



**STANDARDS COMMITTEE  
HANDBOOK**

**A GUIDE TO THE DEALING OF COMPLAINTS  
AGAINST MEMBERS, THEIR INVESTIGATION  
AND DETERMINATION**

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# **1. INTRODUCTION**

## **1.1 GENERAL INTRODUCTION**

This handbook contains the practices and procedures that will be used by the Standards Committee for investigations and hearings into allegations of a breach of conduct, or other complaints relating to the conduct of Members of Douglas Borough Council.

### The Standards Committee

The Standards Committee aims to promote, develop and maintain high standards of conduct by all Members, and also Independent Members, in compliance with the Local Government Acts, the Codes of Conduct, Standing Orders, and all other protocols, procedures and legislation that relates to their office and responsibilities.

The Committee is responsible for the following main functions:-

- Promoting and maintaining high standards of conduct by Members (and Independent Members) of the Council;
- Assisting Members to observe and to adhere to the Members' Code of Conduct;
- Considering any individual cases referred for decision. This may relate to an alleged issue of misconduct or breach of any of the Codes, Protocols, etc., relating to Members' conduct;
- To review annually the Register of Members' Interests.

## **1.2 THE ETHICAL FRAMEWORK FOR MEMBERS**

This consists of two main parts, but is not exclusive:-

### 1. Members' Code of Conduct

The Council adopted in June 2009 a Members' Code of Conduct for Local Authorities based on the national code and encompassing the principles of Duty, Selflessness, Honesty/Integrity, Objectivity, Accountability, Openness, Leadership, Personal Judgement and Respect for Others.

The Code deals with such issues as:-

- Member / officer working relationships;
- Gifts and hospitality;
- Involvement in commercial transactions;
- Disclosure of information and confidentiality;
- Declarations of interests;
- Conduct in meetings;

- Corruption and other offences.

## 2. Members' Protocol

This is a Council document, which supplements the Members' Code of Conduct by governing relationships between Members and officers.

A copy of the Members' Code of Conduct and Members' Protocol can be found on the Council's website at [www.douglas.gov.im](http://www.douglas.gov.im), under "Constitution", Part 5.

### 1.3 TERMS OF REFERENCE

#### Article 8 – The Standards Committee

##### 8.1 Standards Committee

The Council will appoint a Standards Committee, which will be tasked with promoting and maintaining high standards of conduct in the Council and assisting Members in observing the Code of Conduct.

##### 8.2 Composition

###### Membership

The Standards Committee will comprise:

- a Chair appointed by the Council;
- three Council Members appointed by the Council;
- one person appointed by the Council who is not a Member or Officer of the Council or any other body having a Standards Committee (the Independent Person);

###### Independent Person

The Independent Person will be entitled to vote at meetings and will be reckoned in calculation of the quorum.

##### 8.3 Proceedings of the Standards Committee

Proceedings of the Standards Committee shall take place in accordance with the Council Procedure Rules, as set out in Part 4 of the Constitution.

##### 8.4 Roles and Functions

The terms of reference for the Standards Committee are set out in Part 3 of this Constitution, entitled "Responsibility for Functions", and include the following roles and functions:

- (a) To promote and maintain high standards of conduct and behaviour in all areas of Council activity;
- (b) To advise the full Council on the adoption or revision of the Members' Code of Conduct;
- (c) To assist Members to observe the Members' Code of Conduct;
- (d) To monitor the operation of the Members' Code of Conduct;
- (e) To advise, train, or arrange training on any aspect of conduct and behaviour relating to the Members' Code of Conduct;
- (f) To support the Chief Executive, and Assistant Town Clerk (as Governance / Monitoring Officer) in discharging his / her duties in relation to ethical governance and the Members' Code of Conduct;
- (g) To consider any report referred to it by the Chief Executive, Assistant Town Clerk, or other investigating officer;
- (h) To ensure the Council's 'Complaints against Members' Procedure operates effectively and, in particular:-
  - Receive and review regular reports on its operation;
  - Adjudicate on unresolved complaints against Members and hold hearings to consider complaints and alleged breaches of the Members' Code of Conduct;
  - Review information gained from the operation of the system;
- (i) To oversee and monitor the operation of the Council's Whistle-Blowing Policy and procedures;
- (j) To approve and revise protocols on relations between Members and employees and to monitor such protocols;
- (k) To review and monitor the keeping of the Register of Members' Interests;
- (l) To review and monitor the guidance to Members on gifts and hospitality;
- (m) To report to Council annually on the work of the Standards Committee;
- (n) To assist in the recruitment of an Independent Member for the Standards Committee.

#### 1.4 **GUIDANCE**

Douglas Borough Council takes all allegations of Member misconduct very seriously and seeks to secure the highest standards of conduct at all times.

#### ROLE OF THE LEADER OF THE COUNCIL AND CHIEF EXECUTIVE WITHIN THE ETHICAL FRAMEWORK

The Leader of the Council, and the Chief Executive, are both committed in common with all Councillors to setting and encouraging high ethical standards and promoting the ethical agenda inside and outside the Council.

They will support and facilitate the work of the Standards Committee and Assistant Town Clerk (as Governance / Monitoring Officer) in relation to the ethical framework in the following joint and individual ways.

#### Jointly

- Publicly committing themselves to working together to uphold the ethical well-being of the Council and affirming that each fully subscribes to the Council's ethical agenda and expects all Members and officers to do likewise;
- Leading by example, acting at all times with integrity, propriety and impartiality in the discharge of their roles;
- Helping to ensure that Members and officers are clear about their respective roles and what is expected of them;
- Working with the Assistant Town Clerk (as Governance / Monitoring Officer) and the Standards Committee;
- Being available for consultation on key ethical issues;
- Taking appropriate action, where necessary, on particular ethical issues;
- Receiving, and considering, the agenda for, and minutes of, the Standards Committee meetings;
- Promoting the work of the Standards Committee;
- Where appropriate, including the Chair of the Standards Committee in the Council's wider corporate governance meetings and activities;
- Holding an annual meeting with the Chair of the Standards Committee, after the publication of the Standards Committee's Annual Report;
- Pro-actively supporting a Member and officer ethical training and development programme;
- Supporting action taken by the Standards Committee and Assistant Town Clerk in furtherance of the Council's Codes of Conduct, Protocols, the ethical framework generally, and information provided by Government;

- Ensuring that support for the Standards Committee and the Council's ethical agenda is adequately resourced.

### Individually

#### The Leader:

- Holding regular meetings where the Chief Executive / Assistant Town Clerk (as Governance / Monitoring Officer) may raise issues;
- Supporting the Chief Executive / Assistant Town Clerk as necessary in reporting to the Executive Committee, full Council and other Committees, regarding the ethical agenda.

#### Chief Executive:

- Recognising the importance of the ethical and wider corporate governance agenda in the Chief Officers' Management Team;
- Regularly meeting and directly supporting the Assistant Town Clerk (as Governance / Monitoring Officer) on key issues and individual matters arising out of the ethical and governance agenda, and the work of the Standards Committee.

### Early Resolution

The Standards Committee is extremely aware that a formal investigation of a complaint may be costly and time-consuming. Whilst formal investigation may be necessary in some cases, many complaints can often be dealt with more rapidly and effectively if an early, informal resolution of the matter can be achieved.

On behalf of the Standards Committee, the Chief Executive, where a complaint has been received, which appears easily resolvable, will explore the potential for an early resolution to the satisfaction of the complainant, to avoid the need for a formal investigation.

### Complaints that cannot be considered

The Council must consider every complaint that a Member of the Council has failed to comply with the relevant Codes or Protocols, or there is an alleged case of misconduct. However, it has no jurisdiction in respect of any complaint that relates to:

- Persons who are not Members or Independent Members of Douglas Borough Council;
- Conduct which occurred at a time when the person against whom the complaint was made, was not a Member of the Council;

- Conduct which occurred in the Member's private life, as the Code / Protocol only applies to a Member's conduct as a Member of a local authority;
- Conduct which occurred when the Member was acting as a Member of another Authority. The complaint should then be addressed directly to that Authority;
- Complaints which do not relate to the alleged misconduct of a Member, but are, for example, about the policies and priorities of the Council, or are a request for the provision of a service, or are a complaint about the conduct of an officer of the Council.

Such complaints will be dealt with by the Chief Executive (or other delegated officer), who will advise the complainant as to the most appropriate route for proper consideration of their complaint or request.

#### No action required

There may be some cases where the Chief Executive, on behalf of the Standards Committee, decides to take no action in respect of the complaint.

