

WORCESTERSHIRE COUNTY COUNCIL

STANDARDS AND ETHICS COMMITTEE

Procedure for Local Assessment and Investigation of Complaints that Councillors have breached their Code of Conduct

Introduction and Summary

This procedure applies only in respect of alleged failures to comply with the Council's Code of Conduct for Members. This procedure will be followed for the local assessment and investigation of such allegations in respect of Councillors (which means elected County Councillors and voting co-opted and independent members of the Council's Committees). No departure will be made from this procedure unless the Monitoring Officer or the Committee consider it justified through exceptional circumstances.

Written complaints are sent to the Monitoring Officer, who will refer them to the Committee. Where the Standards and Ethics Committee receives an allegation that a Councillor has failed to comply with the Council's Code of Conduct for Members it (or an assessment sub-committee) will decide to:

- take no action on the allegation
- take some other action (eg mediation or training)
- refer it to the Standards Board for England or
- refer it to the Monitoring Officer for investigation.

If the Monitoring Officer receives a referral for investigation, he/she will arrange for an Investigating Officer to investigate the allegation and to report the matter to the Committee.

- Where the Investigating Officer considers after investigation that the Councillor has not acted in breach of the Council's Code of Conduct for Members, the Committee (or assessment sub-committee) must meet to decide whether to accept that finding or to proceed to a formal hearing.
- Where the Investigating Officer considers that there has been a failure to comply with the Code of Conduct for Members, or where the Committee (or assessment sub-committee) decides to hold a full hearing, there will then be a formal hearing to determine whether a breach of the Council'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 Committee, to enable the Committee to come to an informed decision as to whether the Councillor has failed to comply with the Council's Code of Conduct for Members, and upon any consequential action. The Committee acts in an inquisitorial, 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) "The Committee" refers to the Council's Standards and Ethics Committee or to any Sub-Committee to which it or the Council has delegated the conduct of the assessment, review or hearing, unless the context indicates that it refers only to the Standards and Ethics Committee itself.
- (b) "Councillor" means the member or co-opted member of the Council who is the subject of the allegation being considered by the Committee, and unless stated otherwise it also includes the Councillor's representative.
- (c) "Investigating Officer" means the person appointed by the Monitoring Officer to undertake a local investigation (which may include the Monitoring Officer, and his or her representative).
- (d) "The Matter" is the subject matter of the Investigating Officer's report.
- (e) "The Monitoring Officer" includes persons authorised to act for him/her.

2. Allegations and Local Assessment

(a) Publication of address to which written allegations are to be sent

The Monitoring Officer shall as soon as practicable publish details on the Council's website of the address to which written allegations that a Councillor has failed to comply with the Code of Conduct shall be sent. The address shall be that of the Monitoring Officer unless the Committee determines otherwise. The Monitoring Officer shall take reasonable steps to ensure that the published details continue to be brought to the attention of the public and that any changes to those details are promptly published.

(b) Action by Monitoring Officer on receipt of written allegation

Upon receipt by him/her of a written allegation with sufficient detail that a Councillor has failed to comply with the Code of Conduct the Monitoring Officer shall:-

(i) notify the Councillor that an allegation has been received (which will include a summary or the content of the complaint unless the Monitoring Officer considers that it would be contrary to the public interest or would prejudice the consideration of the allegation to do so); and

(ii) ensure as far as reasonably practicable that within 20 working days of such receipt the allegation is considered by the Committee.

(c) **Consideration of the allegation by the Committee and action on it**

The Committee (in practice an assessment sub-committee) shall then consider the allegation and make one of the following decisions regarding it:-

- (i) to take no action on it, in which case the Committee shall direct that the Monitoring Officer shall give written notice of that decision and the reasons for it to the person who made the application and no further action shall be taken unless that person requests, pursuant to Section 57B of the Local Government Act 2000, that the Committee review that decision and the Committee (in practice a review sub-committee) will reconsider the allegation within three months of receipt of the request;
- (ii) to refer the allegation to the Standards Board for England through the Monitoring Officer;
- (iii) to refer the allegation to the Monitoring Officer for investigation, in which case consideration of the allegation shall proceed in accordance with the following paragraphs of this Procedure;
- (iv) in deciding to take no action, it may direct that the Monitoring Officer pursue other action short of formal investigation.

