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LOCAL INVESTIGATIONS AND OTHER ACTION

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introduction

This guidance on local investigations and other action is for standards committees and monitoring officers.

It reflects the Standards Committee (England) Regulations 2008 (the regulations). These regulations are mandatory and this guidance must be taken into account by your authority.

The regulations set out the framework for dealing with allegations of misconduct by members, including carrying out investigations and taking steps other than investigation. We will refer to steps other than investigation as 'other action'.

The regulations state that anybody who has had a case referred to them by a standards committee must take the following guidance into account. Also, they must follow the regulations and have effective procedures in place for conducting investigations and hearings, known as determinations.

The guidance applies to monitoring officers and anyone nominated by a monitoring officer to carry out investigations or other action, employed or engaged by:

- district, unitary, metropolitan, county and London borough councils
- English police authorities
- fire and rescue authorities (including fire and civil defence authorities)
- the London Fire and Emergency Planning Authority
- passenger transport authorities
- the Broads Authority
- national park authorities
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

Any reference in this guidance to a 'standards committee' includes a reference to any sub-committees. These include those established to make an initial assessment of an allegation, to review an initial assessment decision and to hold a determination hearing.

introduction

Any reference in this guidance to 'you' is a reference to a monitoring officer, a deputy monitoring officer or any person nominated by them to carry out their functions.

Furthermore, any reference to the 'subject member' is a reference to the member who is the subject of the allegation.

You can contact the Standards Board for England on **0845 078 8181** or email **enquiries@standardsboard.gov.uk**

conflicts of interest

Interests and natural justice

Standards committees and monitoring officers are at the heart of the standards framework. They promote, educate and support members in following the highest standards of conduct and ensuring that those standards are fully owned locally.

Under the Code of Conduct, members must have regard to the advice of the monitoring officer when it is given as part of the monitoring officer's statutory duties. Monitoring officers will advise their council and its standards committee on the adoption and promotion of high ethical standards including their authority's Code.

Monitoring officers have four main roles in relation to the Code of Conduct:

- They provide advice to the standards committee.
- They advise subject members.
- They deal with cases of alleged misconduct referred to them by standards committees and ethical standards officers. This is a statutory role that can be delegated.
- They advise members about conduct issues.

An investigation could create a potential conflict of interest between these roles. For example, it is likely that a conflict of interest would arise if you were asked to investigate an allegation against a member and you had advised them on the same issue.

In such situations, you should delegate the investigation to somebody else.

Advising standards committees

We have previously recommended that monitoring officers should act as main advisers to standards committees on cases referred by ethical standards officers for local determination. However, they should not do so if they have an interest in the matter that would prevent them from performing the role independently.

It is vital that standards committees have access to appropriate advice on cases that have been referred for local investigation, as well as those referred only for a hearing. Monitoring officers will need to ensure that there is someone able to advise the standards committee throughout the process of investigation.

The Standards Board for England believes that you should not conduct an investigation and advise a standards committee at a hearing about the same case. You therefore need to consider whether it is more important to investigate the matter and delegate the role of advising the standards committee, or to delegate the investigative role.

If you advise the sub-committee dealing with initial assessment, you would not be prevented from advising the sub-committee dealing with review decisions. Advising either sub-committee about a case would not stop you from carrying out an investigation into that case.

conflicts of interest

Where you have made a complaint to the standards committee, this will normally mean that you should not provide advice to the committee and its sub-committees about the case. However, where you are doing nothing more than making a complaint on behalf of others, you may be able to continue giving advice to those bodies. However, where possible you should seek to avoid making complaints on behalf of others.

Personal conflicts

Take care to avoid any personal conflicts of interest. You must not participate if you find that you have a direct or indirect interest in an investigation. For example, you must not participate if you have a direct financial interest, or a family member or friend is involved. Instead, you should notify the standards committee, the member concerned and the complainant, explaining:

- that you will not take part in the investigation
- the nature of your interest
- who will carry out the investigation in your place

conducting investigations

Referral of allegations

The Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007, provides that standards committees can refer complaints that a member has breached the Code of Conduct to a monitoring officer for investigation or other action.

Ethical standards officers appointed by the Standards Board for England may also refer complaints to you, but this is most likely to be a direction for other action.

When referring a complaint, the standards committee or the ethical standards officer will forward details of the complaint to you, along with any other information that they consider appropriate.

Disclosure of information

The information that a monitoring officer obtains during the course of a local investigation is covered by Section 63 of the act. You must treat this information as confidential until the investigation is completed. You may only disclose it for the purposes set out in Section 63(1) as amended by Regulation 12 of the regulations. These purposes include carrying out your functions under the act and the regulations. Please see the section **Confidentiality** on **page 10** for further information.

