

# **ARRANGEMENTS FOR DEALING WITH COMPLAINTS UNDER THE MEMBER CODE OF CONDUCT**

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## **Introduction**

- 1.1 The system of regulation of standards of councillor conduct in England is governed by the Localism Act 2011. Local authorities are under a duty to promote and maintain high standards of conduct by their elected members and co-opted members. Every local authority must have a code of conduct for its members, which must be consistent with the 'Seven Principles of Public Life': selflessness, honesty, integrity, objectivity, accountability, openness and leadership. The code of conduct must also make provision for the registration and disclosure of pecuniary and other interests.
- 1.2 Local authorities must also have in place arrangements under which allegations that a member has failed to comply with the authority's code of conduct can be investigated and decisions on allegations can be made. As part of those arrangements, they must also appoint at least one Independent Person whose views must be sought and taken into account before making a decision on an allegation that it has decided to investigate.
- 1.3 Islington Council has adopted a Code of Conduct for its Members which is in the Constitution and is available on the council's website ([Constitution](#)) and on request from the Monitoring Officer ([democracy@islington.gov.uk](mailto:democracy@islington.gov.uk))
- 1.4 This document sets out Islington Council's arrangements for how allegations that one or more of its members has failed to comply with the Council's Code of Conduct for Members can be investigated and decisions on allegations can be made.
- 1.5 The Council's Monitoring Officer is responsible for the implementation of the Code of Conduct and the management of investigations of alleged breaches. Any reference in these arrangements to the Monitoring Officer shall include a Deputy Monitoring Officer.

1.6 Islington Council has appointed at least one Independent Person under section 28 of the Localism Act 2011, who is neither a member nor officer of the Council, to work with the Council to support them with Code of Conduct complaints and standards issues.

1.7 The timescales set out in this document are for guidance and shall be observed where practicable but may be extended by the Monitoring Officer as necessary if they cannot be complied with by any relevant party due to sickness, holidays or other reasonable cause.

## **2. Making a Complaint**

2.1 Anyone who considers that an elected or co-opted member of Islington Council may have breached the Code of Conduct may make a complaint to the Monitoring Officer. Formal complaints must be made in writing. This should usually be done using the Code of Conduct complaint form ([Code of Conduct Complaint Form](#)) available on the Council's website and can be sent to [democracy@islington.gov.uk](mailto:democracy@islington.gov.uk) alternatively by hand to the Monitoring Officer at the Town Hall, Upper Street, London, N1 2UD.

2.2 Reasonable adjustments will be made where, for example, a complainant has a disability that prevents them from making their complaint in writing. In such cases, a verbal account of their complaint will be transcribed and a written copy produced for approval by the complainant or the complainant's representative.

2.3 The complaint should include the following information:

- (a) the complainant's name, address and other contact details;
- (b) who the complainant is, for example, a member of the public, fellow councillor or officer;
- (c) who the complaint is about; and
- (d) details of the alleged misconduct including, where possible, dates, witness details and other supporting information.

2.4 The Council will not normally allow anonymous complaints as that would be against the principles of transparency and fairness and make matters much more difficult to investigate.

However, there may be exceptional compelling reasons why an anonymous complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the complainant.

2.5 A complainant will only be granted confidentiality in exceptional circumstances. As a matter of fairness, the complainant's identity will normally be disclosed to the subject member.

2.6 Anonymity and confidentiality are different concepts. Anonymity means the complainant is not known whereas confidentiality means that the complainant is known to the Monitoring Officer but their identity is withheld for a specific reason.

2.7 Complaints which identify criminal conduct or a breach of other regulations by any person may be referred to the police or any other relevant regulatory agency for consideration. In such cases the Monitoring Officer may consider pausing the assessment of the complaint pending action by the other body.

### **Acknowledging Receipt of a Complaint**

2.8 When a complaint is received by the Council, the Monitoring Officer will, within 5 working days, acknowledge its receipt and set out the process to be taken to assess the complaint with an agreed timescale.

2.9 The Monitoring Officer may also notify the subject member that a complaint has been received and invite their comments on it within an agreed timescale.

