

SHROPSHIRE AND WREKIN FIRE AUTHORITY

PROCEDURE FOR LOCAL INVESTIGATION OF REFERRED COMPLAINTS

1. Introduction

- 1.1 This document sets out the procedure to be followed in the local investigation of allegations of misconduct by Members. This procedure applies to alleged breaches of Shropshire and Wrekin Fire Authority's Code of Conduct for Members. The Fire Authority has also resolved that the same procedure shall apply to the investigation of allegations of breaches of the Fire Authority's local protocols, in so far as they apply to Members and co-opted Members with voting rights.
- 1.2 The Local Government Act 2000 enables an Ethical Standards Officer (ESO) from the Standards Board for England, following receipt and consideration of an allegation that a Member of an Authority has breached the Authority's Code of Conduct for Members, to refer the allegation to that Authority's Monitoring Officer for investigation. This document sets out the procedure for such an investigation. The ESO may, alternatively, decide that he/she will retain investigation of the complaint but subsequently, on completing the investigation, may decide to refer the determination as to whether a breach of the Code of Conduct has taken place to the Standards Committee for the Authority concerned. A separate procedure exists for the local determination process and is not included in this document.
- 1.3 The ESO will be subject to certain guidance in deciding whether or not it is appropriate for the complaint to be investigated locally and is unlikely to refer the case, if there were evidence that a local investigation would be perceived as unfair or biased or there are any relevant local political issues, which may have a bearing on the investigation.
- 1.4 An ESO may refer the matter for local investigation at any point before he/she completes the investigation into the allegation, i.e. he/she does not have to make the referral for local investigation only at the outset of the investigation process – he/she can commence the investigation themselves and decide before the conclusion to refer it to the Authority concerned. When referring an allegation, the ESO will forward a copy of the allegation to the Monitoring Officer, along with any other significant information he/she considers appropriate. At that point the ESO will notify the Member, who is the subject of the allegation and the person, who made the complaint.

2. Interpretation

- 2.1 "The Fire Authority" means the Shropshire and Wrekin Fire Authority.

- 2.2 “The Member” means the Member of the Fire Authority, who is subject to the allegation from which the investigation is centred, including any co-opted Members with voting rights.
- 2.3 “The Standards Board” means the Standards Board for England.
- 2.4 “ESO” means The Ethical Standards Officer employed by the Standards Board for England.
- 2.5 “The Monitoring Officer” means the Monitoring Officer of the Fire Authority.
- 2.6 “The Investigating Officer” means the person instructed by the Monitoring Officer to conduct the local investigation into the alleged breach of the Code of Conduct for Members, which can include the Monitoring Officer herself, the Deputy Monitoring Officer, any other appropriate officer of the Borough of Telford & Wrekin or the Fire Authority, or any independent external investigator.
- 2.7 “The Code of Conduct” means the Code of Conduct adopted by the Fire Authority.
- 2.8 “The Standards Committee” means the Standards Committee of the Fire Authority.

3. Notification of Referral of Allegation to the Monitoring Officer

- 3.1 Upon the receipt of an allegation from an ESO, the Monitoring Officer shall, unless otherwise directed by the ESO, e.g. in the event that the ESO directs the Monitoring Officer to make recommendations to the Standards Committee about wider issues raised by the allegation, undertake the following procedures:
- (i) Notify in writing the Member against whom the allegation is made:
Confirming that the allegation has been referred to her for local investigation and determination,
Stating the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk),
Outlining the conduct, which is the subject of the allegation and the section(s) of the Code of Conduct or local protocol, which appear to be relevant to the allegation,
Outlining the procedure, which will be followed in respect of the allegation; and
Confirming the identity of the Investigating Officer.
 - (ii) Appoint an Investigating Officer, instructing him/her to conduct the investigation of the allegation and to report to the Fire Authority’s Standards Committee. The Investigating Officer may be the Monitoring Officer herself, the Deputy Monitoring Officer, another officer of the Borough of Telford & Wrekin Authority, an officer of the Fire Authority or of another Local Authority, or another external Investigating Officer. The Investigating Officer may appoint any such person to assist him/her in the conduct of their investigation and may obtain such professional advice as he/she deems necessary during the investigation process.
 - (iii) Notify the Standards Committee by way of confidential memo to the Chair and all Members. The memo will not name the complainant or the Member against whom the allegation has been made. The memo containing the information sent to the Members of the Committee is not to be considered at a Standards Committee meeting. The memo will be brief, so as not to prejudice any future proceedings during the investigation or any subsequent local determination.

