



WEST LANCASHIRE DISTRICT COUNCIL

Procedure for Standards Committee Local Investigation

1. Introduction and Summary

- 1.1 This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors¹. No departure will be made from this procedure unless and until the Council Secretary and Solicitor has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.
- 1.2 This procedure applies to breaches of the authority's Code of Conduct for Members. The authority may also resolve that the same procedure shall apply to the investigation of allegations of breaches of the authority's local protocols², in so far as they apply to Councillors.
- 1.3 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 investigation³. 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 Authority. If the matter is referred before the Ethical Standards Officer has completed his/her

¹ 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.

² Allegations of breach of a local protocol may also constitute breaches of the Code of Conduct, and so fall within the jurisdiction of the Standards Board. Where a particular allegation of breach of protocol does not form a breach of the Code of Conduct, it may fall to be investigated and determined by the Council, should it so resolve. Accordingly this procedure may apply equally to allegations of breach of a local protocol, but by virtue of a delegation from Council rather than by virtue of the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004 – SI 2004 No. 2617.

³ Section 58(2), Local Government Act 2000.

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 Committee⁴ (or to a Sub-Committee of the Standards Committee convened for the purpose⁵). Similarly, when the Council Secretary and Solicitor receives an allegation of a failure by a Councillor to comply with a local protocol, and she is of the opinion that the allegation merits investigation, she shall arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee, if the Council so resolve. Where the Investigating Officer has found, after investigation, that the Councillor has not acted in breach of the authority's Code of Conduct for Members or a local protocol, 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 for Members or a local protocol, 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 Councillor has failed to comply with the authority's Code of Conduct for Members or a local protocol, 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.

1.5 **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 Council Secretary and Solicitor to undertake that investigation (which may include the Council Secretary and Solicitor, and her representative).⁶
- (c) "The Matter" is the subject matter of the Investigating Officer's report.

⁴ Section 59(4)(c), Local Government Act 2000.

⁵ Where an authority determines that individual allegations shall be considered by a Sub-Committee, or Regulations require that a complaint be considered by a Sub-Committee, references in this procedure to the Standards Committee should be read as being references to such a Sub-Committee.

⁶ This definition has been amended to make it clear that, when the Monitoring Officer arranges for someone else to undertake the investigation, the definition of the "Investigating Officer" no longer includes the Monitoring Officer.

- (d) '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.

2. Notification of Reference of Allegation to the Monitoring Officer

2.1 Appointment of Investigating Officer

Upon receipt of the allegation from an Ethical Standards Officer, the Council Secretary and Solicitor 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 authority⁷, an officer of another local authority, or an external Investigating Officer. The Council Secretary and Solicitor will appoint an Investigating Officer in the form attached as an Appendix and inform the Ethical Standards Officer of that appointment.

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.

2.2 Notification to the Councillor

The Council Secretary and Solicitor will then notify⁸ in writing the Councillor against whom the allegation is made:

- (i) that the allegation has been referred to her 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 (see general summary in Notification letter and copy of the allegation)
- (iv) of the procedure which will be followed in respect of the allegation, and
- (v) of the identity of the Investigating Officer.

⁷ There are two distinct roles, that of the Investigating Officer and that of legal adviser to the Standards Committee. The Monitoring Officer may herself take on the role of Investigating Officer. Where she does so, she must also arrange for a separate legal adviser to the Standards Committee in respect of the allegation.

⁸ 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.

The Council Secretary and Solicitor shall provide the Councillor with a copy of any report received from the Ethical Standards Officer.

2.3 Notification to the Standards Committee

At the same time as notifying the Councillor, the Council Secretary and Solicitor will notify each member of the Standards Committee in writing in a confidential memo of the fact that she is carrying out a local investigation. The memo should be brief and not name the complainant or the member against whom the allegation has been made (see p3 Standards Board Guidance Nov 2004)

2.4 Notification to the Parish 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 Council Secretary and Solicitor will notify the Clerk of the Parish Council concerned in writing of the matters set out in paragraph 2.2 above.

2.5 Notification to the Person who made the Allegation

At the same time as notifying the Councillor, the Council Secretary and Solicitor will notify the person who made the allegation in writing of the matters set out in paragraph 2.2 above.

2.6 Initial response of the Councillor

In notifying the Councillor of receipt of the allegation, the Council Secretary and Solicitor 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 or local protocol 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 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.

and advise that the Investigating Officer will be in contact with him/her.

2.7 Supporting information from the person who made the allegation

In notifying the person who made the allegation as above, the Council Secretary and Solicitor will request the person to respond to the Investigating Officer within 14 days as follows:

- (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.

and advise that the Investigating Officer will be in contact with him/her.

3. Conduct of Investigation

3.1 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 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 Councillor or in consequence of the breach, and what any such action should be.

3.2 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.