The following factors are examples of where such a decision may be made:

- The complaint appears to be trivial, vexatious, malicious, or politically motivated, or equivalent retaliation;
- The complaint is anonymous. The confidentiality of the identity of the complainant can be protected where that is justified by any real fear of intimidation or victimisation. However, where this is not an obvious risk, the fact that the complainant has not disclosed his / her identity can indicate that the complaint is less serious, is malicious, or politically motivated. Some action or investigation will be taken, however, where they have raised serious issues;
- A significant period of time has elapsed since the events which are the subject of the complaint. This is because, where a matter is serious enough to warrant a formal complaint, it would be reasonable to expect the complainant to make a complaint promptly, and also because the passage of time may make it more difficult (if not impossible) to obtain documentary evidence and reliable witness evidence.

The Chief Executive will report such decisions, and the reasons, to the Chair of the Standards Committee.

## Confidentiality

As a matter of fairness and natural justice (and in compliance with the Human Rights Act 2001), a Member should usually be told who has complained about them and what the complaint is about. There may be occasions where the complainant requests that their identity is withheld. Such a request would only be granted in exceptional circumstances.

Examples (not exclusive) may include:-

- The complainant has reasonable grounds for believing that he / she will be at risk of physical harm if his / her identity is disclosed;
- The complainant suffers from a serious health condition which might be adversely affected if his / her identity is discussed. Medical evidence may be requested in such circumstances;
- The complainant works closely with the Member and they have a reasonable fear of intimidation or victimisation if their identity is disclosed.

## **2. PROCEDURE FOR COMPLAINTS AGAINST MEMBERS**

### **2.1 GENERAL**

This Procedure applies to complaints against Members of Douglas Borough Council only. Complaints against officers will be considered in accordance with the Council's Disciplinary Rules and Procedures as laid down from time to time. Complaints about services will be considered under the Council's Customer Complaints Procedure.

The Procedure requires the Committee, in dealing with matters within its Terms of Reference:-

- (a) To apply best practice based on the law, including the provisions of the Human Rights Act 2001, and on the principles of natural justice, and in particular that -
  - Each party has the right to be heard;
  - No Member serving on the Committee will hear any matter in which he / she has an interest, or in which any reasonable member of the public could take the view that there was bias on the part of the Committee Member;
  - All relevant matters will be taken into account;
  - All irrelevant matters will be ignored;
  - Members of the Committee will come to reasonable decisions based upon the evidence in front of them and the law;
- (b) To comply with the requirements of the Council's Standing Orders, as set out in the Constitution Part 4 and referred to as the 'Council Procedure Rules';
- (c) To have regard to the following -
  - The maintenance of standards;
  - The protection of the public interest;
  - The rights of all interested parties;
- (d) To conduct its business in a non-political manner in relation to decisions of a quasi-judicial nature.

The Procedure set out below may be ended at any time by the Standards Committee where they conclude that continuing will serve no useful purpose, for example:-

- The Member concerned acknowledges the complaint is justified, apologises, and accepts any sanction the Committee may feel necessary; or
- The Member is no longer a member of the Council (e.g., resignation; non-election; death).

The Procedure may take place in the absence of any party if they fail to co-operate with any reasonable request of the Committee or the Assistant Town Clerk (as Governance / Monitoring Officer), or fail to attend a hearing without good cause.

In the absence of the Assistant Town Clerk or his / her inability to act, the Chief Executive will appoint such other person as appropriate to carry out this procedure.

Nothing in this Procedure detracts from the authority of the Chief Executive, or Director of Finance (as Chief Financial Officer), to decide that any matter, whether involving a Member or not, should be reported to the police at any time.

## **2.2 DEFINITIONS**

'Misconduct' means any conduct by a Member which is in breach of:-

- The Code of Conduct for Members and Officers issued by the Isle of Man Government in July 2009 and adopted by the Council in December 2009;
- The Council's Member / Officer Protocol;
- Any other Codes, Protocols, Procedures, Rules or Guidance that the Council may adopt from time to time, including Standing Orders;
- Failure to declare in interest under the Local Government Acts and the Council's Constitution;
- Any behaviour likely to bring the Council into disrepute.

'Complainant' means any Member, officer or member of the public who has made a formal written complaint in accordance with this Procedure.

## **2.3 RECEIPT OF COMPLAINT**

Any complaint of misconduct by a Member should be made in writing to the Chief Executive, setting out the conduct complained of, and giving particulars of the alleged breaches of any relevant legislation or codes of conduct.

A complaint not containing the above information may still go forward to the Preliminary Investigation Stage if, in the opinion of the Assistant Town Clerk, in consultation with the Chief Executive, the matter complained of merits further investigation.

The Assistant Town Clerk will acknowledge receipt of any complaint within five working days.

The Chief Executive may also determine of his / her own volition that a matter should be investigated without the receipt of a complaint, in which case the Chief Executive shall instruct the Assistant Town Clerk to investigate and that written instruction together with the completed complaint form shall be treated as the complaint.

## **2.4 PRELIMINARY INVESTIGATION STAGE**

The Investigating Officer, normally the Assistant Town Clerk, will send a copy of any complaint received to the Member concerned, the Leader of the Council (for information purposes) and the Chief Executive within five working days of receipt. The Member will be invited to respond to the complaint in writing and / or to discuss the issue with the Assistant Town Clerk within ten working days. The Assistant Town Clerk may take such steps as are necessary at this point to gather information in order to assist him/her in determining whether a prima facie case exists.

On receipt of the Member's written or verbal comments, the Assistant Town Clerk will consider whether or not a prima facie case is made out, which process shall not be time limited, but must be within a reasonable time. Where a Member has failed to respond to a complaint within the time allowed, the Assistant Town Clerk will not be prevented from determining whether or not a prima facie case is made out as above.

## **2.5 MINOR BREACHES**

At this point, the Assistant Town Clerk will determine whether or not the case should be referred to the Standards Committee, it should be investigated by some other agency (e.g., the police, internal audit), or whether it should be dealt with other than by the Standards Committee. Where a police or other external investigation is already being undertaken in relation to the matter complained of, it shall not be referred to the Standards Committee until such time as it has been properly disposed of by that body.

In certain circumstances, it may be appropriate to deal with minor breaches in a way other than to refer them to the Standards Committee. This may take the form of a reminder of the procedure, code or protocol that has been breached and advice that should a further breach occur, then the matter will be reported to the Standards Committee (such a further occurrence would also bring forward the initial issue for consideration by the Standards Committee).

If the Assistant Town Clerk reaches the view that the sanction should be as in the paragraph above, that decision must be shared with the Chief Executive and Chair of the Standards Committee, on the basis that should either or both of them have a

different view, then the Assistant Town Clerk has an opportunity to revisit the matter and, if appropriate, bring the case before the Standards Committee for consideration.

The determination of the matter in these circumstances shall be shared with the Chair of the Standards Committee, the Leader and the Chief Executive.

## **2.6 SUBSTANTIVE CASES – INVESTIGATION**

In the event of a full investigation, the Assistant Town Clerk will invite the complainant for a formal interview. The complainant will be afforded the opportunity to submit further material in support of the allegations made.

The Assistant Town Clerk will provide the Member with a copy of the complaint and any further supporting material and/or documentation. He / she will be invited to comment on the content and may submit any material and/or documentation of their own which they consider relevant.

Following the above, the Assistant Town Clerk will prepare a draft report for the Standards Committee. The final report will be copied to the complainant and Member, a minimum of ten working days in advance of the Committee meeting to consider the complaint. The complainant and Member may at this stage submit further written comments for submission with the report if required, including any mitigating factors or extraneous events that may be relevant. Any submission must be made available five working days before the date of the Committee meeting.

## **2.7 STANDARDS COMMITTEE HEARING**

The procedure at the hearing of the complaint will be as follows:-

- The Assistant Town Clerk will present the report;
- The complainant or his / her representative will be invited to speak to their complaint if they wish to do so;
- The Assistant Town Clerk and the Committee may ask questions of the complainant if present;
- The Member or his / her representative will present their case;
- The Assistant Town Clerk and the Committee may ask questions of the Member;
- Witnesses may be asked to attend, at the discretion of the Committee. They may be questioned by:
  - The complainant / Member;
  - The Assistant Town Clerk and the Committee;
- The Member may sum up his / her case;
- The Assistant Town Clerk will sum up.

The complainant and the Member will normally be entitled to be present at the meeting throughout the Committee's consideration of the complaint.

Any procedural questions for issues which may arise during the course of the hearing will be determined by Committee, ensuring at all times that the parties to the complaint are treated fairly.

At any time before or during the case hearing, the Committee may send for persons, papers and / or records not currently before it and may adjourn so that this can take place.

