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## Procedure for Local Investigation of Referred Complaints

### Introduction and Summary

This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors<sup>1</sup>. No departure will be made from this procedure unless and until the Monitoring Officer<sup>2</sup> has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.

This procedure applies to breaches of the authority's Code of Conduct for Members. The authority has also resolved that the same procedure shall apply to the investigation of allegations of breaches of the authority's local protocols<sup>3</sup>, in so far as they apply to Councillors.

Where the Standards Board for England receives an allegation that a Councillor has breached the authority's Code of Conduct for Members, the Board refers the allegation to an Ethical Standards Officer for investigation<sup>4</sup>. At any point in that investigation the Ethical Standards Officer may determine that the allegation should be referred to the authority's Monitoring Officer (or in the case of a Parish Council, to the Monitoring Officer of the local District or Unitary Authority<sup>5</sup>). If the matter is referred before the Ethical Standards Officer has completed his investigation, the Monitoring Officer is then required to arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee<sup>6</sup> (or to a Sub-Committee of the Standards Committee convened for that purpose<sup>7</sup>). Similarly, when the Monitoring Officer receives an allegation of a failure by a Councillor to comply with a local protocol, and he is of the opinion that the allegation merits investigation, he shall arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee. Where the Investigating Officer has found, after investigation, that the Councillor has not acted in breach of the authority's Code of Conduct for Members or a local protocol, the Standards Committee must meet to decide whether to accept that finding or to proceed to a formal hearing. Where the Investigating Officer has found that there has been a failure to comply with the Code of Conduct for Members or a local protocol, or where the Standards Committee decides to hold a full hearing, there will then be a formal hearing to

<sup>1</sup> This procedure will apply to allegations of breach of the authority's Code of Conduct by elected and co-opted members of the authority and by the directly elected mayor of the authority (if any), and the word "Councillor" is to be taken to refer all such persons.

<sup>2</sup> The "Monitoring Officer" is an officer of the Council who has been designated as the authority's Monitoring Officer under section 5 of the Local Government and Housing Act 1989.

<sup>3</sup> Authorities may supplement their Code of Conduct for Members with local protocols which do not form part of the Code of Conduct. Allegations of a breach of a local protocol may also constitute breaches of the Code of Conduct, and so fall within the jurisdiction of the Standards Board. Where a particular allegation of breach of protocol does not form a breach of the Code of Conduct, it would fall to be investigated and determined by the authority concerned. Accordingly this procedure will apply equally to allegations of breach of a local protocol, but by virtue of a delegation from Council rather than by virtue of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 – SI 2004 No. 2617.

<sup>4</sup> Section 58(2), Local Government Act 2000.

<sup>5</sup> Where this procedure relates to a District or Unitary Authority's responsibilities in respect of a Parish Council, it refers to the District or Unitary Authority as the Principal Authority.

<sup>6</sup> Section 59(4)(c), Local Government Act 2000.

<sup>7</sup> Where an authority determines that individual allegations shall be considered by a Sub-Committee, or Regulations require that a complaint be considered by a Sub-Committee, references in this procedure to the Standards Committee should be read as being references to such a Sub-Committee.

determine whether a breach of the authority's Code of Conduct has occurred and whether any action should be taken in consequence.

In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the Councillor has failed to comply with the authority's Code of Conduct for Members or a local protocol, and upon any consequent action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision.

## **1. Interpretation**

- (a) 'Councillor' means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor's representative.
- (b) 'Investigating Officer' means the Ethical Standards Officer (ESO) who referred the report to the authority (and his or her nominated representative) or, in the case of matters that have been referred for local investigation, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).<sup>8</sup>
- (c) 'The Matter' is the subject matter of the Investigating Officer's report.
- (d) 'The Standards Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing, unless the context indicates that it refers only to the Standards Committee itself.

## **2. Notification of Reference of Allegation to the Monitoring Officer**

- (a) Appointment of Investigating Officer

Upon receipt of the allegation from an Ethical Standards Officer, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him to conduct an investigation of the allegation and to report thereon to the authority's Standards Committee. The Investigating Officer may be an officer of the authority<sup>9</sup>, an officer of another local authority, or an external Investigating Officer.

