

PROCEDURE FOR DEALING WITH COMPLAINTS UNDER THE MEMBERS' CODE OF CONDUCT

1. Background

This procedure sets out how a complaint that an elected or co-opted member of this authority has failed to comply with the authority's Code of Conduct can be made and how the authority will deal with allegations of a failure to comply with the authority's Code of Conduct.

2. The Code of Conduct

The Council has adopted a Code of Conduct for members and this is available on the Council's website.

3. Making a Complaint

3.1 A complaint must be made in writing and emailed or sent to:

The Monitoring Officer
London Borough of Brent
Legal and Procurement
Forty Lane
Wembley
Middlesex
HA9 9HD

Or emailed to: fiona.ledden@brent.gov.uk

3.2 The Monitoring Officer has statutory responsibility for maintaining the register of members' interests and is responsible for applying the processes in respect of complaints of member misconduct.

3.3 The authority will not normally investigate anonymous complaints unless there is a clear public interest in doing so.

3.4 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and will keep the complainant informed about the progress of the complaint.

3.5 The Monitoring Officer will inform the member against whom a complaint has been made that a complaint has been made and will give details of the complaint to them. The Monitoring Officer has the discretion, which will only be exercised in exceptional circumstances, not to inform the member of the detail of the complaint at this stage if the Monitoring Officer is of the view that there is a risk that an investigation could be frustrated or a case prejudiced by the member knowing the details. Once the matter is concluded the member will be informed of the outcome of the matter whether or not they were informed at this early stage.

4. Will the complaint be investigated?

4.1 The Monitoring Officer will review every complaint received.

4.2 The complaint must be:

- Against one or more named members of the authority; and
 - In relation to a named member who was in office within the authority at the time of the alleged conduct and the code of conduct was in force at the time; and
 - In relation to an alleged breach of the Code of Conduct.
- 4.3 If the complaint does not fall within 4.2 above the matter will not be considered and the complainant will be informed that there will be no further action.
- 4.4 Where the complaint passes the above test, and in order to establish a preliminary view of the circumstances of the complaint and whether there may be a course of action which could be taken to resolve the issues promptly without the need for formal action, the Monitoring Officer may consult or meet with any relevant persons, which may include the Leader of the Council or Group Leaders, the Chief Executive or any other officers, the complainant and the member against whom the complaint has been made.
- 4.5 The Monitoring Officer will consult with the Independent Person to determine the course of action to be taken. This decision will normally be taken within 14 days of receipt of the complaint. The complainant and the member against whom the complaint is made will be informed of the Monitoring Officer's decision and the reasons for that decision. Three outcomes are available:
- (i) No formal investigation and no further action paragraph (4.6) below
 - (ii) No formal investigation and local resolution paragraph (4.8) below
 - (iii) Referral to the Standards Committee for a decision to be taken on investigation – paragraph 5.
- 4.6 In assessing whether a complaint should be investigated the following factors will be taken into consideration:
- Public Interest – the decision whether to investigate will be a proportionate response to the issues raised and expected outcomes and will take into account the wider public interest and the costs of undertaking an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters.
 - Alternative course of action – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case.
 - Previous action – if the complaint has already been subject to a previous investigation or some other action relating to the code of conduct or other related process, the matter will ordinarily not be referred for further investigation of the same matters.
 - Vexatious/repeated complaints – the Monitoring Officer will not refer for investigation a complaint that is the same or substantially the same as one previously made by the complainant.
 - Timing of the alleged conduct – if there are significant delays between the incident complained of and the complaint the matter will not ordinarily be considered further unless there are very good reasons for the delay.
 - Ulterior motive – no further action is likely to be taken if the complaint is considered to be only motivated by malice, political motivation or retaliation.
- 4.7 In cases which do not fall within 4.6 above the Monitoring Officer in consultation with the Independent Person may consider resolution of the complaint by one of the following means;

- The member accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the authority.
- Referring the matter to group leaders or officers
- The member being required to attend training
- The member being required to meet with the Monitoring Officer and/or other chief officers
- Such other action as is considered appropriate by the Monitoring Officer and Independent Person

4.8 Matters which might appropriately be dealt with as described in 4.7 above may include:

- Misunderstanding of procedures or protocols
- Misleading, unclear or misunderstood advice from officers
- Lack of experience or training
- A general deterioration of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect.

