

## **Draft Procedures to be followed in Relation to Allegations**

### **1. *Receiving an Allegation***

- 1.1 All allegations against a Member of the City Council should be addressed to the Standards Committee (care of the Monitoring Officer).
- 1.2 When the complaint is addressed to the Monitoring Officer, the Monitoring Officer will determine whether the complaint should be directed to the Assessment Sub-Committee or whether another course of action is appropriate. If the complaint is clearly not about Member conduct then the Monitoring Officer will not pass it to the Assessment Sub-Committee and will notify the Complainant as to how the complaint will be dealt with.
- 1.3 Following receipt of an allegation which relates to the City Council's Code of Conduct ("the Code"), the Monitoring Officer will send an acknowledgement to the Complainant within five working days.
- 1.4 The Monitoring Officer may inform the Member that a complaint has been made against them, the relevant paragraphs of the Code that may have been breached and the name of the Complainant (unless the Complainant has requested anonymity). The Monitoring Officer must not reveal the detail of the Complainant to the Member as only the Standards Committee has the power to give a written summary of the allegation. The Monitoring Officer may also inform the Member that a written summary of the allegation will be provided to the Member once the Assessment Sub-Committee has met to consider the complaint, and the date of this meeting, if known.

### **2 *Pre-assessment summary and enquiries***

- 2.1 The Monitoring Officer will prepare a short summary of the complaint for the Assessment Sub-Committee to consider. The summary could, for example, set out the following details:
  - whether the complaint is within jurisdiction
  - the paragraphs of the Code which the complaint might relate to, or the paragraphs the Complainant has identified

- a summary of the key aspects of the complaint if it is lengthy or complex
- any further information that the Monitoring Officer has obtained to assist the Assessment Sub-Committee with its decision, for example:
  - a) a copy of the declaration of office form and an undertaking to observe the Code
  - b) minutes of meetings
  - c) a copy of a Member's entry in the register of interests
  - d) information from Companies House or the Land Registry
  - e) other easily obtainable documents

2.2 The Monitoring Officer may also contact the Complainant for clarification of the complaint if the complaint submitted is difficult to understand. Any pre-assessment enquiries shall not be conducted in such a way as to amount to an investigation, for example they will not extend to interviewing potential witnesses, the Complainant or the Member. The summary will only contain factual information and not express opinions on the allegation.

### 3. ***Initial Assessment Procedure***

3.1 Before the assessment of a complaint begins, the Assessment Sub-Committee should be satisfied that the complaint meets the following tests:

- It is a complaint against one or more of the City Council's Members
- The Member was in office at the time of the alleged conduct and the Code was in force at the time
- The complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct

3.2 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the Complainant must be informed that no further action will be taken in respect of the complaint.

- 3.3 The Assessment Sub-Committee will assess all complaints against the Standards Committee's Assessment Criteria, attached as Appendix 1.

#### **4 *Initial Assessment Decisions***

- 4.1 The Assessment Sub-Committee, which will conduct its meetings in private, should reach a decision on what should happen with the complaint within 20 working days. The Assessment Sub-Committee will reach one of the following decisions on a complaint about a Member's actions in relation to the Code:

- referral of the complaint to the Monitoring Officer for a local investigation
- referral of the complaint to the Standards for England
- no action should be taken in respect of the complaint
- referral of the complaint to the Monitoring Officer for other action

#### **4.2 Referral to Monitoring Officer for local investigation**

- 4.2.1 The Assessment Sub-Committee can decide that the complaint should be referred to the Monitoring Officer for investigation.

#### **4.3 Referral to Standards for England**

- 4.3.1 Occasionally there may be matters in a case, or public interest considerations, which make it difficult for the City Council to deal with the case fairly and speedily. In such cases the Assessment Sub-Committee may refer the complaint to Standards for England (SfE) to be investigated by an Ethical Standards Officer.

- 4.3.2 If SfE decline to investigate the complaint they will send it back to the City Council's Standards Committee. The Assessment Sub-Committee must then take a further assessment decision within 20 working days.

#### **4.4 Decision to take no action**

- 4.4.1 The Assessment Sub-Committee may decide that no action is required in respect of a complaint.