2.10 In deciding whether or not to notify the subject member the Monitoring Officer will weigh up different factors. The presumption will normally be to invite the subject member to comment as this can, for example, help the Monitoring Officer to decide whether a matter can be dealt with informally without the need for an investigation.

2.11 Examples of circumstances in which the Monitoring Officer may decide not to notify the subject member include:

- (a) If the complaint falls outside of the jurisdiction of the Code and there is no need to hear from the subject member;
- (b) If telling the subject member risks that the complainant may be intimidated or evidence destroyed;
- (c) If there is no legal power to disclose the information.

2.12 The impact of the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR) will be considered to ensure that any personal data is processed fairly and lawfully at every stage of the process and reasonable expectations of privacy will be balanced against the public interest.

### **Pre-assessment enquiries and reports**

2.13 When the Monitoring Officer notifies the subject member that a complaint has been made about them, and seeks any relevant comments, the subject member will be given up to 10 working days from the date of the notification in which to submit their comments.

2.14 The Monitoring Officer may contact complainants for clarification of their complaint if they are unable to understand the document submitted.

2.15 The Monitoring Officer may also carry out preliminary enquiries, for example whether the councillor was in fact present at the meeting to which the complaint relates. However, such preliminary enquiries will be limited to readily available public records and will not extend to a more formal investigation.

## **3. Assessment of Complaints**

3.1 The assessment of a complaint is a two-stage process:

**i. Initial test**

3.2 The first step is a jurisdictional test which assesses whether the complaint is:

- (a) against one or more named members of the Council;
- (b) the named member was in office at the time of the alleged conduct;
- (c) the complaint relates to matters where the member was acting as a councillor or representative of the Council and it is not a private matter;
- (d) the complaint, if proven, would be a breach of the Code of Conduct under which the member was operating at the time of the alleged misconduct.

3.3 The jurisdictional test will be carried out by the Monitoring Officer.

3.4 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code of Conduct, and the complainant will be informed that no further action will be taken in respect of the complaint.

3.5 If there is any doubt, however, the allegation will proceed to the second stage. For example, if it is unclear whether the member was acting 'in capacity' or not then the complaint will proceed to the second stage of the assessment criteria.

**ii. Second-stage criteria**

3.6 If the jurisdictional tests have been met, the Monitoring Officer will, after consultation with the Independent Person, decide whether or not a complaint merits formal investigation.

3.7 The Monitoring Officer will use a number of criteria for assessing complaints. The Monitoring Officer may determine that an allegation does not merit any further action where, for example:

- (a) The complaint does not contain sufficient evidence to demonstrate a potential breach of the Members' Code of Conduct;
- (b) An informal resolution should be explored first;

- (c) Where a complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression;
- (d) The complaint is, in the view of the Monitoring Officer, malicious, politically motivated, or 'tit for tat';
- (e) An investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction;
- (f) A substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;
- (g) A substantially similar complaint has been submitted and accepted;
- (h) The complaint relates to conduct which is more than 3 months old and there is no good reason for the delay in making the complaint;
- (i) The behaviour that is the subject of the complaint has already dealt with. For example, through an apology at the relevant meeting;
- (j) The complaint actually relates to dissatisfaction with a Council decision or service rather than the specific conduct of an individual;
- (k) The complaint is about someone who is no longer a councillor.

The above criteria are indicative only, and the Monitoring Officer will always take into account the public interest in taking further action on a complaint.

### **Assessment Decisions**

3.8 The Monitoring Officer will aim to complete the above two stages of their initial assessment of an allegation within 20 working days of receiving a complaint.

3.9 Where the Monitoring Officer has asked the subject member for comment, the member will be allowed up to 10 working days to comment and the Monitoring Officer will then make their assessment normally within 5 working days of any comments being received.

3.10 Where the subject member has not commented, and the 10 working days has elapsed (and they have not provided a reasonable excuse for the delay), the assessment will nevertheless be made within 5 working days after that.

3.11 The Monitoring Officer may reach one of the three following decisions on an allegation:

- (1) no further action should be taken on the allegation;
  - (2) the matter should be dealt with through a process of informal resolution in the first instance;
- or
- (3) the matter should be referred for a formal investigation.

