



MERSEYSIDE WASTE DISPOSAL AUTHORITY

## **Procedure for considering complaints alleging a failure to comply with a Members' Code of Conduct for Merseyside Waste Disposal Authority**

### **Introduction**

1. This procedure should be used to deal with complaints submitted in relation to the Members' Code of Conduct adopted by Merseyside Waste Disposal Authority (the Authority).
2. The Members' Code of Conduct applies to elected Members appointed to the Authority when they are acting in that capacity. All complaints should be submitted to the Authority's Monitoring Officer for consideration.
3. The Monitoring Officer may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.

### **Stage 1 – Initial assessment by the Monitoring Officer**

4. Complaints must be submitted in writing, provide substantiated information and should outline what form of resolution the complainant is seeking.
5. The Monitoring Officer will consider the complaint and make a decision as to whether it will be treated as a valid complaint or not based on the criteria agreed by the Authority.
6. In all cases where the complainant names a Member of the Authority, the Member will be notified of the complaint as will the relevant Monitoring Officer for the Member's principal authority. If the Monitoring Officer decides that the complaint is 'invalid,' this notification is made for information only.
7. If the complaint relates to an elected member but not in their capacity as a Member of Merseyside Waste Disposal Authority, the complaint will be redirected to the relevant Monitoring Officer of the Member's principal authority.
8. If the complaint relates to an employee or is a service related issue, the Monitoring Officer will redirect the complaint through to the Authority's Comments and Complaints Procedure.
9. In any case where the Monitoring Officer decides that the complaint is 'invalid,' the complainant will be informed in writing why their complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.

10. The Monitoring Officer will report on such complaints received on an annual basis to the Authority where complaints have been received in the preceding year.

## **Stage 2 – Complaint Resolution**

11. Following initial assessment and information gathering, where the complaint is deemed to be valid, the Monitoring Officer will notify the relevant Monitoring Officer for the Member's principal authority.
12. The complaint will then be dealt with under the principal authority's own complaints procedures to seek resolution or use the sanctions available to that authority where a complaint is upheld. Throughout, this Authority's Monitoring Officer will provide all necessary evidence and assistance to facilitate the process.
13. The outcome and recommendations will be reported back to the Authority's Monitoring Officer and subsequently the Authority at the conclusion of the matter.

## CRITERIA FOR THE ASSESSMENT OF COMPLAINTS

(Guidance Note: Complainants will be required to complete the relevant complaints form and also asked to indicate what outcome they would wish to see in terms of the complaint being made).

### GENERAL CRITERIA –

The Monitoring Officer in consultation with the relevant authority should be satisfied that the complaint meets the following tests:

**Question 1:** Has the complainant contacted the member concerned directly to try to resolve the matter?

*If the answer is no then was there a reason why not? If yes then what was the response?*

**Question 2:** Is it a complaint against a named member (or members) of Merseyside Waste Disposal Authority(MWDA)?

*If the answer is no then the complainant and subject member to be informed that no further action will be taken in respect of the complaint as the person is not a Member of the Authority.*

**Question 3:** Was the named member in office and the Code of Conduct in force at the time of the alleged misconduct but the named member is no longer a current elected member?

*In the above circumstances then the complainant and subject member to be informed that no further action will be taken in respect of the complaint as it would not be an effective use of limited resources to investigate an individual who is no longer an elected member.*

**Question 4:** Would the complaint, if proven, be a breach of the Code under which the member was operating at the time of the alleged misconduct? (note: it maybe a service provision issue or the complainant is merely dissatisfied with the outcome of a decision of the Authority)

*If the answer is no then the complainant and subject member to be informed that no further action will be taken in respect of the complaint as this is not a breach of the code of conduct.*

**Question 5:** Does the matter complained of clearly relate to an incident or issue when the member has been acting in his/her official capacity as a Member of Merseyside Waste Disposal Authority?