#### 4.5 Referral to Monitoring Officer for other action

- 4.5.1 Following consultation with the Monitoring Officer, the Assessment Sub-Committee can decide to refer the matter to the Monitoring Officer for action which does not involve an investigation. The Monitoring Officer may for example arrange training for the Member or arrange a process of conciliation between the Member and the Complainant or institute changes to the City Council procedures if they have given rise to the complaint.
- 4.5.2 Where the Monitoring Officer is required to take such steps, he will submit a written report to the Standards Committee within three months of the date of the decision of the Assessment Sub-Committee giving details of what action has been taken. If the Standards Committee is satisfied with the report they must notify all parties. If the Standards Committee is not satisfied with the action specified it can give further directions to the Monitoring Officer to enhance the action already taken or suggest alternatives but not investigation.
- 4.5.3 The decision to refer the matter to the Monitoring Officer to take other action closes the opportunity to investigate. The Assessment Sub-Committee should communicate this clearly to all parties.

#### 4.6 Notification of the decision

- 4.6.1 Where an Assessment Sub-Committee convenes to consider a complaint, it shall produce a summary in writing of its consideration of the allegation of the decision. The summary will include:
- What the allegation was,
  - the main points considered,
  - its conclusion as regards the allegation
  - the reason for that conclusion and
  - the name of the Member unless doing so is not in the public interest or would prejudice any investigation.
- 4.6.2 Within five days of the decision being taken, the Assessment Sub-Committee will arrange for a copy of the summary to be sent to the Member and

Complainant and for it to be made available for public inspection. Where the Assessment Sub-Committee have decided not to take any further action, the Complainant will also be informed that he/she has 30 days from the date of the decision to seek a review of that decision by writing to the Standards Committee with his/her reasons for requesting the review.

4.6.3 The Assessment Sub-Committee does not have to give the Member a summary of the complaint if it decides that doing so would be against the public interest or would prejudice any future investigation. For example:

- where the Member may intimidate the complainant or the witnesses involved
- where early disclosure of the complaint may lead to evidence being compromised or destroyed

Any decision to withhold the summary must be kept under review as circumstances change.

4.6.4 Where the Complainant has requested anonymity, the criteria by which the Assessment Sub-Committee will consider the request will include:

- whether the Complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed
- whether the Complainant is an officer who works closely with the Member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed
- whether the Complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed.

5. ***Carrying out the Review***

- 5.1 Where the Assessment Sub-Committee decide not to take any further action, the Complainant will have 30 days from the date of the decision to seek a review of that decision.
- 5.2 If the Standards Committee receives a review request from the complainant it must notify the Member that it has received the request.
- 5.3 The Review Sub-Committee will aim to undertake the review within an average of 20 working days from the date that the Standards Committee received the request for the review and in any event it must be completed within three months of receiving the request. The Review Sub-Committee will conduct its meetings in private.
- 5.4 The review will be independent of the original decision; it will be a complete reconsideration of the case afresh. The Review Sub-Committee will apply the same criteria (the Standards Committee Assessment Criteria) which were used by the Assessment Sub-Committee that carried out the initial assessment. The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee.
- 5.5 If the Complainant provides further information which changes the nature of the original complaint or gives rise to a potential new complaint then the Review Sub-Committee should consider carefully if it is more appropriate to pass this to the Assessment Sub-Committee to be handled as a new complaint. In this instance the Review Sub-Committee will still need to make a formal decision that the review request will not be granted.
- 5.6 Where a Review Sub-Committee convenes to review a decision, it shall produce a summary in writing of its consideration of the review of the decision. The summary will include:
- the main points considered,
  - its conclusion as regards the allegation

- the reason for that conclusion and
- the name of the Member unless doing so is not in the public interest or would prejudice any investigation.

5.7 Within five days of the decision being taken, the Review Sub-Committee will arrange for a copy of the summary to be sent to the Member and Complainant and for it to be made available for public inspection for six years.

## 6. ***The Investigation process***

6.1 Upon either the Assessment or Review Sub-Committee referring the allegation to the Monitoring Officer to carry out an investigation, the Monitoring Officer shall appoint an Investigating Officer to conduct an investigation and prepare a report. The Monitoring Officer will notify, in writing, both the Complainant and the Member of the appointment of the Investigating Officer.

