

## **PROCEDURE FOR CONSIDERING COMPLAINTS ALLEGING A FAILURE TO COMPLY WITH A MEMBERS' CODE OF CONDUCT WITHIN THE AREA OF LEEDS METROPOLITAN DISTRICT COUNCIL**

### **Introduction**

1. This procedure should be used to deal with complaints submitted under the Members' Code of Conduct adopted by Leeds City Council and the Parish and Town Councils in the Leeds area.
2. The Members' Code of Conduct applies to elected Members and voting co-opted members when they are acting in that capacity and this procedure relates to all complaints relating to allegations that a Member or Co-opted Member has failed in their obligations under the Code of Conduct adopted by the relevant Authority.
  - a) Complaints which relate to a failure to comply with the rules about 'Disclosable Pecuniary Interests' will not be accepted and should be directed by the Complainant to the West Yorkshire Police for their consideration.
  - a)b) Complaints relating to an employee or which relate wholly to a service related issue, will not be accepted by the Monitoring Officer under this procedure but instead the complainant will be referred to the relevant service in order for them to respond to the complainant directly.
3. The Monitoring Officer may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.

### **Stage 1 - Initial assessment by the Monitoring Officer**

4. Complaints must be submitted in writing<sup>1</sup>, must provide substantiated information to evidence the issue complained of, and should outline what form of resolution the complainant is seeking. ~~o-~~ Otherwise the Monitoring Officer should ask the complainant to resubmit their complaint or provide further information. Ideally the complainant ~~should use~~ will use the ~~correct~~ complaints form to submit their complaint, but other written complaints will be accepted so long as they contain the relevant information.
5. The Monitoring Officer will acknowledge receipt of the complaint and provide the complainant with a copy of this procedure. They will then assess the complaint<sup>2</sup> in consultation with the Independent Person. The Council will 'Take No Further Action' where a complaint appears to be intended to cause annoyance, frustration or worry (vexatious), is intended to do harm (malicious), or where it is apparent that a complaint has little or no substance (frivolous), particularly in terms of value or importance to the wider Public Interest (i.e. trivial complaints) or are politically motivated or tit-for-tat. For any other complaint, the Monitoring Officer will and assess the complaint and make a decision as to whether it is valid and whether it should be

<sup>1</sup> Complaints about the conduct of a parish or town councillor towards a clerk should be made by the chair or the by the parish or town council as a whole, rather than by the clerk in all but exceptional circumstances.

<sup>2</sup> Including seeking and reviewing any readily obtainable information (including observations and recollections from the Subject Member).

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upheld is valid or not valid and where the complaint is upheld, whether further action would be proportionate and/or in the public interest.

6. The following types of complaint<sup>3</sup> will not be considered as 'valid complaints' under this procedure and will result in No Further Action being taken:
- a. Complaints which are submitted anonymously<sup>45</sup>;
  - b. Complaints which do not identify a subject Member;
  - c. Complaints which relate to a Member's personal or private life;
  - d. Complaints concerning a failure to respond to a request from a constituent or other individual;
  - e. Complaints which relate to the alleged actions of employees of the Council or non-voting co-optees;
  - f. Complaints which relate to a decision of an employee or a Committee;
  - g. Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council;
  - h. Complaints which refer to alleged incidents which happened so long ago<sup>6</sup> that there would be little benefit in taking action now;
  - i. Complaints which relate to an alleged failure to comply with the rules regarding 'Disclosable Pecuniary Interests'<sup>7</sup>
  - j. Complaints containing trivial allegations, cause annoyance, frustration or worry (vexatious), or intended to do harm (malicious), or where it is apparent that a complaint has little or no substance (frivolous), particularly in terms of value or importance to the wider Public Interest (i.e. trivial complaints), are politically motivated or tit-for-tat ;

The following types of complaint will not be upheld:

<sup>3</sup> Specified in sub-paragraph (a) – (j)

<sup>4</sup> Complaints which contain a request for the complainant's identity to be withheld may be considered to be 'valid complaints', although the complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage.

<sup>5</sup> Anonymous complaints which reveal potential fraud or corruption will be referred to Internal Audit for consideration under the Council's adopted Whistle blowing Policy.

<sup>6</sup> In general terms complaints should be submitted within 6 months of the alleged incident

<sup>7</sup> Such complaints should will be redirected by the complainant to the West Yorkshire Police. The Monitoring Officer will provide contact details to the Complainant subject to the complainant's agreement

