

PROTOCOL – COMPLAINTS AGAINST MEMBERS

Arrangements for dealing with allegations that a member or co-opted member of Barnet Council has failed to comply with the Members' Code of Conduct

1. Introduction

- 1.1 These arrangements set out how an allegation may be made that an elected member or a co-opted member of Barnet Council has failed to comply with the Members' Code of Conduct and how the Council will deal with such allegations.
- 1.2 Under Section 28 of the Localism Act 2011 the Council must have arrangements in place whereby allegations can be investigated and decisions upon them can be made. In addition the arrangements must provide for the Council to appoint at least one Independent Person whose views must be sought and taken into account by the Council before it makes a decision and who may be consulted by the Council at other stages in the process or by the member or co-opted member against whom an allegation has been made. These arrangements fulfil the Council's statutory obligations.
- 1.3 In these Arrangements a number of terms are used which have the following meanings:

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| Member | An elected Councillor |
| Co-opted Member | A person who is not an elected member of the Council but has been appointed to a committee or sub-committee of the Council. |
| Monitoring Officer | A officer of the Council designated under section 5 of the Local Government and Housing Act 1989 to undertake the statutory duties prescribed which include ensuring that the Council and its members and officers act lawfully at all times. Under Section 29 of the Localism Act 2011 the Monitoring Officer must establish and maintain a register of interests of members and co-opted members. |
| Investigating Officer | An appropriate person appointed by the Monitoring Officer to conduct an investigation into an allegation. |
| Independent Person | A person appointed by the Council pursuant to Section 28 of the |

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Localism Act 2011, whose views are sought and taken into account before decisions upon allegations against members are taken and who may be consulted by a member who is the subject of allegations or the Council, generally.

Standards Committee

A committee of members responsible for considering reports of the Monitoring Officer upon allegations that a Member or Co-opted Member has breached the Council's Code of Conduct.

2. The Members' Code of Conduct

2.1 The Council has adopted a Members' Code of Conduct which is available for inspection on the Council's website and on request from the Monitoring Officer.

3. The Independent Person

3.1 Pursuant to Section 28 of the Localism Act 2011, the Council shall appoint an Independent Person or Persons. The person(s) appointed shall have responded to a public advertisement for the vacancy and submitted an application for the post. The appointment of the successful applicant shall be approved by a majority of the members of the Council.

3.2 The views of the Independent Person must be sought by the Monitoring Officer before any allegation is investigated or reported to the Standards Committee

3.2 The views of the Independent Person may be sought:

(i) by the Standards Committee or by the Monitoring Officer/Investigating Officer in relation to an allegation in circumstances not within paragraph 3.2, above.

(ii) by a Member or Co-opted Member of the Council if that person's behaviour is the subject of an allegation.

4. Making an allegation

4.1 An allegation that a Member or a Co-opted Member of Barnet Council has failed to comply with the Members' Code of Conduct should be

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made in writing, wherever possible, using the Complaint Form on the Council's website to:

Davina Fiore
Monitoring Officer
Barnet Council
North London Business Park
Oakleigh Road South
London
N11 1NP

Tel: 0208 8359 6373

or email:

Davina.Fiore@barnet.gov.uk

- 4.2 It is important that a person making an allegation provides his/her name and a contact address or email address, so that the Council can acknowledge receipt of the allegation and keep the person informed of its progress. The person must indicate if he/she wants to keep his/her name and address confidential and the Monitoring Officer will consider any such requests.
- 4.3 The Council does not normally investigate anonymous allegations unless there is a clear public interest in doing so.
- 4.4 The Monitoring Officer will acknowledge receipt of an allegation within five clear working days of receiving it and will keep the person making the allegation informed of progress.
- 4.5 The Monitoring Officer will inform the councillor against whom an allegation has been made and will give the details of the complaint and remedy sought to them. In exceptional circumstances the Monitoring Officer has the discretion not to inform the Councillor if, in her opinion, to do so would risk an investigation being frustrated or prejudiced in some other way.

5. Assessment of an allegation

- 5.1 The Monitoring Officer will review every allegation received and will consult the Independent Person before taking a decision that an allegation merits reference to the Standards Committee.
- 5.2 If the Monitoring Officer requires additional information in order to reach a decision, she may revert to the person making the allegation for such information and may request information from the member against whom the complaint is directed. If the person making the allegation fails to provide the additional information requested the

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allegation may be dismissed by the Monitoring Officer pursuant to paragraph 5.3 (c), below.

