

BEDFORD BOROUGH COUNCIL

PROCEDURE FOR LOCAL INVESTIGATION OF COMPLAINTS

ABOUT BREACHES OF THE CODE OF CONDUCT FOR MEMBERS

Introduction and Summary

1. This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Members. No significant 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.
2. This procedure applies to breaches of the Council's Code of Conduct for Members.
3. Where the Monitoring Officer receives an allegation that a Member has breached the Code of Conduct for Members, s/he will decide, following consultation with the Independent Person
 - (i) whether or not the complaint merits formal investigation and if so, arrange for an investigation to be carried out; or
 - (ii) to seek a resolution to the complaint where practicable without the need for a formal investigation.

The Monitoring Officer has discretion to refer decisions on investigations to an Assessment Panel of the Standards Committee and will do so where he feels it would be inappropriate for him to take the decision. In such cases, the Assessment Panel will seek the views of the Independent Person before determining how to respond to the complaint.

4. If the complaint is found not to merit investigation or informal resolution, the Monitoring Officer will advise the complainant and will explain the reasons for that determination.
5. If the complaint is referred for investigation, the Monitoring Officer will arrange for an Investigator to investigate the allegation and submit a report on the matter to the Monitoring Officer in the first instance.
6. Where the Investigator has found, after investigation, that the Member has not failed to comply with the Council's Code of Conduct for Members, the Monitoring Officer has authority to close the complaint. In such cases a copy of the report and findings will be provided to;

- The complainant
- the member against whom the complaint was made and
- the Independent Person

The findings will also be reported for information to the next available meeting of the Standards Committee.

- 7 Where the Investigator finds evidence of a failure to comply with the Code of Conduct for Members, the Monitoring Officer has authority, in consultation with the Independent Person, to seek a local resolution where he considers this to be appropriate and he is able to do so to the satisfaction of the complainant. In such cases a summary report will be submitted to the Standards Committee following resolution of the complaint.
- 8 Where a local resolution is not appropriate or not possible, the Monitoring Officer will report the investigation findings to a Hearings Panel of the Standards Committee for a local hearing. Such Panels are authorised by the Council to apply, or recommend, a range of sanctions in respect of members who are found to have failed to comply with their Council's Code of Conduct.
- 9 In this process;
 - (i) the function of the Investigator is to identify, as far as possible, all the information relevant to the allegation and present it in his/her report, to enable the an informed decision to be made as to whether the Member has failed to comply with their Council's Code of Conduct for Members, and upon any consequential action; and
 - (ii) the function of any Hearings Panel is to act 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.
 - (iii) Either the Monitoring Officer or a hearings panel may commission further investigation or information if they need to do so in order to come to a decision.

1 Interpretation

- (a) 'Member' means the member of a Council who is the subject of the allegation that has been made that they have breached their Council's Code of Conduct , unless stated otherwise. It also includes the member's nominated representative.
- (b) 'Investigator' means the person appointed by the Monitoring Officer to investigate and report on the complaint.

- (c) 'The Matter' is the subject matter of the Investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Hearings Panel which has delegated power to conduct a hearing.

2 Appointment of Investigator

Following a determination by either the Monitoring Officer or an Assessment Panel after consultation with the Independent Person that an allegation of a breach of the Code of Conduct should be investigated, the Monitoring Officer will appoint an Investigator to conduct an investigation of the allegation and report thereon to the Monitoring Officer in the first instance. The Investigator may be an officer of the authority, an officer of another local authority, or an external Investigator.

The Investigator may appoint persons to provide assistance in the conduct of the investigation and may obtain any professional advice as may be necessary to conduct the investigation.

3 Notifications

(a) Notification to the Member

The Monitoring Officer will within 5 working days of the determination notify in writing the Member against whom the allegation is made:

- (i) that the allegation has been referred for investigation;
- (ii) of 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 be relevant to the allegation;
- (v) why the particular referral decision has been made;
- (vi) of the procedure which will be followed in respect of the allegation;
- (vii) of the identity of the Investigator; and
- (viii) of the name and contact details of a nominated "Independent person" the member is able to consult;

- (ix) that the Council has agreed to provide an indemnity/ insurance under Regulations made under Section 101 of the Local Government Act 1972 to Borough Council Members, to meet the costs which they may incur investigations, hearings or other proceedings relating to alleged breaches of the Council's Code of Conduct for Members up to a maximum of £5000 for each case. This is on the basis that any such indemnity or insurance is subject to a requirement (to which the Member must unconditionally agree in advance) to repay any sums received in the event that the Member is found to have failed to comply with the Code of Conduct.

