

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

18 MAY 2009

COMPLAINT INVESTIGATION PROCEDURE

1.0 INTRODUCTION

- 0.1 North Yorkshire County Council (“the Authority”) has adopted a Code of Conduct for Members (attached at Appendix 1), based on the statutory national model. The Code applies to the Members of the Authority and voting co-opted Members on Authority Committees, eg the independent Members on the Authority’s Standards Committee, and the phrase “Member” within this procedure refers to all such Members.
- 0.2 The Standards Committee (England) Regulations 2008 provide for the local receipt, assessment, investigation and determination of complaints that Members may have breached the Code of Conduct, by local standards committees.
- 0.3 Consequently, if someone (“the complainant”) wishes to complain about the conduct of a Member of North Yorkshire County Council (“the subject Member”), s/he must submit their complaint, in writing, to:

The Standards Committee
c/o The Monitoring Officer
North Yorkshire County Council
County Hall
Racecourse Lane
NORTHALLERTON
North Yorkshire
DL7 8AD

- 0.4 The Standards Committee can only deal with complaints about the behaviour of a Member and cannot deal with complaints about things that are not covered by the Members’ Code of Conduct. A complaint to the Committee must be about why the complainant thinks a Member has *not followed the Code*.
- 0.5 The Standards Committees will not look at complaints that are about:
- people employed by the Authority;
 - incidents that happened before a Member was elected/co-opted/appointed or after they have resigned or otherwise cease to be a Member;
 - incidents that happened before the Authority adopted the Code of Conduct;
 - the way the Authority conducts or records its meetings;
 - the way the Authority has or has not done something;
 - decisions of the Authority or one of the services it provides. In this case, the complainant should ask how to complain using the Authority’s own complaints system.

- 0.6 When submitting a complaint that a Member has breached the Code of Conduct, complainants should provide the following written details:
- the complainant's name, address and other contact details;
 - the complainant's status, eg member of the public, fellow Member or Officer;
 - who the complaint is about and the authority or authorities that the Member belongs to;
 - details of the alleged misconduct including, where possible, dates, witness details and other supporting information;
 - where possible, the parts of the Code which have been breached.
- 0.7 The complainant should set out the complaint clearly and provide at the outset all supporting information s/he wishes to be considered.
- 0.8 The Standards Committee has established various Sub-Committees, each chaired by an independent Member, to deal with the different stages in the complaints process:
- i. a Complaint Assessment Sub-Committee ("Assessment Sub-Committee"), to receive and assess complaints that Members may have breached the Code;
 - ii. a Complaint Review Sub-Committee ("Review Sub-Committee"), to review Assessment Sub-Committee decisions to take no further action on complaints, where requested to do so by complainants; and
 - iii. a Complaint Determination Sub-Committee ("Determination Sub-Committee"), to consider investigation reports and conduct hearings determining complaints, following investigation;

with fixed membership and substitute lists.

- 0.1 Complaints will be assessed and reviewed in accordance with the Standards Committee's local Assessment Criteria (attached at Appendix 2) which have been agreed by the Standards Committee and which will be periodically reviewed by the Committee.
- 0.2 The Standards Board for England ("SBE"), an independent, national body, is a key part of the ethical framework, providing advice and guidance to authorities on the framework and acting as a 'light touch' regulator. The Board may still investigate certain, more serious, complaints in particular, limited circumstances. The Standards Board's website (www.standardsboard.gov.uk) contains further information about the ethical framework.

2.0 SCOPE OF PROCEDURE

- 2.1 This procedure shall be followed by the Monitoring Officer and any Officer appointed to carry out a local investigation. It is based upon the advice given in the Standards Board for England publications "Local Investigations and Other Action" and "How to conduct an investigation".
- 1.2 The procedures for the initial assessment and, if required, review of complaints and for the determination of complaints are set out in separate protocols.

- 2.3 All relevant legislation must be followed and SBE Guidance taken in to account in dealing with the investigation of complaints.

3.0 CONFLICTS OF INTEREST AND DELEGATION OF INVESTIGATIONS

3.1 Monitoring Officers have a number of roles in relation to the Code of Conduct including advising Members about conduct issues; dealing with cases of alleged miss conduct referred to them; advising subject members; and providing advise to the Standards Committee. Involvement in these roles may create a potential conflict of interest, for example, it is likely that the conflict of interest would arise if the officer who had advised a member on an issue also asked to investigate a related allegation against that member. In such circumstances, another person should be appointed to carry out the investigation. SBE Guidance is clear, however, that an Officer who has advised the Sub-Committee dealing with initial assessment of a complaint or the Sub-Committee dealing with a review decision would not prevent that Officer from carrying out an investigation into the case.

