

BARROW BOROUGH COUNCIL

PROCEDURE FOR INVESTIGATION OF MISCONDUCT COMPLAINTS

INTRODUCTION

1. This procedure applies to the investigation of misconduct complaints where a decision has been taken to refer for formal investigation.

APPOINTMENT OF INVESTIGATING OFFICER

2. Once a decision has been made to refer a complaint for local 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 Monitoring Officer. The Investigating Officer may be an Officer of the Council, the 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.

NOTIFYING THE MEMBER

3. The Monitoring Officer shall notify the Member in writing:
 - i. that the allegation has been referred for formal investigation;
 - ii. the identity of the person making the allegation [unless 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 procedure which will be followed in respect of the allegation; and
 - v. of the identity of the Investigating Officer.

NOTIFYING THE PARISH OR TOWN COUNCIL CLERK

4. 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

5. 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 3 i, iii – v.

CONDUCT OF INVESTIGATION

6. [a] 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 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 any 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 Monitoring Officer and to enable the Monitoring Officer to come to a considered decision on the report.

[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 a member of the principal authority]* 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 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, in consultation with the Independent Person, whether to request the Investigating Officer to investigate the additional matter;
- ii. *[where the additional matter constitutes an apparent breach of the Authority's protocols but not a breach of the Code of Conduct by a Member of the principal authority]* 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 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, in consultation with the Independent Person, will then take a decision whether to request the Investigating Officer to consider the matter and report to the Monitoring Officer as appropriate.
- 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. The Investigating Officer may supplement or amend this list at any stage of the investigation.

[e] Production of Documents, 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 purposes 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 their own expense by a Solicitor 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 be made 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 Monitoring Officer 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 send any comments thereon to him/her within 14 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 14 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 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 will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient he/she shall then:
 - 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, will write to the Complainant and the Member concerned and to the Parish Council, where the complaint relates to a Parish Councillor, notifying them that he/she is satisfied that no further action is required and provide a copy of the final report.
 - 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 either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.
 - [c] If the report is dealt with by local resolution then that is the end of the matter.
 - [d] If it is determined that there should be a local hearing then the procedure for Local Hearing will apply.