



THE ROYAL BOROUGH OF
**KENSINGTON
AND CHELSEA**

The Royal Borough of Kensington and Chelsea Arrangements for dealing with complaints alleging a breach of the Members' Code of Conduct

*(Approved by full Council on 27 June 2012 and last updated following full Council on 16
October 2019)*

1. Context

- 1.1 Under Section 28 of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a member or co-opted member of the Council, or of a Committee or Committee of the Council, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations. The Council has committed to the highest ethical standards for both its members and officers.
- 1.2 These "Arrangements" set out how you may make a complaint that an elected or co-opted member of the Royal Borough of Kensington and Chelsea ("the Council") has failed to comply with the Members' Code of Conduct ("the Code") and sets out how the Council will deal with allegations of a failure to comply with the Code.
- 1.3 Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a member or co-opted member against whom an allegation has been made. The Council has set up an independent Ethics Panel made up of three such Independent People. The Panel advises the Council on matters of ethics and ethical conduct as well as advising on complaints that members have breached the Code.

2. **The Code**

- 2.1 The Code adopted by the Council is on the Council's website and paper copies can be requested from:

Governance Services
Town Hall
Hornton Street
London W8 7NX
Tel: 020 7361 2265
Email: governance@rbkc.gov.uk

3. **Making a complaint**

- 3.1 If you wish to make a complaint, please complete a copy of the complaint form, available on the Council's website or on request from Governance Services, and send or email it to:

The Monitoring Officer
Legal Services
Town Hall
Hornton Street London W8
7NX

email monitoring.officer@rbkc.gov.uk

- 3.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering these Arrangements.
- 3.3 Please provide all the details requested on the complaint form. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request but, in the interests of fairness, the presumption is that the member concerned is entitled to know who has made the complaint. If, in exceptional circumstances, your request is granted we will not disclose your name and address to the Member against whom you make the complaint, without your prior consent.

- 3.4 The Council will not investigate anonymous complaints unless the Monitoring Officer considers that there is a strong and clear public interest in doing so.
- 3.5 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it and will keep you informed of the progress of your complaint.
- 3.6 Where the Monitoring Officer considers that the complaint should not be investigated further, he/she shall advise the complainant that they are entitled to appeal the decision. The appeal should be made within 21 days of the Monitoring Officer's decision and the Chief Executive will consider any appeal following consultation with an Independent Person.

4. **Will your complaint be investigated?**

- 4.1 The Monitoring Officer will consider each complaint received and will decide, on the basis of the information set out in the complaint form or submitted with the complaint, whether it merits formal investigation. Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, investigating a complaint involves spending public money as well as the cost of officer and Member time. The Council, therefore, takes a proportionate approach to the issue of whether or not a complaint merits investigation bearing in mind the sanctions which can be imposed, if a member is found to be in breach of the Code, and the costs to the Council and, therefore, to the public of undertaking an investigation. The performance of members in terms of how they represent those in their wards, is ultimately a matter for the electorate if a member seeks re-election.
- 4.2 A complaint will be considered to merit formal investigation if it complies with all the criteria in paragraph 4.3 or one or more of the criteria in paragraph 4.4. The Monitoring Officer will consult the Chairman of the Audit and Transparency Committee and the Ethics Panel, or one of the members of the Panel, before coming to a final decision as to whether or not a complaint should be investigated.
- 4.3 The relevant criteria referred to in paragraph 4.2 are:
 - a) The complaint raises matters which would be a breach of the Code;
 - b) The complaint is sufficiently serious to warrant

investigation;

- c) The complaint is not "tit-for-tat" i.e. the complaint has not been made by another Member only because he or she has been complained about by the Member the subject of the complaint;
- d) The complaint appears not to be politically motivated (A complaint will not be adjudged to be politically motivated just because the complainant is from a different political group to the Member complained about);
- e) It is about someone who is still a Member or co-opted member of the Council;
- f) The complaint has been received within 3 months of the alleged failure to comply with the Code unless there are exceptional circumstances for the delay and the delay does not mean that it would be difficult for a fair investigation to be carried out;
- g) The same, or similar, complaint has not already been investigated;
- h) It is not an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code;
- i) The Member has not already apologised and/or admitted making an error; and
- j) If the complaint reveals a criminal offence and a complaint has been made to the police, the police investigation and any proceedings have concluded or the police have confirmed no proceedings will be issued.

4.4 The relevant criteria referred to in paragraph 4.2 are:

- a) The complaint reveals a continuing pattern of behaviour that is significantly and unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
- b) The complaint is made by the Chief Executive or the Monitoring Officer

- 4.5 This decision will normally be taken within 28 working days of receipt of your complaint. The Monitoring Officer will inform you of her decision and the reasons for that decision.
- 4.6 In appropriate cases, where the Monitoring Officer has decided that a complaint would merit investigation, the Monitoring Officer may seek to resolve the complaint informally without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was in breach of the code and offering an apology, or other remedial action such as correcting the Register of Interests. In appropriate cases the Monitoring Officer may involve the whip of the Member complained about and, if the complaint has been made by a Member, by the whip of that Member's group. Where the Member makes a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint should be investigated.

