

## LONDON BOROUGH OF WALTHAM FOREST

### CODE OF CONDUCT COMPLAINTS PROCEDURE

#### 1. INTRODUCTION

- 1.1 This Procedure provides for the receipt, initial assessment, ~~investigation~~investigation, and determination of complaints made under the Code of Conduct for Members. The Monitoring Officer has the discretion to vary the timescales where ~~s/he~~they considers that it is expedient to do so in order to secure the effective, timely and fair consideration of any matter.
- 1.2 The following terms used in this Procedure are defined as follows:
- Complainant:** the person making the complaint
- Member:** the elected councillor or co-opted member subject to the complaint
- Investigator:** either an officer of the Council and / or an independent investigator whom the Monitoring Officer has asked to investigate a complaint
- Monitoring Officer:** The Council officer with statutory responsibilities under section 5 of the Local Government and Housing Act 1989 and as set out below in this Code. In Waltham Forest, the Monitoring Officer is currently the Director of Governance and Law
- Independent Person:** a person or persons appointed by the Council to advise it, the Monitoring ~~Officer~~Officer, or the Member on the determination of complaints.
- Determination Hearing:** the sub-committee of the Audit and Governance Committee at which a complaint is heard.
- Appellant:** the person appealing a decision under this Procedure
- Respondent:** the person responding to an appeal.

#### 2. HOW TO MAKE A COMPLAINT

- 2.1 Any person may make a complaint under the Code of Conduct. Complaints must:
- 2.1.1 Be made in writing, ~~i.e.~~i.e., by email or letter addressed to the **Monitoring Officer, Legal Services, Town Hall, Forest Road, London E17 4JF** or to [mark.hynes@walthamforest.gov.uk](mailto:mark.hynes@walthamforest.gov.uk).
- 2.1.2 Include the full name and address of the Complainant;
- 2.1.3 Identify the Member complained of;
- 2.1.4 Set out the nature and substance of the alleged breach of the Code of Conduct for Members. It is recommended that complaint references specific paragraphs of the Code that the Complainant allege have been breached and include or attach evidence to support the allegation.

- 2.1.5 Upon receipt of a complaint complying with 2.1 above, the Monitoring Officer will send a copy of the Complaint to the Member, the relevant Group ~~Whip~~Whip, and the Independent Person.

### 3. INITIAL ASSESSMENT

- 3.1 The Council's Monitoring Officer will receive and assess all complaints to determine whether the complaint should be investigated. The Monitoring Officer will consider ~~whether~~whether ~~they~~he can resolve the ~~complaint~~informally~~complaint~~informally, including mediation. The Monitoring Officer should strive to be proportionate to the seriousness or complexity of the complaint. Where a matter is straightforward or relatively simple, the Monitoring ~~Officer~~may~~Officer~~may choose not to follow all of the steps in this Procedure if the matter can be resolved more proportionately.
- 3.2 The following complaints are normally not suitable for investigation, save where the Monitoring Officer accepts there are exceptional circumstances:
- 3.2.1 Complaints that are really about Council services, its policies or performance. Such complaints will be referred to the relevant service area in accordance with the Council's Complaints Policy.
- 3.2.2 Complaints that are really about the political policies or performance of a councillor in their role. Such complaints will be referred to the councillor and / or their political group for response.
- 3.2.3 Complaints that relate to another authority or an alleged breach of another authority or body's Code of Conduct.
- 3.2.4 Vexatious or frivolous complaints or complaints which are intended to insult individuals.
- 3.2.5 Minor or "tit-for-tat" complaints that do not justify the time and resources of an investigation.
- 3.2.6 Complaints which relate to matters or events more than 3 months before the date of the complaint.
- 3.2.7 Complaints by a member against another member will not normally be investigated until the Monitoring Officer considers that other processes, ~~e.g.~~e.g., informal mediation or political group processes, have been exhausted.
- 3.2.8 Complaints by officers should ~~be made~~be made under the Member / Officer Protocol.
- 3.2.9 Complaints that are already subject to other internal or external processes will not be investigated until those other processes have completed to enable the complaint to be resolved by other means. Determination of such complaints will be suspended until the other process is finalised.

