

Pension Board Member Conduct Review Policy

1. Context

This policy sets out how a person may make a complaint that a Pension Board Member (“The Member”) has failed to comply with the Pension Board Member’s Code of Conduct, and sets out how the fund will deal with allegations of a failure to comply with that Code.

All Pension Board members are required to adhere to a Code of Conduct when undertaking their duties in this capacity.

2. The Code of Conduct

The Fund’s Pension Committee has adopted a Code of Conduct for Members of the Pension Board, which is available for inspection on the Fund’s website and on request from Reception at the Fund’s Offices.

3. Making a complaint

If you wish to make a complaint, please complete the form on the Fund’s website and post or email to:

Rachel Howe
Head of Governance
West Midlands Pension Fund
P O Box 3948
Wolverhampton
WV1 1XP

Or:

Rachel.howe@wolverhampton.gov.uk

The Head of Governance is a senior officer of the fund who has responsibility for maintaining the register of members’ interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that all the information required is available with the complaint, the complainant will be asked to provide their name and a contact address or email address together with any relevant documents in support of their complaint.

The Head of Governance will acknowledge receipt of the complaint within 5 working days of receiving it.

Where an anonymous complaint is received or the complainant wishes to remain anonymous it will be at the Head of Governance's discretion as to whether the complaint proceeds. Consideration will be given to the public interest and whether the complaint can be justified or determined without the complainant's participation.

4. What happens to my complaint?

The Head of Governance will review every complaint received and take a decision as to whether it merits further examination. This decision will normally be taken within 14 days of receiving the complaint.

Once the Head of Governance has taken a decision, they will inform the complainant of that decision and the reasons for that decision.

Where a complaint is determined to be merit further examination, the subject member will be notified of the complaint at the earliest opportunity and requested to attend a meeting with the Head of Governance to review the complaint and present their side of the case.

Where they require additional information in order to come to a decision, the Head of Governance may refer back to the complainant for such information, and may request information from the member against whom the complaint is directed.

In appropriate cases, the Head of Governance may seek to resolve the complaint informally, without the need for further review. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the fund. Where the member or the fund make a reasonable offer of local resolution, but the complainant or subject member are not willing to accept that offer, the Head of Governance may take account of this in deciding whether the complaint merits further examination.

5. What if Informal Resolution is not appropriate/successful?

In cases where Informal Resolution is not appropriate or successful the Head of Governance may conduct a fact-finding exercise to establish the groundwork for the complaint. The fact-finding exercise is to satisfy the initial tests of:

- (a) it is a complaint against one or more named members of the pension board;
- (b) the named member was appointed to the pension board at the time of the alleged conduct and the Code of Conduct was in force at the time;
- (c) the complaint, if proven would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If on conducting the fact-finding exercise, there are no facts determined or the complaint is deemed to be frivolous/vexatious, the Head of Governance will notify the complainant and the subject member that there is “no case to answer” and the matter will cease. There is no right of review of this decision unless new evidence is presented in support of the complaint. It will be at the discretion of the Head of Governance to determine whether such new evidence substantiates further examination.

Where facts are established the Head of Governance in conjunction with the Strategic Director of Pensions will prepare a report for the Pensions Committee who will determine the further steps to be taken in relation to the complaint. The report will detail all steps taken by the Head of Governance prior to the Committee.

The Committee is subject to the normal Committee rules in relation to public meetings and it will take a decision at the start of the meeting to determine whether it is appropriate to hold the meeting in closed session.

The complainant and the Subject Member will not be present at the meeting but their views will have been sought prior to the meeting to enable their opinions to be presented.

If, on assessment of the facts, the Pension Committee determines that no further action is required or there is no case to answer, this will be reported back to the complainant and the subject member who may be given leave by the Committee to appeal the decision. Such appeal will only be granted where there is new evidence in relation to the complaint.

There may be instances where the Pension Committee consider the action of the subject member to be so serious as to warrant criminal investigation. In such circumstances, the Pension Committee will instruct the Head of Governance to refer the matter to the appropriate body for investigation.

Should the Committee determine that the matter warrants a detailed investigation, the Head of Governance will appoint an Investigating Officer, who may be another senior officer of the Administering Authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to the complainant to understand the nature of the complaint and will provide an opportunity for the complainant to explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

In exceptional cases, where it is appropriate to keep identities confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Head of Governance can delete names and addresses from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the member concerned, to give them both an opportunity to identify any matter in that draft report with which they disagree or consider requires more consideration.

Having received and taken account of any comments, the Investigating Officer will send his/her final report to the Head of Governance.

6. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

On completing their investigation the Investigating Officer will present their report to the Pensions Committee who will take into account the facts and evidence produced.

The Pensions Committee is subject to the normal Committee rules in relation to public meetings and it will take a decision at the start of the meeting to determine whether it is appropriate to hold the meeting in closed session.

If satisfied that the Investigating Officer's report is sufficient, the Pensions Committee will accept the findings of the report and request the Head of Governance to write to the complainant and to the member concerned notifying them that they are satisfied that no further action is required, and provide a copy of the Investigating Officer's final report. If the Head of Governance is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider his/her report.

There may be instances where the Pensions Committee wishes to ask questions of the complainant and the subject member in order to fully understand the circumstances of the complaint. Where this is requested by the Committee, the meeting will be adjourned to enable the attendance of all parties. In such a situation, the Committee will be conducted in a manner similar to court proceedings where each party may present their arguments.

At the end of the Committee the Chair will ask the subject member whether they are happy for the outcome of the matter to be published through public notice/press statement. It will be at the discretion of the subject member whether such action is taken.

7. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

Where the investigating officer has determined that there is a breach of the code of conduct they will present their report to the Pensions Committee.

The Head of Governance will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at

the hearing, and the Chair of the Pensions Committee may issue directions as to the manner in which the hearing will be conducted.

At the Pensions Committee, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Committee, with the benefit of any advice from the Head of Governance, may conclude, in disagreement with the investigation officer that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the meeting of this finding and the Committee will then consider what action, if any, should be taken as a result of the member's failure to comply with the Code of Conduct. In doing this, the Committee will give the member an opportunity to make representations to the Panel and will consult the Strategic Director of Pensions (and if appropriate the representative body – employer or trade union), but will then decide what action, if any, to take in respect of the matter.

8. What action can the Pensions Committee take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Pensions Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Committee may:

- Issue a formal letter to the member found to have breached the Code.
- Impose Formal censure.
- Remove the member from the pension board and other appointments associated with that role.
- A press release and other appropriate publicity.
- Recommend Training.
- Report to the Pensions Regulator

9. What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Committee resolves to take.

As soon as reasonably practicable thereafter, the Head of Governance shall prepare a formal decision notice in consultation with the Chair of the Committee, and send a copy to the complainant, to the member.

10. Revision of this policy

The Fund may agree to amend these arrangements, and has delegated to the Head of Governance in consultation with the Strategic Director of Pensions the right to depart from this policy where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13. Appeals

The Pension Committees have authority to allow, or not, a right of review following the Committee's determination of the complaint. The process follows one similar to the court process, where Members be given leave to appeal a decision taken on their matter. That in order to avoid frivolous appeals, a stance of "unless new evidence is submitted/provided there will be no review".

Such requests for a review to be received within 28 days of the decision by the relevant Committee.