

WEST OF ENGLAND MAYORAL COMBINED COMBINED AUTHORITY MEMBER CODE OF CONDUCT COMPLAINTS HANDLING PROCEDURE

Background

1. Under Section 27(2) of the Localism Act 2011 (the “2011 Act”), the West of England Mayoral Combined Authority (the “Combined Authority”) is required to adopt a code dealing with the conduct that is expected of members and co-opted members of the Combined Authority when they are acting in that capacity. The 2011 Act sets out further requirements as to the content of the code that the Combined Authority must adopt. The Combined Authority has adopted such a code of conduct (the “Code”) which is set out in its constitution.
2. Under Section 28 of the 2011 Act, the Combined Authority must have in place “arrangements” for dealing with allegations that the Metro Mayor or any other member of any of the Combined Authority’s committees (a “Subject Member”) has failed to comply with the Code. This complaints handling procedure (the “Procedure”) constitutes the necessary arrangements for the purposes of Section 28 of the 2011 Act.

Independent Persons

3. The 2011 Act requires the Combined Authority to appoint at least one Independent Person (“IP”) to assist in administering the Procedure. It says that the views of an IP must be sought by the Combined Authority before it takes a decision on an allegation that it has decided to investigate, and that the Combined Authority may also seek the views of an IP at any other stage in the complaints handling process. The 2011 Act also provides that a Subject Member, against whom an allegation has been made, may also seek the views of an IP.
4. Whilst the 2011 Act only requires the Combined Authority to appoint one IP, the Combined Authority will endeavour to retain no less than three IPs. The Combined Authority will do this to provide resilience in that function, but also so that there can be an IP available to the Combined Authority and a separate IP available to the Subject Member to assist in the handling of any single complaint.
5. The MO will usually select an IP to support the Combined Authority on a “cab rank” basis, with each appointed IP taking their turn to discharge that role. The other IPs will then be available for the Subject Member to consult should the Subject Member wish to do so.

The Monitoring Officer

6. The Combined Authority has delegated to its Monitoring Officer (the “MO”) responsibility for dealing with complaints in accordance with this Procedure.

7. If the MO has a conflict of interest, they will delegate the matter to the Deputy Monitoring Officer (the “DMO”). Circumstances in which the MO will have a conflict of interest include where the MO is the complainant or is likely to be key witness in any investigation.
8. The MO may, in circumstances which fall short of a conflict of interests, take the view that it would nonetheless be prudent to delegate the matter to the DMO and/or retain the services of a suitably qualified external advisor to provide, along with the role undertaken by the IP, additional assurance as to the independence of the process and the decisions taken by the MO/DMO in dealing with the complaint.

Requirements for Making a Complaint

9. All allegations of a breach of the Code must (under the 2011 Act) be made in writing (ideally by a complainant completing a complaints form made available on the Combined Authority’s website) and should be sent to the MO at a postal and/or email address publicised for that purpose.
10. A complaint must provide a sufficiently precise description of the conduct complained of and indicate which provisions of the Code are said to have been breached. A complaint should make clear what evidence is relied upon in support of the allegations made and what outcome is sought from the complaints process.
11. The Combined Authority cannot deal with complaints which relate solely to a Subject Member’s private life or things they do which are not related to their role as a member or representative of the Combined Authority.
12. The MO will reject a complaint unless they are satisfied that the complaint is:-
 - a) against a member of the Combined Authority who was,
 - b) acting in that capacity at the time of the alleged incident; and
 - c) that the allegation (if proven) is capable of amounting to a breach of the Code
13. In accordance with accepted principles of “natural justice” a Subject Member is entitled to know the identity of their accuser. For this reason, anonymous (or pseudonym) complaints will not be accepted unless the MO concludes that there is a compelling reason in the public interest why a serious allegation made anonymously should nevertheless be considered under the Procedure.
14. As an alternative to accepting an anonymous (or pseudonym) complaint, the MO may conclude that there is compelling reason why a complainant’s identity, whilst made known to the MO, shall be withheld from the Subject Member (or others involved in the administering the Procedure).
15. It is important that complaints are brought swiftly, so the MO will also consider whether there has been any undue delay in bringing a complaint and will not

normally accept complaints about conduct that occurred more than 6 months prior to the date upon which the complaint is received.

