

Procedure for Investigation of Complaints of Misconduct by Members

Introduction

1. All investigation of allegations of misconduct by Members of the Authority shall be carried out in accordance with this procedure. 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.
2. This procedure applies to:
 - the allegation of a breach of the Authority's Code of Conduct for Members that has been referred 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.

Interpretation

3. 'Member' means the Member of the Authority who is the subject of the allegation being considered, unless stated otherwise. It also includes the Member's representative.
4. '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.
5. 'Investigating Officer' means the Monitoring Officer, if the Monitoring Officer investigates the complaint, or the person appointed by the Monitoring Officer to undertake that investigation.
6. 'The Matter' is the subject matter of the Investigating Officer's report.
7. 'The Programmes and Resources Committee' refers to the Programmes and Resources Committee or to any Programmes and Resources Sub-Committee which is delegated to conduct the hearing, unless the context indicates that it refers only to the Programmes and Resources Committee itself.

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

8. In the case of an allegation of a breach of a local Protocol the Monitoring Officer, in consultation with the Independent Person, 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.
9. 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.
10. If the Monitoring Officer decides not to personally carry out the investigation he/she will appoint an Investigating Officer.

Appointment of Investigating Officer

11. 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 Monitoring Officer.

12. 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

13. 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.

14. 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 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.

Notification to the Person who made the Allegation

15. 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 paragraph 13 above.

16. 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.

Conduct of the Investigation

Purpose of the Investigation

17. The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Monitoring Officer and Programmes and Resources Committee a report which, would provide the Monitoring Officer and Programmes and Resources Committee with sufficient information to determine, in consultation with the Independent Person, 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

18. 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 14 and 16 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

19. 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

20. In the course of the investigation the Investigating Officer may request any person to
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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

21. 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

22. 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

23. 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

24. 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 Monitoring Officer and to enable the Monitoring Officer and the Programmes and Resources Committee, in consultation with the Independent Person, to come to a considered decision on the allegation.

Additional matters arising during an investigation.

Breach of the Code of Conduct

25. 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.

Breach of a local Protocol

26. 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.
27. The Monitoring Officer will provide the Member with details of the matter in the form set out in paragraphs 13 and 14 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.
28. 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.

The Draft Report

29. 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 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.

30. 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 Monitoring Officer once he/she has considered any comments received on the draft report.

31. 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.

32. 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

33. 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. 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

34. Where the final report concludes that there has been a failure by the Member to comply with the Code of Conduct, the Monitoring Officer will refer the report to the Programmes and Resources Committee who will convene a formal Panel hearing of the Committee.

Finding of failure to comply with a local Protocol

35. 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 Monitoring Officer, in consultation with the Independent Person, shall make one of the following findings :

- that he/she 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 Programmes and Resources Committee, conducted in accordance with the Authority's adopted Procedure for Hearings; or
- that the matter can be satisfactorily dealt with by other means without the need for a formal hearing. (E.g. where there is an admission of failure and the Member accepts the finding and the Investigating Officer makes recommendations on remedial action).

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

36. 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 in consultation with the Independent Person shall review the report and if he/she is satisfied that the report is sufficient, the Monitoring Officer will write to the Member concerned and the complainant notifying them that he/she is satisfied that no further action is required and send a copy of the final report to the Member and the complainant.

Monitoring Officer consideration of the Final Report in consultation with the Independent Person

Code of Conduct

37. Where the Monitoring Officer, in consultation with the Independent Person, considers the report of the Investigating Officer that concludes that the Member has not failed to comply with the Code of Conduct the Monitoring Officer shall make one of the following findings:
- that he/she accepts the Investigating Officer's finding that the Member has not failed to comply with the Code of Conduct; or
 - that he/she is not at that stage prepared to come to a final conclusion that there has not been a failure to comply with the Code of Conduct and that the matter merits consideration at a full Panel hearing of the Programmes and Resources Committee, conducted in accordance with the Authority's adopted Procedure for Hearings.

Local Protocol

38. Where the Monitoring Officer, in consultation with the Independent Person, considers the report of the Investigating Officer that concludes that the Member has not failed to comply with a local Protocol, the Monitoring Officer shall make one of the following findings:
- that he/she accepts the Investigating Officer's finding that the Member has not failed to comply with a local Protocol; or
 - that he/she 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 Programmes and Resources Committee, conducted in accordance with the Authority's adopted Procedure for Hearings.
39. Where the Monitoring Officer, in consultation with the Independent Person, finds that the Member has not failed to comply with the Code of Conduct or with a local Protocol, the Monitoring Officer shall, within 10 working days, 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 person who made the allegation;
40. 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 on the Authority's website unless the Member objects to such publication.

Programmes and Resources Committee Panel Hearings

41. The Monitoring Officer shall arrange for the matter to be considered at a Panel hearing in accordance with the Authority's adopted Procedure for Hearings;
- where the Investigating Officer's report contains a finding that the Member did fail to comply with the Code of Conduct;
 - where the Monitoring Officer, in consultation with the Independent Person, finds as set out in Paragraph 37 above, in respect of the Code of Conduct, that the matter should be considered at a full Panel hearing; or
 - where the Monitoring Officer, in consultation with the Independent Person, finds as set out in Paragraph 38 above, in respect of a local Protocol, that the matter should be considered at a full Panel hearing.