6.2 The Investigating Officer will contact the Complainant requesting that he/she respond to the Investigating Officer within 14 days:

- listing any documents which the Complainant wishes the Investigating Officer to consider, where possible providing copies of these documents, and/or informing the Investigating Officer of where the original documents may be inspected/obtained;
- Providing the Investigating Officer with the name and contact details of any witnesses he/she wishes to be contacted; and
- Providing the Investigating Officer with any other relevant information.

6.3 The Investigating Officer will also contact the Member requesting that he /she respond to the Investigating Officer in writing within 14 days detailing:

- whether the Member admits or denies the breach of the Code which is the subject of the allegation;
- listing any documents which the Member wishes the Investigating Officer to consider, where possible providing copies of these documents and/or informing the Investigating Officer of where the original documents may be inspected/ obtained;

- providing the Investigating Officer with the name and contact details of any witnesses s/he wishes to be contacted;
- Providing the Investigating Officer with any other relevant information, and
- the name and details of their representative, if any.

## 7. ***Conducting Interviews***

- 7.1 The Investigating Officer may interview any person as considered necessary, City Council officers are required to attend such interviews. Any person who appears before the Investigating Officer may arrange to be accompanied at his/her own expense by a solicitor or friend. The Investigating Officer shall produce a written note of interviews undertaken. If the investigating Officer wishes to record any interviews, consent to the recording should be sought.

## 8. ***Producing Draft and Final Reports***

- 8.1 The Investigating Officer should consider whether to produce a draft report before finalising the report and completing the investigation. The report should contain the following information:

- a 'confidential' marking
- A 'draft' or 'final' marking
- the date
- the legislation under which the investigation is being carried out
- a summary of the complaint;
- the relevant provisions of the Code;
- evidence
- findings of fact
- reasoning
- finding as to whether there has been a failure to comply with the Code

- 8.2 Any draft report must state that the report does not necessarily represent the Investigating Officer's final finding, and that the Investigating Officer will present a final report to the Hearing Sub-Committee once he/she has considered any comments received on the draft report.



- 8.3 The Investigating Officer shall send a copy of the draft report in confidence to the Member and the Complainant giving them the opportunity to check facts and ensure that all aspects of the case have been explored in sufficient detail, requesting their comments within 14 days of receipt.
- 8.4 The Investigating Officer may also send relevant extracts from the draft report to any person on whose evidence he/she has relied upon in compiling the draft report.
- 8.5 If a draft report was prepared, the Investigating Officer shall consider any comments received before finalising his/her report. The final report will include the date of its completion on the front page. If the matter proceeds to a hearing it should take place within 3 months of the date that the investigation was completed. The Investigating Officer will send a copy of his/her final report attaching a schedule of evidence which includes any background documents of telephone conversations, letters and notes of interviews with witnesses to both the Clerk to the Standards Committee and the Member. The Investigating Officer will also send a copy of the final report to the Complainant.
9. ***Referral from Monitoring Officer to the Assessment Sub-Committee to reconsider the Decision to Refer for Investigation***
- 9.1 In cases referred to the Monitoring Officer for investigation by the Assessment Sub-Committee, the Monitoring Officer will refer that matter back to the Assessment Sub-Committee if:
- a) as a result of new evidence or information the Monitoring Officer believes that:
    - (i) the matter is materially more or less serious than may have seemed apparent to the Assessment Sub-Committee and
    - (ii) the Assessment Sub-Committee would have made a different decision had it been aware of that new evidence or information.
  - b) the Member has died, is seriously ill or has resigned from the authority and the Monitoring Officer believes that it is consequently no longer appropriate to continue with an investigation.

9.2 If a matter is referred back to the Assessment Sub-Committee, the Assessment Sub-Committee will make a decision by considering the Standards Committee's Assessment Criteria as if the matter had been referred to it for initial assessment.

9.3 Where the Assessment Sub-Committee considers a matter which has been referred back to it, it may direct that the matter should not be referred back to it a further time.