*If the answer is no then the complainant and subject member to be informed that no further action will be taken in respect of the complaint as this is not a breach of the Authority's Code of Conduct.*

**Question 6:** Has the complainant submitted enough information to satisfy the Monitoring Officer that the complaint should be referred for investigation or other action; is it submitted in writing; and does it outline what form of resolution the complainant is seeking?

*Unless sufficient information has been received to make a decision as to whether the complaint should be referred for investigation or other action then the response to the complainant will be to that effect. The complainant and subject member to be advised that no further action is to taken on this complaint.*

(Note: The Authority will ensure that the guidance for individuals making complaints is clear enough to ensure that they send through all relevant information that they wish to be considered in support of the complaint)

**Question 7:** Is the member a member of another authority rather than MWDA?

*If it is a member of another authority, the complaint will be referred to the Monitoring Officer of that authority to consider.*

**Question 8:** Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities/ police?

*If the answer is yes then unless significantly new information has been provided, the complainant will be informed that the matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken.*

**Question 9:** Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

*If the answer is yes then the complainant will be informed that the period of time that had elapsed since the alleged misconduct was taken into account when deciding whether or not it should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.*

**Question 10:** Is the complaint too trivial to warrant further action?

*If the answer is yes then the complainant will be informed that the matter was not considered to be sufficiently serious or an effective use of limited resources to warrant further action.*

**Question 11:** Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

*If the answer is yes then the complainant will be informed that the matter appeared to be simply malicious, politically motivated or tit-for-tat, and not sufficiently serious or an effective use of limited resources and therefore it was decided that further action was not warranted.*

**Question 12:** Does the complaint relate to the production of or a statement made on a political leaflet and personal blogs (private social networks) or at political meetings?

If the answer is yes then the complainant will be informed that these are subject to the laws of defamation, public order, discrimination and electoral law and not a matter for the Authority and no further action to be taken unless the allegation relates to -

- the Authority's facilities or resources having been used to produce a political leaflet;
- where there may be an impact on the reputation of the Authority or its constituent members; or
- an allegation that confidential information obtained by a councillor in their capacity as a MWDA Member had been used and published to the public in a leaflet and/ or a social network which may then breach the code of conduct in respect of confidentiality.

**Question 13:** Does the complaint appear to be a breach of criminal law?

*If the answer is yes then the complainant will be informed that it is a matter for the police and advised of whom to contact.*

**Question 14:** Is the complainant an officer of the Authority?

If the answer is yes then the officer will be advised to speak to their direct line manager in the first instance to see if the matter can be resolved between the officer and member concerned using the existing internal structures and the Protocol on Member / Officer Relations.

**Question 15:** Does the complaint relate to a failure to respond to constituent or another individual?

If the answer is yes then the complainant will be advised that failure to respond to a request does not constitute a breach of the code.

**Question 16:** Is the complaint anonymous?

As a matter of fairness and natural justice, a member should usually be told who has complained about them subject to the considerations below. If the complaint fails one or more of these tests then the complaint will not be progressed and the

complainant (where identified) and subject member must be informed that no further action will be taken in respect of the complaint. The Monitoring Officer will review these types of complaints and if appropriate give guidance to the complainant of other more appropriate courses of action. The Monitoring Officer will consult the Monitoring Officer for the Member's principal authority in each instance to link with their local procedures.

### **CONFIDENTIALITY OF COMPLAINANTS – OPTION FOR CONSIDERATION**

As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the Monitoring Officer. The Monitoring Officer should consider the request for confidentiality alongside the substance of the complaint itself.

Requests for confidentiality will be considered in the following circumstances:

- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
- The complainant is an officer who works closely with the subject member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's Whistleblowing Policy and/or the Protocol for Member / Officer Relations).
- The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. (In such circumstances, the Monitoring Officer may wish to request medical evidence of the complainant's condition.)

In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint.

If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, it may be appropriate to offer the complainant the option to withdraw, rather than proceed and have their identity disclosed.