

A GUIDE TO OUR INVESTIGATION PROCESS

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From 8 May 2008, amendments to the Local Government Act 2000 changed the way that complaints about members of local authorities are made. These complaints are about members failing to comply with their authority's Code of Conduct.

The description given here will apply to all complaints received by a standards committee after that date. While the procedures for complaints made earlier are broadly similar, they are not identical to those set out here. If you need information about how the Standards Board is dealing with a complaint made before 8 May, please contact our Director of Casework on **0161 817 5300**.

Introduction

Being involved in an investigation may be a worrying experience. This guide is intended to provide information about the investigations process, and aims to answer the questions that those who become involved may wish to ask.

Investigating allegations of misconduct is one of the ways in which we at the Standards Board for England work to build confidence in local democracy. Over 100,000 people give their time as members. The majority do so with the very best motives and conduct themselves in a way that is beyond reproach. Public perception, however, tends to focus on the minority, who in some way abuse their positions or behave badly.

Anyone who considers that a member may have breached the Code of Conduct can make an allegation to their local authority. If the allegation is about a member of a parish council, the complaint should be sent to the relevant district or unitary council. Each allegation will be assessed by the local authority's standards committee who will decide if it falls within their remit and should be investigated. If it does, they will decide whether the matter should be investigated locally by the monitoring officer or whether they should ask the Standards Board for England to investigate the matter.

All of our investigations are carried out in accordance with a defined set of procedures – a downloadable pdf version of which is available from our website www.standardsboard.gov.uk.

Leading up to our investigation

When does an allegation become an investigation?

From 8 May 2008, the standards committee of a local authority may refer an allegation for investigation if they satisfied that the allegation falls within their legal jurisdiction and believes the matter should be investigated.

When a matter is referred for investigation, it does not mean that the standards committee believes the allegation is true. It simply means that they believe the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct and therefore should be investigated.

The Standards Committee may ask us to investigate the matter if they believe that they cannot or should not investigate it locally.

How do you decide whether a case should be investigated by the Standards Board for England or if it should be kept locally?

When considering a standards committee's request that we investigate a case, the Standards Board will be principally concerned with supporting the ethical framework nationally and locally. They will take into account all relevant circumstances. These may include:

- The status or number of members involved. For example, a group leader, elected mayor or member of the authority's cabinet or standards committee.
- The status of any officers involved. For example, is the complainant the chief executive, the monitoring officer or other senior officer?
- A potential conflict of interest. For example, because so many members of the standards committee are involved that it could not properly monitor the investigation. Or because the monitoring officer has been involved, suitable alternative arrangements cannot be put in place.
- The seriousness or complexity of the case. For example, so many members are involved that it cannot be handled locally.
- Substantial amounts of evidence are needed and are beyond that available from the authority's documents, its members or officers.
- Substantial governance dysfunction in the authority or its standards committee.

- The complaint relates to long-term or systemic member/officer bullying.
- The complaint raises significant or unresolved legal issues on which a national ruling would be helpful.
- The public might perceive the authority to have an interest in the outcome of a case. For example, if the authority could be liable to be judicially reviewed if the complaint were upheld.
- Other exceptional circumstances which would make a local investigation particularly difficult. For example if the same facts have given rise to an investigation by another regulator such as the Local Government Ombudsman or the authority's auditors.

If the Standards Board accepts an allegation from a standards committee it will refer it to an ethical standards officer for investigation

What is an ethical standards officer?

An ethical standards officer is someone empowered by the *Local Government Act 2000* to investigate allegations referred to them by the Standards Board for England that a member or co-opted member of a relevant authority in England has failed to comply with his or her authority's Code of Conduct.

Ethical standards officers conduct each investigation impartially and decide whether the allegation should be referred for a hearing or not. The ethical standards officer may also decide that there has not been a breach of the Code of Conduct or may ask the authority's monitoring officer to take some action instead of investigation, such as training, reviewing procedures or conflict resolution.

