

Part 5.2

Member Code of Conduct Complaints Procedure

1. Definitions

- 1.1 The following definitions are used in this part 5.2 (reproduced from Part 1 of the constitution (except where denoted by an *) for ease of reading):

Assessment Panel	an ad hoc panel of three Councillors taken from the membership of the Governance Committee established to decide whether allegations against Members/Co-opted Members are worthy of investigation.
Code of Conduct	the code of conduct for Members found at part 5.1 of this constitution.
Complainant*	the person (or persons) making a complaint pursuant to this procedure.
Councillors	elected councillors of the Council (and a reference to a Member shall be construed as being a reference to a Councillor). Any reference to a member includes a co-opted member (that is a member who is not a member of the Council but who is entitled to attend the committee or sub-committee on which they sit and may have voting rights).
Hearing Panel	an ad hoc panel of three Members taken from the membership of the Governance Committee established to conduct a hearing.
Independent Person*	a person appointed pursuant to section 28(7) of the Localism Act 2011
Monitoring Officer	the designated monitoring officer of the Council.
Subject Member*	The Councillor about whom a complaint is made pursuant to this procedure.

2. Introduction

- 2.1 The Localism Act 2011 requires local authorities to establish arrangements to deal with allegations of breaches by Councillors of the Code of Conduct.
- 2.2 The Monitoring Officer is responsible for the implementation of this procedure and the management of investigations of alleged breaches. Any reference in these arrangements to the Monitoring Officer shall include a deputy Monitoring Officer.

- 2.3 The timescales set out in this document are indicative and shall be observed where practicable, but may be extended by the Monitoring Officer as necessary if they cannot be complied with by any relevant party due to sickness, holidays or other reasonable cause.
- 2.4 When applying the procedure, due regard will be given to the Council's duty under the Equality Act 2010 and the Human Rights Act 1998. The impact of the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR) will be considered to ensure that any personal data is processed fairly and lawfully at every stage of the process and reasonable expectations of privacy will be balanced against the public interest.

3. Overview of the process pursuant to this procedure

- 3.1 A Complainant lodges a complaint with the Monitoring Officer in writing.
- 3.2 The Monitoring Officer acknowledges the complaint.
- 3.3 The complaint is assessed for viability.
- 3.4 Where the complaint is deemed viable, the Monitoring Officer will conduct an initial assessment of the complaint to determine whether:
- (a) the complaint is rejected;
 - (b) informal resolution of the complaint is sufficient; or
 - (c) the complaint is to progress to an Assessment Panel.
- 3.5 Where a complaint is referred to an Assessment Panel, the Assessment Panel shall determine whether:
- (a) the complaint is to be investigated further; or
 - (b) the complaint is dismissed.
- 3.6 Where an investigation takes place the investigation report shall be presented to a Hearing Panel who shall thereafter who shall determine whether:
- (a) the complaint is dismissed; or
 - (b) the complaint is upheld.
- 3.7 If the complaint is upheld, the Hearing Panel shall determine the sanction (if any) which shall be applied to the Subject Member.

4. Confidentiality

- 4.1 A complaint is confidential and remains so where no breach of the Code of Conduct is found. In the event that a determination of a breach is made, the Monitoring Officer will assess whether it is the public interest to disclose details of the complaint.
- 4.2 Anonymised details of all complaints (including the number of those deemed not viable) received in a municipal year will be reported to Governance Committee on an annual basis.

5. Criminal investigations

- 5.1 If the complaint makes allegations that a criminal offence may have been committed, then the matter will normally be referred to the police. In such cases the Monitoring Officer may consider pausing the progress of the complaint pending action by the police.

6. The right of the Monitoring Officer to progress complaints

- 6.1 A Complainant may request that a complaint be withdrawn at any stage and all such requests will be determined by the Monitoring Officer, which may include consultation with an Independent Person. A complaint may still be progressed if in the Monitoring Officer's view this is deemed necessary and in the public interest.