3.3 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 or local protocol by the Councillor other than the breach which he/she is currently investigating, the Investigating Officer shall either:

- (i) *(where the additional matter relates to an apparent breach of the authority's Code of Conduct by a member of the principal authority)* report the matter to the Council Secretary and Solicitor who will provide the Councillor with details of the matter 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 Council Secretary and Solicitor will then determine whether to ask the person from whom the information was obtained to make an allegation to the Standards Board or report the additional matter to the Standards Board herself;
- (ii) *(where the additional matter constitutes an apparent breach of the authority's local protocols but not a breach of the Code of Conduct by a member of the principal authority)* report the matter to the Council Secretary and Solicitor who will provide the Councillor with details of the matter and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the authority's local protocols. The Council Secretary and Solicitor 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, subject to Council resolution re local protocols where the original matter relates to an allegation of breach of a local protocol, and the additional matter relates to a further breach of a local protocol of the same authority, the Council Secretary and Solicitor may, with the consent of the Councillor, request the original Investigating Officer to extend his investigation to include the additional matter;
- (iii) *(Where the additional matter relates to an apparent breach of the Code of Conduct or a local protocol by a Parish Councillor)* notify the Clerk to the Parish Council of the additional matter, and take no further action in respect thereof⁹.

3.4 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 earlier, 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.

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As set out above, District Council Standards Committees have no jurisdiction in respect of breaches of local protocols by Parish Councillors, which would have to be dealt with by the Parish Council itself unless the Parish Council has delegated the resolution of such matters to the District Council.

3.5 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.

3.6 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, 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.

3.7 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 the agreement of the Council Secretary and Solicitor.

3.8 Reference back to the Standards Board (allegations of breach of the Code of Conduct for Members only)

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 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, from overleaf

he/she may, after consulting the Council Secretary and Solicitor, suspend his/her investigation and the Council Secretary and Solicitor shall then request the Ethical Standards Officer to resume his investigation of the matter.

Where the Ethical Standards Officer does resume his investigation, the Council Secretary and Solicitor shall ensure that the Councillor concerned, the person who made the complaint, the members of the Standards Committee and any relevant Parish Council are informed of such resumption. Where the Ethical Standards Officer declines to resume his investigation, the Council Secretary and Solicitor shall instruct the Investigating Officer to resume his/her investigation.

4. The Draft Report

- 4.1 When the Investigating Officer is satisfied that he/she has 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, he/she shall prepare a draft, and dated report, marked confidential, 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 evidence, 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 together with copies of such documents where available;
 - (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 reasoning and draft finding as to whether the Councillor has or has not failed to comply with the Code of Conduct for Members of any authority or a local protocol, 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 or local protocol, for rectifying any deficiency in the authority's 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. 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.
- 4.2 The draft reports 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.
- 4.3 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, with a copy to Council Secretary and Solicitor.
- 4.4 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. The draft report does not need to be sent to the relevant Parish Clerk.

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 his/her draft report in the light of any comments received, and produce and send to the Council Secretary and Solicitor 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 and a chronology of events.
- 5.2 The Council Secretary and Solicitor 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 for Members or a local protocol, 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 for Members or with a local protocol, he/she will refer the report to the Standards Committee for a formal hearing.

5.3 The Council Secretary and Solicitor 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 Councillor;
- (ii) The person who made the complaint;
- (iii) The Clerk to the Parish Council (if appropriate); and
- (iv) The Ethical Standards Officer who referred the matter

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, if a hearing is to be held.

5.4 Where the Standards Committee considers the report in accordance with Paragraph 5.2(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 Code of Conduct for Members as set out in the allegation;
- (ii) That it accepts the Investigating Officer's finding that, on the facts as set out in the report, the Councillor 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 for Standards Committee determinations.¹⁰

N.B. At this meeting the Standards Committee should simply consider the report. It should not seek to interview witnesses or take representations from the parties. The Committee's role is to decide whether, based on the facts set out in the report, it agrees with the finding or believes there is a case to answer.

5.5 Where the Standards Committee finds as set out in Paragraph 5.4(i) or (ii) above (no failure to comply with the Code of Conduct or with a local

¹⁰ Note that this is not a finding that there has been a failure to comply with the Code of Conduct for Members or with a local protocol, 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.

protocol), the Council Secretary and Solicitor 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.

5.6 Where the Standards Committee finds as set out in Paragraph 5.4(iii) 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 or a local protocol, the Council Secretary and Solicitor shall arrange for the matter to be considered at such a hearing in accordance with the Hearing Procedure for Standards Committee Determinations, 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 Council Secretary and Solicitor 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 Council Secretary and Solicitor will not conduct Pre-Hearing enquiries of the Councillor, and
- (iv) the Investigating Officer shall be responsible for presenting the report to the Standards Sub Committee and introducing any witnesses whom he considers that the Standards Sub Committee should hear in order to be able to give the matter proper consideration.

6. Confidentiality

It is good practice to treat information gathered during an investigation as confidential. This will help to ensure the investigation is seen as fair. Maintaining confidentiality reduces the risk of evidence being viewed as

biased and preserves the integrity of the investigation. The fact that an investigation is being conducted does not need to remain confidential.

Those interviewed and anyone else aware of the investigation will be asked to maintain confidentiality and members are reminded of their obligation under the code not to discuss information received in confidence. Information will only be disclosed in the case of an investigation if

- the disclosure will assist Ethical Standards officers to perform their statutory functions
- the disclosure will assist the Monitoring officer to perform his or her statutory function's
- permission from the person to whom the information relates has been given
- the information has already lawfully been made public;
- the disclosure is made for the purposes of Criminal proceedings in the UK.

Draft reports are marked as confidential to preserve the integrity of any further investigation. Final reports will be made available for public inspection unless they contain confidential or exempt information as defined by part VA of the Local Government Act 1972.