

Procedure for handling complaints of breach of the Member Code of Conduct

Introduction

- 1) This booklet describes the procedure that the London Borough of Lewisham will use to deal with complaints of breach of its Member Code of Conduct.

Making a complaint

- 2) Complaints should be made in writing (including by fax or email) to the Monitoring Officer, LB Lewisham, Town Hall, Catford, London SE6 4RU (fax no 0209 314 3107); email monitoring.officer@lewisham.gov.uk . Complaints may be made using the Ethics Complaint Form available on the Council's website and from the Monitoring Officer. If a complainant finds it hard to put their complaint in writing, Council staff will help them to do so. The Council will make reasonable adjustments to help a disabled complainant.

Notice of complaint

- 3) The Monitoring Officer will normally write to the complainant to acknowledge their complaint and write to the member concerned to tell them that an allegation has been received. The Monitoring Officer may decide that it is not appropriate to inform the member if s/he thinks it is not appropriate to do so, for example if by doing so any investigation would be affected, or there might be a risk that evidence could be destroyed.
- 4) Unless the Monitoring Officer decides that it would not be appropriate to inform the member of the complaint, s/he will also tell the member the paragraphs of the Member Code of Conduct that may have been breached.
- 5) The Monitoring Officer will normally tell the member concerned the name of the complainant, unless the Monitoring Officer thinks in all the circumstances it is appropriate not to do so.

Informal resolution

- 6) In some circumstances it may be possible to resolve the complaint informally without considering whether it is necessary to proceed to investigation. If the complainant and the member concerned agree to this and it appears to the Monitoring Officer that informal resolution is appropriate, s/he will seek to achieve an informal resolution at that stage. It may be for example, in less serious allegations that an apology or a meeting between the parties may resolve the issue. However informal resolution is unlikely to be appropriate if the allegation is serious or the parties do not agree.

Initial assessment

7) If informal resolution is not appropriate or possible, the Monitoring Officer will make initial enquiries so that s/he may reach a decision about whether the matter should be investigated in detail. If the Monitoring Officer is not satisfied that:-

- the complaint is against a member of the Council,
- the member was in office at the time of the alleged complaint , and
- the complaint, if proven would amount to a breach of the Member Code of Conduct in place at the time of the alleged breach

then the complaint cannot be investigated.

8) In making an initial assessment, the Monitoring Officer will apply assessment criteria in deciding whether to investigate further. These assessment criteria are designed to promote confidence that complaints will be taken seriously and dealt with properly. They also reflect the fact that any decision to investigate a complaint will cost public money and both officer and member time. The criteria are designed to balance the need to promote confidence in local governance and to make sure that public resources are applied appropriately.

Public interest – The Monitoring Officer must be satisfied that an investigation would be in the public interest, taking into account the time and cost involve. If the Monitoring Officer is not so satisfied s/he will decide not to investigate.

Sufficient information – The complainant must provide sufficient information to warrant an investigation. If not the Monitoring Officer will take no further action unless additional information is provided by the complainant.

Previous action – If there has already been an investigation or some other action under the Code of Conduct or by another regulatory body, in relation to the complaint, the Monitoring Officer will not normally decide to investigate, though s/he may do so if circumstances dictate (e.g. if a criminal charge was dropped)

Repeated complaints –If the complaint is the same or substantially the same as one previously dealt with, the Monitoring Officer will normally decide not to investigate.

Timing – If there has been a significant delay between the incident complained of and the submission of the complaint, the matter will not normally be investigated.

Trivial matters – If the Monitoring Officer takes the view that the matter is not sufficiently serious to warrant further action, no further action will be taken, unless there are compelling reasons to do so.

Ulterior motive – No further action will be taken if it appears to the Monitoring Officer that the complaint is motivated by malice or retaliation unless it involves a serious allegation.

Special circumstances – There may be circumstances where the Monitoring Officer takes the view that an investigation should occur even though the application of these criteria would suggest otherwise. For example, were a very serious allegation to be made after a long delay, it may be appropriate to investigate notwithstanding the delay.

These criteria are for general guidance, but they have to be applied in the light of any particular circumstances of each case.

Police involvement

- 9) If it appears to the Monitoring Officer at any time that if proven the breach might amount to a breach of the criminal law and a referral to the police is appropriate, s/he may, if appropriate, defer any decision about investigation until the police investigation is complete.

Investigation

- 10) If the Monitoring Officer decides that an investigation is appropriate, s/he will investigate the complaint or appoint another person to do so on her behalf. The investigation will be conducted thoroughly and both members and staff are required to co-operate with such investigation. Once the investigation is complete the Monitoring Officer, or person appointed to investigate on her/his behalf, will prepare a report for a sub committee of the Standards Committee. A copy of that report will be sent to the member concerned at least 4 weeks before the meeting of the sub committee. The member concerned will be entitled to make a written submission to the Standards Committee, but if s/he does so it must be delivered to the Monitoring Officer at least 2 weeks before the Sub Committee meeting.

Independent Person

- 11) The Council [has appointed] an Independent Person whose views are to be sought prior to the Standards Sub Committee making any decision on an allegation that has been investigated. The Monitoring Officer will therefore send her/his report to the Independent Person at the same time as s/he sends it to the member concerned. Should the member make any written representations in response, the member may also send these to the Independent Person, but should they fail to do so, the Monitoring Officer will do so.
- 12) The comments of the Independent Person will be made in writing and presented to the Standards Sub Committee for consideration.

- 13) The member concerned is also entitled to approach the Independent Person directly for their views.

Standards Sub Committee meeting

- 14) The Standards Sub Committee will meet to consider the report of the Monitoring Officer and any written representations made by the member concerned as well as any views received from the Independent Person. The member will be entitled to attend the meeting, which will normally be held in public unless the Sub Committee takes the view that there are compelling reasons to the contrary. The Sub Committee will not normally take oral evidence at the meeting (but may decide to do so in appropriate cases). However it may require the member concerned, the Monitoring Officer (and/or person appointed on her/his behalf to investigate), the Independent Person and/or any other person to attend to answer their questions. The conduct of the meeting will be a matter for the Chair so long as the process used accords with the principles of fairness and natural justice. Legal advice will be available to the meeting.

Findings

- 15) The Standards Sub Committee will decide whether there has been a breach of the Member Code of Conduct. Both the complainant and the member concerned will be notified in writing of the decision.

Appeal

- 16) If there is a finding of breach, the Member concerned may appeal to a different sub committee of the Standards Committee within 21 days of the date of notification. The decision of that sub-committee will be final.

Sanctions

- 17) If there is a finding of breach of the Member Code of Conduct, the Standards Sub Committee will decide whether it is appropriate to require action to be taken in respect of it. That may be a sanction, such as censure or in certain circumstances the withdrawal of access to Council facilities provided that is proportionate and does not interfere unduly with the members' ability to carry out their duties as a member. It may also report any finding of breach to the full Council and/or publicise them on the website and/or in a local newspaper. It may also recommend that a member in breach undergo training, or that Council processes be amended.