

Arrangements for dealing with complaints against members under the Councillor Code of Conduct

Glossary

Complainant	The person making the complaint
Determination Hearing	The committee at which an investigated complaint is heard.
Independent Chair	Independent chair of the Standards Hearing Panel, appointed by Standards Committee
Independent Person	A person or persons appointed by the Council under the Localism Act 2011 to advise it, the Monitoring Officer or the councillor on the determination of complaints
Investigating Officer	A council officer, officer of another council and /or independent investigator instructed by the Monitoring Officer
Monitoring Officer	The council officer with statutory responsibilities under s5 Local Government and Housing Act 1989. This may include any other officer the Monitoring Officer has authorised to carry out their functions under this procedure
Standards Committee	The committee of the council that determines complaints about councillors that are investigated
Standards Hearing Panel	The sub-committee making the decision at the Determination Hearing
Subject Councillor	The elected councillor or co-opted member subject to the complaint

1. Introduction

1.1 This procedure applies to all complaints submitted under the Councillors' Code of Conduct adopted by Thurrock Council

1.2 The Council's Monitoring Officer is responsible for the conduct of complaints made under the Councillors' Code of Conduct and may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.

1.3 These arrangements provide that the Authority has appointed at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which is has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by the subject councillor. These appointments take place at the Annual Council Meeting.

1.4 The Councillors' Code of Conduct applies to elected members and voting co-opted members when they are acting in that capacity. Complaints must be submitted to the Council's Monitoring Officer. The Monitoring Officer will consider whether a failure to comply with the rules about 'Disclosable Pecuniary Interests' should be directed to the Police if s/he considers there are reasonable grounds to believe that a criminal offence may have occurred. Complaints about a potential breach of the general obligations should be submitted to the Monitoring Officer for consideration.

1.5 Complaints can only be considered where a councillor is acting in an official capacity for the Council. It does not apply to a councillors acts or omissions in their private life.

STAGE 1 SUBMITTING A COMPLAINT & INITIAL ASSESSMENT

2. Submitting a Complaint

2.1 Complaints must:

2.1.1 be submitted in writing;

2.1.2 include the identity of the complainant unless there are substantial reasons not to do so;

2.1.3 provide information that substantiates the allegations made; and

2.1.4 outline the form of resolution the Complainant is seeking.

2.2 The complainant should use the complaints form accessed via the Thurrock Council website: [Complaints about councillors](#) | [Governance ethics and standards](#) | [Thurrock Council](#).

2.3 If the Monitoring Officer considers that the complaint does not include sufficient information, the complainant will be asked to provide the additional information and the complaint may not be accepted until that information is received or may be rejected if the information is not provided as requested.

2.4 The Monitoring Officer will inform the following people that a complaint has been made:

2.4.1 The subject councillor(s);

2.4.2 The council's independent person(s) who will be consulted on the complaint;

2.4.3 The investigating officer appointed to investigate the complaint or persons whom they contact as part of an investigation; and

2.4.4 The council's Standards Committee (as part of the regular reporting on councillor complaints).

2.5 The Monitoring Officer will provide those persons set out in 2.4 above with the name of the complainant against whom the complaint has been made and the complainant together with a summary of a complaint. They will provide full details of a complaint where necessary or appropriate to be able to deal with the complaint.

2.6 The Monitoring Officer will consider a request by a complainant or witness to keep their identity confidential (from the councillor against whom the complaint has been made and / or others) but will only grant such a request in exceptional circumstances

3. Initial Assessment.

3.1 The Monitoring Officer, in consultation with the Independent Person, will consider the complaint and make a decision as to whether it warrants further action.

3.2 If the Monitoring Officer determines that the complaint is about an employee or the provision of a Council service, it will be referred to the relevant service for response. The Monitoring Officer will not consider the complaint under the Code of Conduct arrangements but will refer the matter for consideration under the appropriate complaints procedure.

