

Arrangements for dealing with allegations of breach of the Members' Code of Conduct under the Localism Act 2011

1 Context

These arrangements set out how you may make a complaint that an elected or co-opted Member of this Council has failed to comply with the authority's Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Council's Code of Conduct.

Under Sections 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a Member or co-opted Member of the Council (referred to as 'Members'), has failed to comply with its Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage of the investigation, or by a Member or co-opted Member against whom an allegation has been made.

An Independent Person is a person who is not a Member, co-opted Member or officer of the Council and who has been appointed to the role of Independent Person by a positive vote from a majority of all the Members of Council following an advertised recruitment process.

You should be aware that the arrangements set up by the Council do not cover Disclosable Pecuniary Interests as defined by Regulations issued by the Secretary of State, or complaints that a Member or co-opted Member has failed to comply with the statutory requirements in respect of Disclosable Pecuniary Interests. Any complaints of this nature need to be addressed to the Police, who have jurisdiction to deal with such complaints. The Council will not pursue such complaints on your behalf.

2 The Code of Conduct

The Council has adopted a Code of Conduct for Members, which is attached as Appendix 1 to these arrangements and is available for inspection on the Council's website.

3 Making a complaint

The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of Members' interests and who is responsible for administering the system in respect of complaints of Member misconduct.

If you wish to make a complaint it must be made in writing. Oral complaints will not usually be considered for investigation. So in order to ensure that we have all the

information which we need to be able to process your complaint, please use the model complaint form, which can be downloaded from the Council's website.

Please complete that form, providing us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. Your name will be disclosed to the Member against whom you have made the complaint.

Please send or email that form to –

Monitoring Officer
Legal & Democratic Services
Resources Department
4th Flr Annex, Zone G
Bernard Weatherill House
8 Mint Walk
Croydon
Surrey
CR0 1EA

Or –

ethics@croydon.gov.uk

The Monitoring Officer will usually acknowledge receipt of your complaint within 15 working days of receiving it, and will keep you informed of the progress of your complaint.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. In reaching this decision, the Monitoring Officer may, although is not obliged to do so, consult with an Independent Person before reaching this decision.

The decision by the Monitoring Officer will normally be taken within 30 working days of acknowledgement of your complaint. In deciding whether to refer the matter for investigation, the Monitoring Officer will have regard to relevant considerations including the considerations set out in Appendix 2. When the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the Member against whom your complaint is directed. Where the Monitoring Officer requires further information from you, the time period of 30 days referred to above ceases to run until such time as such additional information is received.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve, for example, the Member accepting that his/her conduct was unacceptable

and/or offering an apology. Where the Member of the Council makes a reasonable offer of informal resolution but you are not willing to accept that offer, the Monitoring Officer will consider this in deciding whether the complaint merits formal investigation. However, this will not be an overriding consideration and will only be one of a number of factors which the Monitoring Officer will take into account.

The decision of the Monitoring Officer on whether to investigate a complaint is final and is not subject to an internal right of appeal or review. Parties affected by the decision do however retain their rights to approach the Local Government Ombudsman or seek legal redress if they remain dissatisfied. The Local Government Ombudsman can be contacted on 0300 061 0614 or 0845 602 1983 or by writing to them: The Local Government Ombudsman PO Box 4771 Coventry CV4 0EH

If your complaint identifies criminal conduct or breach of other Regulation by any person, the Monitoring Officer does not have the power to consider the matter and you will be directed to the Police and/or other appropriate regulatory agencies.

5 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another officer of the Council, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you, which further parties he/she wishes to interview or whether he/she wishes to conduct the investigation on the papers.

The Investigating Officer will write to the Member against whom you have complained and provide him/her with a copy of your complaint and ask the Member to provide his/her explanation of events.

At the end of his/her investigation, the Investigating Officer will produce a report for the Monitoring Officer.

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

The Monitoring Officer will review the Investigating Officer's report and may consult with them if necessary. If the Monitoring Officer is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned notifying you that he/she is satisfied that no further action is required. At this stage, you and the Member will be given a summary of the Investigating Officer's final report. If the Monitoring Officer, in consultation with the Independent Person, is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to undertake further investigation or 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?