3.2 Under Section 82(a) of the Local Government Act 2000, the Monitoring Officer can delegate functions, including investigations, to their Deputy or to any other named individual. The Monitoring Officer should, however, maintain the function of overseeing the investigation. Under Section 82(a) the other Officer carrying out the investigation has the same right to support from the Local Authority as has the Monitoring Officer.

- a) 3.3 When appointing an Officer to carry out an investigation on their behalf, the Monitoring Officer should record the scope of the delegation in writing and keep this on the investigation file. This is to ensure that there is no confusion concerning the role and the authority of the person delegated to conduct the investigation. It should make clear who is responsible for preparing the draft and final reports as, if the Monitoring Officer intends to advise the Standards Committee at the hearing, they should avoid being involved in the preparation of the investigation report. The Monitoring Officer may, however, wish to reserve the right to decide when a report is of an acceptable quality to be put to the Standards Committee.

3.4 The Monitoring Officer should inform the relevant parties when they appoint an investigation officer, so that relevant parties know who is dealing with the case and in case they need to provide the investigator with more information.

4.0 CONFIDENTIALITY

4.1 Section 63 of the Local Government Act 2000 as amended, limits the circumstances where information obtained by an ethical standards officer or a monitoring officer during an investigation can be disclosed. Any person who discloses information in breach of Section 63 is guilty of a criminal offence. The legal parameters are as follows.

You should not disclose information obtained in an investigation unless:

- the disclosure will assist ethical standards officers to perform their statutory functions
- the disclosure will assist the monitoring officer or standards committee to perform their statutory functions
- the person who the information relates to gives you permission to disclose it
- the information has already lawfully been made public
- the disclosure is made for the purposes of criminal proceedings in the UK
- you are required to do so by a court or other similar body
- the disclosure is to one of the public bodies listed in Section 63(1) of the Local Government Act 2000 for the purpose of their functions

Any draft report that you issue on the outcome of the investigation should be marked as confidential. This is to preserve the integrity of any further investigation that you may need to undertake.

An ethical standards officer might refer an allegation to you part-way through an investigation into that allegation. If this happens, under Section 63 of the act, they are allowed to disclose any information that they have obtained during the investigation to enable you to carry out your duties. However, there may be circumstances in which the ethical standards officer will be unable to disclose information. An example of this is where the Secretary of State has advised them that the disclosure would not be in the public interest.

- 4.2 In some circumstances, maintaining the confidentiality of an investigation can be difficult. However, it is important that you take all reasonable steps to maintain the confidentiality of your investigation, as failure to do so may compromise the integrity of your investigation.

Here are some practical steps for maintaining confidentiality:

Mark all of your letters, transcripts and reports as confidential.

Outline the legal restrictions on the disclosure of information in any letter that you send. However, you must clearly inform members in writing that they can appoint a solicitor, or other person, to act as their representative.

You must also clearly inform them that they can disclose any relevant document to this representative.

You should state that their representative should not be someone who may be involved in the investigation.

It is important that you make it clear to all parties that they should make any approach to witnesses in writing. This is to avoid confusion that might arise about the investigative process.

When arranging interviews ask interviewees to identify the name of any person who is accompanying them to the interview. Also ask them to state what their relationship is to the interviewee. You should explicitly state, in writing, that they should not be accompanied by anyone who may be called as a witness in the investigation.

If you think it is possible that witnesses may discuss their testimonies with each other, you should not send the transcripts of any interviews until all of the interviews have been concluded. This may mean that you send interview transcripts out with the draft report.

Where you are interviewing a number of people who have close relationships with one another, it may be prudent to interview them immediately after each other. This reduces any opportunity for collaboration.

- 4.3 If confidentiality is breached write to the party reminding them of the confidentiality requirements and, if they are a member, of their duties under the Code of Conduct.

If you have evidence that information was disclosed to a party prior to their interview, you can take this into account when evaluating the reliability of the witness's evidence.

If the disclosure was made by a member you can consider making a formal complaint about their conduct.