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- k. Complaints regarding alleged behaviour which has already been the subject of an investigation or some form of action, or are more suited for resolution through alternative means;
  - ~~k. Complaints which relate to an alleged failure to comply with the rules regarding 'Disclosable Pecuniary Interests'<sup>6</sup>;~~
  - l. Complaints which do not evidence a failure to comply with obligations under the Members' Code of Conduct or otherwise do not relate to the Members' Code of Conduct;
  - m. Complaints ~~where that~~ it is not possible to investigate, or in relation to which there is no action which could be taken which would achieve an outcome sought by the complainant in the circumstances of the case.
7. In all cases where the complaint names a Member of a relevant authority, the Member will be notified of the complaint<sup>8</sup> and the name of the complainant<sup>9</sup> and invited to comment.
- ~~8. If the complaint relates to an employee or is a service related issue, the Monitoring Officer will refer the complaint to the relevant service in order for them to respond to the complainant directly.~~
- ~~9. In any case where the Monitoring Officer decides that the complaint cannot be progressed further under the procedure, they will write to the complainant explaining why, their complaint cannot be dealt with under this procedure. There is no Council appeal process for decisions taken by the Monitoring Officer at this stage, however, complainants will be advised of their right to contact the Local Government and Social Care Ombudsman.~~

### Stage 2 - Informal resolution

9. If, following ~~initial~~ assessment, the Monitoring Officer decides that the complaint should be upheld ~~treated as a 'valid complaint'~~ they will write to the complainant and explain that the matter is to be referred to the subject Member for the Member ~~m~~ to seek to resolve the issue in accordance with this procedure. ~~The complainant will also be provided with an outline of the procedure for dealing with complaints against Councillors.~~
10. At the same time, the Monitoring Officer will refer the matter to the subject Member<sup>10</sup> and the relevant Group Whip<sup>11</sup> for their consideration. ~~In this correspondence, the~~ Monitoring Officer will provide the subject Member with a reasonable timescale within which to attempt to resolve

<sup>8</sup> Information shared will include details of the complainant and their complaint. The Subject Member will receive this information as a data controller in their own right and all usual data protection controls will apply.

<sup>9</sup> Except where the Monitoring Officer is satisfied the complainant should remain anonymous.

<sup>10</sup> Information shared will include details of the complainant and their complaint. The Subject Member will receive this information as a data controller in their own right and all usual data protection controls will apply.

<sup>11</sup> If the subject Member is the Group Whip, the complaint will be copied to their Group Leader. In the case of a Parish or Town Council without structured political groups, the Monitoring Officer could consider involving the Chairperson of the Council.

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the complaint (usually this will be 28 days) and will provide the subject Member with the contact details for the Independent Person<sup>12</sup>.

11. Types of informal resolution might include:

- a. An explanation by the subject Member of the circumstances surrounding the complaint;
- b. An apology from the subject Member;
- c. An agreement from the subject Member to attend relevant training or to take part in a mentoring process;
- d. Offering to engage in a process of mediation or conciliation between the subject Member and the complainant; or
- e. Any other action capable of resolving the complaint.

12. Before deciding upon a course of action the subject Member may seek guidance from a Group Whip, the Independent Person, and/or the Monitoring Officer or an appropriate senior person nominated by them. It may also be appropriate for the Monitoring Officer<sup>13</sup> to seek the view of the complainant to ascertain what form of informal resolution they would find acceptable, particularly if the form of resolution they have specified in their complaint is not possible.

13. The Independent Person is available to the subject Member to give them advice on the severity of the complaint and what form of resolution they would consider appropriate. Providing such guidance will not prevent the Independent Person from giving a view to the Standards and Conduct Committee about the complaint at a later stage.

14. At the end of the ~~28-day~~ period given to resolve the complaint, the Monitoring Officer will, in consultation with the Chair of the Standards and Conduct Committee and the Independent Person, seek to establish whether the subject Member (or Group Whip) has appropriately addressed matters which have been raised by the complainant.

15. Where the subject Member has appropriately addressed the matters raised there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the complainant and the subject Member of this decision.

16. Where, in the opinion of the Monitoring Officer in consultation with the Independent person, it has not been possible to appropriately address matters, the complaint will be referred to the Standards and Conduct Committee for consideration. The Monitoring Officer will notify both the complainant and the subject Member of this decision and will provide the subject Member with information regarding the Council's insurance arrangements (and how legal representation may be accessed).

<sup>12</sup> See Annex 1 for a summary of the role of the Independent Person.

<sup>13</sup> Or other suitable senior person as appropriate (including that Members' Whip)

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17. There will be no appeal process for decisions taken by the Monitoring Officer and the Chair of the Standards and Conduct Committee at this stage.

**Stage 3 – Standards and Conduct Committee**

18. The Monitoring Officer will commission a report of the complaint for consideration by the Standards and Conduct Committee. This report will include readily obtainable information (~~such as minutes of meetings or Clerk's notes~~), a summary of the complaint, the Monitoring Officer's assessment of it and the efforts made to resolve the matter informally.

19. The Monitoring Officer must arrange for a meeting of the Standards and Conduct Committee (or the relevant Sub-Committee<sup>14</sup>)<sup>15</sup> to be convened to consider the ~~commissioned~~ report. ~~of the complaint~~. Wherever possible the meeting will take place within 28 days of the report being finalised.

20. If the complaint relates to a Parish or Town Councillor, one of the co-opted Parish Members will be invited to attend the Committee meeting. The Parish Member will not be entitled to vote at the meeting but will be entitled to speak, at the discretion of the Chair.