The Monitoring Officer will review the Investigating Officer's report and, if following consultation with the Independent Person, he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will then either send the matter for local hearing before the Ethics Committee or a sub-committee of the Ethics Committee or seek local resolution. If the matter is to come before the Ethics Committee, that Committee is empowered to establish a Hearings Panel to consider the matter, which will be a sub-committee of the Ethics Committee.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable, or offering an apology. If the Member complies with the suggested resolution, the Monitoring Officer will advise you and no further action will be taken.

7.2 Local Determination by the Ethics Committee or sub-committee

If the Monitoring Officer considers that local resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Ethics Committee or sub-committee of the Ethics Committee set up for this purpose which will consider and determine the matter. It will decide whether to take any action in respect of the Member. Save in exceptional circumstances, the Ethics Committee or sub-committee will determine the matter on the papers, which will comprise the investigation report along with written representations from the Member concerned and the complainant.

The Council has delegated the power to agree a procedure for local hearings to the Ethics Committee. Once agreed, this procedure will be attached as Appendix 3 to these arrangements.

As part of any procedure, the Monitoring Officer will conduct a "pre-hearing process", requiring the Member and complainant to each give their written responses to the Investigating Officer's report. These papers will then form part of the documentation for consideration by the Ethics Committee or sub-committee established for purposes of determination. In the event that it is determined that an oral hearing is required due to the exceptional circumstances of the matter, the Chair of the Ethics Committee or sub-committee tasked with hearing the matter may issue directions as to the manner in which the hearing will be conducted, including in relation to the calling of witnesses and representations by the complainant and Member.

The Ethics Committee or sub-committee, in consultation with the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct and so dismiss the complaint. If the Ethics Committee or sub-committee of the Ethics Committee concludes that the

Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Ethics Committee or sub-committee of the Ethics Committee will then consider what action, if any, the Ethics Committee or sub-committee of the Ethics Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Ethics Committee or sub-committee of the Ethics Committee may give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter. The possible actions which the Ethics Committee or sub-committee of the Ethics Committee could take are set out below.

8 What action can the Ethics Committee or sub-committee of the Ethics Committee take where a Member has failed to comply with the Code of Conduct?

The Council has delegated to the Ethics Committee or sub-committee of the Ethics Committee such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Ethics Committee or sub-committee of the Ethics Committee may –

- 8.1 Publish its findings in respect of the Member's conduct;
- 8.2 Report its findings to Council for information;
- 8.3 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Recommend to full Council or the Leader of the Council as the case may be that the Member be removed from outside appointments to which he/she has been appointed or nominated by the Council ;
- 8.6 Withdraw facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access;
- 8.7 Exclude the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings; or
- 8.8 Request that the Monitoring Officer arrange training for the Member.

The Ethics Committee or sub-committee of the Ethics Committee has no power to suspend or disqualify the Member or to withdraw the Member's basic or special responsibility allowances.

9 What happens following consideration by the Ethics Committee (or sub-committee)?

A minute of the decision of the Ethics Committee (or sub-committee as the case may be) will be prepared in consultation with the Chair of the Ethics Committee or sub-committee or Chair of the Hearings Panel, as the case may be, which will record the outcome and state the committee's reasons for the decision. This will be published on the Council's website once approved.

10 Who are the Hearings Panel?

The Hearings Panel is a sub-committee of the Ethics Committee which will comprise three Members drawn from the Ethics Committee and convened for the purpose of acting as a Hearings Panel under this procedure. The Ethics Committee is comprised of five Members of the Council, including not more than one Member of the authority's Executive and comprising Members drawn from at least 2 different political parties. Subject to those requirements, it is appointed on the nomination of Party Group Leaders in proportion to the representation of each political group on the Council.

The Independent Person/s is/are invited to attend all meetings of the Ethics Committee and her/his views are sought and taken into consideration before the Ethics Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11 Revision of these arrangements

The Council may by resolution agree to amend these arrangements.

12 Appeals

There is no internal right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer, the Ethics Committee or a sub-committee of the Ethics Committee. This includes a decision of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman and/or take independent legal advice.

Appendix 1 The authority's Member Code of Conduct

Appendix 2 Assessment Criteria

Appendix 3 Procedure for Hearings

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