### **Notification of assessment decisions**

3.12 Written confirmation of the decision should be issued within five working days of the decision being made.

3.13 If the Monitoring Officer decides to take no action over a complaint then, as soon as possible after making the decision, they will notify the complainant and subject member of the decision and set out clearly the reasons for that decision, including the views of the Independent Person. There is no right of appeal against a decision by the Monitoring Officer not to take any further action.

3.14 If the Monitoring Officer decides that the complaint should be referred for formal investigation or informal resolution, they will notify the complainant and subject member, stating what further action is being taken.

3.15 In such cases the Monitoring Officer will also decide whether or not to give the subject member a copy of the full complaint and whether the complainant, where they had been granted confidentiality, should remain confidential for the time being. If only one part of a complaint has been referred for action or the complaint is against more than one member, then the Monitoring Officer may decide only to disclose the relevant parts of the complaint. Any decision to withhold information will be kept under review as circumstances change.



#### **4. Informal Resolution**

4.1 When dealing with allegations, the Monitoring Officer can decide that some form of action other than a formal investigation is needed. This is called an 'informal resolution'. An informal resolution is often a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals.

4.2 If a matter is recommended for informal resolution at the initial assessment stage, no finding of fact is made, as there has been no formal investigation. A referral for informal resolution does not imply that the subject member is culpable where there has been no formal investigation.

4.3 An informal resolution may also be considered part way through an investigation rather than completing an investigation if it becomes clear that the matter could be resolved amicably. Where informal resolution relates to a formal investigation the Monitoring Officer will seek the views of an Independent Person before halting or pausing the formal investigation.

4.4 The Monitoring Officer may also decide that informal resolution may be more appropriate than referring a matter to a hearing following completion of an investigation. The Monitoring Officer will seek the views of an Independent Person before taking such a course of action.

4.5 Matters which the Monitoring Officer might consider appropriate for informal resolution include:

- (a) the same particular breach of the Code of Conduct by many members, indicating poor understanding of the Code and the Council's procedures;
- (b) misunderstanding of procedures or protocols;
- (c) lack of experience or training;
- (d) allegations and retaliatory allegations from the same members;
- (e) allegations about how formal meetings are conducted.

4.6 The Monitoring Officer will not refer complaints for informal resolution if they believe an investigation is in the public interest, for example because of the seriousness of the allegations

or because it demonstrates a pattern of behaviour. In addition, the Monitoring Officer may decide that an allegation which challenges a member's honesty or integrity may be better dealt with as a formal investigation.

4.7 If the Monitoring Officer believes that a complaint can be dealt with through informal resolution, the Monitoring Officer will consult with the Independent Person and inform the subject member and the complainant of their intention and give them the opportunity to comment before making a final decision. The parties' views will be taken into account, but they do not have a veto. The decision rests with the Monitoring Officer.

4.8 Informal resolution can take a wide range of forms and can 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:

- (a) Training (whether for individual members or for all members);
- (b) Mentoring of particular members;
- (c) Asking the subject member to apologise or to withdraw a remark;
- (d) Mediation or the drawing up an action plan;
- (e) The development or review of particular Council protocols and procedures.

4.9 A time limit will be set by which the action must be taken. If, within that time limit, the Monitoring Officer is satisfied with the outcome, they will notify the relevant parties. The matter is then closed.

4.10 If the Monitoring Officer is not satisfied within the timescales, they will notify the relevant parties of whether the matter is nevertheless now closed or whether they intend to take further action. Further action may include a formal investigation or referral for a hearing. In doing so the Monitoring Officer will consult with the Independent Person.

## **5. Investigations**

5.1 The Monitoring Officer may conduct an investigation themselves or may delegate an investigation to their Deputy or to any other named individual. However, if they do, the Monitoring

Officer will maintain the function of overseeing the investigation unless they have a conflict of interest, in which case they will make arrangements for another suitable person (internal or external) to oversee the investigation.

5.2 The Monitoring Officer will inform the relevant parties when they delegate an investigation or make sure that the investigator has done this, so that the parties know who is dealing with the case and in case they need to provide the investigator with more information.