5 How is the investigation conducted?

- 5.1 If the Monitoring Officer decides that a complaint merits investigation, she may conduct the investigation but will normally appoint an investigating officer, who may be another senior officer of the Council, an officer of another Council or an external investigator ("the Investigating Officer"). The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the detail of your complaint and so that you can explain your understanding of events and suggest which documents need to be seen, and who needs to be interviewed.
- 5.2 The Investigating Officer will normally write to the Member against whom you have complained and provide them with a copy of your complaint, and ask the Member to provide their explanation of events, and to identify what documents he needs to see and who he needs to interview.
- 5.3 In exceptional cases, where the Monitoring Officer has decided to keep your identity confidential your name and address will be deleted from the papers given to the Member.
- 5.4 At the end of their investigation, the Investigating Officer will produce a draft report ("the Investigation Report") and will send copies of that draft report, in confidence, to you and to the Member, to give you both an opportunity to correct any factual inaccuracies.

5.5 Having received and taken account of any comments which you may make on the draft Investigation Report, the Investigating Officer will send his/her final report to the Monitoring Officer.

6 What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

6.1 The Monitoring Officer will review the Investigating Officer's report and, if she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned notifying you that she is satisfied that no further action is required, and give you both a copy of the final Investigation Report.

7 What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report, seek the views of the Ethics Panel and will then arrange for the Audit and Transparency Committee to consider the complaint. The Audit and Transparency Committee will consider the Investigation Report, the written opinion of the Ethics Panel and any written representations from the Member concerned before deciding whether the Member has failed to comply with the Code and, if so, whether to take any action in respect of the Member.

7.3 The meeting will be held in public so you may attend the meeting as can other members of the public. The Committee will usually consider the matters on the papers but, in exceptional cases, the Member may be permitted by the Committee to make representations on his or her own behalf, although he or she will not be entitled to be represented by a solicitor or other legal representative. Whether or not the case in question is an "exceptional case" is a matter for the discretion of the Committee but might include, for example, cases where the Member's version of the relevant facts is significantly at odds with the conclusions reached in the Investigating Officer's report and, as a consequence, the Committee would like to hear from the Member.

7.4 The Committee, having taken into account the advice of the Ethics Panel, may conclude that the Member did not fail to comply with the Code, and dismiss the complaint. If the Committee concludes that the Member did fail to comply with the Code, the Chairman will inform

those present at the meeting of this finding and the Committee will then consider what action, if any, the Committee should take as a result of the Member's failure to comply with the Code. In doing this, the Committee may give the Member an opportunity to make oral representations but will consider any written representations from the Member and take into account the advice of the Ethics Panel, before deciding what action, if any, to take in respect of the matter.

8 What action can the Audit and Transparency Committee take where a Member has failed to comply with the Code of Conduct?

8.1 The Committee may:-

8.1.1 Censure the Member;

8.1.2 Report its findings to a meeting of the Council for information;

8.1.3 Recommend to the Council that the Member be issued with a formal censure;

8.1.4 Recommend to the Member's Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Council; or

8.1.5 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.

9 What happens at the end of the hearing?

9.1 At the end of the hearing, the Chairman will announce the decision of the Committee as to whether the Member failed to comply with the Code and as to any sanctions imposed.

9.2 As soon as reasonably practicable thereafter, the Monitoring Officer will write to you and the Member concerned confirming the decisions taken. The Committee's decision will be put on the Council's website.

10 Appeals

10.1 There is no right of appeal against the decision of the Audit and Transparency Committee for you as complainant. If you feel that the Council has failed to deal with your complaint properly and that this

failure has caused you injustice, you may make a complaint to the Local Government and Social Care Ombudsman.

10.2 However if it is resolved that the Member has breached the Code, the Member will have an opportunity to appeal against the decision by advising the Monitoring Officer in writing within 14 days of the Committee meeting. The Member will be required to set out in detail the grounds upon which an appeal is sought.

10.3 Upon receipt of notification of appeal the Monitoring Officer will consult the Ethics Panel again for their views. The Monitoring Officer will forward the report detailing the allegations, views of the Ethics Panel and the findings of the investigation to the Audit and Transparency Committee who will determine the appeal. This Committee will comprise different membership to that of the first Committee.

11 **What are the responsibilities of the Audit and Transparency Committee?**

11.1 The Audit and Transparency Committee is charged with considering those written complaints, that a Member or co-opted Member has failed to comply with the Code, referred to it following an investigation of the complaint. The Committee may decide to impose a sanction if it finds that the Member has failed to comply with the Code.

12 **Who is an Independent Person?**

12.1 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and has been appointed by the Council. There a number of statutory restrictions on who may be appointed. For example, a person cannot be appointed as an independent person if he or she is, or has been within the past 5 years, a Member, co-opted Member or officer of the Council. The Council has appointed three such people to form an Ethics Panel.

12.2 The views of the Ethics Panel are sought and taken into consideration before the Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code and as to any action to be taken following a finding of failure to comply with the Code.

13 **Revision of these arrangements**

13.1 The Council may by resolution agree to amend these arrangements.

LeVerne Parker
Chief Solicitor and Monitoring Officer