7. Making a complaint

- 7.1 A complaint should be made in writing by letter / email to the Monitoring Officer, or by filling in a complaint form, setting out the alleged breach of the Code of Conduct. Any documents that support the complaint should accompany the form / email / letter.
- 7.2 Reasonable adjustments will be made where, for example, a Complainant has a disability that prevents them from making their complaint in writing. In such cases, a verbal account of their complaint will be transcribed and a written copy produced for approval by the Complainant or the Complainant's representative.
- 7.3 A complaint may be submitted:
 - (a) in writing to: Monitoring Officer, London Borough of Havering, Town Hall, Main Road, Romford RM1 3BD;

- (b) by email to: monitoringofficer@havering.gov.uk with a copy to PAtoCEO@havering.gov.uk
- (c) by way of form: [here](#)

8. Acknowledgment

- 8.1 The Monitoring Officer shall acknowledge the complaint within 5 working days of receipt.

9. Viability

- 9.1 The Monitoring Officer shall review the complaint to determine whether the complaint shall progress to Initial Assessment or whether it should be rejected for lack of viability.
- 9.2 The Monitoring Officer shall be entitled to reject a complaint where:
 - (a) the Subject Member is not named or is not an elected or voting co-opted member of the Council;
 - (b) the Complainant is not named;
 - (c) the complaint contains insufficient information (in the reasonable opinion of the Monitoring Officer);
 - (d) it refers to alleged incidents which happened more than six months ago (except in exceptional circumstances or in the public interest);
 - (e) it relates to alleged behaviour that has already been the subject of a complaint and that complaint has already been dismissed (other than at viability stage), investigated or otherwise resolved;
 - (f) the complaint relates to service failure and should properly be directed to the Council's corporate complaints process.
- 9.3 Where the Monitoring Officer decides to reject a complaint due to viability, they will write to the Complainant explaining why their complaint cannot be dealt with under this procedure. In these circumstances, there will be no right of appeal.
- 9.4 The Complainant shall be informed as to the result of the viability check within 10 working days of receipt of the complaint.

- 9.5 The Complainant may seek to remedy the failures in the complaint and resubmit. Where the Complainant does so, the complaint shall be treated as a new complaint and the procedure shall recommence.

10. Initial Assessment

- 10.1 Where a complaint is deemed viable, the Monitoring Officer shall conduct an Initial Assessment of the complaint.
- 10.2 An Initial Assessment is a review of the information presented by the complaint, together with any comments of the Subject Member and any initial research undertaken by the Monitoring Officer. It is not a formal investigation. However, the Monitoring Officer may request further information of the Complainant or the Subject Member at any time.
- 10.3 The Subject Member will usually be informed of the complaint once it is deemed viable and will be invited to comment on the complaint. The Subject Member is not obliged to comment. For the avoidance of doubt, the Monitoring Officer shall not be obliged to inform the Subject Member of the complaint where the nature of the complaint is such that informing the Subject Member might prejudice the Initial Assessment or further progress of the complaint (such as a referral to the Police).
- 10.4 Many complaints are capable of informal resolution. The complaint itself may specify an acceptable resolution. The Monitoring Officer shall give due regard to the wishes of the Complainant.
- 10.5 If deemed appropriate, the Monitoring Officer may seek to facilitate an informal resolution between the Subject Member and the Complainant prior to issuing an Initial Assessment.
- 10.6 An Initial Assessment shall conclude one of the following:
- (a) that the complaint is rejected;
 - (b) that informal resolution of the complaint is sufficient; or
 - (c) the complaint is to progress to an Assessment Panel.
- 10.7 Complaints will be assessed as to their merits on the basis of the information provided. A complaint may be rejected for a range of reasons, including:
- (a) if it relates to a person who is no longer a Councillor or which refer to alleged incidents before the person became a Councillor;