### **Principles of investigation**

5.3 Investigations will be undertaken with regard to the following key principles:

- (1) **Proportionality:** The investigation will strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or simple, for example where the facts are not in dispute, there may be no need for any formal investigation, but a report can simply be written up. Equally not all the steps in this procedure need be followed in every instance of a formal investigation – the Monitoring Officer will make a judgment in each case based on its complexity and contentiousness.
- (2) **Fairness:** The investigation will ensure that the subject member knows what they are accused of and has an opportunity to make comments on the investigation, including on a draft report.
- (3) **Transparency:** As far as is practical and having regard to an individual's right to confidentiality, investigations will be conducted as transparently as possible and all parties will be kept up to date with progress in the case.
- (4) **Impartiality.** An investigator will not approach an investigation with pre-conceived ideas and will avoid being involved where they have a conflict of interest.

5.4 The investigator will inform the parties what it is they are investigating and what will happen next. They will also inform the subject member that they have the right to seek the views of the Independent Person at any time whilst the investigation is ongoing.

5.5 The investigator will have due regard to the Council's obligations under the Data Protection Act 2018, UK General Data Protection Regulations, the Human Rights Act 1998 and other relevant legislation, when carrying out an investigation.

5.6 When conducting an investigation, the investigator will make enquiries of any person they think necessary. If the investigator has difficulties obtaining a response, or if a person refuses to cooperate with the investigation, the investigation will not be delayed but the investigator will make this non-cooperation clear in any subsequent report.

5.7 The Monitoring Officer, or an investigator appointed by the Monitoring Officer, will normally:

- Provide the subject member with a copy of the complaint;
- Ask the subject member to provide their explanation of events;
- Ask the subject member to identify what documents they consider the investigator needs to see;
- Ask the subject member who they consider the investigator needs to interview.

5.8 Where it is appropriate to keep confidential the identity of the person making the allegation, the Monitoring Officer / investigator will delete the person's name and address from the papers given to the subject member.

5.9 The Monitoring Officer / investigator has absolute discretion about which are the appropriate witnesses to interview and documents to consider.

5.10 During the course of an investigation, the Monitoring Officer may reappraise if an investigation remains the right course of action, for example, if:

- (a) Evidence is uncovered suggesting a case is less serious than may have seemed apparent originally and that a different decision might therefore have been made about whether to investigate it or not;
- (b) They conclude after examining the matter in detail that in fact the matters under investigation were not done by the subject member in their role as a councillor or as a representative of the authority but rather in a private capacity;

(c) They have uncovered something which is potentially more serious and the authority may want to consider referring it to the police, for example;

(d) The subject member has died, is seriously ill or has resigned from the Council and the Monitoring Officer is of the opinion that it is no longer appropriate to continue with the investigation;

(e) The subject member has indicated that they wish to make a formal apology which the Monitoring Officer considers should draw a line under the matter.

In this context 'seriously ill' means that the subject member has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This might be a terminal illness or a degenerative condition.

5.11 It is for the Monitoring Officer to conclude whether the investigation should continue. However, the Independent Person will be consulted before deciding to defer or end an investigation.

5.12 If the matter has been deferred or ended, the Monitoring Officer will notify the subject member and the complainant of the decision and provide timescales within which the matter will be dealt with if it has been deferred. This will not always be appropriate, however, particularly if the matter has been referred to the police.

### **Deferring an investigation**

5.13 An investigation will be deferred when any of the following conditions are met:

(a) There are ongoing criminal proceedings or a police investigation into the subject member's conduct;

(b) The Monitoring Officer cannot proceed with their investigation without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceeding;

(c) The investigation might prejudice another investigation or court proceeding.

5.14 An investigation may also need to be deferred:

(a) when there is an ongoing investigation by another regulatory body;

(b) because of the serious illness of a key party;

(c) due to the genuine unavailability of a key party.

5.15 The decision to defer an investigation, whether in whole or in part, will be taken by the Monitoring Officer.

5.16 A deferred investigation will be kept under regular review, in the interests of natural justice.

5.17 Once a decision is taken to begin the investigation again, the Monitoring Officer will notify in writing:

(1) the subject member;

(2) the complainant; and

(3) the relevant Independent Person.

