

**Manchester City Council
Report for Resolution**

Report to: Standards Committee – 22 October 2015

Subject: Procedure for the Local Hearing of Allegations of Misconduct by Council Members

Report of: The City Solicitor

Purpose of the Report:

To enable the Standards Committee to consider a draft procedure for the local hearing of complaints against members.

Recommendations:

That the Standards Committee considers this report and approves, with or without modifications, the draft Procedure for the Local Hearing of Allegations of Misconduct by Council Members contained in Appendix 1.

Wards Affected:

All

Financial Consequences for Revenue Budget:

None.

Financial Consequences for the Capital Budget:

None.

Implications for:

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

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Background documents

None

1. Background

- 1.1 On 11 July 2012 the Council adopted a new Code of Conduct for Members (“the Code”) in accordance with the requirements of the Localism Act 2011, together with Arrangements for dealing with complaints that Council Members have failed to comply with the Code (“the Arrangements”).
- 1.2 Under the Arrangements there are a number of stages through which a complaint that a member has breached the Code can potentially pass. The first of these is an “Initial Assessment” stage at the conclusion of which the Monitoring Officer, having consulted with the Council’s Independent Person, will decide whether to reject the complaint, seek informal resolution of the matter or refer the complaint for formal investigation. Where a complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer to investigate the matter in accordance with the Monitoring Officer’s guidance on investigating allegations of breach of the Code. Where the Investigating Officer’s final report concludes that there is sufficient evidence of a failure by the Member concerned to comply with the Code, the Monitoring Officer, having reviewed the report and consulted with the Independent Person, will either seek local resolution of the matter or send it for local hearing before the hearing panel.
- 1.3 The Arrangements provide that a local hearing panel shall be a sub-committee of the Standards Committee. The establishment of such a sub-committee is the subject matter of an accompanying report to the Committee.
- 1.4 Following the adoption of the new Code, a detailed procedure for the local hearing of complaints by a hearing panel has yet to be adopted. A draft Procedure for the Local Hearing of Allegations of Misconduct by Council Members (“the draft procedure”) has been produced and is presented to the Committee for approval.

2. Draft Local Hearing Procedure

- 2.1 The draft procedure is contained in Appendix 1.
- 2.2 The starting point for the draft procedure was the hearing procedure that had been in place prior to the changes to the standards regime that were brought about by the Localism Act 2011. Broadly, the draft procedure makes the following changes to the former hearing procedure:
 - Removal of redundant elements of the hearing process (e.g. references to Consideration Meetings and to the possibility of referral to the First Tier Tribunal).
 - Additions made to reflect new elements of the current standards regime or the Council’s Arrangements (e.g. Independent Persons).
 - Some miscellaneous changes, largely aimed at improving clarity.

3. Recommendations

- 3.1 Recommendations to the Committee are set out at the start of this report.

APPENDIX 1



**PROCEDURE FOR THE LOCAL HEARING OF
ALLEGATIONS OF MISCONDUCT BY COUNCIL
MEMBERS**

Introduction

1. Any hearing that results from a referral of a matter by the Monitoring Officer for local hearing (following an investigation by an Investigating Officer appointed to investigate an allegation of a breach of the Code of Conduct for Members) will be governed by this procedure.
2. The circumstances in which a referral for local hearing may be made by the Monitoring Officer are described in the Arrangements for dealing with complaints that Council Members have failed to comply with Council's Code of Conduct for Members ("the Arrangements").
3. The person against whom the complaint is made will be referred to in this procedure as "the Member". The person making the complaint will be referred to as "the Complainant".
4. A local hearing will be undertaken by a Hearing Panel. A Hearing Panel is a sub-Committee (the Standards (Hearing) Sub-Committee) of the Council's Standards Committee that has been constituted in accordance with the Arrangements for the purpose of carrying out a local hearing of a complaint and shall be chaired by an independent member of the Standards Committee. In the event that, exceptionally, the Standards Committee itself undertakes the local hearing of a complaint, any references in the procedure below to a Hearing Panel should be read as a reference to the Standards Committee.
5. Where there is a conflict of interest preventing the Monitoring Officer from performing their role independently, the Deputy Monitoring Officer, or another appropriate officer of the authority shall be appointed by the Monitoring Officer to perform those functions in respect of which the conflict exists. In such circumstances, the relevant references in this procedure to the Monitoring Officer shall be read as referring to the officer appointed to perform the functions in question.
6. This procedure is subject to an overarching requirement that any local hearing be conducted in a manner compatible with the right to a fair hearing, including as provided for by Article 6 of the European Convention on Human Rights.

