

PROCEDURE FOR CONSIDERING COMPLAINTS ALLEGING A FAILURE TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT FOR BIRMINGHAM CITY COUNCIL

Context

This guidance sets out how you may make a complaint that an elected or co-opted Member has allegedly failed to comply with the Council's Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Council's Code of Conduct.

The Code of Conduct

The Council has adopted a Code of Conduct for Councillors, which can be found [\(insert link\)](#) and is available for inspection on the Council's website.

Making a Complaint

If you wish to make a complaint,

this has to be on the specific complaint form provided. This can be made available on request and is on the Council's website or by following this link [\(insert link\)](#)

You will need to cite which parts of the code you are relying upon and where possible you should provide supporting evidence.

This needs to be sent to:

The Monitoring Officer
P O Box 15992
Birmingham
B2 2UQ
MonitoringOfficer@birmingham.gov.uk

You will have to identify yourself as the complainant on the form as the assumption is that any member has the right to know who has made the complaint against them. However in **exceptional** circumstances the Monitoring Officer may agree that your name can be withheld but you will need to provide detailed reasons as to why that should be the case.

Such reasons could include;

- You have reasonable grounds to believe you would be at risk of physical harm or;
- You are an officer working closely with the Member in question and you fear the employment consequences or
- It would create medical risks associated with a serious health condition.

Requests to keep your name and address confidential will not automatically be granted.

However, if you have made such a request you will be contacted and advised of the decision and, if your request is not granted, we will allow you the option of requesting the withdrawal of your complaint.

DEFINITIONS AND GENERAL PRINCIPLES

Terms used in this document in the masculine form apply equally to the feminine form and words in the singular form include the plural form where the context allows. The following terms are defined for the purposes of this document:-

1. "Authority" or "The Council" means Birmingham City Council or a Parish/Town Council within the City of Birmingham, whichever is the Council whose code of conduct is alleged to have been breached by the Member.
2. "Code of Conduct" means the code of conduct applicable to the Authority at the material time in relation to allegation.
3. "Member" means the member/councillor (or co-opted member) who is the subject of the allegation being considered by the Monitoring Officer/Standards Committee.
4. "Monitoring Officer" means the person appointed by Birmingham City Council under section 5 of the Local Government and Housing Act 1989, and includes any person designated by him to perform any functions under these procedures.
5. "Independent Person" means the person(s) appointed by Birmingham City Council under section 28 of the Localism Act 2011 and who will be invited to attend the Hearing to provide advice to the Panel.
6. "Investigating Officer" means the person commissioned by the Monitoring Officer to investigate the allegation, and the term includes the Investigating Officer's nominated representative.
7. "Legal advisor" means the officer responsible for providing legal advice to the Standards committee. This may be the Monitoring Officer, another legally qualified officer of BCC, or someone appointed for this purpose from outside BCC.
8. "BCC" means Birmingham City Council.

Introduction

1. This procedure should be used to deal with complaints submitted under the Members' Code of Conduct adopted by Birmingham City Council and any Parish/Town Councils in the Birmingham City Council area.
2. The Members' Code of Conduct applies to elected Members and co-opted members when they are acting in that capacity. Complaints which relate to a failure to comply with the rules about 'Disclosable Pecuniary Interests' may be directed to the West Midlands Police for their consideration. Complaints about a potential breach of the general obligations should be submitted to the Monitoring Officer for consideration.
3. The Monitoring Officer will ordinarily nominate another officer of suitable experience and seniority (usually the Deputy Monitoring officer or other senior officer) to carry out any of the functions listed in this procedure.

Stage 1 - Initial assessment by the Monitoring Officer

4. Complaints must be submitted in writing and should be on the City Council's complaints form [{Insert link}](#). Full details of the complaint must be provided, and should outline what form of resolution the complainant is seeking. The complainant should also state how the subject member is alleged to have breached the code of conduct.
5. Other written complaints may be considered so long as they contain all of the relevant information.
6. The Deputy Monitoring Officer will consider the complaint and make a decision as to whether it will be treated as a valid complaint or not, within **7 days** of receipt of the form from the complainant.
7. The following types of complaint will not be considered as 'valid complaints' under this procedure:
 - a. Complaints which are submitted anonymously^{1 2};
 - b. Complaints which do not identify a subject Member;
 - c. Complaints which relate to a Member's personal or private life;

¹ Complaints which contain a request for the complainant's identity to be withheld may be considered to be 'valid complaints', although the complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage.

