

Eden District Council

Procedure for Local Investigation of Referred Complaints

Introduction

1. The investigation of a complaint referred to the Council's Accounts and Governance Committee will be governed by this procedure.
2. The person[s] making the complaint is referred to in this procedure as the Complainant and the person against whom the complaint is made is referred to as the Member.
3. The Investigating Officer means the person nominated by the Monitoring Officer to undertake the investigation [which may include the Monitoring Officer and his or her representative].
4. The Accounts and Governance Committee means the Council's Accounts and Governance Committee or a Sub-Committee of that Committee.

Appointment of Investigating Officer

5. [a] Upon receipt of a referral of a complaint for investigation, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation, and instruct him/her to conduct an investigation of the allegation and to make a report to the Accounts and Governance Committee. The Investigating Officer may be an Officer of the Council, the Officer of another Local Authority, or an external Investigating Officer.

[b] The Investigating Officer may appoint persons to assist him/her in the conduct of his/her functions and may obtain such advice as may be necessary for the conduct of the investigation.

Notifying the Member

6. [a] Within five working days of the receipt of the referral, the Monitoring Officer shall notify the Member in writing of the referral:
 - i. that the allegation has been referred to him/her for investigation and determination;
 - ii. of the identity of the person making the allegation [unless the identification of the Complainant might prejudice the investigation or put the Complainant at risk];
 - iii. of the conduct which is the subject of the allegation;
 - iv. of the section[s] of the Code of Conduct or local protocol which appear to him/her to be relevant to the allegation;
 - v. of the procedure which will be followed in respect of the allegation; and
 - vi. of the identity of the Investigating Officer.
- [b] At the same time as notifying the Member of the referral, the Monitoring Officer shall request the Member to respond to the Investigating Officer in writing within fourteen days of notification to:

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

Notifying the Accounts and Governance Committee

7. At the same time as notifying the Member, the Monitoring Officer will notify each member of the Accounts and Governance Committee in writing that he/she is carrying out an investigation.

Notifying the Parish or Town Council Clerk

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

Notifying the Complainant

9. [a] At the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out at paragraph 6 [a] i., iii.-iv.
 - [b] In notifying the Complainant the Monitoring Officer will request the person to respond to the Investigating Officer within fourteen days to:
 - i. identify any documents which the person would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;
 - ii. provide the Investigating Officer with the name, address and telephone number [or other appropriate contact details] of any person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation; and
 - iii. provide the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person organisation.

Conduct of Investigation

10.[a] Purpose of the Investigation

The purpose of the investigation is to enable the Investigating Officer to prepare and present to the Accounts and Governance Committee a report which would provide the Committee with sufficient information to determine whether the Member 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 Member or in consequence of the breach, and what that action should be.

[b] Termination of the Investigation

The Investigating Officer may terminate his/her investigation at any point, where he/she is satisfied that he/she has sufficient information to enable him/her to report to the Accounts and Governance and to enable the Committee to come to a considered decision on the allegation.

[c] Additional Matters

Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code of Conduct or local protocol by the Member other than the breach which he/she is currently investigating the Investigating Officer shall either:

- i. where the additional matter relates to an apparent breach of the Authority's Code of Conduct by the Member, report the matter to the Monitoring Officer who will provide the Member with details of the matter in the form set out in paragraph 6 [a] iii. and iv. above and invite the Member to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct. The Monitoring Officer will then determine whether to report the additional matter to the Accounts and Governance Committee;
- ii. where the additional matter constitutes an apparent breach of the Authority's protocols but not a breach of the Code of Conduct by the Member, report the matter to the Monitoring Officer who will provide the Member with details of the matter in the form set out in paragraph 6 [a] iii. and iv. above and invite the Member to provide a statement as to why the additional matter does not constitute a breach of the Authority's local protocols. The Monitoring Officer will then take a decision whether to refer the matter to an Investigating Officer for local investigation and report to the Accounts and Governance Committee as appropriate. Where the original matter relates to an allegation of breach of local protocol and the additional matter relates to a further breach of a local protocol of the same Authority, the Monitoring Officer may, with the consent of the Member, request the original Investigating Officer to extend his investigation to include the additional matter;
- iii. where the additional matter relates to an apparent breach of the Code of Conduct or a local protocol by a Parish or Town Councillor notify the Clerk to the Town or Parish Council of the additional matter and any action taken.

[d] Following notification to the Member, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Member has provided the Investigating Officer with the information requested in accordance with paragraphs 6[b] ii. and iii. above the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he/she is of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than to contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.

[e] **Production of Document, Information and Explanations**

- i. In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may make such enquiries of any person or organisation and request any person or organisation to provide any document or information which is in his/her/its possession or control, or provide any explanation, as he/she thinks necessary for the purpose of carrying out the investigation.
- ii. In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may require any authority of which the Member is a member to provide any document which is in his/her/its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.