## **Confidentiality**

5.18 Any information received by the Monitoring Officer, or an investigator appointed by the Monitoring Officer, during the course of an investigation will be treated as confidential to the investigative process until the investigation is completed unless there is a statutory requirement to disclose it, for example when there are parallel criminal investigations being undertaken.

5.19 Persons interviewed during the course of an investigation, and anyone else aware of the investigation, are asked to maintain confidentiality. Members are reminded of their obligations under the Code of Conduct regarding the disclosure of information that they receive in confidence.

5.20 Members of the public are not covered by the Code of Conduct. A person making an allegation about a member is under no responsibility to the subject member to keep that complaint confidential, but if they do decide to publish the complaint and it is untrue then the complainant may well expose themselves to an action for defamation.

### **Timescales for an investigation**

5.21 There are many factors that can affect the time it takes to complete an investigation. However, most investigations will be carried out, and a report on the investigation completed, within a maximum of six months of the original complaint being referred for an investigation. This will not always be possible, particularly where there is overlapping jurisdiction or where the investigator is waiting for a key piece of evidence from an external body.

5.22 Refusal by the subject member or other relevant party to cooperate, for example by not making themselves available for an interview without good reason, will not be a reason for delay but will be reflected in the investigation report.

5.23 If the subject member refuses to cooperate with the investigation, that of itself is a potential breach of the Code of Conduct and may be something that any decision maker may take account of.

### **Reports**

#### **i. Draft reports:**

5.24 The investigator will produce a draft report, which will initially be considered by the Monitoring Officer and the Independent Person so that they can satisfy themselves that the investigation is of an acceptable standard and met the scope of the complaint. Once the Monitoring Officer is satisfied, the draft report will be sent to the relevant parties with a deadline of up to 10 working days for commenting.

5.25 The draft report is not sent to witnesses, but where criticism is made of a third party who will not otherwise have an opportunity to comment on a draft report then they will be invited to comment on those criticisms before the report is completed.

5.26 The report will cover:

- (a) agreed facts;
- (b) any disputed facts together with the investigator's view, if appropriate, as to which version is more likely;
- (c) whether those facts amount to a breach of the Code or not; and
- (d) the investigator's reasons for reaching that conclusion.

5.27 The report will make one of the following findings on the balance of probabilities:

- (a) that there has been one or more failure(s) to comply with the Code of Conduct;
- (b) that there has not been a failure to comply with the Code.

5.28 Responses to the draft report may reveal the need for further investigation, or they may add nothing of relevance. Occasionally changes may be significant enough for the issuing of a second draft.

## **ii. The Final Report**

5.29 Upon receipt of the final investigation report, the Monitoring Officer, in consultation with the Independent Person, may decide:

- (a) to take no further action;
- (b) to seek to resolve the matter informally; or
- (c) to refer the matter to a hearing by the Standards Committee.

5.30 The final report will be issued by the Monitoring Officer and sent to:



- (a) the subject member;
- (b) the complainant;
- (c) the Independent Person;

5.31 If the Monitoring Officer considers that there has been no breach of the Code, that will be the end of the matter.

5.32 If the Monitoring Officer considers that there has been a breach of the Code, the Monitoring Officer will decide what action, if any, to take and notify the relevant parties. For example, the Monitoring Officer may decide to seek an informal resolution at this stage. In doing so the Monitoring Officer will consult with the Independent Person.

5.33 If the Monitoring Officer decides the matter should be referred for a hearing, the report will be accompanied by information explaining that a hearing will be held and the procedure to be followed.

5.34 There is no appeal against the Monitoring Officer's report. Where a potential breach has been found, and the matter has been referred to a hearing, the parties will have their chance to have their say on the investigation at that stage. Where no breach has been found, that is the end of the matter.

## **Publication of Reports**

5.35 Where the Monitoring Officer has concluded that there has been no breach, that no further action is needed, or the matter has been resolved in some other way, a copy of the investigation report will not usually be published. However, if the matter has generated local interest the Monitoring Officer may consider putting out a brief statement explaining the outcome and reasoning.

