

Part 5A Addendum

PROCEDURE FOR DEALING WITH COMPLAINTS MADE AGAINST ELECTED OF CO- OPTED MEMBERS FOR BREACH OF THE MEMBERS CODE OF CONDUCT

1. Background

This procedure sets out the arrangements adopted by the Council pursuant to s,28(6) Localism Act 2011 as to how a complaint that an elected or co-opted member of this authority has failed to comply with the authority's Code of Conduct can be made and how the authority will deal with allegations of a failure to comply with the authority's Code of Conduct.

Under the Localism Act 2011 the authority must 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 has been made.

2. The Code of Conduct

The Council has adopted a Code of Conduct for members.

3. Making a Complaint

- 3.1 A complaint must be made in writing, preferably using the Complaint Form on the authority's website and emailed or sent to:

The Monitoring Officer
London Borough of Merton
London Road
Morden
Surrey
SM4 5DX

Or emailed to: louise.round@merton.gov.uk

- 3.2 The Monitoring Officer has statutory responsibility for maintaining the register of members' interests and is responsible for administering the system in respect of complaints of member misconduct. In the Monitoring Officer's absence, the Deputy Monitoring Officer will undertake this role.

- 3.3 The authority will not normally investigate anonymous complaints unless there is a clear public interest in doing so.
- 3.4 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and will keep the complainant informed about the progress of the complaint.
- 3.5 The Monitoring Officer will inform the member against whom a complaint has been made that a complaint has been made and will give details of the complaint to them. The Monitoring Officer has the discretion, which will only be exercised in exceptional circumstances, not to inform the member of the complaint at this stage if the Monitoring Officer is of the view that there is a risk that an investigation could be frustrated or a case prejudiced by the member knowing the details.

4. Will the complaint be investigated?

- 4.1 The Monitoring Officer will review every complaint received.
- 4.2 The complaint must be:
- against a person who was a member of the authority at the time of the conduct complained of; and
 - in respect of conduct of that member while acting, claiming to act or giving the impression to a reasonable member of the public that they are acting in their official capacity as a member; and
 - in relation to an alleged breach of the Code of Conduct in force at the relevant time.
- 4.3. If in the view of the Monitoring Officer the complaint does not fall within 4.2 above the matter will not be considered and the complainant will be informed that there will be no further action.
- 4.4 Where the complaint meets the above criteria, and in order to establish a preliminary view of the circumstances of the complaint and to decide whether it should be investigated and/ or whether there may be a course of action which could be taken to resolve the issues promptly without the need for formal action, the Monitoring Officer may consult or meet with any other relevant persons, which may include the Leader of the Council or Group Leaders, the Chief Executive or any other officers, the complainant and the member against whom the complaint has been made.

- 4.5 This decision will normally be taken within 14 days of receipt of the complaint. The complainant and the member against whom the complaint is made will be informed of the Monitoring Officer's decision and the reasons for that decision.
- 4.6 The Monitoring Officer may consult the Council's Independent Person at any point during her consideration of a complaint and must so consult where she considers a matter should be referred for formal investigation
- 4.7 In assessing whether a complaint should be investigated the following factors will be taken into consideration:
- *Public interest* – the decision whether to investigate will be a proportionate response to the issues raised and expected outcomes will take into account the wider public interest and the costs of undertaking an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters which justify the time and resources of an investigation;
 - *Alternative course of action* – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case (see paragraph 4.8 below);
 - *Member's democratic role* – where a complaint relates to a matter more appropriately judged by the electorate at the local elections, the Monitoring Officer will not normally refer these matters for investigation;
 - *Previous action* - if the complaint or a substantially similar complaint has already been subject to a previous investigation or some other action relating to the code of conduct or other related process, the matter will ordinarily not be referred for further action. Complaints which are already the subject of other internal or external processes will not be investigated;
 - *Vexatious/repeated complaints* – the Monitoring Officer will not refer for investigation a complaint that is the same or substantially the same as one previously made by the complainant or which is considered to be vexatious or frivolous or designed to harass or insult individuals;
 - *Timing of the alleged conduct* – if there are significant delays between the incident complained of and the complaint the matter will not ordinarily be considered further unless there are very good reasons for

the delay. Complaints should normally be made within three months of the date upon which the alleged misconduct occurred;

