

Epsom and Ewell Borough Council

Arrangements for dealing with standards allegations under the Localism Act 2011

1 Context

Epsom & Ewell Borough Council has 38 elected Councillors known as “Members”. The Council may also co-opt non-elected members onto its committees, sub-committees or advisory panels. The Council is committed to promoting and maintaining high standards of conduct amongst its Members and has adopted a Code of Conduct setting out the conduct it expects of its Members and Co-opted Members as they carry out that role.

Section 28(6) and (7) of the Localism Act 2011 requires the Council to have in place “arrangements” to deal with allegations that a member or co-opted member of the Council or of a Committee or Sub-Committee (or, additionally, in the case of this authority, Advisory Panel) of the Council, has failed to comply with that Council’s Code of Conduct.

These are the Council’s arrangements setting out how complaints can be made and how we will deal with any complaint, we receive.

The Council will appoint at least one Independent Person, whose views must be sought before we take a decision on any allegation which we decide should be investigated. We may also seek the view of the Independent Person at any other stage and a Member against whom an allegation has been made can consult the Independent Person.

2 What is the Standards Committee and what is a Hearings Sub-Committee?

The Standards Committee is a Committee of Members of the Council chaired by the Chairman of the Standards Committee. A Hearings Sub-Committee comprising three of their number, one of whom shall be the Chairman or Vice Chairman of the Standards Committee, who will chair the meeting, will conduct any hearing. In the event that neither the Chairman nor Vice Chairman are able to chair the meeting the hearing will be conducted by three members of the Standards Committee and the election of one of their number to chair the hearing will be the first item of business at the meeting.

The Independent Person’s views will be sought and taken into consideration before the Hearings Sub-Committee takes any decision on whether the member’s conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

3 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

Under the Localism Act 2011, a person cannot be “independent” if he/she –

- is, or has been within the past 5 years, a member, co-opted member or officer of the Council; or
- is a relative, partner or close friend, of a member, co-opted member or officer of the Council;

This restriction is subject to transitional arrangements in the case of former Independent Members of the Council’s Standards Committee.

In addition, the Council will not regard a person as “independent”, and eligible for appointment as an Independent Person, if they are actively involved in any registered political party.

4 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is available for inspection on our website and available to view on request from Reception at the Town Hall.

The Code applies to Members when they go about the work of the Council or their role as a Member. We will not investigate complaints relating to a Member’s private life.

5 Making a complaint

If you wish to make a complaint, please write to, or email, the Monitoring Officer (postal and email address below):

Epsom & Ewell Borough Council
Town Hall
The Parade
EPSOM
KT18 5BY

monitoringofficer@epsom-ewell.gov.uk

The Monitoring Officer is a senior Council officer 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.

We will normally only consider complaints in writing and we will require a name and a contact address or email address to acknowledge receipt of the complaint and keep you informed of progress. "Writing" includes complaints submitted by email.

We will not normally investigate a complaint sent in anonymously, unless there is a clear public interest in doing so.

For all other complaints, the Monitoring Officer will disclose the name of the complainant to the Member unless specifically asked to withhold it. However only in very exceptional cases will the Council be able to progress a complaint to an investigation without from the outset disclosing the identity of the complainant to the Member.

If you want to keep your name and address confidential, please indicate this in your complaint, explaining why. We will notify you of our decision about confidentiality and we will not give your name and address to the member against whom you make the complaint without your prior consent. However, if initial confidentiality is agreed, this might affect how we deal with your complaint.

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will keep the complainant informed of the progress of the complaint. At the same time, the Monitoring Officer will normally also inform the Member that a complaint has been received.

6 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. If considered appropriate the Monitoring Officer will consult with the Independent person before reaching their decision. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he will inform you of his decision and the reasons for that decision.

Where the Monitoring Officer is of the view that your complaint, if proven, would not amount to a breach of the Members Code of Conduct they will notify you of this and will usually take no further action on it.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer it to the Police and/or other agencies.

Where the Monitoring Officer requires additional information in order to come to a decision, they may come back to you for such information, and may request information from the member against whom your complaint is directed.

Wherever possible the Monitoring Officer will seek to resolve the complaint informally, without the need for a formal investigation. Informal resolution could involve, for example, the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council. Where the member or the Council makes a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation. The Monitoring Officer will normally consult the Chairman of the Standards Committee and the Independent Person before reaching a decision.

On some occasions, informal resolution will not be possible, because one of the parties does not agree to co-operate with an informal process, or the process breaks down. If this happens, the Monitoring Officer will normally consult the Chairman of the Standards Committee and the Independent Person, before deciding whether the complaint merits formal investigation. The Monitoring Officer may, in order to inform that decision, disclose information to the Chairman and Independent Person, including details of the complaint, steps taken to achieve resolution informally and why this has not been successful. You and the Member will be notified of the outcome.