- (iv) The Monitoring Officer will write to the person, who made the allegation, notifying him/her of the same details that have been set out to the Member, who is the subject of the allegation (set out Paragraph 3.1 (i) above).
- 3.2 When notifying the Member, against whom the allegation has been made (Paragraph 3.1.1 above), the Monitoring Officer will also include in the correspondence a request that the Member concerned provides a response in writing within 21 days of notification as follows:
- (i) Confirmation to the Investigating Officer as to whether the Member admits or denies the breach of the Code of Conduct, which is the subject of the allegation, and in doing so indicating whether any of the facts set out in the notification to the Member are disputed (and setting out a reason for disputing any of those facts).
 - (ii) Listing any document, which the Member would wish the Investigating Officer to take into account in any investigation of the allegation, and including, where possible, copies of such documents. Alternatively, informing the Investigating Officer where any such documents may be located/inspected.
 - (iii) Providing the Investigating Officer with the name, address, and telephone number (or other appropriate contact details) of any person(s) or organisation(s), whom the Member would wish the Investigating Officer to interview in the course of the investigation of the allegation.
 - (iv) In the event that the Member wishes to appoint a representative to act on his/her behalf during the investigation, to provide the name and address of any such representative and indicating whether or not further contact (including correspondence, telephone calls etc.) should be made directly to, and only with, that representative or whether contact should continue to be maintained with the Member himself/herself.

4. Conduct of the Investigation

4.1 During the course of the investigation the Investigating Officer will:

- (i) Give due consideration to the obligations of the Fire Authority under the Data Protection Act 1998, the Human Rights Act 1998, and other relevant legislation, and any guidance from the Standards Board in that regard.
- (ii) Not investigate evidence of any breaches of the Code of Conduct that are uncovered as part of the investigation, which do not relate directly to the investigation itself. In that instance the Investigating Officer should ask the person from whom he/she has obtained the information to make an allegation to the Standards Board, or make an allegation himself/herself.
- (iii) Suspend the investigation and refer the matter back to the Monitoring Officer (if the Monitoring Officer is not conducting the investigation herself), if the Investigating Officer becomes aware of a conflict of interest during the course of the investigation. In that instance the Monitoring Officer will appoint a suitable alternative Investigating Officer to continue the investigation.
- (iv) Gather all appropriate information, documentation, and other evidence, which will be sufficient to prepare and present a report to the Standards Committee to enable that Committee to determine whether the Member, who is the subject of the allegation, has acted in breach of the Code of Conduct.

- (v) Suspend the investigation and refer the matter back to the Monitoring Officer (if the Monitoring Officer is not conducting the investigation herself), if for any other reason it is considered inappropriate to continue with the investigation. In such an instance, the Monitoring Officer shall then decide whether an alternative Investigating Officer is to be appointed, or whether the matter should be referred back to the Ethical Standards Officer for guidance (as to whether the investigation should continue to be undertaken locally or should revert to the Standards Board to be continued and concluded).

In the event that a Monitoring Officer refers the complaint back to the Standards Board the reason for the referral back should be set out clearly. The Ethical Standards Officer, who has the responsibility for the conduct of the matter, will respond within 21 days of receiving the correspondence, confirming whether the matter is to be retained by the Standards Board to conclude the investigation, or to be referred back to continue the local investigation.

- (vi) Ask all those, who are contacted, or in any other way involved as part of the investigation, not to disclose information that they have in confidence as part of the investigation in order to preserve the integrity of the investigation. Also, to remind Members involved in the investigation of their obligation under paragraph 3 (a) of the Code of Conduct, i.e. not to disclose information that they have received in confidence.

5. Investigation Procedure

5.1 Production of documents, information and explanations in the course of an 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 documentation or information, which is in their possession or control, or provide any explanation as they think necessary, for the purpose of carrying out the investigation. The Investigating Officer has the discretion to authorise a payment by the Fire Authority to any person who, as a result of the investigation, incurs expenses in providing information, documentation etc.

5.2 Interviews in the course of the investigation

The Investigating Officer may request any person to attend and appear before him/her or otherwise provide advice for the purpose of obtaining documents, information or explanations, or other advice from any person, who is in his/her opinion qualified to assist.

5.3 Telephone interviews

The Investigating Officer will not conduct any interviews by telephone, unless he/she has obtained, prior to the interview, the expressed permission of the interviewee.

5.4 Representation

Any person, who is interviewed or contacted for information as part of the investigation, may arrange for representation by a solicitor or friend at his/her own expense. *Any Member, against whom an allegation of breach of the Code of Conduct has been made, person, who is involved in the investigation, may apply for an indemnity in respect of their representation costs. If, however, that Member is ultimately found to be in breach of the Code, then he / she is legally required to reimburse to the Fire Authority or its insurer the sums claimed under the indemnity.*

5.5 Interview notes

The Investigating Officer will ensure that a handwritten note or transcript is made in respect of any interview undertaken as part of the investigation. Such notes or transcripts should be forwarded to the interviewee as soon as practicable after the conclusion of the interview with a request that it be signed (and amended by the interviewee, if they think appropriate) to confirm that it is a correct record of the interview.