- *Ulterior motive* – no further action is likely to be taken if the complaint is considered to be motivated by malice, political motivation or retaliation, or can be characterised as being ‘tit- for tat’;
- *Subject-matter* – complaints which are really about Council services, its policies or performance will be referred to the relevant service area in accordance with the Council’s complaints procedure;
- *Member complaints* – Complaints by Members against another Member will not usually be investigated if the Monitoring Officer considers that the complaint is of a kind which could be more appropriately addressed through political group processes, political party complaints procedures or informal mediation.

4.8 Where the Monitoring Officer considers that a complaint can be resolved without the need for a formal investigation she may take one of more of the following actions:

- asking the member to acknowledge that his/her conduct was unacceptable and to offer an apology or other remedial action by the authority.
- referring the matter to group leaders or officers
- asking the member to being attend training

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

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

- 4.10 If such action does not resolve the complaint, the Monitoring Officer will reconsider whether the complaint merits formal investigation.
- 4.11 The Monitoring Officer may in exceptional circumstances, refer a complaint to the Standards and General Purposes Committee to determine if an investigation is the appropriate course of action.
- 4.12 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the police and other regulatory agencies.

5. How is the investigation conducted?

- 5.1 If the Monitoring Officer in consultation with the Independent Person decides that a complaint merits formal investigation, she will appoint an investigating officer and agree a timescale in which to undertake the investigation. This will normally take no more than 12 weeks from the appointment.
- 5.2 The investigating officer will contact the complainant and the member against whom a complaint has been made and undertake such investigation as is appropriate in all the circumstances.
- 5.3 At the end of the investigation, the investigating officer will produce a draft report and will seek comments and views on the draft report from the complainant and the member against whom the complaint has been made.
- 5.4 Having received and taken account of any comments which have been made, the Investigating Officer will send a copy of the final report to the Monitoring Officer.
- 5.5 If at any time the investigation is frustrated, for example, if significant witnesses are not available for interview, the Monitoring Officer shall decide what action to take, including, in consultation with the Independent Person, terminating the investigation. Such a decision will be reported to the Standards and General Purposes Committee.

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 she is satisfied in consultation with the Independent Person that the report is sufficient, the Monitoring Officer will inform the complainant and the

member concerned that she is satisfied that no further action is required. A copy of the investigating officer's final report will be given to the complainant and the member concerned. The report will be referred to the Standards and General Purposes Committee without question or debate, unless the member concerned requests that it not be reported.

6.2 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, she 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 in consultation with the Independent Person, will either (a) refer the matter to the Hearings Subcommittee which is a sub-committee of the Standards and General Purposes Committee or (b) seek local resolution.

7.2 Local resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, she will consult with the Independent Person and the complainant and seek to agree a fair resolution which helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards and General Purposes Committee for information but will take no further action.

7.3 Monitoring Officer consideration of whether a matter proceeds to Local hearing

If the Monitoring Officer considers, in consultation with the Independent Person, that the matter should be referred directly to a hearing or if, in accordance with paragraph 7.2 above, the member has failed to comply with the suggested informal resolution, she shall refer the matter to the Hearings Subcommittee which shall proceed to conduct a hearing in accordance with paragraphs 8-11 of this procedure and the hearings procedure attached as the schedule to this procedure.

7.4 Where the Monitoring Officer considers it appropriate, she may refer a complaint falling within paragraph 7.3 above to the full Standards and General Purposes Committee for hearing instead of to the Hearings

Subcommittee and in such cases the provisions of paragraphs 8-11 below and the schedule shall apply.

