

Members Code of Conduct Complaints

Procedure guide

1. The Code of Conduct

The Localism Act 2011 requires all local authorities to adopt a code of conduct setting out the standards of behaviour expected from local Councillors.

The London Borough of Hackney (“the Council”) has adopted a code of conduct for members, which is available for inspection on the [council’s website](#).

The Localism Act 2011 also requires local authorities to have in place “arrangements” under which allegations that an elected or co-opted member of the district or parish council has failed to comply with the relevant Code of Conduct can be investigated and decisions made on such allegations.

These arrangements set out:

1. how to make a complaint about the conduct of an elected or co-opted member of the Council
2. how the Council will deal with such complaints

Decisions reached by the Monitoring Officer under this complaints process will be reported to the next scheduled meeting of the Standards Committee for noting.

2. Making a complaint

Complaints must be submitted to the Council’s Monitoring Officer using the [Code of Conduct complaint form](#).

If you require assistance completing the form, please contact Clifford Hart, Senior Governance Officer on 020 8356 3597 or clifford.hart@hackney.gov.uk

The Monitoring Officer will not consider a complaint unless the complaint form has been completed; this is to ensure that all of the relevant information is provided and, where necessary, consent to share information has been obtained so that the complaint can be processed.

If you are making the complaint on behalf of a number of individuals, one person should be nominated as the single point of contact to whom all correspondence will be addressed.

3. The complaint process

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days.

The Monitoring Officer may reject the complaint at the outset if:

- the subject of the complaint is no longer a Councillor or Co-Optee;
- the complaint is made anonymously;
- the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation and there is nothing further to be gained;
- the complaint is essentially against the action of the council as a whole and cannot properly be directed against an individual Councillor or Co-Optee;
- the complaint does not relate to the conduct as a Councillor or Co-Optee;
- the complaint is a service complaint;
- The complaint is about conduct which is the subject of legal proceedings against the Council brought by the complainant (e.g. events at a Planning or Licensing Sub-Committee)
- the complaint is about an officer of the Council.

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 as appropriate. No further action will be taken in relation to such complaints until any related criminal / regulatory investigation, proceedings or processes have been concluded.

Anonymous complaints will not normally be investigated, unless there is clear public interest in doing so and the Monitoring Officer considers that a fair investigation can be carried out.

Requests from Complainants for the Monitoring Officer to withhold their identity, so that they remain anonymous to the subject of the complaint, are not ordinarily granted. The Monitoring Officer has to balance the right of the subject of the complaint to properly understand the complaint against them and respond to it, with the rights of the Complainant. This normally means that the Councillor or Co-Optee will need to be told who is making the complaint.

All parties are encouraged to respond promptly to any correspondence in relation to the complaint. All parties will be kept updated as to how the complaint is progressing. If at any stage in the complaint process the Complainant fails to respond, the complaint may be treated as withdrawn; if the subject of the complaint fails to respond, the complaint will be determined on the basis of the information available.

4. Will the complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with an Independent Person where considered appropriate, take a decision as to the following:

- No further action should be taken
- The matter complained of does not on its face demonstrate a potential breach of the Code of Conduct
- Refer the complaint for local resolution (which might involve an apology or training or some other form of mediation)
- Refer the complaint for formal investigation

This is known as the ‘Assessment’ stage and its purpose is to establish if there are valid grounds to investigate the complaint.

When reviewing Code of Conduct complaints, the Monitoring Officer, in consultation with an Independent Person(s), will have regard to the following assessment criteria:

Adequate information	<p>The Monitoring Officer must be satisfied that there is sufficient information available at the “initial test and assessment stage” to decide whether the complaint should be referred for investigation or other action.</p> <p>The Monitoring Officer may access other information which is readily available, and which may assist in the consideration of the complaint “initial test and assessment stage”. This may include copies of agendas, reports and minutes of meetings, recordings of Council meetings, copies of the Members’ entry in the Register of Members’ Interests. It will not include conducting interviews with witnesses.</p> <p>If insufficient information is available, the Monitoring Officer will not normally refer the complaint for investigation or other action.</p>
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Official capacity	The Monitoring Officer must be satisfied that the Subject Member was acting in an official capacity.
Timescale	The Monitoring Officer will take into account when the events subject to the complaint took place and will not normally investigate or pursue other action if the events occurred more than 6 months prior to the complaint being submitted other than in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated
Seriousness	<p>The Monitoring Officer will not normally refer a matter for investigation or other action if it is considered trivial, malicious, vexatious, politically motivated¹ or tit-for-tat.</p> <p>Where the complaint appears to relate to the “rough and tumble of political debate” and pertains to conduct between Members or Members and co-opted Members rather than between Members and the public or officers, in most instances no further action will be taken.</p>

