

DRAFT

PROTOCOL FOR DEALING WITH COMPLAINTS OF BREACH OF THE CODE OF CONDUCT FOR MEMBERS AND/OR LOCAL PROTOCOLS

Introduction

This procedure is intended to act as guidance for the Monitoring Officer, the Standards Committee and as information for Councillors and Co-opted Members in circumstances where the actions of a Councillor or Co-opted Member could be regarded as a breach of:

- the Code of Conduct;
- a Local Protocol which results in a breach of the Code of Conduct; and/or
- a Local Protocol.

The Council has adopted a number of locally agreed Protocols, which can be found in Part 5 of its Constitution. These are local to Harrow and a breach of these Protocols of itself is not a breach of the Code of Conduct. However, there may be circumstances when a breach of a Protocol may also be a breach of the Code of Conduct.

In this document, reference to Members means Councillors and Co-opted Members.

Role of the Monitoring Officer

The Monitoring Officer is central to the good administration of the Code of Conduct for Councillors and Local Protocols, and he will be concerned with any actions that may constitute a breach of either.

The Monitoring Officer must be aware of the potential conflicts involved in advising the Standards Committee and Members. In order to avoid these possible conflicts, the Monitoring Officer will appoint the Deputy Monitoring Officer or another appropriate officer to investigate and consider complaints referred to him.

The Monitoring Officer is the main adviser to the Standards Committee, unless he has an interest in the matter that would prevent him from performing this role. If such a situation arises the Monitoring Officer will arrange for the Deputy Monitoring Officer to advise the Committee.

Procedure on receipt of a Complaint about a Councillor

A complaint about a breach of the Code or Protocols should be referred to the Monitoring Officer. As soon as practicable the Monitoring Officer must identify the nature of the complaint.

Following assessment of the complaint, the Monitoring Officer may decide that:

- Based on the information received no action is necessary;
- The Member and the complainant will be will be informed of this decision.

Or if it is clear that there is a possible breach the Monitoring Officer will:

- Depending on the nature of the complaint, immediately consult or advise the Police;
- Inform the Chief Executive and the Leader of the Council, depending on the seriousness of the complaint;
- Inform the Group Leader (where the complaint refers to a Councillor);
- Refer the matter to the Deputy Monitoring Officer for investigation.

The Deputy Monitoring Officer should:

- Request the complainant to provide written details of the complaint (if the original complaint was oral);
- Write to the Member concerned setting out the nature of the complaint with reference to the relevant parts of the Code or Protocol;
- Confirm whether the complaint has been or may be passed to the Police;
- Confirm whether the matter has been brought to the attention of the Chief Executive, Leader of the Council or Group Leader;
- Arrange to meet with the Member concerned to explore the complaint. The Guidance in the Standards Board For England publication 'How to Conduct an Investigation' should be considered;
- Confirm that the Member may be accompanied by a friend; and
- Inform the complainant and the person who is the subject of the complaint that no comment or information on the details of the complaint or investigation into the complaint will be disclosed whilst the investigation is ongoing.

Following the meeting with the Member, the Deputy Monitoring Officer should:

- Prepare an initial report;
- Inform the Member of the initial findings;
- Inform the Member that the Chairman of the Standards Committee will be consulted on those findings;
- Confirm that consideration will be given as to whether further investigation is required.

Factors that should be considered by the Deputy Monitoring Officer and the Chairman will include:

- Whether the breach has been committed by a new or an experienced Member;
- Whether the breach was reported by the Member concerned;
- The reaction of the Member to the complaint. e.g. the Member may offer an immediate apology or from discussions it may be clear that the Member may have failed to recognise that his/her action may be a breach of the Code or a Protocol;
- Failure by the Member to understand/acknowledge the requirements of the Code or a Protocol;
- Whether in the opinion of the Deputy Monitoring Officer there is likely to be a reoccurrence;
- Whether the Member has previously breached the Code or a Protocol resulting in written advice to that Member; and
- The seriousness of the complaint.