5.3 The Monitoring Officer will use a number of criteria for assessing complaints, and may consult with the Independent Person and if necessary the appropriate party group Whips and party Leaders. The decision whether to investigate a complaint will be a proportionate response to the issues raised and likely outcomes. The Monitoring Officer may determine that an allegation does not merit any further action, where:

- (a) The allegation does not demonstrate a breach of the Members' Code of Conduct; for example it relates to a member's private life to which the Code does not apply or it is about dissatisfaction with a Council decision or service, or
- (b) It is about someone who is no longer a Member or a Co-opted Member of the Council, or
- (c) There is insufficient evidence upon which to investigate and/or the person making the allegation has failed to co-operate with the Monitoring Officer to specify the allegation sufficiently, or
- (d) The same or a similar allegation has been investigated and determined, or
- (e) It is an anonymous allegation which does not include sufficient documentary evidence to indicate a significant breach of the Member's Code of Conduct, or
- (f) The Monitoring Officer facilitates an informal resolution without the need for a formal investigation. This may involve the member accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the Council. If the Monitoring Officer considers an offer of informal resolution is reasonable but the person making the allegation is not willing to accept it, the allegation will be referred to the Standards Committee for determination, or
- (g) the complainant is considered to be vexatious.

5.4 If the complaint is dealt with under 5.3 above, the Monitoring Officer will promptly notify the complainant and the Member of the outcome, giving reasons for the decision.

5.6 The Monitoring Officer may also determine that an allegation merits no further investigation having regard to the following additional criteria:

- (a) The allegation is not considered sufficiently serious to warrant investigation, or

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- (b) The allegation appears to be motivated by malice or is ‘tit-for-tat’, or
 - (c) The allegation appears to be politically motivated, or
 - (d) The matter about which the allegation is made took place more than three months prior to receipt of the allegation unless there are exceptional circumstances or it is otherwise appropriate to investigate.
- 5.7 Where the Monitoring Officer considers that an allegation merits further investigation, the Monitoring Officer shall undertake such investigation in accordance with Section 6 below.
- 5.8 The decision as to whether or not an allegation should be investigated will normally be taken within thirty clear working days from receipt of the allegation. The Monitoring Officer will inform the person making the allegation of that decision and if the allegation is to be investigated, an indication of the timescale for the investigation. The Monitoring Officer will keep the person informed if the initial timetable changes substantially.

6. The Investigation

- 6.1 The Monitoring Officer may conduct the investigation personally or may appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another authority or an external investigator.
- 6.2 The Monitoring Officer/Investigating Officer will decide if he/she needs to meet or speak to the person making the allegation to understand the nature of the allegation and so that the person can explain his/her understanding of events and identify what documents he/she considers the Monitoring Officer/Investigating Officer needs to see and who he/she considers the Monitoring Officer/Investigating Officer needs to interview.
- 6.3 The Monitoring Officer/Investigating Officer will normally write to the Member against whom the complaint is made and provide him/her with a copy of the complaint and ask the member to provide his/her explanation of events and to identify what documents he/she considers the Monitoring Officer/Investigating Officer needs to see and who he/she considers the Monitoring Officer/Investigating Officer needs to interview. Where it is appropriate to keep confidential the identity of the person making the allegation the Monitoring Officer/Investigating Officer will delete the person’s name and address from the papers given to the Member. Where disclosure of details of the allegation to the Member might prejudice the investigation, the Monitoring Officer/Investigating Officer may delay notifying the Member until the investigation has progressed sufficiently.

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- 6.4 The Monitoring Officer/Investigating Officer has absolute discretion about which are the appropriate witnesses to interview and documents to consider but will follow best practice in conducting investigations. Having considered all relevant documentation identified and having interviewed all relevant witnesses, at the end of the investigation the Monitoring Officer/Investigating Officer will produce a draft report and may where appropriate send copies of that draft report, in confidence, to the person making the allegation and to the member concerned, to give them an opportunity to identify any matter in that report with which there is disagreement or which is considered to require more consideration.
- 6.5 Where an Investigating Officer has been appointed, having received and taken account of any comments which the person making the allegation and/or the member have made on the draft report, the Investigating Officer will send his/her final report (the Investigation Report) to the Monitoring Officer for the latter's consideration prior to onward transmission to the Standards Committee where appropriate. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider the report or may appoint a new Investigating Officer.
- 6.6 Where the Monitoring Officer has undertaken the investigation personally, having received and taken account of any comments which the person making the allegation and/or the member have made on the draft report, and, where appropriate, having sought to achieve an informal resolution pursuant to paragraph 8.1 below, the Monitoring Officer shall submit the Investigation Report to the Standards Committee and the Independent Person.

