

St Helens Borough Council

Procedure for Dealing with Complaints regarding breach of the Code of Conduct for Members

Introduction

The Code of Conduct sets out the general principles of behaviour expected from Members and requirements in relation to specific interests. Complaints about a breach of the Code are submitted to the Council's Monitoring Officer for consideration [except that if the Monitoring Officer received a complaint in relation to a failure to comply with the requirements on Disclosable Pecuniary Interests, then this would be referred to Merseyside Police].

The Code of Conduct applies to Co-opted members.

This procedure will be used in dealing with complaints received relating to elected members, co-opted members and members of Parish Councils in the Borough.

Public interest considerations are at the heart of this process. The Monitoring Officer must balance the appropriate use of resource in dealing with complaints with the extent to which it may be in the public interest to take further action, and what that further action should be.

The Monitoring Officer will take steps to avoid any conflict of interest when dealing with complaints. Should a conflict arise, the Monitoring Officer from a different local authority may be being asked to consider the complaint and undertake any investigation.

1. Stage 1 – Initial Consideration

- 1.1 Complaints will be submitted in writing and there is a form available for the purpose of submitting a complaint, although completion of the form is not a requirement to consideration of a complaint.
- 1.2 Complainants must provide sufficient information to enable the Monitoring Officer to identify the breach of the Code which is being alleged. It is also helpful if the complainant identifies how the matter could be resolved.
- 1.3 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and will then consider the complaint. It may be necessary to seek further clarification from the complainant. In certain circumstances, the Monitoring Officer may decide not to investigate the complaint. Examples of the circumstances are set out in Appendix 1, but these examples are not definitive. The Monitoring Officer will notify the relevant Member that a complaint has been made and that it is currently being considered at the initial stage. The Monitoring Officer may seek information from the relevant Member.
- 1.4 Where the complaint relates to a town or parish council member, the Monitoring Officer may inform the relevant clerk about the complaint and seek

further information from the clerk, if necessary. Formal complaints about the conduct of a parish or town councillor towards a clerk should be encouraged to be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

- 1.5 If the Monitoring Officer decides not to investigate the complaint, the Monitoring Officer will endeavour to write to the complainant within 15 working days of acknowledging the complaint, explaining why that decision has been taken and affording the complainant an opportunity to request the Monitoring Officer to review the decision. A request to review the decision will only be accepted if it is supported by new information or evidence that was not available at the time of submitting the complaint. Following the outcome of initial consideration and any review requested, the decision of the Monitoring Officer not to investigate a complaint is final. The Monitoring Officer will notify the relevant Member of the outcome.

2. Stage 2 – Alternative Resolution

- 2.1 There may be circumstances where a complaint may appear to be a valid complaint which ought to be investigated, but the complainant indicates how they believe that the issue could be suitably resolved or the Monitoring Officer believes it can be resolved informally.
- 2.2 The Monitoring Officer will consider this and, if appropriate, will raise the issue with the Member with the aim of resolving the complaint quickly and informally without need of a full investigation. An example of such circumstances would be a request for an assurance that the Member will not repeat remarks which have been the subject of the complaint. If the Member was willing to give that assurance, the Monitoring Officer would regard the complaint as informally resolved and would not submit the complaint for investigation. The Monitoring Officer will consider each set of circumstances on its merits in determining whether a matter is appropriate for alternative resolution.
- 2.3 The Monitoring Officer will inform the Council's Independent Person that consideration is being given to alternative resolution of a complaint. The Monitoring Officer will also provide contact details of the Independent Person to the relevant Member to enable them, if they choose, to seek advice on the way forward.
- 2.4 If the Member concerned is unwilling to agree to the alternative resolution put forward by the Monitoring Officer, then the complaint will be submitted for investigation.
- 2.5 If the Member agrees to the alternative resolution and acts in accordance with it, e.g. by providing the assurance within an agreed timescale, then the Monitoring Officer will notify the complainant of the outcome and notify them that the complaint will not be progressed further. The Monitoring Officer's decision on this is not subject to review.

