

REPORT OF THE MONITORING OFFICER/ CITY SOLICITOR

**TO
STANDARDS COMMITTEE
ON
30 June 2022**

TITLE: Revision of the Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members

RECOMMENDATIONS:

That the Standards Committee considers the revised Arrangements for dealing with complaints that the City Mayor and Members have failed to comply with the Council's Code of Conduct for Members and requests that Full Council approves, with or without modifications, the revised Arrangements set out in the Appendix to the report.

EXECUTIVE SUMMARY: This report asks the Standards Committee to consider revised Arrangements for dealing with allegations of failure to comply with the City Council's Code of Conduct for Members.

The main changes are aimed at making the procedure clear and ensuring it is up to date with current legislation and include the following specific points:

- Ensure that the Independent Person should be consulted where it is appropriate and beneficial to do so throughout the entire procedure.
 - insert provision for a public interest test to be carried out to determine whether referring a complaint for investigation is a proportionate use of resources and/or will give rise to an overriding public benefit.
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BACKGROUND DOCUMENTS:

Salford City Council's Code of Conduct for Members

KEY DECISION: NO

DETAILS:

1. Background

1.1 Under section 28 of The Localism Act 2011 the City Council must have in place Arrangements under which allegations that an elected or co-opted Member of the Council has failed to comply with the Council's Code of Conduct for Members ('the Code') can be considered and decisions made on such allegations.

1.2 It is for the City Council to decide the details of those Arrangements, but the City Council must appoint at least one Independent Person whose views are to be taken into account before making a decision on a complaint that it has decided to investigate.

1.3 It is vital that the public has confidence in the high standards of local government and that there is transparency about the conduct of councillors and the mechanisms for dealing with alleged breaches of the Council's Code. It is also vital that councillors themselves have confidence in these mechanisms and investigations into such complaints abide by the principles of natural justice.

1.4 Under the Council's Constitution the Standards Committee is delegated with the role of advising the Council on the adoption, revision or replacement of the Arrangements as well as monitoring their operation. The Committee last considered the content of the Arrangements at its meeting on 5 April 2018.

2. The Arrangements

2.1 The current Arrangements have been reviewed by the City Solicitor in light of the operation of the document and the fact the last review took place 4 years ago. The main changes proposed are to:

- insert a paragraph to expressly provide that the Council's Independent Person should be consulted where it is appropriate and beneficial to do so throughout the entire procedure.
- provide clearer information about the role of the Monitoring Officer.
- insert provision for a public interest test to be carried out to determine whether referring a complaint for investigation is a proportionate use of resources and/or will give rise to an overriding public benefit. The test will specifically be carried out both at the initial assessment stage and following any attempts at local resolution which prove unsuccessful.
- adding an Appendix setting out the factors which will be taken into account when the public interest test mentioned above is carried out.
- make the various stages of the procedure clearer.
- take out references to the old standards regime (e.g., the reference to the Standards Board for England) and legislation which is no longer in force (e.g., the Disability Discrimination Act 2000).
- amend section 13 of the Arrangements to delete the delegation to the Chair of the Hearings Panel.

2.2 A copy of the revised Arrangements is attached as an Appendix to this report. The views of the Committee are sought regarding the revisions and generally.

KEY COUNCIL POLICIES: The Council's Code of Conduct for Members.

EQUALITY IMPACT ASSESSMENT AND IMPLICATIONS:

Any equality issues are addressed in the report.

ASSESSMENT OF RISK: The Council has a statutory duty to have in place Arrangements under which allegations that an elected or co-opted Member of the Council has failed to comply with the Council's Code can be considered and decisions made on such allegations. Failure to do so would mean the Council is in breach of that

duty and therefore at risk of challenge which in turn would also cause reputational damage to the Council. The Arrangements which the Council has in place also need to be transparent, effective, and fair otherwise there will be a loss of confidence around how allegations that the Code has been breached amongst both the public and councillors. It is anticipated that the Council will be able to meet its obligations, so the risk is considered low.

LEGAL IMPLICATIONS Supplied by: Ian Mark Principal Lawyer Shared Legal Service

These are set out in the body of the report.

FINANCIAL IMPLICATIONS Supplied by: N/A

PROCUREMENT IMPLICATIONS Supplied by: N/A

HR IMPLICATIONS Supplied by: N/A

CLIMATE CHANGE IMPLICATIONS Supplied by: N/A

OTHER DIRECTORATES CONSULTED: N/A

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WARDS TO WHICH REPORT RELATES: ALL

SALFORD CITY COUNCIL

Member Complaints Procedure – Code of Conduct

Arrangements for dealing with allegations of failure to comply with the Code of Conduct for Members

1. Introduction

1.1 This procedure applies when a complaint is received that the City Mayor or a Member or a voting Co-opted Member of Salford City Council ('the Council') has or may have failed to comply with the Code of Conduct for Members ('the Code').