If you consider that the disclosure was substantial you may want to take legal advice on whether to refer the matter to the police.

5.0 PLANNING THE INVESTIGATION

5.1 An Investigation Plan should be drawn up at the start of the investigation. Appendix 1 to this protocol is an Investigation Plan template drawn from the SBE Local Investigations Toolkit. The following areas should be covered in the plan:-

- The complaint made against a subject member (it may be necessary to seek clarification from the complainant.)
- The paragraphs of the Code of Conduct that may have been breached (it is not necessary to accept the complainants interpretation of what paragraphs may have been breached). It may be helpful to break down each potential failure to comply with the Code into the component parts of each provision.
- The facts which need to be determined to establish if the Member breached the Code including:-
 - Facts which would establish if the conduct happened as alleged.
 - Facts that would need to be proven to show that the conduct constituted a breach of the Code.
 - Facts which might aggravate or mitigate the alleged breach, for example, provocation or an apology.
 - Evidence that has been supplied by the complainant.
 - How required evidence is to be obtained.
 - Expected timescales for the investigation.

5.2 If, at any stage in the investigative process, there are significant changes to any of the above areas, an investigation plan review may need to be completed. A template for a review appears as Appendix 2 to this protocol.

6.0 DOCUMENTARY EVIDENCE

6.1 Documentary evidence should be sought at the earliest opportunity and before any interviews are conducted. It is helpful if the list of documents required and who they will be obtained from is in the investigation plan.

6.2 It may be helpful to invite the subject Member to provide an initial response to the allegation, in writing, when first making written contact with them. This gives the Member the opportunity to admit to the breach, if they would like to do so. A written response from the Member may also provide additional useful information prior to the interview stage.

6.3 Requests for information should be made in writing and the investigator should:-

- Explain the legal authority they have for asking for the documents.
- Explain the broad purpose which the document is needed, for example “an investigation into the conduct of Councillor X”. It is not necessary to provide the detail of the complaint against the Member at this stage.

- Outline the confidentiality requirements that relate to the information request.
 - Set a deadline for a response.
 - Provide a contact name and number for further enquiries.
- 6.4 If relevant evidence is held on a computer it may be necessary for the hard drive to be searched for deleted or corrupted documents. It may be necessary to employ specialists to facilitate this. **(would it be appropriate to identify approved contractors for the purpose and list contact details here, in order to save time if it is necessary take control of the computer as part of an investigation?)**
- 6.5 If the investigator believes that evidence may be destroyed if the subject Member or another party becomes aware of a request for that evidence, or it could lead to improper collaboration by witnesses, the investigator may consider it appropriate to meet the witness to make the request for the relevant documents, rather than doing so in writing. The investigator will then be able to explain the powers they have to obtain the information.
- 6.6 Whilst there may be a legal obligation on an individual organisation to provide documents, if it is necessary to enforce such obligations is likely to be time consuming and costly and investigators may consider whether there is an alternative route to obtaining the same information.

7.0 INTERVIEWS

- 7.1 It would be usual to interview the subject member at the end of the investigation, when all the evidence has been gathered. This provides an opportunity for the evidence to be put to the subject member and to obtain their response to it. If the subject member and complainant have been interviewed earlier in the process, the investigator may wish to re-interview them near the end of the investigation, which may allow them to agree facts and to comment on issues that have been raised during the course of the investigation.
- 6.2 Interviews may be conducted by telephone or face to face. It may be more appropriate to conduct face to face interviews if:-
- The matters involved are sensitive.
 - The interview is vulnerable.
 - You will need to refer to multiple documents during the interview.
 - The interviewee wishes to have a legal representative present.
 - The interview is with the subject member.

It may, however, be more appropriate to conduct a telephone interview if the interview does not fall into one of the categories outlined and there are significant resource implications, either in terms of cost or time, in conducting a face to face interview.

- 6.3 The investigator may wish to carry consecutive interviews on the same day, if they are concerned that witnesses may collude or use information provided to them
- 6.4 If a subject member or witness insists on a face to face interview, then serious consideration should be given to their request and checks should be made for whether there is medical or disability related reason for their request. If there is no such reason, then the decision is at the discretion of the investigating officer, who should outline their decision in writing on the file to show that it was proportionate and reasonable.

