

STANDARDS COMMITTEE

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011

1. Context

1.1 These 'Arrangements' set out how a complaint may be made that an elected or co-opted member of this Authority has failed to comply with the Authority's Code of Conduct, and sets out how the Authority will deal with allegations of a failure to comply with that Code of Conduct.

1.2 Under sections 28(6) and (7) of the Localism Act 2011, the Council must have in place 'arrangements' under which allegations that a member or co-opted member of the Authority, or of a committee or sub-committee of the Authority, has failed to comply with the Authority's Code of Conduct can be investigated and decisions made on such allegations.

1.3 Such arrangements must provide for the Authority to appoint at least one Independent Person, whose views must be sought by the Authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Authority at any other stage, or by a member against whom an allegation as been made.

2. The Code of Conduct

2.1 The Council has adopted a Code of Conduct for members, which is available for inspection on the Authority's web site and on request from Reception at the Civic Offices, St Nicholas Way, Sutton.

3. Making a complaint

3.1 Complaints alleging that a member has breached the Code of Conduct must be in writing ~~stating the paragraph of the Code that it is alleged the member has not complied with and explaining the circumstances of the non-compliance. explaining how it is alleged the code of conduct has not been complied with.~~ The complainant ~~must~~ should complete the Council's complaint form and send it to the Council's Corporate Complaints Team at the Civic Offices, St Nicholas Way, Sutton, SM1 1EA. Their telephone number is 020 8770 5000. A copy of the complaint form is on the Council's web site at www.sutton.gov.uk.

3.2 Whilst complainants will be encouraged to complete the complaint form to ensure all required information is provided, where a complaint is received in writing and contains enough information the complaint will be progressed without requiring the complainant to complete the form. Where a complaint is received officers may seek further clarity from the complainant before progressing. Where a complaint is received orally or by email the complainant will be advised to complete the complaint form. If necessary, assistance will be provided or arrangements made to enable the complainant to complete the complaint form.

3.3 The complainant must provide us with their name and a contact address or email address, so that we can acknowledge receipt of the complaint and keep them informed of its progress. If they wish to keep their name and address confidential, they must indicate this in the space provided on the complaint form, in which case we will not disclose it to the member against whom the complaint has been made without their prior consent. However there may be exceptions, such as those outlined in paragraph 3.7 below. A request from a complainant for confidentiality should be supported by reasons. The Authority does not normally investigate complaints received anonymously or where the complainant cannot otherwise be identified, unless there is a clear public interest in doing so.

3.4 The Corporate Complaints Team will log the complaint and write to the complainant within five working days acknowledging receipt of the complaint.

3.5 Officers in the Corporate Complaints Team will check a complaint. If a complaint specifies that it relates to a failure to comply with the Code of Conduct by a member, or it appears that it might relate to a member and a failure to comply with the Code of Conduct, then it will be passed to the Council's Monitoring Officer for further action within two working days of its acknowledgement, together with any relevant correspondence with the complainant.

3.6 The Monitoring Officer is a senior officer of the Authority who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. The Deputy Monitoring Officer may take the role of the Monitoring Officer if the Monitoring Officer is unable to act.

3.7 The Monitoring Officer will normally disclose to the subject member the details of the complaint, except where such disclosure would be against the public interest or would prejudice any future investigation, or where the complainant has requested confidentiality. If any one of these exceptions applies the Monitoring Officer may only notify the member of the fact that an allegation has been made and the reasons why details cannot be disclosed. A complainant who has requested confidentiality will be informed if the Monitoring Officer considers that it is necessary to divulge their details to the member so that an investigation can be progressed.

4. Will the complaint be investigated?

4.1 The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of the complaint. Where the Monitoring Officer has taken a decision, he/she will inform the complainant and the member of his/her decision and the reasons for that decision.