7. Where the Monitoring Officer/Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct.

7.1 In these circumstances the Monitoring Officer may decide (a) to take no further action or (b) to will refer the matter to the Standards Committee.

7.2 Where the Monitoring Officer decides to take no further action, the Monitoring Officer will inform the person making the allegation and the Member who is the subject of the complaint of her decision and of the reasons for it.

7.3 When the Standards Committee receives an Investigation report which recommends that there is no evidence of failure to comply with the Members' Code of Conduct, the Committee may:

- (a) accept the recommendation resolve that no further action is required and dismiss the allegation, or

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- (b) remit the report to the Monitoring Officer for further consideration, or
- (b) conduct a hearing for the consideration of the allegation and the Investigation Report and determine the allegation.

| 7.24 Prior to making a determination under Paragraph 7.1 above, the Standards Committee shall seek and shall take into account the views of the Independent Person.

8. Where the Monitoring Officer/Investigating Officer concludes that there is evidence of failure to comply with the Code of Conduct.

- 8.1 Where an Investigation Report concludes that there is evidence of failure to comply with the Code of Conduct the Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult the Independent Person and the person making the allegation and seek to agree what the person considers to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee which will note the outcome but take no further action.
- 8.2 If the Monitoring Officer considers that an informal resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will submit the Investigation Report to the Standards Committee to conduct a hearing for the consideration of the allegation and the Investigation Report and to determine the allegation.

9. The Pre Hearing Process and Hearing

- 9.1 A Member or Co-opted Member who is the subject of a complaint which proceeds to a hearing has the right to be legally represented or accompanied at the hearing.
- 9.2 In advance of the Hearing the Monitoring Officer (and/or her nominees) will:
 - (a) agree a date for the hearing with all the relevant parties;
 - (b) provide a timetable for the Member to provide details about whether they wish to give evidence (and whether orally or in writing) at the hearing and any witnesses they intend to call, and additional papers they may wish to provide in time for inclusion in the committee papers;

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- (c) establish whether the member will be represented or accompanied at the hearing;
 - (d) establish whether the member wishes any part of the Investigation Report to be kept confidential or the Hearing itself to be held in private, and the reasons for this;
 - (e) provide information about the procedure to be used at the hearing;
 - (f) establish whether the member disagrees with any of the findings of fact in the Investigation Report;
 - (g) establish whether the Investigating Officer intends to call any witnesses.
- 9.2 Wherever possible hearings conducted by the Standards Committee Sub-Committee shall take place within three calendar months of the completion of the Investigation Report.
- 9.3 At the hearing, the Monitoring Officer/Investigating Officer will present the Investigation Report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Monitoring Officer/Investigating Officer may request the person making the allegation to attend and give evidence to the Standards Committee.
- 9.4 The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Committee as to why he/she considers that he/she did not fail to comply with the Members' Code of Conduct.
- 9.5 If a Member fails to attend the hearing, the Standards Committee may decide to proceed in the Member's absence and make a determination, or to adjourn the hearing to a later date
- 9.6 Full details of the process to be undertaken at the hearing are contained in the Hearing Procedure note comprising Appendix A to these arrangements.
- 9.7 The Standards Committee, having sought and taken into account the views of the Independent Person may conclude:
- (a) that the member did not fail to comply with the Members' Code of Conduct, and dismiss the complaint, or
 - (b) that the member did fail to comply with the Members' Code of Conduct.
- 9.8 In the event of a finding under Paragraph 9.7 (b) above, the Chair will inform the member of this finding and the Standards Committee will then consider what action, if any, it should take as a result of the member's failure to comply with the Members' Code of Conduct. In doing this, the Standards Committee will give the member an

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opportunity to make representations to the Committee as to whether any action should be taken and what form any action should take and will seek and take into account the views of the Independent Person. It will then decide what action, if any, to take in respect of the matter.

