

REPORT TO:	STANDARDS COMMITTEE
DATE:	1 November 2022
REPORT OF:	Sandra Stewart – Chief Executive
SUBJECT MATTER:	PROCEDURE UNDER STANDARDS FRAMEWORK
REPORT SUMMARY:	<p>The committee are asked to review the updated procedure for complaints which particularly addresses anonymous complaints and also asks to consider a position when a standards complaint has not been concluded when a member ceases to be in office. A finding may not be made against a former member however there are some authorities that have decided that a complaint or investigation can be reinstated if the former member is re-elected within a certain period of time. It is recommended therefore that the committee consider that when a member ceases to hold office the outstanding complaint, investigation or hearing does not continue unless the person is re-elected within a certain period of time after ceasing to hold office. Members can determine the relevant period. If within that period, the person is either re-elected or co-opted to the Council, the complaint is reinstated and will be referred back to the Standards Committee for consideration. If the person is not re-elected or co-opted within that period, no further action is taken in the matter. It should be noted that both the Council's complaints system and the Local Government Ombudsman do not consider complaints over 12 months except in exceptional circumstances.</p>
RECOMMENDATION(S)	Members consider the refreshed and revised procedure procedure for a local hearing and confirm (i) the composition of the Hearing Panel; and (ii) Members consider the position of the time period in which a complaint should be revived if a member ceases to hold offices but becomes relected.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.
RISK MANAGEMENT:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.
LINKS TO COMMUNITY PLAN:	Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

ACCESS TO INFORMATION

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

REFERENCE DOCUMENTS:

The background papers relating to this report can be inspected by contacting the report author, Sandra Stewart, Chief Executive & Head of Paid Service:



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1. INTRODUCTION

- 1.1 This procedure applies when a complaint is received that a Member, or Voting Co-opted Member of Tameside Council or Mossley Town Parish Council has or may have failed to comply with the Code of Conduct for Members ('the Code').
- 1.2 The Code only applies to a Member of Tameside Council or Mossley Town Parish Council when they are acting in the capacity of a Member of that 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 is responsible for administering the system of complaints about member misconduct and as part of that role may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.
- 1.5 The Council appoints Independent Persons from outside the Council to assist the Monitoring Officer and Standards Committee in considering complaints. Further details about the role of the Independent Persons are set out in Appendix 1 to these Arrangements.
- 1.6 No Member or Officer of Tameside Council or Mossley Town Parish Council will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter.

2. MAKING A COMPLAINT

- 2.1 A complaint should be made in writing either by post or e-mail to: The Monitoring Officer, Chief Executive's Department, or [complaints @tameside.gov.uk](mailto:complaints@tameside.gov.uk)
- 2.2 However, an oral complaint will be accepted where the complainant is unable to write due to a physical or mental disability. Where an oral complaint is received it will be transcribed and sent to the complainant for their approval.
- 2.3 A complainant is required to provide their full name and full postal address. Anonymous complaints will only be accepted in exceptional circumstances. Further information regarding confidentiality and anonymous complaints is set out in paragraphs 2.6 to 2.8 and 2.11 to 2.12 below.
- 2.4 A complaint must provide substantiated information and should outline what form of resolution the Complainant is seeking. Further information regarding the range of sanctions available is set out in paragraph 9 below. Complainants will be encouraged to submit their complaint using the Council's Member Complaints Form. However, other written complaints will be accepted so long as they contain all relevant information.
- 2.5 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. In the case of alleged criminal conduct the complaint may be held in abeyance pending the outcome of any criminal investigation.

Confidentiality

- 2.6 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 their decision, the Monitoring Officer may also consult with the Council's Independent Person.

- 2.7 As a matter of fairness and natural justice the Subject Member will 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 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.
- 2.8 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. If the Complainant does not respond within five working days the Monitoring Officer may dismiss the complaint.

Discontinuance of Complaints by Monitoring Officer

- 2.9 The Monitoring Officer may discontinue a complaint if they consider it appropriate to do so where the Subject Member ceases to be a Member of Tameside Council or Mossley Town Parish Council.
- 2.10 Where a complaint is discontinued the Monitoring Officer will write to the Complainant and the former Subject Member setting out the reasons for their decision.

Anonymous complaints

- 2.11 If an anonymous complaint is received it 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 Council's Independent Person.
- 2.12 The principles of fairness and natural justice referred to in paragraph 2.7 will also be applied to anonymous complaints and such complaints will only be accepted if they include documentary or photographic evidence indicating an exceptionally serious or significant matter.