How will an ethical standards officer conduct the investigation?

The ethical standards officer decides the appropriate way to investigate an allegation. This depends upon the circumstances of each individual case. However, we conform with good practice in relation to the planning and conduct of investigations and these notes set out our usual practice.

What can the ethical standards officer investigate?

The ethical standards officer will specifically investigate the allegations referred to him or her by the Standards Board for England. In addition, Section 59(1)(b) of the *Local Government Act 2000* gives the ethical standards officer the power to investigate other matters which may amount to a breach of the Code of Conduct that come to his or her attention during the course of an investigation.

During our investigation

What are members told about the allegations against them?

During the course of investigations, the ethical standards officer will put in detail, to the member concerned, the allegations made against him or her, and provide the member with the opportunity to respond to them.

When will the ethical standards officer interview the member being investigated?

Not all investigations will require interviews. If interviews are needed, the ethical standards officer will often seek information from the person making the allegation, and others involved, before interviewing the member concerned.

However, the ethical standards officer may sometimes contact the member at the beginning of the investigation. It may also be necessary to conduct more than one interview.

Does the ethical standards officer have the right to demand information?

Yes. The ethical standards officer has a right of access to all relevant information that is necessary to conduct the investigation. The gathering of information is vital in order to enable the ethical standards officer to reach a fair and proper finding on an allegation.

The ethical standards officer may make enquiries of any person believed to have information relevant to the investigation. This may include:

- the member alleged to have breached the Code of Conduct
- the person who made the allegation
- other members of the authority
- any relevant third parties, such as witnesses

Such persons can be required to provide information and attend an interview.

How will the ethical standards officer obtain information?

The manner will vary depending on the individual case. They may seek information by way of correspondence or by interview.

Many interviews will be conducted on the telephone in order to ensure an efficient use of public funds. Members who are the subject of an investigation will often be interviewed face to face depending on the circumstances of the case. While requests for a face-to-face interview will be considered on a case-by-case basis, we are unable to interview everyone in person.

The ethical standards officer will try to arrange interviews at a time and place convenient for those concerned.

Can a legal adviser or other person attend or participate in an interview?

A member is always entitled to be accompanied or supported by a legal adviser upon request. However, the ethical standards officer will expect the member to answer any questions posed – not the legal adviser. Members are personally responsible for any legal costs incurred during the process; the Standards Board for England has no power to meet the cost of a member's legal representation.

The ethical standards officer may also allow someone who is not a lawyer to accompany the member, but it is not appropriate if that person is a potential witness in the investigation.

Will interviews be recorded?

Some interviews will be recorded in order to save time and ensure an accurate record of the interview. This technique is used for both face-to-face and telephone interviews. However, we do not record interviews without first gaining consent from the person we are interviewing.

Notes of the interview will be taken irrespective of whether consent is given for the interview to be recorded.

What happens if a person refuses to provide information?

It is a criminal offence to fail to comply with the ethical standards officer's requests without a reasonable excuse. If a member refuses to provide information or attend an interview, the ethical standards officer may conclude the investigation based upon other information he or she has obtained, and without the benefit of the member's comments. The member will still be provided with a copy of the ethical standards officer's draft report for comment.

Does the member being investigated get the opportunity to comment on the findings?

Yes. The member will be given a draft report containing the ethical standards officer's findings of fact and be given the opportunity to comment on it. If the ethical standards officer thinks that there has been a breach of the Code of Conduct the member will be sent copies of the evidence relied upon by the ethical standards officer in reaching their decision with the draft report.

Who else can comment on the draft report?

The person who made the allegation and the monitoring officer of the relevant authority will also receive the draft report and have the chance to comment on

it. The ethical standards officer will take all comments into account when producing the final report.

The ethical standards officer may also give other relevant people the opportunity to comment on the draft report, or extracts from it, if their conduct is directly referred to in the report, or if it will assist the investigation.