² Anonymous complaints which reveal potential fraud or corruption may be dealt with by the Council's Whistle blowing Policy

- d. Complaints concerning a failure to respond to a request from a constituent or other individual;
 - e. Complaints which relate to the alleged actions of employees of the Council or co-optees;
 - f. Complaints which relate to a decision of an employee or a Committee;
 - g. Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council³;
 - h. Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now;
 - i. Complaints containing trivial allegations, or which appear to be simply malicious, politically motivated or tit-for-tat;
 - j. Complaints regarding alleged behaviour which has already been the subject of an investigation or some form of action;
 - k. Complaints which do not relate to the Members' Code of Conduct.
8. In all cases where the complaint names a Member, the Member will be notified of the complaint⁴.
 9. The Monitoring Officer (or his Deputy) will determine whether the investigation is invalid or whether it should proceed to Stage 2 - an initial Investigation. If the Monitoring Officer decides that the complaint is 'invalid', the notification will be made to the member for information only.
 10. If the complaint relates to an employee or is a service related issue, the Monitoring Officer will refer the complaint to the relevant service in order for them to respond to the complainant directly.
 11. In any case where the Monitoring Officer decides that the complaint is 'invalid', they will write to the complainant explaining why the complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.
 12. In cases involving member to member complaints, these will not be investigated until the Monitoring Officer considers other processes eg mediation or political group processes with the Group Secretaries and/or the Group Whip (see also paragraph 25 below).

³ The Monitoring Officer will only investigate allegations during the period in which the person was an elected member.

⁴ Information shared will include details of the complainant and their complaint. The Subject Member will receive this information as a data controller in their own right and all usual data protection controls will apply.

Stage 2 – Initial Investigation

13. If, following initial assessment, the Monitoring Officer decides that the complaint should be treated as a 'valid complaint' they will write to the complainant and explain that the matter is to be referred to the subject Member and the Deputy Monitoring Officer (or other senior officer) who will oversee the investigation.
14. The Deputy Monitoring Officer may appoint an Investigating Officer to conduct the initial review on behalf of the Monitoring Officer.
15. However in appropriate cases the Monitoring Officer may appoint an external Investigating Officer to undertake a full investigation where circumstances warrant such an appointment.
16. The complainant will also be provided with an outline of the procedure for dealing with complaints against Councillors and that the assumption is that all complaints will be resolved in accordance with this procedure.
17. The Deputy Monitoring Officer will provide the subject member with a reasonable timescale within which to respond to the complaint. This will usually be within 21 days although this may be extended at the discretion of the Deputy Monitoring Officer.
18. At the same time the Deputy Monitoring Officer will forward a copy of the complaint to the relevant Group Secretary or Group whip⁵.
19. Following receipt of the member's comments in response to the complaint, the Deputy Monitoring Officer /Investigating Officer will undertake an initial review based on the complaint form and any written responses.
20. Whilst the aim is to consider the complaints based on the written submissions, the Deputy Monitoring Officer /Investigating Officer can seek further clarification from any party and may request to meet with them or any witnesses. The aim is to complete any initial review within **28 days** of the Deputy Monitoring Officer receiving the subject Members response to the complaint.
21. At the end of his/her investigation, the Investigating Officer will produce a draft report with recommendations. This in the first instance will be sent to the Monitoring Officer and the Independent Chair of Standards Committee or such lay member of the committee as he/she may appoint.
22. The Monitoring Officer will review the Investigating Officer's report after consulting with the Independent Chair of Standards Committee. If the Monitoring Officer is not satisfied with the investigation he/she can ask the Investigating Officer to reconsider the report or specific elements.
23. If the Monitoring Officer and the Independent Chair of Standards Committee are in agreement with the Investigating officer's recommendations, copies of that draft report will be sent, in confidence, to the complainant and to the Member

⁵ If the subject Member is the Group Secretary, the complaint will be copied to his or her Group Whip. In the case of a Parish or Town Council without structured political groups, the Monitoring Officer could consider involving the Chairperson of the Council.

concerned, to give both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration.

24. Having received and taken account of any comments which maybe received on the draft report, the Deputy Monitoring Officer /Investigating Officer will send his/her final report to the Monitoring Officer and the Independent Chair of Standards Committee.

Special provisions – member/member complaints

25. Where a complaint is made by one councillor against another councillor, the Monitoring Officer, following consultation with the Independent Chair of Standards Committee may refer the matter to the relevant Group Secretaries/Group Whips for them to mediate between the parties.
26. After a 28 day period the Group Secretaries/Group Whips will provide a report to the Monitoring Officer and the Chair of Standards Committee with a report on whether a resolution was possible and if not what steps have been taken to resolve that matter⁶.
27. If the matter cannot be resolved or if mediation is not thought to be possible then the Group Secretaries/Group Whips can refer the matter back to the Monitoring Officer.
28. If required the Independent Person is available to provide advice on the severity of the complaint and what form of resolution they would consider appropriate. Providing guidance does not prevent the Independent Person from giving a view to Standards Committee about the complaint at a later date.

