

Part 4(i) - Procedure for Local Investigations

1. Interpretation

- 1.1 “The Council” means Southend-on-Sea Borough Council.
- 1.2 “The Member” means the Member of Southend-on-Sea Borough Council or Leigh-on-Sea Town Council who is subject to the allegation. It also includes the Member’s representative.
- 1.3 “Investigating Officer” means the Monitoring Officer or the person appointed by the Monitoring Officer to undertake the investigation.
- 1.4 “The Matter” is the subject matter of the Investigating Officer’s report.
- 1.5 “The Standards Committee” refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing, unless the context indicates that it refers only to the Standards Committee itself.
- 1.6 This procedure shall also apply to the investigation of allegations of breaches of the Council’s local protocols in so far as they apply to Members.

2. Notification of Reference of Allegation

a) Appointment of Investigating Officer

Upon receipt of the allegation from an Ethical Standards Officer (ESO), the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him to conduct an investigation of the allegation and to report thereon to the Standards Committee. The Investigating Officer may be an officer of the Council (including the Monitoring Officer himself), an officer of another local authority, or an external Investigating Officer.

The Investigating Officer may appoint persons to assist him in the conduct of his 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:

- that the allegation has been referred to him for local investigation;
- 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 to be relevant to the allegation;
- of the procedure which will be followed in respect of the allegation; and
- of the identity of the Investigating Officer.

The Monitoring Officer shall provide the Member with a copy of any Report received from the ESO.

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 there has been a complaint against a Member of the Council or Leigh-on-Sea Town Council.

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 paragraph 2(b) above (see also 2(f) below).

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:

- 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 of 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.

Model forms to help the Member respond to the Investigating Officer are included as an **Annex** in this section of the Constitution.

f) Supporting information from the person who made the allegation

In notifying the person who made the allegation as referred to in 2(d)above, the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days:-

- 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;
- 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
- 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 Investigation

The purpose of the Investigating Officer's investigation is to enable him to prepare and present to the Standards Committee a report which, together with any report provided by the ESO, would provide the Standards Committee with sufficient information to determine whether the Member has acted in breach of the Code of Conduct or local protocol and, where there has been a breach of the Code of Conduct or local protocol, 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 his investigation at any point, where he is satisfied that he has sufficient information to enable him 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 investigation, the Investigating Officer becomes aware of any other matter which appears to him to indicate a breach of the Code of Conduct by the Member other than the breach which he is currently investigating, the Investigating Officer shall inform the Monitoring Officer who will report this back to the Standards Board.
- Where, in the course of his investigation, the Investigating Officer becomes aware of any other matter which appears to him to indicate a breach of a local protocol by the Member other than the breach he is currently investigating (but not a breach of the Code of Conduct), the Investigating Officer should report the matter to the Monitoring Officer. The Monitoring Officer will then take a decision whether to refer the matter to an Investigating Officer for local investigation and report to the Standards Committee as appropriate.

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 Paragraph 2(e) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he 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.

e) Production of Documents, Information, and explanations

- In the course of the investigation, the Investigating Officer and any person authorised on his 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, as he thinks necessary for the purposes of carrying out the investigation.
- In the course of the investigation, the Investigating Officer and any person authorised on his behalf may require any authority of which the Member is also a member to provide any document which is in his/its possession or control which he 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 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 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 request, such fees or allowances as he considers to be appropriate.

h) Reference back to the Standards Board (allegations of breach of Code of Conduct only)

At any point in the course of the investigation, if the Investigating Officer is of the opinion:-

- that the seriousness of the matters which he 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
- that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter;

he may, after consulting the Monitoring Officer, suspend his investigation and the Monitoring Officer shall then request the ESO to resume his investigation of the matter.

Where the ESO does resume his investigation, the Monitoring Officer shall ensure that the Member concerned, the person who made the complaint and the members of the Standards Committee are informed of such resumption.

Where the ESO 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 has sufficient information to meet the requirement set out in Paragraph 3(a) above or has obtained as much information as is likely to be reasonably capable of being obtained, he shall prepare a draft report setting out:
 - the details of the allegation;
 - the relevant provisions of statute, 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 has obtained in the course of the investigation;
 - a list of any documents relevant to the matter;
 - a list of those persons whom he has interviewed and those organisations from whom he 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 draft findings of fact;
 - his conclusion as to whether the Member has or has not failed to comply with the Code of Conduct or a local protocol; and
 - any recommendations which the Investigating Officer is minded to make to the Council or Leigh Town Council for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol or for rectifying any deficiency in the relevant decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol 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 he has considered any comments received on the draft report.
- c) The Investigating Officer shall then send a copy of his draft report in confidence to the Member and the person making the allegation, and request that they send any comments thereon to him within 14 days.
- d) The Investigating Officer may send a copy of, or relevant extracts from his draft report in confidence to any person on whose evidence he has relied in compiling the draft report, and request that they send any comments thereon to him 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 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 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 or local protocol, he 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 or local protocol, he 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:
 - The person who made the complaint; and
 - The ESOtogether 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 final 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 Member has not failed to comply with the Code of Conduct as set out in the allegation; or
 - ii) That it accepts the Investigating Officer's finding that on the facts as set out in the report , the Member has not failed to comply with a local protocol; or
 - iii) That the Matter should be considered at a hearing of the Standards Committee, conducted in accordance with the Council's Hearing Procedure Rules.
- e) Where the Standards Committee finds as set out in 5(d)(i) or (ii) above (no failure to comply with the Code of Conduct or local protocol) 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:-

- The Member;
- The ESO;
- The Standards Committee, if the finding was made by a Sub-Committee of the Standards Committee;
- The Standards Committee of any other local authority (other than a Parish or Town Council) of which the Member is also a member;
- Leigh-on-Sea Town Council if the allegation was against a Member of that Council;
- Any other Parish or Town Council, if the Member was also a member of a Parish or Town Council; and
- The person who made the allegation

and shall ask the Member 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 Member so objects

- f) Where the Standards Committee finds as set out in Paragraph 5(d)(iii) above (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 or a local protocol, the Monitoring Officer shall arrange for the Matter to be considered at such a hearing in accordance with the Council's "Hearing Procedure Rules for Local Determination by the Standards Committee".

Note Guidance in respect of this procedure for Local Investigations and also the Hearing Procedure Rules is attached as an **Annex** hereto.