

Reigate and Banstead Borough Council

Procedures for Dealing with Complaints Under the Member Code of Conduct



Introduction

1. The Council takes all allegations of Member misconduct extremely seriously and seeks to secure the highest standards of conduct at all times.
2. The Council's Standards Committee is responsible for dealing with allegations that a Member may have failed to observe the Council's Member Code of conduct and has introduced procedures to ensure fairness and transparency whilst, at the same time, providing proportionate, cost effective and timely action.
3. The Committee has therefore introduced the following four stage procedure:
 - initial consideration by the Monitoring Officer (Stage 1)
 - local resolution (Stage 2)
 - referral to an Assessment Panel (Stage 3)
 - determination by a Hearings Sub-Committee (Stage 4)

(Note: All stages may not be required. See also paragraph 5 below).
4. The aim is to resolve complaints within 3 months of receipt although in complex cases requiring investigation this may not always be possible. All interested parties will be kept informed of progress in dealing with the complaint through the above stages.
5. In advance of the four stages referred to under paragraph 3 above, it is open to any person who is concerned about a Member conduct issue, to contact the Council's Monitoring Officer for informal confidential advice.

Criteria for Complaints

6. Complaints must:
 - relate to a serving Member or co-opted Member of the Council
 - name who the complaint is against
 - relate to conduct within the last six months
 - relate to conduct that occurred at a time when the person against whom a complaint is made was a Member of the Council
 - explain the alleged breach of the Member Code of Conduct
 - be made in writing and, where appropriate, provide relevant documentation

6. Complaints must not:
- be vexatious, frivolous or politically motivated
 - be anonymous
 - relate to the Members private life

Initial Consideration by the Monitoring Officer (Stage 1)

7. All allegations of Member misconduct must be referred to the Council's Monitoring Officer to consider and determine whether:
- the criteria set out above is met
 - no further action is required
 - the complaint appears to show a breach of the Code
 - a local settlement is appropriate or
 - referral of the allegation to an Assessment Panel, if necessary
8. Complaints will be acknowledged in writing within five working days of receipt. At the same time the Member against whom the allegation is made will be provided in writing with details and his or her initial views sought. The Member involved will also be informed of his/her right to consult with an Independent Person.
9. The Monitoring Officer will consult with one of the Council's Independent Persons giving an initial indication that the complaint is either to be rejected ("no further action"); or accepted as meeting the required criteria leading to local resolution (Stage 2) or referral to the Assessment Panel (Stage 3). Having consulted the Independent Person the Monitoring Officer will determine what course of action is to be taken and notify in writing the Independent Person accordingly.
10. Interested parties will also be notified in writing of the proposed action, procedures involved, where appropriate, and the reasons for the decision. Determinations under this delegation will be reported to the Standards Committee by the Monitoring Officer on a quarterly basis. In the case complainants the decision of the Monitoring Officer is final. Information about the complaint may be shared by the Monitoring officer with the Leader of the Council and relevant group leaders.

Local Settlement (Stage 2)

11. The Standards Committee is aware that the formal investigation of complaints is both costly and time consuming. Whilst formal investigation may be necessary in some cases, it may be possible for complaints to be dealt with more rapidly and effectively through early informal resolution of the matter.

12. The Monitoring Officer is therefore authorised, upon receipt of a complaint, to consider and, if appropriate, explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for referral to the Assessment Panel. Any attempt at local resolution at this stage does not take away the complainant's right to have the complaint of Member misconduct considered by the Assessment Panel.
13. In dealing with a complaint and whether it is capable of local resolution, the Monitoring Officer will consult an Independent Person appointed for this purpose. A key factor in local resolution will be the nature and complexity of the allegation and, typically, whether an apology and/or training would bring matters to a close. Local resolution is not, however, solely limited to these remedies.
14. The decision to proceed with local resolution rests with the Monitoring Officer following consultation with the Independent person and with the agreement of the complainant and the Member involved. This decision will be confirmed in writing to all parties.