4.9 If the action recommended in paragraph 4.7 above is not taken, the Monitoring Officer shall refer the matter to Standards Committee to determine if formal investigation is the appropriate course of action.

5 How is the investigation conducted?

5.1 Where a complaint does not fall within paragraph 4.6 or 4.8 the case shall be referred to the Standards Committee for a decision as to whether the complaint merits formal investigation. Where the Standards Committee agrees a formal investigation be undertaken it will instruct the Monitoring Officer to appoint an investigating officer. The timescale for investigation will normally take no more than 12 weeks to complete.

5.2 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.

5.3 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 complainant and the member against whom the complaint has been made.

5.4 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.

5.5 If at any time the investigation is frustrated, for example, if significant witnesses are not available for interview, the Standards Committee in consultation with the Independent Person can decide what action to take, including terminating the investigation. Such cases will be reported to the Standards Committee for a decision.

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

- 6.1 The Standards Committee will review the Investigating Officer's report and if, in 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.
- 6.2 If the Standards Committee in 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.
- 6.3 If the Standards Committee in 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?

- 7.1 The Standards Committee will review the investigating officer's report and in consultation with the Independent Person, will either (a) direct local resolution or (b) refer the matter to Standards Committee for a hearing

7.2 Local Resolution

The Standards Committee, in 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 Standard 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 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.

7.3 Standards Committee hearing

Meetings of the Standards Committee including those in 4.9, 5.1 and 6.1 above 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 a 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 team will write to the member subject to the complaint proposing a date for the hearing before the Standards Committee.
- 8.2 The Legal and Procurement Department would 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 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 members 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
- Indicate the witnesses, if any, who will be asked to give evidence
- Include the proposed procedure for the hearing
- 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 **Appendix 1**.

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 conclude 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 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 Standards Committee may:

- 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 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 administration 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 the 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

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

If the complainant believes that the authority has failed to deal with the complaint properly, they may wish to make a complaint to the Local Government Ombudsman.

Appendix 1

Procedure for Hearings before the Standards Committee

1. Introduction

2. Chair of the Standards Committee outlines the hearing procedure

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.

Findings of Fact

3. The Committee should consider where there are any significant disagreements about the facts contained in the investigating officer's report.

If there is no disagreement about the facts the committee can move on to the next stage of the hearing (go to paragraph 9)

4. 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.

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.

5. The member will then be given the opportunity to make representations and with the committee's permission, call any witnesses to give evidence.

The investigating officer will be given the opportunity to challenge the evidence put forward by any witness called by the member to give evidence.

6. At any time, the committee and independent person may question any of the people involved or any witnesses.

7. The Committee will usually consider the representations and evidence in private.

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.

8. Once the committee has made its decision, the Chair will announce the committee's finding of fact to the meeting.

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

9. The committee should then consider whether based on the facts it has found, the member has failed to comply with the Code.

10. The member will be invited to make representations on the matter.

11. The investigating officer will be invited to make representations

12. The independent person will be invited to make representations
13. The committee may, at any time, question the member, investigating officer or independent person on any point raised in the representations.
14. The member will be invited to make any final relevant points
15. The committee will usually consider the representations in private, with the attendance of and advice from the Monitoring Officer
16. 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.

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

17. 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 to the authority

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

18. 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
19. 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.
20. 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
21. The Chair will announce the decision to the meeting.
22. The committee will also consider whether it should make any recommendations to the authority with a view to promoting high standards of conduct

Committee decision

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