

Process for Managing Standards Complaints under the Localism Act 2011

1. Introduction and Summary

- 1.1. This procedure applies in respect of alleged failures by Members to comply with the Authority's Code of Conduct for Members.
- 1.2. Formal written complaints are to be sent to the Monitoring Officer, who may consult with the Chairman of Audit & Standards Committee and/or an appointed Independent Person, and who will consider them and decide to:
 - take no action on the allegation or
 - refer it to an Investigator for investigation or
 - take some other action short of an investigation.

1.3. Interpretation

"The Committee" refers to the Authority's Audit & Standards Committee.

"Independent Person" shall have the meaning assigned to it by section 28 of the Localism Act 2011 as appointed by the Monitoring Officer in respect of a particular case.

"Investigator" means the person appointed by the Monitoring Officer to undertake an investigation (which may include the Monitoring Officer) and his or her representative.

"The Matter" is the subject matter of the Investigator's report.

"Member" means the member who is the subject of the allegation being considered, and includes his or her representative unless otherwise stated or implied.

2. ASSESSMENT AND INVESTIGATION PROCEDURE

Publication of address to which written allegations are to be sent

- 2.1. The Monitoring Officer shall publish details on the Authority's website of the address to which written allegations that a Member has failed to comply with the Code of Conduct shall be sent and take reasonable steps to keep the information up to date.

Filtering action by Monitoring Officer on receipt of written allegation

- 2.2. Upon receipt by him/her of a written allegation with sufficient detail (including name and address of the complainant) that a Member has failed to comply with the Code of Conduct, the Monitoring Officer may at his/her discretion consult with the Chairman of Audit & Standards Committee and/or an appointed Independent Person. The Monitoring Officer shall generally inform the Member concerned and in any event shall determine:-
 - 2.2.1. to take no further action on it, and give written notice of that decision and the reasons for it to the complainant and the member;
 - 2.2.2. to refer the allegation for formal investigation; or
 - 2.2.3. take some other action short of formal investigation, which may include providing advice and guidance, and/or arranging training, mediation or conciliation.

- 2.3. The Monitoring Officer shall notify the outcome of this filtering decision to the complainant, Member and Chairman of the Committee unless the exception in paragraph 2.5.2 (below) applies.

Appointment of Investigator

- 2.4. Upon a determination by the Monitoring Officer to refer the allegation for investigation, he/she will appoint an Investigator who will investigate the allegation and report to the Committee. The Investigator may be an officer of the Authority, an officer of another local authority, or an external person.

Notification of appointment of Investigator

- 2.5. Except where he/she considers that it would be contrary to the public interest or would prejudice the ability of the Investigator to investigate the allegation, the Monitoring Officer will notify in writing the Member against whom the allegation is made, and the Chairman of the Committee:
- 2.5.1. that the allegation has been referred by him/her for investigation and determination by the Committee;
 - 2.5.2. the identity of the person making the allegation (unless the Monitoring Officer agrees that identification of the complainant might prejudice the investigation, put the complainant at risk, or anonymity is in the public interest);
 - 2.5.3. the conduct which is the subject of the allegation;
 - 2.5.4. the section(s) of the Code of Conduct which appear to him to be relevant to the allegation;
 - 2.5.5. the procedure which will be followed in respect of the allegation, and
 - 2.5.6. the identity of the Investigator.
- 2.6. At the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2.5.1 and 2.5.3 to 2.5.6 above.

Procedure for Investigation

- 2.7. Unless otherwise directed by the Monitoring Officer, the Investigator shall determine the procedure to be followed for the investigation of the allegation. The Member or the Monitoring Officer may seek the views of an Independent Person at any point in the process.

The Draft Report

- 2.8. When the Investigator is satisfied that he/she has sufficient information, or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a draft report setting out:
- 2.8.1. the details of the allegation;
 - 2.8.2. the relevant provisions of statute and of the Code of Conduct;
 - 2.8.3. the Member's initial response to notification of the allegation (if any);
 - 2.8.4. the relevant information, advice and explanations which he/she has obtained in the course of the investigation;
 - 2.8.5. a list of any documents relevant to the matter;
 - 2.8.6. a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;