Referral to an Assessment Panel (Stage 3)

15. Where local settlement cannot be achieved or is not appropriate (having regard to the nature and complexity of the allegation) the Monitoring Officer must arrange for referral to and consideration by an Assessment Panel.
16. The Assessment Panel shall be chaired by the Chairman or Vice-Chairman of the Standards Committee (but not both), and comprise the Chairman together with two other Members of the Committee. In the event that a complaint relates to a Parish Councillor from Horley Town Council or Salfords and Sidlow Parish Council one of the members of the assessment panel shall be a member of the other Parish Council.
17. Interested parties will be advised of the date time and location of the Panel and given the opportunity to provide written representations in advance of the meeting. No parties will be invited to the Assessment Panel at this stage. This is to ensure that the assessment of complaints is undertaken swiftly; additionally it is not expected that all the facts of the case need be considered in full at this preliminary stage.
18. The Panel (only) will be provided with a report by the Monitoring Officer, which will include the following:
 - details of the complaint
 - details of the Member's response to the complaint
 - any evidence which is available without the need for investigation
 - the outcome of consultation with the Independent Person
 - details of any attempt to negotiate a local settlement
 - written representations from any interested party
 - such other papers as the Monitoring Officer considers appropriate

19. Proceedings are at the discretion of the Chairman (upon advice from the Monitoring Officer or his/her nominated representative) but generally will be conducted as follows:
- introduction of Panel Members and others in attendance
 - outline of purpose of the meeting and how it will proceed
 - the Panel is not bound by the Access to Information rules and will not take place in public unless there are exceptional circumstances which dictate otherwise
 - the Panel will consider the Monitoring Officer's report and determine whether or not, on the basis of the complaint, there appears to have been a breach of the Code
 - in the light of these considerations, the Panel will recommend to the Monitoring Officer one of the following courses of action:
 - close the case on the basis that the evidence does not disclose an apparent breach of the Code of Conduct.
 - request that the complaint be formally investigated (on the basis that the alleged conduct appears sufficiently serious to merit the imposition of a penalty/sanction against the Member) leading to consideration by a Hearings Sub-Committee
 - other appropriate action short of formal investigation, for example requiring an apology, providing formal training (either individual or Council wide), securing conciliation or mediation or reviewing procedures to minimise conflict. This is not an exhaustive list and, in the main, will apply to less serious cases and where the parties involved are willing to engage in an amicable resolution.
20. The decision whether to close the case or take further action is delegated to the Monitoring Officer based on the recommendation of the Panel. The Monitoring Officer will write to all parties within 10 working days to advise them of his decision based on the outcome of the Assessment Panel.

Determination by a Hearings Sub-Committee (Stage 4)

21. Where a formal investigation has been undertaken, the Monitoring Officer must arrange for the relevant report to be considered by a Hearings Sub-Committee. The Monitoring Officer can appoint an independent investigator or a senior officer of the Council for the purposes of conducting the investigation.
22. The Hearings Sub-Committee shall comprise the Chairman or Vice-Chairman of the Standards Committee (but not both), together with two other Members of the Committee. As far as possible, the Sub-Committee must reflect the political balance of the Council. In the event that a complaint relates to a Parish Councillor from Horley Town Council or Salfords and Sidlow Parish Council one of the members of the assessment panel shall be a member of the other Parish Council.
23. The conduct of Sub-Committee meetings shall be in accordance with the Council's Constitution as supplemented by these procedures.

Pre-hearing Process

24. Upon receipt, the draft Investigator's report shall be sent to the complainant and relevant Member so that they can comment on any matters of fact. Parties will have two weeks in which to comment. Absence of response will be taken as meaning that there is no disagreement on facts in the draft report.
25. Once the Investigator's final report has been submitted, the Monitoring Officer or an informal meeting of the Hearings Sub-Committee may conduct a pre-hearing process in order to narrow the issues between the parties and make appropriate provision for the smooth running of the Hearing. Where this happens the Monitoring Officer will provide a letter to all parties outlining the issues to be determined and the arrangements for progressing all such matters.

