

ANNEX 1

Procedure for Local Investigation of Complaints of Misconduct by Members

Introduction

1. All local investigation of allegations of misconduct by Members of the Authority shall be carried out in accordance with regulations made under the Local Government Act 2000 and also in accordance with statutory guidance issued by the Standards Board for England.
2. This note sets out the Authority's procedure to be followed in the local investigations. No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Member against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.
3. This procedure applies to:
 - the allegation of a breach of the Authority's Code of Conduct for Members that has been referred by an Ethical Standards Officer of the Standards Board to the Authority's Monitoring Officer for local investigation; and
 - to the investigation of allegations of breaches of the Authority's local Protocols e.g. Planning Protocol, in so far as they apply to Members. In such cases where an Ethical Standards Officer has not referred the matter references in the procedure to an Ethical Standards Officer shall not apply.

Interpretation

4. 'Member' 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 Member's representative.
5. 'Monitoring Officer' is the officer of the Authority who has been designated as the Authority's Monitoring Officer under section 5 of the Local Government and Housing Act 1989.
6. 'Investigating Officer' means the Monitoring Officer, if the Monitoring Officer investigates the complaint, or the person appointed, under section 113 Local Government Act 2003, by the Monitoring Officer to undertake that investigation.
7. 'The Matter' is the subject matter of the Investigating Officer's report.
8. '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.

Action to be taken by the Monitoring Officer on receipt of an Allegation

9. In the case of an allegation of a breach of a local Protocol the Monitoring Officer, in consultation with the Chair of the Standards Committee, shall have discretion not to carry out a full investigation if it is considered appropriate that the matter can be satisfactorily dealt with by other means.
10. If the Monitoring Officer decides to personally carry out the investigation he/she may request the Deputy Monitoring Officer or another employee of the Authority to carry out

the Monitoring Officer's administrative duties under this procedure.

11. If the Monitoring Officer decides not to personally carry out the investigation he/she will appoint an Investigating Officer.

Appointment of Investigating Officer

12. Under section 113 Local Government Act 2003 the Monitoring Officer will, in writing, formally delegate the power of investigation to the Deputy Monitoring Officer, another employee of the Authority or some other person to act as the Investigating Officer in respect of the allegation. The Monitoring Officer will request him/her to conduct an investigation of the allegation and to report thereon to the Authority's Standards Committee. The Ethical Standards Officer shall be informed that the investigation has been delegated.
13. The Investigating Officer may appoint persons to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

Notification to the Member

14. The Monitoring Officer will then notify in writing the Member against whom the allegation is made:
 - that the allegation has been referred to the Monitoring Officer for local investigation and determination;
 - the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
 - of the conduct which is the subject of the allegation;
 - of the section(s) of the Code of Conduct or local Protocol which appear to him/her to be relevant to the allegation;
 - of the procedure which will be followed in respect of the allegation, and
 - the identity of the Investigating Officer;
 - that all matters relating to the investigation will be treated as confidential until the final report is published.
15. In notifying the Member of receipt of the allegation, the Monitoring Officer shall request the Member to respond to the Investigating Officer in writing within 14 days of notification as follows:
 - advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct or local Protocol which is the subject of the allegation;
 - listing any documents which the Member 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 where the original documents may be inspected;
 - providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of an person or organisation whom the

(or other appropriate contact details) of an person or organisation whom the Member would wish the Investigating Officer to interview in the course of any investigation of the allegation, and

- providing the Investigating Officer with any information which the Member would wish the Investigating Officer to seek from any person or organisation.

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

Notification to the Person who made the Allegation

17. At the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the relevant matters set out in paragraphs 14 above.

18. In notifying the person who made the allegation the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days:

- to provide a list of 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 where the original documents may be inspected;
- to provide the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of an person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
- to provide the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

Notification to the Standards Committee

19. The Monitoring Officer will notify, in confidence, each Member of the Standards Committee that a matter has been referred for local investigation. Such notification shall not identify the Member concerned, the complainant or the nature of the complaint.

Conduct of the Investigation

Purpose of the Investigation

20. The purpose of the Investigating Officer's investigation is to enable him/her 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 Member has acted in breach of the Code of Conduct or local Protocol and, where there has been a breach, whether any action should be taken in respect of the Member or in consequence of the breach, and what any such action should be.