When a matter is referred to you by your standards committee or an ethical standards officer for investigation or other action, you must inform:

- the subject member
- the complainant
- the standards committee of any other authority concerned
- the relevant town or parish council if the subject member is a town or parish member

We would suggest that the notice sent to the town or parish council is sent to the parish clerk, unless sending it to the chairman of the council is more appropriate because of the parish clerk's involvement in the complaint.

This requirement to notify is subject to any direction given by an ethical standards officer or the standards committee.

You should also explain to them what will happen next.

Conducting your investigation or other action

You must always be aware of your obligations under the Data Protection Act 1998, the Human Rights Act 1998 and other relevant legislation, when carrying out an investigation or other action.

When conducting an investigation you have the power to make inquiries of any person you think necessary. However, there is no obligation for them to respond. If you have difficulties obtaining a response, your standards committee may consider referring the matter to the Standards Board for England to investigate, as ethical standards officers have the power to compel a witness to provide information.

conducting investigations

During an investigation you can require your authority and any other authority concerned to provide you with any advice or assistance you need to help you with your investigation. All authorities other than parish councils must do this at their own cost. Parish councils can require the district or unitary council responsible to cover any reasonable costs incurred by the parish council in providing advice and assistance with the investigation.

We provide information on conducting investigations and taking other action in our guide **How to conduct an investigation**. This is not statutory guidance, but practical information that you may find helpful.

Evidence of new breaches

During the course of an investigation, you may uncover evidence of conduct by members that breaches the Code of Conduct, but extends beyond the scope of the investigation referred to you.

Your powers as an investigator relate only to the allegation that you have been given. You may uncover evidence of a possible breach that does not directly relate to the allegation you are investigating. If this happens, you should tell the person you obtained the information from that you cannot investigate the possible breach as part of your existing investigation. You should also tell them that they may wish to make a separate complaint to the relevant standards committee.

Alternatively, you may wish to refer the matters to the standards committee yourself as a new complaint for them to make an initial assessment on. There might also be cases where you refer the original case back to the standards committee. Please see the section **Referring cases back to standards committees** on **page 8** for further information.

Referring cases back to ethical standards officers

During the course of an investigation referred to you by an ethical standards officer, circumstances may arise that prompt you to ask them to take the case back from you. These circumstances could include:

■ Evidence of further breaches

You may uncover evidence of a further possible breach that relates directly to the investigation, revealing for instance, a consistent pattern of behaviour.

■ Obstruction of an investigation

The ethical standards officer is likely to accept a case back only if they believe you have genuinely been prevented from completing the investigation. An example of this is where a subject member refuses to cooperate with your investigation.

Cases where an officer obstructs an investigation are not a matter for the

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Standards Board for England. It may, however, be a disciplinary matter for your authority to consider under the terms of the officer's contract of employment.

When you request an investigation to be referred to an ethical standards officer, you must state in writing to them the reasons why you believe they should carry out the investigation. All requests must be made prior to the completion of your investigation.

You can ask an ethical standards officer to take a case only once during the course of an investigation. It is therefore important to make sure you are satisfied that this is the correct course of action to take.

The ethical standards officer will respond to your request within 21 days. They will either direct you to continue with your investigation or accept the matter as requested.

Referring cases back to standards committees

During the course of an investigation, circumstances may arise that prompt you to ask the standards committee to take the original case back from you. You can only do this during an investigation in either of the following situations:

- You believe that evidence is uncovered suggesting a case is more or less serious than may have seemed apparent to the standards committee originally. Furthermore, if the standards committee had been aware of that evidence, it would have made a

different decision about how the case would be dealt with.

- The subject member has died, is seriously ill or has resigned from the authority and you are of the opinion that it is no longer appropriate to continue with the investigation.

In this context 'seriously ill' means that the member has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This might be a terminal illness or a degenerative condition. You would be expected to establish this from a reliable independent and authoritative source other than the subject member. Stress brought on by the investigation is not likely to fall into this category.

When you request that an investigation be referred back to the standards committee, you should explain in writing the reasons why you believe it should be referred back to that committee.

All requests must be made before you complete your investigation. Please see the section **Completion of an investigation** on **page 11** for further information.

You should notify the subject member and the complainant of a decision to refer the allegation back to the standards committee, and provide time scales within which the matter will be dealt with.