## **6. Hearings**

6.1 At the end of the investigation, a hearing may be called where the investigator has concluded that there has been a breach of the Code of Conduct and the Monitoring Officer has concluded that the matter cannot otherwise be resolved informally.

6.2 For reasons of fairness and proportionality a hearing should wherever possible take place within three months of the date on which the investigator's report was completed. Where that is not possible, for example because the matter is awaiting the outcome of other matters being dealt with by outside bodies or other investigations into the subject member, the Monitoring Officer will notify the relevant parties of the reason for the delay and provide an estimated timescale.

6.3 However, the hearing will not take place sooner than 28 days after the investigation report has been issued unless the subject member agrees. This is to allow them sufficient time to prepare their defence and consider any witnesses they may wish to call for example.

6.4 Once a date has been set for a Hearing the Monitoring Officer will notify:

- (a) the subject member;
- (b) the investigator;
- (c) the Independent Person;
- (d) the complainant if appropriate.

6.5 The Monitoring Officer will also outline the hearing procedure; the subject member's rights and ask for a written response from the subject member within a set time. This is to find out whether the subject member:

- (a) disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements;
- (b) wants to give evidence to the hearing, either verbally or in writing;
- (c) wants to call relevant witnesses to give evidence to the Standards Committee;
- (d) wants to request any part of the hearing to be held in private (and the reasons for this);

(e) wants to request any part of the investigation report or other relevant documents to be withheld from the public (and the reasons for this).

6.6 The investigator will also be asked if they wish to call any witnesses.

6.7 If the subject member is unable to attend the specified date the Standards Committee Hearing Panel ("the Panel") may arrange for the hearing to be held on a different date, provided that they are satisfied that the subject member has given an acceptable reason. Where the subject member does not give an acceptable reason or does not reply within a specified time, the Panel will proceed with the date and may consider the report in the subject member's absence if the subject member does not attend the hearing. The Panel should make clear at the start of the hearing that they have considered whether they can proceed in the absence of the subject member and should record their reasons.

6.8 If one or more witnesses are unavailable on the given date, the Monitoring Officer, in consultation with the Chair of the Panel, will decide how material they would be to the hearing and whether another date needs to be looked for. Witnesses will be kept promptly informed of the relevant dates, times and location of the hearing.

6.9 Except in the most complicated cases, the Panel should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

### **Role of the Monitoring Officer**

6.10 The Monitoring Officer will be the main adviser to the Panel unless they have an interest in the matter that would prevent them from performing this role independently. This may be because they have carried out the investigation or have another conflict. If this situation arises, the Monitoring Officer will arrange for another appropriately qualified officer to advise the Panel.

6.11 Where the Monitoring Officer has personally conducted the formal investigation of a complaint, they will delegate the role of advising the Panel and, where the Monitoring Officer

intends to undertake the role of advising a potential hearing, they will delegate the investigative role. The Monitoring Officer will not undertake both roles in the same case.

6.12 The Monitoring Officer or other legal adviser's role in advising the Panel is to:

- (a) make sure that members of the Panel understand their powers and procedures;
- (b) make sure that the procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible;
- (c) make sure that the subject member understands the procedures the Panel will follow;
- (d) provide advice to the Panel during the hearing and their deliberations;
- (e) help the Panel members produce a written decision and a summary of that decision.

### **Composition of the Panel**

6.13 The Hearing Panel will comprise of members drawn from the main body of the Standards Committee.

6.14 Political proportionality applies to the Panel.

6.15 All Panel members are required to have undertaken suitable training.

### **Pre-Hearing**

6.16 As soon as a date has been set for a hearing the Monitoring Officer and the Panel will hold a private pre-hearing. This may be done in writing or just between the Monitoring Officer and the Panel Chair for expediency. The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically.

6.17 At the pre-hearing the Panel should:

- (a) Decide whether any of the findings of fact in the investigation report are in dispute and, if so, how relevant they are likely to be at the hearing.