¹ If something is politically motivated, it is carried out in the interests of a particular government or political party or individual

<p>Public interest</p>	<p>Consideration will be given as to whether the public interest² would be served by referring a complaint for investigation or other action.</p> <p>The public interest would not normally be served where, for instance, a member has died, resigned or is seriously ill.</p> <p>If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or the subject of an investigation by other regulatory authorities, it is unlikely that it will be referred for investigation or other action unless it is evident that the public interest will be served by further action being taken.</p> <p>If the complaint relates to a former Member of the Council who is now a Member of another authority the Monitoring Officer may refer the matter to that authority for consideration.</p>
<p>Multiple Complaints</p>	<p>A single event may give rise to similar complaints from a number of complainants.</p> <p>Where possible these complaints will be considered by the Monitoring Officer at the same time. Each complaint will, however, be determined separately.</p> <p>If an investigation is deemed to be appropriate the Monitoring Officer may decide that, in the interests of efficiency, only one complaint should go forward for investigation, with the other complainants being treated as potential witnesses in that investigation.</p>

² Used when talking about people's rights to know the facts about a particular situation

Before reaching a decision, the Monitoring Officer may request further information from the Complainant and the Subject Councillor or obtain information which is readily available, such as minutes / recordings of Council meetings.

The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation.

If the Subject Councillor makes a reasonable offer to settle the complaint informally, but the Complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

The Monitoring Officer will normally reach an assessment within 20 working days of receipt of the complaint, however, in some instances this may take longer.

The Monitoring Officer may at their absolute discretion refer the matter to an Assessment Sub-Committee of the Standards Committee.

If the Monitoring Officer decides not to investigate the complaint they will explain why. That will be the end of the matter.

5. How is a formal investigation conducted?

If the Monitoring Officer decides that a complaint merits investigation, they will appoint an Investigating Officer, who may be another officer of the Council, an officer of another authority or an external investigator. This person will usually be someone with no prior knowledge of the matter.

The Investigating Officer will then carry out an investigation. This will usually involve speaking with the Complainant to discuss the complaint and may include requesting further details / evidence in support. It could also include interviewing other witnesses. The Complainant will be able to suggest what documents and which witnesses the Investigating Officer should consider seeing.

The Investigating Officer will also speak with the Councillor / Co-Optee in question and provide them with the same opportunity to identify sources of evidence and witnesses.

At the end of their investigation, the Investigating Officer will produce a draft report and send it, in confidence, to the Complainant and to the Councillor / Co-Optee, for comment.

The Investigating Officer will consider any comments the Complainant and/or the Councillor / Co-Optee make before sending the final report to the Monitoring Officer.

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

The Monitoring Officer will review the Investigating Officer's report and, if they are satisfied with the quality of the investigation undertaken and that the Investigating Officer's report is sufficient, they will refer the findings to the Standards Committee who can accept the Investigating Officer's recommendation and dismiss the allegation, remit the matter to the Monitoring Officer for further consideration or remit the matter to the Hearing Sub-Committee to conduct a hearing into the allegation.

The Monitoring Officer may also consider that there are "learning points" contained within the report which should be shared with the wider Council either in the form of training or through correspondence.

7. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and after consulting an Independent Person(s) will then either seek local resolution or send the matter for hearing by the Hearing Sub-Committee.

Local Resolution

If the Monitoring Officer thinks that the complaint can reasonably be resolved without the need for a hearing they will consult with the Independent Person and with the Complainant and seek to agree a fair resolution.

It is important though that any resolution also helps to ensure higher standards of conduct for the future.