Timeframes

- 2.13 The Monitoring Officer will acknowledge receipt of the complaint within 10 working days of all required information being provided. The complainant will be given details about how the complaint will be dealt with and provided with a copy of these Arrangements. At the same time, the Monitoring Officer will write to the Subject Member (and in the case of a complaint about Mossley Town Parish Council Member to the Clerk of the Parish Council) with a copy of the complaint and the name of the complainant, (if anonymity has not been requested and accepted as valid by the Monitoring Officer).
- 2.14 The Subject Member may, within 10 working days of being provided with a copy of the complaint, 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.
- 2.15 A decision regarding whether the complaint merits formal investigation or another course of action will normally be taken within 20 working days of either receipt of representations from the Subject Member or where no representations are submitted 20 working days of the expiry of the period mentioned in paragraph 2.13 above.

- 2.16 The Complainant and the Subject Member will be informed should there be a delay in completing any stage of the process.

3. STAGE 1 – PROCEDURE FOR INITIAL ASSESSMENT OF COMPLAINT

- 3.1 The complaint will be automatically rejected if:
- The complaint is not against one or more named Member of Tameside Council or Mossley Town Parish Council; or
 - The complaint is against a current Member of Tameside Council or Mossley Town Parish Council but the Subject Member was not acting in their capacity as a Member of that Council at the time of the alleged failure to comply with the Code;
 - The complainant fails to provide a full name and postal address, unless the Monitoring Officer has agreed that exceptional circumstances apply such that the complaint may proceed anonymously; or
 - the conduct alleged does not disclose a potential breach of the Code. Examples include a Member's failure to respond to correspondence or where the complaint merely expresses dissatisfaction with a decision taken by a Member.

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 The Monitoring Officer will consider the complaint and, may consult with the Council's Independent Person before reaching a decision (initial assessment) as to whether the complaint merits investigation, or another course of action. Where the complaint relates to a Mossley Town Parish Member, the Monitoring Officer may also seek the views of the Clerk of Mossley Town Parish Council before deciding whether the complaint merits formal investigation or other action.
- 3.4 If the complaint has not been rejected on either of 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 the subject of an investigation 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 (subject to paragraph 2.12 to 2.14 above);
 - Whether the allegation discloses a potential breach of the Code of Conduct, 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;
- 3.5 After consulting with the Independent Person the Monitoring Officer will then give their decision on how the complaint will be dealt with. The Monitoring Officer may at their absolute discretion in exceptional circumstances refer the question of how to proceed to a

Sub-Committee of the Standards Committee.

- 3.6 If the Monitoring Officer decides that no further action is appropriate a decision notice will be sent to the Complainant and the Subject Member. The decision notice will summarise the allegation, give the decision of the Monitoring Officer and the reasons for their decision.

4. STAGE 2 - INFORMAL RESOLUTION

- 4.1. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Informal resolution may be appropriate for example:-
- Where it is apparent that the Subject Member is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction.
 - Where training or conciliation would be a more appropriate response.
- 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 they 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 to the Standards 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, particularly if the form of resolution they have specified in their complaint is not possible.
- 4.5 At the end of the 20 working day period referred to at paragraph 4.3 above the Monitoring Officer will, in consultation with the Council's Independent Person, seek to establish whether 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.
- 4.8 Where the Subject Member makes a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in his or her decision.

5. STAGE 3 – FORMAL INVESTIGATION

- 5.1 Where the Monitoring Officer decides a complaint merits investigation they will appoint an Investigating Officer who 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. The Investigating Officer should aim to complete their investigation within 3 months of their appointment.
- 5.3 Following consultation with the Council's Independent Person, the Monitoring Officer may instruct that an investigation be terminated, and the complaint dismissed, if the Investigating Officer informs the Monitoring Officer that the complainant is persistently failing to engage with the investigation and that such failure is hindering the investigation.
- 5.4 At the end of their investigation, the Investigating Officer may produce a draft report and send copies to the Complainant and Subject Member for comments on matters of fact. The Investigating Officer will take any such comments received during a period to be specified by the Investigating Officer into account before issuing their final 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 (and to the Clerk of Mossley Town Parish Council, where the complaint relates to a Mossley Town Parish 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 believes that the matter can reasonably be resolved without the need for a hearing, for example because informal resolution has not yet been considered, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. The types of resolution available are as set out in paragraph 4.2 of these Arrangements. If the Subject Member and the Complainant accept the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to Mossley Town Parish Council (if appropriate) 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 a 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 the Complainant and/or Subject Member refuses to accept informal resolution, then the Monitoring Officer will report the Investigating Officer's findings to a Hearing Panel (constituted as detailed in paragraph 8.2 below), which will conduct a 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.