The Committee will recommend to the Chief Executive what information will be public after the announcement of the decision, having regard to the Access to Information Procedure Rules set out in Part 4 of the Council's Constitution, and the need to ensure fairness to the persons involved.

The Committee will be supported when necessary during a case hearing by the Chief Executive or the Assistant Town Clerk, if he / she is not the Investigating Officer, who will advise them as to practice and procedure, together with any relevant points of legislation in relation to their decision-making process.

## **2.8 SANCTIONS**

The Committee, after considering all the facts and information before it, may determine whether or not a complaint is upheld or not.

Where a complaint is upheld, the Committee may impose the following sanctions, either singularly or in conjunction with each other:-

- An instruction that the Member must apologise to the complainant, either privately or publicly or to apologise to the Council;
- The removal of the Member from membership of some or all Committees;
- The removal of a Member as representative of the Council on an outside body / or any outside bodies;
- The barring of a Member from representing the Council at conferences and other similar events;
- The recommendation to the appointing body or Committee that the Member be removed from the office of Chair or any other office.

In making its decision, the Committee will have regard to the severity of the misconduct found, and will determine the type, length and duration of such sanctions accordingly.

Alternatively, or in addition, to imposing a sanction(s), the Committee may offer advice or comments to the Member about his / her future conduct.

The costs of attendance at the meetings must be borne by the individuals concerned and the Committee has no power to award costs or expenses (including the claiming of a Member's allowance) to any party or their representatives.

## **2.9 NOTIFICATION OF DECISION**

The Committee will deliver its decision, together with reasons, in writing, within five working days of the hearing, or if the Chair thinks fit, orally at the end of the meeting (with written confirmation to follow within five working days), to both the complainant, the Member concerned, and the Chief Executive.

The decision of the Committee will be reported to the Mayor, Leader and Council for information.

## **2.10 APPENDICES**

Appendix 1, which forms part of this procedure, sets out the process referred to above, including timescales.

Appendix 2 is a copy of the 'Complaint Against a Member Form.'

**Diagrammatic Representation of the Investigation/Hearing Procedure**



Timescales are indicative and every effort will be made to observe them; failure to meet them, for reasonable cause, in any case will not invalidate the process.

## APPENDIX 2

# COMPLAINT AGAINST A MEMBER FORM

### Your details

1. Please provide us with your name and contact details

|                           |  |
|---------------------------|--|
| <b>Title:</b>             |  |
| <b>First name:</b>        |  |
| <b>Last name:</b>         |  |
| <b>Address:</b>           |  |
| <b>Daytime telephone:</b> |  |
| <b>Evening telephone:</b> |  |
| <b>Mobile telephone:</b>  |  |
| <b>Email address:</b>     |  |

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the Member(s) you are complaining about
- the investigating officer of the authority (usually the Assistant Town Clerk)
- the Chief Executive

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. In certain circumstances, if you request it, your name may be withheld.

**2.** Please tell us which best describes you:

- Member of the public
- Member of Douglas Borough Council;
- A member of another authority
- Member of the House of Keys
- Council officer or authority employee
- Other ( )

**3.** All complaints about Members' conduct will be investigated. Where the initial investigation finds a prima facie case, the matter will be reported to and heard by the Council's Standards Committee.

**4.** Please provide us with the name of the Member(s) you believe has acted inappropriately or breached the Code of Conduct, Standing Orders or other Protocols:

| Title | First Name | Last Name |
|-------|------------|-----------|
|-------|------------|-----------|

**5.** Please explain in this section (or on separate sheets) what the Member has done that you believe is inappropriate or a breach of the Code of Conduct, Standing Orders or other Protocol. If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct, Standing Orders or other Protocols.

Copies of these documents can be obtained on the Council's website.

It is important that you provide all the information you wish to have taken into account by the Standards Committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the Member insulted you, you should state what it was they said.

- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any documents and relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

**Only complete this next section if you are requesting that your identity is kept confidential**

6. In the interests of fairness and natural justice, we believe Members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that:

- You have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed.
- You are an officer who works closely with the Member and you have a reasonable fear of intimidation or victimisation if your identity is disclosed.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Standards Committee will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

K J Rice, BA (Hons), Solicitor  
Chief Executive  
Douglas Borough Council  
Town Hall  
Ridgeway Street  
Douglas  
Isle of Man  
IM99 1AD

## **Additional Help**

- 7.** Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Disability Discrimination Act 2006, we can assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

### **3. PROCEDURE FOR INVESTIGATION OF COMPLAINTS**

#### **3.1 INTRODUCTION**

The Standards Committee of the Council deals with the hearing and determination of complaints of misconduct by a Member, i.e., that Members have breached the Code of Conduct for Members (the Code), Standing Orders or other procedures and protocols, or has in some way brought the Council into disrepute.

The Standards Committee has also agreed a Procedure to deal with all the stages of complaint handling, including making a complaint and hearing process. The Standards Committee will also take account of legislation and guidance by the Chief Executive, as the Council's legal adviser, in conducting these processes.

The Procedure for Investigation of Complaints deals with the conduct of investigations where it is decided by the Chief Executive that an investigation into a complaint is necessary.

#### **3.2 SCOPE OF PROCEDURE**

This Procedure shall be followed by the Assistant Town Clerk or, if it is inappropriate for the Assistant Town Clerk to deal with it, or he / she is unavailable, other officer appointed by the Chief Executive to carry out an investigation (the Investigating Officer).

The Procedure for the hearing and determination of complaints are set out in the procedures agreed by the Standards Committee for those purposes.

#### **3.3 CONFLICTS OF INTEREST AND DELEGATION OF INVESTIGATION**

The Assistant Town Clerk will have various roles in relation to the Code and complaints, including advising Members about conduct issues, dealing with cases of alleged misconduct referred to them, advising subject members, and providing advice to the Standards Committee.

The Assistant Town Clerk will usually undertake an investigation as the Investigating Officer. These roles could, in some circumstances, give rise to a conflict of interest. The Assistant Town Clerk must be mindful of the potential for a conflict to arise, and, in that event, another person should be appointed by the Chief Executive to carry out the investigation.

### 3.4 **CONFIDENTIALITY**

By Section 65 of the Local Government Act 1985 it is an offence to disclose information obtained by an Investigating Officer during an investigation unless:

- a) the disclosure will assist the Investigating Officer, the Chief Executive or the Standards Committee to perform their functions;
- b) the person to whom the information relates gives permission for disclosure;
- c) the information has already lawfully been made public;
- d) the disclosure is made for the purposes of criminal proceedings;
- e) the disclosure is required by a court or other similar body.

A draft report issued on the outcome of the investigation should be marked confidential.

### 3.5 **PLANNING THE INVESTIGATION**

An Investigation Plan should be prepared (see Appendix 3). The plan should include:-

- a) Details of the complaint;
- b) The paragraphs of the Code or Protocol which may have been breached, or other misconduct which has been alleged;
- c) The facts which need to be determined to establish if the Member breached the Code or to show misconduct, including:-
  - facts which would establish if the conduct happened as alleged;
  - facts that would need to be proven to show that the conduct constituted a breach of the Code, or was misconduct;
  - facts which might aggravate or mitigate the alleged breach, for example, provocation or an apology;
  - evidence that has been supplied by the complainant;
  - how required evidence is to be obtained;
  - expected timescales for the investigation (this should not be underestimated);
  - Set date for Review.

If, there are significant changes to any of the above the Investigation Plan may need to be reviewed (see Appendix 4).

### **3.6 DOCUMENTARY EVIDENCE**

Documentary evidence should be sought at the earliest opportunity and before any interviews are conducted.

It may be helpful to invite the Member to provide an initial response to the allegation, in writing, when first making written contact with him/her. This gives the Member the opportunity to admit to the breach, if they would like to do so. A written response from the Member may also provide additional useful information prior to the interview stage (see Appendix 5).

Requests for information should be made in writing and the Investigating Officer should:-

- a) explain the authority for asking for the documents;
- b) explain the broad purpose for which the document is needed, for example "investigation into the conduct of Mr Councillor/Councillor Mrs X";
- c) outline the confidentiality requirements that relate to the information request;
- d) set a deadline for the response;
- e) provide a contact name and number for further enquiries.

### **3.7 INTERVIEWS**

The Member may be interviewed at any time in the investigation, and will be re-interviewed at its conclusion. This provides an opportunity for the evidence to be put to the Member and for his/her response to be obtained. If the Member and complainant have been interviewed earlier in the process, the Investigating Officer may wish to re-interview them near the end of the investigation, which would allow them to agree facts and to comment on issues that have been raised during the course of the investigation.

