

MEMBERS' CODE OF CONDUCT COMPLAINTS INVESTIGATION PROCEDURE

General rules

1. These arrangements set out how this authority will deal with a complaint that an elected or co-opted member of this authority has failed to comply with the authority's [Code of Conduct](#).
2. Under section 26 of the Localism Act 2011, the authority must have in place arrangements under which allegations that a member or co-opted member of the authority, or of a committee or sub-committee of the authority, has failed to comply with the authority's Code of Conduct can be investigated and decisions made on such allegations.

Code of Conduct

3. The authority has adopted a Code of Conduct for elected and co-opted members.

Role of the Monitoring Officer

4. The Monitoring Officer is the officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

Procedure for the Initial assessment

5. Complaints should be in writing and addressed to the Monitoring Officer. However, an oral complaint will be accepted where the complainant is unable to write due to a physical or mental disability or there is a language barrier. Where an oral complaint is received it will be transcribed and read back to the complainant and sent to them for their approval. Anonymous complaints will only be referred for assessment if they include documentary evidence or photographic evidence indicating an exceptionally serious or significant matter.
6. All complaints received will be logged and acknowledged, normally within 5 working days. The subject member will usually be informed that a complaint has been received against him/her unless this will not be in the public interest or it would prejudice the future investigation of the complaint.

7. The Monitoring Officer will review every complaint and, after consultation with the independent person and, where appropriate, the whips of the members groups, decide on what action to take.
8. Where the Monitoring Officer requires additional information in order to come to a decision they may ask the person making the allegations for further information and may request information from the member who is the subject of the allegation and any other persons the Monitoring Officer considers appropriate.

After the initial assessment

9. The Monitoring Officer may decide that no further action with regard to the allegation is appropriate. The Monitoring Officer will in this case send out a decision notice to the person making the allegation. The decision notice should summarise the allegation, give the decision of the Monitoring Officer and the reasons for their decision. The Monitoring Officer should aim to send out their decision notice within 10 working days of the allegation being received.
10. If the Monitoring Officer decides that a complaint warrants formal investigation the Monitoring Officer will appoint an investigating officer. The Monitoring Officer will in this case send out a decision notice to the person making the allegations, the member who is the subject of the allegation and any other persons the Monitoring Officer considers appropriate. The decision notice should summarise the allegation, give the decision of the Monitoring Officer and the reasons for their decision. The Monitoring Officer should aim to send out their decision notice within 10 working days of the allegation being received.
11. If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer shall notify the police or other regulatory agencies.

Local Resolution

12. In appropriate cases the Monitoring Officer may seek to resolve the complaint informally, without the need for formal investigation. Such informal resolution may involve the member accepting their conduct was unacceptable and offering an apology, or other remedial action by the authority.
13. If the Monitoring Officer decides that local resolution is appropriate, they will in this case send out a decision notice to the person making the allegation(s), the member who is the subject of the allegation and any other persons the Monitoring Officer considers appropriate. The decision notice should summarise the allegation, give the decision of the Monitoring Officer and the reasons for their decision. The Monitoring Officer should aim to send out their decision notice within 10 working days of the allegation being received.
14. If the Monitoring Officer embarks on the course of informal resolution at this stage, it should be emphasised to the parties concerned that no finding has been made on whether the subject member has failed to comply with the Code of Conduct.

15. Other examples of alternatives to investigations are:
- Arranging for the subject member to attend a training course.
 - Arranging for the subject member and complainant to engage in a process of conciliation.
 - Instituting changes to the procedures of the authority if they have given rise to the complaint.

How formal investigations will be conducted

16. The Monitoring Officer may appoint an investigating officer who could be:-
- A senior officer of the authority
 - An officer from another local authority with a reciprocal agreement with Southwark Council to undertake each other's conduct investigations.
 - Any other senior person, who is not an elected or former member of this authority, with the relevant experience to conduct an investigation.
17. The Monitoring Officer shall inform the following persons below that the matter has been referred for investigation:
- The member who is the subject of the allegation.
 - Any person who made the allegation that gave rise to the referral
 - Where appropriate, any other authority concerned.
18. When appointing an investigating officer the Monitoring Officer will send a letter of appointment which will include the following matters and anything else the Monitoring Officer considers relevant:
- Details of the complaint together with any relevant documentation and contact details of relevant parties
 - The need for the investigating officer to provide an investigation plan for the Monitoring Officer
 - The questions which the investigating officer is asked to address
 - The data protection arrangements for any documentation obtained in the course of the investigation
 - Any specific arrangements necessary where there multiple complainants and/or a number of members involved in the complaint
 - The extent to which parties and any witnesses will be kept informed about the process
 - Date for completion of the investigation report
19. The investigating officer can make enquires of any person and ask any person to give such information including documentary evidence or explanation as he/ she thinks necessary.
20. The investigating officer can ask any other authority concerned to provide such advice and assistance as may reasonably be needed to assist in the investigation.
21. The investigating officer may ask any of the authorities concerned to afford reasonable access to such documents in the possession of that authority as appear to the investigation officer to be necessary for the purpose of conducting the investigation.

22. The investigating officer will give the subject member an opportunity to comment on the allegation.
23. The investigating officer will prepare a report, including their findings, within 3 months of the complaint being initially assessed.

The report

24. The report should show appropriate input from relevant persons and clearly state whether the investigating officer considers that there has been a breach of the code and which obligations of the Code of Conduct have been breached.
25. The investigating officer will send, in confidence, a draft copy of the report to the member who was the subject of the allegation and to the person who made the allegation to give them both the opportunity to identify any matters within the report they disagree with or which they consider require more consideration.
26. The investigating officer will receive any comments and having taken them into account produce the final report. The investigating officer will send their final report to the Monitoring Officer.

Where the investigating officer concludes there is no evidence of a failure to comply with the Code of Conduct

27. The Monitoring Officer will review the investigating officer's report and if they are satisfied that the investigating officer's report is sufficient the Monitoring Officer will notify the person making the allegation, the member who is the subject of the allegation and any other persons the Monitoring Officer considers appropriate that they are satisfied that no further action is required.
28. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the investigating officer to reconsider their report.

Where the investigating officer concludes there is evidence of a failure to comply with the Code of Conduct

29. The Monitoring Officer will review the investigating officer's report and if they are satisfied that the investigating officer's report is sufficient the Monitoring Officer will either send the matter for hearing before the conduct sub-committee of the audit, governance and standards committee ("the conduct sub-committee") or, after consulting with the independent person, seek local resolution.

Local Resolution after investigation

30. The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case they will consult with the independent person and also consult with the person making the allegation and seek to agree a fair resolution.

31. Such resolution may involve the member accepting their conduct was unacceptable and offering an apology, and/or other remedial actions by the authority.
32. Other examples of other remedial actions are:
 - Arranging for the subject member to attend a training course.
 - Arranging for the subject member and complainant to engage in a process of conciliation.
 - Instituting changes to the procedures of the authority if they have given rise to the complaint.
33. If the member complies with the suggested resolution, the Monitoring Officer will present a report of the matter to the conduct sub-committee for noting, but neither the Monitoring Officer nor the sub-committee will take any further action.

Hearing

34. If the Monitoring Officer considers local resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, the Monitoring Officer will report the investigating officer's report to the conduct sub-committee which will conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and if so, whether to take any action in respect of the member.
35. The Monitoring Officer will send a copy of the final report to the member who is the subject of the allegation, the person who made the allegation and any other persons the Monitoring Officer considers appropriate.
36. The hearing would normally be heard within three months of the date on which the investigating officer's report is completed but not less than 14 days after the Monitoring Officer sends the report to the subject member.

Pre-hearing process

37. The Monitoring Officer will conduct a pre-hearing process, requiring the member who is the subject of the allegation(s) to give his/her response to the investigating officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing; as well as what evidence is agreed and which witnesses are needed to give evidence.
38. The subject member may choose to present evidence and make representations either orally, or in writing and either personally or by counsel or solicitor or, with the consent of the conduct sub-committee, by any other representative.
39. In the event of any dispute, the chair of the conduct sub-committee will consider relevant representations and may issue directions as to the manner in which the hearing will be conducted.

40. The Monitoring Officer will produce a pre-hearing summary and will send a copy of this to the member who is the subject of the allegation, the investigating officer and any other persons the Monitoring Officer considers appropriate.

The conduct sub-committee

41. The conduct sub-committee, will decide, on a balance of probabilities, whether the allegation(s) is or are upheld. It will do so by considering the investigating officer's report and any representations by investigating officer or their representative and the written or oral representations made by the subject member, any evidence given and any other relevant issues.
42. The conduct sub-committee meeting will be open to the public and the press. However, the public and press may be excluded for those parts of the meeting where confidential or exempt information under Schedule 12A of the Local Government Act 1972 as amended is disclosed.

Procedure at the Hearing

43. The initial order of business at the meeting will be as follows:
 - establishing whether the conduct sub-committee is quorate;
 - introductions;
 - the chair will explain how the hearing will be conducted;
 - If a member, having given notice of attendance, fails to attend the hearing, the conduct sub-committee may make a determination in their absence if satisfied that there is insufficient reason for such failure or adjourn to another date where there is sufficient reason to warrant an adjournment
 - consideration of any procedural issues and, in particular, any representations from the Monitoring Officer and/or the subject member as to reasons why the conduct sub-committee should exclude the press and public for any part of the meeting and determination as to whether to exclude the press and public.

Presentation by the investigating officer

44. The investigating officer will present the evidence which is relevant to the matter and may call any witnesses, including the complainant to substantiate any matter(s) contained in the report.
45. The subject member or his/her representative may ask questions of the investigating officer and of any witnesses.
46. The conduct sub-committee may ask questions of the investigating officer and of any witnesses.

Presentation by the subject member

47. The subject member or his/her representative will then have the opportunity to make representations and to present the evidence which is relevant to the matter. The subject member or his/her representative may call any other witnesses to give evidence.
48. The investigating officer may ask questions of the subject member and of any witnesses.

49. The conduct sub-committee may ask questions of the subject member or any witness.

Views of Independent Person

50. The conduct sub-committee will ask for the views of the Independent Person.
51. The investigating officer may ask questions of the Independent Person.
52. The subject member or his/her representative may ask questions of the Independent Person.

Closing Statements

53. The investigating officer will be given the opportunity to sum up.
54. The subject member or his/her representative will be given the opportunity to sum up.

Consideration by the hearing committee/sub-committee

55. The conduct sub-committee may adjourn to consider in private all the evidence and its decision. The conduct sub-committee's legal adviser (who will be a different officer from the investigating officer) and committee clerk will retire with them to provide legal advice or advice regarding the evidence/submissions.
56. At any stage in the consideration of the matter the hearing sub-committee may return to ask further questions of the investigating officer or subject member or to seek further information.

Decision by the hearing committee/sub-committee

57. The chair of the conduct sub-committee will state the decision of the conduct sub-committee as to whether the subject member has failed to comply with the Code of Conduct.

Where the hearing sub-committee finds the subject member to be in breach

58. The investigating officer will be given the opportunity to comment on the most appropriate sanction.
59. The subject member or his/her representative will be given the opportunity to comment on the most appropriate sanction and put forward any mitigating circumstances.
60. The conduct sub-committee will ask for the views of the Independent Person on the most appropriate sanction.
61. The conduct sub-committee may adjourn to consider in private the appropriate sanction. The chair of the conduct sub-committee will state the decision of the conduct sub-committee as to any sanction.

