



Procedure for the consideration of Code of Conduct (Standards) complaints against elected Councillors

Bromley has adopted a Code of Conduct for Councillors. If anyone - which can include an employee, a member of the public or even another councillor - feels that behaviour by a Councillor or co-opted member of the Council may have fallen short of the standards required by the Code of Conduct they need to tell us about this so that we can consider their complaint.

The Council has adopted procedures for considering Complaints against Councillors which were reviewed following the publication in January 2019 of the Committee for Standards in Public Life report on ethical standards in local government.

1. How to make a complaint

- 1.1 Anyone wishing to make a complaint against a councillor is asked to consider the [Councillors Code of Conduct](#) .
- 1.2 You will need to provide details about the nature of the complaint, which part of the code you think the councillor has breached and how, and evidence to substantiate your complaint.
- 1.3 Complaints can be submitted by completing our [complaints form](#) or alternatively please write to the Monitoring Officer, Civic Centre, Stockwell Close, Bromley BR1 3UH.

2. What happens once a complaint has been submitted

- 2.1 Complaints under the Code are addressed to the Monitoring Officer who will take a view on whether a complaint should be dealt with under the Council's Code of Conduct or another process. This stage of the process is routinely conducted by the Monitoring Officer's nominated representative.
- 2.2 Upon receipt of the complaint, the Subject Member will be notified of the complaint in writing and asked to provide comment.
- 2.3 Complaints which contain a request for the Complainant's identity to be withheld may be considered to be 'valid complaints', although the Complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the Complainant's identity, the Complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage.
- 2.4 If the complaint identifies criminal conduct (including a failure to register disclosable pecuniary interests) or breach of other regulations by any person,

the Monitoring Officer will refer the complaint to the police or other regulatory agencies. No further action will be taken in relation to such complaints until any related criminal/regulatory investigation, proceedings or processes have been concluded.

3. The Initial Assessment Process

- 3.1 Under the Council's procedures an initial assessment known as filtering is undertaken, in consultation with the Independent Person, with complaints which do not amount to a breach of the Code of Conduct for councillors or those considered unlikely to do so following investigation being filtered out at this stage.
- 3.2 The first issue to consider is whether the Code of Conduct is engaged or not. The Standards committee has adopted criteria for considering complaints alleging Breaches of the [Code of Conduct](#).
- 3.3 The following types of complaint will usually not be considered as 'valid complaints': -
 - a) Complaints which are submitted anonymously (though the Monitoring Officer reserves the right to investigate if he/she thinks appropriate).
 - b) Complaints which do not identify a Subject Member.
 - c) Complaints which relate to a Member's personal or private life including personal use of social media.
 - d) Complaints concerning a failure to respond to a request from a Constituent or other individual.
 - e) Complaints which relate to the alleged actions of employees of the Council or non-voting Co-opted Members.
 - f) Complaints which relate to dissatisfaction with a Council, Executive or Committee decision or delivery of a Council service.
 - g) Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council, or after they have resigned or otherwise ceased to be a Member.
 - h) Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now.
 - i) Complaints regarding substantially similar alleged behaviour which has already been the subject of an investigation or enquiry or some form of action. However, a series of complaints demonstrating a pattern of behaviour will be given due consideration.
 - j) Complaints which relate to conduct which is alleged to have taken place more than 3 months prior to the submission of the complaint, unless there are exceptional circumstances to justify the later submission of the complaint.

- k) Complaints which are considered malicious, vexatious, politically motivated, tit-for-tat or not sufficiently serious to warrant further action.
- l) Complaints which arise from general political activity or campaigning when the Councillor is not acting as a Councillor.

3.4 If the Code of Conduct is engaged the Monitoring Officer will consider whether the complaint is likely to amount to a breach of the Code of Conduct having regard to the public interest test adopted by the Committee and the criteria in paragraph 3.3. Before reaching a decision, the Monitoring Officer may request further information from the Complainant and the Subject Councillor and consider information which is readily available e.g. minutes of Council meetings

3.5 The Monitoring Officer will, after consultation with the Independent Person, either set out the outcome of the initial assessment process in writing or seek informal resolution or instigate an investigation. If the initial assessment indicates that the Code is not engaged or no breach of the Code, or indicates no further action is required, the Monitoring Officer, after consultation with the Independent Person will advise all parties accordingly. There is no Appeal Process for decisions taken by the Monitoring Officer at this stage.