6 Completing the Investigation and Providing the Draft Report

- 6.1 The Investigating Officer may conclude the investigation when he/she believes that there is sufficient information to meet the requirements set out in 4.1 (iv) above or when he/she has obtained such information as is likely to be reasonably capable of being obtained.
- 6.2 On reaching the point set out 6.1 above the Investigating Officer shall prepare a draft report containing the following:
- (i) A marking of “draft”, and “confidential”
 - (ii) The date of the Draft Report
 - (iii) The nature of the initial allegation
 - (iv) The relevant statute, section of the Code of Conduct and/or local protocol
 - (v) Details of the investigation process, information about the persons/organisations contacted, the way in which enquiries were made, the method and location for any interviews undertaken, and confirmation as to whether payments were made in respect of expenses of those subject to the investigation
 - (vi) A copy of all supporting information
 - (vii) The Member’s initial response to the notification of the allegation
 - (viii) Details of any person or organisation, who has failed to co-operate during the investigation, and any outstanding information or documentation, which has not been provided
 - (ix) The facts relied upon
 - (x) The conclusion reached by the Investigating Officer confirming whether, in his/her view, there has been a breach of the Code of Conduct, local protocol or as appropriate, together with supporting reasons for reaching his/her conclusion
 - (xi) Any recommendations to the Fire Authority in order to rectify any deficiency in the Authority’s decision-making procedures or for the prevention or deterring of any breach of the Code of Conduct or local protocol in the future, or to remedy the position any person, who may have suffered detriment or injustice as a result of the breach (if a breach is found)

- (xii) Confirmation that the Draft Report does not represent the final findings and these may be subject to change after the consultation period, which follows the distribution of the Draft Report

7. Procedure following Production of the Draft Report

- 7.1 On the issuing of a Draft Report, copies are to be sent to the Monitoring Officer (if the Monitoring Officer is not conducting the investigation), to the Member, who is subject to the allegation, and to the complainant, who made the allegation, for comment.

8. The Final Report

- 8.1 After the expiry of the time limit for providing a response (or reasonable extension to that time limit allowed by the Investigating Officer) the Investigating Officer may make amendments as appropriate (following any comments received) and should then produce the final version of the report.
- 8.2 The final report should include the following:
 - (i) All of the contents required for the initial draft report as referred to at paragraph 6 above (with the exception of removing the words draft and confidential and re-dating)
 - (ii) Confirmation that it is the final report
 - (iii) Copies of any documents, which the Investigating Officer has relied upon in reaching his/her conclusions. This will include background documents of telephone conversations, letters and notes of interviews with witnesses together with a chronology of events.
- 8.3 The final report should be sent to the following parties:
 - (i) The Member who is subject of the allegation
 - (ii) The person who made the allegation
 - (iii) All Members of the Standards Committee
 - (iv) The Ethical Standards Officer who referred the matter for investigation
- 8.4 If the investigation has found that there has been no breach of the Code of Conduct, covering correspondence should explain to all parties, who received the report, that the report will be sent to the Standards Committee for consideration. If there is a finding in the report that there has been a breach of the Code of Conduct, covering correspondence with the report to all parties should make it clear that there will be a hearing into the allegations.
- 8.5 The report should be accompanied by information explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations, and the procedure for these events.

9. Consideration of the Final Report

- 9.1 If the report finds that there has not been a breach of the Code of Conduct, the report should be considered by the Standards Committee at the earliest opportunity and in any event to allow sufficient time (if the Standards Committee disagrees with the findings of the report and does believe that there may have a breach of the Code of Conduct) to allow a Final Hearing to take place within 3 months of the date of the report. For the purposes of this meeting, the Standards Committee will appoint an Independent Member of the Committee to chair the meeting.
- 9.2 If the Standards Committee agrees with the findings of the report and decides that the Code of Conduct has not been breached, the Monitoring Officer will as soon as practicable after the meeting arrange for a notice to that effect to be published. The notice will state the Standards Committee's finding and the reasons for it. In such an instance the notice will be passed to local newspapers, unless the Member involved requests that this is not to be done. The Monitoring Officer will be responsible for writing to the Member concerned in such an instance and request written confirmation of his/her wishes in that regard.
- 9.3 If the Standards Committee decides that there is a case to answer, the matter will then be referred for a final determination on whether the Code of Conduct was breached and at that point the procedure for local determination will be followed.
- 9.4 If the Standards Committee disagrees with a finding that there has not been a breach of the Code of Conduct, or alternatively if the report concludes that there has been a breach of the Code of Conduct, then it must be referred to the Standards Committee or an appointed sub-group of the Committee for determination. The hearing must be held within 3 months of the issuing of the final report and must be held in accordance with the appropriate statutory regulations and guidance, and the adopted local procedure, approved by the Standards Committee.