

LONDON BOROUGH OF HAVERING

Arrangements for dealing with allegations that a Member or a Co-opted member of the London Borough of Havering has failed to comply with the Members' Code of Conduct

1. INTRODUCTION

- 1.1 These arrangements set out how an allegation may be made that an elected Member or Co-opted Member of the London Borough Havering has failed to comply with the Members' Code of Conduct and how the Council will deal with such allegations.
- 1.2 Under Section 28 of the Localism Act 2011 the Council must have arrangements in place whereby allegations can be investigated and decisions upon them can be made. In addition the arrangements must provide for the Council to appoint at least one Independent Person whose views must be sought and taken into account by the Council before it makes a decision and who may be consulted by the Council at other stages in the process or by the Member/Co-opted Member against whom an allegation has been made. The arrangements fulfil the Council's statutory obligations.
- 1.3 In these arrangements a number of terms are used which have the following meanings.

Member	An elected Councillor
Co-opted Member	A person who is not an elected Member of the Council but has been appointed to a committee or sub-committee of the Council

Monitoring Officer	An officer of the Council designated under Section 5 of the Local Government and Housing Act 1989 to undertake the statutory duties prescribed which include ensuring that the Council and its Members and Officers act lawfully at all times. Under Section 29 of the Localism Act 2011 the Monitoring Officer must establish and maintain a Register of Interests of Members and Co-opted Members.
Investigating Officer	An appropriate person appointed by the Monitoring Officer to conduct an investigation into an allegation.
Independent Person	A person appointed by the Council pursuant to Section 28 of the Localism Act 2011 whose views are sought and taken into account before decisions upon allegations against Members/Co-opted Members are taken and who may be consulted by a Member/Co-opted Member who is the subject of allegations or by the Council generally.
Adjudication and Review Assessment Panel	An ad hoc Panel of three Members taken from the membership of the Adjudication and Review Committee established to decide whether allegations against Members/Co-opted Members are worthy of investigation.
Adjudication and Review Hearing Panel	An ad hoc Panel of three Members taken from the membership of the Adjudication and Review Committee established to conduct Hearings into allegations of breaches by Members/Co-opted Members of the Members' Code of Conduct

2. THE MEMBERS' CODE OF CONDUCT

- 2.1 The Council has adopted a members' Code of Conduct which is available on the Council's website and on request from the Monitoring Officer.

<https://www.havering.gov.uk/Pages/Category/Councillors.aspx?l1=90001>

3. MAKING AN ALLEGATION

- 3.1 Allegations concerning possible breaches of the Code of conduct should be made in writing to:

Monitoring Officer
London Borough of Havering
Town Hall,
Main Road,
Romford RM1 3BD

Tel: 01708 432484

Or by email to complaints@havering.gov.uk marked for the attention of the Monitoring Officer.

- 3.2 It is preferable that allegations are made on the form available on the Council's website:

[Insert link to form (not yet available)]

- 3.3 It is important that a person making an allegation provides his/her name and a contact address or email address so that the Monitoring Officer can acknowledge receipt of the allegation and keep the person informed of its progress.
- 3.4 The person must indicate if he/she wants to keep his/her name and address confidential and the Monitoring Officer will consider any such requests. The Monitoring Officer has to balance the rights of the Member/Co-opted Member

to understand who is making an allegation against them, against the rights of the person making the allegation who will have to provide reasons why their name and/or address ought to remain confidential