3.3 In making decisions at 3.1 and 3.2, the Monitoring Officer will consult the Council's independent person (or where it has more than one independent person, one of the independent persons).

3.4 The Monitoring Officer may request further evidence or information from the Complainant. The Monitoring Officer may request an initial response from the Councillor complained of (or any other person) or take any other steps they/he considers reasonable to assist his determination. Informal resolution could either be directed at the member who is the subject of the complaint, both the subject member and the complainant, or at the Council more generally. For example, it may be a request that a member apologise for remarks made in the heat of the moment. Or the Monitoring Officer may decide that the council's resources are better used trying to ensure that the subject member and complainant attempt some form of mediation or reconciliation. Or it may be about wider issues for the council that are raised by the case. For example, a relatively minor alleged infringement of the Code, by a member who is accused of misusing their authority's IT equipment, might identify shortcomings in the authority's policy about members using that equipment. In such a case the Monitoring Officer might decide that the best way to deal with the allegation is to ask the council to review ~~the policy~~the policy and make recommendations for improvement.

3.5 If the Monitoring Officer decides to seek an informal resolution when assessing a complaint, they/he should be clear that an investigation into that complaint will not take place provided s/he/they is-are satisfied that the party at whom the resolution is directed has acted in good faith in seeking to comply with it. For example, if the Monitoring Officer asked the subject member to apologise, and in the Monitoring Officer's view the apology made is appropriate, it would not be reasonable then to investigate the matter even if the complainant refused to accept the apology. On the other hand, if the subject member refused to apologise or made an apology in terms the Monitoring Officer deemed unacceptable, then they/he may consider commencing a formal investigation so that the matter could potentially be dealt with by a more formal sanction.

### 3.6 3.6 Matters which the Monitoring Officer might consider appropriate for informal resolution may include:

- the same particular breach of the Code by many members, indicating poor understanding of the Code and the council's procedures
- a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the council
- misunderstanding of procedures or protocols
- misleading, ~~unclear~~unclear, or misunderstood advice from officers
- lack of experience or training
- interpersonal conflict

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- allegations and retaliatory allegations from the same members
- allegations about how formal meetings are conducted
- allegations that may be symptomatic of governance problems within the council, which are more significant than the allegations in themselves

### **3.7 Alternative resolution can identify an issue about lack of understanding or training about such issues as:**

- the Code of Conduct
- council procedures and protocols
- chairing skills
- working with external bodies
- wider governance issues
- planning and licensing
- working with officers
- use of council resources

Where the issue is more of an inter-personal dispute it may simply be asking the subject member to apologise or to withdraw a remark.

Where the allegation highlights wider procedure or cultural issues within the authority, the Monitoring Officer may wish to consider training of members as a whole or mentoring of particular ~~members, or~~ members or work as a council on conflict resolution.

The Monitoring Officer may also decide that the allegation highlights council procedural failings rather than the specific fault of an individual so ~~s/he~~ they may want to develop or review particular council protocols and procedures.

Where the allegation is one of a series which in your view highlight that relationships within a council as a whole have broken down to such an extent that it has become very difficult to conduct the business of the council then some wider form of reconciliation may be needed

~~3.8~~ The Monitoring Officer will inform the complainant and member in writing of their decision within 30 calendar days of receipt of the complaint. Where the Monitoring Officer is not able to respond within this time, ~~s/he~~ they will inform the complainant and member of the date by which a decision will be made.