- (b) Consider any additional evidence it considers is required at the hearing.
- (c) Identify any witnesses it thinks it would want to hear from.
- (d) Decide if witnesses which the subject member or investigator may want to call are relevant bearing in mind the nature of the issue and the need for proportionality.
- (e) Consider whether there are any parts of the hearing that are likely to be held in private or whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material though the final decision will rest with the Panel on the day. The presumption will be to hold a public hearing unless there is specific exempt or confidential information as defined by Part VA of the Local Government Act 1972.
- (f) Identify any potential conflicts of interest, for example any close associations with the people involved or potential witnesses. The Monitoring Officer will advise if any conflicts mean that a councillor should stand down from the Panel.

6.18 Panel members must not debate the merits of the case at the pre-hearing.

6.19 Once the pre-hearing has been held the Monitoring Officer will write to everyone involved in the complaint at least two weeks before the hearing to:

- (a) confirm the date, time and place for the hearing;
- (b) list those witnesses, if any, who will be asked to give evidence; and
- (c) outline the proposed procedure for the hearing.

## **The Hearing**

6.20 The hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters.

6.21 Evidence will not be under oath.

6.22 The Panel will decide factual evidence on the balance of probabilities.

6.23 The Panel is required at all times to act in a demonstrably fair, independent and politically impartial way.

6.24 All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the Council and the public.

### **Representatives**

6.25. The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. This should have been agreed at the pre-hearing and if the Panel has any concern about the person chosen to represent the subject member, they should have made that clear beforehand. The Panel does, however, have the right to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

### **Evidence**

6.26 The Panel, through its Chair, controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

6.27 In many cases, the Panel may not need to consider any evidence other than the investigation report and any other supporting documents. However, the Panel may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

6.28 The Panel can allow witnesses to be questioned and cross-examined by the subject member and the investigator. The Panel and the Independent Person can also question witnesses directly. It is not a legal requirement that the Independent Person attend the hearing, but it is best practice,

and the Panel must have regard to their views when reaching a decision. If the Independent Person does not attend therefore, there must be an agreed mechanism for receiving their views.

6.29 If the Panel believes that questions are irrelevant or oppressive then the Chair may stop that particular line of questioning.

6.30 Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. However, the Panel may limit the number of witnesses if the number is unreasonable.

6.31 Typically, a hearing will adopt the following format:

- (1) The Investigating Officer will be invited to present their Investigation Report and to call witnesses as required;
- (2) The Subject Member may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (3) The Independent Person may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (4) Members of the Panel may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (5) The Subject Member may present their case and call witnesses as required;
- (6) The Investigating Officer may question the Subject Member and any witnesses;
- (7) The Independent Person may question the Subject Member and any witnesses called by the Subject Member;
- (8) Members of the Panel may question the Subject Member and any witnesses called by the Subject Member;
- (9) The Investigating Officer may make a closing speech;
- (10) The Subject Member may make a closing speech.

## **Making a finding**

6.32 Once the Panel has heard all the relevant evidence and before retiring to consider its finding, the Chair will invite the Independent Person to give their views to the Panel which the Panel must have regard to. These views will be given in the open session.

6.33 The Chair will then suspend the hearing and the Panel will retire in private to consider its finding. Any officer who retires with the Panel is there to advise on matters of procedure and law only. If the Independent Person retires with the Panel, they should not take part in any decision making as they are not part of the formal decision-making process. In addition, they should ensure that any views they give to the Panel are also made publicly to the meeting.

6.34 The Panel may conclude:

- (a) that the Member did not fail to comply with the Members' Code of Conduct, and dismiss the complaint, or
- (b) that the Member did fail to comply with the Members' Code of Conduct.

6.35 Once the Panel has reached its decision it will reconvene to inform the Subject Member. Where a breach has been found, the Panel will invite representations as to any aggravating or mitigating factors and what action it should take.

6.36 Mitigating factors may include:

- (a) an honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice;
- (b) a member's previous record of good service;
- (c) substantiated evidence that the member's actions have been affected by ill-health;



(d) recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate; self-reporting of the breach by the subject member;

(e) compliance with the Code since the events giving rise to the complaint.