6.5 The investigator should not conduct joint interviews, as it is important that each witness gives their own account without being influenced by another's recollections. An interviewee may, however, have a friend or advisor, but that person should not be someone who is a witness and they should be asked to keep the information confidential. If the interviewee is a vulnerable person or a minor, the investigating officer may wish to ensure that they are accompanied by another person.

6.6 The venue for face to face interviews should be:-

- Mutually convenient.
- On neutral territory.
- In a private room where you cannot be overheard.
- A place where the interviewee will feel comfortable and is unlikely to be seen by people whose presence may intimidate or upset them, for example, the complainant or subject member.
- Safe for the investigating office.

It may be appropriate, in some circumstances, to conduct an interview of the home of the interviewee, but this should usually be at the request of the interviewee.

7.7 If an interviewee is disabled, you should make reasonable provisions, if an interviewee is vulnerable or a minor, they should always be accompanied by third party.

8.0 INFORMATION FOR INTERVIEWEES

8.1 The investigator should provide the following information, in writing:-

- Agreed time, date and venue, or confirmation that there is a telephone interview.
- Confirmation that the interview will be recorded, if appropriate.
- Confirmation that the interviewee can have a legal or other representative with them, but that the representative must not be a potential witness in the investigation, nor a member of the Standards Committee, nor a Council Officer. Asked to be provided with the name and status of the representative before the interview.
- The legal framework within which the interview will be conducted.
- How the information they provide in the interview may be used.
- The circumstances in which the information that they provide in the interview may be made public.
- The confidentiality requirement that they are under as an interviewee.
- Details and copies of any documents you may refer to during the interview
- When interviewing the subject member, details and copies of any evidence you have gathered which you may refer to in your report. You do not have to disclose witness testimony prior to the interview, depending on the nature of the testimony and whether you want the interviewees account prior to putting the witness testimony to them. You may, however, wish to disclose a witnesses testimony during the interview, once you have obtained the interviewees own account.
- The interviewing officer contact details, in case the interviewee has questions before the interview.

8.2 Appendix 4 of the SBE Toolkit provides a pre-interview letter template.

9.0 CONDUCTING AN INTERVIEW

9.1 Interviews should be planned in advance. Appendix 5 of the SBE Toolkit provides an interview plan template. All important interviews should be audio recorded, where possible. Before recording an interview you should:-

- Obtain the consent of the interviewee before you start recording the interview.
- Ask them to record their consent on the record, once you have started the recording.
- Offer to send the interviewee a copy of the transcript or draft interview statement, which ever is applicable. If they ask, you can send them a copy of the recording also.

8.2 The interviewee should not normally be allowed to make a recording of the interview. This is to prevent collusion between interviewees and any possibility of record tampering. If the investigator is concerned that the interviewee may share their transcript with other witnesses, the despatch of the transcript or recording can be delayed until all interviews have been completed.

8.3 The interview procedures set out in the most recent version of the Standards Boards for England's Guidance "How to conduct an Investigation" should be followed in carrying out interviews and Appendix 6 of the SBE toolkit provides a suggested interview preamble.

At the start of the interview:-

- 1) When the interviewee arrives, try and put them at ease.
- 2) Before you start the formal interview, inform the interviewee that there is a standard interview preamble that you must take them through. This ensures that any rapport you have established is unlikely to be lost when you take them through the legal framework of the interview.
- 3) Confirm that the interview will be recorded and put the recording device in a visible place on the desk.
- 4) With their permission start recording.
- 5) Ask them to confirm for the record that they consent to the recording.
- 6) Confirm for the record who you are, and the powers under which you are conducting the interview.
- 7) State the date and time for the record.
- 8) Confirm that they received your letter outlining the arrangements for the interview.
- 9) Confirm that they read and understood your letter and ask if they have any questions about any of the information within it.
- 10) If the interview is with the subject member, repeat orally all of the information contained in your letter.
- 11) If the interviewee is at all unclear about anything, then repeat orally all of the information contained in your letter.
- 12) Explain that they can take a break whenever they choose.

- 13) Explain that you will offer them a break if the interview goes over an hour, even if they have not said that they want one.
- 14) Tell them how long the interview is likely to take and ask them if they have a time by which it needs to end.
- 15) Explain that they can ask you to rephrase a question if they don't understand it.