1.2 The Code only applies to the City Mayor or a Member of the Council when they are acting in the capacity of a Member of the Council

1.3 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".

1.4 The Monitoring Officer is the officer of the Council who has responsibility for dealing with complaints made about the City Mayor or a Member of the Council and as part of that role will review the complaint and make a decision as to whether it merits formal investigation.

1.5 The Council appoints at least one Independent Person from outside the Council to assist the Monitoring Officer and the Standards Committee in considering complaints. The Monitoring Officer may consult with the Independent Person at any point where they consider it may be appropriate or beneficial to the complaint and will consult with the Independent Person where specified under this procedure.

1.6 In reviewing and making a decision about all complaints the Monitoring Officer will have regard throughout as to whether the balance of the public interest favours taking any further action in respect of the complaint. The test will be specifically relevant when considering whether to recommend formal investigation of the complaint to the Standards Committee. Application of the test seeks to ensure that only the most serious complaints, which justify the public expense of formal investigation and determination are formally investigated. The public interest test the Monitoring Officer will consider is set out in the Appendix to the Procedure.

1.7 No Member or Officer of the Council will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter. Where the Monitoring Officer has a conflict of interest in the complaint, for example if he or she has formally advised the member on the matter previously, the Monitoring Officer will appoint another person to carry out the procedure and will have no further involvement in the complaint. The Monitoring Officer may appoint the Deputy Monitoring Officer, or a Monitoring Officer or Deputy Monitoring Officer from another authority to carry out the procedure.

2. Making a complaint

2.1 A complaint must be made in writing via the Council's online complaint form which can be accessed at <https://www.salford.gov.uk/your-council/councillors/how-to-complain-about-a-councillor/>. However, in line with the requirements of the Equality Act 2010, the Council can make reasonable adjustments to assist a complainant who has a disability that prevents him/ her from using the form. If there is a language barrier assistance will also be provided to a prospective complainant. Should an oral complaint be accepted, it will be transcribed and sent to the complainant for their approval.

2.2 A complainant must provide details of their name and address to the Monitoring Officer when submitting a complaint. Any complaint submitted without this information will be rejected. If a complainant wishes to have their details withheld during the complaints process and therefore appear anonymous, the Monitoring Officer will consider this request at the initial assessment stage of these Arrangements. In reaching their decision as to whether or not to allow the request for anonymity, the Monitoring Officer may also consult with the Independent Person. Anonymity during the complaints process will only be permitted where the complaint includes documentary or photographic supporting evidence indicating an exceptionally serious or significant issue that provides clear evidence that disclosing the complainant's identity will place them at risk.

2.3 If the complaint alleges criminal conduct or breach of other regulations by any person, the Monitoring Officer will have absolute discretion as to whether to report this to the Police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code of Conduct. Once a referral to the Police or other prosecuting or regulatory authority has been made, no further action will be taken by the Monitoring Officer unless and until the Police have confirmed such further action to be appropriate and where this occurs the Monitoring Officer will inform the complainant of their decision and the reasons for it.

2.4 Confidentiality

If a Complainant wishes their identity to be withheld, they should state this and provide full reasons why they believe their request is justified when submitting the complaint. Any request for confidentiality will be considered by the Monitoring Officer at the initial assessment stage of these Arrangements. In reaching his/ her decision the Monitoring Officer may also consult with the Independent Person.

2.5 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 Officer 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.

2.6 If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality/anonymity, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed.

2.7 The complaint procedure will be carried out with an expectation of confidentiality from all parties involved in the complaint. An elected or co-opted member who does not respect the confidentiality of the complaint process and without authorisation shares or publicly discloses information provided by the Monitoring Officer or gained during an investigation, will be in breach of the Code.

2.8 The Monitoring Officer will acknowledge receipt of the complaint within ten working days of all required information being provided and, at the same time, write to the Subject Member with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer).

2.9 The Subject Member may, within ten 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. Stage 1 – Initial Assessment of Complaint

3.1 The Monitoring Officer will review the complaint and, following consultation with the Independent Person, take a decision (initial assessment) as to whether it should be rejected, or it merits investigation or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

The complaint will be automatically rejected if:

- The complaint is not against one or more named Member or co-opted Member of Salford City Council.
- The Subject Member was not in office at the time of the alleged conduct.
- The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged conduct.

