles
- Instruct the Monitoring Officer to arrange training for the member
- Recommend to Council removal from all outside appointments to which the member has been appointed or nominated by authority
- Withdraw facilities provided to the member by the Council
- Exclude the member from the Council's offices or other premises with the exception of meeting rooms as necessary for attending council and committee meetings.

11 What happens at the end of hearing?

- 11.1 At the end of the hearing the Chair of the Standards Committee will state the decision of the Committee and any actions which the Committee resolves to take.
- 11.2 The decision taken by the Standards Committee will be recorded in accordance with ordinary committee rules.

12 Appeals

- 12.1 There is no right of appeal for the complainant or the member against a decision of the Monitoring Officer or the Standards Committee.

Annex 3

Procedure for Hearings before the Standards Committee

1 Introduction

2 Chair of the Standards Committee outlines the hearing procedure

- 2.1 The Chair can depart from the procedure outlined below where he/she considers it expedient to do so in order to secure the fair consideration of the matter.

3 Findings of Fact

- 3.1 The Committee should consider where there are any significant disagreements about the facts contained in the investigating officer's report.
- 3.2 If there is no disagreement about the facts the committee can move on to the next stage of the hearing (go to paragraph 9)
- 3.3 Where there is a disagreement the investigating officer will be invited to make representations to support the findings of fact and with the committee's permission, call witnesses to give evidence.
- 3.4 The member, against whom the complaint has been made, will be given the opportunity to challenge the evidence put forward by any witness called by the investigating officer by asking the witness questions.
- 3.5 The member will then be given the opportunity to make representations and with the committee's permission, call any witnesses to give evidence.
- 3.6 The investigating officer will be given the opportunity to challenge the evidence put forward by any witness called by the member to give evidence.
- 3.7 At any time, the committee and independent person may question any of the people involved or any witnesses. The independent person may also give an opinion.
- 3.8 The Committee will usually consider the representations and evidence in private.
- 3.9 The committee will be advised by the Monitoring Officer, in private if necessary, at any time during the hearing or while they are considering the outcome.
- 3.10 Once the committee has made its decision, the Chair will announce the committee's finding of fact to the meeting.

4 Did the member fail to comply with the Code of Conduct?

- 4.1 The committee should then consider whether based on the facts it has found, the member has failed to comply with the Code.
- 4.2 The member will be invited to make representations on the matter.

- 4.3 The investigating officer will be invited to make representations.
- 4.4 The independent person will be invited to give an opinion.
- 4.5 The committee may, at any time, question the member, investigating officer or independent person on any point raised.
- 4.6 The member will be invited to make any final relevant points
- 4.7 The committee will usually consider the representations in private, with the attendance of and advice from the Monitoring Officer.
- 4.8 Once the committee has made its decision, the Chair will announce the committee's decision to the meeting as to whether the member has failed to comply with the Code.

5 If there is a finding that the member has not failed to comply with the Code of Conduct

- 5.1 Where the committee decides that the member has not failed to comply with the Code, the committee can consider whether it wishes to make any recommendations.

6 If there is a finding that the member has failed to comply with the Code of Conduct

- 6.1 If the committee decided that the member has failed to comply with the Code, it will consider representations from the member, investigating officer and independent person as to:

- Whether the committee should apply a sanction
- What form any sanction should take

- 7 The committee may question the investigating officer, member and independent person and take legal advice, to make sure they have the information they need in order to make an informed decision.

- 8 The committee will consider in private with the attendance of and advice from the Monitoring Officer whether to impose a sanction and if, so what sanction it should be

- 9 The Chair will announce the decision to the meeting.

- 10 The committee will also consider whether it should make any recommendations with a view to promoting high standards of conduct

11 Committee decision

- 11.1 The decision taken by the Standards Committee will be recorded in accordance with ordinary committee rules.