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

29. The Monitoring Officer will write to the complainant, the Member concerned and to his/her Group Secretary/Chief whip notifying that the Monitoring Officer is satisfied that no further action is required, or that the complaint has otherwise been resolved and enclose a copy of the Investigating Officer's final report.
30. The Monitoring Officer may consult with the Independent Chair of Standards Committee and share a copy of the Investigating Officer's final report

Note - Although there is no internal right of appeal, the complainant or the member who is subject of the complaint may refer the Monitoring Officer's decision to the Local Government Ombudsman if there is some fault in the way that he/she has considered the complaint and there is sufficient injustice to warrant their involvement.

⁶ This can be used as evidence at any full hearing

What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct that requires a determination by Standards Committee?

31. Where that there is potential evidence of a failure to comply with the Code of Conduct the following options are available to the Monitoring Officer :

- If there appears to be criminal misconduct, the Monitoring Officer will refer the case to the Police.
- The Monitoring Officer can seek, in consultation with the Independent Chair of the Standards Committee, to resolve the complaint informally by getting the Member to acknowledge that their conduct was unacceptable and apologise, or engage in other remedial actions on behalf of the authority.
- Refer the matter to Standards Committee for full hearing.

Local Resolution

32. 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 with the Independent Chair of Standards and the parties involved to agree what would be considered a fair resolution which also helps to ensure higher standards of conduct for the future.

33. Such resolution may include;

- i. An explanation by the subject Member of the circumstances surrounding the complaint;
- ii. An apology from the subject Member;
- iii. An agreement from the subject Member to attend relevant training or to take part in a mentoring process;
- iv. An offer by the subject Member to engage in a process of mediation or conciliation between them and the complainant; or
- v. Any other action capable of resolving the complaint.

34. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee [and if appropriate, the Parish/Town Council] for information as well as the Group Secretary/Group Whip, but will take no further action.

35. Where the Member makes a reasonable offer of local resolution, but the complainant is not prepared to accept the offer, the Independent Chair of

Standards Committee will take account of this in deciding whether the complaint merits a full hearing.

Stage 3 – Standards Committee Hearings

36. The Monitoring Officer will provide for consideration by the Standards Committee the original complaint, the Investigating Officers report and details of efforts made to resolve the matter informally.
37. The Monitoring Officer must arrange for a meeting of the Standards Committee (or if appropriate a relevant Sub-Committee⁷) to be convened to consider the commissioned report of the complaint.
38. The Independent Chair of Standards Committee will in consultation with the Monitoring officer and Standards Committee determine the make-up of any sub-committee.
39. If the complaint relates to a Parish or Town Councillor, one of the co-opted Parish Members will be invited to attend the Committee meeting. The Parish Member will not be entitled to vote at the meeting, but will be entitled to speak at the discretion of the Chair/Deputy Chair.
40. The Standards Committee or sub-committee will consider directions to enable the matter to proceed to a Final Hearing
41. The following people⁸ will also be invited to attend the Final Hearing meeting:
 - a. The complainant;
 - b. The subject Member;
 - c. The Independent Person.
 - d. Any witnesses
 - e. Or any other person as determined by the Chair of the Standards Committee and/or the Monitoring Officer
42. The Monitoring Officer will attend the meeting in order to advise the committee.
43. At the beginning of the meeting the Committee will be asked to consider whether the complaint should be considered in private in accordance with the provisions of Rule 10 of the Access to Information Procedure Rules relating to exempt information. If the meeting is to be held in private the press and public will be excluded⁹.

⁷ Such Sub-Committee will be made up of at least 6 Members from the Standards Committee.

⁸ No person shall sit on a full hearing if they have previously considered any element of the complaint in order to avoid any potential conflict of interest.

⁹ The Committee may invite people to remain in the meeting if it is considered that they could provide information relevant to the complaint.

