



## **Procedure for Local Investigation of Allegations of Member Misconduct**

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## Introduction and Summary

This document sets out the procedure which will be followed in the local investigation of allegations of misconduct by Members<sup>1</sup> and applies to breaches of the authority's Code of Conduct for members. It takes into account the statutory provisions in the Local Government Act 2000 (as amended), the Standards Committee (England) Regulations 2008 and the statutory guidance issued thereunder.

The procedure applies where an allegation that a Member has breached the authority's Code of Conduct for Members has been referred for investigation to the Authority's monitoring Officer by an Assessment Panel or Assessment Review Panel of the authority or by an Ethical Standards Officer of the Standards Board for England.

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 Committee or to a Sub-Committee of the Standards Committee convened for the purpose<sup>2</sup>.

Where the Investigating Officer has completed the investigation, the Hearing Panel must meet and has three initial findings that it can make under Regulation 17 of the Standards Committee (England) Regulations 2008. If the Investigating Officer has found there has been no failing on the part of the Member, it can accept that finding. If the Hearing Panel decides not to accept that finding or if the Investigating Officer has found there was a failing on the part of the Member, there are two alternative findings that can be made. These are either to proceed to a formal hearing of the matter by the authority's Hearing Panel, or to refer the matter to the Adjudication Panel for England. The limited circumstances in which the matter may be referred to the Adjudication Panel are set out below in part ??? of this Procedure.

The purpose of a formal hearing by the Hearing Panel or Adjudication Panel is to determine whether a breach of the authority's Code of Conduct for Members has occurred and if so whether any action should be taken in consequence.

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<sup>1</sup> 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 "Member" is to be taken to refer to all such persons.

<sup>2</sup> The City Council's Standards Committee has determined that individual allegations shall be considered by Sub-Committees called Hearing Panels. References in this procedure to the Hearing Panel should be read as being references to the relevant Sub-Committee.

In these processes, 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 Hearing Panel (or exceptionally the Adjudication Panel), to enable the Panel to come to an informed decision as to whether the Member has failed to comply with the authority's Code of Conduct for Members and upon any consequential action. The Hearing Panel acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member on the balance of 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.

The Monitoring Officer may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is desirable and does not conflict with statutory requirements.

## **1 Interpretation**

- (a) "Assessment Panel" includes the Assessment Review Panel, the role of these Panels being to assess complaints about alleged breaches of the Code of Conduct and decide what action, if any, should be taken.
- (b) "Code of Conduct" means the Code of Conduct for Members.
- (c) "ESO" means an Ethical Standards Officer.
- (d) "Member", except where the context otherwise requires, means the elected member or co-opted member of the authority who is the subject of the allegation that he/she has breached the Code of Conduct. It also includes the Member's nominated representative.
- (e) "Investigating Officer" means, as appropriate to the circumstances, the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her representative) or the ESO who has referred a matter for investigation to the authority (and his or her nominated representative).
- (f) "the Matter" is the subject matter of the Investigating Officer's report.
- (g) "The Hearing Panel" refers to the Standards Sub-Committee whose role it is to hear cases and make local determinations on complaints about alleged breaches of the Code of Conduct.

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

### **(a) Appointment of Investigating Officer**

Upon receipt of an allegation 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 thereon to the authority's Hearing Panel. The Investigating Officer may be an officer of the authority<sup>3</sup>, an officer of another local authority, or an external Investigating Officer. In relation to an allegation referred by an ESO, if the Investigating Officer is other than the Monitoring Officer, the

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<sup>3</sup> The Role of the Investigating Officer must be kept distinct from the roles of committee support officer and legal adviser to the Hearing Panel. The Investigating Officer must be a different person from the person or persons who act as committee support officer and/or legal adviser to the Hearing Panel in respect of the allegation.

Monitoring Officer shall inform the ESO of the name and address of the person to whom the investigation has been delegated.

Subject to the agreement of the Monitoring Officer, 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.

**(b) Notification to the Member**

Subject to any direction from the Assessment Panel or an ESO, the Monitoring Officer will then notify<sup>2</sup> in writing the Member against whom the allegation is made:

- (i) that the allegation has been referred to him/her for local investigation and determination;
- (ii) the identity of the person making the allegation;
- (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.

The Monitoring Officer shall provide the Member with a copy of any report received from the ESO (see also 2(f) below).

**(c) Notification to the Standards Committee and other bodies**

Subject to any direction from the Assessment Panel or an ESO, at the same time as notifying the Member, the Monitoring Officer will notify:

- (i) each member of the Standards Committee; and
- (ii) the Standards Committee of any other authority concerned;

in writing, under a requirement for confidentiality, of the matters set out in paragraphs 2(b)(i), (iii), (iv) and (vi) above.

