

# 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.
2. The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “Subject Member”. The “Independent Person” means an Independent Person appointed under s.28(7) of the Localism Act 2011.
3. No Member or officer will participate in any stage of the procedure if he or she has, or may have, any personal conflict of interest in the matter.

### Submitting a Complaint

4. The complainant alleging a failure to comply with the Code should submit their complaint in writing either by post to the Monitoring Officer, West Yorkshire Combined Authority, Wellington House, 40-50 Wellington Street, Leeds LS1 2DE or email to [caroline.allen@westyorks-ca.gov.uk](mailto:caroline.allen@westyorks-ca.gov.uk) for initial assessment<sup>2</sup>.
5. The complaint must set out:
  - the complainant’s name, address and other contact details,
  - who the complainant is (member of the public/fellow councillor or officer)
  - who was involved,
  - the alleged misconduct,
  - when and where it occurred, and
  - how the complainant wants the complaint to be resolved.

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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.

6. The complainant may complete a complaint form, but this is not required if the complainant provides the details required in writing.
7. If the 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.
8. The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, may<sup>3</sup> write to the Subject Member with details of the allegation(s)<sup>4</sup>.
9. The Subject Member may, within 10 working days of receipt, make written representations to the Monitoring Officer which must be considered when deciding how the complaint should be dealt with. Representations after this time may be considered, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the Initial Assessment of the complaint.

### **Initial Assessment by the Monitoring Officer**

10. The Monitoring Officer will review the complaint and following consultation with the Independent Person take a decision (Initial Assessment) as to whether it passes the jurisdictional threshold (see paragraph 11 below) and, only if it does, will proceed to consider whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint. If the Monitoring Officer is of the opinion the Initial Assessment will take longer than 20 working days, they will notify the complainant and Subject Member of this as soon as is practicable
11. The jurisdictional or 'initial test' carried out by the Monitoring Officer will assess whether the complaint is:
  - against one or more named members of the Combined Authority;
  - the named member was in office at the time of the alleged conduct;
  - the complaint relates to matters where the member was acting as a member or representative of the Combined Authority, and it is not a private matter;
  - the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.
12. 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. In cases where an

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<sup>3</sup> The presumption will be that the Monitoring Officer will notify the Subject Member of any complaint against them, however, in the interest of preserving evidence, protecting the complainant from harassment, or other exceptional circumstances, the Monitoring Officer may decide not to notify the Subject Member

<sup>4</sup> subject to any representations from the complainant on confidentiality, which are accepted as valid by the Monitoring Officer

allegation could trigger the complaints process in more than one authority, the Monitoring Officer will seek to agree with the Monitoring Officer of the relevant council that one initial assessment is undertaken to avoid two separate processes being carried out.

**13.** No complaint will be pursued unless it is in the opinion of the Monitoring Officer, in the public interest to do so. In deciding what action is necessary the Monitoring Officer will consider the following non-exclusive factors in respect of the complaint:

- Where it is submitted anonymously,<sup>5</sup>
- does not identify the Subject Member,
- relates to a member's personal or private life,
- alleges that a criminal offence has been committed,
- is about failing to respond to a request from a constituent or other individual,
- relates to alleged actions by officers of the Combined Authority, or a service-related issue,
- relates to a decision of the Combined Authority or the Mayor, a committee of the Combined Authority or an officer of the Combined Authority,
- relates to a person who is no longer a Member,
- refers principally to an alleged incident before the person became a Member,
- refers principally to an alleged incident which happened so long in the past that there would be little benefit in taking action,
- contains trivial allegations, or which appear to be simply malicious, vexatious, politically motivated or tit-for-tat<sup>6</sup>, or
- concerns alleged behaviour which has already been investigated or subject to some form of action.

**14.** 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,

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<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.

<sup>6</sup> The Monitoring Officer should give the 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.

- the Chair of the Governance and Audit Committee,
  - the Head of Paid Service,
  - the Section 73 Chief Finance Officer, or
  - the Independent Person.
15. The Monitoring Officer will refer any complaint about an officer or service-related issue to the Head of Paid Service.
16. On conclusion of their Initial Assessment, the Monitoring Officer will make one of the following decisions about the complaint:
- no further action should be taken on the complaint;
  - the matter should be dealt with through a process of informal resolution in the first place or;
  - the matter should be referred for a formal investigation.
17. The Monitoring Officer will notify the complainant and Subject Member of the outcome of their decision in writing, as soon as is practicable. This will set out what further action is being taken (where appropriate).
18. Where the decision is made to take no further action, the Monitoring Officer will provide reasoning for that decision, including the views of the Independent Person.
19. There is no appeal against any decision taken by the Monitoring Officer at this stage.

## **Informal Resolution**

20. If the Monitoring Officer decides to seek to resolve the matter informally, they may do one or more of the following:
- ask the Subject Member to submit an apology in writing to the complainant;
  - convene a meeting between the Subject Member and the complainant in order to try to resolve the issue informally;
  - notify the Subject Member's group leader (where they are a member of a political group) and suggest that they may wish to take some internal group action<sup>9</sup>;
  - suggest that the Subject Member undergo relevant training;
  - other such action that the Monitoring Officer deems appropriate.
21. The Monitoring Officer will decide on a timeframe within which the informal resolution must be completed to an acceptable standard, and if within that

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<sup>9</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. Where the Subject Member is the Deputy Mayor for Policing and Crime (and a CA member) the Monitoring Officer may notify the Mayor to seek their support

timeframe the Monitoring Officer is satisfied with the outcome, they will notify the complainant and the Subject Member, and the matter is then closed.

