



ISLINGTON

PROCEDURE FOR LOCAL INVESTIGATION OF REFERRED COMPLAINTS

JANUARY 2005

Introduction and Summary

This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Members. 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.

Where the Standards Board for England receives an allegation that a Member has breached the authority's Code of Conduct, 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. If the matter is referred before the Ethical Standards Officer has completed their 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.

Where the Investigating Officer has found, after investigation, that the Member has not acted in breach of the 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 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 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 Member has failed to comply with the authority's Code of Conduct for Members, 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 Member 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 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 them 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.

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

(b) Notification to the Member

The Monitoring Officer will then notify in writing the Member against whom the allegation is made:

- (i) that the allegation has been referred to them 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 which appear to them 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 Member 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 Member, the Monitoring Officer will notify each member of the Standards Committee in writing that an investigation is underway.

(d) Notification to the Person who made the Allegation

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

(e) Initial response of the Member

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:

- (i) advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;
- (ii) 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 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 an person

or organisation whom the Member 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 Member would wish the Investigating Officer to seek from any person or organisation.

(f) **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 an 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.

2 Conduct of Investigation

(a) **Purpose of the Investigation**

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

(b) **Termination of the Investigation**

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 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 their investigation, the Investigating Officer becomes aware of any other matter which appears to them to indicate a breach of the Code of Conduct by the Member other than the breach which they are currently investigating, the Investigating Officer shall report the matter to the Monitoring Officer who will refer this to the Standards Board to investigate.

- (d) Following notification to the Member, 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 has provided the Investigating Officer with the information requested in accordance with Paragraphs 1(e)(ii) and (iii) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless they are 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 their 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 their possession or control, or provide any explanation, as they think necessary for the purposes of carrying out the investigation.
- (ii) In the course of the investigation, the Investigating Officer and any person authorised on their behalf may require any authority of which the Member belongs to provide any document which is in their possession or control which they think 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 them or otherwise provide any information, document or explanation for the purpose of Paragraph 2(e), as they think necessary for the purposes of carrying out the investigation.

(ii) **Representation**

Any person who appears before the Investigating Officer can 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 they consider 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 their request, such fees or allowances as they consider to be appropriate subject to the 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

- (iii) that the seriousness of the matters which they are investigating, including any additional matters identified under Paragraph 2(c) above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, or
- (iv) that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter,

they may, after consulting the Monitoring Officer, suspend their 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 Member concerned, the person who made the complaint, the members of the Standards Committee 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 their investigation.

3 The Draft Report

- (a) When the Investigating Officer is satisfied that they have 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, they shall prepare a draft report setting out:
 - (i) the details of the allegation;
 - (ii) the relevant provisions of statute, of the Code of Conduct
 - (iii) the Member's initial response to notification of the allegation (if any);

- (iv) the relevant information, advice and explanations which they have obtained in the course of the investigation;
 - (v) a list of any documents relevant to the matter;
 - (vi) a list of those persons whom they have interviewed and those organisations from whom they have 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 their draft findings of fact;
 - (ix) their conclusion as to whether the Member has or has not failed to comply with the Code of Conduct, and
 - (x) any recommendations which the Investigating Officer is minded to make to the 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.
- (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 they have considered any comments received on the draft report.
 - (c) The Investigating Officer shall then send a copy of their draft report in confidence to the Member and the person making the allegation, and request that they send any comments thereon to them within 14 days.
 - (d) The Investigating Officer may send a copy of, or relevant extracts from their draft report in confidence to any person on whose evidence they have relied in compiling the draft report, and request that they send any comments thereon to them within 14 days.

4 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 their 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 their 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 Member, advising that:

- (i) where the final report concludes that there has not been a failure to comply with the Code of Conduct, they 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 Member to comply with the Code of Conduct, they 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 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 4(a) above, it shall make one of the following findings:
 - (i) That it accepts the Investigating Officer's finding that the Member has not failed to comply with the 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
- (e) Where the Standards Committee finds as set out in Paragraph 4(b)(i) or (ii) above, 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 Member;
 - (ii) The Ethical Standards Officer;
 - (iii) The Standards Committee of any other local authority of which the Member is also a member
 - (iv) The person who made the allegation.

And shall ask the Member whether they object 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 Member so objects.

- (f) Where the Standards Committee finds that the matter should be considered at a full hearing or the Investigating Officer's report contains a finding that the Member 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 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 Member, and
- (iv) the Investigating Officer shall be responsible for presenting the report to the Standards Committee and introducing any witnesses whom they consider that the Standards Committee should hear in order to be able to give the matter proper consideration.