- 3.5 If the Monitoring Officer accepts the reasons for maintaining anonymity and the name and/or address of the person making the allegation will not be disclosed to the Member/Co-opted Member without prior consent.
- 3.6 If the Monitoring Office does not consider those reasons justify anonymity, the person making the allegation will be given the opportunity to withdraw the allegation if they do not wish to proceed without anonymity.
- 3.7 Even where anonymity is agreed at the outset it may not always be possible to maintain that anonymity throughout the entirety of the process. For example, the person making the allegation may be requested to give evidence at a Hearing. If anonymity cannot be maintained the Monitoring Officer will liaise with the person making the allegation to establish whether the person wishes to continue with the allegation or withdraw it.
- 3.8 The Council does not normally investigate anonymous allegations unless there is a clear public interest in so doing.
- 3.9 The Monitoring Officer will acknowledge receipt of an allegation within five clear working days of receiving it and will keep the person making the allegation informed of progress.
- 3.10 The Monitoring Officer will inform the Member/Co-opted Member against whom an allegation has been made and will give details of the allegation and the remedy sought by the person making the allegation. In exceptional circumstances the Monitoring Office has discretion not to inform the Member/Co-opted Member if in his/her opinion to do so would risk an investigation being frustrated or prejudiced in some way.

4. ASSESSMENT OF AN ALLEGATION

- 4.1 The Monitoring Officer will review every allegation received and may consult the Independent Person before taking a decision as to whether or not the allegation merits reference to an Adjudication and Review Assessment Panel.
- 4.2 If the Monitoring Officer requires additional information in order to reach a decision, he/she may revert to the person making the allegation for such information and may request information from the Member/Co-opted Member against whom the allegation is directed. If the person making the allegation fails to provide the additional information requested, the allegation may be dismissed by the Monitoring Officer pursuant to Paragraph 4.4(a), below.
- 4.3 The Monitoring Officer will use a number of criteria for assessing allegations and may consult the Independent Person and if necessary the appropriate political Group Leaders. The decision whether to submit the allegation to an Adjudication and Review Assessment Panel will be a proportionate response to the issues raised and likely outcomes.
- 4.4 The Monitoring Officer may determine that an allegation does not merit any further action where:
- (a) There is insufficient information upon which to base a decision and/or the person making the allegation has failed to co-operate with the Monitoring Officer to specify the allegation sufficiently; or
 - (b) The allegation is about someone who is no longer a Member/Co-opted Member of the Council; or
 - (c) The allegation does not demonstrate a breach of the Members' Code of Conduct; for example the allegation relates to matters whilst the Member/Co-opted Member was not acting in his/her official capacity but rather relates to their private life to which the Code does not apply or it is about dissatisfaction with a Council decision or service; or

- (d) The same or a similar allegation has been investigated and determined;
or
- (e) It is an anonymous allegation which does not include sufficient documentary evidence to indicate a significant breach of the Members' Code of Conduct; or
- (f) The allegation is considered to be frivolous or vexatious; or
- (g) The matters to which the allegation refers took place longer than three months before the date of receipt of the allegation and there are no exceptional circumstances which merit the investigation of matters outside that timescale, nor is it otherwise appropriate to investigate the allegation; or
- (h) The Member/Co-opted Member about whom the allegation is made has admitted making an error and/or has apologised and the matter would not warrant a more serious sanction; or
- (i) The Monitoring Office facilitates an informal resolution. This may involve the Member/Co-opted Member accepting that his/her conduct was inappropriate or otherwise unacceptable and offering an apology and/or taking other remedial action. If the Monitoring Officer considers an offer of informal resolution is reasonable but the person making the allegation is not willing to accept it, the allegation will be referred to the Adjudication and Review Panel for consideration.

4.5 If the allegation is dealt with under Paragraph 4.4 above, the Monitoring Officer shall notify the person making the allegation and the Member/Co-opted Member of the outcome giving reasons for the decision. Normally such notification shall be given within 20 clear working days of receipt of the allegation.

4.6 Except as provided for in Paragraph 4.4 above, the Monitoring Officer shall refer all allegations to an Adjudication and Review Assessment Panel for

consideration which normally shall meet within 20 clear working days from receipt of the allegation.

