

Arrangements for dealing with complaints about the Code of Conduct for Members

1. Introduction

1.1 This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Council Member has or may have failed to comply with the Code of Conduct for Members.

1.2 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”.

1.3 No member of officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter

2. Making a complaint

2.1 A complaint must be made in writing, either by post or e-mail to; The Monitoring Officer, Oldham Council, Civic Centre, West Street, Oldham, OL1 1UL or via email for the Monitoring Officer’s attention constitutional.services@oldham.gov.uk

2.2 The Monitoring Officer will acknowledge receipt of the complaint within five working days of receiving it and, at the same time, write to the subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council also) with details of the allegations (subject to any representations from the complainant on confidentiality, which are accepted as valid by the Monitoring Officer). 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 should 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 initial assessment of the complaint.

3. Initial Assessment of Complaint

3.1 The Monitoring Officer will reject a complaint if it is not a complaint against a Councillor of Oldham MBC or a Parish Councillor within the area or the Councillor was not in office at the time of the alleged conduct. The Monitoring Officer will review the complaint and following consultation with the Independent Person, take a decision (Initial Assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

3.2 If appropriate, the Monitoring Officer will consider the following criteria where relevant in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected;

- Whether a substantially similar allegation has previously been made by the complainant to The Council, or the complaint has been the subject of an investigation by another regulatory authority
- whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat.
- Whether the complaint is about something that happened so long ago that 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;
- Whether the allegation is anonymous
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
- Whether the complaint suggests that there is a wider problem throughout the Authority;
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response.

The Monitoring Officer will consult with the Independent Person and then give a decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question of how to proceed to a sub-committee of the Standards Committee.

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. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Clerk of the Parish Council of the complaint and seek the views of the Clerk of the Parish Council before deciding whether the complaint merits formal investigation or other action. 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 his/her conduct was unacceptable and offering an apology, or taking other steps. Where the subject Member or the Council

(in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.2 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority in addition, to any action taken pursuant to the Code of Conduct.

5. Confidentiality

5.1 If a complaint has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage .

5.2 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 Office 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 his or her 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

5.3 If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the subject Member.

6. Investigation

6.1 The Monitoring Officer will appoint an investigating officer where a complaint merits formal investigation. The investigating officer may be a Council officer, an officer from another Council, or an external investigator.

6.2 The investigating officer will follow guidance if issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of Council resources and shall be interpreted in line with these principles.

6.3 At the end of their investigation, the investigating officer will produce a draft report and will send copies of that draft report to the complainant and to the Subject Member, for comments. The investigating officer will take such comments into account before issuing their final report to the Monitoring Officer.

7. Investigating Officer finding of no failure to comply with the Code of Conduct

7.1 Where the Investigating Officer's report finds that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.

7.2 The Monitoring Officer will write to the Complainant and the Subject Member (and to the Clerk of the Parish Council, where the complaint relates to a Parish Member), with a copy of the decision and the Investigating Officer's report.

7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

8. Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

Where the Investigating Officer's report finds that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then having consulted the Independent Person either send the matter for local hearing before the hearing panel or seek local resolution.

8.1 Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting their conduct was unacceptable and offering an apology, and/or other remedial action including mediation or training. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a local hearing without further reference to the Complainant or the Subject Member.

8.2 Local Hearing

Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the Complainant and/or Subject Member refuses to accept local resolution, then the Monitoring Officer will report the Investigating Officer's findings to the Hearing Panel which will conduct a local hearing before deciding whether the Member has failed to comply with a Code of Conduct and, if so, what action (if any) to take in respect of the Member.

9. Constitution of the Hearing's Panel

The Hearing's Panel is a sub-committee of the Council's Standards Committee. It will comprise of one of the independent persons and five elected members of the

Council drawn from the Standards Committee. Where the complaint is about a Parish Council Member, the hearing panel will include at least one of the Parish Council Members co-opted to the Standards Committee. The Standards Committee comprises such elected members as determined by the Council, four Independent persons and a Parish Councillor representative from each Parish Council. Oldham Council members have voting rights only.