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The committee must deal with your referral as it would deal with an initial complaint. If the standards committee decides to refer the allegation back to you, it can limit the circumstances in which the case can be referred back to it again. The standards committee can decide that the case may only be referred back to it again in the circumstances set out in the second bullet point above.

You should note that it is not possible to refer a case back to your standards committee if you were instructed to take other action rather than carry out an investigation. This is because Regulation 16, which allows a referral back, only applies to cases referred for investigation.

Deferring an investigation

An investigation should be deferred when any of the following conditions are met:

- There are ongoing criminal proceedings or a police investigation into the member's conduct.
- You cannot proceed with your investigation without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceeding.
- Your investigation might prejudice another investigation or court proceeding.

An investigation may also need to be deferred:

- when there is an ongoing investigation by another regulatory body
- because of the serious illness of a key party
- due to the genuine unavailability of a key party

When it is clear that there is an ongoing police, or other investigation, or related court proceedings, you should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings.

If at any time during the investigation you become aware of any circumstances that might require the investigation to be deferred, you should notify the subject member of this. If you are not the monitoring officer you should notify the monitoring officer and seek their consent to the deferral.

The decision to defer an investigation should be taken by you, the monitoring officer. If you have asked someone else to carry out the investigation, they will need to gather sufficient information from the complainant, subject member, and from the police or other organisation involved, to enable you, as the monitoring officer, to come to a decision. You may wish to seek legal advice at this stage. The reason for the decision to defer should be specifically set out in the investigation file with supporting documentation attached.

In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another

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investigation or court proceedings. The investigator should highlight those areas where investigation may be possible in the investigation plan.

In some cases, it will be possible to investigate the alleged conduct in parallel with another investigation, for example where the Local Government Ombudsman is investigating a council's decisions and you are investigating the conduct of an individual member involved in making the decision. You may need to work closely with the other organisation, and agree the steps that each party will take.

You might also consider asking the standards committee to refer the investigation to the Standards Board for England in these cases, to allow closer cooperation between the two investigators.

When a decision is taken to defer an investigation, you should inform:

- the subject member
- the complainant
- the standards committee of any authority concerned
- the relevant town or parish council if the subject member is a town or parish member

You should ask the police, other relevant organisation or individual in writing to keep you informed of the outcome of any police or other investigation, court proceedings or other relevant matter. You should note any important dates, for example of committal hearings, in the investigation plan review. In addition, you may wish to make further

contact with the police, other body or individual to ask for an update on the matter.

A deferred investigation should be kept under regular review, in the interests of natural justice. You may wish to seek legal advice at regular intervals, for example every three months, from the date of the deferral decision about the reasonableness of continued deferral.

Once a decision is taken to begin the investigation again you should notify in writing:

- the subject member
- the complainant
- the standards committee of any authority concerned
- the relevant town or parish council if the subject member is a town or parish member

You should also review the investigation plan in light of the outcome of any police investigation or court proceedings.

Confidentiality

You must treat the information that you gather during your investigation as confidential. This will help ensure that your investigation is seen as fair. Maintaining confidentiality reduces the risk of evidence being viewed as biased, and preserves the integrity of the investigation.

Note: the fact that an investigation is being conducted does not need to remain confidential.

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We recommend that you also ask the people you interview, and anyone else aware of the investigation, to maintain confidentiality. You should remind members of their obligations under paragraph 4(a) of the Code of Conduct regarding the disclosure of information that they receive in confidence. In addition, members should be reminded of the requirements of Section 63 of the act.

You must not disclose information obtained in an investigation unless:

- the disclosure will enable the standards committee, an ethical standards officer, the Local Government Ombudsman, the Audit Commission and Welsh equivalent, the Electoral Commission or the First-tier Tribunal to perform their statutory functions
- the disclosure will assist the monitoring officer to perform their statutory functions
- you have permission to disclose it from the person the information relates to
- 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 similar body

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.

Information about confidentiality of documents in relation to standards committee hearings is included in our guidance, **Standards Committee Determinations**.

Timescales for an investigation

There are many factors that can affect the time it takes to complete an investigation. Nevertheless, it is important that there are realistic targets for the completion of an investigation. This allows standards committees to monitor the progress of investigations and explore reasons for any delays. The Standards Board would recommend that most investigations are carried out, and a report on the investigation completed, within six months of the original complaint being assessed by the initial assessment sub-committee.

Completion of an investigation

It is important to know when an investigation has been completed. Once an investigation is completed, a case cannot be referred back to an ethical standards officer or the standards committee. Furthermore, the timescale for holding a hearing to consider the outcome of a local investigation is normally three months from the completion of that investigation.