The Monitoring Officer shall provide the Member with a copy of any report received from the Investigator.

(b) Notification to the Standards Committee

At the same time as notifying the Member, the Monitoring Officer will notify in confidence each member of the Standards Committee in writing;

- that an investigation is to be commenced;
- of any other authority concerned.

(c) Notification to the Parish/Town Council Clerk

Where the allegation relates to the conduct of a member of a Parish or Town Council in his/her capacity as such, at the same time as notifying the Member, the Monitoring Officer will notify the Clerk of the Parish or Town Council concerned in confidence in writing that an investigation is to be commenced.

(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 confidence in writing that an investigation is to be commenced.

4 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 Investigator in writing within ten working days of notification as follows:

- (i) advising the Investigator whether the Member admits or denies the alleged breach of the Code of Conduct which is the subject of the allegation;

- (ii) listing any documents which the Member would wish the Investigator to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigator where the original documents may be inspected,
- (iii) providing the Investigator with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Member would wish the Investigator to interview in the course of any investigation of the allegation,
- (iv) providing the Investigator 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

In notifying the person who made the allegation as above, the Monitoring Officer will request the person to respond to the Investigator within ten working days:

- (i) listing any documents which the person would wish the Investigator to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigator of where the original documents may be inspected,
- (ii) providing the Investigator with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the person would wish the Investigator to interview in the course of any investigation of the allegation, and
- (iii) providing the Investigator with any information which the person would wish the Investigator to seek from any person or organisation.

5. Conduct of Investigation

(a) Purpose of the Investigation

- (i) The purpose of the investigation is to enable the Investigator to prepare and submit to the Monitoring Officer in the first instance a report which provides sufficient information to determine whether the Member has acted in breach of their Council's Code of Conduct; and

- (ii) 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) **Complaints**

- (i) The Investigator will explain to the person making the allegation, the Member and any witnesses that should there be any complaint received about the conduct of an investigation or a “service complaint”, :
 - There is an independent service complaints procedure that they can use;
 - That the complaint will be dealt with under the Council’s Corporate Complaints Procedure.
 - Once the complaint has gone through the Council’s Corporate Complaints Procedure no further communication will be entered into with the Council.
 - The complainant (against the Investigator) may then take the matter up with the Local Government Ombudsman.
- (ii) Service criticisms occur when a party criticises the actions of an Investigator. Such criticisms may include:
 - Administrative errors, for example misspelling a name
 - Failure to communicate
 - Criticism of the manner in which the investigator behaved
 - Criticism of the length of time it took to conduct the investigation
- (iii) Differences of interpretation during an investigation or on any draft or final report will not be considered as part of a complaint. In instances where there is a mix of “interpretation and reasoning” matters and service complaints, the Investigator or the Monitoring Officer will write to the complainant outlining which matters will be considered under the Council’s Corporate Complaints Procedure and which will not.
- (iv) An investigation can continue while a complaint under the Council’s Corporate Complaints Procedure is being addressed. There may be circumstances where the complaint is so substantive that it would not be appropriate for the same Investigator to continue. Such cases will, however, be extremely rare and will be for the Monitoring Officer to determine.

(c) Termination of the Investigation

The Investigator may terminate the investigation at any point, where s/he is satisfied that s/he has sufficient information to enable a report to be made and to enable a considered decision to be reached on the allegation.