- 4.7 Where the Monitoring Officer refers an allegation to an Adjudication and Review Assessment Panel for consideration, the Panel shall determine whether the allegation:
- (a) Merits no further investigation and is dismissed; or
 - (b) Merits further investigation
- 4.8 An Adjudication and Review Assessment Panel may determine that an allegation merits no further investigation for whatever reasons it thinks fit, but it may have regard to the criteria set out in Paragraph 4.4 above and to the following additional criteria:
- (a) The allegation is not considered sufficiently serious to warrant investigation; or
 - (b) The allegation appears to be motivated by malice or is “tit-for-tat”; or
 - (c) The allegation appears to be politically motivated
- 4.9 Where an Adjudication and Review Assessment Panel considers that an allegation merits further investigation, the Monitoring Officer shall undertake such investigation. The meeting of the Panel shall adjourn and reconvene when the Investigation Report is available.
- 4.10 The Monitoring Officer will inform the person making the allegation and the Member/Co-opted Member of an Adjudication and Review Assessment Panel’s decision and if the allegation is to be investigated will provide an indication of the timescale for the investigation. The Monitoring Officer will keep the person making the allegation and the Member/Co-opted Member informed if the initial timetable changes substantially.

5. THE INVESTIGATION

- 5.1 The Monitoring Officer may conduct the investigation personally or may appoint an Investigating Officer who may be another senior officer of the Council, an officer of another Authority, or an external investigator.
- 5.2 The Monitoring Officer/Investigating Officer will decide if he/she needs to meet or speak to the person making the allegation to understand the nature of the allegation and so that the person can explain his/her understanding of events and identify what documents he/she considers the Monitoring Officer/Investigating Officer needs to see and who he/she considers the Monitoring Officer/Investigating Officer needs to interview.
- 5.3 The Monitoring Officer/Investigating Officer will normally write to the Member/Co-opted Member against whom the allegation is made and provide him/her with a copy of the allegation and ask the Member to provide his/her explanation of events and to identify what documents he/she considers the Monitoring Officer/Investigating Officer needs to see and who he/she considers the Monitoring Officer/Investigating Officer needs to interview.
- 5.4 Where it is appropriate to keep confidential the identity of the person making the allegation the Monitoring Officer/Investigating Officer will delete the person's name and address from the pages given to the Member/Co-opted Member. Where disclosure of details of the allegation to the Member/Co-opted Member might prejudice the investigation, the Monitoring Officer/Investigating Officer may delay notifying the Member/Co-opted Member until the investigation has progressed sufficiently.
- 5.5 The Monitoring Officer/Investigating Officer has absolute discretion about which are the appropriate witnesses to interview and documents to consider but will follow best practice in conducting investigations. Having considered all relevant documentation identified and having interviewed all relevant witnesses, at the end of the investigation the Monitoring Officer/Investigating Officer shall produce as appropriate a draft report and may where appropriate

send copies of that draft report, in confidence, to the person making the allegation and to the Member/Co-opted Member concerned to give them an opportunity to identify any matter in that report with which there is disagreement or which is considered to require more consideration.

- 5.6 Where an Investigating Officer has been appointed, having received and taken account of any comments which the person making the allegation and/or Member/Co-opted member have made on the draft report, the Investigating Officer will send his/her final report (The Investigation Report) to the Monitoring Officer. If the Monitoring Officer is not satisfied that the investigation has been conducted properly he/she may ask the Investigating Officer to reconsider the report or may appoint a new Investigating Officer.
- 5.7 Where the Monitoring Officer is satisfied with the Investigation Report, and where the conclusion in the Investigation Report is that there is evidence of failure to comply with the Members' Code of Conduct by the Member/Co-opted Member, where appropriate he/she may seek to achieve an informal resolution. The Monitoring Officer will consult the Independent Person and the person making the allegation and seek to agree what the person making the allegation considers to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member/Co-opted Member accepting that his/her conduct was inappropriate or otherwise unacceptable and offering an apology and/or taking other remedial action. If the Member/Co-opted Member complies with the suggested resolution, the Monitoring Officer will report the matter to an Adjudication and Review Assessment Panel which will note the outcome and formally resolve that the allegation is determined by way of informal resolution, the details of which will be published.
- 5.8 Where the Monitoring Officer has undertaken the investigation personally, having received and taken account of any comments which the person making the allegation and/or the Member/Co-opted Member has made on the draft report and, where appropriate having sought to achieve an informal resolution pursuant to Paragraph 5.7 above, the Monitoring Officer shall produce the Investigation Report.