8. Pre Hearing Process

8.1 Prior to a hearing, an officer from the Council's Democracy Services team will write to the member subject to the complaint ("the member") proposing a date for the hearing before the Hearings Subcommittee.

8.2 Democracy Services will outline the hearing procedure to the member and request a written response within a set time in relation to whether the member:

- Wants to attend the hearing
- Wants to be represented at the hearing by a solicitor, barrister or any other person
- Disagrees with any of the findings of fact in the investigation report in which case the member should be asked to set out those facts which are in dispute
- Wants to give evidence to the Hearings Subcommittee either verbally or in writing
- Wants to call relevant witnesses to give evidence to the hearing and to provide details of the witnesses
- Wants any part of the hearing to be held in private and reasons for the request
- Wants any part of the investigation report or other relevant documents to be withheld from the public and reasons for the request

8.3 Democracy Services will refer the member's response to the Monitoring Officer to comment in order to ensure that all parties are clear about the remaining factual disputes and can deal with these issues at the hearing. The Monitoring Officer will also ascertain from the investigating officer whether the complainant will be giving evidence at the hearing and whether the investigating officer will be calling any witnesses to give evidence.

8.4 The Monitoring Officer will prepare a report for the hearing which will:

- Summarise the allegation
- Outline the main facts of the case which are agreed
- Outline the main facts which are not agreed
- Indicate whether the member and the investigating officer will be present at the hearing
- Indicate the witnesses, if any, who will be asked to give evidence
- Outline the proposed procedure for the hearing
- Include the Investigating Officer's report
- Include the views of the Independent Person

9 The Hearing

9.1 The hearing is before the Hearings Subcommittee and the Independent Person will be in attendance to provide his/her views before a decision is made.

9.2 The procedure for local hearings is set out in the schedule. The Chair of the Hearings Subcommittee shall have discretion to vary that procedure if s/he considers it is reasonably necessary to do so in order to ensure a fair and efficient hearing.

9.3 The meeting of the Hearings Subcommittee will be open to the press and public unless confidential or exempt information under Part VA Local Government Act 1972 and the Subcommittee resolves to go into

private session having considered whether it is appropriate to do so, taking into account the public interest in the meeting being

- 9.4 The Hearings Subcommittee can determine the number of witnesses and the way in which witnesses can be questioned.
- 9.5 If the member fails to attend the hearing, the Hearings Sub Committee can decide whether to proceed in the member's absence and make a determination or whether to adjourn the hearing to a later date.
- 9.6 The Hearings Subcommittee will decide on the balance of probabilities whether it is more likely than not that the member is in breach of the Code of Conduct. The Hearings Subcommittee must seek the views of the independent person before making a decision on the allegation.
- 9.7 If the Hearings Subcommittee concludes that the member did not fail to comply with the Code of Conduct, it will dismiss the complaint.
- 9.8 If the Hearings Subcommittee concludes that the member did fail to comply with the Code of Conduct, the Subcommittee will then consider what action, if any, it should take. In doing this, the Hearings Subcommittee will give the member the opportunity to make representations to the Committee and will consult the Independent Person.

10. What action can the Hearings Subcommittee take where a member has failed to comply with the Code of Conduct?

- 10.1 The Hearings Subcommittee may:
 - Issue a public censure or reprimand the member
 - Ask the member to apologise
 - Publish its findings in respect of the member's conduct
 - Report its findings to Council for information including a recommendation that the member be removed from any committee of the Council
 - Recommend to the member's Group Leader (or in the case of ungrouped members recommend to Council or to committees) that the member be removed from any or all committees of the council

- Recommend to the Leader of the Council that the member be removed from the Cabinet or removed from particular portfolio responsibilities
- Recommend to Council that the member be replaced in any Council appointed roles
- Instruct the Monitoring Officer to arrange training for the member
- Recommend to Council removal from all outside appointments to which the member has been appointed or nominated by the authority
- Withdraw facilities provided to the member by the Council, such as computer, website and/or internet access
- Exclude the member from the Council's offices or other premises with the exception of meeting rooms as necessary for attending council and committee meetings
- The Hearings Subcommittee has no power to suspend or disqualify the member or to withdraw members' allowances.