How long will the investigation take?

The time taken to complete an investigation will vary depending on the facts of each case. We aim to conduct our investigations as swiftly as possible without compromising on quality. We believe that being thorough and fair is an absolute priority.

We aim to complete all our investigations as quickly as possible. Since May 2008, ethical standards officers are likely to be dealing with more serious and complex cases, that are more likely to take nine months or longer.

The timeframe is calculated from the point when the standards committee refers the allegation to the Standards Board. It includes the time taken to conduct the investigation, evaluate the evidence, prepare a detailed report, receive and consider comments from relevant parties, and finalise the report.

Sometimes we have to defer an investigation because, for example, the member concerned is seriously ill or another investigation is being conducted by the police or another regulator.

At the end of the investigation

What are the findings an ethical standards officer can reach?

There are four possible findings which an ethical standards officer can make, defined by Section 59(4) of the *Local Government Act 2000*. For complaints made after 1 April 2008:

- a) that there has been no failure to comply with the code of conduct of the relevant authority concerned
- b) that there has been such a failure to comply but no action needs to be taken
- c) the matter should be referred to the monitoring officer of the relevant authority for determination by the local standards committee
- d) the matter should be referred to the Adjudication Panel for England for adjudication by a tribunal

The ethical standards officer will take any relevant factors into account before deciding on the appropriate finding. The likelihood of repeat or continuing misconduct would be an aggravating factor. A genuine expression of regret or the acceptance of personal responsibility for the misconduct would be mitigating factors.

Ethical standards officers will set out their decision on the finding in a report or letter. This will provide reasons for their decision, including whether they consider there is a breach of the Code of Conduct. However, this is their opinion after a thorough investigation. Only a hearing of the Adjudication Panel for England, or a local authority's standards committee to which the case is referred, can reach a legal determination as to whether there has been a breach of the Code of Conduct, and impose a sanction if appropriate.

Who will be told the final outcome of the investigation?

Where the finding is either that there has not been a failure to comply with the Code or no action is required, the ethical standards officer will send a copy of the final report to:

- the member being investigated
- the person who made the allegation
- the monitoring officer of the relevant authority

If the case concerns a town or parish councillor, the ethical standards officer will inform the clerk of the outcome but will not send them a copy of the report.

If the finding is that the matter should be referred for determination by the local standards committee, the ethical standards officer will send the final report only to the monitoring officer. The ethical standards officer will then advise the member being investigated and the person who made the allegation that they have done so. And again, in the case of town or parish councillors, the ethical standards officer will inform the clerk.

The monitoring officer will send the final report to the member being investigated and the standards committee members selected for the hearing panel.

Finally, if the finding is that the matter should be referred to the Adjudication Panel for England, the ethical standards officer will send the final report to the president of the Adjudication Panel. A copy of the final report will also be sent to the monitoring officer of the relevant authority. The ethical standards officer will then advise the member being investigated and the person who made the allegation that they have done so, and in the case of town or parish councillors, they will inform the clerk.

The Adjudication Panel will send the final report to the member being investigated in accordance with their process. Please visit the website of the Adjudication Panel for England for details of the process they follow: www.adjudicationpanel.co.uk.

When are the ethical standards officer's findings made public?

Where the finding is either that there has not been a failure to comply with the Code or no action is required, we will publish a summary of the case on our website as soon as possible after the final report has been sent to the relevant parties — usually within a month. In addition, the ethical standards officer may, depending on the circumstances, use his or her powers under the *Local Government Act 2000* to publish a summary of the report in the relevant authority's local newspapers.

If the finding is that the matter should be referred for determination by the Adjudication Panel for England or local standards committee, we will publish the ethical standards officer's decision on our website shortly after the relevant parties have been notified. Summaries of these cases will be published as soon as possible after we have received the full written decision of the relevant hearing panel.

Where the ethical standards officer has decided that there is no breach of the Code or no action should be taken, the report may be made available to the Standards Committee for information to assist them in carrying out their functions.