Identification of sources of information

21. Following notification to the Member and the complainant, 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 Member and/or the complainant has provided the Investigating Officer with the information requested in accordance with Paragraphs 15 and 18 above, the Investigating Officer shall

include in this list each document, person and organisation referred to in that response, unless he/she 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.

Production of documents, information and explanations

22. In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may:
- make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in his/its possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation.
 - require any other Authority of which the Member is a member to provide any document, which is in his/its possession or control, which he/she thinks necessary for the purposes of carrying out the investigation.

Requesting attendance at Interviews

23. In the course of the investigation the Investigating Officer may request any person to attend and appear before him/her or otherwise provide any information, document or explanation as he/she thinks necessary for the purposes of carrying out the investigation.

Representation

24. Any person who appears before the Investigating Officer may arrange to be accompanied at their own expense by a legal or other representative.

Notes of interviews

25. 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.

Costs

26. The Investigating Officer may, where he/she 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/her request, such fees or allowances as he/she considers to be appropriate subject to the approval of the Monitoring Officer.

Termination of the Investigation

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

Additional matters arising during an investigation.

Breach of the Code of Conduct

28. During an investigation the Investigating Officer has no jurisdiction to investigate any other matter that appears to be an additional breach of the Code of Conduct by the Member. The Investigation Officer shall advise the Monitoring Officer who will then determine whether to report the additional matter to the Standards Board.

Breach of a local Protocol

29. During an investigation if the Investigating Officer becomes aware of any other matter that appears to be a breach of a local Protocol by the Member other than the breach that he/she is currently investigating, the Investigating Officer shall report the matter to the Monitoring Officer.
30. The Monitoring Officer will provide the Member with details of the matter in the form set out in paragraphs 14 and 15 above and invite the Member to provide a statement as to why the additional matter does not constitute a breach of the Authority's local Protocol.
31. The Monitoring Officer will then take a decision whether to commence a separate investigation into this matter in accordance with this procedure. Where the original investigation relates to an allegation of a breach of a local Protocol, the Monitoring Officer may, with the consent of the Member, request the original Investigating Officer to extend the investigation to include the additional matter.

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

32. At any point in the course of the investigation, if the Investigating Officer is of the opinion
- that the seriousness of the matters which is being investigating, (including any additional matters identified under Paragraph 28) above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, or
 - that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter,
33. The Investigating Officer may, after consulting the Monitoring Officer, suspend his/her investigation and the Monitoring Officer shall then request the Ethical Standards Officer to resume his/her investigation of the matter.
34. Where the Ethical Standards Officer resumes his/her investigation, the Monitoring Officer shall ensure that the Member concerned, the person who made the complaint, the members of the Standards Committee are informed of such resumption.
35. Where the Ethical Standards Officer declines to resume the investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his/her investigation.

The Draft Report

36. When the Investigating Officer is satisfied that he/she has sufficient information, or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a confidential draft report setting out:
- the details of the allegation;
 - the relevant provisions of statute, of the Code of Conduct and any relevant local Protocols;
 - the Member's initial response to notification of the allegation (if any);
 - the relevant information, advice and explanations which he/she has obtained in the course of the investigation;
 - a list of any documents relevant to the matter;
 - a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;
 - 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-operate;
 - a statement of his/her draft findings of fact;
 - his/her conclusion as to whether the Member has or has not failed to comply with the Code of Conduct or any local Protocol, and
 - any recommendations, where appropriate, which the Investigating Officer is minded to make to the Authority:
 - for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local Protocol;
 - for rectifying any deficiency in the Authority's practices and procedures;
 - for preventing or deterring any breach of the Code of Conduct or local Protocol;
 - for remedying the position of any person who may have suffered detriment or injustice as a result of the breach.
37. The draft reports 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/she has considered any comments received on the draft report.
38. The Investigating Officer shall then send a copy of the draft report in confidence to the Member and the person making the allegation, and request that they send any comments thereon to him/her within 14 days.