3.3 The Monitoring Officer will dismiss complaints where there is no prima facie evidence of a code of conduct breach or where no further action is warranted, having discussed them with the Independent Person. The complainant will be notified in writing providing reasons for the decision. The subject councillor will also be informed and will be given a summary of the complaint.

3.4 Should either the complainant or the subject councillor disagree with the initial assessment decision, they may request a review of the decision, which will be determined by the council's Chief Executive. Any such request for a review must be submitted in writing to the Monitoring Officer setting out the reasons for the review.

3.5 The Monitoring Officer will provide reports on a cyclical basis to the Standards Committee on all complaints received and their determination.

STAGE 2 - INFORMAL RESOLUTION

4. Informal Resolution

4.1 If the Monitoring Officer decides that the complaint warrants further action s/he will normally consider if an informal resolution between the complainant and the subject councillor is possible, by taking one of the following actions:

4.1.1 Writing to both parties requiring them to seek resolution of the complaint with a reasonable period and suggesting possible alternative action to achieve this; and

4.1.2 Providing such assistance to informally resolve the complaint as is considered reasonable, including the involvement of the Independent Person, political groups or party representatives as appropriate.

4.2 Informal resolution will normally include agreement to withdraw the complaint and may include the following:

4.2.1 An explanation by the subject councillor of the circumstances surrounding the complaint;

4.2.2 An apology from the subject councillor;

4.2.3 Agreement by the subject councillor to attend relevant training or to take part in a mentoring process;

4.2.4 Both parties (the subject councillor and the complainant) agreeing to engage in a process of mediation or conciliation;

4.2.5 An acknowledgement by the complainant that the complaint did not arise from misconduct by the subject councillor; or

4.2.6 Any other action capable of resolving the complaint.

4.3 The Independent Person is available to the subject councillor to give them advice on the complaint and what form of resolution they would consider appropriate. Providing such guidance would not normally prevent the Independent Person from giving a view to the Standards Committee about the complaint at a later stage.

4.4 If the complainant informs the Monitoring Officer that their complaint has been resolved by informal resolution, no further action will be taken except that the Monitoring Officer:

- 4.4.1 will ensure any actions arising from the informal resolution are completed; and
- 4.4.2 if so, will inform both the complainant and subject councillor that no further action will be taken on the complaint and will record the outcome and report it to the next meeting of the Standards Committee

4.5 Where informal resolution has been rejected or has not been successfully achieved or where the Monitoring Officer considers that it is not appropriate, the Monitoring Officer, in consultation with the Independent Person, will determine whether to proceed to formal investigation or whether no further action is warranted having regard to the circumstances of the complaint.

5. Monitoring Officer Assessment

5.1 The Monitoring Officer will determine if the complaint merits investigation and keep a written record of their decision including reasons.

6. Complaints that will not normally be investigated

6.1 The following complaints are normally not suitable for investigation, save where the Monitoring Officer considers there are exceptional circumstances:

6.1.1 Complaints that are really about the council services, its policies or performance. Such complaints will be referred to the relevant service area in accordance with the council's Complaints Policy.

6.1.2 Complaints that are really about the political policies or performance of a councillor in their role. Such complaints will be referred to the councillor and / or their political group for response.

6.1.3 Complaints that relate to another authority or an alleged breach of another authority or body's Code of Conduct.

6.1.4 Vexatious or frivolous complaints or complaints which are intended to insult individuals.

6.1.5 Minor or "tit-for-tat" complaints that do not justify the time and resources of an investigation.

6.1.6 Complaints which relate to matters or events more than 3 months before the date of the complaint.

6.1.7 Complaints by a councillor against another councillor will not normally be investigated unless the Monitoring Officer considers that other processes, e.g. informal mediation or political group processes, have been exhausted.

6.1.8 Complaints by officers should be first made under the councillor / officer protocol.

6.1.9 Complaints that are already subject to other internal or external processes will not normally be investigated until those other processes have been completed, to enable the complaint to be resolved by other means. Determination of such complaints will normally be suspended until the other process is finalised.