- (b) that relate to incidents or actions that are not covered by the Code of Conduct;
 - (c) where they relate to a Subject Member's personal or private life;
 - (d) if it contains trivial allegations, or appears to be malicious, vexatious, politically motivated, tit-for-tat; or is so minor that there is no overriding public benefit in carrying out an investigation;
- 10.8 The Monitoring Officer shall complete the Initial Assessment within 30 working days of the complaint being received. The Initial Assessment shall be sent to the Complainant and the Subject Member. Where no informal resolution facilitation is undertaken the Monitoring Officer shall use reasonable endeavours to issue the Initial Assessment as soon as reasonably practicable after the complaint has been deemed viable.
- 10.9 Where the initial assessment concludes that the complaint is rejected the complaint shall be closed with no right of appeal. The Complainant may resubmit the complaint as a new complaint where new information / evidence comes to light.
- 10.10 Where the initial assessment concludes that the complaint has been informally resolved the complaint shall be closed with no right of appeal. However, where the Initial Assessment provides for remedial action on behalf of the Subject Member and such action is not progressed, the Complainant may request that the complaint be reopened. The Monitoring Officer shall refer all such complaints to an Assessment Panel unless there is a compelling reason not to.
- 10.11 Where the initial assessment concludes that the complaint has been upheld, the Monitoring Officer shall convene an Assessment Panel.

11. Assessment Panel

- 11.1 An Assessment Panel shall be convened within 15 working days of the date of the Initial Assessment.
- 11.2 The Assessment Panel shall consider / review the complaint, the comments of the Subject Member received in response to the complaint (if any) and the Initial Assessment.
- 11.3 After reviewing those documents and discussing the same with the Monitoring Officer the Assessment Panel shall either:
- (a) dismiss the complaint; or

(b) order an investigation of the complaint.

11.4 The Assessment Panel shall inform the Complainant the Subject Member (and their relevant Group Leader) of its decision within 5 working days of making its decision.

12. Investigation

12.1 The Monitoring Officer may conduct the investigation personally or the complaint will be referred by the Monitoring Officer to an officer, an officer of another authority or such other expert as the Monitoring Officer considers appropriate for investigation (the Investigating Officer).

12.2 The Subject Member shall be provided with the details of an Independent Person should they require guidance on the process for investigation of the complaint. Where feasible, the Independent Person shall be a different Independent Person to the one with whom the Monitoring Officer has previously consulted.

12.3 The Investigating Officer may conduct the investigation as they see fit and may request any documents, conduct any interviews or access other information they deem relevant to the investigation.

12.4 Investigations will be undertaken with regard to the following key principles:

- (a) Proportionality. The investigation will strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or relatively simple, for example where the facts are not in dispute, there may be no need for any formal investigation, but a report can simply be written up. Equally not all of the steps in this procedure need be followed in every instance of a formal investigation – the Monitoring Officer will make a judgment in each case based on its complexity and contentiousness.
- (b) Fairness. The investigation will ensure that the subject member knows what they are accused of and has an opportunity to make comments on the investigation, including on a draft report.
- (c) Transparency. As far as is practical and having regard to an individual's right to confidentiality, investigations will be carried out as transparently as possible and all parties will be kept up to date with progress in the case.
- (d) Impartiality. An investigator will not approach an investigation with pre-conceived Ideas; will seek to obtain independent evidence to establish

the facts and will avoid being involved where they have a conflict of interest.

- 12.5 Upon conclusion, the Investigating Officer will provide the Monitoring Officer with a report setting out their findings and whether or not, in the officer's view, there have been any breaches of the Member Code of Conduct.
- 12.6 The investigation will normally be carried out and the report provided to the Monitoring Officer within 30 working days of the investigation being commissioned or in exceptional circumstances within a maximum of six months of the complaint being referred for an investigation.
- 12.7 Where the Investigating Officer encounters difficulties obtaining a response, or a person refuses to cooperate with the investigation this should not cause undue delay to the investigation. In such circumstances, having consulted the Independent Person, the Investigating Officer will proceed and document the issues in the Investigation report.
- 12.8 The Investigating Officer's report will set out:
- (a) The details of the allegation
 - (b) The relevant provisions of statute, the Member Code of Conduct and any relevant local protocols
 - (c) The Subject Member's response to notification of the allegation (if any)
 - (d) The views of an Independent Person
 - (e) The relevant information, advice and explanations obtained in the course of the investigation
 - (f) Any documents relevant to the matter
 - (g) A list of those persons they have interviewed and those organisations from whom they have sought information
 - (h) A note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to cooperate
 - (i) A statement of their draft findings of fact
 - (j) Their conclusions as to whether or not the Subject Member has breached the Member Code of Conduct.