If further investigation is required, this should be completed as soon as possible, in accordance with Standards Board guidance.

Decision

At the conclusion of the investigation and consultation with the Chairman, the Deputy Monitoring Officer will write to the Member with the decision. The decision will take into account all the circumstances, and may be one or more of the following:

- No further action is appropriate;

- No formal action will be taken but advising the Member about his/her future conduct;
- (for breaches of the Code only) Although no formal action will be taken, advising the Member that it remains open to the complainant, other Members or the public to refer the complaint to the Standards Board;
- That the Member will be invited by the Chairman of the Standards Committee to attend a future meeting of the committee to discuss his/her conduct. After the committee meeting, the Deputy Monitoring Officer will write to the Member outlining the nature of the discussion. (Care must be exercised as the Chairman may have a conflict of interest if the matter is subsequently referred for local determination);
- The complaint should be referred to the Hearing Panel of the Standards Committee for consideration;
- The complaint will be referred to the Chief Executive to consider passing to the Standards Board.
- Advise the Group Leader, Chief Executive and/or Leader of the Council.

Procedure for Hearing Panels of the Standards Committee

NB The Deputy Monitoring Officer needs to exercise care in deciding whether to report the matter to the Committee. If the matter is subsequently reported to the Standards Board and referred for local determination, the Members of the Committee may be regarded as having a conflict of interest, and thereby not be able to deal with the matter.

The Deputy Monitoring Officer should prepare a Report to the Hearing Panel of the Standards Committee, and send a copy to the Member (who may submit a response).

At the meeting:

- The Monitoring Officer will advise the Hearing Panel.
- The Member concerned may be represented by another person but this will be at the Member's own expense. **(The insurance indemnity provision does not apply, as this is not a Local Determination.)**
- The Hearing Panel will decide whether or not the hearing should be in private, having received advice from the Monitoring Officer.

- The Hearing Panel will consider the written report of the Deputy Monitoring Officer, and any written representations from the Member concerned, and will then ask questions of them both as appropriate.
- The Deputy Monitoring Officer and the Member concerned may ask questions of each other but only through the Chairman of the Hearing Panel.
- Prior to considering their decision, the Hearing Panel will offer the Member the opportunity to make a statement in mitigation.
- The Hearing Panel will consider their decision in private. They will decide, on the balance of probabilities (i.e. it is more likely than not), whether or not the complaint(s) are made out.
- The Hearing Panel will then give their decision and advise the Member what, if any sanction should be imposed.

Sanctions

As this hearing is not a Local Determination for a breach of the Code of Conduct for Members, the sanctions as set out in The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 are not applicable. However, the Hearing Panel may consider imposing the following sanctions:

- To make public the name of the Member and the breach they have committed;
- To recommend to the Group Leader that a Member not be appointed to or continue to be a member of a specific committee, sub-committee, panel etc.;
- To recommend that the Member undertake further training;
- To recommend that the Member offer an apology; and/or
- To circulate a copy of its decision letter to all Members.

Confidentiality of documents/information received

During the course of the investigations, confidential information and documents will be received. The Monitoring Officer or his Deputy must consider how such confidential information will be dealt with and in doing so the following should be considered:

- The Access to Information legislation that governs reports made to local authority meetings and the rights of the public to inspect background papers;
- The common law rights of Councillors to receive information held by the Council to enable them to better carry out their duties;
- Any guidance from the Standards Board for England with regard to the holding of investigations and hearings; and
- The Data Protection and Freedom of Information Acts.

Members must be aware that in accordance with their common law rights, all Councillors may be able to have access to confidential information. However, in handling that information, they must abide by the Members' Code of Conduct, which states:

“3.2 A Councillor must not:

- a. disclose information given to him/her in confidence by anyone, or information acquired which he/she believes is of a confidential nature, without the consent of a person authorised to give it, or unless he/she is required by law to do so; nor
- b. prevent another person from gaining access to information to which that person is entitled by law.”

March 2007

FLOWCHART FOR DEALING WITH COMPLAINTS