9.4 During the interview:-

- 1) Start the interview with the subject member with some background questions. These could include 'how long have you been a member', or 'what training have you had on the Code of Conduct?'
- 2) Do not ask multiple questions. Ask one question at a time, and do not ask another question until the interviewee has answered your first question.
- 3) Do not dart back and forth between different issues as you are liable to confuse yourself and the interviewee.
- 4) Tackle one subject issue at a time.
- 5) Ask open questions about information the interviewee or other witnesses have provided about the issue.
- 6) Drill down. In other words, ask open questions about one specific issue until you have all the information you need on it.
- 7) Where relevant ask the interviewee to reconcile differing accounts.
- 8) Ask closed questions to confirm the information you have obtained about the specific issue.
- 9) Move onto the next issue using the same method. Start with a broad open question about the subject, drill down for information with specific open questions. Conclude the area by asking closed questions to confirm what you have been told.
- 10) If you are interviewing with someone else, the first interviewer should ask the open questions about each subject area. The second interviewer should then pick up on points to be clarified at the end of each subject area and ask closed questions to confirm what was said.
- 11) Do not ask leading questions, for example, 'You said this to the clerk, didn't you?'
- 12) Do not ask the interviewee to speculate.
- 13) Accurately put the evidence of other interviewees to the interviewee and ask for their response.
- 14) When asked, explain the relevance of your question.
- 15) Do not allow the interviewee's lawyer or representative to answer a question.

- 16) You must allow the interviewee to stop and obtain advice whenever they choose.
- 17) If the interviewee becomes upset or unwell you must offer them a break.
- 18) Never raise your voice.
- 19) Only interrupt if the interviewee is being unreasonable or is not providing relevant information.
- 20) You should be mindful of avoiding oppressive or repetitive questioning. If an interviewee will not properly answer a question, despite significant attempts to obtain a satisfactory response, then you should move on to another point or issue.
- 21) Do not question the subject member about matters which fall outside the scope of the original allegation.
- 22) If the interviewee wants a break, record the time of the break on the record and the time you resume the interview. Ask the interviewee to confirm for the record that you did not discuss anything about the case with them during the break.

Closing the interview:-

- 1) State the time the interview finished.
- 2) Thank the interviewee for their time and outline what will happen next.

After the interview:-

- 1) Send the interviewee a copy of the transcript.
- 2) State in the letter that if you do not hear from them by a specified date, you will assume the transcript is agreed.
- 3) If the content of the transcript is disputed, check the discrepancies against the recording.
- 4) If the transcript is confirmed by the recording, write to the interviewee to inform them of this. In these circumstances, when the matter is referred to the standards committee, submit the transcript, the recording, the interviewee's letter outlining the dispute, and your response.

Please see Appendix 7 of the SBE toolkit for an Interview statement/transcript letter template.

Evaluating the information:-

- 1) Review your investigation plan in light of the information gathered during the interview.
- 2) Review all the evidence you gather to determine if there are any gaps in it.
- 3) Take a view on all disputed relevant matters. Your own opinion on the evidence is sufficient. However, if you are unable to come to a decision, you may need to seek further information or decide that you are unable to reach a conclusion.

- 4) Weigh up all the evidence and decide if the alleged conduct occurred.
- 5) If you decide that the subject member acted as alleged, you will need to consider whether their conduct involved a failure to comply with the Code of Conduct. 6) If you decide the member breached the Code, consider whether you have evidence of any mitigating or aggravating circumstances. If not, you may need to seek further information.

10.0 DRAFTING THE REPORT

- 10.1 The guidance set out in the most up to date version of the Standards Boards for England's Publication "How to conduct and Investigation" should be followed when preparing and circulating any report of the investigation.

When you have conducted your investigation, you will need to write up your findings in a report to the Standards Committee, see Appendix 8 of the SBE toolkit for a template. The report should contain the following information:-

- 10.1.1 Title page - You must state:

- who the report is for
- who the report is by
- the date of the report

- 10.1.2 Executive summary - You must state:

- the full allegation and who it was made by
- the provisions of the Code of Conduct that were considered
- a conclusion as to whether there has been a failure to comply with the Code
- the finding

- 10.1.3 Member X's official details - You must state:

- when the member was elected
- the member's term of office
- any other relevant authorities they are a member of
- details of any committees on which the member serves or has served
- the date a member ceased to be a member, where relevant
- the date the member signed an undertaking to abide by the Code
- full details of any training the member has received on the Code

- 10.1.4 Relevant legislation and protocols -You must state:

- any relevant extracts from the Code
- any relevant extracts from any other legislation or protocols considered in the report

- 10.1.5 Evidence gathered and the investigator's consideration of it. When gathering and considering evidence you may wish to follow this procedure:

- 1) Start by summarising who you have obtained information from.
- 2) Outline chronologically the facts that you have established.
- 3) Set out undisputed facts as facts. Do not summarise them or preface them 'he said' or 'the minutes state'. If they are undisputed just state them as fact.
- 4) Where there is a disputed fact, outline the different views and your conclusion on them. You need to form a conclusion based on the balance

of probabilities. Also state why you have reached this conclusion. For example:

- The clerk, Councillor Jones and Councillor Smith met at Councillor Jones's house on y date at x time.
 - At interview the clerk stated that Councillor Jones said...
 - At interview Councillor Smith stated that Councillor Jones told the clerk...
 - At interview Councillor Jones stated that he told the clerk...
 - I have considered the following issues when deciding what Councillor Jones said to the clerk...
 - I consider that on the balance of probabilities Councillor Jones told the clerk...because...
- 5) Include all the relevant evidence you have gathered even if it does not support the conclusions you have reached.
 - 6) Include any mitigating or aggravating factors, such as the state of mind of those involved.
 - 7) When you refer in the report to material in the evidence bundle, identify the document referred to.

10.1.6 Summary of the material facts:-

- Summarise the facts needed to confirm the conclusions you have reached.
- Where there was a disputed fact, you will only need to include the conclusion you came to.

10.1.7 The subject member's additional submissions:-

- Outline information or opinions submitted by the subject member, which you did not consider relevant to the case.
- Outline why you do not deem information or opinions submitted by the subject member to be relevant.

9.0.8 Reasoning as to whether there has been a failure to comply with the Code of Conduct:-

- Take each alleged breach in turn.
- Outline which part of the Code of Conduct you are considering. Explain the test you are applying when determining if there has been a failure to comply with the Code.
- Explain in detail, giving reasons, why you do or do not consider that the conduct constitutes a breach of the Code.
- Do not introduce any new facts or opinions. You must only refer to evidence or opinions that have been outlined earlier in the report.

Make sure your explanation of the test you are applying, and the reasons for your conclusions, are detailed and clear enough to understand for a lay person with no legal background.

10.1.9 Finding -You will need to make a finding about each alleged breach of the Code.

- Outline in detail the reason for your decision.
- Refer to aggravating or mitigating facts, which must be outlined in the facts section earlier in the report.

10.1.10 Schedule

- List the exhibits with the title Schedule of evidence taken into account. Please see Appendix 9 of the toolkit for a Schedule of evidence template.
- Exhibit all the evidence upon which you have relied when reaching your conclusion.

- In complex cases it may be appropriate to provide a chronology.
- Provide a list of unused material.

10.1.11 Chronology

Where a case is complex it may be helpful to provide a chronology of important events in the case.

10.1.12 Send the draft to:-

- You should issue a draft report, sending a copy to the subject member and the complainant and inviting their comments by a specified date. This is helpful if the report is complex or your conclusions are likely to be disputed by either party.
- The draft should not be sent to other witnesses or parties interviewed, but you should seek confirmation of their evidence from them before issuing the report.

10.1.13 Ensure that the draft report is clearly marked as 'Draft'.

- You must state that the report may be subject to change and does not represent your final conclusion.
- If you have found the subject member in breach, you should send them copies of the evidence that you have relied upon when reaching this conclusion.
- You must consider whether any of the information in the draft report, or evidence bundle, is confidential information that should not go into the public domain. For example, medical details or personal contact details. Information of this nature should be edited from the draft and final report unless it is essential to the reasoning.

Send an accompanying letter stating:

- that the report is confidential
- that it can be discussed with a legal representative
- the date by which comments must be received

Appendix 10 of the SBE toolkit for has a Draft report cover letter template:-

- It is important to keep a copy of the draft and the bundle of evidence that you send to the subject member. This acts as a record of what information the member has received and prevents duplication of work when issuing the final bundle.