16. The MO or their nominee may take such steps as are reasonably required to render assistance to those requiring it to satisfy the requirement that complaints be submitted in writing, provided always that the complainant confirms that the written complaint captures the complaint that they wish to make in the way that they wish to make it.

Acknowledging and Accepting Complaints and Keeping Parties Informed

17. Within three working days of receipt of a written complaint, the MO will send the complainant an acknowledgement of receipt of the complaint. The MO may seek further information from a complainant at this (or any other) stage, along with (if not already provided) their permission to disclose the complainant's identity to the Subject Member and an undertaking from the complainant to respect the confidentiality of the process.
18. The MO may discontinue a complaint at this (or any other) stage if any further information, consent or undertaking reasonably required from the complainant is not provided within a reasonable time frame.
19. Complaints which identify criminal conduct or a breach of other regulations by any person may be referred to the Police (or other appropriate regulatory authority) for consideration. In such cases the MO may pause the consideration of the complaint pending action by the relevant regulatory authority.
20. Once the MO is content that they have all that they reasonably require to proceed with their consideration of the complaint, they will confirm to the complainant that the complaint has formally been accepted and the anticipated process/timeframe from that point.
21. Within three working days of receipt of a written complaint, the MO will also inform the Subject Member that a complaint has been made, providing whatever information the MO is able (considers appropriate) to provide at that stage, including anticipated process/timeframe from that point and whether anything is required of the Subject Member at that stage.
22. The MO will also ensure that the Subject Member is informed in timely fashion as to whether/when a complaint has been formally accepted, inviting views on the complaint from the Subject Member at the appropriate time, affording a reasonable period for the Subject Member to respond, reminding the Subject Member of their right to consult an IP, and providing the Subject Member with the contact details of the available IP(s) if requested.
23. The MO will continue to keep the complainant and Subject Member apprised in timely fashion of anticipated process/timeframes as the complaint progresses.

Initial Consideration Stage

24. Once the MO is content that they have all the information that they reasonably require, they will proceed to an initial consideration of the complaint. They will invite an IP to give their views on the complaint, on the Subject Member's response (if any) and on what action should be taken at this stage. That IP will then remain the IP who will be consulted by the MO/Combined Authority on that case throughout this process, except in exceptional circumstances necessitating a change of IP.
25. Having sought the views of the IP, and after having regard to all relevant considerations (including those set out in the paragraph below) the MO will decide to:-
- a) take no further action; or
 - b) seek to resolve the matter informally; or
 - c) refer the matter for investigation.
26. The relevant considerations referred to in the paragraph above include whether:-
- a) there is (or is likely to be) sufficient evidence to demonstrate a breach of the Code.
 - b) there are alternative, more appropriate, remedies that should be explored first. These remedies could include things like engaging in mediation or asking the Subject Member to correct the record or update a register of interests, gifts, or hospitality.
 - c) the complaint has been made by another member about political debate where a greater allowance for robust (but not personal abuse or "unparliamentary") language or views is given.
 - d) the complaint is, in the view of the MO, malicious, frivolous, politically motivated, or 'tit for tat'.
 - e) an investigation would be proportionate in the public interest which shall include consideration of whether, even if proven, the breach should or could lead to any (or any further) sanction being imposed.
 - f) the complaint is the same as one which has previously been considered with no new material evidence or issues raised.
 - g) the complaint (along with any others) tends to disclose a relevant pattern of behaviour on behalf of the complainant or Subject Member.
27. All parties will be notified of the MO's decision and there is no internal right of appeal against that decision.

