

STANDARDS COMMITTEE
20TH FEBRUARY 2006
REPORT OF THE MONITORING OFFICER

MATTER REFERRED FOR LOCAL INVESTIGATION
CASE LGA/KM/104 (SBE 10761.05)

1. Under the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, Ethical Standards Officers of the Standards Board for England (SBE) may refer complaints of Councillor misconduct to the Council's Monitoring Officer for local investigation. I presented a report on these Regulations to the Standards Committee Meeting of 11th May 2005 when new procedures were adopted for investigation and determinations.
2. During May 2005 I received notice from the SBE of the proposed referral of the above case to me for local investigation. Arrangements for outsourcing the investigation were finalised in July 2005.
3. The Investigator's full Final Report is attached to this report. It is important to note that this is in the form of a 'pink' exempt appendix since it relates to an item during which, in my opinion, the meeting is likely not to be open to the public. The contents of the report should not therefore be made public at this stage. In relation to each of the four allegations the findings of the investigator are that there was no failure to comply with the relevant Code of Conduct. However two recommendations are made by the Investigator in relation to the relevant Parish Council's procedures.
4. Since the Investigator's findings are that there has been no breach of the Code, there is no requirement to hold a formal hearing of the matter unless the Committee decide they are not prepared to accept the findings at this stage. Attached to this report is an extract from the agreed procedure paragraph 5 of which outlines the purpose of the current meeting and the options open to members.
5. Members of the Standards Committee are requested:
 - (a) to determine whether it accepts the Investigator's findings that there has been no failure to comply with the relevant Code of Conduct or whether the matter should be considered at a hearing of the Standards Committee.
 - (b) to consider the recommendations set out in paragraphs 7.3 and 7.7 of the Investigator's report.

T W Mortimer
Monitoring Officer

PROCEDURE FOR LOCAL INVESTIGATION OF ALLEGATIONS OF COUNCILLOR MISCONDUCT

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PROCEDURE FOR LOCAL INVESTIGATION OF ALLEGATIONS OF COUNCILLOR MISCONDUCT

Introduction and Summary

- This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors. 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 the word "Councillor" is to be taken to refer to all such persons. No material departure will be made from this procedure unless and until the Monitoring Officer has first notified the Councillor against whom the allegation has been made of the proposed material variation to the procedure and the reasons for that variation.
- 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. 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 Council). If the matter is referred before the Ethical Standards Officer has completed his/her 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 (or to a Sub-Committee of the Standards Committee convened for the purpose). Where the Investigating Officer has found, after investigation, that the Councillor has not acted in breach of the relevant authority's Code of Conduct, 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 relevant Code of Conduct, or where the Standards Committee decides to hold a full hearing, there will then be a formal hearing to determine whether a breach of the relevant 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 relevant Code of Conduct, and upon any consequential 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 representative).
- (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 has been 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/her 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, an officer of another local authority, or an external Investigating Officer. 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 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 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.

(b) **Notification to the Councillor**

The Monitoring Officer will then notify 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.

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.

(c) **Notification to the Standards Committee**

At this stage the Monitoring Officer will not notify the members of the Standards Committee that a matter has been referred for investigation.

(d) **Notification to the Parish or Town Council Clerk**

Where the allegation relates to the conduct of a member of a Parish Council in his/her 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 which is the subject of the allegation;
- (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 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/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 Councillor has acted in breach of the relevant Code of Conduct and, where there has been a breach of the Code of Conduct 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/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.

(c) **Additional Matters**

Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code of Conduct by the Councillor other than the breach which he/she is currently investigating, the Investigating Officer shall 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 for England.

(d) **Identification of people from whom Investigating Officer will seek information**

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(f)(ii) and (iii) 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 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/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.
- (ii) In the course of the investigation, the Investigating Officer and any person authorised on his/her 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/she thinks necessary for the purposes of carrying out the 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) above, as he/she thinks necessary for the purposes of carrying out the investigation.

(ii) **Representation**

Any person who appears before the Investigating Officer may arrange 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/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 any maxima set by the authority.

(h) **Reference back to the Standards Board**

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/she 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/she may, after consulting the Monitoring Officer, suspend his/her 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/she 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/she shall prepare a draft report setting out:
 - (i) the details of the allegation;
 - (ii) the relevant provisions of 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/she 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/she has interviewed and those organisations from whom he/she 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-operate;
 - (viii) a statement of his/her draft findings of fact;
 - (ix) his/her conclusion as to whether the Councillor has or has not failed to comply with the relevant Code of Conduct, 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, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach.

NB: 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/she has considered any comments received on the draft report.
- (c) The Investigating Officer shall then send a copy of his/her draft report in confidence to the Councillor and the person making the allegation, and request that they send any comments thereon to him/her within 14 days. The Investigating Officer shall also send a copy of his/her draft report to the Monitoring Officer.
- (d) The Investigating Officer may send a copy of, or relevant extracts from his/her 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.

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/her 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/her 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, he/she 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, he/she 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 (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(b)(i) 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 relevant Code of Conduct as set out in the allegation;
 - (ii) 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.

NB: This is not a finding that there has been a failure to comply with the Code of Conduct, 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.

- (e) Where the Standards Committee finds as set out in Paragraph 5(d)(i) above (no failure to comply with the Code of Conduct), 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(d)(ii) 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, 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 final 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; and
 - (iii) 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.

6. **Other Directions to the Monitoring Officer from an ESO other than investigation or determination**

- 6.1 Not all referrals to the Monitoring Officer from an ESO will require investigation. An ESO can decide that some form of action other than investigation or determination is required. This is most likely to happen in situations where the ESO considers that a case has broad relevance for the ethical governance of the council. For example, the ESO may direct the Monitoring Officer to make recommendations to the Standards Committee about wider issues for the authority raised by the case, or to ensure that the parties concerned attempt some form of reconciliation.
- 6.2 The Monitoring Officer should report back to the ESO within 3 months of receiving the directions on the outcome of actions taken or with details of proposed actions.
- 6.3 If the ESO is not satisfied with the action taken or proposed to be taken, the ESO may require the Monitoring Officer to arrange for the publication of a statement giving details of the direction and the Monitoring Officer's reasons for not fully implementing the directions.