44. After initial consideration of the commissioned report, the Committee will take statements from the following parties (either in person or in written form if the person is unable to attend the meeting):
- a. The complainant; and
 - b. The subject Member.
 - c. Or any other person as determined by the Committee
45. The Committee may also ask questions of anyone present at the meeting in order to reach a conclusion on the complaint.
46. Before reaching a final decision on the complaint, the Committee must seek, and take account of, the view of the Independent Person in relation to the complaint.
47. If the Committee is unable to reach a conclusion on the complaint on the basis of the information before it, it may adjourn the meeting and request that the Monitoring Officer seeks the further information required. However, when doing so the Committee should consider whether the information will be readily available to the Monitoring Officer.
48. Once the Committee is satisfied with the information before it, it must decide the following issues:
- a. Whether the subject Member has failed to comply with the Members' Code of Conduct;
 - b. Whether further action is warranted; and
 - c. What form of action might be appropriate.
49. If the Committee concludes that, on the balance of probabilities, the subject Member did not fail to comply with the Members' Code of Conduct, this will conclude the complaints process. In such cases no further action will be taken in respect of the complaint, although the Committee may still wish to consider making a recommendation to the authority with a view to promoting and maintaining high standards of conduct in general. Before doing so, the Committee may hear further representations from the subject member and the Independent Person. Such recommendations may include proposed changes to internal procedures and practices or training for Members in general.
50. If the Committee concludes that, on the balance of probabilities, the subject Member has failed to comply with the Members' Code of Conduct, the Committee must go on to consider whether action should be recommended in respect of the subject Member, and what form of action might be appropriate.
51. The recommendations available to the Committee include¹⁰ but are not limited to:
- a. A formal letter to the subject Member from the Chair of the Standards Committee;

¹⁰ The committee may not decide to disqualify or suspend the subject Member as a Councillor.

- b. Formal censure by a motion of full Council; or
- c. Removal by the authority of the Member from a relevant Committee(s) subject to statutory and constitutional requirements.

Furthermore the Hearings Panel may:-

- Reprimand the Member;
- Request that the Member be required to make an apology at Council;
- Publish its findings in respect of the Member's conduct;
- Report its findings to Council for information;
- Recommend that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Member be removed from the Cabinet.
- Recommend to Council that the Member be replaced as Executive Leader;
- Instruct the Monitoring Officer to arrange training for the Member, which the Member is obliged to attend;
- Remove from all outside appointments to which he/she has been appointed or nominated by the Council;
- 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.

The Hearings Panel has no power to suspend or disqualify the Member or to withdraw Members' or special responsibility allowances.

52. The Committee may make a recommendation in relation to one or more of the above sanctions to full Council or, if appropriate, the Town or Parish Council, the Group Whip or the Chair of the Standards and Conduct Committee. The Chair will confirm any such recommendations in writing within five working days of the Committee meeting.

53. The Committee may also make general recommendations to the authority with a view to promoting and maintaining high standards of conduct within the authority. As stated above, such recommendations may include proposed changes to internal procedures and practices or training for Members in general. The Monitoring Officer will be responsible for communicating such recommendations to the relevant Committee or officer for consideration.

54. Within five working days of the meeting the Independent Chair of the Standards Committee will write to the complainant and the subject Member explaining the final decision of the Committee and detailing any recommendations made.
55. There is no right of appeal against a decision of the Committee.

ANNEX 1 - ROLE OF THE 'INDEPENDENT PERSON'

Role of the Independent Person

The role of the independent person is set out in Section 28 of the Localism Act 2011.

Independent Members will be invited to attend meetings of the Standards Committee, with agreement of the Chair, and will be provided with agendas and minutes of such meetings.

As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one independent person.

The independent person's views will¹¹ be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.

The authority may also seek the independent person's views on any complaint. However, there is no requirement for the authority to do so, or to take those views into account. Where a matter is referred to the Standards Committee or its Sub-Committee for determination, the Committee will seek the views of the Independent Persons before reaching its conclusions. Those views will be recorded in any decision notice.

Independent Persons will consider all the information relating to a complaint, the views of the parties involved in the complaint, the Code of Conduct and the law as it affects standards matters, before offering their view.

The Monitoring Officer may contact the Independent Person by telephone, email, in writing or arrange a meeting. Any communication should be formally recorded.

The Independent Person will be provided with sufficient information in order to provide their view and be given sufficient time to consider that information before providing their view. This will change on a case by case basis.

¹¹ Section 28 (7) of the Localism Act 2011,

Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of 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—

(i) by the authority in relation to an allegation in circumstances not within paragraph (a),

(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and

(iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

The Independent Person should provide their views in written form, even if the views have already been given verbally.

Finally, a member or co-opted member of the authority (or of a parish council in the area) may seek the independent person's views on an allegation made against them at any time.

As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one independent person.

The independent person's views **may** be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.

The authority may also seek the independent person's views on an allegation that it has not decided to investigate. However, there is no requirement for the authority to do so, or to take those views into account.

Finally, a member or co-opted member of the authority (or of a parish council in the area) may seek the independent person's views on an allegation made against them at any time.