The Investigating Officer may appoint persons to assist him in the conduct of his functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

- (b) Notification to the Councillor

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<sup>8</sup> This definition has been amended to make it clear that, when the Monitoring Officer arranges for someone else to undertake the investigation, the definition of the 'Investigating Officer' no longer includes the Monitoring Officer.

<sup>9</sup> There are two distinct roles, that of the Investigating Officer and that of legal advisor to the Standards Committee. The Monitoring Officer may him/herself take on the role of the Investigating Officer. Where he / she does so, he / she must also arrange for a separate legal advisor to the Standards Committee in respect of the allegation.

The Monitoring Officer will then notify<sup>10</sup> in writing the Councillor against whom the allegation is made:

- (i) That the allegation has been referred to him for local investigation and determination;
- (ii) The identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
- (iii) Of the conduct which is the subject of the allegation;
- (iv) Of the section(s) of the Code of Conduct or local protocol which appear to him to be relevant to the allegation;
- (v) Of the procedure which will be followed in respect of the allegation; and
- (vi) Of the identity of the Investigating Officer.

The Monitoring Officer shall provide the Councillor with a copy of any report received from the Ethical Standards Officer.

(c) Notification to the Standards Committee

At the same time as notifying the Councillor, the Monitoring Officer will notify each member of the Standards Committee in writing of the matters set out in paragraphs 2(b) (i) – (iv) and (vi) above.

(d) Notification to the Parish Council Clerk

Where the allegation relates to the conduct of a member of a Parish Council in his capacity as such, at the same time as notifying the Councillor, the Monitoring Officer will notify the Clerk of the Parish Council concerned in writing of the matters set out in paragraphs 2(b) (i) – (iv) and (vi) above.

(e) Notification to the Person who made the Allegation

At the same time as notifying the Councillor, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2(b) (i) – (iv) and (vi) above.

(f) Initial response of the Councillor

In notifying the Councillor of receipt of the allegation, the Monitoring Officer shall request the Councillor to respond to the Investigating Officer in writing within 14 days of notification as follows:

- (i) Advising the Investigating Officer whether the Councillor admits or denies the breach of the Code of Conduct or local protocol which is the subject of the allegation;

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<sup>10</sup> In very exceptional cases, where the Monitoring Officer has reason to believe that there is a serious risk of intimidation of witnesses or destruction of evidence, the Monitoring Officer may initiate an investigation before notifying the Councillor.

- (ii) Listing any documents which the Councillor would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;
  - (iii) Providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Councillor would wish the Investigating Officer to interview in the course of any investigation of the allegation; and
  - (iv) Providing the Investigating Officer with any information which the Councillor would wish the Investigating Officer to seek from any person or organisation.
- (g) Supporting information from the person who made the allegation

In notifying the person who made the allegation as above, the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days:

- (i) Listing any documents which the person would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;
- (ii) Providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation; and
- (iii) Providing the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

### **3. Conduct of Investigation**

(a) Purpose of the Investigation

The purpose of the Investigating Officer's investigation is to enable him to prepare and present to the Standards Committee a report which, together with any report provided by the Ethical Standards Officer, would provide the Standards Committee with sufficient information to determine whether the Councillor has acted in breach of the Code of Conduct or local protocol and, where there has been a breach of the Code of Conduct or local protocol, whether any action should be taken in respect of the Councillor or in consequence of the breach, and what any such action should be.

(b) Termination of the Investigation

The Investigating Officer may terminate his investigation at any point where he is satisfied that he has sufficient information to enable him to report to the Standards Committee and to enable the Standards Committee to come to a considered decision on the allegation.

