

Part 2 – Procedure for making Complaints against a Councillor for breach of the Code of Conduct

1 Introduction

- 1.1 This Procedure provides for the receipt, initial assessment, investigation and determination of complaints made under the Code of Conduct for Members
- 1.2 The following terms used in this Procedure are defined as follows.

Complainant	the person making the complaint
Member	the elected councillor or co-opted member subject to the complaint
Investigator	either an officer of the Council and / or an independent Investigator whom the Monitoring Officer has asked to investigate a complaint
Monitoring Officer	the Council officer with statutory responsibilities under section 5 of the Local Government and Housing Act 1989 and as set out below in this Code – in Thurrock Council, the Monitoring Officer is currently the Assistant Director of Law and Governance
Independent Person	a person or persons appointed by the Council to advise it or the Member on the determination of complaints
Members Advisory Panel	the Members' Advisory Panel is a Working Group of the Council's Standards and Audit Committee which will conduct a local hearing to consider whether the Member has failed to comply with the Code of Conduct and, if so, whether to recommend actions in respect of the Member to the Monitoring Officer
Appellant	the person appealing a decision under this Procedure
Respondent	the person responding to an appeal

2 How to make a complaint

- 2.1 Any person may make a complaint under the Code of Conduct. Complaints must:
- 2.1.1 Be made in writing – that is, by email or letter – addressed to the:

**Monitoring Officer
Legal Services
Civic Offices
New Road
Grays
RM17 6SL**

or to the contact email address on the Council's website

- 2.1.2 Include the full name and address of the Complainant
 - 2.1.3 Identify the Member complained of
 - 2.1.4 Set out the nature and substance of the alleged breach of the Code of Conduct for Members. It is recommended that complaints include or attach evidence to support the allegation.
- 2.2 Upon receipt of a complaint complying with 2.1 above, the Monitoring Officer will send a copy of the Complaint to the Member and the Independent Person.

3 Initial assessment

- 3.1 The Council's Monitoring Officer will receive and assess all complaints to determine whether the complaint should be investigated. If the Monitoring Officer considers that s/he can resolve the complaint through informal mediation or discussion, s/he may take this step before determining whether a complaint should be investigated.
- 3.2 The following complaints are normally not suitable for investigation, save where the Monitoring Officer accepts there are exceptional circumstances:
- 3.2.1 Complaints that are really about Council services, its policies or performance. Such complaints will be referred to the relevant service area in accordance with the Council's Complaints Policy.
 - 3.2.2 Complaints that are really about the political policies or performance of a councillor in their role. Such complaints will be referred to the councillor and / or their political group for response.
 - 3.2.3 Complaints that relate to another authority or an alleged breach of another authority or body's Code of Conduct.
 - 3.2.4 Vexatious or frivolous complaints or complaints which are intended to insult individuals.
 - 3.2.5 Minor or "tit-for-tat" complaints that do not justify the time and resources of an investigation.
 - 3.2.6 Complaints which relate to matters or events more than 3 months before the date when the complainant first became aware of the matters or events.
 - 3.2.7 Complaints by a member against another member will not normally be investigated until the Monitoring Officer considers that other processes – for example, informal mediation or political group processes have been exhausted.
 - 3.2.8 Complaints by officers should be first made under the Member / Officer Protocol
 - 3.2.9 Complaints that are already subject to other internal or external processes will not be investigated until those other processes have completed to enable the complaint to be resolved by other means. Determination of such complaints will be suspended until the other process is finalised.

- 3.3 In making decisions at 3.1 and 3.2, the Monitoring Officer will consult the Council's independent person (or where it has more than one independent person, one of the independent persons).
- 3.4 The Monitoring Officer may request further evidence or information from the Complainant. The Monitoring Officer may request an initial response from the Councillor complained of (or any other person) or take any other steps s/he considers reasonable to assist her determination.
- 3.5 The Monitoring Officer will inform the complainant and member in writing of their decision within 30 days of receipt of the complaint. Where the Monitoring Officer is not able to respond within this time, s/he will inform the complainant and member of the date by which a decision will be made.
- 3.6 The Complainant will have 7 days from the date of the Monitoring Officer's letter to ask for a review of a decision not to investigate a complaint. The application for review must be submitted in writing to the Monitoring Officer setting out the reasons for the review. The review will be determined by the Council's Chief Executive. If the Chief Executive considers the review should be upheld, the complaint will be investigated in accordance with Section 4.

