



**ISLINGTON**

**DRAFT**

**PROCEDURE FOR LOCAL  
INVESTIGATION OF REFERRED  
COMPLAINTS**

**June 2008**

## **1. Introduction and Summary**

- 1.1 This procedure 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.
- 1.2 Where the Standards Committee receives an allegation that a Member has breached the authority's Code of Conduct (a "complaint"), the Initial Assessment Sub-Committee of the Standards Committee meets to consider what, if any action, should be taken in respect of it. The decisions available to the sub-committee include referring the complaint to the authority's Monitoring Officer for investigation and referring the complaint to the Standards Board for investigation by an Ethical Standards Officer ("ESO"). At any point in an investigation the ESO may determine that the complaint should be referred to the authority's Monitoring Officer to investigate. If the complaint is referred to the Monitoring Officer s/he is then required to arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee.
- 1.3 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.
- 1.4 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.
- 1.5 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 probability based on 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.

## **2. Notification of Reference of Allegation to the Monitoring Officer**

### **Appointment of Investigating Officer**

- 2.1 Upon referral of a complaint by the Standards Committee or from an ESO, the Monitoring Officer will appoint an Investigating Officer in respect of the complaint and instruct them to conduct an investigation of the complaint 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.
- 2.2 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.

### **Notification to the Member**

- 2.3 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.
- 2.4 The Monitoring Officer shall provide the Member with a copy of any report received from the ESO.

### **Notification to the Standards Committee**

- 2.5 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.

### **Notification to the Person who made the Allegation**

- 2.6 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.

### **Initial response of the Member**

- 2.7 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.

### **Supporting information from the person who made the allegation**

- 2.8 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.

### **3 Conduct of Investigation**

#### **Purpose of the Investigation**

- 3.1 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

#### **Additional Matters**

- 3.2 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 Initial Assessment Sub-Committee in accordance with the Council's Procedure for Initial Assessment of Complaints.
- 3.3 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 27(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.

#### **Production of documents, information and explanations**

- 3.4 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.

- 3.5 In the course of the investigation, the Investigating Officer and any person authorised on their behalf may require any authority of which the Member is a member to provide any document which is in its possession or control which they think necessary for the purposes of carrying out the investigation.

### **Interviews**

- 3.6 (i) **Requesting attendance**

In the course of the investigation the Investigating Officer may request, or where possible require, 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 may arrange to be accompanied at their own expense by a solicitor, trade union representative or friend.

- (iii) **Notes of interviews**

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**

- 3.7 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.

### **Reference back to the Standards Committee**

- 3.8 At any point in the course of the investigation, if the Investigating Officer is of the opinion that:
- i the seriousness of the matter which they are investigating is materially more or less serious than may have been apparent to the Initial Assessment Sub-Committee when it made its decision (or the Review Sub-Committee when it carried out its review) and the relevant sub-committee would have made a different decision had it been aware of the new information or evidence; or
  - ii the Member has died, is seriously ill or has resigned from Islington Council and it is no longer appropriate to continue with an investigations,

they may suspend their investigation and consult with the Monitoring Officer.

- 3.9 If the Monitoring officer is of the same opinion s/he shall then refer the complaint to the Initial Assessment Sub-Committee. In forming this opinion the Monitoring Officer

may take into account:

- i the failure of any person to co-operate with the investigation;
- ii any allegation that the Member has been involved in a further breach of the Code
- iii an allegation that another member has been engaged in a related breach of the Code.

3.10 The Sub-Committee shall assess the complaint again and paragraphs 4 and 5 of the Procedure for Initial Assessment of Complaints shall apply.

#### **4 The Draft Report**

4.1 When the Investigating Officer is satisfied that they have sufficient information to meet the requirement set out in Paragraph 3.1, 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.

4.2 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.

4.3 The Investigating Officer shall then send a copy of their draft report in confidence to the Member and the complainant, and request that they send any comments thereon

to them within 14 days.

- 4.4 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.

## **5 The Final Report**

- 5.1 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 their 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.

- 5.2 The Monitoring Officer shall then send a copy of the final report to the Member, advising that the final report will be referred to the Standards Committee to decide:

- i. where the final report concludes that there has not been a failure to comply with the Code of Conduct, whether that finding is accepted by the Committee, and
- ii. where the final report concludes that there has been a failure by the Member to comply with the Code of Conduct, whether the complaint should be heard by the Committee or will be referred the Standards Board Adjudication panel for a formal hearing (although this option is only available if the Standards Committee determines that the action it could take against the Member would be insufficient were a finding of failure to comply with the code to be made and the president or deputy president of the Adjudication Panel has agreed to accept the referral);
- iii. where the report recommends that the complaint should be heard by the Standards Committee, the Member shall be advised that if the Committee agrees to hear the complaint s/he is entitled to notice under paragraph 5.5 from the Standards Committee of this decision before the actual hearing takes place. The Member may be informed that if s/he is willing to waive that requirement, the Committee will be able to progress immediately to a hearing of the complaint at the same meeting.

- 5.3 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 the complainant 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.

- 5.4 Where the Standards Committee considers the report in accordance with Paragraph 5.1 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 complaint;
- (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;

- (iii) That the matter should be referred to the Standards Board for England Adjudication Panel.

5.5 Where the Standards Committee finds as set out in paragraph 5.4 above, the Monitoring Officer shall, as soon as reasonably 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. Any Ethical Standards Officer involved;
- iii. The Standards Committee of any other local authority of which the Member is also a member
- iv. The person who made the allegation;
- v. The Complainant.

and in the case of a finding under 5.4(i) shall ask the Member whether they object to the publication of a notice of the finding in at least one local newspaper and on the Council's website, and arrange for the publication of such a notice unless the Member so objects.

## **6 The Hearing**

6.1 Where the Standards Committee finds at its meeting to consider the report that the matter should be considered at a full local hearing before the Committee, that hearing shall take place within 3 months (or as soon as practicable thereafter) of:

- i the date on which the Monitoring Officer received the report from the ESO; or
- ii the date on which the Investigating Officer completed the final report;

and not less than 14 days after the final report was sent to the Member, unless the Member agrees to an earlier date.

6.2 If the Member has agreed to waive their entitlement to separate notice of this decision under paragraph 5.3 (iii) the Standards Committee may proceed immediately to hear the complaint in accordance with the Procedure for Local Determination Hearings at the meeting under paragraph 6.1.

6.3 If the entitlement to notification of this decision under paragraph 5.5 has not been waived, the Monitoring Officer shall arrange a date for the matter to be considered at a hearing in accordance with the authority's adopted Procedure for Local Determination Hearings.