

INVESTIGATION OF COMPLAINTS – INVESTIGATIONS AND HEARINGS PROCEDURE

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Why has this report come to the Audit and Governance Committee?

To ask Audit and Governance Committee to consider and agree a proposed detailed procedure investigations and hearings into complaints

Recommendations:

The Audit and Governance Committee are recommended to agree the proposed procedure for investigations and hearings.

1 Introduction

1.1 Section 28(11) of the Localism Act 2011 gives local authorities a duty to have in place arrangements for considering allegations that a member of the Council or a member of a town or parish council in Copeland has breached the Council's Code of Conduct for Members, and, in cases where an allegation is proven, for deciding what action if any to take.

1.2 The Council has already agreed a policy and procedure for initial assessment of allegations and how they will be determined, and has agreed a set of sanctions that can be imposed where an allegation is proven.

2 Proposals for Detailed Procedure on investigations and Hearings

2.1 Audit and Governance Committee now need to agree a detailed administrative procedure for how investigations will be conducted, including timescales, documentation etc., and how hearings themselves will be conducted to ensure transparency and fairness to all parties to an allegation. A proposed procedure, based on the procedures used by the former Standards Committee under the Local Government Act 2000, is attached at Appendix "A".

3 Conclusion

3.1 The proposed procedure is recommended for approval and adoption by Audit and Governance Committee.

Consultees: Chief Executive; Section 151 Officer; Chairman

Monitoring Officer comments: Included in report

S151 Officer comments: There is currently no provision for the additional costs of investigations which are anticipated to be between £2K and £5K each, it is recommended that a reserve of £10K is set up as part of the review of reserves being undertaken by the Executive and the level of this is reviewed annually .

EIA comments: No groups are advantageously or disadvantageously affected by the proposals in the report.

Appendix "A" – Proposed Procedure for Investigations and Hearings

Procedure for Local Investigation and Determination of Allegations About Personal Conduct of Council Members

Introduction

1. The investigation of allegations received by the Monitoring Officer concerning a breach of the Council's Code of Conduct, where an investigation has been completed by an Investigating Officer for the Council, will be governed by this procedure.
2. The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member. The allegation will be heard by the Hearings Panel, comprising the Chief Executive and the Monitoring Officer, in consultation with one or two Independent Persons and, where the Member is a parish councillor, one of the Parish Representatives (the Panel).

Pre-Investigative Process

3. Appointment of Investigating Officer

Upon receipt an instruction from an Assessment Hearing or Review Hearing to arrange an investigation into a complaint, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him/her to conduct an investigation of the matter and to report thereon to the Monitoring Officer. The Investigating Officer may be an Officer of the Authority, an Officer of another Local Authority, or an external Investigating Officer.

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

The Investigating Officer shall make every effort to complete the investigation within two months of receipt of his/her instruction from the Monitoring Officer. Should this not be possible the Investigating Officer shall report before that time to the Monitoring Officer, explaining in broad terms the reasons for the delay. The parties to this discussion will then mutually agree a further extension of time to complete the investigation.

4. Notification to the Member

The Monitoring Officer will notify in writing the Member against whom the allegation is made:

- ⇒ That the allegation has been referred to him for Investigation.
- ⇒ Of the identity of the Investigating Officer.
- ⇒ The nature of the complaint.
- ⇒ The relevant section of the Code of Conduct, which is alleged to have been contravened.
- ⇒ Unless the Complainant wishes to remain anonymous, the identity of the complainant.

5. Notification to the Person who made the Allegation

The Monitoring Officer will notify in writing the person who made the allegation of the appointment of the Investigating Officer.

6. Notification to Parish/Town Clerk

If the allegation is against a member of a Parish or Town Council the Monitoring Officer will notify in writing the Parish/Town Council Clerk of the appointment of the Investigating Officer.

Conduct of Investigation

7. Purpose of the Investigation

The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Monitoring Officer a report which would provide the Hearings Panel with sufficient information to determine whether the Member has acted in breach of the code, and where there has been a breach of the code, whether any action should be taken in respect of the Member or in consequence of the breach, and what any such action should be.

8. 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 Monitoring Officer and to enable the Hearings Panel to come to a considered decision on the allegation.

9. Additional Matters

Where, in the course of his/her investigation, the Investigating Officer becomes aware of any additional matter which appears to him/her to indicate a breach of a code by the Member other than the breach which he/she is currently investigating, the Investigating Officer shall notify the Monitoring Officer.

