

**Procedure for making Complaints against a Member (Councillor)**

**for breach of the Code of Conduct**

**1. Introduction and Context**

1.1 These procedures set out how you may make a complaint that an elected or co-opted Member of this Authority has failed to comply with the Councillors’ Code of Conduct. The procedures set out how the Authority will deal with any allegations of a failure to comply with the Councillors’ Code of Conduct.

1.2 Under Section 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 Authorityor of a Committee or Sub-Committee of the Authority, has failed to comply with Code of Conduct and can be investigated and decisions made on such allegations.

1.3 Such arrangements must provide for the Authority to 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**

2.1 The Assembly (full Council) has adopted a Councillors’ Code of Conduct, which is available on the Council’s website at <https://modgov.lbbd.gov.uk/Internet/documents/s161814/Pt%205%20Ch%201%20-%20Cllrs%20Code%20of%20Conduct%20Dec21.pdf> and on request from Governance Services, Town Hall, 1 Town Square, Barking IG11 7LU.

**3. Making a complaint**

3.1 If you wish to make a complaint, you can download the complaint form at <https://www.lbbd.gov.uk/council-and-democracy/councillors-and-committees/councillors/complaints-about-councillors> or by writing to The Monitoring Officer, Town Hall, 1 Town Square, Barking IG11 7LU and the complaint form will be sent to you.

* 1. The Monitoring Officer is the 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 councillor misconduct.
	2. In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form If you need help in completing the form, please contact monitoringofficer@lbbd.gov.uk
	3. You must provide us with your name, postal contact address and email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and / or address confidential, please indicate this in the space provided on the complaint form. Only in exceptional circumstances will your name and / or address be kept confidential. Therefore, it is important that you give clear reasons for your request for confidentiality. The Monitoring Officer, whose decision is final, will consider your request and if granted we will not disclose your name and /or address to the Member against whom you make the complaint, without your prior consent. If there however there is not a proper reason the complaint will not proceed.
	4. The Council will not direct resources to investigate anonymous complaints, unless there is clear evidence of a potential breach of the Code and it is in the public interest to investigate the matter. Furthermore, complaints must be timely. If your complaint is not received within three months of the alleged misconduct then, unless there are exceptional circumstances e.g. allegation of bullying, harassment etc., it will not proceed and be dismissed as being out of time
	5. The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it. We will keep you informed of the progress of your complaint at the appropriate stages.
	6. The Complaints Procedure Flowchart is annexed at **Appendix 1** for your assistance.
1. **Will your complaint be investigated?**
	1. If the complaint is from a Member against another Member or from an officer of the Council against a Member, then the expectation is that the Monitoring Officer will seek to resolve the issue without resorting to this Complaints Procedure. The Monitoring Officer will seek a mutually agreed outcome in such circumstances and if this is not possible then the general procedure set out below will be followed.
	2. The Monitoring Officer will review every complaint received from a member of the public and may consult with the Independent Person before taking a decision as to whether it:
		1. Merits no further investigation
		2. Merits further investigation
		3. Should be referred to the Standards Committee
	3. This decision will normally be taken within a target of 30 working days of receipt of your complaint, though this will depend upon whether clarification is needed. Your complaint will be considered in accordance with the Public Interest Assessment Criteria annexed at **Appendix 2**. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer 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.
	4. If your complaint identifies criminal conduct or breach of other regulation by a Member, the Monitoring Officer has the power to call in the Police or other regulatory agencies.
2. **How is the investigation conducted?**
	1. The Assembly has adopted a procedure for the investigation of misconduct complaints, which is attached as **Appendix 3** to these arrangements.
	2. If the Monitoring Officer decides that a Complaint merits further investigation, he/she may appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet or speak to you to understand the nature of your Complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
	3. The Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with a copy of your Complaint, ask the Member to provide his/her explanation of events and identify what documents he/she needs to see and who he/she needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the Complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.
	4. At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and may send details of that draft report, in strict confidence, to you and to the Member concerned, to give you both an opportunity to identify any findings in that draft report for your comment and observations that may require more consideration.
	5. Having received and taken account of any comments which you may make, the draft Investigation Report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer.
3. **What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
	1. If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer’s report and, if he/she is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the Member concerned notifying you why that he/she is satisfied that no further action is required.
	2. If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.
4. **What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**
	1. If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report and will then either send the matter for a hearing before the Standards Sub-Committee or, in consultation with the Independent Person, seek an informal resolution.
		1. **Informal Resolution**
	2. 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 with you as complainant and seek to agree what you consider to be 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 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 Audit and Standards Committee for information but will take no further action.