Where a complaint is rejected on any of the above grounds the Monitoring Officer will write to the Complainant explaining why their complaint cannot be dealt with under this procedure.

3.2 The Monitoring Officer may request further information from either the Complainant, the Subject Member or any other persons the Monitoring Officer considers appropriate before reaching a decision.

3.3 If the complaint has not been rejected on the grounds in 3.1 the Monitoring Officer will notify party whips that a complaint has been received and that it is undergoing initial assessment. Such notification will name neither the subject member nor the complainant.

3.4 If the complaint has not been rejected on the grounds in 3.1 the Monitoring Officer will then go on to apply the following criteria 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 Monitoring Officer (unless sufficient new evidence is provided) or the complaint has been investigated by another regulatory authority.

- 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, but the complaint is not serious enough to merit any action and:
 - i. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations or
 - ii whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
- Whether the complaint appears to be malicious, vexatious politically motivated or tit for tat.
- Whether the complaint suggests that there is a wider problem throughout the authority.

The Monitoring Officer will consult the Independent Person and then give their 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. Stage 2 – Informal Resolution

4.1 The Monitoring Officer will always seek to resolve a complaint informally whenever in his/ her reasonable judgment it is appropriate to do so. It is only complaints which raise the most serious issues where informal resolution will not be considered to be an appropriate step.

4.2 Types of informal resolution might include:

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

4.3 Where the Monitoring Officer seeks to resolve the complaint informally, he or she will provide the Subject Member with a reasonable timescale within which to attempt to resolve the complaint (usually this will be 20 working days) and provide the Subject Member with the contact details for the Independent Person who will be 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 at the Hearing Panel.

4.4 Before deciding upon a course of action the Subject Member may seek guidance from a Group Whip, Leader of the Group, the Independent Person, and/or the Monitoring Officer. The Monitoring Officer may also seek the Complainant's views to ascertain what form of informal resolution they would find acceptable.

4.5 At the end of the 20-working day period referred to in paragraph 4.3 above the Monitoring Officer will, in consultation with the Independent Person, seek to establish whether the proposed action by the Subject Member has resolved the complaint to the Complainant's satisfaction.

4.6 Where it has been possible to agree a form of resolution between the Subject Member and the Complainant 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.

4.7 Where it has not been possible to agree a form of resolution between the Subject Member and the Complainant, the Monitoring Officer will decide if the complaint merits formal investigation. In making a decision at this point, the Monitoring Officer will consider if the balance of the public interest is in recommending formal investigation or in taking no further action.

4.8 Where the Subject Member makes a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will also take account of this in his or her decision.

5. Stage 3 – Formal Investigation

5.1 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.

5.2 The Investigating Officer will follow guidance 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.

5.3 Whilst the Investigating Officer will make every effort to conduct any investigation as swiftly but as thoroughly as possible, all parties should recognise that the time taken to investigate, and subsequently reach a resolution, may vary according to the complexity of the particular case under investigation.

5.4 At the end of their investigation, the Investigating Officer will produce a report and will send a copy of that report to the Monitoring Officer. The Investigating Officer may before that produce a draft report and send copies to the Complainant and Subject Member for comments on matters of fact. The Investigating Officer will take such comments into account before issuing their report to the Monitoring Officer.

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

6.1 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.

6.2 The Monitoring Officer will write to the Complainant and the Subject Member, with a copy of the decision and the Investigating Officer's report.

6.3 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.

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

7.1 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 hearing before the Hearing Panel or seek informal resolution in accordance with paragraph 7.2 below.

7.2 Informal Resolution

If the Monitoring Officer considers that the matter can at this stage still 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. In reaching a decision as to whether informal resolution is appropriate the Monitoring Officer will have regard to the public interest test. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology and/or other remedial action such as conciliation and/or training. If the Subject Member and the Complainant accept the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee for information but will take no further action. If the Complainant or the Subject Member refuses informal resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for hearing without further reference to the Complainant or the Subject Member.

8. Stage 4 - Hearing

8.1 Where, in the opinion of the Monitoring Officer, informal resolution is not appropriate or if having attempted informal resolution as set out in paragraph 7.2 it has not been possible to agree a form of resolution between the Subject Member and the Complainant, then the Monitoring Officer will report the Investigating Officer's findings to the Hearing Panel which will conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, what action (if any) to take in respect of the Member.

8.2 Constitution of the Hearing Panel

The Hearing Panel is a sub-committee of the Council's Standards Committee. It will comprise of at least one of the Independent Members co-opted to the Standards Committee and three elected Members of the Standards Committee of whom one should be a Member of the minority party.