Informal resolution

28. Where the MO has decided to seek to resolve the matter informally, they may do one or more of the following:-

- a) ask the Subject Member to submit an apology in writing to the complainant (or to some other person or in some other way commensurate to the circumstances of the case).
 - b) convene a meeting between the Subject Member and the complainant to try and resolve the issue informally.
 - c) notify the Subject Member's group leader (where they are a member of a political group) and suggest that they may wish to take some internal group action.
 - d) suggest that the Subject Member undergo relevant training.
 - e) other such action that the MO deems appropriate.
29. The MO will decide on a timeframe within which the informal resolution must be completed to a standard the MO considers to be acceptable.
30. If either the Subject Member or complainant refuses to engage with the informal resolution proposed by the MO, or the MO deems the action taken by the Subject Member insufficient or the informal resolution does not take place in a timely way the MO will decide, in consultation with the IP, whether the case should be closed, whether an investigation is necessary or whether some other action should be taken which could include an alternative sanction or referral of the matter to a Hearings Subcommittee, convened in accordance with the Terms of Reference set out in the Combined Authority's constitution.
31. The MO will notify the parties in writing of the outcome of the informal resolution process.

Investigation

32. Where the MO determines that a matter should be formally investigated, the MO may carry out the investigation themselves, delegate it to another officer or contract it out to a suitably qualified outside person or organisation.
33. The investigation will normally be completed within 3 months of the MO decision to investigate; however each case will depend on its own circumstances. The MO will keep the parties informed as to process/timescales in a timely fashion.
34. Before concluding the investigation, a draft report will be produced and the complainant, Subject Member and IP will be invited to comment on matters of factual accuracy. Witnesses may also be asked to comment on matters of factual accuracy as appropriate on parts of the draft report relevant to them.
35. At the end of the investigation, and after seeking the views of the IP, the MO may:
- a) seek to resolve the matter informally with no determination as to a breach of the Code; or
 - b) determine whether there has been a breach of the Code; or

- c) convene a meeting of the Hearings Subcommittee, in accordance with the Terms of Reference set out in the Combined Authority's constitution, to determine the matter as soon as is reasonably practicable.
36. In cases where the MO seeks to resolve the matter informally, the provisions above in respect of informal resolution shall apply, save that there shall be no second investigation.
37. In cases where the MO concludes that there has been no breach of the Code, all parties will be notified in writing of the MO's decision. There is no right of internal appeal against that decision.
38. In cases where the MO concludes that there has been a breach of the Code they may, after seeking the views of the IP, impose a sanction. The parties will be notified in writing of the MO's decision. There is no right of internal appeal against that decision.
39. Where the matter is referred for to the Hearings Subcommittee for determination, in accordance with the Terms of Reference set out in the Combined Authority's constitution, the MO will notify the Subject Member and complainant of the date of the committee meeting and provide them with a written outline of the hearing procedure.

Hearings Subcommittee

40. A matter referred for determination by the MO will be heard by a Hearings Subcommittee in accordance with the provisions in the Combined Authority's constitution.
41. At the start of the hearing the MO will ask the Hearings Subcommittee to consider whether the matter should be heard in public or in private, subject to the normal rules on exempt and confidential information and bearing in mind the public interest. The Hearings Subcommittee will always, however, retire in private to consider its findings and possible action.
42. The views of the IP will be sought by the Hearings Subcommittee as part of the determination process.
43. The Hearings Subcommittee may decide:
- a) that there has been no breach of the Code;
 - b) that there has been a breach of the Code but to take no further action; or
 - c) that there has been a breach and a relevant sanction should be imposed or recommended.
44. In any event, the Hearings Subcommittee may issue advice or guidance with the intention of avoiding any recurrence of the issues identified in the case.

