

# London Borough of Enfield

## Procedure for Handling Complaints against Councillors and Co-opted Members

### 1. Introduction

- 1.1 The Council has established a Councillor Conduct Committee to implement the relevant requirements of Section 28 of the Localism Act 2011. These include arrangements for dealing with allegations that a councillor or co-opted member has failed to comply with the Authority's Code of Conduct.
- 1.2 The Councillor Conduct Committee comprises 4 members of the Council and deals with policy, complaints against councillors and issues concerning the members' Code of Conduct. The Localism Act also set up a role of Independent Person who will be consulted in respect of complaints received and before findings and sanctions are agreed. The Independent Person will not be a councillor and will be drawn from the local community. The Council has agreed to appoint two Independent Persons who will be recruited through public advertisement and a competitive interview process. Further information on the role of the Committee and the Independent Persons can be found at (insert hyper link)
- 1.3 Further reference to 'councillor' or 'member' in this document also refers to co-opted members of the Authority.

### 2. Key principles

The procedure for dealing with complaints should:

- 2.1 Be relevant to the Council's Code of Conduct
- 2.2 ~~Command~~ Have the confidence of the public, Council members and council staff.
- 2.3 Be as simple and economical as possible
- 2.4 Be speedy and fair to all parties
- 2.5 Be decisive
- 2.6 Provide oversight and support to the Monitoring Officer
- 2.7 Be proportionate and comply with the principles of natural justice

### 3. Criteria for eligibility of complaints

- 3.1 Complaints must be received by the Council's Monitoring Officer in writing within three months of the alleged matter, stating why it is felt the councillor concerned has breached the Code of Conduct. It will be considered solely on the evidence presented. The Council encourages complainants to provide their name and contact details. If the complainant asks for their identity to be protected, the Council will not disclose such details without their consent. The Council will not accept anonymous complaints. The Monitoring Officer will consult the Councillor Conduct Committee or relevant Independent Person as appropriate throughout the process – subject to neither being at risk of being compromised in the event of them being involved at some future point.
- 3.2 Complaints will not be accepted where:
- (a) They are considered to be malicious, vexatious or frivolous
  - (b) The subject matter has already been considered by the Council - except where -new evidence has become available which could not previously have been produced
  - (c) It would be more appropriate for the complaint to be dealt with by a court or under another complaints or arbitration procedure
  - (d) One of the parties had registered their intention to take legal action on all or some of the matters complained about
  - (e) Legal action **iswas** under way
  - (f) Some or all of the matters complained about have been resolved through litigation.
  - (g) The complaint is being/has been dealt with by another independent complaints process.
  - (h) The complainant seeks to overturn decisions made by the Council.

3.3 If a complaint is rejected on the basis of 3.2 above, there is no right of appeal.

### 4. Process

4.1 All complaints must be made using the Councillor Conduct Complaint Form attached as Appendix A.

4.1.2 The Council will use its best endeavours to determine a complaint within 3 months of receipt. It will acknowledge the complaint within 5 working days, giving the complainant a contact name and details. The complainant will be kept informed of progress throughout. The process may include:

- (a) Requests for further information/evidence
- (b) Informal resolution to the satisfaction of all parties

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- (c) Mediation
- (d) Investigation and/or
- (e) Referral to the Councillor Conduct Committee where the Monitoring Officer feels it would not be appropriate for him/her to take a decision

4.32 The Monitoring Officer, based primarily on the criteria set out in paragraph 3.2 above, will consider the complaint received and, in consultation with an Independent Person, will determine whether it warrants further action.

4.43 If it is decided that the complaint does not warrant further action, the Monitoring Officer will advise the complainant accordingly with reasons.

4.54 If the complaint is referred for further action, the Monitoring Officer will determine, in consultation with the Independent Person, the most appropriate way of dealing with the complaint. ~~This may include any of the options in 4.1 above. The Monitoring Officer can either decide to determine the matter her/himself or refer it to the Councillor Conduct Committee.~~

#### 5. Consideration of Complaints by Monitoring Officer

~~4.5.15~~ The Monitoring Officer may decide to undertake any investigation and other of the actions him/herself or appoint another person to act on his/her behalf. Whichever option is chosen, the outcome will be the responsibility (and in the name) of the Monitoring Officer.

5.2 Following an investigation which may involve requests for further information and advice, the Monitoring Officer or his/her representative will seek to resolve the matter to the satisfaction of all parties or carry out mediation.

(a) If the complaint is resolved, there will be no further action.

(b) If this is not possible the Monitoring Officer will either determine the matter himself or refer it to the Councillor Conduct Committee at this stage.

~~5.34.6~~ ~~There will be a right of appeal for the complainant against the above decisions of the Monitoring Officer. Such appeals must be submitted within 10 working days of the receipt of the decision (with reasons) and will be considered by the Councillor Conduct Committee, with advice from an Independent Person not previously involved if available.~~

4.5.74 The Monitoring Officer will report quarterly to the Councillor Conduct Committee on:

- (a) The number and nature of complaints received
- (b) Those rejected with reasons
- (c) Those resolved through informal resolution and other methods (eg mediation)
- (d) The number investigated,

(e) Outcome/progress of investigations and action taken.

