

Appendix 1

PROCEDURE FOR LOCAL INVESTIGATION OF COMPLAINTS AGAINST MEMBERS OF MEDWAY COUNCIL AND PARISHES WITHIN MEDWAY'S JURISDICTION

1 INTRODUCTION

- 1.1 Where the Standards Board for England receives an allegation that a councillor has breached a council's Members' Code of Conduct it can refer the matter to the monitoring officer for local investigation and determination by the council's Standards Committee.
- 1.2 This procedure will be followed in the conduct of local investigations referred by the Standards Board for England and those under the local codes and protocols in respect of planning and member/employee relations.
- 1.3 The monitoring officer can, if circumstances require, vary the procedures having first notified the councillor against whom the allegation is made of the variation to the procedure and the reasons for that variation.

2 APPOINTMENT OF INVESTIGATION OFFICER

- 2.1 Upon receipt of an allegation from an Ethical Standards Officer (ESO) or upon a complaint being made under a local protocol the Monitoring Officer will either:
 - (a) appoint an investigation officer who may or may not be an employee of Medway; or
 - (b) undertake the investigation him/herself.
- 2.2 An investigation officer may appoint such persons to assist him/her in the conduct of the investigation and may obtain such professional advice as is necessary for the conduct of the investigation. Where an investigation has been undertaken by a person who is not the monitoring officer the person shall obtain the prior approval of the monitoring officer before incurring any expenditure.

3 NOTIFICATIONS TO INTERESTED PARTIES

- 3.1 As soon as it is practicably possible to do so following the appointment of an investigating officer the monitoring officer shall notify the councillor against whom the allegation has been made:
 - (i) that the allegation has been referred for local investigation and determination;

- (ii) the identify of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
 - (iii) the conduct which is the subject of the allegation under section(s) of the Code of Conduct or local protocol which appear to be relevant to the allegation;
 - (iv) the procedure to be followed in respect of the allegation;
 - (v) the identity of the investigating officer.
- 3.2 The monitoring officer shall provide the councillor with a copy of any report received from the ESO.
- 3.3 At the same time the monitoring officer notifies the councillor of the allegation the monitoring officer shall also request the councillor to respond to the investigation officer in writing within 15 working days of notification as follows:
- (i) advising the investigation officer whether the councillors admits or denies the alleged breach 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, providing if possible copies of those documents or informing the investigation officer where those 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 contact or interview in the course of the investigation;
 - (iv) providing the investigating officer with any other information the councillor considers relevant to the investigation.
- 3.4 At the same time as notifying the councillor the monitoring officer will also notify each member of the Standards Committee, in writing, that an allegation has been referred for local determination, together with such other information as the monitoring officer may lawfully disclose.
- 3.5 Where the complaint is made against a parish councillor the monitoring officer shall in addition also notify the parish clerk that a matter has been referred for local investigation together with such other information as the monitoring officer may lawfully disclose.
- 3.6 At the same time as notifying the councillor that a matter has been referred for local investigation the monitoring officer shall also notify the person who made the allegation and shall supply to the complainant the information set out in paragraph 3.1 above. In addition to providing this information the monitoring

officer shall also request the person who made the allegation to respond to the investigating officer within 14 days:

- (i) confirming that the person wishes to proceed with the allegation;
- (ii) listing any documents which the person would wish the investigating officer to take into account in any investigation of the allegation where possible either providing copies of these documents or informing the investigating officer where the documents may be inspected;
- (iii) providing the investigation officer with the name, address, telephone number and other contact details of any person or organisation whom the complainant would wish the investigating officer to interview in the course of any investigation;
- (iv) providing the investigation officer with any other information the complainant considers relevant in the conduct of the investigation.

4 CONDUCT OF THE INVESTIGATION

- 4.1 The investigating officer will conduct the investigation to enable the preparation and presentation to the Standards Committee of a report which together with any report provided by an ESO 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 what any such action should be.
- 4.2 The investigating officer may terminate an investigation on being satisfied that there is sufficient information to discharge the obligations set out in paragraph 4.1 above.
- 4.3 Where an investigation officer becomes aware of any other matter which may indicate a breach of the members' code of conduct or a local protocol by the councillor other than the breach currently under investigation, the investigating officer shall, as appropriate:
 - (i) if the additional matter relates to a potential breach of the code of conduct, report the matter to the monitoring officer who shall provide the councillor with full details of apparent breach 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 the additional matter should be referred to the Standards Board;
 - (ii) where the additional matter constitutes a potential breach of a local protocol but not the code of conduct, provide the member with full details of the potential breach and invite the councillor to provide a statement as to why the additional matter does not constitute a breach

of the authority's local protocol. The monitoring officer will then take a decision on whether to refer the matter to the appointed investigating officer or another investigating officer for local investigation and report to the Standards Committee;