**(d) Notification to the Parish Council Clerk**

Where the allegation relates to the conduct of a member of Rottingdean Parish Council in his/her capacity as such, at the same time as notifying the Member, the Monitoring Officer will notify the Clerk (or if the Clerk is involved in the allegation, the

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<sup>2</sup> In exceptional cases, where there is reason to believe that it would be contrary to public interests or would prejudice any a person's ability to investigate the allegation there is power to defer notifying the Member.

Chairman) of the Parish Council in writing, under a requirement for confidentiality, of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

**(e) Notification to the person who made the allegation (the Complainant)**

Subject to any direction from the Assessment Panel or an ESO, at the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2(b)(i), and (iii) to (vi) above and will provide any directions that can be made regarding the forthcoming investigation.

**(f) 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:

- (i) advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;
- (ii) listing any documents which the Member would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;
- (iii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Member would wish the Investigating Officer to interview in the course of any investigation of the allegation; and,
- (iv) providing the Investigating Officer with any details of information which the Member would wish the Investigating Officer to seek from any person or organisation.

**(g) Supporting information from the person who made the allegation**

In notifying the person who made the allegation as above, the Monitoring Officer will request him/her 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 any person or organisation whom the Complainant would wish the Investigating Officer to interview in the course of any investigation of the allegation; and,
- (iii) providing the Investigating Officer with details of any information which the Complainant would wish the Investigating Officer to seek from any person or organisation.

### **3. Conduct of the 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 Hearing Panel a report which, together with any report provided by the ESO, will provide the Hearing Panel with sufficient information to determine whether the Member has acted in breach of the Code of Conduct and, where there has been a breach of the Code of Conduct, whether any action should be taken in respect of the Member or in consequence of the breach, and what any such action should be.

#### **(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 Hearing Panel and to enable the Hearing Panel 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 evidence which appears to him/her to indicate a breach of the Code of Conduct by the Member other than the breach which he/she is currently

investigating, the Investigating Officer. If this happens, the Investigating Officer shall take one of the following two courses of action.

- (i) The Investigating Officer may inform the person from whom the evidence was obtained that the possible breach cannot be investigated as part of the existing investigation, and that they may wish to make a separate complaint to the relevant standards committee.
- (ii) Alternatively, the Investigating Officer may report the matter to the Monitoring Officer who will provide the Member with details of the matter in the form set out in paragraphs 2(b)(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 will then determine whether to report the additional matter.

**(d) Identification of those people from whom the Investigating Officer will seek information**

Following notification to the Member, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Member has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(f)(ii) to (iv) 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 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 information which is in his/its possession or control, or provide any explanation, as he/she thinks necessary or expedient 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 other authority to provide such advice or assistance as he/she thinks may reasonably be needed for the purposes of carrying out the investigation. (Note: the authority concerned, or in the case of a Parish Council, the authority responsible for that Parish Council, can be required to meet the reasonable cost of any advice and assistance so provided).

**(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 3(e), as he/she thinks necessary for the purposes of carrying out the investigation.

- (ii) Representation

Any person who appears before the Investigating Officer can 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/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 maxima set by the authority.

**(h) Reference back to the Standards Board or the Assessment Panel**

- (i) In relation to any allegation referred by an ESO for investigation, at any point in the course of the investigation, if the Investigating Officer is of the opinion
- (A) that the seriousness of the matters which he/she 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 Hearing Panel, or
  - (B) during the course of the investigation new evidence has been uncovered of the conduct of the Member that breaches the Code of Conduct but that the new evidence extends the scope of the investigation beyond the allegation referred by the ESO
  - (C) that the Member is obstructing the investigation by refusing to co-operate or
  - (D) that there is some other substantial reason,

he/she may, after consulting the Monitoring Officer, suspend his/her investigation and the Monitoring Officer shall then request the ESO with reasons in writing to resume his/her investigation of the matter<sup>3</sup>.

Where the ESO does resume his/her investigation, the Monitoring Officer shall ensure that the Member concerned, the person who made the complaint, the members of the Standards Committee and the Parish Council (if appropriate) is informed of such resumption. Where the ESO declines to resume his/her investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his/her investigation.