(d) Evidence of Possible New Breaches

Where, in the course of the investigation, the Investigator becomes aware of any other matter, which appears to him/her to indicate a breach of the Code of Conduct by the Member other than the breach which s/he is currently investigating, the Investigator shall in the case of a:

- (i) Member of the Borough Council, report the matter to the Monitoring Officer who will provide the Member with details of the matter in the form set out in paragraphs 3(a)(iii) and (iv) above and invite the Member to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct. The Monitoring Officer following consultation with the Independent Person, will then determine whether this additional matter should be included in the investigation;
- (ii) Parish/Town Council Member, notify the Clerk to the Town/Parish Council of the additional matter, and take no further action in respect thereof;

(d) Following notification to the Member, the Investigator will identify

- an initial list of persons to be interviewed,
- organisations/individuals from whom information is to be sought; and
- documents to be inspected as part of the investigation.

Where the Member has provided the Investigator with the information requested in accordance with Paragraphs 4(ii) and (iii) above, the Investigator shall include in this list each document, person and organisation referred to in that response, unless s/he is of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than contribute to the accuracy of the Investigator's final report. The Investigator 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 Investigator and any person authorised on his/her behalf may:

- (i) make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in his/her or its possession or control, or provide any explanation, as s/he thinks necessary for the purposes of carrying out the investigation;
- (ii) require the Council which the Member belongs to, to provide any document it possesses or controls, which s/he thinks necessary for the purposes of carrying out the investigation.

In doing so they should ask all persons contacted to respect the confidentiality of the enquiry.

(f) Interviews

(i) Requesting attendance

In the course of the investigation the Investigator may request any person to attend and appear before him/her or otherwise provide such information, document or explanation for the purpose of Paragraph 4(e) s/he thinks necessary for the purposes of carrying out the investigation.

(ii) Representation

Apart from any Member of the Borough Council who is entitled to representation on the basis set out in paragraph 3(a)(viii), any other person who appears before the Investigator may arrange to be accompanied at his/her own expense by a solicitor, other adviser or friend but who should not be a member of the Standards Committee, a council officer or a potential witness.

(iii) Notes of interviews

Following the interview, the Investigator shall produce a written note of any 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 Investigator may, where s/he considers it to be appropriate to facilitate the investigation, pay any person to provide any document, information, advice or explanation in response to his/her request, such fees or allowances as s/he considers appropriate, subject to the maxima set by the Borough Council.

(h) Discontinuation or deferral of Investigation

- (i) If the person who is the subject of the allegation
 - (a) has died;
 - (b) is seriously ill; or
 - (c) has resigned from the Council,the investigation will be discontinued.
- (ii) An investigation will be deferred in any of the following circumstances:
 - (a) there are ongoing criminal proceedings or a police investigation into the member's conduct;
 - (b) the investigation cannot proceed without either an investigation of similar alleged conduct or the need to come to conclusions of fact about events which are also the subject of some other investigation or court proceeding; or
 - (c) the investigation might prejudice another investigation or court proceeding.
- (iii) An investigation may also be deferred in any of the following circumstances:
 - (a) there is an ongoing investigation by another regulatory body;
 - (b) a key witness is seriously ill; or
 - (c) a key party is genuinely unavailable.

In any of these circumstances the Monitoring Officer will inquire into the nature of the other investigation or proceedings or other relevant circumstances. The Monitoring Officer will inform all relevant parties of any deferral.

Where an investigation is deferred because there exists parallel investigations, the Monitoring Officer will seek regular updates on the progress of that investigation and will in any event keep the deferral under regular review.

Once it is decided to begin the investigation again the Monitoring Officer will notify all relevant parties.

The Draft Report

- (a) When the Investigator is satisfied that s/he 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, s/he shall prepare a draft report setting out:
- (i) who the report is for
 - (ii) who the report is by
 - (iii) the date of the report
 - (iv) the full allegation and who it was made by
 - (v) the relevant provisions of legislation and of the Code of Conduct that were considered in the investigation
 - (vi) his/her conclusion as to whether there has been a failure to comply with the Code of Conduct of any authority
 - (vii) the finding
 - (viii) the Member's details:
 - when the Member was elected
 - the Member's term of office
 - any other relevant authorities they are a member of
 - details of any committees on which the Member has served
 - where relevant, the date the Member ceased to be a member
 - the date the Member signed an undertaking to abide by the Code
 - full details of any training the Member has received on the Code
 - (ix) the relevant information, advice and explanations which s/he has obtained in the course of the investigation;
 - (x) a list of any documents relevant to the matter;
 - (xi) a list of those persons whom s/he has interviewed and those organisations from whom s/he has sought information;
 - (xii) 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;

- (xiii) his/her conclusion as to whether the Member has or has not failed to comply with the Code of Conduct for Members of any authority, and
- (xiv) any recommendations which the Investigator 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:
 - to rectify any deficiency in the authority's decision-making procedures; or
 - to prevent or deter 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.