The Pre-Hearing Process

7. Where, following the completion of a local investigation, a decision is made to refer the matter for local hearing, the Monitoring Officer shall provide the information in paragraph 8, on the understanding that it be treated as confidential, to
 - the Member;
 - the Hearing Panel;
 - the Independent Person; and

- the standards committee of any other authority, other than a parish council, of which the person who was the subject of the investigation is a member, if that other authority so requests.
8. The information that is to be provided is as follows:-
- a copy of the Investigating Officer's final report,
 - any documents relied upon by the Investigating Officer in reaching the conclusion in his or her final report, such as background documents of telephone conversations, letters, notes of interviews of witnesses, and a chronology of events,
 - a report from the Monitoring Officer describing why, having received the Investigating Officer's final report and having consulted with the Independent Person, a decision was made to refer the matter for a local hearing,
 - a copy of this hearing procedure, and
 - a covering letter explaining what will happen next.
9. The Member will be asked to provide a written response, within 15 working days, stating whether or not they:
- disagree with any of the findings of fact in the Investigating Officer's final report, including the reasons for any disagreement;
 - wish to attend the hearing
 - want to be represented at the hearing (at their own expense) by a solicitor, barrister or any other person;
 - want to give evidence at the hearing, either verbally or in writing;
 - want to call relevant witnesses to give evidence at the hearing;
 - want any part of the hearing to be held in private;
 - want any part of the final report or other relevant documents to be withheld from the public; and
 - will be unavailable on any dates within the next 3 months.
10. The Monitoring Officer will request the Member to make clear in their response any disagreements they have with the findings of fact in the Investigating Officer's final report, as the Member will not be allowed to raise new disagreements at the hearing unless the Hearing Panel agrees there are good reasons to permit these.

11. The Monitoring Officer will inform the Member that to be represented at the hearing by a person other than a barrister or solicitor will require the permission of the Chair of the Hearing Panel in advance of the hearing. The Chair of the Hearing Panel may refuse permission if they believe that the non-legal representative is directly involved in the matter being determined.
12. The Monitoring Officer will inform the Member that the Chair of the Hearing Panel may call such witnesses as considered appropriate. The Monitoring Officer shall also inform the Member that he/she may call witnesses, subject to the Chair of the Hearing Panel's power to limit the number of witnesses where the number requested is unreasonable.
13. The Chair of the Hearing Panel may request the attendance of any additional witnesses to be present at the hearing whose evidence may assist the Hearing Panel with its decision.
14. The Independent Person must be invited to the hearing.
15. The Chair of the Hearing Panel, in consultation with the Monitoring Officer, will then write to the persons referred to at paragraph 7 at least two weeks before the hearing to:
 - set the date, time and place for the hearing;
 - summarise the allegation(s);
 - outline the main facts of the case that are agreed;
 - outline the main facts which are not agreed;
 - note whether the member concerned or the Investigating Officer will attend or be represented at the hearing;
 - list those persons to be invited to the hearing, including the Independent Person and those witnesses, if any, who will be asked to give evidence;
 - indicate whether any part of the hearing should be in private or any documents or parts of documents withheld from the public; and
 - outline the proposed procedure for the hearing.

The Hearing

16. The hearing shall take place within three months from the date that the final report is issued and at least 14 days after the Member receives a copy of the final report.
17. The Hearing Panel may consider any new evidence submitted by the Member.

18. The Hearing Panel will aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.
19. The Hearing Panel will control the procedure and evidence presented at a hearing including the questioning and cross-examination of witnesses.
20. The Hearing Panel may at any time seek legal advice from the Monitoring Officer. Such advice will on all occasions be given in the presence of the Member and the Independent Person, if present.
21. The Hearing Panel may, at any time prior to the conclusion of the hearing, decide it needs additional information in order to reach a decision, and having adjourned the hearing may ask the Monitoring Officer to obtain further information or undertake further investigation.
22. The Hearing Panel shall decide, on the balance of probability, whether the grounds of the complaint are upheld.
23. Each Hearing Panel member, aside from any independent member, shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. Independent members of the Hearing Panel do not have voting rights.
24. The meeting of the Hearing Panel will be open to the public unless confidential information or exempt information is likely to be disclosed (see paragraph 50).
25. The initial order of business at a local hearing shall be as follows:
 - declarations of interests
 - introductions
 - consideration of the Monitoring Officer's and/or the Member's reasons as to why the Hearing Panel should exclude the public. Where the Hearing Panel decides that it will not exclude the public, copies of the agenda and reports will be provided to any members of the public who are present.
 - (where the Member is not present at the hearing) decision whether to determine case in Member's absence or to accept Member's reason for absence and adjourn hearing to a new date.
26. The procedure at the hearing will be as follows, subject to the Chair of the Hearing Panel being able to make any changes they think fit in order to ensure a fair and efficient hearing.
 - Examination of the Investigating Officer's report, the Monitoring Officer's report and Member's written representations.