Constitution of the Hearing Panel

- 8.2 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 who will act as Chair and three elected Members of the Standards Committee of whom one should be a Member of the largest minority political group (if any). Where the complaint is about a Mossley Town Parish Council Member, the Hearing Panel will also include the Mossley Town Parish Council Member co-opted to the Standards Committee. The Independent Person will be invited to attend all meetings of the Hearing Panel and their views must be sought and if such views are provided 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 also be recorded in the decision notice issued by the Hearing Panel.

Process

- 8.3 Members of the Hearing Panel will consider in private the complaint and consider whether there has been a breach of the code.
- 8.4 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 Member for the purpose of this procedure.
- 8.5 The Investigating Officer outlines their report and presents the report, including any documentary evidence and calls such individuals as they consider appropriate to give evidence.
- 8.6 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.
- 8.7 Members of the Hearing Panel may ask questions of the Investigating Officer and any witnesses called.
- 8.8 The Subject Member or representative may present their case and call witnesses as required.
- 8.9 The Investigating Officer may question the Subject Member and/or any witnesses.
- 8.10 Members of the Hearing Panel may also question the Subject Member and/or any witnesses.
- 8.11 The Investigating Officer may sum up the complaint.

- 8.12 The Subject Member or representative may sum up their case.
- 8.13 In the presence of all the parties, the Chair of the Hearing Panel will announce the decision that either the Subject Member has failed to follow the Code of Conduct or has not failed to follow the Code and will give reasons for their decision.
- 8.14 If the Hearing Panel decides that the Subject Member has failed to follow the code, the hearing Panel will give the Subject Member the opportunity to make representations on whether action or sanctions should be taken.
- 8.15 The Hearing Panel will consider in private what action should be taken and then in the presence of all the parties, the chair shall announce the decision.
- 8.16 The chair will confirm that the decision will be provided in writing to the Subject Member within 10 working days following the meeting.
- 8.17 The Chair shall have absolute discretion on managing the running of the hearing with the advice of the Monitoring Officer and/or their deputy with the aim of achieving fairness and proportionality.

9. ACTION AVAILABLE TO THE HEARING PANEL

- 9.1 Where a Hearing Panel finds that a Subject Member has failed to comply with the Code, it will –
- Publish its findings in respect of the Subject Member's conduct;
- And it may –
- Report its findings to Council (or to Mossley Town Parish 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 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 Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
 - Instruct the Monitoring Officer (or recommend to Mossley Town Parish Council) to arrange training for the Member;
 - Recommend to Council (or recommend to Mossley Town Parish Council) that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council (or by Mossley Town Parish Council);
 - Withdraw (or recommend to Mossley Town Parish Council that it withdraws) 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.

10. APPEALS

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

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 will take into account whether there has been any intimidation or attempt to intimidate any person who is or is likely to be:

- a complainant,
- a witness, or
- involved in the administration of any investigation or proceedings, in relation to the allegation that the Subject Member has failed to comply with the Council's Code.

12. REVISION OF THESE ARRANGEMENTS

The Monitoring Officer may, in consultation with the Chair of the Standards Committee, revise these Arrangements, as they consider appropriate, in individual cases to enable the process to be dealt with efficiently. Any such revisions to be reported to the next meeting of the Council's Standards Committee.

13. REVIEW OF THESE ARRANGEMENTS

These Arrangements were last reviewed in 2019 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 1

THE INDEPENDENT PERSON

1. The role of the Independent Person is set out in Section 28 of the Localism Act 2011.
2. As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one Independent Person. The Independent Person's views must be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.
3. The authority may also seek the Independent Person's views on an allegation that it has not decided to investigate. However, there is no requirement for the authority to do so, or to take those views into account.
4. A member or co-opted member of the authority (or of a parish council in the area) may seek the independent person's views on an allegation made against them.
5. 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.
6. 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 Tameside Council,
 - are, or have been within the past five years, a Member or co-opted Member or officer of Mossley Town Parish Council; or
 - are a relative or close friend of a person within the bullet points above.
7. For the purpose of paragraph 6 above, "relative" means:
 - 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