21. The following people will also be invited to attend the Committee meeting:

- a. The complainant;
- b. The subject Member;
- c. The Group Whip (if relevant); and
- d. The Independent Person.

If the complainant or the subject Member are unable to attend the meeting they will be asked for a written statement for consideration by the Committee.

22. The Monitoring Officer will attend the meeting in order to advise the Committee.

23. At the beginning of the meeting the Committee will be asked to resolve ~~consider~~ whether the complaint should be considered in private in accordance with the provisions of Rule 10 of the Access to Information Procedure Rules relating to exempt information. If the meeting is to be held in private the press and public will be excluded<sup>16</sup>.

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<sup>14</sup> Such Sub-Committee will be made up of three Members of the Standards and Conduct Committee, one of whom must be from the same political group as the subject Member (wherever possible), but not all of the Members will be from the same political group. The Chair will be elected from among the membership at the beginning of the meeting, but cannot be from the same political group as the subject Member.

<sup>15</sup> References to the Committee in rules 21 to 36 below shall be read as references to the Sub-Committee if such sub-committee has been appointed and is convened to hear the complaint.

<sup>16</sup> The Committee may invite people to remain in the meeting if it is considered that they could provide information relevant to the complaint.

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24. After initial consideration of the commissioned report, the Committee ~~will take statements from the following parties (either in person or in written form if the person is unable to attend the meeting):~~
- ~~a. The complainant; and~~
  - ~~b. The subject Member.~~
26. ~~The Committee~~ may ~~also~~ ask questions of anyone present at the meeting in order to reach a conclusion on the complaint.
25. Before reaching a final decision on the complaint, the Committee must seek, and take account of, the view of the Independent Person in relation to the complaint.
26. If the Committee is unable to reach a conclusion on the complaint on the basis of the information before it, it may adjourn the meeting and request that the Monitoring Officer seeks the further information required. However, when doing so the Committee should consider whether the information will be readily available to the Monitoring Officer.
27. Once the Committee is satisfied with the information before it, it must decide on the balance of probabilities the following issues:
- a. ~~Whether~~ the subject Member has failed to comply with the Members' Code of Conduct and if so;
    - ~~a~~b. Whether further action is warranted; and
    - ~~b~~e. What form of action might be appropriate; and
    - c. Whether to make any other general recommendation to the authority.
28. If the Committee concludes that, ~~on the balance of probabilities,~~ the subject Member did not fail to comply with the Members' Code of Conduct, this will conclude the complaints process. In such cases no further action will be taken in respect of the complaint, although the Committee may still wish to consider making a recommendation to the authority with a view to promoting and maintaining high standards of conduct in general. Such recommendations may include proposed changes to internal procedures and practices or training for Members in general.
29. If the Committee concludes that, ~~on the balance of probabilities,~~ the subject Member has failed to comply with the Members' Code of Conduct, the Committee must ~~go on to~~ consider whether further action is warranted should be recommended in respect of the subject Member, and recommend what form of action might be appropriate.
30. The recommendations available to the Committee include<sup>17</sup> but are not limited to:
- a. A formal letter to the subject Member from the Chair of the Standards and Conduct Committee setting out the conclusions of the Committee;
  - b. Formal censure by a motion of full Council; or

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- c. Removal by the authority of the Member from a relevant Committee(s) subject to statutory and constitutional requirements.

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The Committee has no authority to disqualify or suspend the subject Member as a Councillor.

31. The Committee may make a recommendation in relation to one or more of the above ~~sanctions~~ to full Council or, if appropriate, the Town or Parish Council, the Group Whip or the Chair of the Standards and Conduct Committee. ~~The Chair will confirm any such recommendations in writing within five working days of the Committee meeting.~~

32. The Committee may also make general recommendations to the relevant authority<sup>18</sup> with a view to promoting and maintaining high standards of conduct within the authority. As stated above, such recommendations may include proposed changes to internal procedures and practices or training for Members in general. The Monitoring Officer will be responsible for communicating such recommendations to the relevant Committee or officer for consideration.

33. Within five working days of the Committee meeting, the Chair of the Committee will write to the complainant and the subject Member explaining the final decision of the Committee and detailing any recommendations made.

34. There will be no right of appeal against a decision of the Committee.

## **ANNEX 1 - ROLE OF THE 'INDEPENDENT PERSON'**

### Role of the Independent Person

The role of the independent person is set out in Section 28 of the Localism Act 2011.

As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one independent person.

The independent person's views **will** be sought, and taken into account, by the authority before:-

- Making a decision at Stage 1 of this procedure;
- Making a decision as to whether the subject Member has appropriately addressed matters raised by the complainant by way of informal resolution at Stage 2 of this procedure;
- Making a decision on an allegation that it has decided to investigate under Stage 3 of this procedure.

A member or co-opted member of the authority (or of a parish council in the area) **may** seek the Independent Person's views on an allegation made against them.

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<sup>18</sup> Which shall be Leeds City Council and / or the Town or Parish Council concerned as appropriate