- 2.8.7. a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
 - 2.8.8. a statement of his/her draft findings of fact;
 - 2.8.9. his/her conclusion as to whether the Member has or has not failed to comply with the Code of Conduct, and
 - 2.8.10. any recommendations the Investigator is minded to make to any authority concerned for reviewing or reconsidering any decision which is the subject of failure to comply with the Code of Conduct, for rectifying any deficiency in the Authority's decision-making procedures or for preventing or deterring any failure to comply with the Code of Conduct or to remedy the position of any person who may have suffered detriment or injustice as a result of the failure.
- 2.9. The draft report should also state that the report does not necessarily represent the Investigator's final finding, and that the Investigator will present a final report to the Committee once he/she has considered any comments received on the draft report.
- 2.10. The Investigator shall then send a copy of his/her draft report in confidence to the Member and the person making the allegation, and request that they send any comments to him/her within 14 days.
- 2.11. The Investigator 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 to him/her within 14 days.

The Final Report

- 2.12. After the expiry of the relevant periods set out in paragraph 2.10 (or such extended period as the Investigator may allow), the Investigator shall reconsider and amend as appropriate his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his final report. The final report should state that the report represents the Investigator's final findings to be presented to the Committee, and should have appended to it copies of any relevant documents which the Investigator has relied on in reaching his/her conclusions, such as background documents or notes of telephone conversations, letters, and notes of interviews with witnesses;
- 2.13. The Monitoring Officer shall then send a copy of the final report to the Member, advising that:
- 2.13.1. where the final report concludes that there has not been a failure to comply with the Code of Conduct, he/she will refer the report to the Committee for consideration; or
 - 2.13.2. where the final report concludes that there has been a failure by the Member to comply with the Code of Conduct, he/she will refer the report to a Hearings Sub-Committee for a formal hearing.
- 2.14. The Monitoring Officer shall ensure that, when the agenda for the Committee is sent out to members of the Committee, including the final report, the agenda and the report are also sent to the person who made the complaint, together with a note explaining the circumstances under which the Committee may conduct a hearing into the allegations, and the procedure for these events.

Consideration meetings

- 2.15. Where the Committee considers the report in accordance with paragraph 2.13.1 it shall (having first consulted the Independent Person or, in the event that more than one Independent Person has been appointed by the Authority, an Independent Person) make one of the following findings:
 - 2.15.1. that it accepts the Investigator's finding that the Member has not failed to comply with the Code of Conduct as set out in the allegation; or
 - 2.15.2. that the matter should be considered at a Hearings Sub-Committee conducted in accordance with this procedure.
- 2.16. Where the Committee finds as set out in paragraph 2.15.1 above (no failure to comply with the Code of Conduct) the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based, together with a copy of the Investigator's report to the Member and the complainant.

Full hearings

- 2.17. Where the Committee finds as set out in paragraph 2.15.2 above (that the matter should be considered at a Hearings Sub-Committee) or the Investigator's report contains a finding as set out in 2.13.2 that the Member did fail to comply with the Code of Conduct, the Monitoring Officer shall arrange for the Matter to be considered at such a hearing in accordance with this procedure.

3. HEARINGS PROCEDURE

Date of Hearing

- 3.1. The proper officer will arrange a convenient time and date for the Hearings Sub-Committee to meet and determine the Matter. Apart from exceptionally complex cases, it is anticipated that a hearing will be dealt with on a single day, or if necessary on consecutive days. Wherever possible, the hearing should take place within 3 months of receipt of the Investigation report by the Monitoring Officer.
- 3.2. At least five clear working days before the hearing, the Member and Investigator shall be notified of the date, time and place of meeting.
- 3.3. At least five clear working days before the hearing, the Monitoring Officer will send to each member of the Hearings Sub-Committee, the Member, and the Investigator:
 - 3.3.1. the agenda for the meeting set up to determine the Matter; and
 - 3.3.2. a copy of the Investigation report
- 3.4. The documentation sent out must be held by the recipients as confidential information until such time (if any) as the report is made available to the press and public or the Committee agrees that the press and public should not be excluded from the meeting at which the allegations are heard.

Representation

- 3.5. The Member may be represented or accompanied during the hearing by a solicitor or barrister or (as long as the Hearings Sub-Committee or its Chairman has given prior consent) by another person.

- 3.6. The Member may make representations (orally or in writing) or present evidence in accordance with this procedure either personally or through his or her representative. The Hearings Sub-Committee will not normally permit the Member and his or her representative to both make representations, although the Member may present evidence him or herself whether or not represented.

