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Procedure for dealing with complaints made against elected or 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, which is attached as Appendix One to this procedure.

3. Making a Complaint

- 3.1 A complaint must be made in writing, ~~preferably using~~[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 [significant](#) 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.

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- 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~~^{was} 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 one or more named~~ members of the authority ~~at the time of the conduct complained of; and~~
~~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~~ ~~in relation to a named member who was in office within the authority at the time of the alleged conduct and the code of conduct was in force at the time;~~ and
 - in relation to an alleged breach of the Code of Conduct ~~in force at the relevant time.~~
- 4.3. If 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~~ ~~passes~~ the above ~~criteria~~ ~~test~~, 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 The Monitoring Officer ~~will~~ ~~may~~ then consult with the Independent Person and decide whether the complaint merits formal investigation. 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 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

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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.](#)

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- *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 which relate to matters or events more than three months before the date of the complaint will not normally be investigated
- *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 '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 a member against another member will not normally be investigated until the Monitoring Officer considers that other processes, such as political group processes or informal mediation have been exhausted.

4.8 ~~Where the In appropriate cases~~ the Monitoring Officer ~~[in consultation with the Independent Person]~~ considers that a complaint can be resolved -may consider resolution of the complaint- without the need for a formal investigation s/he may take one of more of the following actions- This may involve:

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- asking the member to acknowledge accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the authority.
- referring the matter to group leaders or officers
- asking the member to being ~~required to~~ attend training
- ~~the member being required to meet with the Monitoring Officer and/or other relevant officers~~
- ~~or such other action as is considered appropriate by the Monitoring Officer and Independent Person~~

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

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- 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~~this action does not resolve the complaint, the Monitoring Officer, [in consultation with the Independent Person], will reconsider whether the

complaint merits formal investigation. ~~An investigation will only be conducted where the Monitoring Officer and Independent Person agree that there is evidence of a failure to comply with the Code of Conduct and this is the appropriate course of action~~

4.11. The Monitoring Officer ~~may reserves the right~~, in exceptional circumstances, ~~to~~ refer a complaint to the Standards Committee to determine if an investigation is the appropriate course of action.

4.11 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 and the Independent Person] decide 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~~can 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.

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6. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

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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, in consultation with the Independent Person, 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 referred to the Standards Committee, in private session, 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 for Standards Committee to determine whether there should be a hearing or (b) seek local resolution under paragraph 7.2 below-

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 Committee for information but will take no further action. If the complainant is not satisfied with any suggested resolution or the member fails to comply, the Monitoring Officer may refer the matter to the Standards Committee to determine whether there should be a hearing.

7.3 ~~Standards Committee 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. The Standards Committee which shall proceed to conduct a hearing in accordance with paragraphs 8-11 of this procedure and the hearings procedure attached as Appendix Two, will decide whether the matter will proceed to a hearing and it will

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~~take into account the views of the independent person in making its decision.~~

~~The meeting of the Standards Committee will be open to the press and public unless confidential or exempt information under Part VA Local Government Act 1972 is likely to be disclosed. The Committee will go into private session if it resolves to do so.~~

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 and appendix two shall apply to such hearings.

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~~The Monitoring Officer will confirm the Standards Committee's decision to the complainant and the member against whom the complaint has been made.~~

~~If the Standards Committee decides that the matter will proceed to a hearing, paragraphs 8 to 11 will apply:~~

8. Pre Hearing Process

- 8.1 ~~The Standards Committee may appoint a sub-committee for pre-hearing stages if they consider it necessary~~
- 8.2 Prior to a hearing, an officer from the Council's Democracy Services team will write to the member subject to the complaint proposing a date for the hearing before the ~~Hearings SubStandards Cc~~committee.
- 8.3 Democracy Services will outline the hearing procedure to the member subject to the complaint and request a written response from the member 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 Standards Committee 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
 - ~~Can attend the hearing~~
- 8.4 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.~~
- 8.5 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

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- Include the Investigating Officer's report
- Include the views of the Independent Person

9 The Hearing

- 9.1 The hearing is before the Standards Committee 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 attached at Appendix 2..
- 9.3 The meeting of the Standards Committee will be open to the press and public unless confidential or exempt information under Part VA Local Government Act 1972 is likely to be disclosed. The Committee will go into private session ~~if it resolves to do so.~~
- ~~9.4 The Standards Committee 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 Standards Committee must seek the views of the independent person before making a decision on the allegation.~~
- 9.5 The Standards Committee can determine the number of witnesses and the way in which witnesses can be questioned.
- 9.6 If the member fails to attend the hearing, the Standards 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.
if it resolves to do so.
- 9.4 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 Standards Committee~~ conclude that the member did not fail to comply with the Code of Conduct, it will dismiss the complaint.
- 9.8 If the ~~Hearings Subcommittee Standards Committee~~ conclude that the member did fail to comply with the Code of Conduct, the Committee will then consider what action, if any, the Committee should take. In doing this, the Committee 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~~Standards Committee take where a member has failed to comply with the Code of Conduct?**
- 10.1 The Council has delegated to the ~~Standards~~Standards and General Purposes Committee such of its powers to take action in respect of individual members as may be necessary to promote

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and maintain high standards of conduct. That Committee has in turn delegated those powers to the Hearings Subcommittee.

Accordingly the Hearings Subcommittee ~~Standards Committee~~ may:

- Issue a public cCensure 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

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- Recommend to the member's Group Leader (or in the case of un-grouped 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 Standards Committee 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 Standards Committee will state the decision of the committee and any actions which the Committee resolves to take.
- 11.2 As soon as practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Standards Committee and send a copy to the complainant, the member, and make the decision notice available for public inspection.

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 ~~and has delegated to the Chair of the Standards Committee the right to depart from these arrangements where he/she considers that it is expedient to do so~~ in order to secure the effective and fair consideration of any matter.

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 ~~Standards Committee~~.

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.

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