The Independent Person will be invited to attend all meetings of the Hearing Panel and their views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. Any views provided by the Independent Person must be recorded in the decision issued by the Hearing Panel.

9. The Independent Person

9.1 The Independent Person must be a person who has applied for the post following advertisement 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.

9.2 A person is not eligible for appointment if they:

- are, a member, co-opted Member or officer of the Council;
- have within the past five years been a Member, co-opted Member or officer of the Council;
- are a relative, or close friend of a person within the bullet points above.

9.3 For the purpose of paragraph '10.2', "relative" means:

- spouse or civil partner;
- living with the other person as husband or 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 or wife or as if they were civil partners.

9.4 In the interests of accountability and transparency, whenever the Independent Person is consulted about a complaint about a member and has provided views thereon, those views will be shared in any subsequent report to the Standards Committee and, where appropriate, full Council.

10. Action available to the Hearing Panel

10.1 Where a Hearing Panel finds that a Subject Member has failed to comply with the Code of Conduct, the Council has delegated to the Standards Committee (and the Standards Committee has sub-delegated to the Hearing Panel), such of its powers to take action in respect of Subject Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearing Panel will –

- publish its findings in respect of the subject member's conduct;

And it may –

- report its findings to Council for information;
- recommend to Council that the Member be censured;
- recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to the Council) that he/she will be removed from any or all committees or sub committees of the council;
- recommend to the City Mayor that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
- instruct the Monitoring Officer to arrange for training for the Member;
- recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council.
- withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or
- place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.

11. Withdrawal of a Complaint

In the event that a Complainant withdraws a complaint at any time prior to a decision having been made by a Hearing Panel, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint. In taking such a decision the Monitoring Officer shall take into account any issues which may arise under paragraph 3.1(c) of the Code of Conduct.

12. Revision of these Arrangements

The Council may by resolution or by delegation to the Monitoring Officer agree to amend these Arrangements where it is considered that it is expedient to do so in order to secure fair consideration of any matters.

13. Appeals

There is no right of appeal against the decision of the Monitoring Officer or of the Hearing Panel.

14. Annual Reporting to Council

The Monitoring Officer, on behalf of the Standards Committee, will prepare an Annual Report to Council outlining the proactive and reactive activities of the Committee over the previous 12 months. This will include details of activities and initiatives to promote high ethical standards of behaviour among members and a summary of complaints received, the findings of any investigations undertaken, and any action taken. Such reports will usually be anonymised, but the Standards Committee has the discretion to take a report on a specific case to full Council if it chooses to do so.

15. Review of these Arrangements

These Arrangements were last reviewed in 2022 and shall be reviewed every 3 years thereafter, or earlier where there is a change in the applicable law or circumstances warrant an earlier review.

APPENDIX

Public interest Test

There is no single definition of the public interest, which can cover a wide range of values concerning what is in the best interests of society. The public interest in local democracy includes there being widespread trust in the integrity of local members as community representatives and decision makers. The Code of Conduct is designed to protect the democratic role of members, encourage good conduct and safeguard public trust in local democracy by setting out the standards of conduct that citizens can reasonably expect from members elected to or co-opted onto the Council. The public interest is therefore not necessarily the same as what the public is interested in, as demonstrated for example through traditional or social media discussion. It is also not necessarily the same as the private interests of any person, though something which affects the private interests of a person may also impact on the wider public interest.

The seriousness of the allegations.

In assessing the seriousness of the allegations, the Monitoring Officer will consider the evidence provided by the complainant. Evidence that indicates a more serious breach is likely to include evidence that the alleged breach was planned or premeditated, evidence that the alleged breach is ongoing, repeated or has escalated, evidence that the member or someone connected to them has benefited from the alleged breach, whether the member has been found to have breached the Code previously, evidence of alleged harm to individuals or groups of people, evidence that the alleged breach involves discrimination on the basis of gender, race, disability or other characteristic protected by the Equality Act 2010, evidence that the complaint suggests a wider issue in the Council. The seniority and length of experience of the member may also be relevant to this consideration.

The proportionality of conducting a full investigation

Proportionality involves considering whether the cost of an investigation, and the impact of an investigation on the member complained of and others who will be drawn into the investigation is justified by the need to maintain public trust and confidence in elected members and local democracy. The likely sanction that would be imposed if the member is found to have breached the Code is relevant to this consideration. An investigation necessarily involves public resources and for this reason the Monitoring Officer will ordinarily only recommend full investigation of alleged breaches of the Code that appear likely to be significant in their impact on public trust and confidence in elected members and/or local democracy