Interviews may be conducted by telephone or face to face. It may be more appropriate to conduct face to face interviews if:-

- the matters involved are sensitive;
- the interviewee is vulnerable;

- multiple documents need to be referred to during the interview;
- the interviewee wishes to have someone present;
- the interview is with the Member.

If a Member or witness requests a face to face interview, reasonable consideration should be given to their request. If there are medical reasons or reasons related to disability the request should be agreed or another way found to accommodate their requirements. If there is no such reason, then the decision is at the discretion of the Investigating Officer. The decision and reasons should be recorded.

The Investigating Officer should not conduct joint interviews, as it is important that each witness gives their own account. The Member or complainant may have a friend or other person present, but not another witness and those present should be asked to keep the information confidential. Where necessary, the Investigating Officer will ensure that the interviewee is accompanied by an appropriate person. Witnesses other than the complainant and Member will not normally be entitled to be accompanied. If the interviewee is accompanied, the Investigating Officer may have another officer present to take notes.

The venue for face to face interviews should be:-

- mutually convenient;
- on neutral territory;
- in a private room where the participants cannot be overheard;
- a place where the interviewee will feel comfortable and is unlikely to be seen by people whose presence may intimidate or upset them, for example, the complainant or Member.

It may be appropriate, in some circumstances, to conduct an interview at the home of the interviewee, where she/he requests.

A full note of the interview must be taken.

### **3.8 INFORMATION FOR INTERVIEWEES**

The Investigating Officer should provide the following information, in writing (Appendix 6):

- a) the agreed time, date and venue, and whether there is to be a recorded telephone interview;
- b) confirmation that notes of the interview will be taken;

- c) confirmation that the Member or complainant can have someone with them, but that person must not be a potential witness in the investigation, or a Member of the Standards Committee, or a Council Officer; provided always that where the interviewee is an Officer of the Council, he/she may be accompanied by another Officer not involved in the case. It is appropriate for the Investigating Officer to ask to be provided with the name and status of the accompanying person before the interview. Witnesses other than the Member or complainant will not normally be entitled to be accompanied;
- d) the framework within which the interview will be conducted;
- e) how the information provided in the interview may be used;
- f) the circumstances in which the information provided in the interview may be made public;
- g) the confidentiality requirements which apply to an interviewee;
- h) details and copies of any documents to be referred to during the interview;
- i) when interviewing the Member, details and copies of any evidence gathered which may be referred to in the report. Witness evidence does not have to be disclosed prior to the interview, depending on the nature of the evidence and whether the Investigating Officer wants the interviewee's account prior to putting the witness evidence to them. Witness evidence may be disclosed during the interview, once the interviewee's own account has been obtained;
- j) the Investigating Officer's contact details.

### 3.9 **CONDUCTING THE INTERVIEW**

Interviews should be planned in advance (Appendix 7), including the preparation of a script for opening contact with all interviewees in a standard manner. Interviews will be recorded in writing.

Before starting an interview:-

- a) inform the interviewee that notes will be taken of the interview;
- b) inform the interviewee that they will be sent a draft interview statement, for their agreement (Appendix 8).

Details of the stages of interview and how they should be conducted are attached at Appendix 9.

Evaluating the information - on completion of the interview it is necessary to:

- a) review the Investigation Plan in light of the information gathered during the interview;
- b) review the evidence to determine whether there are any gaps in it;
- c) take a view on any disputed relevant matters. The Investigating Officer's opinion of the evidence is sufficient. However, if the Investigating Officer is unable to come to a decision, he/she may need to seek further information or decide that he/she is unable to reach a conclusion;
- d) weigh up all the evidence and conclude whether the alleged conduct occurred.

If it is concluded that the Member acted as alleged, the Investigating Officer will need to consider whether the conduct involved a failure to comply with the Code or other Protocol, or was misconduct of any kind.

If it is concluded that the Member has breached the Code or other Protocol, or misconduct has been proved, it should be considered whether there is evidence of any mitigating or aggravating circumstances. It may be necessary to seek further information.

### **3.10 DRAFTING THE REPORT**

On conclusion of the investigation, the Investigating Officer will need to write up his/her findings in a report to the Standards Committee (Appendix 10). The report should be in a standard format and must contain the following information:-

Title page –

- a) who the report is for;
- b) who the report is by;
- c) the date of the report.

An Executive Summary –

- a) the full allegation and who made it;
- b) the provisions of the Code of Conduct or other Protocol, or misconduct, considered;
- c) a conclusion as to whether there has been a failure to comply with the Code or Protocol;

d) the finding.

The subject Member's official details –

- a) date of election;
- b) term of office;
- c) any other relevant bodies of which he/she is a member;
- d) details of any committees served upon;
- e) the date the subject Member ceased to be a member, where relevant;
- g) full details of any training/briefing the subject Member has received on the Code, Standing Order or other Protocol.

Relevant legislation and protocols –

- a) any relevant extracts from the Code;
- b) any relevant extracts from any other legislation or Protocols considered in the report.

Details of the evidence gathered and the Investigating Officer's consideration of the evidence.

This should include:

- a) a summary of those who have provided information;
- b) a chronology of the facts established;
- c) undisputed facts set out as facts;
- d) where there is a disputed fact, the different views and the Investigating Officer's conclusion on them. The conclusion should be based on the balance of probabilities. It should be stated why the conclusion has been reached;
- e) all the relevant evidence gathered even if it does not support the conclusions reached;
- f) any mitigating or aggravating factors, such as the state of mind of those involved;
- g) identification of documents referred to in the report.

A summary of the material facts, to include:-

- a) a summary of the facts needed to confirm the conclusions reached;
- b) where there is a disputed fact, the Investigating Officer's conclusion.

The subject Member's additional submissions:

- a) an outline of information or opinions submitted by the subject Member, which the Investigating Officer did not consider to be relevant to the case;
- b) reasons why the Investigating Officer does not deem information or opinions submitted by the subject Member to be relevant.

Reasoning as to whether there has been a failure to comply with the Code or other Protocol, or misconduct found, in relation to each allegation:-

- a) details of which part of the Code, other Protocol, or type of misconduct, is being considered, with an explanation of the test being applied when determining whether there has been a failure to comply with any of these;
- b) a detailed, reasoned explanation for the conclusion as to whether or not the conduct constitutes a breach of any of these;
- c) new facts or opinions should not be introduced at this stage, only evidence or opinions that have been outlined earlier in the report.

The explanation of the test applied, and the reasons for the conclusions, should be detailed and clear enough to enable understanding by a person without a legal background.

Findings:

The Investigating Officer should make a finding about each alleged breach, outlining in detail the reason for the decision and referring to aggravating or mitigating facts, (which must be outlined in the facts section earlier in the report).

The Schedule should contain:

- a) a list of the documents entitled 'Information Taken into Account';
- b) all the information relied upon when reaching a conclusion;
- c) in complex cases, a chronology;

- d) a list of unused material.

The draft report should be sent to the Member and the complainant, inviting their comments by a specified date. This is helpful where the report is complex or the conclusions are likely to be disputed by either party. The draft should not be sent to other witnesses or parties interviewed, but confirmation of their evidence can be sought from them before the report is issued.

The draft report should be clearly marked as 'Draft' and it should be made clear that it may be subject to change and does not represent the final conclusion. If the Member is found to be in breach, the draft report should be accompanied by copies of the evidence relied upon in reaching this conclusion. Consideration should be given as to whether any of the information in the draft report, or evidence bundle, is confidential information which should not go into the public domain e.g. medical details, or personal contact details. Such information should be edited from the draft and final report unless it is essential to the reasoning.

The accompanying letter should state (Appendix 11):

- a) that the report is confidential;
- b) the date by which comments must be received.

A copy of the draft and the bundle of evidence sent to the Member should be kept.

Comments may be received on the draft and result in the following:

- a) Responses to the draft may reveal the need for further investigation, or they may add nothing of relevance. Occasionally, responses may reveal a need for further investigation and may result in changes to the report. If these changes are significant, the Investigating Officer may consider issuing a second draft, but this would only be in very exceptional circumstances;
- b) Once the Investigating Officer has considered whether the responses add anything of substance to the investigation, he/she will be able to make final conclusions and recommendations;
- c) Where comments on the draft are critical of the investigation or the Investigating Officer, considerations should be given to how to respond to the complaints made. Such criticisms should not prevent a draft report being finalised unless it is unavoidable. In particular, the investigation process, including writing the report, should not be suspended while a complaint about the investigation is dealt with. The only exemption to this is in the circumstances referred to in paragraph 3.12 in relation to complaints about the investigation;

- d) A party may disagree with:-
- the interpretation of the Code or other Protocol or legislation;
  - the analysis of the evidence;
  - the analysis of an individual's conduct;
  - conclusions reached in an investigation;
  - the scope of the investigation;
  - how and who evidence was obtained from.