## 10. ***The Consideration Meeting***

10.1 The Hearing Sub-Committee will convene to consider the Investigating Officer's report and make one of the following findings:

- that it accepts the Investigating Officer's finding of no failure ("a finding of acceptance") or
- that the matter should be considered at a further hearing of a Hearing Sub-Committee or
- That the matter should be referred to the First-tier Tribunal for determination

10.2 The consideration meeting is separate to the meeting at which the hearing is conducted and provides a useful opportunity for the Hearing Sub-Committee to consider the potential issues which might arise during the pre-hearing process. Any information presented to the consideration meeting is exempt information. The Hearing Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.3 If the investigation report finds that there has been a failure to comply with the Code a hearing must take place – unless the Hearing Sub-Committee decides that the matter is referred to the First-tier Tribunal for determination. The Hearing Sub-Committee may only decide to refer the matter to the First-tier Tribunal provided it is satisfied that the action it could take against the Member

would be insufficient were a finding of failure to be made and the First-tier Tribunal has agreed to accept the referral.

- 10.4 If the Hearing Sub-Committee make a finding of acceptance, it shall as soon as possible, arrange for written notice of that finding to be given to the relevant parties. The Standards Committee shall also publish a notice stating that the Hearing Sub-Committee have found that there has been no failure on the part of the Member concerned to comply with the Code, unless the Member requests otherwise.

## 11. ***The Pre-hearing process***

- 11.1 The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. It enables parties to seek to resolve areas of difficulty before the hearing itself. A pre-hearing could be used to;
- Identify whether the Member disagrees with any of the findings of fact in the investigation report
  - Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
  - Identify whether evidence about those disagreements will need to be heard during the hearing
  - Decide whether there are any parts of the hearing that are likely to be held in private
  - Decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing on the grounds that they contain 'exempt' material.
- 11.2 The pre-hearing process should usually be carried out in writing. However, occasionally a meeting between the Hearing Sub-Committee, the relevant parties and their representatives may be necessary. It is expected that the majority of the pre-hearing process will be dealt with by the Monitoring Officer or the Clerk to the Standards Committee.

- 11.3 The Clerk to the Standards Committee will write to the Member proposing a date for the hearing, outlining the hearing procedure and to request a written response within a set time to establish whether the Member:
- will be represented at the hearing
  - disagrees with any of the findings of fact in the investigation report, including reasons for any of those disagreements
  - wants to give evidence, either verbally or in writing
  - wants to call relevant witnesses
  - wants any part of the meeting held in private
  - wants any part of the investigation report or other relevant documents to be withheld from the public
  - can attend the hearing
- 11.4 A critical part of the pre-hearing process should be an attempt to focus the relevant parties' attention on isolating all relevant disputes of fact between them. The Member will be required to make it clear precisely what findings of fact in the report he/she disagrees with and why. The Investigating Officer will comment on the Member's response to ensure that all parties are clear about the remaining factual disputes.
- 11.5 The relevant parties will be asked to provide outlines or statements of the evidence their witnesses intend to give. This will enable the Hearing Sub-Committee to identify the issues they will be dealing with at the hearing.
- 11.6 The Hearing Sub-Committee will only allow the relevant parties to raise new disagreements over factual matters in the investigation report at the hearing in exceptional circumstances, such as new evidence becoming available that the parties could not have produced before. Members of the Hearing Sub-Committee will consider the evidence before the hearing to identify any potential conflicts of interests. Any concerns should be raised with the Monitoring Officer in advance of the hearing.

11.7 Following receipt of the Member's and investigating officer's response, the Clerk to the Standards Committee will send a pre-hearing process summary to everyone involved in the complaint at least two weeks before the hearing. The pre-hearing process summary will:

- set the date, time and place for the hearing
- summarise the allegation
- outline the main facts of the case that are agreed
- outline the main facts which are not agreed
- note whether the Member or investigating officer will go to the hearing or be represented at the hearing.
- List those witnesses, If any, who will be asked to give evidence
- Outline the proposed procedure for the hearing

## **12    *The Hearing***

12.1 The hearing must be held within three months of the date the Investigating Officer's report. The hearing must not be held less than 14 days after the date the Monitoring Officer sent the report to the Member unless the Member agrees to the hearing being held earlier. If the hearing cannot be held within this timescale then it must be held as soon as reasonable practicable.

12.2 The quorum for the hearing shall be three with an independent chair and two elected Members. At all times the Standards Committee should work in a demonstrably fair, independent and politically impartial way.