What happens if the matter is referred to the local standards committee?

When an ethical standards officer refers a matter to the monitoring officer of the relevant authority for local determination, the monitoring officer will arrange a standards committee hearing. The committee will consider the ethical standards officer's report and decide if it thinks there has been a failure to comply with the Code of Conduct. If it does, the committee has a range of sanctions at its disposal up to and including suspending a member for six months. The member may appeal against the finding to the Adjudication Panel for England.

The standards committee will announce its decision at the hearing, and afterwards will arrange to publish a notice of decision in a local newspaper. If the committee decides there is no breach of the Code, the member being investigated may ask the committee not to publish the notice.

However, there is nothing to stop any third party from publishing details of the case which emerge during the public hearing, even if the authority withholds its notice.

A summary of the case will also be published on our website shortly after we receive the standards committee's full written decision.

What happens if the matter is referred to the Adjudication Panel for England?

When a matter is referred to the Adjudication Panel, a hearing is held to consider the alleged breach of the Code.

The Adjudication Panel for England is independent of the Standards Board for England. It will determine whether there has been a failure to comply with the Code of Conduct and has a range of sanctions available to it, including suspension of a member from office for up to one year, and disqualification from standing or acting as a member for up to five years.

If the Adjudication Panel rules against the member, they have the right to appeal against the finding to the High Court.

The Adjudication Panel will publish its findings on its website and may choose to place a notice of its decision in a local paper.

A summary of the case will also appear on our website shortly after we receive the Adjudication Panel's full written decision.

More information about the Adjudication Panel for England can be found at www.adjudicationpanel.co.uk.

To whom may information obtained by an ethical standards officer be disclosed?

Section 63 of the *Local Government Act 2000* limits the disclosure of information obtained during an investigation. Any person who discloses information in breach of Section 63 is guilty of an offence.

The ethical standards officer may need to disclose information during the course of investigation to the parties concerned or to a witness. They may also disclose information to certain organisations, such as the Audit Commission and the Local Government Ombudsman, under Sections 63 and 67 of the *Local Government Act 2000*.

Disclosure by others of information gathered during an investigation may be made in the following circumstances:

- a) the person or person to whom the information relates has given specific consent to its disclosure
- b) the information has previously been disclosed to the public with lawful authority
- c) for the purposes of seeking advice in relation to the investigation from a solicitor or other professional adviser.

However, anyone who has a copy of a report should consider carefully before making any disclosure of information gathered during the investigation, seeking professional advice from a solicitor so as to ensure they are acting lawfully.

Is there a right of appeal against an ethical standards officer's finding?

There is no right of appeal against anything that appears in the ethical standards officer's report, although all parties will have had the opportunity to comment on the draft report.

It may be possible to seek judicial review of the ethical standards officer's finding. There are time limits on making an application for judicial review and we strongly recommend that legal advice be sought as soon as possible when considering action of this kind.

Can an ethical standards officer cease an investigation without reaching a finding?

Once an ethical standards officer has begun an investigation, they may only cease without reaching a finding if they refer the matter to the monitoring officer of the relevant authority for investigation at the local level or they issue a direction to the monitoring officer to take other steps to deal with the allegation. An ethical standards officer may not cease an investigation by any other means.

Local investigations

What is a monitoring officer?

The monitoring officer is a senior officer of the authority of the member concerned or, in the case of parish councils, the relevant principal authority. They are often, but not always, based in the authority's legal and democratic services department. The monitoring officer has a statutory duty to investigate allegations referred to them by their standards committee or by an ethical standards officer

Who conducts a local investigation?

The investigation may be conducted by the monitoring officer, another officer within the authority, or a third party contracted by the monitoring officer.

Can a monitoring officer refer a case to the Standards Board?