6. CONSIDERATION OF THE INVESTIGATION REPORT

- 6.1 When the Monitoring Officer is satisfied with the Investigation Report and an informal resolution is either inappropriate or incapable of achievement, the Monitoring Officer will refer the Investigation Report to an Adjudication and Review Assessment Panel and the Independent Person. Normally this will be within 30 clear working days of an Adjudication and Review Assessment Panel having determined that the allegation merits further investigation.
- 6.2 Where the conclusion of the Investigation Report is that there is no evidence of failure to comply with the Members' Code of Conduct by the Member/Co-opted Member, an Adjudication and Review Assessment Panel may:
- (a) Accept the conclusion, resolve that no further action is required and dismiss the allegation; or
 - (b) Remit the report to the Monitoring Officer for further consideration; or
 - (c) Remit the allegation to an Adjudication and Review Hearing Panel to conduct a Hearing for the consideration of the allegation and the Investigation Report and to determine the allegation.
- 6.3 Prior to making a determination under Paragraph 6.2(a) above an Adjudication and Review Assessment panel shall seek and take into account the views of the Independent Person.
- 6.4 Where the conclusion of the Investigation Report is that there is evidence of failure to comply with the Members' Code of Conduct by the Member/Co-opted Member and where an informal resolution pursuant to Paragraph 5.7 above is either inappropriate or incapable of achievement, an Adjudication and Review Assessment Panel may:
- (a) Remit the report to the Monitoring Officer for further consideration; or
 - (b) Remit the allegation to an Adjudication and Review Hearing Panel to conduct a Hearing for the consideration of the allegation and the Investigation Report and to determine the allegation.

- 6.5 Where the Adjudication and Review Assessment Panel remits the Investigation Report to the Monitoring Officer for further consideration under Paragraph 6.2(b) or 6.4(a) the meeting of the Panel shall adjourn and reconvene when the Monitoring Officer has reconsidered.

7. THE PRE-HEARING PROCESS

- 7.1 the Monitoring Officer (and/or his/her nominees) shall:

- (a) Agree a date for the hearing with all relevant parties
- (b) Provide a timetable for the person making the allegation, the Member/Co-opted Member (hereinafter called 'the parties') to provide details about whether they wish to give evidence (and whether orally or in writing) at the Hearing and any witnesses they intend to call and additional papers they may wish to provide in time for inclusion in the Committee papers;
- (c) Establish whether the parties will be represented or accompanied at the Hearing;
- (d) Establish whether the parties wish any part of the Investigation Report to be kept confidential or the Hearing itself to be held in private and the reasons for this.
- (e) Provide information about the procedure to be used at the Hearing.
- (f) Establish whether the parties disagree with any of the findings of fact in the Investigation Report.
- (g) Establish whether the Investigating Officer intends to call any witnesses.

- 7.2 Normally Hearings conducted by an Adjudication and Review Hearing Panel shall take place within 20 clear working days of the referral by the Adjudication and Review Assessment Committee to the Adjudication and Review Hearing Panel.

