

# HOW TO CONDUCT AN INVESTIGATION

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# introduction

This is a guide for monitoring officers carrying out investigations and other action relating to allegations referred to them by standards committees or ethical standards officers.

This guide provides an introduction to the practice of investigation and is designed to assist anyone delegated to investigate allegations of misconduct. You should be aware that the process can be a frightening and stressful experience for the subject member, witnesses and complainant.

What follows is an outline of the principles by which the Standards Board for England conducts its investigations. It does not aim to be prescriptive and is not statutory in nature, but it is worth bearing in mind that the processes outlined below have been tested at the First-tier Tribunal (Local Government Standards in England). Many are also based on specific recommendations by the First-tier Tribunal tribunals

We hope this guidance will assist you in ensuring that:

- you establish what happened in a fair and objective manner
- you set out clearly the reasoning for the finding reached
- you complete the investigation promptly and proportionately

You can contact the Standards Board for England on **0845 078 8181** or email **[enquiries@standardsboard.gov.uk](mailto:enquiries@standardsboard.gov.uk)**

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# planning the investigation

You will need to keep a written record to demonstrate what was considered at the start of each investigation. This document is most likely to take the form of an investigation plan. Please see **Appendix 1** of the **Local investigations toolkit** for an **Investigation plan** template. The following areas should be covered in the plan:

- The complaint made against the subject member. You may find it necessary to seek clarification from the complainant.
- The paragraphs of the Code of Conduct that may have been breached. Please note that you do not need to accept the complainant's interpretation of what paragraphs may have been breached. It is helpful to breakdown each potential failure to comply into the component parts of each provision. For example, in considering paragraph 6(a) you will need evidence to demonstrate that:
  - the member used their position
  - the member used their position improperly
  - the member conferred or attempted to confer an advantage or disadvantage
- The facts which need to be determined to establish if the member breached the Code and to decide what the appropriate finding might be. They need to include:
  - 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
- The evidence that you would need to determine the issues outlined in your plan. This includes who you will need to interview and why.
- The evidence that has been supplied by the complainant or, in the case of an investigation plan review, the evidence that you have gathered.
- How you plan to gather the evidence that you need.
- How long you think it is likely to take you.

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. Please see **Appendix 2** of the toolkit for an **Investigation plan review** template.

At the start of the investigation you should contact the complainant and subject member to advise them of your contact details and provide them with a preliminary timescale for the investigation. Please see **Appendix 3** of the toolkit for a **Contact parties letter** template.

# planning the investigation

At the end of your investigation you should have documents which chart the approach you took to the investigation, the reasons for this approach, and when you changed your approach. You do not need to share these documents with the parties involved in the investigation – they are for you to use as you wish. Their main function is as a planning tool, but they also provide an audit trail should your investigation be the subject of a complaint or review.

# documentary evidence

Documentary evidence should be sought before you conduct any interviews and at the earliest opportunity.

When drafting the investigation plan it is helpful to make a list of the documents you need and who they will be obtained from. This list can then form the basis of the first contact you make with the parties and other witnesses.

It is a good idea to invite the subject member to provide an initial response to the allegation in writing when first making written contact with them. This gives members the opportunity to admit to the breach if they would like to do so, and could then save time and effort for all involved. A written response may also provide you with additional useful information before the interview stage. Please see **Appendix 3** of the toolkit for a **Contact parties letter** template.

## How to compile documentary evidence

- Requests for information should be made in writing, even if the initial contact was made by phone.
- Explain the legal authority you have for asking for the documents.
- Explain the broad purpose for which you need the document, for example “an investigation into the conduct of Councillor X”. You do not need 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 response.
- Provide a contact name and number for further enquiries.

## What if...

### The evidence is held on a computer?

- It is good practice to identify the person using the computer in investigations that rely on computer generated documents.
- It may be appropriate to search the hard drive for deleted or corrupted documents. A specialist firm may be employed to facilitate this.

### The information is highly sensitive?

- In certain cases, you may wish for a subject member or other party not to be made aware of a request for evidence. For example, if you consider that this might lead to destruction of evidence by one of the parties or to the improper collaboration of witnesses. In such circumstances it may be appropriate to arrange to meet with the witness, having given them a brief outline of your role. You can then make your request for the relevant documents during the meeting. It is important here that you explain what powers you have to obtain information. If in doubt, it may be prudent to seek legal advice on how to proceed.

# documentary evidence

## The request for information is refused?

- Remind the party of any legal obligation they have to provide information, for example, Regulation 14(4)(b) of the Standards Committee (England) Regulations 2008.
- While there may be a legal obligation on an individual or organisation to provide documents, enforcing such obligations is likely to involve time consuming and costly legal proceedings. It may be easier to see if there is another route to obtaining the same information.