In relation to comments received before the draft is issued:-

- a) if the comments are made by the Member, respond in writing;
- b) if the Member does not understand either the Code, Standing Order, or other Protocol, or the investigative process, then seek to explain the position to them. Failure to do so may be taken into account at any subsequent hearing. However, the Investigating Officer only needs to show that he/she took all reasonable steps to address the Member's confusion;
- c) if comments are made by the complainant or a third party, either respond to their comments or ask them to wait until they have read the draft report.

In relation to comments received in response to the draft report:-

- a) keep a written record of consideration of any comments received on the draft;
- b) provide a written response to the party explaining the Investigating Officer's position or referring them to the relevant paragraph of the report. This can be done in sending the final report;
- c) include in the evidence bundle any critical comments received on the draft.

If comments are received after the final report has been issued, the party involved should be written to with an explanation that the investigation is now concluded and referring them to the Standards Committee hearing.

If comments are received after the hearing:

- a) a response should be sent indicating that the matter is now concluded and no further correspondence will be entered into on the specifics of that case;
- b) any complaints about the conduct of the Investigating Officer should be dealt with in the same way as other service complaints.

The final report must be sent to:

- a) the Standards Committee;
- b) the Member.

A copy may also be made available to the complainant and others as part of the hearing process.

The final report of the Investigating Officer should state that it contains the final finding and will be presented to the Standards Committee.

If the Member has been found in the report to be in breach of the Code, Standing Orders or other Protocol, he/she should be provided with copies of the evidence relied upon when reaching this conclusion.

It should be considered whether any of the information in the report or evidence bundle is confidential information that should not go into the public domain; for example, medical details, personal contact details or signatures. All such information should be edited from the final report unless it is essential to the reasoning.

An accompanying letter should be sent (Appendix 12) stating:-

- a) that some aspects of the report are confidential;
- b) that the comments they made in response to the draft report have been considered and the final report amended where appropriate.

### **3.11 THE BUNDLE OF DOCUMENTS**

Two bundles of documents should be prepared. These should comprise one bundle of documents used, which is to be submitted in full to the Standards Committee. The other should contain a schedule of unused documents. The Investigating Officer may be required to submit documents from this unused bundle if they are requested by the Standards Committee or the Member.

The document bundle will typically include:-

- a) Documents which establish the procedural framework for the investigation such as:
  - the complaint letter;
  - the Council's Code of Conduct, Standing Orders, or other Protocol as appropriate;
  - a copy of any legislation referred to in the report;
  - a copy of the Member's declaration of acceptance of office.
- b) Any document which has been relied upon when reaching the Investigating Officer's decision, such as:
  - interview records or interview statements with all relevant parties and interviewees;
  - written correspondence from the Member on substantive matters, including comments they made on the draft report;
  - minutes, reports and other documentary evidence upon which the Investigating Officer has relied when reaching his/her conclusion as to the facts.
- c) Any document which would assist in the Member's defence, such as:
  - any document that the Member may seek to rely on in their defence of the conclusions reached;
  - documents which contain information that is inconsistent with the facts as established by the investigation;
  - documents which raise questions about the accuracy of any of the evidence, including the reliability of witnesses;
  - documents containing information which could lead to a finding that the Standards Committee or Investigating Officer has acted in breach of the Member's rights under the Human Rights Act 2001;
  - documents which provide an explanation or partial explanation of the Member's actions;
- d) Background documents: These are documents which the Investigating Officer did not rely upon when reaching his/her decision, but which may be helpful to the Standards Committee when considering the case. They should also include

documents that the Member thinks are relevant but which are not, in the Investigating Officer's opinion, material to the case;

- e) A list of unused documents: This is a list of the documents that the Investigating Officer believes are irrelevant to the investigation. The Investigating Officer should provide sufficient detail about each item so that the Standards Committee or Member can request the documents if they consider it appropriate. It is not necessary to prepare a bundle of the unused documents but these should be held on file;
- f) There is no need to disclose:
- sensitive information which the Investigating Officer has edited or deleted;
  - information protected by legal professional privilege and public interest immunity;
  - internal documents such as file notes and draft reports. However, these may be requested by the Standards Committee, so it is important to be sure that these are precise and clear.

The bundle should begin with the documents which establish the procedural framework for the investigation. The remaining evidence should then be grouped thematically, for example policy documents or minutes. Arrange the documents chronologically within their group. If a document is missing, provide a note to this effect to the Standards Committee outlining the reasons why the document is unavailable.

Information which should be deleted from the bundle will depend on its nature and the circumstances. Consideration should be given to whether it is appropriate for certain types of information to be in the public domain. Consideration should be given as to whether to remove the following:

- a) a telephone number, address, email address, or signature of any person other than on a transcript or witness statement. This is personal data as defined by the Data Protection Act 2002. While the Standards Committee may need witness contact details, these should still be deleted from any documents and provided as a separate list to the Committee;
- b) age and date of birth of a party (unless directly relevant to the case);
- c) information which relates to matters which were not referred for investigation;

- d) other personal data as defined by the Data Protection Act 2002;
- e) items such as petitions, legal advice and the evidence of vulnerable persons may need to be deleted on a case by case basis.

Legal advice should be sought from the Chief Executive if there is any doubt.

### 3.12 COMPLAINTS

It is important that there is a clear documented procedure for considering complaints about the investigation itself. The procedure should fall into two discrete stages, firstly, an evaluation of the nature of the complaint, and secondly, what action should be taken to handle it.

There are two types of complaints:

- a) complaints about the conduct of the investigation (service complaints);
- b) complaints about the interpretation and reasoning in the Investigating Officer's report.

Service complaints occur when a party criticises the actions of an Investigating Officer.

Such criticisms may include:-

- a) administrative errors, for example misspelling a name;
- b) failure to communicate;
- c) criticism of the manner in which the Investigating Officer behaved;
- d) criticism of the length of time it took to conclude the investigation.

The Council has a procedure for dealing with service complaints, which should be used when dealing with service complaints about an investigation.

The investigation can continue while a service complaint is being addressed. However, there may be circumstances where the complaint is so substantive that it would not be appropriate for the same Investigating Officer to continue on the case while the service complaint is on-going. Such circumstances should be very rare. An investigation into a service complaint should not postpone the conduct of the main investigation.

Complaints of the type referred to in paragraph 3.12 b) above relate to subjective judgements made by the Investigating Officer as part of the Standards Committee

regime process and should therefore be dealt with by way of a complaint to the Chief Executive, as the Council's legal adviser.

### **3.13 TERMINATING INVESTIGATION BEFORE COMPLETION**

It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. In some circumstances it may be more appropriate to deal with matters by taking other action. This decision may only become clear after some investigation has been conducted. In such cases, the matter should be referred to the Standards Committee. It is important to be aware that once a programme of other action has been embarked upon the investigation cannot be re-opened, even if other action fails. The decision to take other action closes the opportunity to investigate. This should be communicated clearly to all parties.

The following are some alternatives to investigation:-

- a) mediation or conciliation – either between parties or involving the community to a greater or lesser extent;
- b) training;
- c) review of lessons learnt from the case;
- d) peer mentoring;
- e) review of Protocols, Standing orders or Registers of Interest.

If the Standards Committee decides to take other action, the parties should be advised that no conclusion has been reached about whether the Member failed to comply with the Code, Standing Orders or other Protocol.

