



**Appendix 3**

**Durham County Council**

**Durham Police Authority**

**County Durham and Darlington Fire and Rescue Authority**

**Procedure for Local Investigation of Referred Complaints**

**Introduction and Summary**

This document sets out the procedure which will be followed in the local investigation of allegations of misconduct by Members. The procedure applies to alleged breaches of the Code of Conduct for Members and (in the case of the case of the County Council) to the investigation of allegations of breaches of the Authority's local protocols in so far as they apply to Members.

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In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the Member has failed to comply with the Code of Conduct for Members (or, where relevant, a local protocol), and upon any consequential action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member on the balance of the information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision.

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## 1 Interpretation

- (a) 'Member' means the member of the ~~Authority~~ who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Member's representative.
- (b) 'Investigating Officer' means the Ethical Standards Officer (ESO) who referred the report to the Authority (and his or her nominated representative) or, in the case of matters that have been referred for local investigation, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her representative).
- (c) "The Matter" is the subject matter of the Investigating Officer's report.
- (d) 'The Standards Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing, unless the context indicates that it refers only to the Standards Committee itself.

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## 2 Notification of the Reference of Allegation to the Monitoring Officer

- (a) Appointment of Investigating Officer

Upon an allegation being referred ~~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 report thereon to the Authority's Standards Committee. The Investigating Officer may be an officer of the Authority, an officer of another authority, or an external Investigating Officer.

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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.

- (b) Notification to the Member

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

- (i) that the allegation has been referred to him/her for investigation ~~;~~
- (ii) of the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);

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- (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.

The Monitoring Officer shall provide the Member with a copy of any report received from the Ethical Standards Officer.

**(c)** Notification to the Person who made the Allegation

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 in sub- paragraphs (b) (i) – (iv) and (vi) above

**(d)** Initial response of the Member

In notifying the Member of receipt of the allegation, the Monitoring Officer shall request the Member to respond to the Investigating Officer in writing within 14 days of notification as follows:

- (i) advising 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) listing 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) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of a person or an organisation whom the Member would wish the Investigating Officer to interview in the course of any investigation of the allegation, and

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**Deleted:** At the same time as notifying the Member, the Monitoring Officer will notify each member of the Standards Committee in writing of the matters set out in sub-paragraphs 2(b), (i), (ii) and (iv) above, together with the name of the Member to whom the allegation relates, on the understanding that such information will be treated in the strictest confidence.

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- (iv) providing the Investigating Officer with any information which the Member would wish the Investigating Officer to seek from any person or organisation.

(e) Supporting information from the person who made the allegation

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In notifying the person who made the allegation as above, the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days:

- (i) listing 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) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of a person or an organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
- (iii) providing the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

### 3 Conduct of investigation

(a) Purpose of the Investigation

The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Standards Committee a report which, together with any report provided by the Ethical Standards Officer, would provide the Standards 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 any such 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 Standards Committee and to enable the Standards Committee to come to a considered decision on the allegation.

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(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 report the matter to the Monitoring Officer, who will determine how the matter is to proceed.

(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 2(e) (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 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 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, or request any person or organisation to provide any document or information which is in his/its possession or control, or provide any explanation, as he/she think 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/its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.

(f) Interviews

(i) 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 for the purpose of paragraph 3(e), as he/she thinks necessary for the purposes of carrying out the investigation.

(ii) Representation

Any person who appears before the Investigating Officer 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.

(g) Reference back to the Standards Committee, (allegations of breach of the Code of Conduct only)

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At any point in the course of the investigation, if the Investigating Officer is of the opinion

- (i) that the seriousness of the matters which he/she is investigating, including any additional matters identified under Paragraph 3(c) above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, or
- (ii) that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter,

he/she may, after consulting the Monitoring Officer, suspend his/her investigation and the Monitoring Officer shall report back to the Assessment Sub Committee.

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**Deleted:** Where the Ethical Standards Officer does resume his/her investigation, the Monitoring Officer shall ensure that the Member concerned, the person who made the complaint, and the Members of the Standards Committee are informed of such resumption. Where the Ethical Standards Officer declines to resume his/her investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his/her investigation.

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## 4 The Report

- (a) When the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in Paragraph 3(a), or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a report setting out:
- (i) the details of the allegation;
  - (ii) the relevant provisions of statute and of the Code of Conduct (or 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 manner in which they have failed to co-operate;
  - (viii) a statement of his/her findings of fact;
  - (ix) his/her conclusion as to whether the Member has or has not failed to comply with the Code of Conduct (or a local protocol) and
  - (x) any recommendations for reviewing or reconsidering any decision which was the subject of a 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,

and shall send the report to the Monitoring Officer.

- (b) Where the Investigating Officer considers it appropriate having regard to the complexity of the matter, the report referred to in sub-paragraph (a) above shall initially be prepared in draft form. In this case the 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 Standards Committee 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 also 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. 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.
- (c) The report should state that the report represents the Investigating Officer's final findings and will be presented to the Standards 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 letters or records of telephone conversations or interviews with witnesses;
- (d) The Monitoring Officer shall then send a copy of the 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 (or a local protocol), he/she will refer the report to the Standards Committee for their consideration, and
  - (ii) where the final report concludes that there has been a failure by the Member to comply with the Code of Conduct (or a local protocol), he/she will refer the report to the Standards Committee for a formal hearing.
- (e) The Monitoring Officer shall ensure that, when the agenda for the Standards Committee is sent out to Members of the Standards Committee, including the final report, the agenda and the report are also sent to:
- (i) The person who made the complaint: Investigating together with a note explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations, and the procedure for these events.

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- (f) Where the Standards Committee considers the report in accordance with sub-paragraph d(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 as set out in the allegation;
  - (ii) (where relevant) 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 Standards Committee, conducted in accordance with the Authority's adopted Procedure for Local Determination Hearings.
- (g) Where the Standards Committee finds as set out in sub-paragraph (f)(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 Standards Committee, if the finding was made by a Sub-Committee of the Standards Committee;
- (iii) The Standards Committee of any other local authority of which the Member is also a member and
- (iv) The person who made the allegation

and shall ask the Member whether he objects to the publication of a notice of the finding in at least one local newspaper, and shall arrange for the publication of such a notice unless the Member so objects.

- (h) Where the Standards Committee finds as set out in sub-paragraph (f)(iii) above (that the matter should be considered at a full hearing) or where 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:

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(i) The hearing shall be conducted no sooner than 14 days from, and no later than 3 months from the date on which the Monitoring Officer received the report of the Investigating Officer;

and

(iii) the Investigating Officer shall be responsible for presenting the report to the Standards Committee and introducing any witnesses whom he/she considers that the Standards Committee should hear in order to be able to give the matter proper consideration.

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