# interviews

Your goal in interviewing is to obtain the most informed, reliable evidence possible. It is not to ambush or catch out interviewees. The following guidance on interviewing will assist you in achieving this.

## Order of interviews

You will normally interview the subject member at the end of the investigation, when you have gathered all your evidence. This will give you the opportunity to put that evidence to the subject member and obtain their responses to it. However, it could save time if you find out at the outset that the subject member admits part or all of the allegations. You could ask for an initial response to the allegations to establish this. Please see **Appendix 3** of the toolkit for a **Contact parties letter** template. This response could be provided orally or in writing.

You may decide to carry out consecutive interviews on the same day if you are concerned that witnesses may collude or use information provided to them.

If you have already interviewed the subject member and complainant, you may wish to re-interview them near the end of the investigation. This may allow you to get them to agree facts. It also gives the interviewees an opportunity to comment on issues that have been raised during the course of the investigation. It provides an opportunity to present potential inconsistencies to the relevant parties for comment.

## The format of the interview

It might be more appropriate to conduct face-to-face interviews than telephone interviews if:

- the matters involved are sensitive
- the interviewee 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 be more appropriate to conduct a telephone interview if:

- there are significant resource implications, either in terms of cost or time in conducting a face-to-face interview
- the interview does not fall into one of the categories outlined above

If a subject member or witness insists on a face-to-face interview then serious consideration should be given to their request. You should specifically check that there is no medical or disability-related reason for their request. If there is, then you should conduct a face-to-face interview. If there is no medical or disability-related reason, then the decision is at your discretion. If you still wish to proceed with a telephone interview despite their request, then you should outline your decision in writing on the file. This is to show that it was both proportionate and reasonable.

# interviews

Do not conduct joint interviews. It is important that each witness gives their own account without having their recollection influenced by hearing another person's account.

An interviewee may have a friend or adviser present. That person should not be someone who is a witness and they should be asked to keep the matters confidential.

If an interviewee is a vulnerable person or a minor, you may wish to ensure that you are accompanied by another person.

## The venue

If you are conducting a face-to-face interview try to ensure that the venue is:

- 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 you, the investigating officer

Occasionally it may be appropriate to conduct an interview at the home of the interviewee. This should generally be at the request of the interviewee.

## Information you must provide interviewees

You should provide the following information in writing to the interviewee:

- Confirmation of the agreed time, date and venue or that it 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. They should also not be a member of the standards committee or a council officer. Ask that they provide you with the name and status of their representative before the interview.
- The legal framework within which you are conducting the interview.
- How the information they give you in the interview may be used.
- The circumstances in which the information that they give you during the interview may be made public.
- The confidentiality requirements that they are under as an interviewee.
- Details and copies of any documents you may refer to during the interview.
- In the case of the subject member, details and copies of any evidence you have gathered and 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 that testimony and whether you

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want the interviewee's account prior to putting the witness's testimony to them. However, you may wish to disclose a witness's testimony during an interview once you have obtained the interviewee's own account. You could also consider providing an outline of the areas you intend to cover at interview.

- Your contact details if they have any questions or concerns before the interview.

Please see **Appendix 4** of the toolkit for a **Pre-interview letter** template.

**Note:** if you only need to confirm one or two factual details with a council officer you may contact them by phone and do not need to forewarn them. However, when obtaining this information you should:

- orally outline all of the information you would otherwise have provided in writing as set out above
- check that they are happy to give it to you then, rather than at an agreed date in the future
- confirm the detail of information they do provide, in writing

## Special circumstances

If an interviewee is disabled you should make reasonable provisions to cater for their specific needs. If an interviewee is vulnerable or a minor, then they should

always be accompanied by a third party at the interview.

## Structuring an interview

Interviews should be planned in advance. You can plan your questions using the following suggested format:

- Divide the information you require into discreet issues. For example, Issue 1: The planning meeting on date x; Issue 2: The planning meeting on date y.
- Make a note of the evidence you have already obtained about each issue.
- Note how you would briefly summarise the evidence to the interviewee.

Please see **Appendix 5** of the toolkit for an **Interview plan** template

## Conducting the interview

All important interviews should be audio recorded where possible. The only exception is when the interview is likely to cover only a small number of factual matters. In this case, it may be more appropriate to resolve these factual matters in writing.

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

# interviews

- offer to send the interviewee a copy of the transcript or draft interview statement, whichever is applicable. If they ask, you can send them a copy of the recording too.

If you are concerned that the interviewee may share the transcript with other witnesses, you can delay sending the transcript or recording until you have completed all of your interviews.

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. Standards Board investigators tend to use digital voice recorders to record face-to-face interviews.