(c) Additional Matters

Where, in the course of his investigation, the Investigating Officer becomes aware of any other matter which appears to him to indicate a breach of the Code of Conduct or local protocol by the Councillor other than the breach which he is currently investigating, the Investigating Officer shall either:

- (i) *(where the additional matter relates to an apparent breach of the authority's Code of Conduct by a member of the principal authority)* report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b) (iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct. The Monitoring Officer will then determine whether to report the additional matter to the Standards Board;
- (ii) *(where the additional matter constitutes an apparent breach of the authority's local protocols but not a breach of the Code of Conduct by a member of the principal authority)* report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b) (iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the authority's local protocols. The Monitoring Officer will then take a decision whether to refer the matter to an Investigating Officer for local investigation and report to the Standards Committee as appropriate. Where the original matter relates to an allegation of breach of a local protocol, and the additional matter relates to a further breach of a local protocol of the same authority, the Monitoring Officer may, with the consent of the Councillor, request the original Investigating Officer to extend his investigation to include the additional matter;
- (iii) *(where the additional matter relates to an apparent breach of the Code of Conduct or a local protocol by a Parish Councillor)* notify the Clerk to the Town or Parish Council of the additional matters and take no further action in respect thereof<sup>11</sup>.
- (d) Following notification to the Councillor, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Councillor has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(e) (ii) and (iii) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he is of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than to contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.
- (e) Production of documents, information and explanations:
  - (i) In the course of the investigation, the Investigating Officer and any person authorised on his behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any document or information

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<sup>11</sup> As set out above, District Council Standards Committees would have no jurisdiction in respect of breaches of local protocols by parish and Town Councillors, which would have to be dealt with by the Parish Council itself unless the Parish Council has delegated the resolution of such matters to the District Council.

which is in his / its possession or control, or provide any explanation, as he thinks necessary for the purposes of carrying out the investigation.

- (ii) In the course of the investigation, the Investigating Officer and any person authorised on his behalf may require any authority of which the Councillor is a member to provide any document which is in his / its possession or control which he thinks necessary for the purposes of carrying out this investigation.

(f) Interviews

- (i) Requesting attendance

In the course of the investigation the Investigating Officer may request any person to attend and appear before him or otherwise provide any information, document or explanation for the purpose of Paragraph 3(e) as he thinks necessary for the purposes of carrying out the investigation.

- (ii) Representation

Any person who appears before the Investigating Officer arranges to be accompanied at their own expense by a solicitor or friend.

- (iii) Notes of interviews

Where practicable, following the interview the Investigating Officer shall produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

(g) Costs

The Investigating Officer may, where he considers that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to his request, such fees or allowances as he considers to be appropriate subject to the maxima set by the authority.

(h) Reference back to the Standards Board (allegations of breach of the Code of Conduct for Members only)

At any point in the course of the investigation, if the Investigating Officer is of the opinion

- (i) that the seriousness of the matters which he is investigating, including any additional matters identified under Paragraph 3(c) above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, or
- (ii) that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter,

he may, after consulting the Monitoring Officer, suspend his investigation and the Monitoring Officer shall then request the Ethical Standards Officer to resume his investigation of the matter.

Where the Ethical Standards Officer does resume his investigation, the Monitoring Officer shall ensure that the Councillor concerned, the person who made the complaint, the members of the Standards Committee and any Parish Council is informed of such resumption. Where the Ethical Standards Officer declines to resume his investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his investigation.

#### **4. The Draft Report**

- (a) When the Investigating Officer is satisfied that he has sufficient information to meet the requirement set out in Paragraph 3(a), or has obtained as much information as is likely to be reasonably capable of being obtained, he shall prepare a draft report setting out:
- (i) The details of the allegation;
  - (ii) The relevant provisions of the statute, of the Code of Conduct and any relevant local protocols;
  - (iii) The Councillor's initial response to notification of the allegation (if any);
  - (iv) The relevant information, advice and explanations which he has obtained in the course of the investigation;
  - (v) A list of any documents relevant to the matter;
  - (vi) A list of those persons whom he has interviewed and those organisations from whom he has sought information;
  - (vii) A note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operated;
  - (viii) A statement of his draft findings of fact;
  - (ix) His conclusion as to whether the Councillor has or has not failed to comply with the Code of Conduct for Members of any authority or a local protocol; and
  - (x) Any recommendations which the Investigating Officer is minded to make to any authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach. Where the allegation relates to a Parish Councillor, such recommendations would be recommendations which the Investigating Officer would recommend that the Standards Committee make to the Parish Council.
- (b) The draft report should also state that the report does not necessarily represent the Investigating Officer's final finding, and that the Investigating Officer will present a final report to the Standards Committee once he has considered any comments received on the draft report.
- (c) The Investigating Officer shall then send a copy of his draft report in confidence to the Councillor and the person making the allegation, and request that they send any comments thereon to him within 14 days.