10.1.14 Comments on the draft:-

- Responses to your draft may reveal the need for further investigation, or they may add nothing of relevance.
- Occasionally, responses may reveal a need for further investigation and may result in changes to the report. These changes may be significant enough for you to consider issuing a second draft.
- Once you have considered whether the responses add anything of substance to the investigation, you will be able to make your final conclusions and recommendations.
- Where comments on the draft are critical of the investigation or the investigator, you may need to consider how to respond to the complaints made. You should not let such criticisms prevent a draft report being finalised unless this is unavoidable. In particular, the investigation process, including writing the report, should not be suspended while a complaint about the investigation is dealt with. The only exemption to this is in the circumstances listed in the section Complaints about an investigation.

A party may disagree with:-

- the interpretation of the Code or other legislation
- the analysis of the evidence
- the analysis of an individual's conduct
- conclusions reached in an investigation
- the scope of the investigation
- how and who evidence was obtained from

These complaints will normally focus on the draft or final report. They will not usually criticise the actions of a specific individual. However, they may criticise an individual for reaching certain conclusions.

You should avoid getting drawn into lengthy correspondence with the subject member or other interested parties in this situation.

10.1.15 Comments received before the draft is issued:-

- If the comments are made by the subject member, then you should respond in writing.
- If the subject member does not understand either the Code or the investigative process, then you should seek to explain the position to them. Failure to do so may be taken into account at any subsequent hearing. However, you only need to show that you took all reasonable steps to address the subject member's confusion.
- If comments are made by the complainant or a third party, you can either respond to their comments or ask them to wait until they have read the draft report.

10.1.16 Comments received in response to the draft report:-

- You should keep a written record of your consideration of any comments received on the draft.
- It is best practice to provide a written response to the party explaining your position or referring them to the relevant paragraph of the report. This can be done when they are sent the final report.
- Add to the bundle of evidence any critical comments received on the draft.

10.1.17 Comments received after the final report has been issued:-

- Write to the party explaining that the investigation is now closed and refer them to the person who is dealing with the standards committee hearing. Refer the party to the Adjudication Panel for England if the matter has been referred to it.

10.1.18 Comments received after the hearing:-

- Respond saying that the matter is now closed and no further correspondence will be entered into on the specifics of that case.
- Complaints about the conduct of investigators should be dealt with in the same way as other service complaints.

10.1.19 The final report: - You must send it to:

- the standards committee
- the subject member
- the standards committee of any other authority, other than a parish council, of which the subject member is a member, if requested

A copy may also be made available to the complainant and others as part of the hearing process.

- You must state that the report represents your final finding and will be presented to the standards committee.

- If you have found the subject member in breach you should send them copies of the evidence you have relied upon when reaching this conclusion.
- You must consider whether any of the information in the report or evidence bundle is confidential information that should not go into the public domain. For example, medical details, personal contact details or signatures. All information of this nature should be edited from the final report unless it is essential to the reasoning.
- Send an accompanying letter stating:-
 - that some aspects of the report are confidential
 - that you have considered the comments they made in response to the draft report and have amended the final report where appropriate
 - that it can be discussed with a legal representative

Appendix 11 of the SBE toolkit has a Final report cover letter template.

11.0 THE BUNDLE OF EVIDENCE

- 11.1 The guidance in the most up to date version of the Standards Board for England's Publication "How to conduct and Investigation" should be followed in dealing with the bundle of evidence.

You should make two bundles. One of evidence used, which you will submit in full to the standards committee or the Adjudication Panel for England (if applicable). The other should be a schedule of unused evidence. You may be required to submit documents from this bundle if they are requested by the standards committee or the subject member.

- 11.2 The evidence bundle will typically include:-

- a) Documents which establish the legal framework for the investigation such as:
 - the complaint letter
 - the authority's Code of Conduct
 - a copy of any legislation referred to in the report
 - a copy of the subject member's declaration of acceptance of office
- b) Any document upon which you have relied when reaching your decision, such as:
 - transcripts, interview records or interview statements with all relevant parties and interviewees
 - written correspondence from the subject member on substantive matters, including comments they made on the draft report
 - minutes, reports and other documentary evidence upon which you have relied when reaching your conclusion as to the facts
- c) Any document which would assist in the subject member's defence, such as:
 - any document that the subject member may seek to rely on in their defence of the conclusions reached
 - documents which contain information that is inconsistent with the facts as established by the investigation
 - documents which raise questions about the accuracy of any of the evidence, including the reliability of witnesses
 - documents containing information which could lead to a finding that the standards committee or investigator has acted in breach of the subject member's rights under the Human Rights Act 1998

- documents which provide an explanation or partial explanation of the subject member's actions
- d) Background documents. These are documents which you did not rely upon when reaching your decision, but which may be helpful to the standards committee when considering the case. They should also include documents that the subject member thinks are relevant but which are not, in your opinion, material to the case.
 - e) A list of unused evidence. This is a list of the documents that you believe are irrelevant to the investigation.
 - f) You should provide sufficient detail about each item so that the standards committee or subject member can request it if they wish.
 - g) You do not need to prepare a bundle of the unused evidence.

