

Appendix A

Arrangements for dealing with Member complaints

1. Receipt of Complaint

- 1.1. The Clerk will normally acknowledge receipt of the complaint within 5 working days of receiving it and refer it to the Monitoring Officer. The Monitoring Officer will write to the Member concerned (Subject Member) with details of the allegations (subject to any representations from the Complainant on withholding their identity which are accepted as valid by the Monitoring Officer).
- 1.2. The Subject Member may, within 10 working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the Complaint Initial Assessment.

2. Complaint Assessment

- 2.1. The Monitoring Officer will review the complaint and, after consultation with the Independent Person, take a decision (Complaint Initial Assessment) as to whether it merits further consideration or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.
- 2.2. A complaint will be rejected if:
 - a) It is not against one or more named Members of the Authority;
 - b) The Subject Member was not in office at the time of the alleged conduct/or a Code of Conduct was not in force at the time;
 - c) The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.
- 2.3. If appropriate, the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be investigated, dealt with informally, or rejected:
 - a) Whether a substantially similar allegation has previously been made by the Complainant or the complaint has been subject of an investigation by another Regulatory Authority.
 - b) Whether the complaint is about something that happened over 6 months ago as those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now.
 - c) Whether the allegation is anonymous.

- d) Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action
- e) The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations; or ii. whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation.
- f) Whether the complaint appears to be malicious, vexatious, politically motivated or 'tit-for-tat'.
- g) Whether the complaint suggests that there is a wider problem throughout the Authority.
- h) Whether it is apparent that the Subject Member has apologised for making an error and the matter would not warrant a more serious sanction.
- i) Whether training or conciliation would be the appropriate response.

3. Identity of the Complainant

- 3.1. If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Complaint Initial Assessment stage.
- 3.2. As a matter of fairness and natural justice, the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or their employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
- 3.3. If the Monitoring Officer decides to refuse a request by a Complainant to withhold their identity, the Complainant will be offered the option to withdraw the complaint, rather than proceed with their identity being disclosed.

4. Additional Information

- 4.1. The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member or otherwise.
- 4.2. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such Informal Resolution may involve the Subject Member accepting that their conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the Authority (in appropriate cases) make a reasonable offer of informal resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits further consideration.

5. Further Consideration

- 5.1. In the event that it is concluded that the complaint merits further consideration, the matter will be dealt with in one of three ways:
 - a. Informal Resolution
 - b. Summary Hearing
 - c. Formal Investigation
- 5.2. The decision as to how to proceed will be made by the Monitoring Officer following consultation with the Independent Person and will be final.

6. Informal Resolution

- 6.1. If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, the Independent Person and the Complainant will be consulted to seek to agree a fair resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will take no further action. The target timescale for this will be 10 working days of the Complaint Initial Assessment.
- 6.2. If the Complainant or the Subject Member refuses Informal Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Summary Hearing or a Formal Investigation without further reference to the Complainant or the Subject Member. The target timescale for this will be 15 working days from the refusal to cooperate.
- 6.3. Engagement in the Informal Resolution process will usually prevent the complaint from progressing to a Summary Hearing or an investigation.

7. Summary Hearing

- 7.1. Where, in the opinion of the Monitoring Officer, Informal Resolution is not appropriate or the Complainant and/or Subject Member refuse to co-operate, the Monitoring Officer will report on the complaint to a panel made up from the Appointments and Disputes Committee which may then conduct a Summary Hearing by the Panel before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member. Alternatively, if the Panel decides that the complaint is not suitable for a Summary Hearing it may direct that a Formal Investigation takes place.
- 7.2. Under this procedure, the complaint and the comments made by the Subject Member will be collated into a report for the hearing. The Complainant and the Subject Member will be informed of the hearing date and the complaint, together with supporting evidence/witnesses and the Subject Member's comments and supporting evidence/ witnesses will be presented to the hearing. The only witnesses permitted are people referred to in the evidence, and not, for example, character witnesses.

- 7.3. The Independent Person will be invited to attend the hearing.
- 7.4. The Panel will make a decision based on the evidence presented by the two parties about whether there has been a breach of the Code, and if so, what sanctions they may impose; and the views of the Independent Person.
- 7.5. This hearing should take place within 20 working days of the Complaint Initial Assessment.