On completion of an investigation, the monitoring officer must make one of the

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findings required by Regulation 14(8) of the regulations, and write a report. Once a final report has been written and dated by the monitoring officer, the investigation should be regarded as completed. Where the report is being written by another person, the position will depend on the functions that were delegated to that person by the monitoring officer. In general, the investigation should be regarded as completed when the monitoring officer receives the final report and accepts that no further investigation is necessary.

reports

Purpose of the report

The report should be treated as an explanation of all the essential elements of the case and a justification for any possible sanction, if one is suggested. Normally sanctions are a matter for the standards committee, so an investigation report should not normally suggest a sanction.

Producing a draft report

When you have concluded your investigation, you should consider whether to produce a draft report before your final report. Where you can, you will need to form conclusions about the evidence on the balance of probabilities. A draft report is issued to the parties in the investigation for review and comment. It gives you the opportunity to check facts and ensure that all aspects of the case have been explored in sufficient detail.

When deciding whether to produce a draft report, ask yourself:

- Are the facts in the matter complex or ambiguous?
- Are the facts of the case disputed?
- Do the parties expect to receive a draft for comment?

Issuing draft reports

If you decide to issue a draft report, copies should be sent for comment to the complainant and to the subject member. 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. You might do this by sending them extracts from your report that refer to them or their evidence.

At this stage, the subject member or complainant may comment on the draft report. You may decide to redraft your report based on the comments received. If you make significant changes to your first draft following the comments received you may consider issuing a second draft. Occasionally, responses may reveal a need for further investigation. 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.

Final reports

The final report must be sent to:

- the subject member
- the standards committee of your authority
- the standards committee of any other authority 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.

The report must make one of the following findings:

- that there has been a failure to comply with the Code of Conduct (a finding of failure)
- that there has not been a failure to comply with the Code (a finding of no failure)

If you consider that there has been no breach of the Code, you should explain in a covering letter to the people listed above that the report will be sent to the standards committee for consideration. You should also state that it is possible the standards committee will reach a different conclusion.

If you consider that there has been a breach of the Code, you should make it clear that there will be a hearing into the allegations.

If the subject member is a town or parish councillor, you should advise the relevant parish/town clerk of the outcome of your investigation.

The report should be accompanied by information explaining the circumstances under which the standards committee may conduct a hearing into the allegations. It should also explain the procedure for these events.

Report checklist

Your report should contain the information listed below.

- a 'confidential' marking
- a 'draft' or 'final' marking
- the date
- the legislation under which the investigation is being carried out
- a summary of the complaint
- the relevant sections of the Code
- evidence
- your findings of fact
- your reasoning
- your finding as to whether there has been a failure to comply with the Code

The level of detail required will vary for each report, depending on the complexity of information to be considered and presented.

In addition, the letter you send with the draft report should explain that the report does not necessarily represent your final finding. The letter should also explain that you will present a final report to the standards committee once you have considered any comments received on the draft report.

Furthermore, the letter you send with the final report should explain that the report represents your final findings and will be presented to the standards committee. It is important that the report has the date of its completion on the front page. This provides clear evidence of when the time within which a hearing should be held begins.

reports

The date of the hearing should be within three months from the date the monitoring officer, or delegated officer, completes the final report.

The report will contain documents that you have relied on in reaching your conclusions. These may include:

- a chronology of events
- records of telephone conversations, letters and notes of interviews with witnesses

When the report is considered by the standards committee, it will normally be as an appendix to a covering report from the monitoring officer, which will be on the agenda of the standards committee. Both reports can be kept confidential under paragraph 7C of Schedule 12A of the Local Government Act 1972, until the committee decides at the hearing whether it wishes to meet in public.

You can find information about confidentiality of documents in relation to standards committee hearings in our guidance, **Standards Committee Determinations**.

Consideration of the final report

If you find that there has been a breach of the Code of Conduct, you must refer the case for determination. Advice on determinations can be found in our **Standards Committee Determinations** guidance.

If you consider that there has not been a breach of the Code, the standards committee must decide at a meeting if it agrees with this. At the meeting, the standards committee should simply consider the report. It should not seek to interview witnesses or take representations from the parties.

The standards committee's role here is to decide, based on the facts in the report, whether it agrees that the Code has not been breached or if there is a case to answer. If the standards committee believes there is a case to answer, there will be a hearing.