**b) Hearing**

* 1. If the Monitoring Officer considers that informal 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 present the Investigation Report to the Standards (Hearing) Sub-Committee which will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.
	2. The Assembly has agreed a procedure for hearing complaints, which is attached as **Appendix 4** to these arrangements.
	3. At the hearing, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Standards (Hearing) Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.
	4. The Standards (Hearing) Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint.
	5. If the Standards (Hearing) Sub-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 Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the Member’s failure to comply with the Code of Conduct. In doing this, the Sub-Committee will 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.
1. **What action can the Standards (Hearing) Sub-Committee take where a Member has failed to comply with the Code of Conduct?**
	1. The Sub-Committee has been delegated by the Assembly 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 Sub-Committee may:
		1. Publish its findings in respect of the Member’s conduct.
		2. Report its findings to Assembly for information.
		3. Recommend to Assembly that the Member be issued with a formal censure or be reprimanded.
		4. Recommend to the Member’s group leader (or in the case of un-grouped Members, recommend to Assembly or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council.
		5. Recommend to the Leader of the Council that the Member be removed from the Cabinet or removed from particular Portfolio responsibilities.
		6. Instruct the Monitoring Officer to arrange training for the Member.
		7. Remove the Member from all outside appointments to which he/she has been appointed or nominated by the Council.
		8. Withdrawfacilities provided to the Member by the Council, such as a computer, website and/or email and internet access.
		9. Exclude the Member for up to a maximum of six months from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Assembly, Committee and Sub-Committee meetings.
	2. The Sub-Committee has no power to suspend or disqualify the Member or to withdraw allowances.
2. **What happens at the end of the hearing?**
	1. At the end of the hearing, the Chair will state the decision of the Standards (Hearing) Sub-Committee as to whether the Member failed to comply with the Code of Conduct and any actions which the Sub-Committee resolves to take.
	2. As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the Member*,* make that decision notice available for public inspection and report the decision to the next convenient meeting of the Assembly.
3. **Who are the Standards (Hearing) Sub-Committee Members?**
	1. It is a Sub-Committee comprising Councillors sitting on the Council’s Audit and Standards Committee.
	2. It will comprise of three elected Members appointed from Members of the Audit and Standards Committee who will have been drawn from all political groups.
	3. The Independent Person is invited to attend all meetings of the Sub-Committee and their views are sought and taken into consideration before the Sub-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.
4. **Who is the Independent Person?**
	1. The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, whose appointment will be ratified by the Assembly.
	2. A person cannot be “independent” if he/she:
		1. is, or has been within the past five years, a Member, co-opted Member or officer of the Authority;
		2. is a relative or close friend, of the complainant or the Member(s) against whom the complaint has been made.
5. **Revision of these arrangements**

12.1 The Council may, by resolution, agree to amend these arrangements and has delegated to the Chair of the Standards (Hearing) Sub-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, the details of which can be found on the Council’s website.

1. **Appeals**
	1. There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or of the Standards (Hearing) Sub-Committee.
	2. If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman whose details are as follows:

[www.lgo.gov.uk](http://www.lgo.gov.uk)

LGO, PO Box 4771, Coventry, CV4 0EH

Tele: Advice Team – 0300 061 0614

Text to 'call back' 0762 480 3014

**Appendix 1**

**Complaints Procedure Flowchart**

Monitoring Officer:

* Acknowledges complaint within 5 working days

**Complaint received by Monitoring Officer**

**APPENDIX 2**

Standards (Hearing) Sub-Committee to arbitrate on facts and conclude whether a breach of the Code of Conduct has occurred.

Any decision is made in consultation with the Independent Person

Investigation Report to include:

* Agreed facts;
* Facts not agreed and corresponding conflicting evidence
* Conclusion whether a breach of the code or not

MO prepares formal Decision Finding and in due course reported to Audit & Standards Committee

In consultation with the IndependentPerson:

1. No Further Action
2. Informal Resolution
3. Formal Decision/Action

**Preliminary tests:**

* Acting in capacity as a Member?
* In office at time of alleged misconduct?
* Very minor or trivial matter?
* Vexatious or malicious?
* Historical?
* Potential breach of the Code?
* Assessment of public interest?
* Decision within 30 working days of receipt
* Or seek additional information as required prior to making a decision

