

Procedure for Local Investigation of Assessed Complaint

Appointment of Investigating Officer

1. Following the decision of the Monitoring Officer to investigate the allegation or upon receipt of the referral to the Monitoring Officer from the Local Assessment Sub-Committee for an investigation, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him or her to conduct an investigation of the allegation and to report thereon to the Monitoring Officer. The Investigating Officer may be an officer of the Council authority, an officer of another local authority, or an external Investigating Officer.
2. There are two distinct roles: that of the Investigating Officer and that of legal advisor to any Hearing Sub-Committee. The Monitoring Officer may him or herself take on the role of Investigating Officer but where he or she does so the role of the legal advisor will need to be re-allocated.
3. The Monitoring Officer may appoint an external investigator (including an officer from another council) where for example:
 - (a) The complaint looks likely to raise particularly complex or sensitive issues;
 - (b) There is insufficient expertise within the Council to carry out the investigation;
 - (c) There is insufficient capacity within the Council to carry out the investigation;
 - ~~(e)~~(d) A conflict has or may be perceived to have arisen.
4. The decision whether to use an external investigator is at the discretion of the Monitoring Officer and will be made following consultation with the Independent Person and where appropriate, a Parish Member from the Corporate Governance and Standards Committee.
5. External Investigators will be appointed in accordance with the Council's procurement rules set out in its Constitution (insert link). The procurement process will include the establishment of an agreed investigation methodology, which will be fair and auditable.

Notification of Investigation to the Subject Member

6. The Monitoring Officer will notify in writing the Subject Member :
 - 6.1 that the allegation has been referred for local investigation and possible hearing;
 - 6.2 remind the Subject Member of the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
 - 6.3 remind the Subject Member of the conduct which is the subject of the allegation;

- 6.4 remind the Subject Member of the paragraph(s) of the Code of Conduct which appear to be relevant to the allegation(s);
 - 6.5 of the procedure which will be followed in respect of the allegation;
 - 6.6 of the identity of the Investigating Officer
 - 6.7 of the identity of the Independent Person whose views may be sought by the Member; and
 - 6.8 of the identity of the Parish Member whose views may be sought by the Subject Member if the Subject Member is a Parish Councillor.
7. The Monitoring Officer shall provide the Member with a copy of the complaint.
 8. 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 Subject Member.

Notification to the Complainant

9. At the same time as notifying the Subject Member, the Monitoring Officer will notify the Complainant in writing of the matters set out above.

Notification to the Corporate Governance and Standards Committee

10. At the same time as notifying the Subject Member, the Monitoring Officer will notify the Chairman of the Corporate Governance and Standards Committee in writing of the matters set out above.

Notification to the Parish Council Clerk

11. Where the allegation relates to the conduct of a Subject Member of a Parish Council in his or her capacity as such, at the same time as notifying the Subject Member, the Monitoring Officer will notify the Clerk of the Parish Council concerned in writing of the matters set out above.

Investigation Process

12. The agreed process may be the standard procedure used by the external investigator. As a minimum, the Investigating Officer will interview the Complainant, the Subject Member and, where possible, any witnesses to the event or events that are the substance of the complaint. The Investigating Officer will produce notes of these meetings that will be signed by the interviewees as fair records of what was said in the interviews. If the complaint is complex or serious, the Investigating Officer will produce formal, signed statements.
13. Interviews may be recorded where appropriate.
14. The Monitoring Officer will agree with the Investigating Officer the scope and parameters of the investigation before an investigation starts. However, these may change during the course of an investigation depending on the findings of that investigation. Any changes will be agreed with the Monitoring Officer by the Investigating Officer and this agreement will be documented.

Initial Response of the Subject Member

15. The Monitoring Officer should request the Subject Member to respond to the Investigating Officer in writing within 14 days of notification as follows:
- (a) advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;
 - (b) listing any documents which the Subject 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 of where the original documents may be inspected;
 - (c) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Subject Member would wish the Investigating Officer to interview in the course of any investigation of the allegation; and
 - (d) providing the Investigating Officer with any information which the Subject Member would wish the Investigating Officer to seek from any person or organisation.

Supporting information from the Complainant

16. In notifying the complainant as above, the Monitoring Officer will request the Complainant to respond to the Investigating Officer within 14 days of notification as follows:
- (a) listing any document which the Complainant 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;
 - (b) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Complainant would wish the Investigating Officer to interview in the course of any investigation; and
 - (c) providing the Investigating Officer with any information which the Complainant would wish the Investigating Officer to seek from any person or organisation.
17. The Subject Member has a duty to cooperate with any investigation and to respond promptly and to comply with any reasonable requests from the Investigating Officer for such things as interviews, comments on draft meeting notes or the provision of information necessary for the conduct of an investigation.

Confidentiality

18. It is important that confidentiality is maintained throughout the investigation and that details of the complaint are not disclosed to any third party, unless disclosure is to a representative, witness, immediate family members, or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.