If the standards committee agrees that the Code has not been breached, the standards committee must arrange for a notice to be published in a local newspaper. It can also arrange for the notice to be published on the authority's website and in any other publication. The notice should state the standards committee's finding, and give reasons for it. In cases where the standards committee finds that the Code has not been breached, the subject member is entitled to insist that the notice is not published anywhere.

If the standards committee agrees with the monitoring officer's 'finding of no failure' to comply with the Code, it must, as soon as possible after making its decision, give written notice of its finding to:

- the subject member
- the complainant
- any ethical standards officer concerned

reports

- the relevant town or parish council if the subject member is a town or parish member

We would suggest that the notice sent to the town or parish council is sent to the parish clerk, unless sending it to the chairman of the council is more appropriate because of the parish clerk's involvement in the complaint

You will need to consider how any 'finding of no failure' decisions are recorded for the minutes of the standards committee. Publication of the details of such cases on an authority website where the minutes of authority meetings are routinely stored may well undermine the purpose of a member's right not to have the notice published.

Standards committees may make recommendations to their authorities on matters arising from the report, such as revision of the council's protocols or training on the Code.

delegation of investigations

Under Section 82A of the Local Government Act 2000, monitoring officers can delegate functions, including investigations, to their deputy or to any other named individual.

However, monitoring officers should maintain the function of overseeing the investigation. As with monitoring officers, deputies and nominated people do not have to be legally qualified but are obliged to take account of any guidance issued for monitoring officers by the Standards Board for England.

Under Section 5(1)(b) of the Local Government and Housing Act 1989, local authorities must provide you with sufficient resources to perform your duties. Under Section 82A of the Local Government Act 2000, deputies and other officers have the right to the same support as monitoring officers.

In many authorities, monitoring officers will be able to appoint a member of staff to carry out their investigation. Smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities. This is to make sure that an experienced officer is available to carry out an investigation, should the need arise. Authorities may also decide to outsource the investigation to another organisation or individual.

Monitoring officers 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 authority of the

person delegated to conduct the investigation. You should be particularly clear about who is responsible for writing the draft and final reports. If the monitoring officer intends to advise the standards committee at a hearing they should avoid being involved in the preparation of the investigation report. However, they may want to be able to reserve the right to decide when the report is of an acceptable quality to be put to their standards committee.

You should inform the relevant parties when you delegate an investigation, so that they know who is dealing with the case and in case they need to provide the investigator with more information.

other action

When dealing with allegations, a standards committee or ethical standards officer can decide that some form of action other than investigation or determination is needed at a local level. The standards committee must consult its monitoring officer before reaching that decision. An ethical standards officer will also consult the monitoring officer before issuing a direction of this kind.

The standards committee or ethical standards officer may, for instance, direct you to consider what recommendations to make to your authority about wider issues for that authority that are raised by the case. For example, a relatively minor alleged infringement of the Code, by a member who is accused of misusing their authority's IT equipment, might identify shortcomings in the authority's policy about members using that equipment.

The standards committee or ethical standards officer might decide that the best way to deal with the allegation is to direct the monitoring officer to review the policy, and make recommendations for improvement to the authority.

Alternatively, the standards committee or ethical standards officer may try to ensure the parties concerned attempt some form of mediation. Further information on when standards committees may consider other action to be appropriate can be found in our guidance called the **Local assessment of complaints**.

Once a standards committee refers an allegation for other action, an investigation

into that allegation can no longer take place. However, if a standards committee refers an allegation for investigation, the monitoring officer may consider once the investigation has started, that the issues would be more appropriately dealt with through other action. Please see the section **Referring cases back to standards committees** on **page 8** for the conditions that must be satisfied before this can happen.

If the monitoring officer makes a request to the standards committee that the allegation is dealt with through other action rather than investigation, the monitoring officer should inform the subject member and the complainant of this request. They should also give the subject member and the complainant the opportunity to comment before the standards committee makes any decision.

When you have been given a direction to carry out other action, you should report back to the standards committee or ethical standards officer, within three months, on the outcome of your actions or with details of your proposed actions.

If the standards committee or ethical standards officer is satisfied with the action specified in the report they must notify:

- the subject member
- the complainant
- the standards committee of any authority concerned
- the relevant town or parish council if the subject member is a town or parish member

other action

If the standards committee is not satisfied with the action specified in the report they can give you further directions about how to deal with the case. This cannot include a direction to carry out an investigation.

If an ethical standards officer is not satisfied with the action specified in the report they can require you to arrange for the publication of a statement in a local newspaper. The statement should give details of the other action directed by the ethical standards officer, the reasons why the ethical standards officer is dissatisfied with the action taken, and your response.

notes