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

The Final Report

40. After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend the draft report in the light of any comments received, and produce and send to the Monitoring Officer the 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. The report will include copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, such as background documents of telephone conversations, letters, and notes of interviews with witnesses;

Finding of failure to comply with the Code of Conduct

41. Where the final report concludes that there has been a failure by the Member to comply with the Code of Conduct he/she will refer the report to a formal Panel hearing of the Standards Committee. ***(Statutory requirement we have no choice) (Local determination procedures start at this stage)***

Finding of failure to comply with a local Protocol

42. Where the final report concludes that there has been a failure by the Member to comply with a local Protocol, the Monitoring Officer shall then send a copy of the final report to the Member, and the complainant advising them that the report will be referred to the Standards Committee for their consideration.

The Member will also be advised that the Standards Committee

- may not be prepared to come to a final decision on the report if the Committee concludes that the matter merits consideration at a formal Panel hearing of the Standards Committee; or
- that the Standards Committee may decide that the matter can be satisfactorily dealt with by other means without the need for a formal Panel hearing. ***(e.g. where there is an admission of failure and the Member accepts the finding and the Investigating Officers recommendations on remedial action).***

Finding of no failure to comply with the Code of Conduct or a local Protocol

43. Where the final report concludes that there has not been a failure to comply with the Code of Conduct or a local Protocol the Monitoring Officer shall then send a copy of the final report to the Member, the complainant. For a Code of Conduct investigation a copy will be sent to the Ethical Standards Officer.

All parties will be advised:

- that the report will be referred to the Standards Committee for their consideration; and
- that the Standards Committee may not be prepared to come to a final decision on the report if the Committee concludes that the matter merits consideration at a formal Panel hearing of the Standards Committee.

Standards Committee consideration of the Final Report

Code of Conduct

44. Where the Standards Committee considers the report of the Investigating Officer that concludes that the Member has not failed to comply the Code of Conduct it shall make one of the following findings:
- that it accepts the Investigating Officer's finding that the Member has not failed to comply with the Code of Conduct; or
 - that on the basis of the Investigating Officer's report, the Standards Committee is not at that stage prepared to come to a final conclusion that there has been not been a failure to comply with the Code of Conduct; and
 - that the matter merits consideration at a full Panel hearing of the Standards Committee, conducted in accordance with the Authority's adopted Procedure for Local Determination Hearings

Local Protocol

45. Where the Standards Committee considers the report of the Investigating Officer in respect of local Protocol it shall make one of the following findings:
- that it accepts the Investigating Officer's finding that the Member has not failed to comply with a local Protocol;
- or
- that it is not at that stage prepared to come to a final conclusion that there has been not been a failure to comply with a local Protocol; and
 - that the matter merits consideration at a full Panel hearing of the Standards Committee, conducted in accordance with the Authority's adopted Procedure for Local Determination Hearings:
- or
- that it accepts the Investigating Officer's finding that the Member has failed to comply with a local Protocol: and
 - that the matter merits consideration at a full Panel hearing of the Standards Committee, conducted in accordance with the Authority's adopted Procedure for Local Determination Hearings; or
 - that the matter can be satisfactorily deal with by other means without the need for a formal hearing

46. Where the Standards Committee finds that the Member has not failed 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:
- the Member;
 - the Ethical Standards Officer, in the case of the Code;
 - the person who made the allegation;
 - the Standards Committee of any other local Authority of which the Member is also a member.
47. Where the Member has not failed to comply with the Code of Conduct the Monitoring Officer shall arrange for the publication of a notice of the finding in at least one local newspaper unless the Member objects to such publication.

Standards Committee Panel Hearings

48. The Monitoring Officer shall arrange for the matter to be considered at a Panel hearing in accordance with the Authority's adopted Procedure for Local Determination Hearings;
- where the Investigating Officer's report contains a finding that the Member did fail to comply with the Code of Conduct;
 - where the Standards Committee finds as set out in Paragraph 43 above, in respect of the Code of Conduct, that the matter should be considered at a full Panel hearing; or
 - where the Standards Committee finds as set out in Paragraph 45 above, in respect of a local Protocol, that the matter should be considered at a full Panel hearing.

