

Complaints about a Breach of the Members' Code of Conduct - Procedure for Handling Complaints

Definitions

Code – means the Code of Conduct adopted by the Fire Authority and in existence at the time of the subject matter leading to the Complaint

Complaint – means a written allegation that there has been a breach of the Code from an identified Complainant

Complainant – means a person lodging a Complaint

Member Subject of Complaint (MSOC) – means the Member who is the subject of the Complaint

Independent Person – means a person appointed by the Fire Authority

Sub-Committee – means the Members' Code of Conduct Sub-Committee

1. The Monitoring Officer receives a Complaint and acknowledges receipt. The Monitoring Officer will normally disclose details of the Complaint to the MSOC at this stage (but has discretion not to do so in exceptional circumstances).

Initial Assessment/Gateway Procedure

2. The Monitoring Officer will consider the written complaint within 21 days and determine whether to;
 - **Take no action**
 - **Arrange other actions i.e. training or mediation**
 - **Refer the matter to the relevant Group Leader for informal action**
 - **Refer the matter for formal investigation**
 - **Refer the matter to the police or other regulatory agency**
3. The Monitoring Officer will apply the “public interest” test when filtering complaints:
 - **CAN the complaint be investigated: Is the person a Member of the Authority? is the conduct covered by the Code? When did the alleged conduct occur?**
 - **SHOULD the complaint be investigated: is there evidence to support the complaint? can it be investigated? Would an investigation be proportionate and in the public interest?**

4. With experience criteria may be developed to assist in making decisions, aimed at ensuring consistency.
5. The Monitoring Officer ~~may~~ **will** consult the Independent Person at this stage.
6. An initial assessment decision to take no action will be final. Accordingly there will be no right of review for either the Complainant or MSOC.

Independent Person

7. The MSOC has the opportunity to consult the Independent Person at any stage.

External Investigation

8. Where the Monitoring Officer decides that the complaint requires further investigation a suitable investigator will be appointed.
9. **If the Monitoring Officer identifies a conflict of interest which prevents him or her from involvement in an investigation, a Monitoring Officer from another Authority will be engaged to undertake the role normally performed by the Monitoring Officer.**
10. The investigation should normally be completed within 12 weeks of the referral.
11. The report of the investigator should incorporate the following:-
 - **Executive Summary** – An outline of the allegation, who made it, the relevant provisions of the Code and whether there has been a breach.
 - **MSOC's official details** – A brief outline of when the MSOC was elected, term of office, details of committees served on and any relevant training.
 - **Summary of facts and evidence gathered** – A summary of the facts and evidence gathered, highlighting facts which are in dispute and setting out the external investigator's conclusions based on the balance of probabilities
 - **Reasoning as to whether there has been a failure to comply with the Code and investigator's findings** – Dealing with each allegation in turn and outline of whether the external investigator considers whether there has been a breach and any aggravating or mitigating facts.
 - **Schedule** – a list of witnesses interviewed and copies of relevant documents

12. A copy of the report will be circulated to the MSOC and Complainant to check for factual accuracy. Both the Complainant and the MSOC will have the opportunity to make written submissions/representations.

Consideration of the Investigator's Report: no evidence of failure

13. Where the investigator concludes that there is no evidence of a failure to comply with the Code, the Monitoring Officer will review the report in consultation with the Independent Person. If the Monitoring Officer is satisfied with the investigator's report, he/she will write to the Complainant and to the MSOC telling them that no further action will be taken. He/she will give them a copy of the investigator's report.
14. The Monitoring Officer will make his/her decision within 21 working days of receipt of the investigator's report.
15. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the investigator to reconsider his/her report.

Consideration of the Investigator's Report: evidence of failure

16. Where the investigator concludes that there is evidence of a failure to comply with the Code, the Monitoring Officer will review the report and will either send the matter for hearing before the Members' Code of Conduct Sub-Committee or, after consulting the Independent Person, seek local resolution.

A. Local Resolution

17. If the Monitoring Officer believes that the matter can be reasonably resolved without the need for a hearing, he/she will consult the Independent Person and the Complainant and seek to agree what the Complainant considers to be a fair resolution e.g. the MSOC accepting that his/her conduct was unacceptable and offering an apology and/or the Authority taking remedial action. This should also seek to ensure higher standards of conduct in the future. The Monitoring Officer will then consult the MSOC.
18. If the MSOC complies with the suggested resolution, the Monitoring Officer will report the matter for information to Governance and Constitution Committee but will take no further action. If the Complainant tells the Monitoring Officer that any suggested resolution would not be adequate or if local resolution cannot be achieved, the Monitoring Officer will consider whether the matter should be considered further at a hearing.

B. Hearing

19. If the Monitoring Officer considers local resolution is not appropriate or this is not agreed by the parties, he/she will refer the matter to the Members' Code of Conduct Sub-Committee which will conduct a hearing before deciding whether the MSOC has failed to comply with the Code and, if so, what action if any to take.
20. The Members' Code of Conduct Sub-Committee will consider the complaint made about the MSOC afresh, having regard to the investigator's findings and all relevant information presented to the hearing by the Complainant and the MSOC.
21. The Independent Person must be consulted and his/her views taken into account before any decision is made on an allegation which has been investigated. The Independent Person should be present at the hearing to present his/her views in person.
22. Meetings of the Members' Code of Conduct Sub-Committee when conducting hearings will normally be subject to the normal rules for publication of agendas and access to information.
23. The Members' Code of Conduct Sub-Committee will announce its decision at the end of the hearing. Within five working days, the Monitoring Officer will prepare a formal Decision Notice in consultation with the Chair of the Sub-Committee and send a copy to the Complainant and the MSOC, **who will be given the opportunity to correct any inaccuracies prior to publication.**
24. The Decision Notice will be available for public inspection and posted on the Authority's website. It will be reported to the next meeting of Governance and Constitution Committee.
25. There is no right of appeal from the decision of the Members' Code of Conduct Sub-Committee.
26. The Members' Code of Conduct Sub-Committee is not bound by any earlier decision.
27. The Members' Code of Conduct Sub-Committee will normally:
 - (a) Allow the Investigator to present his/her report and call witnesses, including the complainant.
 - (b) Allow the subject member to make representations and call witnesses, including the complainant.
 - (c) Decide if the subject member has or has not breached the Code.
 - (d) Decide what sanction should be imposed if it decides the Code has been breached.

The sanctions the Members' Code of Conduct Sub-Committee can impose, if it finds a breach of the Code are:

- (a) Censure or reprimand the MSOC.
- (b) Publish the findings in respect of the MSOC's conduct.
- (c) Report its findings to the Authority for information and make any recommendations.
- (d) Recommending to the MSOC's Group Leader (or in the case of ungrouped member, recommending to the Authority) that the MSOC be removed from any or all committees or sub-committees of the Authority.
- (e) Instruct the Monitoring Officer to arrange training for the MSOC.
- (f) Recommend to the Authority that the MSOC be removed from all outside appointments to which he/she has been appointed or nominated by the Authority.
- (g) Withdraw facilities provided to the MSOC by the Authority, such as computer, website and/or email and internet access.
- (h) Exclude the MSOC from the Authority's offices or other premises, with the exception of meeting rooms as necessary for attending formal meetings.

The Sub-Committee has no power to suspend or disqualify the MSOC or to withdraw the MSOC's allowances.