The Hearing Panel will consider the Investigating Officer's final report together with the Monitoring Officer's report and any written response from

the Member to those reports. The Hearing Panel will establish any findings of fact which are not in disagreement.

- Oral Evidence.

If there is any disagreement as to the facts of the case, the Investigating Officer will be invited to make any necessary representations to support the relevant findings of fact in the report, calling supporting witnesses as agreed by the Chair of the Hearing Panel. Questions may be asked by the Hearing Panel at any point.

If not called by the Investigating Officer as a witness, the Complainant may make a statement to the Hearing Panel.

The Member will then be invited to make necessary representations to support their version of the facts, calling supporting witnesses as agreed by the Chair of the Hearing Panel. Questions may be asked by the Hearing Panel at any point.

If the Member, the Investigating Officer, the Monitoring Officer, or any representative of any party wishes to challenge any oral evidence being presented, this must be directed through the Chair of the Hearing Panel.

27. After the Member has presented their case, the Hearing Panel will ask the Independent Person to express their views on the matter. If not present, any written representations they have made will be considered.
28. If the Member has not given prior notice of disputed facts in the report during the pre-hearing process, the Chair will ask them to provide good reasons for not giving prior notice. After considering the Member's explanation, the Hearing Panel will decide whether to:
 - continue with the hearing, relying on the information in the report;
 - allow the Member to make representations about the issue, and invite the Investigating Officer to respond and call witnesses, as necessary;
 - postpone the hearing to enable witnesses to be called or to enable the Investigating Officer to attend and respond, if they are not present
29. The Hearing Panel will deliberate in private on the representations and evidence presented, following which the Chair will announce their findings of fact at the hearing.
30. The next stage is for the Hearing Panel to then consider in private whether or not, on the determined facts, the Member has failed to follow the Code of Conduct. Before doing so the Hearing Panel will consider representations, as detailed below.

31. The Member may give reasons why the Hearing Panel should decide that the Code has not been breached.
32. The Investigating Officer, if present, may make representations as to whether the Member has breached the Code. If not present, any written representations they have made will be considered.
33. The Independent Person will be invited to express their views. If not present, any written representations they have made will be considered.
34. The Member will then be invited to make any final points they wish to be considered.
35. The Hearing Panel may question anyone involved on any point they raise in their representations.
36. Following its private deliberations the Hearing Panel shall announce its decision as to whether the Member has breached the code.
37. The Hearing Panel will then consider in private whether or not, given the breach of the Code on the determined facts, the Hearing Panel should set a penalty and, if so, what form it should take. The Hearing Panel will first consider any verbal or written representations from the Member, the Independent Person and the Monitoring Officer. The Hearing Panel may question anyone involved on any point they raise in their representations. Following its private deliberations the Hearing Panel shall announce its decision as to what, if any, penalty shall be imposed.

Decision of the Hearing Panel

38. The Hearing Panel upon completing its deliberations shall make one of the following findings:
 - the member has not failed to follow the authority's Code of Conduct nor that of any other authority concerned;
 - the member has failed to follow the authority's Code of Conduct and/or that of another authority concerned, but no action needs to be taken; or
 - the member has failed to follow the authority's Code of Conduct and/or that of another authority concerned and should be penalised.
39. If the Committee decides that the Member has not breached the Code, it will consider whether it wishes to make any recommendations to the Council arising from the hearing.
40. If the Standards Committee finds that the Member should be penalised they shall decide to do one or any combination of the following:
 - Publish its findings in respect of the Member's conduct;

- Report its findings to Council (or to Ringway Parish Council) for information;
 - Recommend to Council that the Member be censured;
 - Recommend to the 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 for a recommended period;
 - Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their portfolio responsibilities;
 - Instruct the Monitoring Officer (or recommend to Ringway Parish Council) to arrange training for the Member;
 - Recommend to Council (or recommend to Ringway Parish Council) that the Member be removed from all outside appointments to which they have been appointed or nominated by the Council (or by Ringway Parish Council);
 - Withdraw (or recommend to Ringway Parish Council that it withdraws) facilities provided to the Member by the Council such as a computer, website and/or e-mail and internet access; or
 - Place such restrictions on the Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances
41. When deciding a penalty the Hearing Panel shall ensure that it is reasonable and proportionate to the Member's behaviour, will consider all relevant circumstances and consider all questions listed in the annex to this procedure.
42. Following private deliberations, the Chair of the Hearing Panel will announce the decision of the Hearing Panel and the reasons for that decision at the Hearing.