4.2 The Monitoring Officer will take account of the following criteria in reaching their decision:-

- (a) It is against a councillor or co-opted member.
- (b) The councillor or co-opted member was in office at the time of the alleged conduct.
- (c) If proven, the complaint would be a breach of the Code of Conduct in force at the time of the alleged misconduct.
- (d) The complainant has provided sufficient information for referral for investigation or any other action.
- (e) The complaint is about someone who is no longer a member of the Council, but is a member of another relevant authority.
- (f) The complaint has already been the subject of an investigation or other action relating to the Code of Conduct.
- (g) The complaint is about something that happened so long ago that there will be little benefit in taking action now, or it is not feasible to investigate for any other reason.
- (h) The complaint is too trivial to warrant further action or not in the public interest.
- (i) The complaint appears to be simply frivolous, vexatious, politically motivated or tit-for-tat.

4.3 Where the Monitoring Officer requires additional information in order to come to a decision they may seek such information from the complainant, and may request information from the member against whom the complaint is directed.

4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Authority. Where the member or the Authority makes a reasonable offer of informal resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.5 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the police and other regulatory agencies.

5. How is the investigation conducted?

5.1 If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the Authority, an officer of another authority or an external investigator. The Monitoring Officer will write to the relevant parties:

- (a) informing them that the matter has been referred for investigation;
- (b) if appropriate, advising them who is to be responsible for conducting the investigation;
- (c) advising them how the investigation will be carried out and within what timescale; and
- (d) giving any member who is the subject of the investigation the opportunity to comment on the complaint made.

5.2 The Investigating Officer will decide whether they need to meet or speak to the complainant to understand the nature of the complaint and so that the complainant can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

5.3 The Investigating Officer will normally write to the member against whom the complaint has been made and provide them with a copy of the complaint, and ask the member to provide their explanation of events, and to identify what documents the Investigating Officer needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep the identity of the complainant confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete personal details from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

5.4 At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the member concerned, to give them both an opportunity to identify any matter in that draft report with which they disagree or which they consider requires more consideration.

5.5 Having received and taken account of any comments which may be made on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

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 Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant and to the member concerned, notifying them that he/she is satisfied that no further action is required, and give both of them a copy of the Investigating Officer's final report. The findings will be reported to the Council for information, without question or debate, unless the member asks that they be not reported. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

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 Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before a Code of Conduct Panel or, after consulting the Independent Person, seek a resolution.

Resolution

7.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and with the complainant and seek to agree what is considered to be a fair resolution which also helps to ensure higher standards of conduct in the future. Such resolution may include the member accepting that their 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. However, if the complainant tells the Monitoring Officer that any suggested resolution would not be adequate; the Monitoring Officer will refer the matter for a hearing.

Hearing

7.3 If the Monitoring Officer considers that resolution is not appropriate, or the complainant is not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to a Code of Conduct Panel which will conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member. The hearing will be attended by the Independent Person to provide advice to the Panel.

7.4 The Monitoring Officer will conduct a 'pre-hearing process', requiring the member to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Code of Conduct Panel may issue directions as to the manner in which the hearing will be conducted.

7.5 Hearings of the Code of Conduct Panel will not be held in public.

7.6 A member who is the subject of a hearing may be represented by counsel, by a solicitor or, with the consent of the Code of Conduct Panel, by any other representative.

7.7 If a member who is the subject of a report to the Code of Conduct Panel fails to attend a hearing of which that member has been given notice, the Code of Conduct Panel may:

(a) unless it is satisfied that there is sufficient reason for such failure, consider the allegation and make a determination in the absence of that member; or

(b) adjourn the hearing to another date.

7.8 At the hearing, the Investigating Officer will open the case, calling such witnesses as they consider necessary, and make representations to substantiate their conclusion that the member has failed to comply with the Code of Conduct. For this purpose the Investigating Officer may ask the complainant to attend and give evidence to the Code of Conduct Panel. The member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Code of Conduct Panel as to why they consider that they did not fail to comply with the Code of Conduct.

7.9 The Code of Conduct Panel may place a limit on the number of witnesses a member who is the subject of a hearing may call if it considers that the number that the member proposes to call is unreasonable.