**Potentially criminal conduct/breach of other regulations – further consideration**

**Complaint rejected with reasons**

**Or to Standards Sub-Committee for formal hearing**

**No further action**

**Complaint referred for Informal Resolution**

**Appointment of Investigating Officer or Monitoring Officer Investigates**

**Complaint considered by Monitoring Officer who can consult with the Independent Person**

**Informal Resolution**

**(Mediation, apology etc)**

**PUBLIC INTEREST ASSESSMENT CRITERIA**

**Complaints against Councillors - Public Interest Considerations**

1. **Introduction**
	1. The London Borough of Barking and Dagenham’s (the Council’s) Code of Conduct for Councillors sets out the high standards of behaviour which the Council expects from its elected representatives. The Code’s aim is to help councillors achieve and maintain their standard of conduct in accordance with the Localism Acts 2011 requirements. It requires that the Councils Code of Conduct for Councillors as a whole is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership together with the registration of interests. This level of standards will support proper decision-making and the proper use of public resources; and to maintain public confidence in local government and in the democratic process itself.
	2. The Council’s Monitoring Officer is tasked with conducting investigations. The Monitoring Officer in accordance with best practice guidance issued by the Committee for Standards in Public life will not be undertaking investigations that do not support these wider benefits because they will not in the public interest. In addition, our resources are limited and it is important that the Monitoring Officer focuses on the investigation of significant matters which go to the heart of the relationship between Councillors and the public they serve and not on matters which are ether vexatious, trivial, petty, party political, have no realistic prospect of success, without evidence or which have little or no impact on the public.
	3. Furthermore, the Council’s Monitoring Officer cannot consider complaints about a matter currently before the Secretary of State, the courts or tribunals either criminal or civil matters, nor any employment issues.
	4. The public interest will be considered in deciding:

1. whether a complaint against a councillor can and should be investigated, or
2. whether an investigation should continue
	1. There is no widely accepted definition of public interest, but it has been described as ‘something which is of serious concern and benefit to the public’. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public may find to be of interest, or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the entire population of the London Borough of Barking and Dagenham. It may refer to a distinct section of the public such as a small community or interest group. The Monitoring Officer in taking a view will consider:
3. **Seriousness**
	1. The more serious the alleged breach, the more likely it is that the Monitoring Officer will investigate.
	2. When deciding the level of seriousness of the allegation, relevant considerations are:

**(a) To what extent was the councillor responsible for or to blame for the conduct complained of?**

Questions of responsibility or blame are likely to be determined by the councillor’s level of involvement; the extent to which the alleged breach was premeditated and/or planned; whether they have previously been investigated or been referred to the Standards Sub-Committee for an adjudication decision on a similar matter, or have been sanctioned for a previous breach; whether the conduct complained of is ongoing, repeated or has escalated; the councillor’s length of service; and level of experience/knowledge of the councillor in relation to the issue in question.

**(b) What are the relevant circumstances of any person affected by the alleged breach and has the alleged breach caused harm to any person?**

Although a breach of the Code may affect the public at large, it can also cause harm to individuals or to specific groups or bodies. In considering the seriousness of a breach, the circumstances of any person affected by the breach are relevant and the Monitoring Officer will take these into consideration. The Monitoring Officer should also have regard to whether the alleged breach was motivated by any form of discrimination against a person’s ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the councillor demonstrated hostility towards a person based on any of those characteristics. In deciding whether an investigation is required in the public interest investigators should take into account any views expressed by the complainant, or any other person affected, about the impact that the alleged breach has had on them.

1. **Proportionality**
	1. The Monitoring Officer will consider the cost of the investigation and any adjudication, especially where it could be regarded as excessive *when weighed against any likely sanction*. The Monitoring Officer will not decide the public interest on the basis of cost alone, but it is a relevant consideration when making an overall assessment of the public interest. Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers’ and Members’ time. This is an important consideration where the complaint is relatively minor.
2. **Consultation with Localism Act Independent Person**
	1. The Monitoring Officer may consider consulting with an Independent Person appointed by the Council as to the Public Interest merits of continuing with an investigation, however the Monitoring Officer’s decision will be final.
3. **Examples of Complaints which would not normally be referred for investigation**
4. The complaint is not considered sufficiently serious to warrant investigation; or
5. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
6. The complaint appears to be politically motivated; or
7. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Member’s private life or is about dissatisfaction with a Council decision or service; or
8. It is about someone who is no longer a Member of the Council; or
9. There is insufficient information available for a referral; or
10. The complaint has not been received within 3 months of the alleged misconduct, unless there are exceptional circumstances, e.g. allegation of bullying, harassment etc; or
11. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
12. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards (Hearing) Sub-Committee; or
13. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
14. Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.
15. **Example of Complaints which may be referred to the Standards (Hearing) Sub-Committee**
16. It is serious enough, if proven, to justify the range of actions available to the Sub-Committee; or
17. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
18. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
19. The complaint is about a high-profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate; or
20. Such other complaints as the Monitoring Officer considers would not be appropriate for him/her to investigate.
21. **Summary**
	1. These considerations will assist the Monitoring Officer will consider in identifying the public interest, but they are not exhaustive and not all are relevant in each case.
	2. In any event, consideration of the public interest is only one of a number of criteria which must be met in deciding whether to investigate a complaint. Crucially, the complaint must also be supported by evidence of a breach of the Code.