### **3.14 APPENDICES**

Appendix 3 – Investigation Plan Form

Appendix 4 – Investigation Plan Review Sheet

Appendix 5 – Letter to Subject

Appendix 6 – 2<sup>nd</sup> Letter

Appendix 7 – Interview Plan Form

Appendix 8 – Letter Following Interview

Appendix 9 – The Stages of Interview and How they Should be Conducted

Appendix 10 – Report of Investigation

Appendix 11 – Conclusion Letter

Appendix 12 – Final Letter

## APPENDIX 3

### Investigation plan

Case Name:

|   |  |              |  |
|---|--|--------------|--|
| Date received by Chief Executive:       |  |              |  |
| Date referred to Investigating Officer: |  |              |  |
| Member:                                 |  | Complainant: |  |
| Investigating Officer:                  |  |              |  |

Target for Investigating Officer's completion of draft report

|              |  |
|--------------|--|
| Date due:    |  |
| Explanation: |  |

Target for issue of draft report

|              |  |
|--------------|--|
| Date due:    |  |
| Explanation: |  |

Target for issue of final report

|              |  |
|--------------|--|
| Date due:    |  |
| Explanation: |  |

## Case analysis

|  |  |
|--|--|
| <b>Behaviour alleged</b>                 |  |
| <b>Relevant Code / Protocol / Breach</b> |  |
| <b>Issues for determination</b>          |  |
| <b>Evidence required</b>                 |  |
| <b>Evidence obtained</b>                 |  |

## Other matters

**Identify any thoughts/lines of inquiry not outlined in the table and also highlight any problems in the referral process.**

**Date for Review of this Plan:**

**Approved by Chief Executive:**

**Date:**

**APPENDIX 4**

## Investigation plan review sheet

**Case Name:**

|                               |  |
|-------------------------------|--|
| <b>Date:</b>                  |  |
| <b>Investigating Officer:</b> |  |

**Target Reason for review** (tick box)

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | <b>New allegation</b>  |
| <input type="checkbox"/> | <b>Additional information/witnesses</b>                                      |
| <input type="checkbox"/> | <b>Periodic review</b> (Investigation plans should be reviewed periodically) |

**Details relating to above**

|  |
|--|
|  |
|--|

**Update for Complainant and Member**

**Last Update [Date] [Method of Communication]**

**Next Update [Date]**

**Review of targets**

|   |  |
|---|--|
| <b>Revised draft report target:</b>           |  |
| <b>Revised dispatch of final report date:</b> |  |

**Reason for revisions:**

|  |
|--|
|  |
|--|

**Date of Next Review**

**Approved by Chief Executive:**

|                |              |
|----------------|--------------|
|                |              |
| <b>Signed:</b> | <b>Date:</b> |



## APPENDIX 5

### PRIVATE AND CONFIDENTIAL

Dear [insert name]

**Ref:**

Further to my letter of [insert date] and [insert complainant name]'s allegation that you have or may have failed to comply with the Council's Code of Conduct, Standing Orders, Protocol, etc. (the Code).

I have been appointed to investigate the allegations which have been made regarding your conduct. If this complaint goes forward to the Standards Committee for hearing, the investigation will enable the Standards Committee to reach a conclusion on whether there has been any failure to comply with the relevant Code. Part of the investigation will include seeking information and documentation from you and other people, where relevant.

I enclose a copy of the documents which make up the complaint made against you. Sections of text that contain personal data have been removed in accordance with the provisions of the Data Protection Act 2002. Information that is irrelevant to the allegation has also been removed. You may disclose these documents to your representative, should you choose to appoint one, for the purposes of seeking support and assistance in relation to this investigation. The documents should not be disclosed to anyone else.

Please provide the following information in writing by [insert date], in order that I can progress the investigation:

- [insert required information]
- [insert required information]
- [insert required information]

Continued/.....

You are welcome to provide me with your initial response to the allegation should you wish to do so at this point.

I hope to complete the investigation within [insert time period as appropriate]. In order to assist in the progress of the investigation could you please let me know of any periods of time, such as holidays, when you will not be available?

I will keep you informed of the progress of the investigation.

If you have any queries I can be contacted directly on [insert contact number] or by e-mailing [insert email address].

Yours sincerely

## APPENDIX 6

### PRIVATE AND CONFIDENTIAL

Dear [insert name]

**Ref:**

Following our conversation on [insert date] I am writing to confirm our [interview/telephone interview] arrangements for [insert date, time and location] and to give you some additional information.

The interview will be conducted under the authority vested in me by the Council's Constitution, and the Standards Committee.

I will be taking notes of our conversation. If I rely on information gained during this interview in a report, I will send you a copy of the record and give you an opportunity to comment on it. It is possible that what you say at interview may be disclosed and you might be called as a witness to attend a hearing of the Standards Committee.

Please inform me in advance if you will be accompanied and if so by whom. You may have a friend or representative with you during the interview. However, the person who accompanies you should not be a member of the Standards Committee, a Council officer or another potential witness.

I estimate that the interview will take approximately [insert time].

I enclose the following documents that may be required during the interview:

- [insert required document]
- [insert required document]
- [insert required document]

It is important that you have copies of these documents with you, as they may be needed during the interview. It is also important that you have copies of any other relevant documents with you, as they may be needed during the interview.

Continued/.....

/2.

When the investigation is concluded, I will report to the Standards Committee which will decide whether there has been a breach of the Code of Conduct by the Member and what action should be taken.

[Before I complete this investigation, you will be sent a draft of the investigation report to enable you to make any representations you consider necessary. Having considered these, I will then issue my final report.]

(COMPLAINANT AND MEMBER ONLY)

I must also ask that you treat any information provided to you during the course of this investigation as confidential, as disclosure of information contrary to this could be an offence. Anyone who accompanies you to your interview should also be made aware of the restrictions on disclosure of information.

If you have any queries prior to the interview, please do not hesitate to contact me on [insert contact number] or by sending an email to [insert email address].

Yours sincerely

## APPENDIX 7

### Interview Plan

**Case Name:**

|                     |  |
|---------------------|--|
| <b>Interviewee:</b> |  |
|---------------------|--|

|                     |  |
|---------------------|--|
| <b>Member:</b>      |  |
| <b>Interviewer:</b> |  |
| <b>Date:</b>        |  |

|                            |
|----------------------------|
| <b>Nature of complaint</b> |
|                            |

|                             |
|-----------------------------|
| <b>Purpose of interview</b> |
|                             |

**Facts already established** (which relate to purpose of interview)

|  |
|--|
|  |
|--|

**Facts to be established** (which relate to purpose of interview)

|  |
|--|
|  |
|--|

**Record of disclosure to witness before interview**

|  |
|--|
|  |
|--|

**Planned disclosure to witness during interview**

|  |
|--|
|  |
|--|

**Areas to be covered in interview**

**Key questions**

|  |  |
|--|--|
|  |  |
|--|--|

**Target for Investigating Officer's completion of draft report**

## Case analysis

|  |  |
|--|--|
| <b>Behaviour alleged</b>                 |  |
| <b>Relevant Code / Protocol / Breach</b> |  |
| <b>Issues for determination</b>          |  |
| <b>Evidence required</b>                 |  |
| <b>Evidence obtained</b>                 |  |

**Other matters**

|  |
|--|
| <b>Identify any thoughts/lines of inquiry not outlined in the table and also highlight any problems in the referral process.</b> |
|  |

**Approved by Chief Executive:**

**Date:**

## APPENDIX 8

### PRIVATE AND CONFIDENTIAL

Dear [insert name]

**Ref:**

Further to our [interview/telephone interview] of [insert date] I enclose as agreed two copies of the notes taken from the interview.

**Notes:**

I would be grateful if you could review the interview notes and amend where necessary if you feel there are any errors contained therein. Please then sign and date the declaration at the end of the interview transcript and return one copy to me to the above address by [insert date]. If I do not hear from you by that date The notes will be considered an accurate record.

The copy of the interview notes has been provided to you solely to enable you to confirm the accuracy of the interview. It should not be disclosed or used for any other purpose. You are, however, able to disclose these documents to your representative, should you choose to appoint one, for the purpose of seeking advice in relation to this investigation.

If, on reading the interview notes, you have any additional comments that you feel are relevant to the investigation, please address these to me in writing in a separate document and send it to the above address, or by sending an email to [insert email address]. Alternatively you can telephone me directly [insert contact number]. Should you wish to write would you please quote the reference number on all documentation.

Yours sincerely

## APPENDIX 9

### **The Stages of Interview and How They Should be Conducted**

#### A. At the start of the interview:-

- 1) When the interviewee arrives, put him / her at ease.
- 2) Confirm that the interview will be recorded by you or another officer taking notes, and introduce that officer accordingly.
- 3) Ask the interviewee to confirm that s/he has received the letter outlining the arrangements for the interview, has read and understood it and ask whether s/he has any questions about it.
- 4) If the interview is with the Member, repeat orally all of the information contained in the letter.
- 5) If the interviewee is unclear about anything, repeat orally all of the information contained in the letter.
- 6) Explain that s/he can take a break on request.
- 7) Explain that a break will be offered if the interview goes over an hour in any event.
- 8) Estimate how long the interview is likely to take and ask if s/he has a time by which it needs to end.
- 9) Explain that s/he can ask for a question to be rephrased if s/he does not understand it.

#### B. During the interview:-

- 1) Start the interview with the Member with some background questions, for example 'how long have you been a member', or 'what training have you had on the relevant Code, Protocol, etc.?'
- 2) Do not ask multiple questions. Ask one question at a time, and do not ask another question until the interviewee has answered your first question.
- 3) Do not dart back and forth between different issues.