Where the allegation relates to a Parish/Town Council Member, any such recommendations would be ones the Investigator would recommend to be made to the Parish/Town Council.

- (b) The draft report should also state that the report does not necessarily represent the Investigator's final finding, and that the Investigator will present a final report to the Committee once s/he has considered any comments received on the draft report.
- (c) The Investigator shall then send a copy of his/her draft report in confidence to the Member and the person making the allegation, and request that they send any comments thereon to him/her within 10 working days.
- (d) The Investigator may send a copy of, or relevant extracts from, his/her draft report in confidence to any person on whose evidence s/he has relied in compiling the draft report, and request that they send any comments thereon to him/her within 10 working days.

7 Receipt of further Evidence

- (a) Where the Investigator receives any new evidence relevant to an investigation, whether submitted from or on behalf of either the Member or the person making the allegation, and which the Investigator considers should be included in the report but is not sufficient to make a substantial change to the report he/she will send a copy of the new evidence to other party with a request for their comments within the next 5 working days.

8

The Second Draft Report

- (a) Where the Investigator receives any substantial new evidence, whether submitted from or on behalf of either the Member or the person making the allegation, which causes the Investigator to make any major change to the draft report the Investigator shall prepare a second draft report incorporating those changes.
- (b) The Investigator shall then send a copy of his/her second draft report in confidence to the Member and the person making the allegation, and request that they send any comments thereon to him/her within 10 working days.
- (c) The Investigator may also send a copy of, or relevant extracts from, his/her second draft report in confidence to any person on whose evidence s/he has relied in compiling the second draft report, and where he/she considers appropriate also to any person on whose evidence s/he relied in compiling the draft report and request that they send any comments thereon to him/her within 10 working days.

9

The Final Report

- (a) After the expiry of the 10 working days (or such extended period as the Investigator may allow), the Investigator 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 Investigator's final findings, and must have appended to it copies of any documents which the Investigator has relied on in reaching his/her 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 where the final report concludes that:
 - (i) there **has not been a failure** to comply with the Code of Conduct for Members, s/he will close the complaint, provide a copy of the report and findings of the investigation to the complainant and the Independent Person and report the findings to the next available meeting of the Standards Committee, for information.
 - (ii) there **has been a failure** by the Member to comply with the Code of Conduct for Members, as appropriate, the Monitoring Officer, following consultation with the Independent person will, where appropriate, seek a local resolution to the satisfaction of the complainant (in which

case a summary report will be submitted for information to the Standards Committee following the resolution of the complaint). Where the Monitoring Officer, following consultation with the Independent Person, considers a local resolution is not appropriate or possible, s/he will report the findings to a Hearings Panel of the Standards Committee for local hearing.

- (c) Where a report is referred to a Hearings Panel, the Monitoring Officer shall ensure that, when the agenda for the Panel meeting together with the final report is sent out to the Members of the Panel, the agenda and the final report are also sent to:

- (i) The person who made the complaint;
- (ii) The Member who is the subject of the complaint;
- (iii) The Clerk to the Parish or Town Council (if any); and
- (iv) The Investigating Officer

together with a note explaining the circumstances under which the Panel may conduct a hearing into the allegations, and the procedure for the hearing.

- (d) Any hearing shall be conducted no later than 3 months from the date on which the Monitoring Officer receives the report of the Investigator;
- (e) the Monitoring Officer will conduct Pre-Hearing enquiries of the Member as s/he considers appropriate in each case; and
- (f) the Investigator shall be responsible for presenting the report to the Committee and introducing any witnesses whom s/he considers that the Committee should hear in order to be able to give the matter proper consideration.
- (g) The hearing will be conducted in accordance with the Council's approved procedure for hearings before a Hearing Panel, subject to any variation the Chair agrees to where s/he is of the opinion that such a variation is necessary in the interests of fairness.