- (d) The Investigating Officer may send a copy of, or relevant extracts from his draft report in confidence to any person on whose evidence he has relied in compiling the draft report, and request that they send any comments thereon to him within 14 days.

## 5. The Final Report

- (a) After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his draft report in the light of any comments received, and produce and send to the Monitoring Officer his final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Standards Committee, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his conclusions, such as background documents of telephone conversations, letters, and notes of interviews with witnesses;
- (b) The Monitoring Officer shall then send a copy of the final report to the Councillor, advising that:
- (i) Where the final report concludes that there has not been a failure to comply with the Code of Conduct for Members or a local protocol, he will refer the report to the Standards Committee for their consideration; and
  - (ii) Where the final report concludes that there has been a failure by the Councillor to comply with the Code of Conduct for Members or with a local protocol, he will refer the report to the Standards Committee for a formal hearing.
- (c) The Monitoring Officer shall ensure that, when the agenda for the Standards Committee is sent out to members of the Standards Committee, including the final report, the agenda and the report are also sent to:
- (i) The person who made the complaint;
  - (ii) The Clerk to the Parish Council (if any); and
  - (iii) The Ethical Standards Officer
- together with a note explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations, and the procedure for these events.
- (d) Where the Standards Committee considers the report in accordance with Paragraph 5(a)(ii) above, it shall make one of the following findings:
- (i) That it accepts the Investigating Officer's finding that the Councillor has not failed to comply with the Code of Conduct for Members as set out in the allegation;
  - (ii) That it accepts the Investigating Officer's finding that, on the facts as set out in the report, the Councillor has not failed to comply with a local protocol; or



- (iii) That the matter should be considered at a hearing of the Standards Committee, conducted in accordance with the authority's adopted Procedure for Local Determination Hearings<sup>12</sup>.
- (e) Where the Standards Committee finds as set out in Paragraph 5(b)(i) or (ii) above (no failure to comply with the Code of Conduct or with a local protocol), the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based, together with a copy of the Investigating Officer's report to:
- (i) The Councillor;
  - (ii) The Ethical Standards Officer;
  - (iii) The Standards Committee, if the finding was made by a Sub-Committee of the Standards Committee;
  - (iv) The Standards Committee of any other local authority (other than a Parish Council) of which the Councillor is also a member;
  - (v) The Parish Council, if the Councillor was also a member of a Parish Council; and
  - (vi) The person who made the allegation.

and shall ask the Councillor whether he objects to the publication of a notice of the finding in at least one local newspaper, and arrange for the publication of such a notice unless the Councillor so objects.

- (f) Where the Standards Committee finds as set out in paragraph 5(2)(iii) above (that the matter should be considered at a full hearing) or the Investigating Officer's report contains a finding that the Councillor did fail to comply with the Code of Conduct or a local protocol, the Monitoring Officer shall arrange for the matter to be considered at such a hearing in accordance with the authority's adopted Procedure for Local Determination Hearings, subject to the following variations:
- (i) The hearing shall be conducted no sooner than 14 days from, and no later than 3 months from, the date on which the Monitoring Officer received the report of the Investigating Officer;
  - (ii) The report of the Investigating Officer shall be treated as if it constituted the report of the Ethical Standards Officer;
  - (iii) The Monitoring Officer will not conduct Pre-Hearing enquiries of the Councillor; and
  - (iv) The Investigating Officer shall be responsible for presenting the report to the Standards Committee and introducing any witnesses whom he considers that the Standards Committee should hear in order to be able to give the matter proper consideration.

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<sup>12</sup> Note that this is not a finding that there has been a failure to comply with the Code of Conduct for Members or with a local protocol, but simply that, on the basis of the Investigating Officer's report, the Standards Committee is not at this stage prepared to come to a final conclusion that there has been no such failure to comply, and that the matter merits consideration at a full hearing.