- 4) Tackle one subject issue at a time.
- 5) Ask open questions about information the interviewee or other witnesses have provided about the issue.
- 6) Drill down. Ask open questions about a specific issue until all the information needed on it has been obtained.
- 7) Where relevant ask the interviewee to reconcile differing accounts.
- 8) Ask closed questions to confirm the information that has been obtained about the specific issue.
- 9) Move onto the next issue using the same method.
- 10) Do not ask leading questions.
- 11) Do not ask the interviewee to speculate.
- 12) Accurately put the evidence of other interviewees to the interviewee and ask for their response.
- 13) When asked, explain the relevance of the question.
- 14) Do not allow the interviewee's representative to answer a question.
- 15) Allow the interviewee to stop and obtain advice from their representative whenever they choose.
- 16) If the interviewee becomes upset or unwell offer them a break.
- 17) Never use a raised voice.
- 18) Only interrupt if the interviewee is being unreasonable or is not providing relevant information.
- 19) Be mindful of avoiding oppressive or repetitive questioning. If an interviewee will not properly answer a question, despite significant attempts to obtain a satisfactory response, move on to another point or issue.
- 20) Do not question the Member about matters which fall outside the scope of the original allegation or complaint.
- 21) If the interviewee wants a break, record this in the notes and that nothing was discussed with the interviewee about the case with them during the break.

C. Closing the interview:-

1) Thank the interviewee for their time and outline what will happen next.

D. After the interview:-

1) Send the interviewee a copy of the notes.

2) State in the letter that if there is no response from them by a specified date, it will be assumed that the notes are agreed.

3) If the content of the notes are disputed, check the discrepancies against your notes.

4) If a change is made, write to the interviewee to inform them of this. In these circumstances, when the matter is referred to the Standards Committee, submit the notes, the interviewee's letter outlining the dispute, and your response.

**PRIVATE AND CONFIDENTIAL**

## **Case Name:**

Report of an investigation for the Standards Committee by the Assistant Town Clerk **OR** [insert investigating officer] appointed by Chief Executive into an allegation concerning [insert Member name].

**DATE:** [insert date]

## **Contents**

- 1 Executive summary**
- 2 [Insert Member's name]'s official details**
- 3 The relevant legislation and protocols**
- 4 The evidence gathered**
- 5 Summary of the material facts**
- 6 [Insert Member's name]'s additional submissions**
- 7 Reasoning as to whether there have been failures to comply with the Code of Conduct, Standing Orders, Protocols, etc.**
- 8 Finding**

**Appendix A Schedule of evidence taken into account**

**Appendix B List of unused material**

**Appendix C Chronology of events**

## **1 Executive summary**

1.1 [Insert summary of allegation]

1.2 [Insert summary of Investigation outcome]

## **2 [Insert Member's name]'s official details**

2.1 [Insert Member's name] was elected to office on [insert date] for a term of [insert number] years.

2.2 [Insert Member's name] currently serves on the following committees: [insert committee names] and has also served on [insert committee names] committees in recent years.

2.3 [If no longer a Member, state when and how the period of office ceased]

2.4 [Insert Member's name] has received the following training on the Codes [insert training details].

## **3 The relevant legislation and protocols**

3.1 The Council has adopted a Code of Conduct, Standing Orders or Protocol, in which the following paragraph[s] is/are included:

- [insert included paragraph]
- [insert included paragraph]
- [insert included paragraph]
- [insert included paragraph]

## **4 The evidence gathered**

4.1 I have taken account of oral evidence from [insert evidence details]

4.2 I have also taken account of documentary evidence obtained from [insert evidence details]

## **5 Summary of the material facts**

5.1 [Insert summary]

## **6 [Insert Member's name]'s additional submissions**

6.1 [Insert submissions]

**7 Reasoning as to whether there have been misconduct or failures to comply with the Code, Standing Orders or Protocols**

7.1 [Insert reasoning]

**8 Finding**

8.1.1 [Insert finding]

## Appendix 10 (A)

**PRIVATE AND CONFIDENTIAL**

### Schedule of evidence taken into account

Case Name:

#### Core documents

| Doc No | Description       | Pages |
|--------|-------------------|-------|
| XX123  | Allegation letter | 1-13  |
|        |                   |       |
|        |                   |       |
|        |                   |       |

#### Notes of telephone conversations, letters, and interviews with witnesses

| Doc No | Description | Pages |
|--------|-------------|-------|
|        |             |       |
|        |             |       |
|        |             |       |
|        |             |       |

#### Minutes of meetings and other documentary evidence

| Doc No | Description | Pages |
|--------|-------------|-------|
|        |             |       |
|        |             |       |
|        |             |       |
|        |             |       |

#### [insert Member name]'s comments on draft report

| Doc No | Description | Pages |
|--------|-------------|-------|
|        |             |       |
|        |             |       |
|        |             |       |
|        |             |       |

**List of unused materials**

|  |
|--|
|  |
|  |
|  |
|  |
|  |

## Chronology of events

- [insert event]

## APPENDIX 11

### PRIVATE AND CONFIDENTIAL

Dear [insert name]

#### Ref:

Further to enquiries that have been made into [insert complainant's name]'s allegation, that you may have failed to comply with the Code of Conduct or other Protocol, which was referred to me for investigation.

I am writing to you and to [insert complainant's name] to let you know my draft finding[s] and the reasons why I have reached [it/them].

If you choose to make comments on the draft report, it should focus on matters that I have relied upon to reach my findings.

Please note that the disclosure of any information from the report [and some of the documents in the schedule of evidence] may be an offence under the Local Government Acts, or the Data Protection Act 2002.

However, information can be disclosed in any of the following circumstances:

- The disclosure will enable the Standards Committee to perform its responsibilities.
- The disclosure will assist the Chief Executive to perform his / her statutory responsibilities.
- You have permission from the person to whom the information relates to disclose it.
- The information has already lawfully been made public.
- The disclosure is made for the purposes of criminal proceedings.
- You are required to do so by a court or similar body.

You may wish to seek your own advice if you are unsure whether you can legally disclose information from the report. Additionally, this is a draft report and does not necessarily contain my final findings.

Continued/.....

If you wish to comment on the draft report and findings, please let me have your comments in writing to the above address by 12 noon on [insert date 10 working days from date of letter]. If I have not heard from you by that date, I shall proceed to issue the final report.

Should you require any clarification on the points raised in this letter, please contact me on [insert telephone number] or send an email to [insert email address].

Yours sincerely

## APPENDIX 12

### PRIVATE AND CONFIDENTIAL

Dear [insert name]

#### Ref:

I refer to my letter dated [insert date] and advise that the investigation into the allegation made against you by [insert complainant's name] has now been completed.

[Before finalising my report, I considered carefully any comments received in response to the draft report, including those in your letter of [insert date]. I have amended the report, where I have considered it appropriate to do so.]

I enclose a copy of my final report. The report is marked 'Private and Confidential'. While my finding may be disclosed by the Council and the Standards Committee, please note that the disclosure of any information from the report may be an offence under the Local Government Acts for the Data Protection Act 2002.

However, information can be disclosed in any of the following circumstances:

- The disclosure will enable the Standards Committee to perform its responsibilities.
- The disclosure will assist the Chief Executive to perform his or her statutory responsibilities.
- You have permission from the person to whom the information relates to disclose it.
- The information has already lawfully been made public.
- The disclosure is made for the purposes of criminal proceedings.
- You are required to do so by a court or similar body.

You may wish to seek your own advice if you are unsure if you can legally disclose information from the report.

[Insert any appropriate information about publication of the complaint and outcome by the Council].

