

# Part 5

## Section 5.2 – Procedure for considering complaints alleging a failure to comply with the Members’ Code of Conduct

### Introduction

1. The Members’ Code of Conduct applies to Combined Authority Members and voting Co-opted Members<sup>1</sup> 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 assessment<sup>2</sup>.
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

6. The Monitoring Officer will notify a member about any complaint against them<sup>3</sup>.

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<sup>1</sup> 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 including the Mayor and the Deputy Mayor for Policing and Crime (where the Deputy Mayor for Policing and Crime is a Combined Authority Member and the complaint is in relation to a PCC Function that has been referred by the Police and Crime Panel to the Monitoring Officer)

<sup>2</sup> 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.

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

7. The Monitoring Officer will decide whether the complaint should be dealt with under Stage 2 of this procedure<sup>4</sup>.
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 so. 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**,<sup>5</sup>
  - 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 or the Mayor, a committee of the Combined Authority or an officer of the Combined Authority,
  - h. relates to a person who is **no longer a member**,
  - i. refers principally to an alleged incident **before the person became a Member**,
  - j. refers principally to an alleged incident which happened so long **in the past** that there would be little benefit in taking action,

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

<sup>5</sup> 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.

- k. contains **trivial allegations**, or which appear to be simply **malicious, vexatious, politically motivated** or **tit-for-tat**<sup>6</sup>, 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,<sup>7</sup> the Monitoring Officer may direct any such complaint to the West Yorkshire Police<sup>8</sup>. Before making this decision, the Monitoring Officer may consult with:
- the Mayor,
  - the Chair of the Governance and Audit Committee,
  - the Head of Paid Service,
  - the Section 73 Chief Finance Officer, or
  - an Independent Person<sup>9</sup>.
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 Leader<sup>10</sup> or the Mayor<sup>11</sup> if the complaint relates to the Deputy Mayor for Policing and Crime, 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
  - the contact details for an Independent Person.

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<sup>6</sup> 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.

<sup>7</sup> Such as fraud, or an offence relating to failing to register or disclose a disclosable pecuniary interest under Section 34 of the Localism Act 2011.

<sup>8</sup> Serious complaints and conduct matters made against the Mayor and Deputy Mayor for Policing and Crime in relation to PCC Functions must be referred to the Director General of the Independent Office for Police Conduct in accordance with the Policing Protocol Order 2011 as modified by the West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021.

<sup>9</sup> Appointed under S28 Localism Act 2011.

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

<sup>11</sup> Any complaint relating to the Deputy Mayor for Policing and Crime will be referred to the Mayor.

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, and/or
  - the Mayor.
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 Committee<sup>12</sup>

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 Person<sup>13</sup>.
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, Group Whip or the Mayor (if relevant) to attend the meeting of the Governance and Audit Committee.<sup>14</sup>
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 complaint<sup>15</sup>. The Monitoring Officer will invite that Independent Person to attend the meeting of the Governance and Audit Committee<sup>16</sup>. 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.

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<sup>12</sup> Or any sub-committee appointed by the Governance and Audit Committee which has authority to determine complaints under this procedure.

<sup>13</sup> See further below.

<sup>14</sup> 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.

<sup>15</sup> As required by Section 28(7)(a) of the 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.

<sup>16</sup> 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 decides<sup>17</sup> that the member did **not** fail to comply with the Code, the complaints process will conclude.
33. If the Governance and Audit Committee decides<sup>18</sup> 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; and
  - c. What outcome it will report to the Police and Crime Panel (if relevant)

### **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 and/or the Mayor,
  - 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,
  - d. **formal censure** by the Combined Authority, or
  - e. **formal letter to the Mayor**, where the member either exercises delegated authority on behalf of the Mayor, or is the Deputy Mayor for Policing and Crime.

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<sup>17</sup> On the balance of probabilities, that is, it is more likely than not.

<sup>18</sup> See footnote above.

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 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 and to be reported to the Police and Crime Panel (if relevant).
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 Person,
  - 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 Committee.

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