

West Yorkshire Combined Authority Procedure for considering complaints alleging a failure to comply with the Members' Code of Conduct

Introduction

1. The Members' Code of Conduct applies to members and voting co-opted members¹ when they are acting in that capacity.

Submitting a Complaint

2. A complainant alleging a failure to comply with the Code should submit their complaint in writing to the **Monitoring Officer** for initial assessment².
3. The complaint must set out:
 - a. **who** was involved,
 - b. the alleged **misconduct**,
 - c. **when** and **where** it occurred, and
 - d. how the complainant wants the complaint to be **resolved**.
4. A complainant should complete a **complaint form**, but this is not required if the complainant provides the details required in writing.
5. If a complainant does not complete a form and does not provide the required details in writing, the Monitoring Officer will ask them to re-submit the complaint by completing a form.

Stage 1 - Initial Assessment by the Monitoring Officer

¹ and any substitute. Any reference in this procedure to a "member" should be construed as being a reference to any member to whom the Code applies.

² Where any potential conflict of interest arises from the involvement of the Monitoring Officer, the Combined Authority's Managing Director may ask a Monitoring Officer from another authority to deal with the complaint, including undertaking any investigation.

6. The Monitoring Officer will notify a member about any complaint against them³.
7. The Monitoring Officer will decide whether the complaint should be dealt with under Stage 2 of this procedure⁴.
8. Where a complaint may relate to a member in their capacity as a member of a constituent or non-constituent council, the Monitoring Officer will consult with the Monitoring Officer of the relevant council.

Complaints which will not be dealt with under Stage 2

9. No complaint will be pursued unless it is in the opinion of the Monitoring Officer, in the public interest to do so⁵. Except in exceptional circumstances, a complaint will not be dealt with under Stage 2 of this procedure if it is a complaint which:
 - a. is submitted **anonymously**,⁶
 - b. does **not identify the member**,
 - c. relates to a member's **personal or private life**,
 - d. alleges that a **criminal offence** has been committed,
 - e. is about **failing to respond** to a request from a constituent or other individual,
 - f. relates to alleged actions by **officers** of the Combined Authority, or a **service related issue**,
 - g. relates to a **decision** of the Combined Authority, a committee of the Combined Authority or an officer of the Combined Authority,

³ This is for information only, where the Monitoring Officer decides that the complaint should not be dealt with further under this procedure.

⁴ The Monitoring Officer should consult an Independent Person before deciding whether a complaint should be pursued by way of a formal investigation.

⁵ The public interest test will take into account the factors set out in a.to I. below, and other relevant considerations including:

- whether there is any evidence provided to support the complaint,
- whether it is possible to investigate the complaint, and
- whether an investigation is proportionate.

⁶ Complaints which contain a request for the complainant's identity to be withheld may be dealt with under this procedure, although the complainant's identity will only be withheld if, in the opinion of the Monitoring Officer, there are exceptional circumstances. If the Monitoring Officer does not consider that the complainant's identity should be withheld, the complainant will be given the opportunity to withdraw the complaint. Anonymous complaints which reveal potential fraud or corruption will be referred to the Head of Internal Audit for consideration under the Combined Authority's Whistle Blowing Policy.

- h. relates to a person who is **no longer a member** of the Combined Authority,
 - i. refers principally to an alleged incident **before the person became a member** of the Combined Authority,
 - j. refers principally to an alleged incident which happened so long **in the past** that there would be little benefit in taking action,
 - k. contains **trivial allegations**, or which appear to be simply **malicious, vexatious, politically motivated** or **tit-for-tat**⁷, or
 - l. concerns alleged behaviour which has **already** been **investigated** or subject to some form of action.
10. If a complaint alleges that a criminal offence has been committed,⁸ the Monitoring Officer may direct any such complaint to the West Yorkshire Police. Before making this decision, the Monitoring Officer may consult with:
- the Chair of the Combined Authority,
 - the Chair of the Governance and Audit Committee,
 - the Head of Paid Service,
 - the Chief Finance Officer, or
 - an Independent Person⁹.
11. The Monitoring Officer will refer any complaint about an **officer or service related issue** to the Head of Paid Service.
12. The Monitoring Officer will explain in writing to the complainant why the complaint will not be dealt with under Stage 2 of this procedure.
13. There is no appeal against any decision taken by the Monitoring Officer at this stage.