Termination of an Investigation

19. In exceptional circumstances, the Monitoring Officer may stop an investigation before it is finished, for example where confidential information has been released to the media, if the Subject Member dies, has a long term or serious illness, loses his or her seat or stands down and it is deemed no longer in the public interest to pursue the matter further. If the Monitoring Officer stops the Investigation early, he/she will give their reasons to the Subject Member and the Complainant.
20. The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer or Hearings Sub-Committee.

Reference to Police or other regulatory agencies

21. At any point in the course of the investigation, if the Investigating Officer is of the opinion the complaint identifies criminal conduct or breach of other regulation by any person he or she should may, after consulting the Monitoring Officer, suspend his or her investigation, and the Monitoring Officer shall then request the police or other regulatory agency to investigate the matter.
22. Where the police or other agency does investigate the matter, the Monitoring Officer shall ensure that the Subject Member, the Complainant, the members of the Corporate Governance and Standards Committee and if appropriate the Parish Council are informed at the appropriate time. Where the police or other regulatory agency declines to undertake the investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his or her investigation.

The Draft Report

23. When the Investigating Officer is satisfied that he or she has sufficient information or has obtained as much information as is likely to be reasonably capable of being obtained, he or she shall prepare a draft report setting out:
 - 23.1 the details of the allegation;
 - 23.2 the relevant provisions of the Code of Conduct;
 - 23.3 the Subject Member's initial response to the allegation(s) (if any);
 - 23.4 the relevant information, advice and explanations which he or she has obtained in the course of the investigation;
 - 23.5 a list of any documents relevant to the matter;
 - 23.6 a list of those persons whom he or she has interviewed and those organisations from whom he or she has sought information;
 - 23.7 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;
 - 23.8 a statement of his or her draft findings of fact;
 - 23.9 his or her conclusion as to whether the Subject Member has or has not failed to comply with the Code of Conduct;
 - 23.10 any recommendations which the Investigating Officer is minded to make to the Hearings Sub-Committee. Where the allegation relates to a Parish Councillor, such recommendations would be recommendations which the

Investigating Officer would recommend the Hearings Sub-Committee make to the Parish Council.

24. 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 be in a position to present a final report to the Hearings Sub-Committee once he or she has considered any comments received on the draft report.
25. The Investigating Officer shall then send a copy of his or her draft report to the Subject Member and the Complainant and request that they send any comments thereon to him or her within 14 days. The draft report will be clearly labelled 'DRAFT' and 'CONFIDENTIAL'.

The Final Report

26. After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his or her draft report in the light of any comments received and produce and send to the Monitoring Officer his or her final report. The report will be clearly labelled 'FINAL'.

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

27. The Monitoring Officer will review the Investigating Officer's report and, if he or she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the Complainant and the Subject Member and to the relevant Parish ~~Clerk~~council, where the complaint relates to a Parish Councillor. The Monitoring Officer will notify them that he or she is satisfied that no further action is required. The Monitoring Office will give both the Complainant and the Subject Member a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he or she may ask the Investigating Officer to reconsider his or her report.

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

28. The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Sub-Committee or, after consulting the Independent Person, seek local resolution.

28.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he or she will consult with the Independent Person and with the Complainant and seek to agree a fair resolution that also helps to ensure higher standards of conduct for the future.

If the Complainant will not agree with the Monitoring Officer's proposed resolution and the Monitoring Officer considers that the failure to agree is unreasonable, he or she may impose the resolution if he or she believes that it is not in the public interest to pursue the matter further (assuming that it is accepted by the Subject Member).

Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action ~~by the authority~~. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Corporate Governance and Standards Committee (and the relevant Parish Council where the complaint refers to a Parish Councillor) for information, but will take no further action. If the Complainant did not agree with the informal resolution, the Monitoring Officer will record that disagreement in his report to the Corporate Governance and Standards Committee along with his or her reasons for imposing the resolution.

28.2 Local Hearing

If the Monitoring Officer considers that a local resolution is not appropriate, or the Subject Member concerned is not prepared to undertake any proposed remedial action, then the Monitoring Officer will take the Investigating Officer's report to the Hearings Sub-Committee. The Hearings Sub-Committee will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Subject Member.

The Monitoring Officer is able to continue to attempt local resolution up to the time the Hearings Sub-Committee takes place after consulting with the Independent Person.

Notification of the Hearing

29. The Monitoring Officer shall ensure that, when the agenda for the Hearings Sub-Committee is sent out to members of the Hearings Sub-Committee, including the final report, the agenda and the report are also sent at the same time to:

29.1 the Subject Member

29.2 the Complainant; and

29.3 the Clerk to the Parish Council if the subject Member is a parish councillor.

30. The Hearings Sub-Committee will be convened to determine the outcome of the Complaint in accordance with the document entitled "Local Determination of Complaints About Members – Guidance for Members".