- (ii) In relation to any allegation referred by an Assessment Panel for investigation, at any point in the course of the investigation, the Investigating Officer may suspend his/her investigation and refer the matter to the Monitoring Officer if he/she is of the opinion
- (A) that as a result of new evidence or information, the matter is materially more serious or materially less

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<sup>3</sup> Only one such request may be made during the course of an investigation

serious than may have seemed apparent to the Assessment Panel when it referred the matter to the Monitoring Officer for investigation, and that the Panel would have made a different decision had it been aware of that new evidence or information, or

- (B) that the Member has died, or is seriously ill, or has resigned from the authority concerned and that in the circumstances it is no longer appropriate to continue with the investigation.

In forming an opinion under paragraph (ii)(A) above, the Investigating Officer may take account of the failure of any person to co-operate with the investigation, an allegation that the Member concerned has engaged in a further breach of the Code of Conduct, or an allegation that another member has engaged in a related breach of the Code of Conduct.

For the purposes of paragraph (ii)(B) above, a Member is “seriously ill” if they are suffering from a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. The Investigating Officer will establish this by evidence from a reliable independent and authoritative source other than the Member.

The Monitoring Officer may refer the matter back to the Assessment Panel for re-determination, or may require the Investigating Officer to continue with the investigation, If the matter is referred for re-determination, the Monitoring Officer will instruct the Investigating Officer as appropriate in the light of the decision of the Assessment Panel.

**(i) Deferral of investigation**

- (i) If at any point during the investigation the Investigating Officer becomes aware that in relation to the Member’s conduct:
  - (A) there are ongoing criminal proceedings or a police investigation;
  - (B) there is an ongoing investigation by another regulatory body;

- (C) there is some other investigation or court proceeding taking place; or
- (D) a key party in the investigation is seriously ill or unavailable for some substantial reason

he or she will take the following actions.

- (ii) The Investigating Officer will
  - (A) make such enquiries as are necessary to ascertain the nature and extent of any investigation or proceedings referred to in sub-paragraphs (i)(A) to (i)(C) above, and/or the nature of the illness or reasons for unavailability of the key party referred to in sub-paragraph i(D);
  - (B) inform the Monitoring Officer:
    - that circumstances have arisen that may require the investigation be deferred;
    - of the nature and extent of those circumstances; and
    - if applicable, of any areas where in the opinion of the Investigating Officer it would be possible to continue the investigation without overlap with another investigation; and
  - (C) inform the Member that circumstances have arisen which may require that the investigation be deferred.
- (iii) Where the Monitoring Officer receives a reference from the Investigating Officer under sub-paragraph (i)(ii)(B), he or she will take a decision as to whether the investigation should be deferred. In reaching that decision the Monitoring Officer will apply the principles set out below.
- (iv) The investigation **will** be deferred where:
  - (A) There are ongoing criminal proceedings or a police investigation into the Member's conduct;
  - (B) The investigation cannot proceed without investigating similar alleged conduct or needing to come to conclusions of fact about events which are

also the subject of some other investigation or court proceeding; or

- (C) Continuing with the investigation might prejudice another investigation or court proceeding.

The investigation **may** be deferred where:

- (D) There is an ongoing investigation by another regulatory body; or

- (E) A key party in the investigation is seriously ill or unavailable for some substantial reason.

- (v) Where an investigation is being conducted by another body but none of sub-paragraphs (i)(iv)(A) to (C) applies, the Monitoring Officer may decide that, if possible, the investigation should be conducted in parallel with that other body. In such a case the Investigating Officer will take such steps as are necessary to ensure the investigations are co-ordinated. The Monitoring Officer may also refer the investigation to the Standards Board for England if in his or her opinion this would allow closer cooperation between the investigators.
- (vi) The Monitoring Officer may decide that the investigation will proceed only in relation to those areas of the alleged misconduct which are not subject to any other investigation or proceedings. In such circumstances the other part of the investigation will be deferred.
- (vii) When a decision is taken to defer or refer an investigation or parts thereof, the Monitoring Officer shall inform in writing:
- the Member;
  - the complainant
  - the standards committee of any other authority concerned; and
  - if the allegation relates to the conduct of a Member of Rottingdean Parish Council, the Clerk (or if the Clerk is involved in the allegation, the Chairman) of the Parish Council.
- (viii) The Monitoring Officer will keep any decision to defer an investigation under regular review, and will ask the police

or any other relevant organisation or individual to keep him or her informed of the progress of any police or other investigation or proceedings.

- (ix) When a decision has been taken to resume the investigation, the Monitoring Officer shall inform in writing those persons mentioned in sub-paragraph (vii).
- (x) Before resuming an investigation which has been deferred, the Investigating Officer shall review the investigation plan in light of the outcome of any other investigation or proceedings.