Legal Advice

- 3.7. The Hearings Sub-Committee may take legal or procedural advice at any time during the hearing or its deliberations. The substance of any such advice should generally be shared with the Member and/or his/her representative and the Investigator if they are present.

Introductions at the hearing

- 3.8. The Chairman will introduce each of the members of the Hearings Sub-Committee, and shall also introduce any of the officers present. The Member, his or her representative, and the Investigator shall introduce themselves.

Procedural Issues

3.9. Disclosure of interests

- 3.9.1. The Chairman shall ask members of the Hearings Sub-Committee to disclose the existence and nature of any interests which they have in the Matter which they are required to disclose under the terms of the Code of Conduct.

3.10. Procedure

- 3.10.1. The Chairman will explain the procedure which the Hearings Sub-Committee intends to follow and resolve any issues or disagreements over how the hearing will be run.

3.11. Quorum

- 3.11.1. At least three members of the Hearings Sub-Committee must be present for the duration of the hearing, including one co-opted independent, non-councillor member.
- 3.11.2. The Chairman will satisfy him/herself that the Sub-Committee is quorate before proceeding.

3.12. Absences

- 3.12.1. If the Member is not present, then the Hearings Sub-Committee shall consider whether or not to proceed. If the Sub-Committee is not satisfied that there is sufficient reason for the Member's absence, it may either proceed to consider the Matter and make a determination in the absence of the Member, or adjourn the hearing to another time or date. If the Sub-Committee is satisfied there is sufficient reason, it shall adjourn the hearing to another date unless the Member has indicated that the hearing should proceed in his or her absence.
- 3.12.2. Should the Member's representative not be present, then the Sub-Committee may proceed or adjourn as it considers appropriate in the circumstances of the case.
- 3.12.3. The Hearings Sub-Committee should ensure wherever possible that the hearing is held within three months from the date when the Monitoring Officer received the Investigation report from the Investigator.

3.13. Exclusion of Press and Public

- 3.13.1. Hearings should normally be held in public unless there are proper reasons to exclude the press and public from all or any part of the hearing in accordance with the Authority's Access to Information Rules. The Chairman will ask the parties present for their views and take any appropriate advice and the Hearings Sub-Committee will then decide whether to exclude the press and public from all or any part of the hearing. The Sub-Committee may reconsider this issue at any point in the hearing.

Hearing the Matter

- 3.14. The Hearings Sub-Committee will consider whether the Member failed to comply with the Code of Conduct as set out in the Investigator's report. The Sub-Committee will adopt as far as reasonably practicable an inquisitorial approach to the hearing rather than permit an adversarial or hostile approach to develop.

Presenting the Investigator's Report

- 3.15. The Investigator, if present, will be asked to present his or her Investigation report, paying particular regard to any points in dispute identified by the Member and why the Investigator considered that the Member had failed to comply with the Code of Conduct.
- 3.16. Should the Investigator not be present, the Hearings Sub-Committee will consider whether it is appropriate in all circumstances to proceed with the hearing.
- 3.17. The Investigator may, with the consent of the Chairman, call such witnesses as he/she considers necessary.
- 3.18. No cross-examination of the Investigator or any witness shall be permitted, but at the conclusion of the Investigator's presentation of his or her report and at the conclusion of the evidence of any witness, the Chairman may permit the Member or his or her representative to ask appropriate questions through the Chairman in order to query evidence or conclusions.

The Member's Reply

- 3.19. The Member (or his or her representative) will then be invited to make representations on the Matter.
- 3.20. The Member may, with the consent of the Chairman, call such witnesses as he/she considers necessary.
- 3.21. No cross-examination of the Member or witness shall be permitted, but at the conclusion of the Member's presentation of his or her representations and at the conclusion of the evidence of any witness, the Chairman may permit the Investigator to ask appropriate questions through the Chairman in order to query evidence or conclusions.

Evidence

- 3.22. The Hearings Sub-Committee retains the discretion not to hear any evidence if it is not satisfied that the likely evidence will assist the Sub-Committee's determination of the Matter.
- 3.23. The Hearings Sub-Committee may at any time seek or accept additional evidence or comment from the Investigator, the Member, or any other person. The Sub-Committee may at any time arrange for the attendance of such witnesses as it considers appropriate and if necessary may adjourn the hearing to allow this to happen. Members of the Sub-Committee may ask questions of any persons present

at any point in the proceedings. The Sub-Committee is entitled to rely upon hearsay evidence but will give such weight to it as is appropriate.