On some occasions the Monitoring Officer may consider that the conduct alleged, if proven, would amount to a breach of the Members Code of Conduct and would not be appropriate for, or capable of, informal resolution. In this case, the Monitoring Officer will normally consult the Chairman of the Standards Committee and the Independent Person, before deciding whether the complaint merits formal investigation. In making that, decision the Monitoring Officer will take into account both the seriousness of the alleged breach and the information provided in support of the complaint.

Where the Monitoring Officer requires additional information in order to come to a decision, they may contact either the complainant or the Member to request that information.

7 How is an investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another officer of the authority, an officer of another authority or an external investigator.

The Investigating Officer will decide whether to speak to you and to any other witnesses and what other evidence they need to see, including, for example, correspondence, minutes of meetings and other relevant documents.

The Investigating Officer will normally contact 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.

In very exceptional cases, where the Monitoring Officer, after consulting the Independent Person, considers that it is appropriate to keep your identity confidential or that disclosure of details of the complaint to the member might prejudice the investigation, they can delete your name and address from the papers given to the member. Alternatively, in such circumstances, they may delay notifying the member until the investigation has progressed sufficiently.

At the end of their investigation, the Investigating Officer will produce a draft report and, in addition to providing a copy to the Monitoring Officer, will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any inaccuracies in the report and to comment on their findings.

Having received and taken account of any comments made on the draft report, the Investigating Officer will send their final report to the Monitoring Officer. The investigation and the Investigating Officer's report will be kept confidential at this stage.

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

The Monitoring Officer will send a copy of the Investigating Officer's report to the Chairman of the Standards Committee and to the Independent Person for their views on whether it is necessary to convene a Hearings Panel. Where it is decided that a hearing is not necessary the Monitoring Officer will write to the parties, notifying them that they are satisfied that no further action is required. The Monitoring Officer will send all parties a copy of the Investigating Officer's final report, which will no longer be confidential at this point.

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

Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct the Monitoring Officer will arrange for the Hearings Sub-committee to hold a meeting, within three months of the Investigator's final report being issued, so that it can take a decision on the complaint.

The Monitoring Officer will invite the Member to reply in writing to the Investigation Officer's report, in particular, to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Member will be invited to give a view on whether the sub-committee should meet in public or in private. The Chairman of the Standards Committee or the Monitoring Officer may issue directions as to the manner in which the hearing will be conducted, including whether or not the Hearings Sub-committee will meet in public or private.

At the hearing, the Investigating Officer will present their report, call such witnesses, as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the Code of Conduct.

The Member will also have an opportunity to give evidence, to call witnesses and to make representations to the Hearings Sub-committee as to why they consider that they did not fail to comply with the Code of Conduct.

After hearing from all the parties, the Hearings Sub-committee may conclude either:

- that the Member did not fail to comply with the Code of Conduct or
- that the Member did fail to comply with the Code of Conduct, in which case it will also decide what action to recommend or to take.

The Hearings Sub-committee will not announce its decision at the hearing. Before reaching a final decision on the complaint and any sanction, the Chairman of the Hearings Sub-committee will report its finding to the Independent Person, whose views will be sought and taken into account by the Sub-Committee before a final decision is made.

The Member will be given the opportunity to make representations to the Hearings Sub-committee about the action that the Sub-Committee proposes to take, particularly if the Sub-Committee decides that the Member has failed to comply with the Code of Conduct.

10 What action can the Hearings Sub-Committee take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Sub-Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearings Sub-Committee may –

- Decide that no further action is required.
- Publish its findings in respect of the member's conduct;
- Issue a statement of censure ;
- Report its findings to Council;
- Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

- Withdraw facilities provided to the member by the Council, such as a computer, and/or email and Internet access; or
- Exclude the member from some or all of 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 sub-committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

11 What happens at the end of the hearing?

As soon as reasonably practicable after the sub-committee has made its final decision, the Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Hearings Sub-committee, and send a copy to the complainant and to the Member and will make that decision notice available for public inspection.

12 Revision of these arrangements

The Council may agree, by resolution, to amend these arrangements, and has delegated to the Monitoring Officer and the Standards Committee the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

There is no right of appeal for a complainant against a decision of the Monitoring Officer or of the Hearings Sub-Committee

A Member has no right of appeal against a finding of breach of the Member Code of Conduct. However, a Member may require that a further Hearing Sub-Committee meeting reviews any sanction imposed at the first hearing

14 Local Government Ombudsman

If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.