Notice of the Hearing Panel's Findings

43. The Hearing Panel will make available a written decision outlining whether or not the Member has failed to follow the Code of Conduct and the form of any penalty set at the end of the hearing.
44. As soon as is reasonably practicable, the Monitoring Officer will circulate on behalf of the Hearing Panel the full written decision to:
- the Member;
 - the Independent Person;
 - the standards committee of any other authorities concerned;

- any parish council concerned; and
 - the person who made the complaint.
45. The Monitoring Officer shall at the same time arrange for a summary of the decision and the reasons for that decision to be published on the Council's website.
46. If the Hearing Panel's finding is that the Member did not fail to follow the Code of Conduct, the public summary shall:
- state this and give reasons for reaching that finding; and
 - if the member requests, the public summary shall not be published on the Council's website.
47. If the Standards Committee finds that a Member failed to follow the Code of Conduct but that no action is needed, the public summary shall:
- state that the Member failed to follow the Code, but that it has been deemed that no action needs to be taken in respect of that failure;
 - specify the details of the failure; and
 - give reasons for the Hearing Panel's finding.
48. If the Hearing Panel finds that a Member failed to follow the Code and it sets a penalty, the public summary shall:
- state that the Member failed to follow the Code of Conduct;
 - specify the details of the failure;
 - give reasons for the Standards Committee's finding; and
 - explain what penalty has been imposed.
49. Copies of the agenda, reports and minutes of a hearing, apart from sections of documents relating to parts of the hearing that were held in private, shall be made available for public inspection for six years after the hearing.

Public Access to Hearings and Documents

50. A local hearing will be held in public apart from:
- where it is necessary to prevent confidential information being revealed, in which case the meeting or that part of the meeting will be held in private. Confidential information is information that has been provided by a Government

department under the condition that it must not be revealed; and information that cannot be revealed by virtue of any legislation or court order.

- where it is necessary to prevent 'exempt information' being revealed to the public. Exempt information is set out in Schedule 12A of the Local Government Act 1972.

51. The agenda and reports for a meeting shall be made available to the public before the meeting unless the Monitoring Officer exercises the power to prevent any part of a report being made public if it relates to a part of the meeting which, in their opinion, is likely to be held in private. After a meeting/hearing, sections of the committee's reports and minutes of the meeting which relate to parts of the hearing held in private will not be made available for public inspection.

The Role of the Monitoring Officer

52. The Monitoring Officer shall be the legal adviser to the Hearing Panel.

53. The Monitoring Officer's role is to:

- make sure that members of the Hearing Panel understand their powers and procedures;
- make sure that the hearing procedure is fair and will allow the allegation to be dealt with as efficiently and effectively as possible;
- make sure that the Member understands the procedures the Hearing Panel will follow;
- provide advice to the Hearing Panel during the hearing and their deliberations; and
- assist the Hearing Panel in producing a written decision and a summary of that decision.

Questions to be considered by the Hearing Panel when deciding a penalty

When deciding on a penalty, the Hearing Panel should make sure that it is reasonable and in proportion to the Member's behaviour. Before deciding what penalty to impose, the Committee should consider the following questions, along with any other relevant circumstances:

- What was the member's intention? Did the member know that he or she was failing to follow the Code of Conduct?
- Did the member get advice from officers before the incident? Was that advice acted on in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of failing to follow the Code of Conduct?
- How serious was the incident?
- Does the member accept he or she was at fault?
- Did the member apologise to the relevant people?
- Has the member previously been warned or reprimanded for similar misconduct?
- Has the member failed to follow the Code of Conduct before?
- Is the member likely to do the same thing again?
- How will the penalty be carried out?
- Are there any resource implications?

There may be other factors, specific to the circumstances of the case, that the Hearing Panel also considers to be relevant when deciding what penalty to impose.