## 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.

# interviews

Please see **Appendix 6** of the toolkit for a suggested **Interview preamble**.

## 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.

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- 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.
- 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 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.

## 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.

# interviews

- 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.

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## Drafting the report

When you have concluded your investigation, you will need to write up your findings in a report to the standards committee. The report should contain the following information:

### Title page

You must state:

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

### 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

### 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

### 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

### 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.

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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.

## 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.

## 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.

## 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.

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- 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.

## 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.

## 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.

## Chronology

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

## Issuing a draft report

Please see **Appendix 8** of the toolkit for a **Report** template

## Who should I 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.

## How should it look?

- 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

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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

Please see **Appendix 10** of the toolkit for 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.

## 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** on **page 25**.

- 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.

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## 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.

## 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.

## 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 First-tier Tribunal if the matter has been referred to it.

## 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. Please see the section **Complaints about an investigation** on **page 25**.

## The final report

### Who should I send the final report to?

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

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

## How should it look?

- 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

Please see **Appendix 11** of the toolkit for a **Final**

# producing & referencing 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 First-tier Tribunal (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.

## Contents of the evidence bundle

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

# producing & referencing the bundle of evidence

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.

**Note:** Please ensure that you disclose documents that may be relevant to the case or to the subject member's defence. This is because failure to disclose such documents may result in the standards committee reaching an inappropriate decision, and the decision being deemed unsafe upon appeal.

## Structure of the evidence bundle

- 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.

# producing & referencing the bundle of evidence

## Editing the evidence bundle

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.

# confidentiality

## The legal position

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.

## Confidentiality in practice

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

# confidentiality

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.

## What to do 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.

# complaints about an investigation

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.

## Evaluating complaints

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.

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 procedure for handling service complaints

You will already have a procedure for processing service complaints generally. You should consider whether to use this procedure when dealing with service complaints about an investigation. The procedure may include the following provisions:

- An agreement that investigators will explain to parties making a complaint that there is an independent service complaints procedure that they can use.
- That the complaint will be acknowledged by someone other than the investigator within an agreed time frame.
- That the complaint should be considered by someone independent of the investigation.
- That a written response will be provided within an agreed time frame.
- An agreed appeals process which should be clearly communicated to the complainant.

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.

# complaints about an investigation

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.

## **Handling mixed complaints**

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.

# other action

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 be made on receipt of the allegations, or 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.

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.

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.

## Circumstances where other action may be appropriate

It is not possible to set out all the circumstances where other action may be appropriate, but an example is where the authority to which the subject member belongs appears to have a poor understanding of the Code of Conduct and authority procedures. Evidence for this may include:

- a number of members failing to comply with the same paragraph of the Code
- officers giving incorrect advice
- failure to adopt adequate procedure rules
- failure to adopt the Code
- inadequate or incomplete protocols for use of authority resources
- a breakdown in relationships within the authority, evidence of which may include:
  - a) a pattern of allegations of disrespect, bullying or harassment
  - b) antagonism between various political factions or between members and officers.
  - c) a series of ‘tit for tat’ allegations.
  - d) ongoing employment issues, which may include resolved or ongoing applications to employment

# other action

## What action is appropriate?

Once you have identified what issues you think need to be dealt with, you should then consider how best to address them. The following methods have been used by ethical standards officers when issuing a direction:

### Mediation:

- This is best conducted by a trained and qualified mediator.
- You should not set objectives for mediation as it is important that the results of mediation are determined by the parties and the mediator.
- You should explain to the mediator what issues you are seeking to resolve.
- You should make a recommendation as to who should attend mediation, but allow for additional people to take part.
- In cases of alleged bullying or intimidation you need to ensure that the parties understand that the mediator will not force them into a room together unless they are ready. You will also need to reassure them that they will not be left alone with the subject member or complainant.

### Training:

- This can be conducted by you, one of your team or you can involve a local association or other external provider.

- You can require the members to attend training on a specific issue. This could be on interests, or wider areas such as standing orders or the Code of Conduct.
- The training may be about issues that are not directly related to the Code, for example anger management.

### Review of lessons learnt:

- The council can be asked to review what has occurred with a view to improving their processes and procedures. You, another member of your team or someone from the local associations may assist them.
- You must make sure that the council understands that the purpose of a review is to learn from any mistakes that may have been made and not to change any decisions that have been made.

### You can ask a council to assess:

- The decisions they have made on a specific issue. For example, a review of all the decisions they have made about the parish hall or members' register of interests.
- The interests that they have declared at meetings.
- Their standing orders or procedures.
- Their conduct towards the clerk or another member.