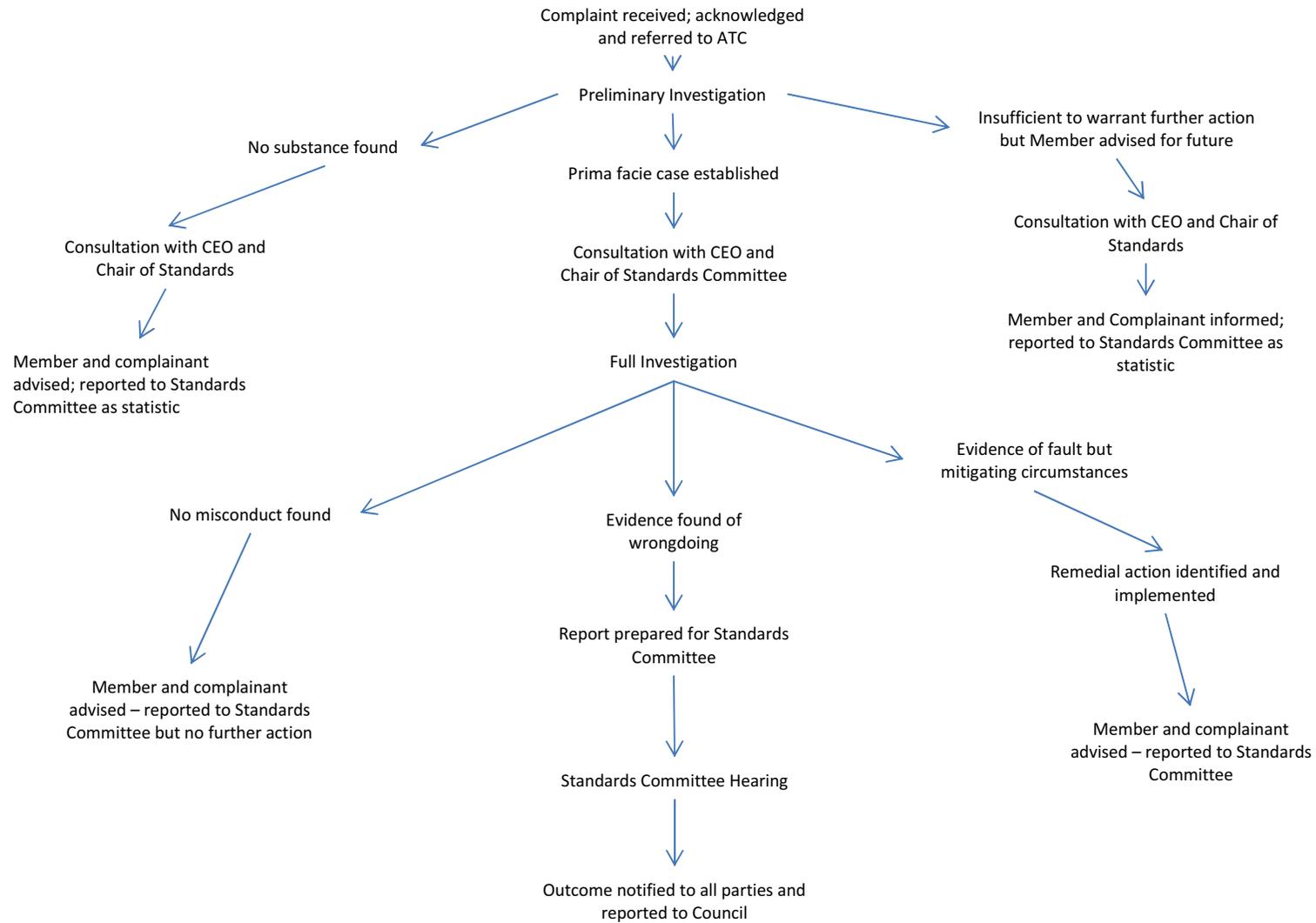
Continued/.....

/2.

I am required by the Procedures to inform [insert complainant's name] of the outcome of the investigation and am therefore sending them a copy of my report. I am also informing the Chief Executive of my findings.

Yours sincerely

**FLOWCHART OF INVESTIGATION PROCESS**



## **4. PROCEDURE FOR HEARINGS**

### **4.1 APPLICATION**

This Procedure applies to hearings set up by the Standards Committee about complaints against Members' misconduct or alleged breaches of the Code of Conduct, Standing Orders or any other procedures or protocols.

### **4.2 MODIFICATION OF PROCEDURE**

This procedure may be varied where it is appropriate to do so in the interests of fairness, by the Chair of the Standards Committee in consultation with the Chief Executive, as the Council's Proper Officer in such matters.

### **4.3 REPRESENTATION**

The Member may, with the agreement of the Chair of the Standards Committee, be represented or accompanied during the hearing by another person. The role of that person is to assist and support the Member, not to answer questions on behalf of the Member or to obstruct and hinder the efficient running of the Hearing in any way.

### **4.4 PROCEDURAL ADVICE**

The Standards Committee may take procedural advice from the Chief Executive at any time during the hearing or its deliberations. The substance of any advice should be shared with the Member, and the Investigating Officer (usually the Assistant Town Clerk) if they are present.

### **4.5 PRELIMINARY ISSUES**

At the start of the hearing, the Chair shall invite all participants to introduce themselves and indicate their role at the hearing, clarify that they are all aware of the procedure and deal with the following:-

- 1) Disclosures of interest
- 2) Quorum
- 3) Any requested change to the procedure
- 4) Whether to proceed in the absence of the Member, if the Member is not present
- 5) Clarify matters, such as what evidence is agreed, and what points of difference there are for the Committee to determine.

#### 4.6 **ADMISSION OF COMPLAINT/BREACH**

If a Member admits that he / she has failed to comply with the Code / Standing Order / Protocol or is responsible for the behaviour complained of, the Standards Committee may make a determination that the Member has failed in their conduct and proceed directly to consider whether any sanction should be applied.

#### 4.7 **HEARING EVIDENCE**

Where there are points of difference in the evidence, the Standards Committee shall hear the evidence of the Investigating Officer and the Member in the following order:-

- 1) The Investigating Officer shall present his / her report, having particular regard to any points of difference identified by the Member and why he / she concluded, on the basis of his / her findings of fact, that the Member had failed to comply with the Code. The Investigating Officer may call witnesses to give evidence on the points of difference.
- 2) The Member may ask questions of these witnesses.
- 3) At any time, the Standards Committee may question the Investigating Officer and witnesses.
- 4) The Member may respond to the Investigating Officer's report and may call any witnesses to give evidence on the points of difference.
- 5) The Investigating Officer may ask questions of these witnesses.
- 6) At any time, the Standards Committee may question the Member and witnesses.
- 7) The Standards Committee may invite the Investigating Officer and the Member to summarise their representations (particularly the points of difference), with reference to the evidence of the witnesses.
- 8) The Standards Committee may adjourn and resume the hearing if it needs to hear evidence from any person not present.
- 9) The Standards Committee may require the room to be cleared, to enable it to deliberate and ask advice on the representations and evidence, and to make its findings of fact, and its decision as to whether the complaint is upheld or there was a breach of the Code / Standing Order / Protocol, or misconduct.

- 10) The Standards Committee may require the hearing to be resumed if it needs to hear further evidence.
- 11) The Standards Committee shall resume the hearing to announce its decision if appropriate, or to inform all parties when the decision will be available, either orally or in writing.
- 12) The Standards Committee may, in complex cases, prior to deciding on whether a complaint is upheld / that there was a breach of the Code / Standing Order / Protocol, or misconduct, if it considers it appropriate, announce its findings of fact and hear further representations from all parties on whether the findings amount to a breach.
- 13) If the Standards Committee considers that it requires additional evidence not available at the hearing in order to come to a finding, it may adjourn the hearing and require the production of further information on points specified by the Standards Committee.

#### **4.8 DECISION AND SANCTION**

If the decision is that the Member has not breached a Code / Standing Order / Protocol, or that a complaint has not been made out against them, the Standards Committee may consider and make any recommendations to the Council.

If the decision is that the Member has failed to follow the Code(s), etc., the Standards Committee shall invite representations from the Investigating Officer and the Member on whether a sanction should be applied and in what form.

The Standards Committee may require the room to be cleared to enable it to decide whether a sanction is to be applied and in what form.

The Standards Committee shall resume the hearing to announce its decision or give all parties notice of when the decision will be given.

The Standards Committee may, in addition, make any recommendations to the Council.

The Standards Committee may apply any of the sanctions, individually or in a combination, as applicable and as appropriate, that are indicated in Appendix 1.

#### 4.9. **THE CLOSE OF THE HEARING**

The Chair will indicate when the written form of the Standards Committee will be available and arrangements for providing this to the parties.

Following the close of the hearing, the Democratic Services Officer / Committee Administrator present will agree a formal written notice of the Standards Committee's decision with the Chair and shall arrange for the distribution of that notice / decision to relevant parties.

#### 4.10 **APPENDICES**

Appendix 14 - Sanctions

**SANCTIONS**

The Committee, after considering all the facts and information before it, may determine whether or not a complaint is upheld or not.

Where a complaint is upheld, the Committee may impose the following sanctions, either singularly or in conjunction with each other:-

- An instruction that the Member must apologise to the complainant, either privately or publicly;
- The removal of the Member from membership of some or all Committees;
- The removal of a Member as representative of the Council on an outside body / or any outside bodies;
- The barring of a Member from representing the Council at conferences and other similar events;
- The recommendation to the appointing body or Committee that the Member be removed from the office of Chair or any other office.

In making its decision, the Committee will have regard to the severity of the misconduct found, and will determine the type, length and duration of such sanctions accordingly.