

**Manchester City Council
Report for Resolution**

Report to: Standards Committee – 3 November 2022
Council – 30 November 2022

Subject: To propose amendments to the Arrangements for dealing with complaints against Members

Report of: City Solicitor

Summary

This report sets out the Monitoring Officer's proposals for amendments to the Arrangements

Recommendations

That the Standards Committee recommend that full Council approve the attached Arrangements as amended.

Wards Affected: All

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Background documents (available for public inspection):

None

1.0 The Arrangements

- 1.1 As the Committee will be aware, the Council is required to have in place Arrangements for dealing with complaints about Councillors made under the Council's Code of Conduct for Members.
- 1.2 The Council's Arrangements were last reviewed by the Standards Committee in June 2019 and a copy of the current Arrangements are attached as an Appendix to this report.
- 1.3 Members are advised there are three specific stages in the Arrangements namely:
- Stage 1 – Initial Assessment of a Complaint
 - Stage 2 - Informal Resolution
 - Stage 3 - Formal Investigation
- 1.4 Paragraph 2.15 of the Arrangements set out the following timeframes in relation to the stage one initial assessment:
- The Council's Monitoring Officer ('MO') will acknowledge receipt of a complaint within 10 working days of all required information being provided by the complainant;
 - The Member/s who is/are the subject of a complaint may, within 10 working days of being provided with a copy of the complaint, make written representations to the MO;
 - 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 member/s who is/are the subject of the complaint or, where no representations are submitted, within 20 working days of the expiry of the 10 working days in which that member could have made representations to the MO.
- 1.5 Under paragraph 3.3 of the Arrangements the MO is required to consult with one of the Council's Independent Persons before reaching a decision (initial assessment) as to whether a complaint merits investigation, or another course of action.

2.0 Proposed Amendments to the Arrangements

- 2.1 The operation and efficacy of the Arrangements are generally considered at the same time as the consideration of complaints relating to Members as part of the Committee's Annual Report. The last such review was in March 2022. It is proposed to report on this as part of the next meeting when Annual report is scheduled rather than approach this in a piecemeal fashion. The MO has however undertaken a review of the Arrangements and proposes the following amendments. The proposed amendments are shown on the Appendix to this report with tracked changes and any proposed additional wording in **bold**:
- 2.2 **Identity and postal address of the complainant**

Most complaints are now submitted electronically. Even when asked to complete a Member complaint form complainant's often only provide an email address and no postal address. There is the potential that complainants may not use their real names. It is considered that if a false name is used this may put a subject member at a disadvantage.

Proposed amendments:

That paragraph 2.3 of the Arrangements be amended to provide that a complainant is required to provide their full name and full postal address.

That paragraph 3.1 of the Arrangements be amended to add a further ground for automatic rejection, namely failure 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.

2.3 Where the alleged misconduct does not disclose a potential breach of the Code

The arrangements contain no provision allowing the Monitoring Officer to reject complaints at an early stage which clearly have no merit. A number of Councils' Arrangements contain an early 'public interest test' filter to avoid wasting resources on such complaints. The Monitoring Officer proposes:

Proposed amendment:

That a further ground for rejection be added to paragraph 3.1 of the Arrangements to allow the MO to reject complaints upon receipt and without undertaking a full Initial Assessment if, even if the facts alleged are true, the facts alleged do not disclose a potential breach of the Code. In a particular instance the MO may choose to seek further information from the complainant before exercising this power.

2.4 Members failing to respond to correspondence & dissatisfaction with a Council decision

The MO is increasingly receiving complaints that a Member has failed to respond to an initial request made of them and/or failed to respond to all correspondence made to them on a particular matter. A Member's decision not to respond to correspondence may in some circumstances be discourteous. However, it is the MO's view that in most circumstances it would not amount to a breach of the Code.

Similarly, complaints are often received that merely express dissatisfaction with a decision taken by a Member, for example at a regulatory committee. It is the view of the MO that it is for individual Members to decide such matters in line with the principles of good decision making without such decisions potentially giving rise to a complaint by a complainant who is unhappy with the outcome.