3. Reference of Allegation to the Monitoring Officer for Investigation

(a) **Appointment of Investigating Officer**

Upon the reference to him/her of the allegation by the Committee for investigation, 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 to the Committee. The Investigating Officer may be an officer of the Council, an officer of another local authority, or an external person.

(b) **Notification to the Councillor**

Except where (having first consulted the Committee) he/she considers that it would be contrary to the public interest or would prejudice the ability of the Investigating Officer to investigate the allegation, 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/her for local investigation and determination by the Committee;
- (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 him/her 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.

(c) **Notification to the Committee**

At the same time as notifying the Councillor, the Monitoring Officer will notify each member of the Standards Committee in writing of the matters set out in paragraphs 3(b)(i)-(iv) above.

(d) **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 3(b)(i)-(iv) and (vi) above.

(e) **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 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 a 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.

(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 a 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.

4. 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 Committee a report which would provide the Committee with sufficient information to determine whether the Councillor has failed to comply with the Code of Conduct and, where there has been failure to comply with the Code of Conduct, what, if any, action should be taken in respect of the Councillor or in consequence of the failure.

(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 Committee and to enable the 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 failure to comply with the Code of Conduct by the Councillor other than the failure 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 3(b)(iii) and (v) 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 Committee;

(d) 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 3(e)(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 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 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/her or otherwise provide any information, document or explanation for the purpose of paragraph 4(e), as he/she thinks necessary for the purposes of carrying out the investigation.

(ii) **Representation**

The Councillor 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) **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 4(c) above, is such that they may merit the application of a sanction beyond the powers of the Committee, or
- (ii) that the nature of the allegations is such that it would be inappropriate for the Committee to determine the matter,

he/she may, after consulting the Monitoring Officer, suspend his/her investigation and the Monitoring Officer shall refer the allegation to the Standards Board for England.

Where the Monitoring Officer refers the allegation to the Standards Board for England, he/she shall ensure that the Councillor concerned, the person who made the complaint and the members of the Committee are informed of such reference. Where the Standards Board for England decline to investigate the allegation, the Monitoring Officer shall instruct the Investigating Officer to resume his/her investigation.

5. The Draft Report

- (a) When the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in paragraph 4(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 and of the Code of Conduct;
 - (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 Code of Conduct, and
 - (x) any recommendations the Investigating Officer is minded to make for reviewing or reconsidering any decision which has the subject of failure to comply with the Code of Conduct for rectifying any deficiency in the Council's decision-making procedures or for preventing or deterring any failure to comply with the Code of Conduct or to remedy the position of any person who may have suffered detriment or injustice as a result of the failure.
- (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 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 to him/her within 14 days.
 - (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 to him/her within 14 days.

6. 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/her final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the 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 or notes 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 Committee (in practice an assessment sub-committee) for consideration; or
 - (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 Committee (in practice a hearing sub-committee) for a formal hearing.

- (c) The Monitoring Officer shall ensure that, when the agenda for the Committee is sent out to members of the Committee, including the final report, the agenda and the report are also sent to the person who made the complaint, together with a note explaining the circumstances under which the Committee may conduct a hearing into the allegations, and the procedure for these events.
- (d) Where the Committee considers the report in accordance with paragraph 6(b)(i) or (ii) 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 Code of Conduct as set out in the allegation; or
 - (ii) That the matter should be considered at a hearing of the Committee conducted in accordance with the authority's adopted Procedure for Local Determination Hearings or
 - (iii) That the matter should be referred to the Adjudication Panel
- (e) Where the Committee finds as set out in paragraph 6(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 Committee, if the finding was made by a Sub-Committee of the Committee;
 - (iii) The Standards Committee of any other local authority (other than a Parish or Town Council) of which the Councillor is also a member; and
 - (iv) 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 Committee finds as set out in paragraph 6(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 Council's adopted Procedure for Local Determination Hearings, subject to the following variations:

- (i) The hearing shall be conducted no sooner than 14 days, and no later than 3 months, from the date on which the Monitoring Officer received the report of the Investigating Officer;
- (ii) the Monitoring Officer will not conduct Pre-Hearing enquiries of the Councillor, and
- (iii) the Investigating Officer shall be responsible for presenting the report to the Committee and introducing any witnesses whom he considers that the Committee should hear in order to be able to give the matter proper consideration.

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