

## PROCEDURE FOR INVESTIGATING THE COMPLAINT

### 1. Preliminaries

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under UK GDPR and the Data Protection Act 2018, Equalities Act 2010, the Human Rights Act 1998, and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial, and unbiased at all times.
- 1.3 The Subject Member and the Complainant will be advised that the investigation is for the purposes of establishing facts and making recommendations as to whether the facts disclose a breach of the relevant code of conduct.
- 1.4 Witnesses will be identified at the investigation stage and wherever possible their evidence supported by signed and dated witness statements and/or notes of interviews with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5 The Investigating Officer will not make recommendations on sanctions.
- 1.6 The Investigating Officer will notify the Subject Member and the Complainant of their appointment, normally within 20 working days of being appointed, and:
  - (a) Provide details of the complaint to the Subject Member.
  - (b) Detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation.
  - (c) Detail the sections of the Code of Conduct that appear to be relevant to the complaint.
  - (d) Request contact details of any potential witnesses.
  - (e) Require that confidentiality is maintained throughout the duration of the investigation and the procedures contemplated by this Annex and that details of the complaint are not disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.

- 1.8 The Investigating Officer may conclude their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer.

## **2. Evidence of New Breaches**

- 2.1 The Investigating Officer may find evidence of conduct by Members that breaches the Code of Conduct but extends beyond the scope of the investigation referred to them. Their powers as an Investigating Officer relate only to the allegation that they been given. While that means that the Investigating Officer may consider other parts of the Code than those initially considered if they are relevant to the matter in hand, they may also find evidence of a possible breach that does not directly relate to the allegation being investigated. If this happens, the Investigating Officer should tell the person they obtained the information from that they cannot investigate the possible breach as part of their existing investigation. The Investigating Officer should advise them that they are able to make a separate complaint to the Monitoring Officer.

## **3. Referring Cases Back to the Monitoring Officer**

- 3.1 During the course of an investigation, it may be necessary for the Monitoring Officer to consider whether the investigation should continue, for example, if:
- (a) Evidence suggests a case is less serious than may have seemed apparent originally and that a different decision might therefore have been made about whether to investigate it or not.
  - (b) It emerges during the investigation that the conduct under investigation was not conduct by the Subject Member in their role as a Member but rather in a private capacity.
  - (c) Evidence indicates something which is potentially more serious which should be referred to the police.
  - (d) The Subject Member has died, is seriously ill, has resigned from the authority, or is otherwise reasonably unable to take part in the process for the foreseeable future and it is considered that it is no longer appropriate to continue with the investigation.
  - (e) The Subject Member has indicated that they wish to make a formal apology or take other action which should resolve the matter.
- 3.2 In this context 'seriously ill' means that the Member has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This might be a terminal illness or a degenerative condition. The Investigating Officer would be expected to establish this from a reliable independent and authoritative source other than

the Subject Member. This would include where a member claims they are suffering from stress brought on by the investigation.

- 3.3 Ultimately it will be for the Monitoring Officer to conclude whether the investigation should continue. In reaching that decision, the Monitoring Officer may consult with the Independent Person before deciding to defer or end the investigation.
- 3.4 If the investigation has been deferred or ended the Subject Member and the complainant should be notified of the decision and where possible provided with timescales within which the matter will be dealt with if it has been deferred. This would not always be possible, however, particularly if the matter has been referred to the police.

#### **4. Deferring an Investigation**

- 4.1 An investigation should be deferred when any of the following conditions are met:
- (a) There are ongoing criminal proceedings or a police investigation into the Subject Member's conduct.
  - (b) The investigation might prejudice another investigation or court proceeding.
- 4.2 An investigation may also need to be deferred for any of the reasons set out in section 4.5 of Annex 1:
- 4.3 When it is clear that there is an ongoing police or other investigation, or related court proceedings, the Investigating Officer should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings.
- 4.4 If at any time during the investigation the Investigating Officer becomes aware of any circumstances that might require the investigation to be deferred, the Investigating Officer should notify the Monitoring Officer who should determine whether there should be a deferral. The Monitoring Officer may also wish to consult with the Independent Person.
- 4.5 In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another investigation or court proceedings. The Investigating Officer should highlight those areas where investigation may be possible in the investigation plan.
- 4.6 The Monitoring Officer or the Investigating Officer should ask the police, other relevant organisation or individual, in writing to keep them informed of the outcome of any police or other investigation, court proceedings or other relevant matter. Any important dates, for example of committal hearings should be noted in the investigation plan review.

- 4.7 A deferred investigation should be kept under regular review, in the interests of natural justice.
- 4.8 Once a decision is taken to begin the investigation again the Investigating Officer should notify in writing: the Subject Member; the complainant; and the relevant Independent Person.
- 4.9 The investigation plan should be reviewed in the light of the outcome of any police investigation or court proceedings.

## **5. The Draft Report**

- 5.1 On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT and CONFIDENTIAL') to the Monitoring Officer for review.
- 5.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'DRAFT and CONFIDENTIAL' and will detail:
- (a) The relevant provisions of the law and the relevant sections of the Code of Conduct.
  - (b) A summary of the complaint.
  - (c) The Subject Member's response to the complaint.
  - (d) Relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation.
  - (e) A list of any documents relevant to the matter.
  - (f) A list of those persons/organisations who have been interviewed.
  - (g) A statement of the Investigating Officer's draft findings of fact and reasons.
  - (h) The Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct.
  - (i) That the Investigating Officer will present a final report once they have considered any comments received on the draft.
- 5.3 Once the Investigating Officer has received any responses from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled 'FINAL and CONFIDENTIAL'.

## **6. Consideration of Investigating Officer's Final Report**

- 6.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.
- 6.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct; they will inform the Parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.
- 6.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either:
  - (a) Take no action; or
  - (b) Seek informal resolution; or
  - (c) Refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 3 to these Arrangements.

## **7. Confidentiality**

- 7.1 The procedures detailed in this Annex are all treated as confidential to those involved in the process. Some details (which would include names and addresses) may be personal data, subject to data protection laws, some content of statements or reports may be otherwise private or confidential or, may be potentially defamatory if published.
- 7.2 Whilst non-members are not covered by the Code of Conduct (e.g., members of the public, witnesses and non-member complainants) if, they do decide to publish details of the complaint they may expose themselves to liability in defamation (if information turns out to be untrue) or to other liabilities e.g., for breach of confidence, or for breach of data protection laws which could arise even where the information is true. Non-members may wish to seek their own legal advice.