10. Action which may be taken where a member has failed to comply with the Code of Conduct

10.1 Having determined that a member has failed to comply with the Members' Code of Conduct, the Committee may:

- (a) Publish its findings in respect of the Member's conduct;
- (b) Report its findings to Council for information;
- (c) Issue the Member with a formal censure or reprimand, a report of which may be submitted to Council
- (d) Recommend to the Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- (e) Instruct the Monitoring Officer to arrange training for the member;
- (f) Recommend to Council that the member be removed from outside appointments to which he/she has been appointed or nominated by the Council
- (g) Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- (h) 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.
- (i) Take no further action
- (j) Any other appropriate sanction which may be available to the Committee.

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- 10.2 The Standards Committee has no power to suspend or disqualify the Member or to withdraw members' or special responsibility allowances.
- 10.3 At the end of the hearing, the Chairman shall state the decision of the Standards Committee as to whether the Member failed to comply with the Code of Conduct and as to any action which the Committee has resolved to take.
- 10.4 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice after consultation with the Chairman of the Committee, and send a copy to the person making the allegation; to the member concerned; make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

11. Appeals

- 11.1 There is no right of appeal for either the person making the allegation or for the Member against whom the allegation is made, against a decision of the Monitoring Officer or of the Standards Committee
- 11.2 If a person making the allegation considers that the Council has failed to deal with an allegation properly, he/she may make a complaint to the Local Government Ombudsman.

12. Reports

- 12.1 The Monitoring Officer will submit a report to the Constitution, Ethics and Probity Committee at six monthly intervals to inform the Constitution, Ethics and Probity Committee about complaints which have been received and not investigated under paragraphs 5.3 or 5.6 of this Protocol, and complaints which have been investigated but not reported to the Standards Committee under paragraph 7.1

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Appendix A

Hearing Procedure

The model procedure which follows comprises good and equitable practice and should be followed closely wherever possible. There may be occasions when circumstances require variations and subject to the maintenance of the principles of natural justice these may be effected at the discretion of the Standards Committee and advised to the parties

1. The Chairman shall facilitate introductions and explain the procedure for the hearing.
2. The Monitoring Officer/Investigating Officer shall be invited to present his/her Investigation Report including any documentary evidence or other material and to call witnesses as required. This report and documentary and witness evidence must be based on the allegation made to the Council; no new or additional matters will be allowed.
3. The Member against whom the allegation has been made or his/her representative may question the Monitoring Officer/Investigating Officer upon the content of the Investigation Report and any witnesses called by the Monitoring Officer/Investigating Officer. This is the Member's opportunity to ask questions arising from the Investigation Report and the direct evidence and not to make a statement.
5. Members of the Sub-Committee may question the Monitoring Officer/Investigating Officer upon the content of the Investigation Report and any witnesses called by the Monitoring Officer/Investigating Officer
6. The Member against whom the allegation has been made or his/her representative may present his/her case and call witnesses as required.
7. The Monitoring Officer/Investigating Officer may question the Member and any witnesses
8. Members of the Committee may question the Member and any witnesses.
9. The Monitoring Officer/Investigating Officer may sum up the investigation into the allegation and make a closing speech.
10. The Member or his/her representative may sum up his/her case and make a closing speech.
11. The Chair shall invite the parties to withdraw to enable the Committee to deliberate upon the allegation. Prior to reaching a determination the Committee shall seek and take into account the views of the Independent Person.

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12. The parties shall be invited to return and the Chairman shall announce the Committee's decision in the following terms:-

- (a) The Committee has determined that the Member has failed to comply with the Code of Conduct, or
- (b) The Committee has determined that the Member has not failed to comply with the Code of Conduct and the allegation is dismissed.

The Committee will give reasons for its decision.

13. If the Committee has determined that the Member has failed to comply with the Code of Conduct it shall consider any representations from the Member as to whether any action should be taken and what form any action should take.

14. The Chairman shall invite the parties to withdraw to enable the Committee to deliberate upon what action if any should be taken. Prior to reaching a determination the Committee shall seek and take into account the views of the Independent Person.

15. In addition to any action upon the current matter, the Committee shall consider whether in consequence it should make recommendations to the Council with a view to promoting high standards of conduct amongst Members.

16. The parties shall be invited to return and the Chairman shall announce the Committee's decision

17. A full written decision shall be issued to the Complainant and the Member within ten clear working days following the hearing and shall be published.