- 12.9 The Investigator's draft report will be shared initially with the Monitoring Officer and the Independent Person so that they can satisfy themselves that the investigation is of an acceptable standard and meets the scope of the complaint. The Monitoring Officer and Independent Person will have 10 working days to consider the report. Once the Monitoring Officer is satisfied, the draft report will then be sent to the Complainant and Subject Member for comment within 10 working days.
- 12.10 Where a report concludes that the Subject Member has breached the Code of Conduct the matter will be referred to a Hearing Panel.
- 12.11 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 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 a Hearing Panel to conduct a Hearing for the consideration of the allegation and the Investigation Report and to determine the allegation.

13. Hearing Panel

- 13.1 Where the matter is referred to the Hearing Sub-Committee for decision, the Complainant, the Subject Member, an Independent Person and (where appropriate) the relevant political group leader or equivalent, will be advised of the position and consulted on the date of the Sub-Committee hearing.
- 13.2 Democratic Services will arrange a convenient time and date for the Hearing Sub-Committee to meet and determine the matter. It is anticipated that a hearing will be dealt with on a single day. The Hearing Sub-Committee will be drawn from the main body of the Governance Committee and political proportionality will apply. Members should also have undergone suitable training.
- 13.3 At least 20 working days before the hearing, the Complainant, the Subject Member and an Independent Person will be notified of the date, time and place of meeting, provided with the agenda for the meeting and a copy of the investigation report. They will be invited to attend and identify any witnesses already interviewed that they wish to speak.
- 13.4 At the same time (where appropriate), the relevant political group leader or equivalent will be notified of the date, time and place of meeting, provided with

the agenda for the meeting and a copy of the investigation report, which will be considered in **public / private** session.

- 13.5 The documentation sent out must be treated by all recipients as confidential information until such time (if any) as the report is made available to the press and public or the Hearing Sub-Committee resolves that the press and public should not be excluded from the meeting at which the allegations are heard.
- 13.6 The date of the meeting and the agenda will be published on the Council's website.
- 13.7 If at any point during the process, the Subject Member resigns, loses their seat, is seriously ill or has died, the Hearing Sub-Committee will only hear the matter if it considers it is in the public interest to do so.
- 13.8 The Hearing Sub-Committee's decision as to whether or not there have been any breaches of the Member Code of Conduct and whether any sanctions should be applied shall be final.

14. Representation

- 14.1 The Complainant and Subject Member may be represented or accompanied during the hearing by another person as long as the Hearing Sub-Committee or its chair has given prior consent.
- 14.2 The Complainant and Subject Member may make representations (orally or in writing) or present evidence in accordance with this procedure either personally or through their representative. The Sub-Committee will not normally permit the Complainant or Subject Member and their representative to both make representations. Representations must be made either solely by the representative or solely by the Complainant or Subject Member.

15. Role of the Monitoring Officer at the Hearing

- 15.1 The Monitoring Officer will be the main adviser to the Hearing Panel, unless they have an interest in the matter that would prevent them from performing this role independently. This may be because they have carried out the investigation or have another conflict. If this situation arises, the Monitoring Officer will arrange for another appropriately qualified officer to advise the Panel.
- 15.2 Where the Monitoring Officer has personally conducted the formal investigation of a complaint, they will delegate the role of advising the Hearing Panel and, where the Monitoring Officer intends to undertake the role of advising a potential hearing, they will delegate the investigative role. The Monitoring Officer will not undertake both roles in the same case.

15.3 The Monitoring Officer or other legal adviser's role in advising the Hearing Panel is to:

- (a) make sure that members of the panel understand their powers and procedures;
- (b) make sure that the procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible.

