

DARTFORD BOROUGH COUNCIL

ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

1. Making a complaint

A complaint alleging a breach of the Code of Conduct by an elected member or co-opted member of either Dartford Borough Council, or one of the Parish/Town Councils within the Borough of Dartford must be made in writing and addressed to the Monitoring Officer, preferably using the Complaint Form.

Receipt of the complaint will normally be acknowledged within 7 working days. The member the subject of the complaint will be provided with a summary of the complaint.

2. Consultation with the Independent Person

- (a) The Monitoring Officer will seek and take into account the views of the Independent Person before she decides that an allegation should be investigated; and
- (b) In circumstances other than a decision to investigate, the Monitoring Officer may seek and take into account the views of the Independent Person.

3. Preliminary tests

The Monitoring Officer will assess the complaint, using the following criteria:-

Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the person complained of a member of the Borough or Parish Council at the time of the alleged conduct?
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- (f) The complaint is about dissatisfaction with the Borough or Parish Council's decisions, policies and priorities, etc.

If the complaint fails one or more of the legal jurisdiction tests, it will be rejected. If the complaint satisfies the legal jurisdiction test, it will be assessed against the local assessment criteria test.

Local assessment criteria test:

- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous;
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious;
- (f) The alleged misconduct happened more than 3 months ago;
- (g) The complaint is relatively minor and/or dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (k) The complaint is about a deceased person;
- (l) The complaint is about a person who is no longer a Borough or Parish/Town Councillor or Co-opted Member.

If one or more of the local assessment criteria applies to the complaint, the complaint will be rejected.

The Monitoring Officer may consult with the Independent Person on the decision to reject the complaint. If rejected, the complainant and the member who is the subject of the complaint will be notified of the decision and the member will be provided with a summary of the complaint within 10 working days.

4. Notification to Member of complaint

If the complaint is not rejected at the preliminary test stage, the Monitoring Officer will inform the member who is the subject of the complaint, of the details of the complaint and request initial views on the complaint, within 10 working days.

5. Additional information

The Monitoring Officer may ask the complainant, the member who is the subject of the complaint and if applicable, the Parish/Town Clerk for additional information to assist in deciding how to deal with the complaint.

6. Initial assessment

The Monitoring Officer will carry out an initial assessment and categorise the complaint as either:-

- No further action;
- Relating to a Disclosable Pecuniary Interest, where it appears that the alleged breach may constitute an offence under criminal law;
- Informal resolution;
- Referral back to the Parish/Town Council for resolution, within specific parameters;

- Mediation with the Leader of the Member's Political Group;
- Mediation through the Panel of Political Group Leaders;
- Requiring a formal investigation, leading to a meeting of the Hearing Panel.

The Monitoring Officer will seek and take account of the views of the Independent Person where she decides is to formally investigate.

On other categorisations of the complaint, the Monitoring Officer may consult with the Independent Person.

7. No further action

The Monitoring Officer will inform the complainant and the member who is the subject of the complaint of her decision.

8. Relating to a Disposable Pecuniary Interest, where it appears that the alleged breach may constitute an offence under criminal law

The Monitoring Officer will refer the matter to Kent Police and notify the complainant and the member who is the subject of the complaint.

9. Informal resolution

The Monitoring Officer will meet/correspond with the member who is the subject of the complaint and seek an informal resolution – e.g. apology, training etc.

The Monitoring Officer may consult with the Independent Person on the proposed informal resolution. The Monitoring Officer will confirm the informal resolution with the member who is the subject of the complaint and seek their agreement in writing. If the member accepts the informal resolution, the Monitoring Officer will inform the complainant. If the member belongs to a political group, the Monitoring Officer will inform the Group Leader of the resolution.

If the member does not accept the proposed informal resolution, or having accepted the informal resolution, fails to comply, the complaint will be escalated to the Mediation stage. The complainant will be notified accordingly.

10. Mediation with the Leader of the Member's Political Group

The Monitoring Officer will request the member who is the subject of the complaint, to attend a meeting with her and the Leader of the member's Political Group. The Monitoring Officer will consult with the Independent Person on her proposed resolution. The Monitoring Officer will inform the complainant and the member who is the subject of the complaint, of the mediation decision.