As the Arrangements currently stand complaints of this nature are required to be processed in the usual way, namely being sent to the Subject Member for comment and then the MO undertaking an initial assessment of the complaint, in consultation with one of the Council's two Independent Persons. This can result in a significant resources issue for the MO and her staff.

Proposed amendment:

That the proposed further ground for rejection referred to in paragraph 3.1 of this report (where the alleged misconduct does not disclose a potential breach of the Code) provide as examples a Member's failure to respond to correspondence and where the complaint merely expresses dissatisfaction with a decision taken by a Member.

2.5 Instruction to end an investigation

At the formal investigation stage the Arrangements contain no provision to allow the MO to instruct that an investigation be ended before completion where the complainant has persistently failed to engage with the process.

Proposed amendment:

That a new paragraph 5.3 be added to the Arrangements to say that the MO, after consultation with one of the Council's Independent Persons, may instruct that an investigation be terminated, and the complaint dismissed, if the Investigating Officer informs her that the complainant is persistently failing to engage with the investigation and such failure is hindering the investigation.

2.6 Time limits for requests for confidentiality by a complainant

If the MO refuses a request from a complainant for their name to remain confidential the complainant is given the option to either withdraw the complaint or to proceed with their name being provided to the Subject Member. The current Arrangements do not provide for a time limit by which a complainant must respond to the MO with their preferred option. This can lead to delays in their complaints being progressed.

Paragraph 2.9 of the Arrangements provides as follows:

If the MO 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 MO 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.

Proposed amendment:

That paragraph 2.9 of the Arrangements be amended to introduce a timeframe of 5 working days for the complainant to respond otherwise the complaint will be dismissed. This will avoid unnecessary delay, particularly where there are multiple complainants.

2.7 Where the subject Member ceases to be a Member of the Authority

Paragraphs 2.10 and 2.11 of the Arrangements provide as follows:

- 2.10 Discontinuance of Complaints by Monitoring Officer
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 Manchester City Council or Ringway Parish Council.
- 2.11 Where a complaint is discontinued the Monitoring Officer will write to the Complainant setting out the reasons for their decision.

Proposed amendment:

That paragraph 2.11 of the Arrangements be amended to provide that the MO must write to the former Subject member, as well as the Complainant setting out the reasons for their decision.

3.0 Matters raised by a Complainant

- 3.1 A number of suggestions in relation to the complaints process were made by a complainant.
- 3.2 The complainant's comments/ suggested amendments, and the MO's view on these suggestions are as follows:
- a) Complainant's comment -The subject member's response to the complaint was taken on trust without the Subject Member being asked to provide evidence in support.

View of the MO – No amendment to the Arrangements is required because Paragraph 3.2 of the Arrangements already allows the MO to request further information from the Subject Member if she considers it appropriate before reaching a decision. Paragraph 3.2 provides as follows:

“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.”

- b) Complainant's comment -The complainant was not shown the subject member's response and given the opportunity to comment before the initial assessment decision was taken.

View of the MO – No amendment to the Arrangements is required because Paragraph 3.2 of the Arrangements already allows the MO to request further information from the complainant if she considers it appropriate to do so before reaching a decision.

- c) Complainant's comment -The arrangements do not provide for any right of appeal against the Monitoring Officer's initial assessment decision.

View of the MO – No amendment to the Arrangements is recommended. The complaints process is already multi-stage. To introduce the ability to appeal at each stage would make the process particularly unwieldy. Although complainants cannot appeal against the decision in respect of the complaint they can complain to the Local Government and Social Care Ombudsman if the Council's Arrangements are not followed.

- d) Complainant's comment -The complaint form is not user friendly. In particular, it requires the complainant to identify at the outset which of 16 listed provisions of the Code they consider to have been breached.

View of the MO - That the complaint form does not require amendment but that assistance be provided to complainants where required to help them to identify the relevant provision(s) of the Code that may have been breached.

- e) Complainant's comment - There is no ability for complainants to complete a member complaint form online.

View of the MO – An electronic version of the complaint form is now online to allow the public to make member complaints online, as they can do with other service complaints.

Recommendations

The recommendations are at the beginning of this report.