7. The Public Interest

7.1 The Monitoring Officer will consider whether it is in the public interest to investigate the complaint taking into account and balancing the following factors:

7.1.1 The seriousness of the alleged breach;

7.1.2 The level of culpability alleged against the subject councillor including if it is alleged the subject councillor has financially benefitted from the alleged breach;

7.1.3 What harm if any is alleged to have been caused to the complainant or others;

7.1.4 What is the impact on the wider community of the alleged breach;

7.1.5 Is an investigation and potential hearing a proportionate response to the complaint?

STAGE 3 - INVESTIGATION

8. Appointment of an Investigating Officer

8.1 The Monitoring Officer will appoint an investigating officer to investigate the complaint and submit a written report to the Monitoring Officer. The investigating officer may be a council officer, the officer of another local authority, or an external investigating officer.

8.2 The investigating officer may, with the Monitoring Officer's agreement, appoint persons to assist in the conduct of his/her functions or provide professional advice or services.

9. Notification

9.1 The Monitoring Officer shall notify the subject councillor in writing:

9.1.1 that the allegation has been referred for formal investigation and the conduct which is the subject of the allegation.

9.1.2 the identity of the person making the allegation

9.1.3 the identity of the investigating officer.

9.1.4 the procedure which will be followed in respect of the allegation; and

9.1.5 not to contact the complainant or seek to improperly influence the determination of the complaint by any means

9.2 The Monitoring Officer will notify the complainant in writing of the same matters including that the subject councillor should not contact them or seek to improperly influence the determination of the complaint

10. Conduct of the Investigation

10.1 The investigating officer must:

10.1.1 Collate sufficient information to determine whether the subject councillor has acted in breach of the Code of Conduct and, where there has been a breach of the Code of Conduct, whether any action should be taken in respect of the councillor or in consequence of the breach, and what any action should be

10.1.2 Prepare and present a report of the above findings and the evidence to support them to the Monitoring Officer.

11. Production of Documents, Information and Explanations

11.1 The investigating officer (and any person authorised on his/her behalf) is authorised to:

11.1.1 make such enquiries of any person or organisation and request any person or organisation to provide any document or information which is in their possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation;

11.1.2 require the council to provide any document which is in its possession or control which the investigating officer thinks necessary for the purposes of carrying out the investigation;

11.1.3 request any person to attend and appear before him/her or otherwise provide any information, document or explanation as he/she thinks necessary for the purposes of carrying out the investigation.

12. Representation

12.1 Any person interviewed by the investigating officer may arrange to be accompanied at their own expense by a solicitor, trade union or friend.

13. Interview Notes

13.1 Where practicable, following the interview the investigating officer shall produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose. The investigating officer will determine whether to accept or reject any amendments but will keep a copy of any response.

14. Additional evidence of breach of the Code of Conduct

14.1 Where, in the course of his/her investigation, the investigating officer becomes aware of any other matter which appears to him/her to evidence of a different or additional breach of the Code of Conduct by the councillor the investigating officer shall inform the Monitoring Officer with any supporting information.

14.2 The Monitoring Officer shall then determine following consultation with the independent person:

14.2.1 whether or not to investigate the additional matter in accordance with this procedure;

14.2.2 whether or not to instruct the investigating officer to investigate the additional matter or appoint a different investigating officer;

14.2.3 If so, notify the subject councillor of the additional allegations and how it will be investigated if at all

15. Early termination of the investigation

15.1 The investigating officer may terminate his/her investigation at any point, where they are satisfied that they have sufficient information to report to the Monitoring Officer.

16. The Draft Report

16.1 The investigating officer will prepare and submit to the Monitoring Officer a draft report setting out:

16.1.1 the details of the allegation;

16.1.2 the relevant provisions of statute, the Code of Conduct or protocols;

16.1.3 the subject councillor's initial response to notification of the allegation [if any];

16.1.4 the relevant evidence obtained during the investigation;

16.1.5 a list of any documents relevant to the matter;

16.1.6 a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;

16.1.7 details any person or organisation that did not cooperate with a request to provide evidence;

16.1.8 a statement of his/her draft findings of fact;

16.1.9 findings whether the councillor has or has not failed to comply with the Code of Conduct and if so, findings on whether any action should be taken in respect of the councillor or in consequence of the breach, and what any action should be;

16.1.10 the reasoning for all findings;

16.2 The Monitoring Officer will provide comments on the report to the investigating officer within 14 days of receipt and may meet or speak with the investigating officer during this time to discuss the draft report.

16.3 The investigating officer shall then send a copy of his/her draft report in confidence to the subject councillor and the complainant and request that they send any factual comments thereon to him/her within 14 days.

16.4 The investigating officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within 14 days.

17. Final Report

17.1 The investigating officer shall reconsider and amend his/her draft report in the light of any comments received and send their final report to the Monitoring Officer.

17.2 The investigating officer should append copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions.

17.3 The Monitoring Officer will review the investigating officer's report and, if he/she is satisfied that the investigating officer's report shall then:

17.3.1 where the final report concludes that there has not been a failure to comply with the Code of Conduct will write to the complainant and the subject councillor concerned notifying them that he/she is satisfied that no further action is required and provide a copy of the final report.

17.3.2 where the final report concludes that there has been a failure by the councillor to comply with the Code of Conduct will either refer the matter for hearing before the Standards Committee or, after consulting the Independent Person, seek local resolution.

17.4 Local resolution means a resolution of the complaint through agreement between the complainant and the subject councillor to resolve the complaint taking into account the investigating officer's findings. The Monitoring Officer may consider it is not appropriate for the more serious allegations and it requires the agreement of both parties.

17.5 If the report is dealt with by local resolution then the complaint is closed.

STAGE 4 : HEARING & DETERMINATION

18. Determination Hearing

18.1 The Standards Hearing Panel will meet to consider the investigating officer's report to determine whether the subject councillor has failed to comply with the Code of Conduct and, if so, whether to impose a sanction on the subject councillor.

19. Pre-Hearing Process

19.1 The Monitoring Officer shall arrange for the Standards Committee to convene a Standards Hearing Panel meeting to hold a Determination Hearing.

19.2 The Monitoring Officer shall inform the Chair of the Standards Committee and Independent Person of the requirement to hold a Determination Hearing.

19.3 Where the Monitoring Officer is the investigating officer, they will arrange for a separate legal advisor to the Standards Hearing Panel to be appointed in respect of the allegation.

19.4 The Standards Committee will appoint an Independent Chair to chair the Standards Hearing Panel meeting. Reference to the chair through the remainder of this section means the independent chair appointed to the panel.

20. Notification of Investigating Officer's Report

20.1 The Monitoring Officer shall send the investigating officer's report to the subject councillor and the complainant, subject to agreement of an undertaking of confidentiality.

21. Subject councillor's representations

21.1 The subject councillor shall be asked to provide a written response within 14 working days of the receipt of the report setting out:

21.1.1 Any disagreement with findings of fact and the reasons for any disagreement;

21.1.2 If they intend to be represented at the hearing (at their own expense) and if so the representative's contact details;

21.1.3 if they intend to give evidence at the Determination Hearing orally or in writing;

21.1.4 the identity of any relevant witnesses at the Determination Hearing

21.1.5 if they consider any part of the investigating officer's report or the Determination Hearing should be withheld from public access or held in private in accordance with the Council's Access to Information Rules including the reasons for the request;

21.2 The Monitoring Officer will inform the subject councillor if, at the Determination Hearing, they dispute the investigating officer's report without having previously notified the Monitoring Officer the chair of the Hearing Panel may either:

21.2.1 adjourn the meeting to enable the investigating officer to provide a response; or

21.2.2 refuse to allow the disputed matter to be raised.

22. Investigating Officer's Response

22.1 The Monitoring Officer shall invite the investigating officer to comment on the subject councillor's response, and to say whether or not they wish:

22.1.1 to be represented or be present at the Determination Hearing;

22.1.2 to call relevant witnesses to give evidence or submit written or other evidence;

22.1.3 The Monitoring Officer may request the investigating officer to the Determination Hearing to present their report and answer questions.

23. The Hearing Date & Arrangements

23.1 The Monitoring Officer will set a date and make the arrangements for the Determination Hearing following consultation with the chair including:

23.1.1 the calling of witnesses requested by the subject complainant and investigating officer

23.1.2 any additional witnesses requested by the chair whom it is considered will assist the Hearing Panel reaching its decision;

23.1.3 the agenda and documentation to be considered at the hearing

23.1.4 whether or not the whole or part of the hearing or documentation will be exempt from public access and the grounds for this decision

23.2 The Monitoring Officer and Chair may limit the number of witnesses to be called, if he/she believes the number requested is unreasonable or where witnesses will not provide evidence of fact that will not assist the Hearing Panel to reach its decision.

24. The Monitoring Officer's Report

24.1 The Monitoring Officer will prepare a report for the Determination Hearing that will:

24.1.1 append the Investigating Officer's report and any response from the subject complainant;

24.1.2 confirm the agreed facts;

24.1.3 confirm the disputed facts;

24.1.4 confirm the witnesses who will give evidence; and

24.1.5 the proposed procedure for the Hearing, including any arrangements for the whole or part of the meeting will be held in private.

24.2 The report will be published in accordance with the Council's Access to Information Rules and may, if finalised, be shared with the parties to the hearing on a confidential basis.

25. Hearing Procedure

25.1 The Hearing Panel shall adopt an inquisitorial approach at the hearing seeking information and clarifying facts and issues.

25.2 The Hearing Panel may seek legal advice from their advisor.

26. Order of Business

26.1 The initial order of business at the meeting shall be as follows:

26.1.1 confirmation of quorum;

26.1.2 declarations of interest;

26.1.3 introductions;

26.1.4 consideration as to whether to adjourn or to proceed in the absence of the subject councillor if they are not present; and

26.1.5 any procedural issues (including a request to hold all or part of the meeting in private).

27. Proceeding in the subject councillor's absence

27.1 If the subject councillor is not present at the start of the Hearing:

27.1.1 The Chair will ask the Monitoring Officer whether the subject councillor has been notified of the hearing and if indicated their intention not to attend the formal hearing and the reasons; and

27.1.2 The Hearing Panel will decide whether or not in all the circumstances it is necessary to adjourn the hearing to a later date or make a determination in the absence of the subject councillor.

28. Investigating Officer Presentation

28.1 The Investigating Officer will present their report and may introduce relevant evidence, including witness evidence.

28.2 The subject councillor or his/her representative may ask questions of the Investigating Officer or any witness on any matter relevant to any dispute of fact.

28.3 The Hearing Panel or Independent Person may ask questions of the investigating officer or any witness.

29. The subject councillor's case

29.1 The subject councillor will present their report and may introduce relevant evidence, including witness evidence.

29.2 The investigating officer may ask questions of the subject councillor or any witness on any matter relevant to any dispute of fact.

29.3 The Hearing Panel or Independent Person may ask questions of the subject councillor or any witness on any matter relevant to any dispute of fact.

30. Submissions

30.1 The investigating officer and then the subject councillor or his/her representative will have the opportunity to make a final submission. The Chair may determine the length of any submissions.

31. The decision

31.1 The Hearing Panel will consider their decision in private and may consult with the Independent Person. Decisions will be made on the balance of probabilities.

31.2 The Hearing Panel will first decide whether or not the subject councillor has breached the Code of Conduct in respect of each allegation made.

31.3 The Hearing Panel may ask further questions of the investigating officer or the subject councillor or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

31.4 The Hearing Panel may seek legal advice at any time. Such advice may be given in the presence of the Investigating Officer and the subject councillor if appropriate.

31.5 The Chair will advise the subject councillor and the investigating officer of the Hearing Panel's findings and whether the Code of Conduct has been breached.

31.6 If the Hearing Panel decide that the subject councillor has acted in breach of the code, the Hearing Panel will invite representations from the investigating officer and subject councillor as to what action, if any, it should take. The Hearing Panel may ask questions of the subject councillor and the investigating officer.

31.7 The Hearing Panel may, having heard any representations, will make one of the following decisions:

31.7.1 No further action needs to be taken; or

31.7.2 Impose a sanction on the subject councillor

31.8 The Chair will announce the Hearing Panel decision, the action, if any, it is proposed to take and the reasons for the decision. The Chair may state that full reasons for the decision will be provided later in writing

31.9 The Hearing Panel will consider any recommendations to the Council arising from the consideration of the allegation, e.g. a need for training.

31.10 The Hearing Panel will decide whether or not its findings shall be published.

32. Sanctions

32.1 Where the subject councillor is found in breach of the Code of Conduct, there is no statutory power to sanction the Member. The Panel may decide to recommend to the Monitoring Officer:

32.1.1 That no further action is necessary

32.1.2 To impose one or more of the following sanctions (or any other lawful sanction as advised by the Monitoring Officer):

a. Censure or reprimand the member

b. Publish its findings in respect of the councillor's conduct

c. Report its findings to Council for information

d. Recommend to the councillor's group leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council

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

f. Recommend to Council that the councillor be replaced as Executive Leader

g. Instruct the Monitoring Officer to arrange training for the member

h. Remove the councillor from all outside appointments to which he/she has been appointed or nominated by the authority

i. Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or

j. 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

33. Appeal

33.1 There is no right of appeal against the Hearing Panel decision.

34. Notice of Findings

34.1 The Monitoring Officer will draft the Hearing Panel's decision in writing including reasons for the Chair's approval.

34.2 The approved written decision will be sent to the subject councillor, the independent person, the complainant, the investigating officer and any other authority concerned.

34.3 Where the Hearing Panel decides that its findings shall be published, the Monitoring Officer shall arrange for a summary of the findings to be published in such manner as the Hearing Panel shall determine.

34.3.1 Where the Hearing Panel determines there was no breach of the Code of Conduct, the notice shall:

a. state the Hearing Panel finds the councillor did not fail to comply with the Code of Conduct and shall give its reasons for reaching that finding; and

34.3.2 Where the Hearing Panel determines the councillor failed to comply with the Code of Code but no action is required, the notice shall:

a. state the Hearing Panel finds the councillor failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;

b. specify the details of the failure; and

c. give reasons for the findings.

34.3.3 Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:

a. state the Hearing Panel found the councillor failed to comply with the Code of Conduct;

b. specify the details of the failure;

c. give reasons for the findings; and

d. specify the sanction imposed.

35. Governance

35.1 The Panel Hearings are not subject to the Council's Procedure Rules as they apply to Committees or Working Groups save as required by law or as set out below.

35.2 The Council's Access to Information Rules will apply to Panel Hearings and so will normally be held in public.

35.3 The Panel has power to postpone the hearing and / or adjourn a part heard hearing to a later if, in either case, it considers this is necessary to allow it to hold a fair hearing but taking into account the need to determine all complaints in a prompt manner.

35.4 The Panel may determine the length of the hearing and any individual stages – for example, the length of final submissions – taking into account the nature and complexity of the complaint and evidence and ensuring that both parties have a reasonable opportunity to present their case. The Panel will inform the parties of any time limits at the start of the meeting.

35.5 The Panel will take advice from the Monitoring Officer or any legal advisor appointed by the Monitoring Officer to advise the Panel in her/his absence at any time during the hearing or while they are considering the outcome.

35.6 Decisions will be made by simple majority and the standard of proof to be applied is the balance of probabilities in any findings against the member. Abstentions are not permitted. The Independent Chair is not able to vote.