6.37 Aggravating factors may include:

(a) dishonesty or breaches of trust;

(b) trying to gain an advantage or disadvantage for themselves or others;

(c) bullying;

(d) continuing to deny the facts despite clear contrary evidence;

(e) seeking unfairly to blame other people;

(f) failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code;

(g) persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

## **Sanctions**

6.38 The Panel will seek and take into account the views of the Independent Person before retiring again to consider an appropriate sanction.

6.39 When deciding on a sanction, the Panel should ensure that it is reasonable, proportionate and relevant to the subject member's behaviour. Before deciding what sanction to issue, the Panel will consider the following questions, along with any other relevant circumstances:

(a) What was the subject member's intention?

(b) Did the subject member know that they were failing to follow the Code of Conduct?

(c) Did the subject member get advice from officers before the incident? Was that advice acted on or ignored?

- (d) Has there been a breach of trust?
- (e) Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- (f) What was the result or potential result of failing to follow the Code of Conduct?
- (g) How serious was the incident?
- (h) Does the subject member accept they were at fault?
- (i) Did the subject member apologise to the relevant people?
- (j) Has the subject member previously been warned or reprimanded for similar misconduct or failed to follow the Code of Conduct before?
- (k) Is the subject member likely to do the same thing again?
- (l) How will the sanction impact on the subject member's ability to carry out their role?

6.40 There is no definitive list of possible sanctions. Typical sanctions may include one or a combination of the following:

- (a) take no further action;
- (b) report the Panel's findings in respect of the subject member's conduct to Full Council;
- (c) issue a formal censure that may be submitted from the Panel which may also be reported to Full Council;
- (d) recommend to the subject member's group leader that they be removed from any or all committees or sub-committees of the Council;
- (e) recommend to the Leader of the Council that the subject member be removed from positions of responsibility;
- (f) instruct the Monitoring Officer to arrange training for the subject member;
- (g) recommend to Full Council that the subject member be removed from all outside appointments to which they have been appointed or nominated by the Council;
- (h) recommend to Full Council that it withdraws facilities provided to the subject member by the Council for a specified period, such as a computer, website and/or email and internet access;

(i) in exceptional circumstances recommend to Full Council that it excludes the subject member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings and/or restrict contact with officers to named officers only;

(j) if relevant recommend to Full Council that the subject member be removed from their role as Leader of the Council;

(k) if relevant recommend to the appropriate political group that the subject member be removed as group leader or other position of responsibility;

(l) Any other appropriate sanction which may be available to the Committee.

6.41 Sanctions involving restricting access to the Council's premises or equipment or contact with officers should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

6.42 The Standards Committee has no power to suspend or disqualify a Member or to withdraw members' or special responsibility allowances.

### **Publicising the findings**

6.43 Where possible, a short-written decision will be made available on the day of the hearing. The Panel will give its full written decision to the relevant parties as soon as possible after the hearing. In most cases this should be within one week of the hearing.

6.44 The relevant parties are:

(a) the subject member;

(b) the complainant;

(c) the Independent Person.

6.45 The subject member's political group may also be informed of the decision if the sanction requires group action.

6.46 A decision notice will be published on the Council's website, and anywhere else the Panel considers appropriate.

6.47 If the Panel finds that a member did not fail to follow the Council's Code of Conduct, the public summary will state this and give reasons for the finding.

6.48 If the Panel finds that a member failed to follow the Code but that no action is needed, the public summary will:

- (a) state that the member failed to follow the Code, but that no action needs to be taken;
- (b) outline what happened;
- (c) give reasons for the Panel's decision not to take any action.

6.49 If the Panel finds that a member failed to follow the Code and it imposed a sanction, the public summary will:

- (a) state that the member failed to follow the Code;
- (b) outline what happened;
- (c) explain what sanction has been imposed;
- (d) give reasons for the decision made by the Panel.

6.50 The Panel's reports and minutes will be available for public inspection on the Council's website in the same way as other committee papers.

## **Appeals**

6.51 There is no right of appeal against a decision on a Code of Conduct complaint.

## Complaints Procedure Flowchart