Stage 2 - Informal Resolution

14. If the Monitoring Officer decides that the complaint should be dealt with under Stage 2 of this procedure, the Monitoring Officer will refer the complaint to the member and any relevant Group Leader¹⁰, with a request that they seek to resolve the complaint. The Monitoring Officer will provide the member with:
- a reasonable timescale for this (usually **20 working days**), and

⁷ The Monitoring Officer should give an Independent Person the option to review and comment on allegations which the Monitoring Officer is minded to dismiss as falling within this provision.

⁸ Such as fraud, or an offence relating to failing to register or disclose a disclosable pecuniary interest under S34 Localism Act 2011.

⁹ Appointed under S28 Localism Act 2011.

¹⁰ If the complaint is about a Group Leader, the Monitoring Officer may refer the matter to the relevant Group Whip within the relevant council.

- the contact details for an Independent Person,
 - **clear guidance about this procedure, and their responsibilities within it.**
15. The Monitoring Officer will also write to the complainant to explain that the member has been asked to seek to resolve the complaint. The Monitoring Officer will provide the complainant with a copy of this procedure.
16. Informal resolution may include:
- a. an **explanation** by the member of the circumstances surrounding the complaint,
 - b. an **apology** from the member,
 - c. an agreement from the member to attend relevant **training** or to take part in a **mentoring** process,
 - d. an offer of **mediation or conciliation** between the member and the complainant, or
 - e. **any other action** capable of resolving the complaint.
17. The member may seek guidance from:
- a Group Leader or Group Whip, and/or
 - the Monitoring Officer.
18. The member may also ask an **Independent Person** for their view of the complaint and about an appropriate form of resolution. To avoid a conflict of interests arising, an Independent Person should not provide views to both a member and the Governance and Audit Committee on the same complaint.
19. The member may also ask the complainant what form of informal resolution they would find acceptable, particularly if the resolution they have requested in their complaint is not possible.
20. At the end of the 20 working day period, the Monitoring Officer in consultation with the Chair of the Governance and Audit Committee, will decide whether the complaint is resolved.
21. Where the complaint is **resolved**, the Monitoring Officer will confirm to the complainant and the member in writing that there will be **no further action** taken under this procedure.
22. Where the complaint is **not resolved**, the Monitoring Officer will refer the complaint to the **Governance and Audit Committee**. The Monitoring Officer will ask the complainant and the member to submit **written representations** about the complaint and any response to it.

23. There is no appeal against any decision of the Monitoring Officer under this stage.

Stage 3 – Governance and Audit Committee¹¹

24. The Monitoring Officer will prepare a report for the Governance and Audit Committee, which will include:
- a. a **copy of the complaint** and any **response** from the member,
 - b. **minutes** of any relevant meetings,
 - c. details of **measures taken** to address the complaint,
 - d. any further **written representations** from the complainant or the member, and
 - e. any **view** submitted in writing to the Committee by an Independent Person¹².
25. Where possible the Governance and Audit Committee will consider the report within **20 working days** of it being finalised by the Monitoring Officer.
26. The Monitoring Officer will invite the Group Leader or Group Whip (if relevant) to attend the meeting of the Governance and Audit Committee.¹³
27. Before reaching a decision on the complaint, the Committee must seek, and take account of, the view of **an Independent Person** in relation to the complaint¹⁴. The Monitoring Officer will invite that Independent Person to attend the meeting of the Governance and Audit Committee¹⁵. If the Independent Person cannot attend the meeting they must submit their view to the Governance and Audit Committee in writing.
28. The Monitoring Officer will attend the meeting to present their report.