Possible local resolutions may include the Councillor / Co-Optee accepting that their conduct was unacceptable and offering an apology. If the Councillor / Co-Optee complies with the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee, but will take no further action. That will be the end of the matter.

Hearing Sub-Committee

If the complaint is not resolved through local resolution, then the Monitoring Officer will refer the Investigating Officer's report to a Hearing Sub-Committee to determine whether or not the Code of Conduct was breached.

The Hearing Sub-Committee will comprise a minimum of three elected members of the Standards Committee plus the Independent Person. The Monitoring Officer will select the membership of each Hearing Sub-Committee.

This is not a Court process but, in order to be fair to everyone, formalities are followed so that a proper decision can be reached. At the hearing the Monitoring Officer will ask the Investigator to present their investigation report and may request that the Complainant attend and give evidence. The Councillor / Co-Optee will have the opportunity to make their case.

The Hearing Sub-Committee may conclude that the Subject Councillor did not fail to comply with the Code of Conduct, and so dismiss the complaint. That will be an end to the matter.

8. What action can the Hearing Sub-Committee take when a Councillor has failed to comply with the Code of Conduct?

If the Hearing Sub-Committee concludes that the Councillor / Co-Optee did fail to comply with the Code of Conduct, the Chair will inform the Councillor / Co-Optee of this finding and the Hearing Sub-Committee will then consider what action, if any, it should take as a result of the failure to comply with the Code of Conduct. In doing this, the Hearing Sub-Committee will give the Councillor / Co-Optee an opportunity to make representations and will consult the Independent Person(s).

The Hearing Sub-Committee may:

- Censure or reprimand the Councillor / Co-Optee;
- Recommend to the Councillor's group leader (or in the case of ungrouped members, recommend to Council) that they be removed from any or all Committee or Sub-Committees of the Council;
- Recommend to the elected Mayor that the Councillor be removed from the Cabinet or removed from particular portfolio responsibilities;
- Instruct the Monitoring Officer to arrange training for the Councillor / Co-Optee.
- Publish its findings in respect of the Councillor's / Co-Optee's conduct;
- Report its findings to Council for information;

The Hearing Sub-Committee has no power to suspend or disqualify the member or to withdraw or suspend allowances or restrict access to or use of Council facilities.

Within 10 working days of the date of the hearing, the Monitoring Officer will prepare a formal decision notice, in consultation with the Chair of the Hearing Sub-Committee, and send a copy to the Complainant and to the Councillor / Co-Optee.

The decision notice will be published as part of the minutes of the Hearing Sub-Committee and will be placed on the Council's website unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.

9. Timescales

The timescales quoted below are indicative. They are not guaranteed and are included here to illustrate the likely duration of the complaints process. Actual timescales may be significantly shorter or longer depending on the complexity and content of the complaint.

Stage in complaints process	Indicative timescales
Acknowledge receipt of complaint or dismissal of invalid complaints	within 5 working days of receipt of complaint
Assessment stage decision	Issued to Councillor Co-Optee and Complainant within 25 working days of receipt of complaint
Investigation	A formal investigation normally takes around 8 - 12 weeks from the appointment of an appropriate investigator

Local Hearing Panel	<p>within 25 working days of receipt of the final investigation report – which includes:</p> <ul style="list-style-type: none"> • 10 working days to prepare hearing papers and hold any pre-hearing meetings • 10 working days for Councillor / Co-Optee to submit a response to the Investigator’s report and hearing papers • 5 working days for agenda publication
Local Hearing Panel decision	Issued to Councillor / Co-Optee and Complainant and published within 10 working days of the Local Hearing Panel meeting

10. Appeals

There is no right of appeal for the Complainant or for the Subject Councillor against a decision of the Monitoring Officer or of the Standards Committee.

However, the Monitoring Officer reports these decisions to the Council’s Standards Committee so there is oversight of how these matters are dealt with.

11. Document Retention

The documentation relating to a complaint will be retained for the duration of the Councillor / Co-Optees membership of the Council and 4 years thereafter, irrespective of the outcome of the complaint. Minutes of the Standards Committee and its Sub-Committees will be retained in the same way as the minutes of other council decision making bodies.

12. Revision of these arrangements

The Standards Committee will be advised of year-in changes to these arrangements.

The Standards Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter.