Ealing Council Standards Procedure

This procedure is supplementary to the Ealing Code of Conduct for Members

1 General

1.1 The legal obligations upon the Council are limited to “arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made…must include provision for the appointment by the authority of at least one independent person”

1.2 The term “member” is defined within the Code

1.3 The council’s Monitoring Officer is the Director of Legal and Democratic Services (“DLDS”) and is the officer with statutory responsibility for maintaining the register of members interest and for administrating the system in respect of members complaints

1.4 “Code” means the council’s Code of Conduct for Members, incorporating any ancillary documents

1.5 “complainant” means the person making a complaint about a member

1.6 “complainee” means the member about who the complaint has been made

1.7 Any members involved in deciding whether a complaint should be investigated will not automatically be later barred as a result of bias from dealing with any subsequent hearing

1.8 “independent person” means the person or people appointed by the council to fulfil the purpose of independent person, as required by the Localism Act 2011

1.9 “investigator” means an investigator appointed by the DLDS pursuant to 4.1 below

1.10 “relevant whip” means the whip of the political group (if any) to which the complainee belongs

2 Receipt of complaints

2.1 All complaints against a Member are to be directed to the DLDS and must be in writing

2.2 Complainants must give their name. Anonymous complaints will not be accepted although in exceptional circumstances the DLDS may agree to a request that a complainant’s name be withheld from the complainee

2.3 Complainants should give full particulars of their complaint

2.4 All complaints must be against a current member who was also a member at the time of the alleged breach

2.5 Complaints must normally state which part of the Code it is alleged has been breached, although the DLDS may waive this requirement in exceptional circumstances, for example where the complainant cannot reasonably be expected to understand the Code in detail

2.6 The DLDS will acknowledge all complaints in writing within five working days and inform the complainee that a complaint has been made against them. The DLDS will normally send a copy of the complaint to the complainee at this stage, save in exceptional circumstances where the DLDS considers that this will not be appropriate
2.7 The complainant may withdraw a complaint at any point prior to final determination of that complaint

3 Dealing with complaints

3.1 The DLDS shall determine whether a complaint requires investigation or, in his or her discretion, refer the decision to the complaint to the Standards Assessment Panel. The DLDS shall normally take his or her decision under this section 3.1 within fifteen working days of receipt of the complaint, unless informal resolution is being attempted pursuant to 3.3 below or further clarification or referral is required pursuant to 3.4 below – in which case the time period for decision will not apply. The DLDS may (in his or her discretion) consult with an independent person prior to making any decision under the section.

3.2 Where a complaint has been referred to it under (3.1) above, the determination of whether or not a complaint requires investigation shall be made by the Standards Assessment Panel. The Standards Assessment Panel shall normally take its decision under this section 3.2 within twenty working days of referral to it of a complaint by the DLDS.

3.3 The DLDS may, in his or her discretion, seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation or referring it to the Standards Committee.

3.4 In making any decision under 3.1 – 3.3 above the DLDS / Standards Assessment Panel may take whatever matters into account they consider pertinent, including:

3.4.1 age of the incident or behaviour being complained of
3.4.2 the seriousness of the complaint and likely impact upon the reputation of the council
3.4.3 likely adverse impact on any third party
3.4.4 whether the complainant or complainee was unreasonable in not agreeing to or co-operating with attempts resolve the complaint informally.

3.5 The DLDS may contact the complainant to seek further information from them or clarification of any points made in the complaint. The DLDS may also decline to progress the matter should she consider that it should be referred to the Police.

3.6 The DLDS will advise the complainee of the existence and role of the independent persons, including the ability of the complainee to consult with an independent person.

3.7 The DLDS will inform the relevant whip that a complaint has been made against the complainee and the nature of that complaint.

3.8 The DLDS will within ten working days inform the complainant, the complainee and the relevant whip of the outcome of any determination under 3.1 or 3.2 above, giving reasons for that determination.

3.9 In the event that the Standards Assessment Panel decides that a complaint does not require investigation then the complainant shall have no right of appeal against this decision.

3.10 In the event that the DLDS decides that a complaint does not require investigation then the complainant shall have a right of appeal against this decision via the council’s generic complaints procedure (http://www.ealing.gov.uk/info/100004/council_and_democracy/516/complaints).
4 **Investigation of complaints**

4.1 Should the DLDS or the Standards Assessment Panel consider (pursuant to 3.1 or 3.2 above) that a complaint requires investigation then the DLDS will appoint an investigator to investigate it and prepare a report, save where the DLDS determines that no investigation is required - in which case the complaint will proceed straight to the hearing stage (see 6 below) with no investigator’s report.

4.2 The investigator will decide how to carry out the investigation but this is likely to include interviewing the complainant, the complainee and relevant third parties and seeking to examine relevant documentation. At the end of the investigation the investigator will send a draft of their report to the parties for comment before submitting a revised version to the DLDS. If the DLDS is not satisfied that the investigation has been conducted properly she may ask the Investigating Officer to reconsider his/her report before a final version is produced by the investigator.

4.3 The investigator will aim to complete their investigation and report as quickly as possible.

5 **Where the investigator finds no breach of the Code : Standards Assessment Panel meeting**

5.1 Where the investigator concludes that there has been no breach of the Code, the report shall be referred to the Standards Assessment Panel for determination as to whether or not the Panel agrees with the investigator’s finding. That meeting shall be held as soon as possible after the investigator produces his / her final report, but no earlier than fifteen working days after a copy of the final version report has been sent to the complainant and the complainee.

5.2 The complainant and the complainee shall be entitled to attend the meeting of the Standards Assessment Panel pursuant to 5.1 above, and to make oral representations to that meeting, provided that a written summary of those representations has been provided to the DLDS at least seven working days prior to the date of the Panel meeting.

5.3 Neither the complainant or the complainee shall be entitled to give evidence to the meeting of the Standards Assessment Panel pursuant to 5.1 above.

5.4 Where the Standards Assessment Panel agrees with the investigator’s conclusion that there has been no breach of the Code, the complaint will be dismissed at that stage and there shall be no appeal against that decision.

5.5 The DLDS shall notify the complainant and the complainee of the decision of the Standards Assessment Panel within five working days of that decision.

6 **Where the investigator finds a breach of the Code : Standards Committee hearing**

6.1 Where the investigator concludes that a breach of the Code has taken place, the complaint will be referred to the Standards Committee for determination at a formal hearing.
6.2 That hearing shall be held as soon as possible after the investigator produces his / her final report, but no earlier than twenty working days after a copy of the final version report has been sent to the complainant and the complainee.

6.3 The complainant and the complainee will be entitled to attend the Standards Committee hearing.

6.4 At least one independent person shall attend the hearing.

6.5 The complainant and the investigator and the complainee will, at the discretion of the committee, be entitled to give evidence at the Standards Committee hearing, provided that no later than seven working days prior to the date of the meeting they:

6.5.1 Submit to the DLDS any documents they wish the Committee to have before them.

6.5.2 Indicate whether they wish any witnesses to attend and give their identity and a statement of the detailed issues upon which each witness will be invited to give evidence.

6.6 On the basis of the papers provided, the Committee shall in their discretion decide which witnesses they wish to hear.

6.7 At any point the Committee may inform any witness or person addressing the hearing that they consider that they have heard all they need to hear from that person or witness.

6.8 The complainee may, at their own expense, be represented at the Standards Committee hearing by no more than one lawyer or (with the consent of the DLDS) any other person. The Committee can at any time withdraw permission to allow representation should that person become (in the Committee’s opinion) disruptive or obstructive.

6.9 The Standards Committee hearing will be held in private unless the balance of public interest favours meeting in public.

6.10 If the complainee fails to attend the Standards Committee hearing the Committee may either consider the matter or adjourn the hearing to another date.

6.11 At any point the Committee may adjourn and require the DLDS to seek further information or undertake further investigation on any points specified by it.

6.12 The process of the hearing will be a matter for the Committee to decide depending on the facts but it likely to include:

6.12.1 The Chair setting the scene.

6.12.2 The DLDS explaining the process.

6.12.3 Representations by or on behalf of the investigator, complainee, complainant, and any other witnesses that the committee agree to hear.

6.12.4 Questions by committee members to any of the people listed at 6.12.3.

6.13 The Committee will then consult an Independent Person. This may be in private or open session, at the discretion of the Committee.

7 Outcomes of the Standards Committee hearing

7.1 When the hearing resumes the facts and the committee’s finding as to whether or not they consider that the Code of Conduct has been breached will be given to such of the complainant, the complainee and the investigator who are present at the hearing.
7.2 Should the Committee consider that the Code has been breached they will invite the complainee to make representations to the committee hearing with regard to possible sanctions.

7.3 The committee may retire to consider the representations.

7.4 The committee will then announce their decision which will be captured in the minutes of the meeting and in a formal letter to be sent within ten working days following the hearing to the complainant and the complainee.

7.5 Where the committee finds a failure to comply with the Code of Conduct, the Standards Committee may recommend one or more of the following actions:

7.5.1 No further action.

7.5.2 That the complainee apologise in writing to the complainant (whilst noting that the complainee cannot legally be compelled to do so).

7.5.3 That a letter be sent to the complainee informing them of the findings and requesting that the complainee does not repeat the course of action that led to the finding.

7.5.4 Formally censuring the complainee.

7.5.5 Recommendation to full council that full council formally censure the complainee.

7.5.6 Report to full council of its findings, for information only.

7.5.7 Recommendation to the complainee's political group leader (if the complainee is a member of a political group) that a proposal be taken to full council to the effect that the complainee be removed from specified Committees or Sub-Committees of the Council.

7.5.8 Recommendation to the Leader of the Council that the complainee be removed from the Cabinet.

7.5.9 Instruction to the DLDS to arrange training for the complainee (noting that there is no legal obligation upon a complainee to undertake or co-operate in any training request).

7.5.10 Issuing a press release in the name of the Chair of the Committee detailing the case and the findings, and / or

7.5.11 Make general recommendations as to conduct of all members.

7.6 In considering what if any sanctions to impose the Committee will consider amongst other things:

7.6.1 What was the complainee's intention? Did he/she know they were failing to follow the Code of Conduct?

7.6.2 Did the complainee seek advice or obtain from officers before the incident? Was that advice acted on or ignored in good faith?

7.6.3 Has there been a breach of trust?

7.6.4 Has there been financial impropriety?

7.6.5 What was the result of failing to follow the Code of Conduct?

7.6.6 How serious was the incident?

7.6.7 Does the complainee accept they were at fault?

7.6.8 Did the complainee apologise to those adversely affected by their actions?

7.6.9 Has the complainee failed to follow the Code before?

7.6.10 Is the Member likely to agree to any suggestion of training or apology?
8 Appeal against the decisions under this procedure

There is no appeals mechanism against decisions taken as above other than via the Courts and (subject to them accepting jurisdiction) the Local Government Ombudsman.

9 Role of the independent person

9.1 The Localism Act 2011 requires that the council appoints “. . . at least one independent person (a) whose views are to be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate and (b) whose views may be sought by the authority in relation to an allegation in circumstances not within (a), by a member if that persons behaviour is the subject of an allegation . . .”

9.2 The functions of the independent person(s) in Ealing are –

9.2.1 One of them must be consulted by the Standards Committee before it makes a finding as to whether a complainee has failed to comply with the Code or decides on action to be taken in respect of that complainee

9.2.2 One of them may be consulted by the Standards Committee in respect of a standards complaint at any other stage; and

9.2.3 One of them may be consulted by a complainee

9.3 Ealing will seek to appoint two independent persons

9.4 The role of the independent person is different to the role of any co-opted non-voting member of the Standards Committee who may be appointed.

10 Reporting

The DLDS will make regular reports to the Standards Committee on complaints received and how these are dealt with, including complaints which are resolved informally and complaints which are not referred on for investigation or hearing

11 Confidentiality

Complaints which are referred to the DLDS but are not investigated will, subject to the procedure set out above and rights of Data Protection and Freedom of Information rules, be treated as confidential by him or her

Comes into force: 1st July 2012