¹¹ Or any sub-committee appointed by the Governance and Audit Committee which has authority to determine complaints under this procedure.

¹² See further below.

¹³ The Chair may invite them to speak at the meeting, but any Group Leader or Group Whip who attends in response to such an invitation cannot participate or vote as a member of the committee.

¹⁴ As required by S28 (7)(a) Localism Act 2011. The Monitoring Officer will ask the Independent Person to confirm that they are still independent and to notify the Monitoring Officer of any circumstances which might be perceived as presenting a potential conflict of interest on the part of the Independent Person. If the Independent Person is not still independent, or in the event of any conflict of interest arising, the Monitoring Officer will refer the matter to another Independent Person.

¹⁵ The Chair will ask the Independent Person to give their view at the meeting, but an Independent Person cannot participate or vote as a member of the committee.

29. The Governance and Audit Committee will consider the report of the Monitoring Officer and may also ask questions of anyone present at the meeting.
30. The Governance and Audit Committee must decide whether the member has failed to comply with the Code.
31. If the Governance and Audit Committee is unable to reach a decision on the complaint on the basis of the information before it, it may adjourn the meeting and request that the Monitoring Officer seeks any further information required. However, when doing so, the Committee should consider whether such information will be readily available to the Monitoring Officer. Any request for information must be provided to both the complainant and the member.
32. If the Governance and Audit Committee decides¹⁶ that the member did **not** fail to comply with the Code, the complaints process will conclude.
33. If the Governance and Audit Committee decides¹⁷ that the member **has failed** to comply with the Code, the Committee must go on to consider:
 - a. Whether to take action against the member; and
 - b. What **action** it should recommend to the Combined Authority.

Recommendations to the Combined Authority

34. Where the Governance and Audit Committee decides that the member has failed to comply with the Code, the Governance and Audit Committee may recommend:
 - a. a **formal letter to the member** from the Chair of the Governance and Audit Committee which will be copied to the Group Leader and/or the Group Whip,
 - b. **removal** by the Combined Authority of the member **from any committee or sub-committee** (if they are a member of it), either permanently or for a specified period of time,
 - c. a **formal letter** from the Chair of the Governance and Audit Committee **to the Leader of the appointing Council** copied to the relevant Monitoring Officer and Group Whip, or
 - d. **formal censure** by the Combined Authority.
35. Whether or not there has been a failure to comply with the Code, the Governance and Audit Committee may in any event make **general recommendations** to the Combined Authority with a view to promoting and maintaining high standards of conduct within the Combined Authority. Such

¹⁶ On the balance of probabilities, that is, it is more likely than not.

¹⁷ See footnote above.

recommendations may include changes to Combined Authority procedures and practices or training for members in general.

36. Within **5 working days** of the meeting the Chair of the Governance and Audit Committee will write to the complainant and the member explaining the decision of the Committee and setting out any recommendations made to the Combined Authority.
37. The Monitoring Officer will report all recommendations of the Governance and Audit Committee to the next available meeting of the Combined Authority.
38. The Monitoring Officer will publish a decision notice as soon as practicable on the Combined Authority's website, to include:
 - a brief statement of facts,
 - the provisions of the Code engaged by the allegations,
 - the view of the Independent Person¹⁸,
 - the reasoning of the Governance and Audit Committee, and
 - any sanction recommended or applied.
39. There is no right of appeal against a decision of the Governance and Audit Committee¹⁹.

¹⁸ Provided that legal indemnity has been provided for the Independent Person

¹⁹ The Local Government and Social Care Ombudsman may investigate the Combined Authority's decision-making process in undertaking a standards investigation or imposing a sanction on the grounds of maladministration where there is some evidence of injustice, for example, an unreasonable delay or evidence of a conflict of interest. Referrals to the Ombudsman may be made by a complainant or a subject Member. The Ombudsman may recommend a remedy to the Combined Authority, but this is not legally enforceable. A referral to the Ombudsman is not however, an appeal process against any finding of a breach of the Code of Conduct.