**(j) Confidentiality**

The Investigating Officer shall as necessary request that people interviewed and anyone else aware of the investigation process maintain confidentiality in order to maintain the integrity of the process.

**4 The Draft Report**

- (a) Prior to issuing the draft report the Investigating Officer shall send a copy of a statement to each witnesses or party interviewed, on whose evidence he/she will rely in compiling the draft report, and request that they confirm their statement and send any comments thereon to him/her within 14 days.



- (b) When the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in Paragraph 3(a), or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a draft dated report, marked confidential, setting out:
- (i) the details of the allegation;
  - (ii) the relevant provisions of statute and of the Code of Conduct;
  - (iii) the Member's initial response to notification of the allegation (if any);
  - (iv) the relevant information, advice and explanations which 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 and reasoning for these;
  - (ix) his/her conclusion as to whether the Member has or has not failed to comply with the Code of Conduct for Members, and
- (c) 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 Hearing Panel once he/she has considered any comments received on the draft report.
- (d) The Investigating Officer shall then send a copy of his/her draft report in confidence to the Member and the person making the allegation, for comment and request that they send any written comments thereon to him/her within 14 days.
- (e) The Investigating Officer will not send the draft report to any witness or to the relevant Parish Council.

- (f) Responses to the draft report from the Member or the Complainant may reveal the need for further investigation. If that further investigation results in significant changes being made the Investigating Officer may decide to issue a further draft report to the Member and the Complainant.

## **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/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his final dated report. The final report shall include a finding either that there has not been a failure to comply with the Code of Conduct or that there has been such a failure. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Hearing Panel, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, including background documents, records of telephone conversations, letters, and statements from interviews of witnesses or other parties etc and may include a chronology of events;
- (b) The Monitoring Officer shall then send a copy of the final report to the Member, advising that the Monitoring Officer will refer the report to the Hearing Panel for their consideration and an initial finding under Regulation 17. The Member will at the same time be sent a note explaining the three alternative findings that the Hearing Panel may make under Regulation 17.
- (c) The Monitoring Officer shall ensure that, when the agenda for the Hearing Panel is sent out to members of the Hearing Panel, that they also receive a copy of the final report. The agenda and the report shall also be sent to:
  - (i) The person who made the complaint;
  - (ii) The Clerk to the Parish Council (if relevant); and
  - (iii) In relation to any allegation referred by an ESO for investigation, the ESO; and
  - (iv) The Monitoring Officer for any other Standards Committee of any other authority of which the Member is a member, if that authority has so requested

together with, in relation to the person who made the complaint, a note explaining the three alternative findings that the Hearing Panel may make under Regulation 17.

- (d) Where the Hearing Panel considers the final report in accordance with Regulation 17, 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;
  - (ii) That the matter should be considered at a hearing of the Hearing Panel (which will be conducted in accordance with the authority's adopted Procedure for Local Determination Hearings)<sup>4</sup>; or
  - (iii) That the matter should be referred to the Adjudication Panel for determination, but the Hearing Panel may only make such a finding if (1) the Hearing Panel first determines that the action it could take against the Member would be insufficient were a finding of failure to be made and (2) the President or Deputy President of the Adjudication Panel has agreed to accept the referral.
- (e) Where the Hearing Panel finds as set out in Paragraph 5(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, to:
  - (i) The Member;
  - (ii) In relation to any allegation referred by an ESO for investigation, the ESO;
  - (iii) The Standards Committee;
  - (iv) The Monitoring Officer for any other Standards Committee concerned;
  - (v) The Clerk of any Parish Council concerned; and
  - (vi) The person who made the allegation.

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<sup>4</sup> Note that this is not a finding that there has been a failure to comply with the Code of Conduct for Members, but simply that, on the basis of the Investigating Officer's report, the Hearing Panel 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.

and shall ask the Member whether he or she objects to the publication in at least one local newspaper and (in both cases at the discretion of the Hearing Panel) on the authority's website and in any other publication of a notice that there has been no failure to comply with the Code of Conduct, and arrange for the publication of such a notice in the local newspaper and otherwise as directed by the Hearing Panel unless the Member so objects.

- (f) Where the Hearing Panel finds as set out in Paragraph 5(d)(ii) above (that the matter should be considered at a formal hearing) the Monitoring Officer will arrange for the matter to be considered at a hearing of the Hearing Panel which will be conducted under the authority's adopted Procedure for Local Determination Hearings.
- (g) Where the Hearing Panel finds as set out in Paragraph 5(d)(iii) above (that the matter should be referred to the Adjudication Panel) the Monitoring Officer will arrange to refer the matter to the President or Deputy President of the Adjudication Panel as appropriate.