16. Outline of the Procedure for the Hearing

16.1 The Hearing Panel may govern its own procedure as long as it acts fairly. It may request advice from the Monitoring Officer at any time. However, in general the following procedure should be adopted:

- (a) Hearings should normally be held in private unless the Hearing Panel has resolved not to exclude the press and public from all or any part of the hearing in accordance with the Council's Access to Information Procedure Rules.
- (b) Any submissions by either party about the conduct of the case, including disputes about witnesses, potential new information, new supporting documents etc, should be provided prior to the commencement of the hearing.
- (c) Witnesses (including the Complainant) are not to be present in the hearing until they have been called to give their evidence.
- (d) If the Subject Member is not present, then the Sub-Committee shall consider whether or not to proceed. If the Sub-Committee is not satisfied that there is sufficient reason for the Subject Member's absence, it may proceed to consider the matter and make a determination in the absence of the Subject Member. If the Sub-Committee is satisfied there is sufficient reason, it shall adjourn the hearing to another date unless the Subject Member has indicated that the hearing may proceed in their absence.

17. Order of witnesses

17.1 The Investigating Officer presents the evidence on which they rely and calls any witnesses;

17.2 The Investigating Officer makes submissions about whether the facts constitute a breach of the Member Code of Conduct;

- 17.3 The Investigating Officer makes submissions as to the seriousness of the breach and the appropriate sanction in the event that the Sub-Committee decides that a breach has occurred;
- 17.4 The Subject Member and members of the Sub-Committee may ask questions through the chair of the Investigating Officer and/or their witnesses;
- 17.5 The Subject Member may present evidence on which they rely and call any witnesses referred to in the Investigating Officer's report;
- 17.6 The Subject Member may make submissions about whether the facts constitute a breach of the Member Code of Conduct;
- 17.7 The Subject Member may make a statement in mitigation in regard to the seriousness of the breach and the appropriate sanction in the event that the Sub-Committee decides that a breach has occurred;
- 17.8 The Investigating Officer and members of the Hearing Sub-Committee may ask questions of the Subject Member and/or their witnesses through the chair or their representative;
- 17.9 The Sub-Committee retires to decide the facts and whether, on the balance of probabilities, there has been a breach of the Member Code of Conduct. At this point, the Sub-Committee should ask all present to leave the room whilst they consider the matter.
- 17.10 Once the Sub-Committee has concluded its findings as to whether the facts amount to a breach, the Complainant and Subject-Member will re-enter the room and the decision is read out.

18. Outcome

- 18.1 If the Hearing Sub-Committee decides there has been a breach of the Member Code of Conduct, then it can determine whether and if so, which of the following sanctions should apply:
 - (a) Publish findings in respect of the Subject Member's conduct; **[1]**
 - (b) Report findings to the Council for information;
 - (c) Recommend to the Council that the Subject Member be issued with a formal censure or be reprimanded;

¹ The Monitoring Officer in consultation with the Chief Executive will consider whether it is in the public interest to do so and details will be limited to a brief summary of the complaint and reasons for the Panel's decision.

- (d) Recommend to the Subject Member's political group leader (or in the case of un-grouped members, recommend to the Council) that they be removed from any or all committees or sub-committees of the Council;
- (e) Recommend to the Mayor that the Subject Member be removed from Cabinet, or removed from particular portfolio responsibilities;
- (f) Arrange training for the Subject Member;
- (g) Recommend the Subject Member's removal from all outside appointments to which they have been appointed or nominated by the Council;
- (h) Recommend withdrawal of facilities provided to the Subject Member by their council, such as a computer, website and/or email and internet access;
- (i) Recommend the exclusion of the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Full Council, committee and sub-committee meetings.
- (j) Recommend the Subject Member contacts the Council only via specified point(s) of contact.

18.2 The Sub-Committee has no power to suspend or disqualify a member or to withdraw a member's basic or special responsibility allowance.

18.3 The Sub-Committee will issue a formal written decision together with supporting reason as soon as practicable after the end of the hearing and in any event within 5 working days.

19. Appeals

19.1 There is no right of appeal for either the Complainant or the Subject Member against a decision of the Monitoring Officer, an Assessment Panel or a Hearing Panel.