62. Where the conduct sub-committee finds the subject member to be in breach of the Code of Conduct, the possible sanctions or a combination of sanctions available to it are as follows:
- a) censure or reprimand the member;
 - b) recommend that council assembly censure or reprimand the member;
 - c) recommend to the member's group leader that he/she be removed from any or all committees;
 - d) recommend to the Leader of the council that the member be removed from the cabinet, or removed from particular portfolio responsibilities;
 - e) instruct the Monitoring Officer to arrange training for the member;
 - f) removal from all outside appointments to which he/she has been appointed or nominated by the authority
 - 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.

Notification of findings

63. The Monitoring Officer, in consultation with chair of the conduct sub-committee shall prepare a formal decision notice and send a copy to the following persons below that the matter has been referred for investigation:
- The member who is the subject of the allegation
 - Any person who made the allegation that gave rise to the hearing
 - Where appropriate, any other authority concerned.
64. The Monitoring Officer, in consultation with chair of the conduct sub-committee will draw up a summary of the full written decision.
65. Where the conduct sub-committee determines that there has not been a breach of the Code of Conduct, the summary will state that the conduct sub-committee found that the subject member had not failed to comply with the Code of Conduct and will give its reasons for reaching that finding; and, providing the subject member agrees, will arrange for a summary of the full written decision to be published on the council's website and in at least one local newspaper.
66. Where the conduct sub-committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the summary will:
- (i) state that the conduct sub-committee found that the subject member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
 - (ii) specify the details of the failure; and
 - (iii) give reasons for the decision reached.

67. Where the committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the summary will:
- (i) state that the panel found that the member had failed to comply with the Code of Conduct;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached, and
 - (iv) specify the sanction imposed.
68. Where the conduct sub-committee determines that there has been a failure to comply with the Code of Conduct the Monitoring Officer will arrange for a summary of the full written decision to be published on the council's website and in at least one local newspaper.

Multiple and vexatious complaints

Multiple complaints

69. Where a number of complaints from different complainants about the same matter are received the conduct sub-committee may consider the complaints at the same meeting.
70. If this is the case, the investigating officer should be asked to present one report and recommendation that draws together all the relevant information highlighting any differences or contradictions. It should be noted however, that the conduct sub-committee must reach a separate decision for each complaint and follow the notification procedure on each one.

Vexatious complaints

71. The authority must consider every complaint that they receive in relation to the Code of Conduct on its own merits. However, if the complaint is vexatious it will not be considered.
72. Vexatious and persistent complaints may be identified through the following patterns of behaviour:
- repeated complaints making the same or broadly similar, complaints against the same member/s about the same alleged incident.
 - use of aggressive or repetitive language of an obsessive nature.
 - repeated complaints that disclose no potential breach of the Code.
 - where there seems to be an ulterior motive for the complaint/s.
 - where a complainant refuses to let the matter rest once the complaint process has been exhausted (including the review stage)

Confidentiality

77. Where a complainant wishes their identity to be withheld, the conduct sub committee can decide to do so. In reaching that decision it will need to have regard to the following:
- whether there is a risk of physical harm to the complainant if their identity is disclosed
 - where the complainant works closely with the subject member and is afraid of the consequences to their employment
 - where the complainant suffers a serious health condition and there is a medical risk associated with the disclosure of their identity. In such cases the committee may wish to obtain medical evidence in respect of this.

Complaints about members of more than one authority

78. If a complaint is made about a dual-hatted member the Monitoring Officer should check whether a similar allegation has been made to the other authority on which the member serves and a decision on which authority should deal with the particular matter must be taken by the conduct sub-committee following discussions.
79. The provisions of the council's Code of Conduct apply and members will need to declare any interests in respect of the complaint at any meeting. When members' availability is sought they will be provided with the name of the complainant and subject member and other relevant information to determine whether there are any interests. A reserve system will be used as backup.