Determination of the Matter

- 3.24. At the conclusion of the Member's reply and any questions, the Chairman may ask the Investigator and/or Member if they wish to make any brief concluding remarks. The Chairman will check that members of the Hearings Sub-Committee are satisfied that they have sufficient information to enable them to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigator's report. If not, then each member of the Sub-Committee may ask such questions to gather sufficient information.
- 3.25. Unless the Member has accepted there was a failure to comply with the Code of Conduct as set out in the Investigator's report, the Hearings Sub-Committee shall retire to determine in private whether or not there was such a failure on the balance of probabilities. The Sub-Committee will seek the views of the Independent Person before making its determination.

Decision

- 3.26. Having made its determination, the Hearings Sub-Committee shall return and the Chairman will state the Sub-Committee's principal findings on matters in dispute and its decision on whether there has been a failure to comply with the Code.

No failure to comply with the Code of Conduct

- 3.27. If the Hearings Sub-Committee decides that the Member has not failed to comply with the Code of Conduct as set out in the Investigation Report, the hearing of the Matter is concluded. The Sub-Committee may then proceed to consider whether it should make any recommendations to the Authority or members with a view to promoting high standards of conduct.

Failure to comply with the Code of Conduct

- 3.28. If the Hearings Sub-Committee decides that the Member has failed to comply with the Code of Conduct, the Sub-Committee must decide either that:
 - 3.28.1. no action needs to be taken in respect of the Matter; or
 - 3.28.2. a sanction be imposed.
- 3.29. Before deciding whether to impose a sanction, the Hearings Sub-Committee will consider any representations from firstly the Investigator and then the Member, together with any officer advice and the views of the Independent Person as to:
 - 3.29.1. whether or not the Sub-Committee should impose any sanction; and
 - 3.29.2. what form any sanction should take.
- 3.30. Members of the Hearings Sub-Committee may ask questions of the Investigator and Member or any other relevant person and take any necessary advice to make sure they have sufficient information in order to make an informed decision.
- 3.31. The Hearings Sub-Committee shall then retire to determine in private whether to impose one or more sanctions and, if so, what and when it will take effect. It may also consider whether it should make any recommendations to the Authority or members with a view to promoting high standards of conduct.

- 3.32. The Hearings Sub-Committee will then return, and, as far as is practicable, the Chairman will announce the Sub-Committee's decision to the parties on the day and provide a short written confirmation. The Sub-Committee will issue a formal written decision together with supporting reasons as soon as practicable after the end of the hearing and in any event within three working days.

4. APPEALS

- 4.1. If the Hearings Sub-Committee finds the member has breached the Code, the Member may appeal against that finding by serving notice upon the Monitoring Officer within 14 days of the decision, giving reasons for the appeal.
- 4.2. An Appeals Sub-Committee will then be convened to hear the appeal by way of review of the decision not by way of re-hearing and the Member and Monitoring Officer and any Investigating Officer shall be entitled to attend such appeal hearing and make representations. The views of an Independent Person will be sought before the appeals sub-committee determines the appeal. The appeals sub-committee may set it aside the original decision if it considers it to be unreasonable and substitute its own decision on the Matter, but its decision will be a final determination of the Matter.

5. SANCTIONS

- 5.1. Where the Member has failed to comply with the Code of Conduct, the sanctions available to the Committee, Hearings Sub-Committee or Appeals Sub-Committee (as the case may be) shall be the following (or any combination of the following):
- to report its findings to the Authority for information;
 - to censure the Member or recommend that the Authority censure the Member;
 - to accept any agreement by the Member to apologise or to recommend to the Member's Group Leader that he/she facilitates an apology from the Member;
 - to recommend to the Member's Group Leader (or in the case of ungrouped Members to the Authority or Committees) that the Member be removed from any or all of the Authority's Committees or Sub-Committees;
 - Instructing the Monitoring Officer to arrange training for the Member;
 - Withdrawing facilities provided to the Member by the Authority such as computer, website and/or email facilities and internet access; and
 - Excluding the Member from the Authority's offices or other premises with the exception of meeting rooms as necessary for attending Fire Authority meetings, Committee and Sub-Committee meetings.

Revised

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