Hearings Procedure

General

26. All interested parties will be:
 - notified in writing (no less than two weeks in advance) of the date, time and place of the Sub Committee (and Hearing)
 - provided with the Agenda and related reports for the Sub Committee (and Hearing)
 - allowed representation at the Hearing and given the opportunity to request the attendance of witnesses
27. The Investigator will be in attendance at the Hearing and will be given the opportunity to request the attendance of witnesses. The Council will be represented by the Monitoring Officer or his/her nominated representative. A representative of Democratic Services will be present.
28. Following election, the Chairman will:
 - introduce Members of the Sub-Committee and others in attendance
 - explain the purpose of the meeting and how it will proceed
29. The Monitoring Officer or his/her nominated representative will advise the Chairman whether the Hearing should be in public or private. The Access to Information Rules apply. In order to give confidence to the public it is expected that the Sub-Committee will take place in public unless there are exceptional circumstances which dictate otherwise.
30. The Sub-Committee will resolve any other issues or disagreements about how the Hearing should continue, which have not been resolved during the pre-hearing process.

Disagreements about facts

31. The Investigator will be invited to make representations to support the findings of his/her report and call supporting witnesses. The Member or their representative will be entitled to challenge the evidence given by any witness after each witness has completed their evidence.
32. Any Member of the Sub-Committee may then ask questions.
33. The Member or their representative will then be invited to make representations and give evidence to support their version of events. The Investigator will be entitled to challenge that evidence after the Member or representative has completed their evidence.
34. Any Member of the Sub-Committee may then ask questions.
35. The Member or their representative will then call any supporting witnesses in turn and may question them to ensure that their evidence on the facts is clear.

36. The Investigator will be entitled to challenge that evidence, after each witness has completed their evidence.
37. Any Member of the Sub-Committee may then ask questions.

Disagreement over facts that have not been identified by the Member in advance of the Hearing

38. The Sub-Committee will not allow the Member to raise a disagreement with the facts, which was not raised prior to the Hearing, unless the Member satisfies the Sub-Committee there are good reasons for not raising the disagreement before.
39. After considering the position and the Member's explanation for not raising the disagreement at an earlier stage the Sub-Committee may:
 - (a) continue the Hearing, relying on the information in the Investigator's report;
 - (b) allow the Member to make representations about the issue and invite the Investigator to respond and call any witnesses necessary; or
 - (c) adjourn the Hearing.

Determining whether the Member has failed to follow the Code

40. The Member or their representative will be invited to make representations as to why the Sub-Committee should not decide the Member has failed to follow the Code.
41. Any Member of the Sub-Committee may then ask questions.
42. The Investigator will be asked to make representations as to why the Sub-Committee should find there has been a breach.
43. Any Member of the Sub-Committee may then ask questions.
44. The Member or their representative will be invited to make any final points.
45. The Sub-Committee will adjourn and in private, with the Monitoring Officer or his/her nominated representative, consider its decision based on the facts presented.
46. The Hearing will reconvene and the Chairman will announce the Sub-Committee's findings of fact and whether the Member has failed to follow the Code of Conduct.

Procedure where there is a finding that the Code has been breached

47. The Investigator and then the Member or their representative will be invited to make representations as to:
 - (a) whether or not the Sub-Committee should set a penalty/sanction; and
 - (b) what form any penalty/sanction should take.
48. Any Member of the Sub-Committee may then ask questions of the Investigator or Member or his/her representative; and take advice from the Monitoring Officer or his/her representative.
49. The Sub-Committee will adjourn and in private, with the Monitoring Officer or his/her nominated representative, consider what if any, penalty/sanction should be imposed on the Member presented.

50. The Sub-Committee will reconvene and announce its decision(s) and confirm that a full written summary with the decision will be sent to all interested parties as soon as possible and in any event within the following ten working days.
51. The full written summary and decision will be placed on the Council's web for a period of four years or until the Councillor involved ceases to be a Member of the Council.

Withdrawing a Complaint

54. A complaint can be withdrawn at any stage by the complainant unless in the opinion of the Monitoring Officer it is in the wider interests of the Council that it be determined.