~~3.9 The Complainant will have 7 calendar days from the date of the Monitoring Officer's letter to ask for a review of a decision not to investigate a complaint. The application for review must be submitted in writing to the Monitoring Officer setting out the reasons for the review. The review will be determined by the Council's Chief Executive. If the Chief Executive considers the should be upheld, the complaint will be investigated in accordance with Section 4.~~

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**Commented [IB1]:** Appeal to the Chief Executive is a local 'quirk' and does not appear in the guidance – hence proposal to remove

#### 4. INVESTIGATION

- 4.1 The Monitoring Officer ~~can investigate the complaint or can will~~ arrange for the complaint to be investigated by either an officer of the Council and / or an independent investigator. The Monitoring Officer may provide terms of reference for the investigation, which will focus on investigation of the factual evidence in support or against the allegation.
- 4.2 The Investigation will follow its terms of reference and will include but is not limited to:
- 4.2.1 An opportunity for the Complainant to provide further evidence to support their allegation and / or the names of witnesses that they consider may provide relevant evidence.
  - 4.2.2 An opportunity for the Member to provide further evidence to support their allegation and / or the names of witnesses that they consider may provide relevant evidence.
  - 4.2.3 Taking evidence from any witnesses (or considering any documents) the Investigator considers may be relevant to the investigation.
- 4.3 If the Investigator considers that the terms of reference of the investigation may require amendment, e.g., there is evidence of an additional potential breach of the Code of Conduct, ~~s/he~~they will raise this with the Monitoring Officer who will determine the appropriate course of action.
- 4.4 The Investigation will take no longer than 2 months from the date of the appointment of the investigator, unless the Monitoring Officer agrees that the investigation period should be extended.
- 4.5 The Investigator will provide a written report to the Monitoring Officer in respect of the allegations.
- 4.6 Once the investigation has been completed the ~~Monitoring~~Monitoring Officer is at liberty to consider informal resolution as set out earlier within this procedure. ~~However~~However, if the ~~Monitoring~~Monitoring Officer decides that an informal resolution is not possible then the matter will proceed to a hearing

#### 5. THE DETERMINATION HEARING

- 5.1 In those cases where the ~~Monitoring~~Monitoring Officer has not been able to resolve the matter ~~A~~a Sub-Committee (the "Determination Hearing Panel") of the Audit & Governance Committee will be held within 30 calendar days of receipt by the Monitoring Officer of the investigation report to determine the complaint. The Independent Person will be invited to the Determination Hearing and, if present, may advise both the Panel and the Member.
- 5.2 The Determination Hearing will normally take the following order:
- **Investigation Report:** The Investigator will present their report and evidence (and may call witnesses). The Complainant and Member may question the investigator and any witnesses.

- **The Complainant's Case:** The Complainant presents their evidence and calls any witnesses. The Member may then question the Complainant and any witnesses.
- **The Member's Case:** The Member presents their evidence and calls any witnesses. The Complainant may then question the Member and any witnesses.
- **Final Submissions:** The Complainant and Member will present their final submissions in this order.

5.3 The Panel may ask questions of any person at any time.

5.4 After hearing final submissions, the Panel will withdraw to consider its decision and may consult with the Independent Person when doing so.

5.5 After reaching its decision, the Panel will either announce its decision at the hearing or inform the parties that the decision will be provided in writing to them within 7 calendar days. Any verbal decision must be followed by written confirmation of the decision and its reasons within 7 calendar days.

## 6. SANCTION

6.1 Where a member is found in breach of the Code of Conduct, the Panel has no statutory power to sanction the Member. They may decide:

6.1.1 That no further action is ~~necessary~~necessary.

6.1.2 To impose one or more of the following sanctions (or any other lawful sanction as advised by the Monitoring Officer):

6.1.2.1 To recommend that a motion censuring the Member for the breach of the Code of Conduct is put to Full Council (if so, the Monitoring Officer will prepare a report for the next ordinary Council meeting~~ing~~).

6.1.2.2 That the Monitoring Officer writes to the Member informing them of the Panel's decision and its recommendations as to the Member's future conduct.

6.1.2.3 To recommend to the Member's political group that the Member is either removed from any or all committees and / or is not nominated for appointment in the future. The recommendation may be that this sanction should be for a fixed period, ~~e.g.e.g.~~, removal for six months.