8. Formal Investigation

- 8.1. Where the Monitoring Officer (following consultation with the Independent Person) considers that a complaint merits formal investigation, an Investigating Officer will be appointed. The Investigating Officer may be an Officer of the Authority or an external investigator.
- 8.2. The role of the Investigating Officer is to determine whether or not the Subject Member has a case to answer i.e. whether there is sufficient evidence to indicate that a potential breach of the Code may have occurred.
- 8.3. The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of resources and shall be interpreted in line with these principles.
- 8.4. At the end of their investigation, the Investigating Officer will send a copy of their draft report to the Complainant and the Subject Member for any comments and will take these into account before issuing their final report to the Monitoring Officer.
- 8.5. The target time for completion of the investigation is 12 weeks from the date of appointment.

9. Investigating Officer Finding of No Case to Answer

- 9.1. The Monitoring Officer (following consultation with the Independent Person) will review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is satisfactory, will within 10 working days make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.
- 9.2. The Monitoring Officer will write to the Complainant and the Subject Member with a copy of the Confirmation Decision and the Investigating Officer's final report. The target timescale will be 10 working days from receipt of the report.
- 9.3. If the Monitoring Officer is not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion. This should be done within 5 working days of receipt of the report.

10. Investigating Officer finding of A Case to Answer

- 10.1 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for Hearing before the Panel or, after consulting the Independent Person, seek Informal Resolution. The target timescale is 10 working days from receipt of the report. Any Hearing shall take place as soon as reasonably practical.

11. Panel Hearing Procedure

- 11.1. The Hearing will be conducted fairly and in accordance with the rules of natural justice.
- 11.2. Prior to the Hearing the Monitoring Officer will give directions as to the presentation of evidence by the Independent Investigator and the Subject Member and the calling of any witnesses.
- 11.3. The Investigating Officer, the Subject Member and Independent Person shall be invited to attend the hearing.
- 11.4. At the hearing the procedure will be as follows (subject to any directions given under 11.2 above):
- a. The Independent Investigator will present their report to the Panel and call any witnesses in support.
 - b. The Subject Member may ask the witnesses any questions.
 - c. The Panel may ask the witnesses any questions.
 - d. The Independent Investigator may clarify any issues with witnesses arising from the questions asked.
 - e. The Subject Member will respond to the report and call any witnesses in support
 - f. The Independent Investigator may ask the witnesses any questions.
 - g. The Panel may ask the witnesses any questions.
 - h. The Subject Member may clarify any issues with witnesses arising from the questions asked.
 - i. The Independent Person may provide their views to the Panel.
 - j. The Investigating Officer may make closing arguments.
 - k. The Subject Member may make closing arguments.
 - l. The Panel will retire with the Monitoring Officer (or their Deputy) to consider the case making findings of fact and come to a decision on whether the Code of Conduct has been breached.
 - m. The Panel will announce their decision and give an indication of the sanction(s) it believes appropriate in the circumstances.
 - n. If a breach of the code is found the Panel shall invite representations on the proposed sanction(s) to be imposed as set out in 12 below.
 - o. The Panel will consider those representations and announce its final decision on sanction(s).

12. Action the Panel may take where a Member has failed to comply with the Code of Conduct

- 12.1 Where the Panel finds that a Member has failed to comply with the Code of Conduct, the Authority has delegated to the Panel 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 Panel may decide to do one or more of the following:
- a. Publish its findings in respect of the Subject Member's conduct.
 - b. Report its findings to the Authority for information.
 - c. Recommend to the Authority that the Subject Member be censured.
 - d. Recommend to the Authority that the appointing Unitary Authority replaces the Subject Member on the Authority.
 - e. Recommend to the Subject Member's Group Leader (or in the case of ungrouped Members, recommend to the Authority) that they be removed from any or all Committees or Sub-Committees of the Authority.
 - f. Instruct the Monitoring Officer to arrange training for the Member.
 - g. Withdraw facilities provided to the Subject Member by the Authority.
 - h. Exclude the Subject Member from the Authority's premises, with the exception of meeting rooms as necessary for attending Authority, Committee and other approved meetings.
 - i. Require an apology in suitable terms to the Complainant/the Authority.

13. Confidentiality

- 13.1 All complaints received shall be dealt with on a confidential basis and all reports prepared for the Panel shall be regarded as containing Exempt Information under the Local Government Act 1972.
- 13.2 At the end of the process following a Summary Hearing or a Hearing following a formal investigation the Panel shall determine what (if any) information received shall be published and in what format subject to any views expressed by the Complainant and the Subject Member and the requirements of the General Data Protection Regulation and the Data Protection Act 2018.

14. Revision of these arrangements

- 14.1 The Panel may by resolution agree to amend these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter (following consultation with the Monitoring officer and the Independent Person).

15. Appeals

- 15.1 There is no right of appeal against a decision of the Monitoring Officer or of the Panel although redress to judicial review is available