22. If either the Subject Member or complainant refuses to engage with the informal resolution proposed by the Monitoring Officer, or do not engage within the set timeframe, or the Monitoring Officer deems the action taken by the Subject Member insufficient or the informal resolution does not take place in a timely way the Monitoring Officer will decide, in consultation with the Independent Person, whether the case should be closed, whether an investigation is necessary or whether some other action should be taken.
23. At the end of the informal resolution, the Monitoring Officer will report any outcomes to the Governance and Audit Committee
24. There is no appeal against any decision of the Monitoring Officer under this stage.

## **Investigation**

25. Where a matter is referred for investigation, the Monitoring Officer will normally appoint an Investigating Officer<sup>10</sup>. The Investigating Officer may be a Combined Authority officer, an officer from a Constituent Council, Non-Constituent Council or an external investigator.
26. The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to the Monitoring Officer’s decision on confidentiality.
27. The investigation must normally be completed within 6 months of the Monitoring Officer’s decision to refer the complaint for investigation. If an extension of time is needed the Monitoring Officer must agree that extension with the Chair of the Governance & Audit Committee and the Independent Person and notify the Subject Member and complainant of any extension.
28. The Subject Member is notified who the relevant Independent Person is for the case and may seek their views at any stage during the investigation. The complainant is also notified who the Independent Person is and may make a request to the Monitoring Officer to seek the views of the Independent Person. However, such a request will only be granted at the discretion of the Independent Person in consultation with the Monitoring Officer.
29. At any time while the investigation is underway the Monitoring Officer, the Subject Member or the complainant may ask for an informal resolution. The Monitoring Officer will consult with the relevant Independent Person to agree this.

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<sup>10</sup> The Monitoring Officer reserves the right to undertake the investigation personally.

30. At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Monitoring Officer and the Independent Person to ensure it meets the scope of the complaint. Once the Monitoring Officer is satisfied, the draft report will be sent to the complainant and to the Subject Member for comments to be provided within a set timeframe. The Investigating Officer will take such comments into account before issuing the final report to the Monitoring Officer.
31. There may be exceptional circumstances when the Monitoring Officer decides that a case should be closed before a draft or final report has been produced due to a significant change in circumstances. This may include, for example that the Subject Member is seriously ill or is no longer a member or other action has led to the matter being resolved. In such cases the Monitoring Officer should consult the Independent Person before deciding that the file be closed.
32. On completion of the investigation and on considering the Investigating Officer's report, the Monitoring Officer will make one of the following decisions about the complaint in consultation with the Independent Person:
  - to take no further action;
  - to seek to resolve the matter informally; or
  - to refer the matter to the Governance and Audit Committee for determination.
33. The Monitoring Officer will issue the final report to the Subject Member and the Independent Person. A copy may be made available to the complainant if the Monitoring Officer deems it appropriate.
34. Where the Monitoring Officer has decided to take no further action or to seek to resolve the matter informally, they will report this outcome to the Governance and Audit Committee.
35. There is no appeal against any decision of the Monitoring Officer under this stage.
36. Where the matter is referred for determination, the Governance & Audit Committee will convene within 3 months. The Monitoring officer will notify the Subject Member and complainant of the date.

## **Governance and Audit Committee<sup>11</sup>**

37. The Monitoring Officer will prepare a report for the Governance and Audit Committee, which will include:
  - a copy of the complaint and any response from the Subject Member,

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

- minutes of any relevant meetings,
  - details of measures taken to address the complaint,
  - any further written representations from the complainant or the Subject Member, and
  - any view submitted in writing to the Committee by the Independent Person<sup>12</sup>.
  - A copy of the Investigating Officer's final report
- 38.** Before reaching a decision on the complaint, the Committee must seek, and take account of, the view of the Independent Person in relation to the complaint<sup>13</sup>. The Monitoring Officer will invite that Independent Person to attend the meeting of the Governance and Audit Committee<sup>14</sup>. If the Independent Person cannot attend the meeting, they must submit their view to the Governance and Audit Committee in writing.
- 39.** The Monitoring Officer will attend the meeting to present their report.
- 40.** The Investigating Officer will attend the meeting to answer any questions arising from their final report and investigation.
- 41.** The Governance and Audit Committee will consider the report of the Monitoring Officer and may also ask questions of anyone present at the meeting.
- 42.** The Governance and Audit Committee must decide whether the Subject Member has failed to comply with the Code.
- 43.** 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 Subject Member.
- 44.** If the Governance and Audit Committee decides that there has been no breach of the Code, the complaints process will conclude.
- 45.** If the Governance and Audit Committee decides that there has been a breach, the Committee must go on to consider:

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<sup>12</sup> See further below.

<sup>13</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>14</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.

- Whether to take action against the Subject Member; and
  - What **action** it should recommend to the Combined Authority; and
  - What outcome it will report to the Police and Crime Panel (if relevant)
46. Where the Governance and Audit Committee decides that the Subject Member has failed to comply with the Code, the Governance and Audit Committee may action or recommend as appropriate:
- a formal letter to the Subject 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,
  - removal by the Combined Authority of the Subject Member from any committee or sub-committee (if they are a member of it), either permanently or for a specified period of time,
  - 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,
  - formal censure by the Combined Authority, or
  - 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.
47. 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.
48. Within 5 working days of the meeting the Chair of the Governance and Audit Committee will write to the complainant and the Subject Member explaining the decision of the Committee and setting out any actions or recommendations made to the Combined Authority and to be reported to the Police and Crime Panel (if relevant).
49. The Monitoring Officer will report all recommendations of the Governance and Audit Committee to the next available meeting of the Combined Authority.
50. 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.
51. There is no right of appeal against a decision of the Governance and Audit Committee.

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