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8. THE HEARING

- 8.1 A hearing of the Adjudication and Review Hearing Panel shall take place in public unless a resolution is passed to exclude the public and the press due to exempt material which may be disclosed in the course of the proceedings.
- 8.2 Where a resolution to exclude the public and the press has been passed, the following persons only may remain in attendance:
- (a) Members of the Panel
 - (b) Officers supporting/advising the Panel
 - (c) The Independent Person
 - (d) The Monitoring Officer and/or The Investigating Officer
 - (e) The Member/Co-opted Member against whom the allegation is made together with a single representative, if any
 - (f) The person making the allegation together with a single representative, if any.
 - (g) Witnesses to be called by any party
 - (h) Members of the Council who are not Members of the Panel
- 8.3 When the Panel reaches the point of deliberation upon the allegation or the sanction/penalty, the following persons only may remain in attendance:
- (a) Members of the Panel
 - (b) Officers supporting/advising the Panel
 - (c) The Independent Person
 - (d) The Monitoring Officer but only where the Monitoring Officer is present to support/advise the Panel and not where the Monitoring Officer has presented the Investigation Report.

The Chairman shall invite all other persons present to withdraw to enable the Panel to deliberate upon the allegation, and any such persons shall withdraw.

- 8.4 Normally an Adjudication and Review Hearing Panel will conduct the Hearing in an inquisitorial manner.
- 8.5 The Monitoring Officer/Investigating Officer will make an opening statement with reference to the Investigation Report. The parties will then make opening statements in relation to the allegation and to the Investigation Report. Each party may have a single representative who may participate on behalf of the relevant party. Participation may be by the party or the party's representative but not by both.
- 8.6 Following the opening statements, the Adjudication and Review Hearing Panel may ask questions of the Monitoring Officer/Investigating Officer and/or the parties by way of inquiry into the matters the subject of the allegation and/or the Investigation Report.
- 8.7 The Monitoring Officer/Investigating Officer and the parties will be afforded the opportunity to make closing statements.
- 8.8 If the Member/Co-opted Member fails to attend the Hearing, an Adjudication and Review Hearing Panel may decide to proceed in the Member's/Co-opted Member's absence and make a determination, or to adjourn the Hearing to a later date.
- 8.9 Full details of the process to be undertaken at the Hearing are contained in the Hearings Procedure note comprising Appendix A to these arrangements.
- 8.10 An Adjudication and Review Hearings Panel having sought and taken into account the views of the Independent Person may conclude:
- (a) That the Member/Co-opted Member did not fail to comply with the Members' Code of Conduct and dismiss the allegation; or
 - (b) That the Member/Co-opted Member did fail to comply with the Members' Code of Conduct.
- 8.11 In the event of a finding under Paragraph 8.7(b) above, the Chairman will inform the Member/Co-opted Member of this finding and an Adjudication and

Review Hearing Panel will then consider what action, if any, it should take as a result of the Member's/Co-opted Member's failure to comply with the Members' Code of Conduct.

8.12 An Adjudication and Review Hearing Panel will give the Member/Co-opted Member an opportunity to make representations to the Panel as to whether any action should be taken and what form any action should take.

8.13 An Adjudication and Review Hearing Panel will seek and take into account the views of the Independent Person, following which it will decide what action, if any, to take in respect of the matter.

9. ACTION WHICH MAY BE TAKEN WHEN A MEMBER/CO-OPTED MEMBER HAS FAILED TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT

9.1 Having determined that the Member/Co-opted Member has failed to comply with the Members Code of Conduct, an Adjudication and Review Hearing Panel may:

- (a) Publish its findings in respect of the Member's/Co-opted Member's conduct.
- (b) Reports its findings to Council for information;
- (c) Issue the Member/Co-opted Member with a formal censure or reprimand, a report of which may be submitted to Council.
- (d) Recommend to the Member's Group Leader (or in the case of ungrouped Members/Co-opted Members recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-committees of the Council;
- (e) Recommend to the Council that the Member/Co-opted Member be replaced as Chairman or Vice-Chairman of any Committee.