[f] **Interviews**

- i. In the course of the investigation the Investigating Officer may request any person to attend and appear before him/her or otherwise provide any information, document or explanation for the purpose of paragraph 10[e], as he/she thinks necessary for the purposes of carrying out the investigation.
- ii. **Representation**
Any person who appears before the Investigating Officer can arrange to be accompanied at his/her own expense by a third party or friend.
- iii. **Notes of Interviews**
Where practicable, following the interview the Investigating Officer shall produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

Draft Report

11. [a] Where the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in paragraph 10[a], or has obtained as much information as is likely to be reasonably capable of being obtained, he/she will prepare a draft report setting out:

- i. the details of the allegation;
 - ii. the relevant provisions of statute, of the Code of Conduct and any relevant local protocols;
 - iii. the Member's initial response to notification of the allegation [if any];
 - iv. the relevant information, advice and explanations which he/she has obtained in the course of the investigation;
 - v. a list of any documents relevant to the matter;
 - vi. a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;
 - vii. a note of any person or organisation who has failed to co-operate with the investigation and the matter in which they have failed to co-operate;
 - viii. a statement of his/her draft findings of fact;
 - ix. the reasoning for his/her decision;
 - x. his/her conclusion as to whether the Member has or has not failed to comply with the Code of Conduct for Members of any authority or a local protocol; and
 - xi. any recommendations which the Investigating Officer is minded to make to any authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach. Where the allegation relates to a Parish or Town Councillor, such recommendations would be recommendations which the Investigating Officer would recommend that the Accounts and Governance Committee make to the Parish or Town Council.
- [b] The draft report should also state that the report does not necessarily represent the Investigating Officer's final finding, and that the Investigating Officer will present a final report to the Accounts and Governance Committee once he/she has considered any comments received on the draft report.
- [c] The Investigating Officer shall then send a copy of his/her draft report in confidence to the Member and the Complainant and request that they each send any comments thereon to him/her within fourteen days.
- [d] The Investigating Officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within fourteen days.

Final Report

12. [a] After the expiry of that period [or such extended period as the Investigating Officer may allow], the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his/her final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Accounts and Governance Committee, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, such as background documents or telephone conversations, letters and notes of interviews with witnesses.
- [b] The Monitoring Officer shall then send a copy of the final report to the Member, advising that:
- i. where the final report concludes that there has not been a failure to comply with the Code of Conduct for Members or a local protocol, he/she will refer the report to the Accounts and Governance Committee for their consideration; and
 - ii. where the final report concludes that there has been a failure by the Councillor to comply with the Code of Conduct for Members or with a local protocol, he/she will refer the report to the Accounts and Governance Committee for a formal hearing.
- [c] The Monitoring Officer shall ensure that, when the agenda for the Accounts and Governance Committee is sent out to members of the Accounts and Governance Committee, including the final report, the agenda and the report are also sent to:
- i. The Complainant; and
 - ii. The Clerk to the Parish or Town Council [if any]
- together with a note explaining the circumstances under which the Accounts and Governance Committee may conduct a hearing into the allegations, and the procedure for those events.
- [d] Where the Accounts and Governance Committee considers the report in accordance with paragraph 12[b] i. above, it shall make one of the following findings:
- i. That it accepts the Investigating Officer's finding that the Member has not failed to comply with the Code of Conduct for Members as set out in the allegation;
 - ii. That it accepts the Investigating Officer's finding that, on the facts as set out in the report, the Member has not failed to comply with a local protocol, or
 - iii. That the matter should be considered at a hearing of the Accounts and Governance Committee, conducted in accordance with the authority's adopted Procedure for Local Determination Hearings.

- [e] Where the Accounts and Governance Committee finds as set out in paragraph 12[d] i. or ii. above [no failure to comply with the Code of Conduct or with a 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
- i. The Member;
 - ii. The Accounts and Governance Committee, if the finding was made by a Sub-Committee of the Accounts and Governance Committee;
 - iii. The Standards Committee (or equivalent) of any other local authority [other than a Parish or Town Council] of which the Member is also a member;
 - iv. The Parish or Town Council, if the Member was also a member of a Parish or Town Council; and
 - v. The Complainant.
- [f] Where the Accounts and Governance Committee finds as set out in paragraph 12[d] iii. above [that the matter should be considered at a full hearing] or the Investigating Officer's report contains a finding that the Member did fail to comply with the Code of Conduct or a local protocol, the Monitoring Officer shall arrange for the matter to be considered at such a hearing in accordance with the authority's adopted Procedure for Local Determination Hearings, subject to the following variations:
- i. The hearing shall be conducted no sooner than fourteen days from, and no later than three months from the date on which the Monitoring Officer received the report of the Investigating Officer;
 - ii. The Monitoring Officer will not conduct Pre-Hearing Enquiries of the Member;
 - iii. The Investigating Officer shall be responsible for presenting the report to the Accounts and Governance Committee and introducing any witnesses whom he/she considers that the Accounts and Governance Committee should hear in order to be able to give the matter proper consideration.