4 Investigation

- 4.1 The Monitoring Officer will arrange for the complaint to be investigated by either an officer of the Council and / or an independent investigator. The Monitoring Officer may provide terms of reference for the investigation, which will focus on investigation of the factual evidence in support or against the allegation. The Member concerned has a duty to co-operate with the investigation.
- 4.2 The Investigation will follow its terms of reference and will include but is not limited to:
- 4.2.1 An opportunity for the Complainant to provide further evidence to support their allegation and / or the names of witnesses that they consider may provide relevant evidence.
 - 4.2.2 An opportunity for the Member to provide further evidence to support their allegation and / or the names of witnesses that they consider may provide relevant evidence.
 - 4.2.3 Taking evidence from any witnesses (or considering any documents) the Investigator considers may be relevant to the investigation.
- 4.3 If the Investigator considers that the terms of reference of the investigation may require amendment – for example, there is evidence of an additional potential breach of the Code of Conduct – he/she will raise this with the Monitoring Officer who will determine the appropriate course of action.
- 4.4 The Investigation will take no longer than 2 months from the date of the appointment of the investigator, unless the Monitoring Officer agrees that the investigation period should be extended.

4.5 The Investigator will provide a written report to the Monitoring Officer in respect of the allegations.

5 Members' Advisory Panel hearing

5.1 The Monitoring Officer will report the matter to the Members' Advisory Panel (Panel) which will conduct a local hearing to consider whether the Member has failed to comply with the Code of Conduct and if so, whether to recommend action in respect of the Member to the Monitoring Officer. The Members' Advisory Panel (a Working Group of the Standards and Audit Committee) will be held within 30 days of receipt by the Monitoring Officer of the investigation report to determine recommendations on the complaint. The Independent Person will be present at the Panel's Hearing and may advise both the Panel and the Member.

5.2 The Panel Hearing will normally take the following order:

- **Investigation Report**

The Investigator will present their report and evidence (and may call witnesses). The Complainant and Member may question the investigator and any witnesses

- **The Complainant's Case**

The Complainant presents their evidence and calls any witnesses. The Member may then question the Complainant and any witnesses.

- **The Member's Case**

The Member presents their evidence and calls any witnesses. The Complainant may then question the Member and any witnesses.

- **Final Submissions**

The Complainant and Member will present their final submissions in this order.

5.3 The Panel may ask questions of any person at any time.

5.4 After hearing final submissions, the Panel will withdraw to consider its decision and may consult with the Independent Person when doing so.

5.5 After reaching its decision, the Panel will either announce its recommendation at the hearing or inform the parties that the decision will be provided in writing to them within 7 days. Any verbal decision must be followed by written confirmation of the decision and its reasons within 7 days.

6 Sanction

6.1 Where a member is found in breach of the Code of Conduct, there is no statutory power to sanction the Member. The Panel may decide to recommend to the Monitoring Officer:

6.1.1 That no further action is necessary

- 6.1.2 To impose one or more of the following sanctions (or any other lawful sanction as advised by the Monitoring Officer)
 - 6.1.3 Censure or reprimand the member
 - 6.1.4 Publish its findings in respect of the member's conduct
 - 6.1.5 Report its findings to Council for information
 - 6.1.6 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council
 - 6.1.7 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities
 - 6.1.8 Recommend to Council that the member be replaced as Executive Leader
 - 6.1.9 Instruct the Monitoring Officer to arrange training for the member
 - 6.1.10 Remove from all outside appointments to which he/she has been appointed or nominated by the authority
 - 6.1.11 Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
 - 6.1.12 Exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings
- 6.2 Before reaching its decision, the Complainant and Member have the right to make submissions as to the appropriate sanction (if any). Where the decision is communicated in writing, the Council will re-convene the Panel Hearing to consider the question of sanction and the above procedure will apply. In such situations, either party may submit its representations in writing to the Monitoring Officer in advance of the re-convened hearing.

7 Appeals against a determination hearing decision

- 7.1 There is no right of appeal by either party against a decision of the Monitoring Officer or of the recommendations of the Member's Advisory Panel.
- 7.2 If you feel that the authority has failed to deal with the complaint properly, a complaint may be made to the Local Government Ombudsman.

8 Governance

- 8.1 The Panel Hearings are not subject to the Council's Procedure Rules as they apply to Committees save as required by law or as set out below.
- 8.2 The Council's Access to Information Rules will apply to Panel Hearings and so will normally be held in public.

- 8.3 The quorum for the Panel shall be two elected Members of the Council drawn from at least two different political parties and two Independent Members.
- 8.4 The Panel has power to postpone the hearing and / or adjourn a part heard hearing to a later if, in either case, it considers this is necessary to allow it to hold a fair hearing but taking into account the need to determine all complaints in a prompt manner.
- 8.5 The Chair of the Panel shall have a second and casting vote.
- 8.6 The Panel may determine the length of the hearing and any individual stages – for example, the length of final submissions – taking into account the nature and complexity of the complaint and evidence and ensuring that both parties have a reasonable opportunity to present their case. The Panel will inform the parties of any time limits at the start of the meeting.
- 8.7 The Panel will take advice from the Monitoring Officer or any legal advisor appointed by the Monitoring Officer to advise the Panel in her/his absence at any time during the hearing or while they are considering the outcome.
- 8.8 Decisions will be made by simple majority and the standard of proof to be applied is the balance of probabilities in any findings against the member. Abstentions are not permitted.