6.1.2.4 That a public statement about the Panel's decision is published on the Council's website. The recommendation may be that this sanction should be for a fixed period, ~~e.g.e.g.~~, that the statement remain on the Council's website for six months.

6.2 Before reaching its decision, the Complainant and Member have the right to make submissions as to the appropriate sanction (if any). Where the decision

is communicated in writing, the Council will re-convene the Determination Hearing Panel to consider the question of sanction and the above procedure will apply. In such situations, either party may submit its representations in writing to the Monitoring Officer in advance of the re-convened hearing.

## **7. APPEALS AGAINST A DETERMINATION HEARING DECISION**

- 7.1 A Complainant and / or Member may appeal the Panel's decision as to whether there was a breach of the Code of Conduct and / or the sanction imposed only.
- 7.2 An appeal must be made in writing to the Monitoring Officer within 7 calendar days starting with the date on which the decision was made (or if only communicated in writing, on the date of the letter and / or email).
- 7.3 An appeal must set out the grounds of the appeal, including why the Panel decision was incorrect.
- 7.4 An appeal will be considered by a differently constituted Sub-Committee (the "Appeal Panel") of the Audit & Governance Committee within 30 calendar days of the receipt of the appeal ("the Appeal Hearing").
- 7.5 An appeal is a review of the Determination Hearing decision and not a re-hearing. The Appeal Panel may only consider the grounds put forward in the written appeal (see above).
- 7.6 The Appeal Hearing will normally take the following order of business:
  - 7.6.1 The Appellant presents their appeal.
  - 7.6.2 The Respondent presents their response.
- 7.7 Presentations may be made in writing and the Appeal Panel will also have the documentation for the Determination Hearing before them.
- 7.8 No other evidence will be ~~considered~~considered, and no oral evidence will be given, save in exceptional circumstances agreed by the Panel.
- 7.9 The Appeal Panel may either uphold or dismiss the appeal on whether there was either a breach of the Code and / or sanction.
- 7.10 The Appeal Panel will either announce its decision at the hearing or inform the parties that the decision will be provided in writing within 7 calendar days. Any verbal decision must be followed by written confirmation of the decision and its reasons.
- 7.11 The written decision will be sent to the Complainant and Member by the Monitoring Officer within 7 calendar days of the hearing.
- 7.12 There is no appeal against a decision of an Appeal Panel.

## **8. GOVERNANCE**

- 8.1 The Determination and Appeal Hearings are not subject to the Council's Procedure Rules as they apply to Committees, save as required by law or as set out below.

- 8.2 The Council's Access to Information Rules will apply to Determination Hearings and so will normally be held in public. Meeting documents will be published on the Council's website unless they contain exempt or confidential information (as defined in the Access to Information Rules).
- 8.3 The quorum for a Panel shall be three voting members, appointed by the Monitoring Officer on a politically proportionate basis on the nominations of the group whips.
- 8.4 A Panel has power to postpone the hearing and / or adjourn a part-heard hearing to a later date if, in either case, it considers this is necessary to allow it to hold a fair hearing but taking into account the need to determine all complaints in a prompt manner.
- 8.5 The Chair of a Panel shall have a second and casting vote.
- 8.6 A Panel may determine the length of the hearing and any individual stages, ~~e.g.e.g.~~ the length of final submissions, taking into account the nature and complexity of the Complaint and evidence and ensuring that both parties have a reasonable opportunity to present their case. A Panel will inform the parties of any time limits at the start of the meeting.
- 8.7 A Panel will take advice from the Monitoring Officer or any legal advisor appointed by the Monitoring Officer to advise the Panel in his absence at any time during the hearing or while they are considering the outcome.
- 8.8 Decisions will be made by simple majority and the standard of proof to be applied is the balance of probabilities in any findings against the member. Abstentions are not permitted.
- 8.9 This procedure will be kept under review by the Audit and Governance Committee.