**APPENDIX 3**

**STANDARDS COMPLAINTS INVESTIGATION PROCEDURE**

A written record shall be kept to demonstrate what was considered at the start of the investigation together with an investigation plan, the paragraphs of the code that may have been breached, the facts needed to determine to establish, the evidence collection process and an estimate as to how long it will take to conclude the investigation.

A written Investigation Report will need to be prepared for consideration by the Council’s Monitoring Officer.

Acknowledge receipt

On receipt of instructions from the MO to carry out an investigation ensure sufficient detail is received to commence it

Request any further documentary evidence

Identify:

* Whether further information from the complainant is required
* What paragraphs of the code are alleged to have been breached
* The facts which need to be determined to establish if the Member has breached the code
* The evidence you need to determine the issues
* How you plan to gather the evidence
* How long it is likely to take to undertake the investigation

**Appendix 4**

Draft report and submit to MO for consideration. Report to contain:

* Agreed facts
* Facts not agreed and corresponding conflicting evidence
* Conclusion as to whether there is a breach of the code or not

**MO either accepts or asks investigator to reconsider their report**

* Contact complainant and request any supporting or further documentary evidence relating to the complaint
* Contact subject Member with details of the complaint and seek explanation

Interview the subject Member

Identify witnesses and arrange interview(s)

**Standards (Hearing) Sub-Committee Procedure**

|  |  |
| --- | --- |
| **Item No.** | **Procedure** |
| 1 | **Quorum*** 1. Three Members must be present throughout the hearing to form a quorum.
	2. The Sub-Committee shall nominate a Chair for the meeting.
 |
| 2 | **Opening**2.1 The Chair explains the procedure for the hearing and reminds all parties to turn off mobile phones, audible alarms and pagers etc.* 1. The Chair asks all present to introduce themselves.
	2. The Councillor will be asked whether they wish to briefly outline their position.
 |
| 3 | **The Complaint*** 1. The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.
	2. The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor’s opportunity to ask questions rising from the Investigator's report and not to make a statement).
	3. Members of the Sub-Committee may question the Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer.
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| 4 | **The Councillor’s case*** 1. The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative).
	2. The Investigating Officer may question the Councillor and/or any witnesses.
	3. Members of the Sub-Committee may question the Member and/or any witnesses.
 |
| 5 | **Summing Up*** 1. The Investigating Officer may sum up the complaint.
	2. The Member (or their representative) may sum up their case.
 |
| 6 | **Decision*** 1. Members of the Sub-Committee will deliberate to consider the complaint in consultation with the Independent Person prior to reaching a decision.
	2. Upon the Sub-Committee’s return the Chair will announce the Sub-Committee’s decision in the following terms:

6.2.1 The Sub-Committee decides that the Member has failed to follow the Code of Conduct or.* + 1. The Sub-Committee decides that the Member has not failed to follow the Code of Conduct.
		2. The Sub-Committee will give reasons for their decision.
	1. If the Sub-Committee decides that the Member has failed to follow the Code of Conduct the Sub-Committee will consider any representations from the Investigator and/or the Member as to:
		1. whether any action should be taken, and
		2. what form any action should take
	2. The Sub-Committee will then deliberate to consider what action if any should be taken in consultation with the Independent Person.
	3. On the Sub-Committee’s return the Chair will announce the Sub-Committee’s decision.
	4. The Sub-Committee will consider whether it should make any recommendations to the Assembly with a view to promoting high standards of conduct among Members.
	5. The Chair will confirm that a full written decision shall be issued within seven working days following the hearing and that the Sub-Committee’s findings will be published.
 |