11 What happens at the end of the hearing?

- 11.1 At the end of the hearing the Chair of the Hearings Subcommittee will state the decision of the committee
- 11.2 As soon as practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair and send a copy to the complainant, the member, and make the decision notice available for public inspection unless, in a case where the Subcommittee's conclusion is that the member is not in breach of the code of conduct, the member requests that the notice of decision is not published

12 Revision of these arrangements

With the exception of paragraph 10 above, the Council has delegated the authority to amend these arrangements to the Standards and General Purposes Committee

13 Appeals

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

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

Schedule to Part 5 A

PROCEDURE FOR HEARINGS BEFORE THE HEARINGS SUBCOMMITTEE

1. Introductions
2. The Committee will consider whether to resolve to exclude the press and public from the hearing if one of the grounds set out in schedule 12A to the Local Government Act 1972 applies, taking into account the public interest in the hearing being open to the public.
3. The Chair of the Subcommittee will outline the hearing procedure. The Chair can depart from the procedure outlined below where he/she considers it expedient to do so in order to secure the fair consideration of the matter. This may include combining the stages of making findings of fact and considering whether such facts amount to a breach of the Code of Conduct.

Findings of Fact

4. The Subcommittee should consider whether there are any significant disagreements about the facts contained in the investigating officer's report. If there is no disagreement about the facts the committee can move on to the next stage of the hearing (go to paragraph 11)
5. Where there is a disagreement the investigating officer will be invited to make representations to support the findings of fact and with the Committee's permission, call witnesses to give evidence.
6. The member against whom the complaint has been made will be given the opportunity to challenge the evidence put forward by any witness called by the investigating officer by asking the witness questions.
7. The member will then be given the opportunity to make representations and with the Committee's permission, call any witnesses to give evidence.
8. The investigating officer will be given the opportunity to challenge the evidence put forward by any witness called by the member by asking the witness questions.
9. At any time, the Committee and independent person may question any of the people involved or any witnesses.

10. The Committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee in private will be shared with the meeting as a whole.
11. The committee may retire to consider its decision on a finding of facts in private.
12. Once the Committee has made its decision, the Chair will announce the Committee's finding of fact to the meeting.

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

13. The committee should then consider whether, based on the facts it has found, the member has failed to comply with the Code.
14. The member will be invited to make representations on the matter.
15. The investigating officer will be invited to make representations.
16. The independent person will be invited to express his or her views
17. The committee may, at any time, question the member, investigating officer or independent person on any point raised in the representations.
18. The member will be invited to make any final relevant points.
19. The committee may retire to consider its decision in private
20. Once the committee has made its decision, the Chair will announce the committee's decision to the meeting as to whether the member has failed to comply with the Code.

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

21. Where the committee decides that the member has not failed to comply with the Code, the committee can consider whether it wishes to make any recommendations to the authority.

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

22. If the committee decide that the member has failed to comply with the Code, it will consider representations from the member, investigating officer and independent person as to:
 - Whether the committee should apply a sanction
 - What form any sanction should take.
23. The committee may question the investigating officer, member and independent person and take legal advice, to make sure they have the information they need in order to make an informed decision.
24. The committee may consider in private whether to impose a sanction and if, so what sanction it should be.
25. The Chair will announce the decision to the meeting.
26. The committee will also consider whether it should make any recommendations to the authority with a view to promoting high standards of conduct.

The written decision

27. As soon as practicable the Monitoring Officer will prepare a formal decision notice in consultation with the Chair and send a copy to the complainant, the member and make the decision available for public inspection unless, in a case where the Subcommittee's conclusion is that the member is not in breach of the code of conduct, the member requests that the notice of decision is not published.