- (f) Recommend to the Leader of the Council that the Member be removed from the Cabinet or removed from particular portfolio responsibilities;
- (g) Instruct the Monitoring Officer to arrange training for the Member/Co-opted Member.
- (h) Recommend the Council or Cabinet, as appropriate, that the Member be removed from outside appointments to which he/she has been appointed or nominated by the Council/Cabinet.
- (i) Withdraw facilities provided to the Member/Co-opted Member by the Council such as a computer, website and/or email and internet access;
- (j) Exclude the Member/Co-opted Member from Council offices or other premises with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-committee meetings;
- (k) Take no further action;
- (l) Any other appropriate sanction which may be available to an Adjudication and Review Hearing Panel;

9.2 An Adjudication and Review Hearing Panel has no power to suspend or disqualify a Member or to withdraw Members' or special responsibility allowances;

9.3 At the end of the Hearing the Chairman shall state the decision of the Adjudication and Review Hearing Panel as to whether the Member/Co-opted Member failed to comply with the Members' Code of Conduct and as to any action which the Panel has resolved to take.

9.4 Within 10 working days following the Hearing, the Monitoring Officer shall prepare a formal decision notice, after consultation with the Chairman of the Adjudication and Review Hearing Panel and send a copy to the person making the allegation and to the Member/Co-opted Member concerned. The Monitoring Officer shall make that decision notice available for public

inspection and report the decision to the next convenient meeting of the Council.

10. APPEALS

- 10.1 There is no right of appeal for either the person making the allegation or for the Member/Co-opted Member against whom the allegation is made against a decision of the Monitoring Officer, an Adjudication and Review Assessment Panel or an Adjudication and Review Hearing Panel.

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HEARING PROCEDURE

The model procedure which follows comprises good and equitable practice and should be followed closely wherever possible. There may be occasions when circumstances require variations and subject to the maintenance of the principles of natural justice these may be effected at the discretion of the Adjudication and Review Hearing Panel and advised to the Parties.

1. The Chairman shall facilitate introductions and explain the procedure for the Hearing.
2. The Monitoring Officer/Investigating Officer shall be invited to make an opening statement with reference to the Investigation Report.
3. The person making the allegation and the Member/Co-opted Member or their representatives (hereinafter called 'the Parties') shall be invited to make opening statements with reference to the allegation and/or the Investigation Report.
4. Members of the Adjudication and Review Hearing Panel may question the Monitoring Officer/Investigating Officer upon the content of the Investigation Report.
5. Members of the Adjudication and Review Hearing Panel may question the Parties upon the allegation and/or with reference to the Investigation Report.
6. The Monitoring Officer/Investigating Officer may make a closing statement.
7. The Parties or their representatives may make closing statement.
8. The Chairman shall invite the persons who may not be present during the Panel's deliberation upon the allegation to withdraw to enable the Panel to deliberate upon the allegation. Prior to reaching a determination the Panel shall seek and take into account the views of the Independent Person.

9. The Monitoring Officer/Investigating Officer and the Parties shall be invited to return and the Chairman shall announce the Panel's decision in the following terms:

- (a) The Panel has determined that the Member/Co-opted member has failed to comply with the Members' Code of Conduct; or
- (b) The Panel has determined that the Member/Co-opted Member has not failed to comply with the Members' Code of Conduct and the allegation is dismissed.

The Panel will give reasons for its decision.

10. If the Panel has determined that the Member/Co-opted Member has failed to comply with the Members' Code of Conduct it shall consider any representations from the Member/Co-opted Member or his/her representative as to whether any action should be taken and what form any action should take.

11. The Chairman shall invite the persons who may not be present during the Panel's deliberation upon the allegation to withdraw to enable the Panel to deliberate upon what action, if any, should be taken. Prior to reaching a determination the Panel shall seek and take into account the views of the Independent Person.

12. In addition to any action upon the current matter, the Panel shall consider whether in consequence it should make recommendations to the Council with a view to promoting high standards of conduct amongst Members/Co-opted Members.

13. The Monitoring Officer/Investigating Officer and the Parties shall be invited to return and the Chairman shall announce the Panel's decision.

14. A full written decision shall be issued to the person making the allegation and the Member/Co-opted Member within 10 clear working days following the Hearing and shall be published.

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