Where the additional matter indicates a breach of the Members' Code of Conduct by a member of a Council the Monitoring Officer will determine whether to report the additional matter to an Assessment Hearing;

10. On commencing an Investigation 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. The Investigating Officer may supplement or amend this list at any stage of the investigation.

11. Confidentiality

In carrying out these duties, the Investigating Officer will not disclose the facts of this investigation or any information received except as may be necessary to carry out the investigation. The Investigating Officer shall also remind each interviewee of the need for confidentiality and ask them to respect the confidentiality of the investigation. The Investigating Officer shall also ensure that the Data Protection Act is complied with.

12. Production of documents, information and explanations

- ⇒ In the course of the investigation, the Investigating Officer 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/its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.
- ⇒ In the course of the investigation, the Investigating Officer may require the Council or the Member to provide any document which is in his/its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.

13. Interviews

- ⇒ **Requesting attendance**
- ⇒ In the course of the investigation the Investigating Officer may request any person to attend and appear before him or otherwise provide any

information, document or explanation of the purposes of the Investigation, as he/she thinks necessary for the purpose of carrying out the investigation.

⇒ **Representation**

⇒ Any person who appears before the Investigation Officer may arrange to be accompanied at their own expense by a solicitor or friend.

⇒ **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.

14. Costs

The Investigating Officer may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, arrange for the Council to pay to any person who provides any document, information, advice or explanation in response to his/her request, such fees or allowances as he/she considers to be appropriate subject to the maxima set out by the Council.

15. The Draft Report

When the Investigating Officer is satisfied that he/she has sufficient information to satisfy the purpose of the investigation or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall consider whether to prepare a draft report setting out:

- ⇒ The details of the allegation;
- ⇒ The relevant provisions of the Code of Conduct;
- ⇒ The Member's initial response to notification of the allegation (if any);
- ⇒ The relevant information, advice and explanations which he/she has obtained in the course of the investigation;
- ⇒ A list of any documents relevant to the matter;
- ⇒ A list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;
- ⇒ A note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;

- ⇒ A statement of his/her draft findings of fact;
- ⇒ His/her conclusion as to whether the Member has or has not failed to comply with the Code and
- ⇒ Any recommendations which the Investigating Officer is minded to make to any Council concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code, for rectifying any deficiency in the Council's decision-making procedures or for preventing or deterring any breach of the Code 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 Council member, such recommendations would be recommendations which the Investigating Officer would recommend that the Audit and Governance Committee make to the Parish Council.

When deciding whether to produce a draft report the Investigating Officer should ask:

- ⇒ Are the facts in the matter complex and ambiguous?
- ⇒ Are the facts of the case dubious?
- ⇒ Do the parties expect to receive a draft report?

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 Monitoring Officer once he/she has considered any comments received on the draft report.

The Investigating Officer shall then send a copy of his/her draft report in confidence to the member and the person making the allegation, and request that they send any comments thereon to him/her within 14 days.

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 14 days.

16. The Final Report

If a draft report is produced, after the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his final report. In any event, the final report should

state that the report represents the Investigating Officer's final findings and will be presented to the Hearings Panel, 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 of telephone conversations, letters and notes of interviews with witnesses.

The Monitoring Officer shall then send a copy of the final report to the Member, advising that:

- ⇒ Where the final report concludes that there has not been a failure to comply with the Code of Conduct for Members, he/she will refer the report to the Hearings Panel for their consideration, and
- ⇒ 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 Hearings Panel for a formal hearing.

The final report shall be marked "final", be dated, cite any relevant legislation, summarise the allegation, the relevant section(s) of the Code of Conduct, set out the evidence, give reasoning and a finding of whether there has been a failure to comply with the Code of Conduct and that these are the Investigating Officer's final findings.

The Monitoring Officer shall ensure that, when the Investigating Officer's report is sent to the Hearings Panel, the report is also sent to:

- ⇒ The Member
- ⇒ The person who made the complaint;
- ⇒ The Clerk of any relevant Town or Parish Council

17. Where the Hearings Panel considers the report in accordance with the above it shall make one of the following findings:

- That it accepts the Investigating Officer's finding that the Member has not failed to comply with the Code of Conduct as set out in the allegation; or
- That the matter should be considered by the Hearings Panel.

18. Where the Hearings Panel finds as set out in Paragraph 17 above, 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:

The Member;

The Monitoring Officer of any other Local Authority of which the Member is also a member

The Parish Council, if the Member was also a member of a Parish or Town Council, and

The person who made the allegation.

19. Where the Investigating Officer's report contains a finding that the Member did fail to comply with the Code of Conduct, the Monitoring Officer shall arrange for the matter to be considered by the Standards Committee, and the hearing shall be conducted no later than 3 months from the date on which the Monitoring Officer received the final report of the Investigating Officer.