The mediation meeting will be held in private, with the outcome being reported to the Political Group Leaders for information.

11. Mediation through the Panel of Political Group Leaders

The Monitoring Officer will request the member who is the subject of the complaint, to attend a meeting of the Panel of Political Group Leaders. The Monitoring Officer will consult with the Independent Person on the proposed

resolution. The Monitoring Officer will inform the complainant of the decision and the member who is the subject of the complaint, of the mediation decision.

Whilst the meeting will be in private, the outcome of the meeting will be reported to the Audit Board for information.

12. Investigation

If the Monitoring Officer decides that the complaint merits formal investigation, she will appoint and brief an Investigating Officer to undertake the investigation, and inform the complainant, the member who is the subject of the complaint and if applicable, the Clerk to the Parish/Town Council of the appointment. The Investigating Officer will provide a confidential draft report to the Monitoring Officer.

When the Monitoring Officer has reviewed and accepted the Investigating Officer's confidential draft report, he will send it to the complainant and the member who is the subject of the complaint on a confidential basis, requesting comments within 10 working days.

Once comments are received, the Monitoring Officer will discuss these with the Investigating Officer and a final report will be agreed.

The Monitoring Officer will use the initial assessment process in section 5 above in deciding how to progress the complaint and will consult with the Independent Person on her decision.

13. Hearing Panel

Following the submission of the Investigating Officer's report, if the Monitoring Officer concludes that the case needs to be presented to a Hearing Panel, she will consult with the Independent Person.

Where appropriate, the Monitoring Officer will arrange for a Hearing Panel to meet and consider the allegation and report of the Investigating Officer and to determine the outcome of the complaint. The Hearing Panel will have regard to its Procedure for Conducting a Hearing.

Whilst the hearing will be in private, the outcome of the hearing will be a public record and reported to the Audit Board for information.

14. Sanctions

Where a member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more of the sanctions below:-

- (a) Recommending to the Borough or Parish/Town Council that the member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand);
- (b) Recommending to the member's Group Leader, or Parish/Town Council, or in the case of a ungrouped Member, to the Borough or Parish/Town Council that they be removed from committees or sub-committees of the Council;
- (c) Recommending to the Leader of the Borough Council that the member be removed from the Cabinet or removed from particular Portfolio responsibilities;

- (d) Instructing the Monitoring Officer, or recommending to the Parish/Town Council, to arrange training for the member;
- (e) Recommending to the Borough or Parish/Town Council that the member be removed from one or more outside appointments to which they have been appointed or nominated by the Borough or Parish/Town Council;
- (f) Recommending to the Borough or Parish/Town Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and internet access;
- (g) Recommending to the Borough or Parish/Town Council the exclusion of the member from the Borough or Parish/Town Council's offices or other premises, with the exception of meeting rooms as necessary for attending Borough or Parish/Town Council committee and sub-committee meetings;
- (h) Instructing the Monitoring Officer to apply the informal resolution process;
- (i) Sending a formal letter to the member;
- (j) Recommending to the Borough or Parish/Town Council to issue a press release or other form of publicity.

15. Dealing with the recommendation(s)

Where recommendation(s) are made to the Borough or Parish/Town Council, the Borough or Parish/Town Council will note the recommendation without discussion (which will be deemed to have been agreed as recommended)¹.

16. Determination

The complainant and the member who is the subject of the complaint will be informed of the Hearing Panel's determination. The decision notice will be published on the Borough Council's website and reported to the Audit Board.

17. Appeal

There is no right of appeal for the complainant or the member who is the subject of the complaint against decisions of the Monitoring Officer, the determination of the Hearing Panel, or of the outcomes through mediation, with the Leader of the Member's Political Group or the Panel of Political Group Leaders.

18. Revision of these Arrangements

The Audit Board may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer and the Hearing Panel the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter.

Revised and adopted by the GAC - 16 December 2013 – Min.No.75
 Revised and adopted by the Audit Board – 25 June 2014 – Min.No.8
 Revised and adopted by the Audit Board – 24 October 2018 – Min.No.23

¹ R v Brent LBC ex p. Gladbaum and Wood (The Times 14.12.1989)