4. The Role of the Independent Person(s)

4.1 Throughout the process, the Council's Independent Person is consulted.

4.2 The Independent Persons are people who have been appointed under the Localism Act 2011, by the Council. The Independent Person must be consulted and have their views taken into account before the Council makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member. The views of the Independent Person may also be sought at any other stages of the complaints process.

4.3 The Member complained about can seek the views of a duly appointed Independent Person.

4.4 The Independent Persons do not represent and are not advisors to the Councillor who is the subject of the complaint, but they can assist in providing factual information on the complaints process. The Independent Person must remain completely impartial and objective and cannot take sides. Their role is to assess complaints and form a view on them. There is no right for the complainant to seek the views of the Independent Person and no such contact will be permitted.

5. Informal Resolution

- 5.1 If following the initial Assessment Process, it is considered that a breach of the Code of Conduct may have occurred, prior to referring a matter for formal investigation, The Monitoring Officer after consulting with the Independent Person can decide whether a matter is suitable for informal resolution.
- 5.2 The Subject Member will be asked to consider whether he/she is prepared to agree to or propose an informal resolution of the complaint which will be communicated to the Complainant.
- 5.3 Whilst not an exhaustive list, types of informal resolution might include -
- a) an apology from the Subject Member
 - b) an agreement from the Subject Member to attend relevant training or to take part in a mentoring process
 - c) an agreement from the Subject Member to engage in a process of mediation or conciliation between the Subject Member and the Complainant.
 - d) Referral of the matter to the Councillor`s Group Leader or
 - e) Any other action capable of resolving the complaint.
- 5.4 The Monitoring Officer will determine if a matter has been informally resolved.

6 Referral for Investigation

- 6.1 When it is considered after the initial assessment that a complaint may amount to a breach of the Code of Conduct which has not been informally resolved and where further action may be necessary if a breach is proven, the Monitoring Officer will either undertake or commission a formal investigation.
- 6.2 The Investigator will consider all relevant material and interview all persons they consider necessary including but not limited to the Complainant and Subject Member.
- 6.3 The Subject Member as required by the Code of Conduct must co-operate fully with the Investigation and is entitled to have a friend or representative present during any interview.
- 6.4 Where an investigation report recommends that there is no evidence of failure to comply with the Members' Code of Conduct, or that no further action is appropriate the Monitoring Officer shall prepare a report to the Standards Committee who may:
- a) accept the recommendation resolve that no further action is required and dismiss the allegation, or
 - b) remit the matter back to the Monitoring Officer for further consideration/investigation

- 6.5 If after further consideration/investigation, the Investigator concludes that there is no breach of the Code of Conduct or that further action is not required, the Committee shall dismiss the complaint.
- 6.6 Where the investigation finds evidence of a failure to comply with the Code of conduct, the Monitoring Officer in consultation with the Independent Person(s), may seek a further attempt at local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Advisory Committee. Where such local resolution is not appropriate or not possible the Monitoring Officer shall report the investigation findings to a Hearings Panel of the Standards Advisory Committee for hearing and recommendation.

7 Standards Hearings

- 7.1 Where the investigation report concludes that a breach of the Code of Conduct has occurred and that further action may be appropriate the Monitoring Officer shall prepare a report to the Standards Committee who shall appoint a Hearing sub-committee of at least 3 Members to consider the complaint.
- 7.2 The Monitoring Officer will agree a date for the Hearing Sub-Committee with the Investigator and the Subject Member to be held within 28 days of the appointment of the Hearing Sub-committee. In advance of the Hearing the Monitoring Officer will:
- a. provide a timetable for the Member to provide details about whether they wish to give evidence (and whether orally or in writing) at the hearing and any witnesses they intend to call, and additional papers they may wish to provide in time for inclusion in the committee papers
 - b. establish whether the Member will be represented or accompanied at the hearing
 - c. establish whether the Member wishes any part of the investigation report to be kept confidential or the hearing itself to be held in private, and the reasons for this
 - d. provide information about the procedure to be used at the hearing
 - e. establish whether the Member disagrees with any of the findings of fact in the investigation report
 - f. establish whether the investigating officer intends to call any witnesses
- 7.3 The Independent Person will be invited to attend the meeting of the Hearings Sub-Committee and his or her views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Respondent'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
- 7.4 The Subject Councillor may at their own cost arrange for legal or other representation at the Hearing Sub-Committee meeting or may be accompanied by a friend.