20. Arrangements for the Hearing

The Monitoring Officer will:

- ⇒ Confirm a date, time and place for the hearing, which must be within three months from the issuing of the final report;
- ⇒ Confirm the main facts of the case that are agreed;
- ⇒ Confirm which witnesses will be called by the parties;
- ⇒ Provide copies of any written evidence to the relevant parties;
- ⇒ Provide the parties with a copy of the proposed procedure for the hearing, specifying which parts of the matter, if any, may be considered in private; and
- ⇒ Ensure the appropriate information is provided to everyone involved in the hearing at least 14 days before the proposed date of the hearing.

21. The Hearing

The Panel shall decide, on a balance of probabilities, whether the complaint(s) is or are upheld upon the evidence presented to it. The Hearing will be conducted in private.

22. Procedure at the Hearing

The purpose of the hearing is to determine the facts at issue and what action, if any, should be taken. An inquisitorial approach will be adopted by the Panel in seeking information and clarifying facts and issues. The Chairman will control the procedure and evidence presented at the hearing, including the questioning of witnesses.

During the course of a hearing the Hearings Panel may decide that it needs additional information in order to reach a decision. However, it shall only make this request once per case.

The procedure will be as follows, subject to the Chairman being able to make changes as he or she thinks fit in order to ensure a fair and efficient hearing.

23. Presentation by the Investigating Officer

The Investigating Officer will present the evidence which is relevant to the matter. The Investigating Officer may introduce any witness required to substantiate any matter contained in the report which has been disputed and present any other relevant evidence.

The Member or his/her representative may ask questions of the Investigating Officer or any witness.

The Panel, Independent Person(s) and, where applicable, parish representative, may ask questions of the Investigating Officer or any witness.

24. Presentation by the Member

The member or his/her representative will present the evidence which is relevant to the matter. The Member or his/her representative may introduce witnesses or present any other relevant evidence.

The Investigating Officer may ask questions of the Member, or any witness.

The Panel, Independent Person(s) and, where applicable, parish representative, may ask questions of the member or any witness.

The Investigating Officer and then the Member or his/her representative will be given the opportunity to sum up.

25. Decision by the Panel

The Panel will consider in private all the evidence which it heard in order to establish its findings of fact;

At any stage in the consideration of the matter the Panel may return to ask further questions of the Investigating Officer or the Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

At the conclusion of their deliberations the Chairman will advise the member and the Investigating Officer of the findings and whether the Code of Conduct has been breached.

If the Panel concludes that the member has acted in breach of the Code representations will be invited from the Investigating Officer and the Member as to what action, if any, it should take. The Panel may ask questions of the Member and the Investigating Officer.

26. The Panel, having heard any representations will consider what actions, if any to take.

The findings that the Panel may make are:

- ⇒ That there has been no breach of the code;
- ⇒ That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken;
- ⇒ That the Member has failed to comply with the Code of Conduct and that one of the sanctions agreed by the Council should be imposed.

The Chairman will announce the decision of the Panel, the action, if any, it is proposed to take and the reasons for the decision.

The Panel will then consider in open session whether there are any recommendations which should be made by any Authority concerned arising from the consideration of the allegation.

Hearing Procedure

1. The Chairman introduces the parties.
2. The Chairman explains the procedure.

3. Any procedural issues are determined.
4. The Investigating Officer presents his report – he may call witnesses.
The Member may ask questions.
The Panel, Independent Person(s) and, where applicable, parish representative, may ask questions
5. The Member presents his case – he may call witnesses.
The Investigating Officer may ask questions.
The Panel, Independent Person(s) and, where applicable, parish representative, may ask questions.
6. The Investigating Officer and the Member sum up their cases.
7. The Panel decides upon the disputed facts.
8. The Panel announces its findings of fact and its determination upon the breach of the Code of Conduct.
9. If appropriate the Panel invites submissions as to any penalty and the Panel , Independent Person(s) and, where applicable, parish representative, may ask any questions of the parties.
10. The Panel decides upon the sanction.
11. The Chairman announces the decision of the Panel upon the penalty and states that the decision will be confirmed in writing and sent to the parties as soon as is practicable.

Post Hearing

The Monitoring Officer prepares the decision letter which is passed to the Chairman of the Panel for approval. The draft is dispatched within five working days of the hearing. The comments of the members are made within five working days of receipt.

The Monitoring Officer prepares any revised draft and submits it to the Chairman for signature.

The signed decision is dispatched to the parties within fifteen working days.