You do not need to disclose:

- a) Sensitive information which you have edited or deleted.
- b) Information protected by legal professional privilege and public interest immunity.
- c) Internal documents such as file notes and draft reports. However, these may be requested by the standards committee, so it is important to be sure that these are precise and clear.

10.3 The bundle should begin with the documents which establish the legal framework for the investigation.

The remaining evidence should then be grouped thematically, for example policy documents or minutes.

Arrange the documents chronologically within their group.

The front page of the bundle should be numbered 000001, with each subsequent page numbered in ascending order.

If a document is missing, you should provide a note to this effect to the standards committee outlining the reasons why the document is unavailable.

Only include multiple versions of a document if it is important to do so for the evidence.

11.4 The information that should be deleted from the bundle will depend on the circumstances of the case. Information should be deleted on the basis that it may end up in the public domain. You should consider whether to remove the following:

- a telephone number, address, email address, or signature of any person other than on a transcript or witness statement. This is personal data as defined by the Data Protection Act 1998. While the standards committee may need witness contact details, these should still be deleted from any documents and provided as a separate list to the standards committee
- age and date of birth of a party (unless directly relevant to the case)
- any information which relates to matters which were not referred for investigation

- other personal data as defined by the Data Protection Act 1998 Items such as petitions, legal advice and the evidence of vulnerable people need to be deleted on a case-by-case basis. If in doubt seek legal advice.

COMPLAINTS

- 12.1 It is important that there is a clear documented procedure for considering complaints about the investigation. The procedure should fall into two discrete stages. First an evaluation of the nature of the complaint, and second, what action should be taken to handle the complaint.
- 12.2 There are two types of complaints:-
 Complaints about the conduct of the investigation (service complaints).
 Complaints about the interpretation and reasoning in the investigator's report.
- 12.3 Service complaints occur when a party criticises the actions of an investigator. Such criticisms may include:-
 administrative errors, for example misspelling a name
 failure to communicate
 criticism of the manner in which the investigator behaved
 criticism of the length of time it took to conclude the investigation

The County Council has a procedure for processing service complaints generally, which should be used when dealing with service complaints about an investigation.

Once the complainant has gone through the agreed appeals process, it is reasonable to state that no further communication will be entered into. The complainant is then also free to take the matter up with the Local Government Ombudsman.

- 12.4 The investigation can continue while a service complaint is being addressed. However, there may be circumstances where the complaint is so substantive that it would not be appropriate for the same investigating officer to continue on the case while the service complaint is ongoing. Such circumstances should be very rare. An investigation into a service complaint should not postpone the conduct of the main investigation.
- 12.5 It is not uncommon for complainants to mix comments on interpretive matters with service complaints. In such cases, you should write to the complainant outlining which matters will be considered by your service complaints process, and which matters are differences of interpretation which will not be considered as part of the complaint.

13.0 TERMINATING INVESTIGATION BEFORE COMPLETION

- 13.1 It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. In some circumstances it may be more appropriate to deal with matters by taking other action. This decision may only become clear after some investigation has been conducted. In such cases, you must refer the case back to the standards committee. It is important to be aware that once you have embarked upon a programme of other action you cannot reopen the investigation, even if other action fails. The decision to take other action closes the opportunity to investigate. You need to communicate this clearly to all parties.
- 13.2 Standards committees have very broad powers to direct you to deal with cases. The following are some alternatives to investigation:-

Mediation or conciliation – either between parties or involving the community to a greater or lesser extent.

Training.

Review of lessons learnt from the case.

Peer mentoring.

Review of protocols, standings orders or registers of interest.

- 13.3 If your standards committee decides to take other action, you will need to tell the parties that no conclusion has been reached on whether the subject member failed to comply with the Code of Conduct.

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NORTHALLERTON

8 May 2009

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Background documents:

Standards Board for England's Guidance "How to conduct an investigation"