References:

SI 2003 No. 1483 The Local Authorities (Code of Conduct) (Local determination Regulations) 2003

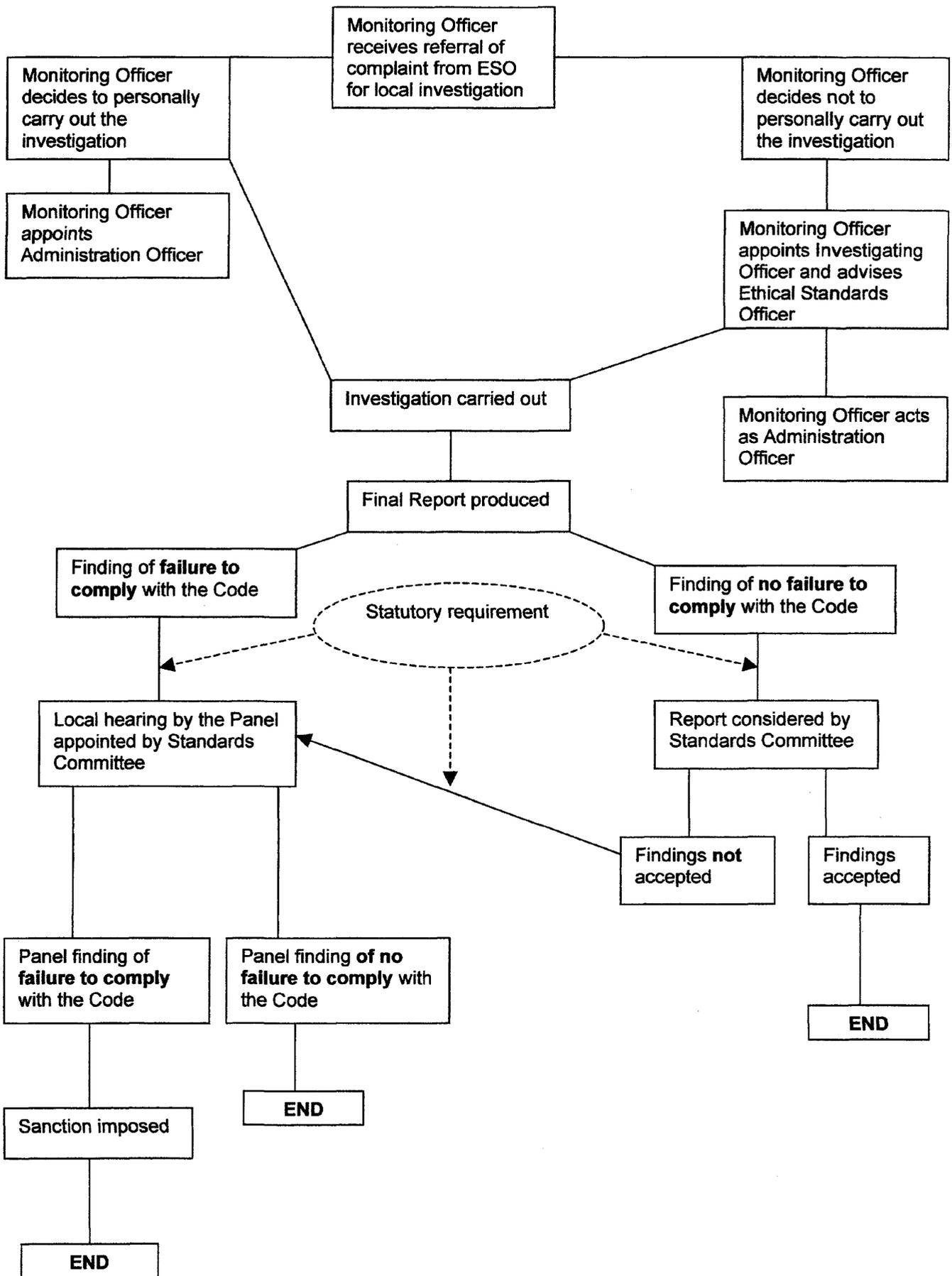
SI 2004 No. 2617 The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004

Standards Board for England. Local Investigations Guidance for Monitoring Officers and Standards Committees 2004

Standards Board for England. How to Conduct an Investigation. Advice for Authorities on investigating allegations of misconduct. 2005

Model procedure for local investigation of standards complaints
Peter Keith-Lucas for Association of Councils Secretaries and Solicitors (ACSeS)

Local Investigation of a Complaint - breach of the Code referred by an Ethical Standards Officer



Local Investigation of a Complaint – breach of Protocol