- (iii) where the additional matter relates to an apparent breach of the code of conduct or the local protocol of a parish or town council notify the clerk of the town or parish council of the additional matter and take no further action in respect thereof. A copy of the notification should be sent to the monitoring officer.
- 4.4 It shall be the responsibility of the investigating officer to determine who shall be interviewed, the nature of the information to be sought and the order that the interviews are undertaken as part of the investigation.
- 4.5 During the course of the investigation the investigating officer and any person authorised by the investigating officer may make enquiries (including further enquiries) of any person or organisation, require attendance for interview by any person, require the provision of any documents in the possession or control of any person or organisation where such enquiry, interview or document is in the reasonable opinion of the investigating officer needed for the conduct of the investigation.
- 4.6 Any person who appears before the investigating officer may arrange to be accompanied, at their own expense, by a representative or friend.
- 4.7 The investigating officer may in order to facilitate the conduct of an investigation pay to any person who provides any document, information, advice or explanation in response to a request from an investigating officer such fees or allowances as the investigating officer considers appropriate subject to any maximum fee set by the authority. Where the investigating officer is not the monitoring officer, the monitoring officer's prior approval shall be sought for the payment of any such fee or allowance.
- 4.8 The investigating officer shall keep full and sufficient copies of any interview undertaken and shall 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. Where the investigating officer does not agree with the comments or corrections made the investigating officer shall record his/her disagreement in writing.
- 4.9 If, during the course of an investigation an investigating officer concludes that:
- (i) the seriousness of the matter under an investigation, including any additional matters, is such that they merit the application of a sanction beyond the powers of the Standards Committee; or
 - (ii) the nature of the allegation is such that it would be inappropriate for the Standards Committee to determine the matter -

The investigating officer after consulting the monitoring officer shall suspend the investigation and the monitoring officer shall request the ESO to resume the investigation and the conduct of the matter. Where the ESO resumes the conduct of the matter the monitoring officer shall ensure that the councillor concerned, the complainant, the members of the Standards Committee and, if appropriate, the parish clerk is informed of the position. Where the ESO declines to resume an investigation the monitoring officer shall instruct the investigating officer to proceed with the investigation.

4.10 Where the investigating officer is satisfied that sufficient information has been obtained to meet the requirements set out in paragraph 4.1 or has obtained as much information as is likely to be reasonably capable of being obtained, the investigating officer shall prepare a draft report setting out:

- (i) the details of the allegation;
- (ii) the relevant provisions of statute, the code of conduct and any local protocols;
- (iii) the councillor's initial response to notification of the allegation (if any);
- (iv) the relevant information, advice and explanations which have been provided in the course of the investigation;
- (v) a list of relevant documents;
- (vi) a list of persons interviewed and organisations from whom information has been sought;
- (vii) details 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 draft findings of fact;
- (ix) a draft conclusion as to whether the councillor has or has not failed to comply with the code of conduct or a local protocol as appropriate;
- (x) any recommendations for the council or any parish council as appropriate to reconsider its procedures and decision making processes for preventing or deterring any breach of the code of conduct in future and any remedy to any person who may have suffered detriment or injustice as a result of the breach;
- (xi) a statement 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 for consideration after receipt of any comments received on the draft report.

- 4.11 The investigating officer shall send a copy of the draft report to the councillor and the person making the allegation and request that they send any comments or observations within 14 days.
- 4.12 The investigating officer may also send a copy of relevant extracts from the draft report in confidence to any person who has been interviewed, provided evidence or documentation or otherwise assisted in the conduct of the investigation requesting they comment within 14 days.

5 FINAL REPORT TO THE STANDARDS COMMITTEE

- 5.1 Following the conclusion of any period allowed for representations and comments on the draft report, including such extension as the investigating officer may allow, the investigating officer shall consider and if necessary, amend the draft report in the light of any comments and send the monitoring officer a copy of the final report.
- 5.2 The final report shall be in the same format as the draft report save that it shall state that the report represents the investigating officer's final findings which will be presented to the Standards Committee and shall append any documents which the investigating officer has relied on during the investigation.
- 5.3 Upon receipt of the final report the monitoring officer shall send a copy to the councillor advising as appropriate:
- (i) where the final report concludes there has not been a failure to comply with the code of conduct for members or a local protocol the report will be referred to the Standards Committee for their consideration; or
 - (ii) where the final report concludes there has been a failure by the councillor to comply with the code of conduct for members or with the local protocol but the report will be referred to the Standards Committee for a formal hearing.
- 5.4 The monitoring officer shall, when the agenda for the Standards Committee is sent to members of the Standards Committee include the final investigating officer's report with the agenda and provide a copy of the agenda and report to:
- (i) the person who made the complaint;
 - (ii) the ESO;
 - (iii) if relevant, the clerk to the parish council
- together with a copy of the procedure under which the Standards Committee may conduct a hearing into the allegation.

- 5.5 The Standards Committee in considering a report made by the investigating officer shall make one of the following findings:
- (i) accept the investigating officer's finding that the councillor has not failed to comply with the code of conduct or the local protocol as set out in the allegation;
 - (ii) that the matter should be considered at a hearing of the Standards Committee conducted in accordance with the authority's adopted procedure for local determination hearings;
 - (iii) where the Standards Committee finds that there is no failure to comply with the code of conduct or with the local protocol, the monitoring officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based together with a copy of the investigating officer's report to:
 - (a) the councillor;
 - (b) the ESO (if the allegation concerned a breach of the code of conduct);
 - (c) the Standards Committee if the finding was made by a sub-committee of the Standards Committee;
 - (d) the Standards Committee of any other local authority of which the councillor is also a member;
 - (e) the person who made the allegation.
- 5.6 The monitoring officer shall ask the councillor whether the councillor objects to the publication of a notice of the finding in at least one local newspaper and arrange for the publication of the notice unless the councillor so objects.
- 5.7 Where the Standards Committee finds that the matter should be considered at a full hearing, 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 from, and no later than 3 months from the date on which the monitoring officer 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 ESO;
 - (iii) the monitoring officer will not conduct pre-hearing enquiries of the councillor;

- (iv) the investigating officer shall be responsible for presenting the report to the Standards Committee and introducing any witnesses the investigating officer considers that the Standards Committee should hear in order to be able to give the matter proper consideration.