3. Stage 3 – Investigation

- 3.1 Where a complaint is to be investigated, the Monitoring Officer may carry out the investigation or may nominate a Deputy Monitoring Officer or any other senior officer with suitable experience or an external investigator, to carry out the role of investigator.
- 3.2 The Council's Independent Person will be provided with details of the complaint and the Member to whom it relates and will be consulted as to whether to undertake a formal investigation on an allegation, and shall be given the option to review and comment on allegations which the Monitoring Officer is minded to dismiss as being without merit, vexatious, or trivial.
- 3.3 The complainant will be notified that the matter is to be investigated.
- 3.4 The relevant Member will be notified that the complaint is to be investigated and will be provided with contact details of the Independent Person prior to the investigation commencing.
- 3.5 In conducting the investigation, the investigator may gather information by interviewing relevant individuals and/or seeking written statements/ documentation from those who can provide relevant information.
- 3.6 The investigator shall prepare a written report detailing the steps taken in carrying out the investigation, the information obtained which is relevant to the complaint and the investigator's conclusions in respect of the complaint. If the investigator is not the Monitoring Officer, the investigator shall provide the completed report to the Monitoring Officer.
- 3.7 The Monitoring Officer shall provide the report to the Independent Person and request that the Independent Person provides their views on the complaint for consideration by Standards Committee.

4. Stage 4 – Standards Committee

- 4.1 On completion of the investigation, the Monitoring Officer shall convene a meeting of Standards Committee.
- 4.2 The Monitoring Officer will notify the relevant Member and the complainant that Standards Committee will consider the outcome of the investigation, and will provide each of them with a copy of the investigation report.
- 4.3 The Monitoring Officer will prepare a report for Standards Committee which includes the investigation report and the views of the Independent Person.
- 4.4 The Monitoring Officer will invite the following to the meeting of Standards Committee:
 - (i) the complainant
 - (ii) the relevant Member
 - (iii) the Investigator (if not the MO)
 - (iv) the Independent Person

- 4.5 At the meeting of Standards Committee, the Monitoring Officer will present the report. Members of the Committee may ask questions of the Monitoring Officer and the investigator (if not the MO). At Members' discretion, the complainant and the relevant Member may be permitted to make a statement setting out their respective position. Members may ask questions of the complainant and the relevant Member, but it is a matter for the individuals concerned whether they wish to respond to any questions asked.
- 4.6 If the Independent Person is present, Members of Standards Committee will provide the Independent Person with the opportunity to make additional comments to any written submission provided.
- 4.7 The meeting may be adjourned if members of Standards Committee require information which may be available, but has not been presented.
- 4.8 When Standards Committee members are satisfied that they have sufficient information before them, they will:
- (i) take into account the views of the Independent Person;
 - (ii) consider whether the relevant Member has breached the Code of Conduct;
 - (iii) consider whether further action is warranted;
 - (iv) consider what action to take.
- Standards Committee will reach its view regarding a breach of the Code on the balance of probabilities.
- 4.9 If Standards Committee determines that the relevant Member has breached the Code, it may recommend to Council that the Member be censured. Standards Committee may make further recommendations to Council regarding the matter relative to the individual circumstances, if it believes this will promote and maintain high standards of conduct.
- 4.10 The decision of Standards Committee in relation to any complaint is final and not subject to appeal either by the complainant or by the relevant Member.

Examples of Complaints which the Monitoring Officer may decide not to progress to Investigation

- (a) Complaints submitted anonymously.
- (b) Complaints which do not identify a Member alleged to be in breach of the Code.
- (c) Complaints which appear to the Monitoring Officer not to relate to the Member's conduct whilst acting in his/her capacity as a Member.
- (d) Complaints which relate to someone who is no longer a Member, or relate to conduct before the Member was elected.
- (e) Complaints which relate to incidents which happened more than 12 months ago and there is little benefit in investigating, or the investigation would be compromised by the passage of time.
- (f) Complaints containing trivial allegations.
- (g) Complaints which appear malicious, politically motivated or tit-for-tat, including complaints made in relation to statements on political leaflets or websites. The complaints process exists to deal with matters of conduct where it is in the public interest to do so. The Monitoring Officer must be mindful of resource considerations and not allow the process to be used as a mechanism to seek to take members to task for conduct which may technically amount to a breach of the Code but where there is little or no wider public interest in pursuing the matter.
- (h) Complaints which do not provide sufficient information to enable effective investigation.
- (i) Complaints which allege that the Member has breached the law, in particular with regard to pecuniary interests.
- (j) Such other complaints as the Monitoring Officer believes it would be inappropriate to investigate.

NB. When exercising the delegation not to progress a matter for investigation, the Monitoring Officer shall inform the complainant and provide the complainant with an opportunity to submit new information or evidence that was not available at the time of submitting the complaint. In relation to (i) above, the Monitoring Officer will refer such complaints to Merseyside Police for investigation.