## **6. Appeals against Monitoring Officer decisions**

- 6.1** In cases where the Monitoring Officer has either found no breach of the code or has determined the matter him/herself the complainant will have a right of appeal against this decision.
- 6.2** Such appeals must be submitted on the template attached as Appendix B within 10 working days of the receipt of the decision.
- 6.3** Appeals under 6.1 above will be considered by the Councillor Conduct Committee, with advice from an Independent Person not previously involved, if available.
- 6.4** When considering the appeal the Councillor Conduct Committee will follow the procedure for appeal hearings (to be drafted).
- 6.5** The attendance of the appellants will not be required unless the committee decides otherwise
- 6.6** If the Councillor Conduct Committee do uphold the appeal, and consider that there has been a breach of the code, they will have the option of considering further action, imposing sanctions or adjourning to seek further information.
- 6.7** There is no further right of appeal to the Council against the decision of the Councillor Conduct Committee. The decision made will be final and binding.
- 6.8** If the complainant feels that the Council has failed to deal with a complaint properly, and that this failure has caused injustice, a complaint can be taken to the Local Government Ombudsman.

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## **7.5. Consideration of complaints by Councillor Conduct Committee**

- 7.5.1** If appropriate, the Monitoring Officer (in consultation with the Independent Person) may refer the outcome of an investigation to the Councillor Conduct Committee.
- 7.5.2** The Committee will consider the investigating officer's report which should include evidence and representations from both parties associated with the complaint. The attendance of the complainant(s) and the member(s) against whom the allegations were made will not be required, unless the Committee decides otherwise.
- 7.3** The Committee will follow the procedure for Councillor Conduct Committee hearings. (to be drafted)
- 7.5.43** — The Committee after considering the investigating officer's report will decide either that:

- (a) The member concerned has breached the Code of Conduct; or
- (b) There has been no breach

**7.55.4**—In the event of a finding of a breach of the Code, the Committee will have the option of recommending a sanction against the member concerned. This can include:

- (a) Reporting the findings to full Council
- (b) Recommending to the relevant Group Leader that the councillor be removed from relevant meetings of the Authority of which they are a member
- (c) Recommending to the Leader of the Council that the member be removed from the Cabinet or from particular portfolio responsibilities
- (d) Withdrawing facilities provided to the member by the Council – such as computer access and/or e mail or internet access
- (e) Excluding the member from the Council's offices or other premises for a defined period of time – with the exception of meeting rooms as necessary for the purpose of attending meetings of the Authority of which they are a member
- (f) Publishing the findings in the local media.

**75.65** The decision will be communicated to all parties with reasons:

**757-6** Where there is a finding of no breach, the Committee will communicate the decision to all parties together with reasons.

**86. Appeals against decisions of the Councillor Conduct Committee in relation to 7 above.**

*Note: Two alternative options are presented for consideration by the Councillor Conduct Committee on the 22 October 2013.*

**Option A: Right of Appeal**

- (a) **The parties involved in the complaint will have a right of appeal but only where the decision taken was considered unreasonable or procedurally flawed or where new evidence was produced which, if available at the time of the original decision, may have changed the outcome. Dissatisfaction with the decision itself will not constitute a right to appeal.**
- (b) **An appeal must be made in writing to the Authority's Monitoring Officer and be received within 10 working days of the notification of the decision. The appeal must contain reasons and should be submitted on the form in Appendix B.**

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- (c) In the event of an appeal, the Leaders of both Groups will be asked to nominate two members each to hear the case, advised by an Independent Person and the Monitoring Officer or representative – none of whom should have been previously involved in the complaint.

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- (d) These members will consider firstly whether the Councillor Conduct Committee

- Had focussed only on relevant matters
- Had not refused or neglected to take account of relevant matters, and
- Was not influenced by irrelevant matters.

Secondly, given the above, the members will then consider whether the Committee had come to a conclusion that any reasonable body would have reached under the circumstances.

- (e) The Council will use its best endeavours to consider the appeal and notify all parties of the outcome within 4 weeks of it being received.

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- (f) If the appeal is upheld, the appeal body will need to consider if there has been a breach of the code and any further action required as a result.

- (g) There is no further right of appeal to the Council against the decision of the appeal body. The decision made will be final and binding.

- (h) If the complainant feels that the Council has failed to deal with a complaint properly, and that this failure has caused injustice, a complaint can be taken to the Local Government Ombudsman.

#### Option B No further right of appeal

The decision of the Councillor Conduct Committee will be final and binding with no further right of appeal to the council. If the complainant feels that the Council has failed to deal with the complaint properly and that this failure has caused injustice, they can make a complaint to the Local Government Ombudsman.

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