45. If the Hearings Subcommittee decides that a relevant sanction should be imposed or recommended it may impose or recommend any one or more of the following:-
- a) report its findings in respect of the Subject Member's conduct to Combined Authority or (where relevant) the authority to which the Subject Member was elected;
 - b) issue a formal censure;
 - c) recommend to the Combined Authority Committee, Subject Member's group leader (or in the case of un-grouped members, recommend to the Combined Authority or to the authority to which the Subject Member was elected) that they be replaced on any or all meetings of a committee or sub-committee of the Combined Authority;
 - d) recommend to the Combined Authority Committee that the Subject Member be removed from positions of responsibility within the Combined Authority.
 - e) instruct the MO to arrange training for the Subject Member;
 - f) recommend to the Combined Authority that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Combined Authority;
 - g) recommend to Combined Authority that it withdraws facilities provided to the Subject Member by the Combined Authority for a specified period, such as a computer, website and/or email and internet access; or
 - h) recommend to the Combined Authority that it excludes the Subject Member from the Combined Authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Combined Authority committee and sub-committee meetings and/or restricts contact with officers to named officers only;
 - i) if relevant, recommend to the secretary or appropriate official of the group that the member be removed as Group Leader or other position of responsibility.
46. Notwithstanding the sanctions above, it should be noted that the Metro Mayor cannot be removed from office under the provisions of this Code.
47. All parties will be notified of the Hearing Subcommittee's decision and there is no right of internal appeal against that decision.

Confidentiality, Decision Notices, Records and Pausing or Discontinuing Complaints

48. All parties to a complaint shall respect the confidentiality of the process and shall not disclose the nature or existence of the complaint nor (even where the nature or existence of the complaint becomes known) discuss or comment on the same unless or until a decision is duly taken as part of this complaints procedure permitting the same. Failure to comply may itself lead to a breach of the Code. A complaint may be discontinued if, in the view of the **Decision Taker** (which is the Monitoring Officer save where a matter has been referred to the Hearings Subcommittee in which case the Decision Taker is the Hearings Subcommittee), it is appropriate to do so on account of this requirement not having been observed.

49. In the event of a finding of a breach of the Code, a Decision Notice will be published.
50. In the event of a finding of a breach of the Code, but that no action is needed, the Decision Notice should:
 - say that the Member failed to follow the Code, but that no action needs to be taken;
 - outline what happened;
 - give reasons for the decision not to take any action
51. In the event of a finding of a breach of the Code leading to the imposition or recommendation of a sanction, the Decision Notice should:
 - say that the Member failed to follow the Code;
 - outline what happened;
 - explain what sanction has been imposed or recommended;
 - give reasons for the decision.
52. In the event of a finding of no breach of the Code, the Decision Taker shall decide whether to publish a Decision Notice having proper regard for the need to balance fairness to the Subject Member with any public interest there may be in making the circumstances of the complaint and the decision known.
53. If a Decision Notice is to be published, it shall be published on the Combined Authority's website and anywhere else the Decision Taker considers appropriate.
54. Subject to any over-riding provisions of the Combined Authority's records retention policy, records shall be kept for a period of 4 years starting on the date upon which the Subject Member ceases to be a member of the Combined Authority and may be considered in subsequent complaints where appropriate.
55. A complaint may be paused or discontinued if (in addition to circumstances described elsewhere in this procedure) the Decision Taker (in consultation with the IP) considers that to be appropriate on account of the intervention of external factors such as police, court or other regulatory proceedings, illness or some other indisposition (whether of the Subject Member or a close relative), loss of office, the resignation, disqualification or death of the Subject Member or if the complaint is withdrawn or otherwise resolved. The Decision Taker may (in consultation with the IP) nonetheless elect to report the issue/outcome to the Hearings Subcommittee in such circumstances where it is considered proportionate in the public interest to do so.
56. The MO will provide the Audit Committee with reports on the number and outcome of Code of Conduct cases on a not less than annual basis. The usual rules in respect of confidential and/or exempt information will apply in the provision of such reports.

Updating this Procedure

57. The MO (in consultation with the IP and Audit Chair) will update this procedure from time to time to ensure that it remains current, proportionate and effective, contemporaneously reporting all such updates all members of the Combined Authority's committees.