12.3 The Hearing Sub-Committee will decide factual evidence on the balance of probabilities. If the Member wants to have a non-legal representative, he/she must obtain the consent of the Hearing Sub-Committee. In many cases the Hearing Sub-Committee may not need to consider any evidence other than the Investigation Officer's report and any other supporting documents. However, witnesses may be necessary if more evidence is needed, or if people do not agree with certain findings of fact in the report. The Hearing Sub-Committee may limit the number of witnesses if the number is unreasonable.

- 12.4 Subject to the Chairman being able to make changes as he/she thinks fit in order to ensure a fair and efficient meeting, the procedure will be as follows:
- introductions
  - declarations of interest
  - consideration as to whether to adjourn or to proceed in the absence of the Member (if the Member is not present)
  - representations from the Investigating Officer and/or the Member as to the reasons why the Hearing Sub-Committee should exclude the press and public
  - determination as to whether to exclude the press and public.
  - examination of the Investigating Officer's report
  - consideration of the Member's written response to the investigation report if there is any disagreement as to the facts of the case
  - the Investigating Officer will be invited to make representations to support the findings of fact, calling supporting witnesses as agreed by the Chairman
  - questions of the Investigating Officer and any witnesses by the Member and Hearing Sub-Committee
  - the Member will make representations, calling supporting witnesses as agreed by the Chairman
  - questions of the Member and any witnesses by the Investigating Officer and Hearing Sub-Committee
  - The Investigating Officer and Member will be invited to make a brief final summary.
  - The Hearing Sub-Committee will retire to consider the written and verbal presentations, to conclude its findings and if the Member is found to have breached the Code to consider what, if any, sanction should be imposed.
- 12.5 Where the Member seeks to dispute any matter in the Investigating Officer's report and he/she has not given notice of intention to dispute, the Hearing Sub-Committee shall decide one of the following:
- not to admit such dispute

- to admit the dispute but invite the Investigating Officer to respond
- to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute

12.6 The Hearing Sub-Committee will decide either

- that there is no evidence of failure to comply with the Code
- that the Member has failed to comply with the Code but that no action need be taken or
- that the Member has failed to comply with the Code and should be:
  - (a) censured
  - (b) restricted access to the City Council's resources or premises for up to 6 months
  - (c) suspension or partial suspension for up to 6 months
  - (d) be required to undergo training on the Code
  - (e) be required to undertake conciliation
  - (f) be required to make a written apology
  - (g) suspension or partial suspension for up to 6 month, or until the Member has met either of the following restrictions:
    - (i) they have submitted a written apology
    - (ii) they have undertaken such training or participated in such conciliation as the Standards Committee specifies.

12.7 When deciding on a sanction, the Hearing Sub-Committee should ensure that it is reasonable and proportionate to the Member's behaviour. Before deciding on what sanction the Hearing Sub-Committee should consider the following questions, along with any other relevant circumstances:

- What was the Member's intention? Did the Member know that they were failing to follow the Code?
- Did the Member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?

- Has there been financial impropriety, for example improper expense claims or procedural irregularities? What was the result of failing to follow the Code?
- What were the potential results of the failure to follow the Code?
- How serious was the incident?
- Does the Member accept they were at fault?
- Did the Member apologise to the relevant people?
- Has the Member previously been warned or reprimanded for similar misconduct?
- Has the Member failed to follow the Code before?
- Is the Member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a Member has repeatedly or blatantly misused the City Council's information technology resources, the Hearing Sub-Committee may consider withdrawing those resources from the Member.

Suspensions may be appropriate for more serious cases, such as those involving:

- Trying to gain an advantage or disadvantage for themselves or others
- Dishonesty or breaches of trust
- Bullying

12.8 The Hearing Sub-Committee should announce its decision at the end of the hearing. The Hearing Sub-Committee must give its full written decision to the Member and complainant as soon as possible after the hearing.

12.9 The Standards Committee must also publish a summary of the decision and reasons for it in at least one local paper, unless there has been a finding of no breach of the Code and the Member objects.



### **13     *Right of Appeal***

13.1. The Member has a right of appeal within 28 days to the First-tier Tribunal for adjudication.

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