7.10 The Code of Conduct Panel may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Code of Conduct Panel concludes that the member did fail to comply with the Code of Conduct the Chair will inform the member of this finding and the Code of Conduct Panel will then consider what action, if any, the Code of Conduct Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this the Code of Conduct Panel will give the member an opportunity to make representations to the Panel, but will then decide what action, if any, to take in respect of the matter.

8. What action can the Code of Conduct Panel take where a member has failed to comply with the Code of Conduct?

8.1 The Council has decided that the Code of Conduct Panel may take such action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Code of Conduct Panel may :-

(a) Instruct the Monitoring Officer to arrange training for the member.

(b) Publish its findings in respect of the member's conduct.

(c) Report its findings to Council for information, without discussion or debate.

- (d) Chair of the Standards Committee write to the member with their advice on the conduct.
- (e) Censure or reprimand by the Code of Conduct Panel.
- (f) Recommend the Council to censure.
- (g) Recommend the removal of the member from all outside appointments to which they have been appointed or nominated by the Authority.
- (h) Recommend to the member's Group Leader that the member be removed from particular portfolio responsibilities.
- (i) Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to the Council or to committees) that the member be removed from any or all committees or sub-committees of the Council.
- (j) Withdraw facilities provided to the member by the Council, such as a computer, web site and/or email and internet access.
- (k) Exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings.
- (l) Recommend to change/adopt a Council process.

8.2 The Code of Conduct Panel has no power to suspend or disqualify the member or to withdraw the member's allowance.

9. What happens at the end of the hearing?

9.1 At the end of the hearing, the Chair will state the decision of the Code of Conduct Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Code of Conduct Panel resolves to take.

9.2 As soon as reasonably practicable thereafter the Monitoring Officer will prepare a formal decision notice, in consultation with the Chair of the Code of Conduct Panel, and send a copy to the complainant and to the member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Standards Committee.

10. Who are the Code of Conduct Panel?

10.1 The Code of Conduct Panel will comprise three members of the Standards Committee (one from each political group on the Council and an Independent Member).

10.2 The Independent Member will be a member of the Standards Committee appointed by the Council following an open advertisement. They will not be a member of any political group.

11. Who is the Independent Person?

11.1 The Independent Person is a person who has applied for the post following advertising of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council. They must be consulted by the Monitoring Officer before they decide whether or not to carry out an investigation and are available to advise a member who is the subject of a complaint. It is a statutory appointment.

11.2 A person cannot be 'independent' if he/she:-

- (a) Is, or has been within the past five years, a member, co-opted member or officer of the Authority.
- (b) Is a relative, or close friend, of a person within paragraph (a) above. For this purpose, 'relative' means –
 - (i) spouse or civil partner;
 - (ii) living with the other person as husband and wife or as if they were civil partners;
 - (iii) grandparent of the other person;
 - (iv) a lineal descendent of a grandparent of the other person;
 - (v) a parent, sibling or child of a person within paragraphs (i) or (ii);
 - (vi) a spouse or civil partner of a person within paragraphs (iii), (iv) or (v);
or
 - (vii) living with a person within paragraphs (iii), (iv) or (v) as husband and wife or as if they were civil partners.

12. Withdrawal of complaint

12.1 The complainant can request, but there is no right, to withdraw a complaint and it is for the Monitoring Officer in any particular case to consider and decide whether or not to agree to a withdrawal. When making a decision the Monitoring Officer will give due consideration to such matters as:

- a) whether there are identifiable underlying reasons for the withdrawal request;
- b) whether the public interest in taking action on a complaint outweighs the reasons behind the complainant's withdrawal request; and
- c) whether the complaint can be adequately investigated without the complainant's participation.

13. Revision of these arrangements

13.1 The Council may by resolution agree to amend these arrangements, and the Chair of the Code of Conduct Panel may depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

14. Appeals

14.1 There is no right of appeal for the complainant or for the member against a decision of the Monitoring Officer. The member may seek permission to appeal to the First-tier Tribunal against any sanction imposed by the Code of Conduct Panel.

14.2 If either party feels that the Authority has failed to deal with the complaint properly, they may make a complaint to the Local Government Ombudsman.

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