- 7.5 The Hearing will be conducted in accordance with the procedure set out in Appendix A - Member Disciplinary Hearing Procedure.
- 7.6 The Hearing Sub Committee must decide:
- a) whether the subject Member has failed to comply with the Members' Code of Conduct
 - b) whether further action is warranted; and
 - c) what form of action might be appropriate
- 7.7 If the Hearing Sub-Committee Considers that there has been a breach of the Code of conduct after consulting with the Independent Person(s) it may -
- a) decide no further action is required.
 - b) censure the Respondent.
 - c) request the Respondent to submit a written apology in a form specified by the Panel
 - d) request the Respondent to undertake such training as the Panel may specify
 - e) request that the Respondent participates in such conciliation as the Panel may specify
 - f) report to the relevant Council on the outcome of the hearing with an appropriate recommendation
 - g) require a report be submitted to Council requesting Council Issue a formal Censure notice
 - h) advise the Leader of the Political Group to which the person belongs, of the outcome of the hearing in order that they can consider what appropriate disciplinary or other action should be taken, taking into account any relevant case law, which could include securing the removal of a member from any Council, committees
 - i) advise the Leader of the Council, and where the Member complained of is also a Member of the Executive, request the suspension from or removal from the Executive.
 - j) where permitted by law to recommend withdrawal of facilities or equipment.
 - k) any other sanction permitted by law.
- 7.8 A Member cannot be disqualified or suspended from sitting as a Member of the Council.
- 7.9 The recommendations of the Hearing Panel shall be published.
- 7.10 There is no right of appeal available against a decision on a Code of Conduct complaint, except through the courts by way of judicial challenge.

8 Appeals

- 8.1. The complainant has no right of appeal against the decision of the Standards Committee. If the complainant feels that the Council has failed to deal with the complaint properly and that this failure has caused injustice, they may make a complaint to the Local Government Ombudsman.
- 8.2. However, if it is resolved that the Member has breached the Code, the Member will have an opportunity to appeal against the decision by advising the Monitoring Officer in writing within 14 days of the outcome of the Standards Hearing. The Member will be required to detail the grounds upon which an appeal is sought.
- 8.3. Upon receipt of notification of appeal the Monitoring Officer will consult an Independent Person for their views. The Monitoring Officer will forward a report detailing the allegations, views of the Independent Person and the findings of the investigation to a second (Appeal) Hearing Sub-Committee who will determine the appeal case. This Sub-Committee will comprise three different Members to that of the first Sub-Committee. The decision of the Appeal Hearing Sub-Committee will be final.



Conduct of Standards Hearings

Where a Standards Hearing is called under Section 7 the following procedure shall apply.

- i. The Investigating Officer will present their case in the presence of the Subject Member and will call any witnesses.
- ii. The Subject Member (or his/her representative) may ask questions of the Investigating Officer and witnesses (if any).
- iii. The Subject Member (or his/her representative) will put his/her case in the presence of the Investigating Officer and will call any witnesses.
- iv. The Investigating Officer may then ask questions of the Subject Member, and witnesses (if any).
- v. The Members of the Standards Hearing Sub-committee may ask questions of the Investigating Officer, the Subject Member and their witnesses at any time.
- vi. The Investigating Officer and the Subject Member (or his/her representative) can sum up their cases if they wish.
- vii. The Investigating Officer and the Subject Member, their representatives and witnesses will then withdraw.
- viii. The Sub-Committee, with the clerk and Monitoring Officer in attendance, will consider the evidence in private. They may recall either party to clear points of uncertainty on the evidence already given. If recall is necessary, both parties are to return even if only one is concerned with the point-giving rise to doubt.
- ix. The Sub-Committee will consult with the Independent Member before deciding on any course of action.
- x. When the Sub-Committee has reached a decision, it will recall the parties and the Chairman of the Sub-Committee will announce the decision which will be confirmed in writing with full reasons within 10 working days.