# other action

## Peer mentoring:

- You can arrange for an experienced clerk or chair from another authority to mentor a clerk or chair who is struggling.
- You can arrange for a successful authority to mentor the authority in difficulty.
- Mentoring can take the shape of:
  - a) one-on-one meetings
  - b) work shadowing of the mentor
  - c) a review carried out by the mentor on their protégé's work
  - d) anything else agreed by the mentor and their protégé

## Troubleshooting

### What if the parties refuse to cooperate?

- You need to make it clear that once a decision has been made to take other action, an investigation will not be undertaken.
- Identify why they are refusing to participate. Often refusal is based on a misunderstanding. For example, people might avoid mediation as they do not want to be in the same room as the person they believed bullied them. You can explain that they do not have to be in the same room as the other party as the mediator can conduct one-on-one discussions.

- Ultimately you can publish an article in the local newspaper outlining why your proposed other action failed.

### How do I find a mediator?

- Ask other monitoring officers in your area as they may be able to make recommendations. Some monitoring officers are also trained mediators.
- Contact one of the many mediation organisations advertised on the internet.

### Is the other action confidential?

- It is for you to determine what, if any, information you make public. Please see the section on **Confidentiality** on **page 23** for further information.

- It is worth involving the affected council in this decision, especially if it is a small parish council, where rumours could spread easily.

- If you do decide to make a public statement, you must make sure that the statement could not be misinterpreted as a finding of guilt or innocence of the subject member.

### How to start other action:

- You should write to the parties concerned outlining:
  - a) what you are proposing
  - b) why you are proposing it
  - c) why they should co-operate
  - d) what you hope to achieve

# other action

- It is often worth lining up the support of key players in the council or from external organisations, for example, the local county association may be able to help in cases involving parish or town councils.

# outsourcing

There has been a significant disparity in the quality of investigations that have been conducted at a local level.

## What to look for in an investigator

### ■ **Understanding of the Code of Conduct or experience of applying a similar code of practice.**

The investigating officer must have a clear understanding of what must be proven to establish the breach. This is so that they can properly understand the scope of the investigation. Local investigations have run into difficulty when the investigating officer has misunderstood the scope of the investigation, and investigated matters which could not constitute a failure to comply with the Code of Conduct. They have also run into difficulty when investigating officers sought to resolve factual disputes that would not affect the consideration of whether the subject member had failed to comply with the Code.

Successful investigating officers are those who have experience of applying the Code or experience of applying a similar code of practice. Solicitors or those with a background in criminal law enforcement may not necessarily be experienced in applying a code of practice, and it is worth establishing what their experience of applying such legislation is. You do not need to be a lawyer to be an investigator, although some lawyers may be experienced in this field.

### ■ **Experience of conducting interviews**

If the alleged conduct is so significant that if proven it would warrant referral to the First-tier Tribunal, then it is vital that the investigating officer has experience of conducting interviews which were taken to a tribunal. Such experience could have been gathered through conducting internal investigations in employment matters. It could also have been gained through working for other ombudsmen, complaint handling organisations, or through working in benefit or environmental enforcement.

If your principal investigator does not have investigative interviewing experience you should consider sending them on a training course. You could alternatively ask an officer who has a background in this to work with them on the case, for example someone from the benefits or environmental control departments.

### ■ **Experience of report writing**

The most successful investigation report writers have experience of writing reports for lay people or members. They understand that their reports need to be clear enough for someone with no legal background to understand how they reached their decision. They also need to be clear enough to show what factors were taken into account when reaching that decision.

# outsourcing

## ■ Objectivity

It is difficult for an officer to consider whether a colleague was bullied or treated disrespectfully. There will be cases when an officer can investigate a complaint where a colleague is the complainant. However, this can only be done if the standards committee is sure that they have the necessary impartiality to conduct the investigation, with no perception of bias. This is one of the key benefits of reciprocal arrangements with other authorities, as they enable you to pass investigations involving your own employees to another council

## Managing outsourcing

It is important to stay in control of outsourced investigations. To do so you will need to do the following:

### ■ Agree the scope of any delegation

In particular be clear who has responsibility for preparing the investigation report and presenting it to the standards committee.

### ■ Agree the scope of the investigation

In particular be clear what allegations are being investigated and what should happen if the investigator discovers evidence of further potential breaches of the Code of Conduct.

## ■ Agree a firm deadline

You need to agree when the case will be completed, and consider whether there will be any financial implications if the case is not completed on time.

## ■ Agree interim deadlines

You should agree when you will receive key pieces of work including the investigation plan, the draft report and the final report. If the investigating officer is new then you may wish to programme in regular investigation updates.

## ■ Agree the payment structure

You may want to consider how you structure the payment for investigations. It is not unreasonable to pay per stage of work completed, and for any additional investigative stages to be agreed as and when they occur.