During the course of the investigation referred to them by an ethical standards officer, a monitoring officer may ask the ethical standards officer to take the investigation back. During the course of the investigation referred to them by their standards committee, a monitoring officer may, in certain circumstances, ask the standards committee to reconsider their decision on how to deal with the allegation. This could result in the allegation being referred to the Standards Board. Depending upon the circumstances of the case, the ethical standards officer or the Standards Board may consider it appropriate to accept the matter and continue the investigation. Circumstances where this may be appropriate include (but are not limited to):

- where investigation shows that the matter is more serious than it first appeared
- the member is obstructing or refusing to co-operate with the investigation

How will a local investigation be carried out?

In all likelihood, an investigation conducted by the monitoring officer, or their appointed delegate, will not differ procedurally from that carried out by an ethical standards officer. There is no set procedure for carrying out an investigation and while we believe the processes we follow represent best practice, there may be minor variations between different authorities.

All will however adhere to the legal requirement to give the subject member an opportunity to comment on the allegation, and where relevant, the evidence against him or her. Please note that this legal right does not extend to the person who made the complaint, and while in most investigations the complainant will be sent a copy of the draft report, there is no legal

requirement that they be involved in the investigation. The complainant should however be informed of the outcome of the investigation.

For details you should consult the monitoring officer or the authority's website.

What is the outcome of a local investigation?

At the end of a local investigation, a report is prepared by the person conducting the investigation.

The monitoring officer must provide a copy of the report to the standards committee for consideration.

If the report concludes that there has not been a breach of the Code of Conduct and the standards committee agrees, a notice will be published stating that there has been no failure to comply with the Code. The member can ask the committee not to publish this notice. If the standards committee disagrees that there has been no failure to comply with the Code, it must hold a hearing to consider the matter in full.

If the report concludes that there has been a failure to comply with the Code, the standards committee must hold a hearing to determine the matter, and if it concludes that the Code was breached, it can impose a range of sanctions on the member including suspension for up to six months.

At any point prior to completion of the hearing, the standards committee may ask the ethical standards officer to take the matter back for investigation if it appears that the sanctions available to the standards committee are not serious enough.

What is a direction/alternative action?

In certain circumstances, a standards committee or ethical standards officer may decide that some form of action other than an investigation is appropriate. This is most likely to happen in situations where the monitoring officer or the ethical standards officer consider that a case has relevance for the ethical governance of an authority and that the issues involved will not be resolved by making a finding against an individual member.

The monitoring officer or ethical standards officer may decide to take other action, rather than carry out an investigation. For example, the monitoring officer could make recommendations to the standards committee about wider issues for the authority, or direct the committee to arrange some form of mediation between parties.

General

How does the Standards Board respond to press enquiries?

Local newspapers have an important role to play in maintaining the transparency of local administration. We are as helpful as possible to journalists who enquire about our work without doing anything that may unfairly prejudice the outcome of an investigation or hearing. We do not comment on, or even acknowledge, allegations that have not yet been considered, and will not publicise the existence of an investigation while it is underway.

We will confirm, when prompted by a journalist, the name and authority of a member involved in an ongoing or past investigation, and will provide the following additional information:

- the type of person who made the allegation – whether they are a member or officer of the same authority, or a member of the public
- the parts of the Code potentially breached
- when the allegation was received and when we decided whether or not to investigate
- if a direction in the case has been issued, the nature of that direction
- for allegations investigated by an ethical standards officer, the outcome of the investigation once it is known (journalists will be referred to the local authority for more information on allegations being investigated locally)

We always make the point that just because an investigation is taking place, no one should presume that a breach of the Code has occurred.

Once the case has been concluded, including any hearing of the Adjudication Panel for England or local standards committee where appropriate, the summary of the case, which is published on our website, is also made available to the press on request.

Where can I go for further details?

This guide is only intended to answer some of the most frequently asked questions about investigations. For more information about our work, please explore our website, www.standardsboard.gov.uk.

If you have any specific questions or concerns, you can contact us at:

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