Procedure at the hearing

1. The Chair shall explain the procedure and ask all present to introduce themselves. The member against whom the complaint has been made shall be known as the Subject Members for the purpose of this procedure.
2. The Investigating Officer outlines his/her report and presents the report, including any documentary evidence and calls such individuals as he/she considers appropriate to give evidence.
3. The Subject Member or their representative may question the Investigating Officer upon the content of their report and may question any witnesses called by the Investigating Officer.
4. Members of the sub-committee may ask questions of the Investigating Officer and any witnesses called.
5. The Subject Member or their representative may present his/her case and call witnesses as required.
6. The Investigating Officer may question the Subject Member and/or any witnesses.
7. Members of the sub-committee may also question the Subject Member and/or any witnesses.
8. The Investigating Officer may sum up the complaint.
9. The Subject Member or representative may sum up their case.
10. Members of the sub-committee consider in private the complaint and consider whether there has been a breach of the code.
11. In the presence of all the parties, the Chair of the sub-committee will announce the decision that either the Subject Member has failed to comply with the Code of Conduct or has not failed to follow the Code and will give reasons for their decision.
12. If the sub-committee decides that the Subject Member has failed to follow the code, the sub-committee will give the Subject Member the opportunity to make representations on whether action or sanctions should be taken.

13. The sub-committee will consider in private what action should be taken and then in the presence of all the parties, the chair shall announce the decision.
14. The Chair will confirm that the decision will be provided in writing to the Subject Member within 7 days following the meeting.
15. If the Subject Member does not attend the hearing without reasonable excuse, the hearing may proceed in his or her absence.

10 The Independent Person

The independent person must be a person who has applied for the post following advertisements of a vacancy for the post and appointed by a positive vote from a majority of all the Members of the Council at a meeting of the full Council. A person is not eligible for appointment if they:

- are, or have been within the past five years a Member, co-opted Member or officer of the Council
- are, or have been within the past five years a Member, co-opted Member or officer of a Parish Council within the Borough; or
- are a relative or close friend of a person within the 2 above bullet points. For this purpose, “relative” means that:
 - Spouse or civil partner
 - Living with the other person as husband and wife or as if they were civil partners
 - Grandparents of the other person
 - A lineal descendant of a Grandparent of the other person
 - A parent, sibling or child of the person within the above bullet points
 - A spouse or civil partner of a person within the above bullet points; or
 - Living with a person within the above bullet points as husband and wife or as if they were civil partners.

11. Action

In the event that the Sub-committee finds that the Code of Conduct has been breached, it will need to determine whether a sanction should be imposed and if so, what sanction, and a timescale by which to comply with the sanction. The available sanctions options that the sub-committee can enforce are:

- Publish its findings in respect of the Member’s conduct.
- Report its finding to Council (or to the Parish Council) for information.
- Recommend to Council (or to the Parish Council) that the member be issued with a formal censure by motion.

- Recommend to the Members' Group Leader (or in case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub-committees of the Council.
- Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their portfolio responsibilities
- Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member.
- Recommend to Council (or recommend to the Parish Council) that the Member be removed from all outside bodies appointments to which they have been appointed or nominated by the Council (or by the Parish Council).
- Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Member by the Council such as a computer, website and/or email and internet access.
- Exclude (or recommend that that Parish Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and sub-Committee meetings or place such restrictions on access to staff as may be reasonable in the circumstances.
- Recommend (or recommend to the Parish Council) that the subject member makes an apology at the next full Council meeting.

The Standards Committee or Sub-Committee has no power to suspend or disqualify the subject member or to withdraw members' basic or special responsibility allowances.

12 . Appeals

Subject to judicial review or a decision of a local ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the Hearing Panel.

13. Publication of investigations

When a matter progresses to a local hearing before a Standards Sub-Committee, the hearing will be in public, unless there is a particular reason for the information that will be disclosed during it, to be exempt. The Monitoring Officer will make this decision prior to the hearing in consultation with the Independent Persons and the Chair of the Committee. Each case will be determined on its own merits. In making this decision, particular consideration will be given to the necessity of transparency, the requirements of witnesses, any Data Protection issues that may become relevant and schedule 12A of the Local Government Act 1972 which outlines what exempt information is.

14. Failure to comply

If the member complies with the sanction imposed by the Standards Sub-Committee, within the timescale set, the Monitoring Officer will report the matter to the Standards Committee for information. If the member fails to comply with the sanction within the timescale set, or where any recommendations to the Members' Group Leader have not been accepted, the matter will be referred to the Standards Committee and Full Council for information.

15. Revision of these Arrangements

The Council may by resolution or the Monitoring Officer may, in consultation with the Chair of the Standards Committee amend these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matters.