

Guidance to ethical standards officers

September 2008

Introduction

- 1) This guidance is issued by the Standards Board for England on 16 September 2008 under Section 57(5) of the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007. Section 57(5) provides that the Board “*may issue guidance to ethical standards officers with respect to the exercise by those officers of their functions.*” All references to legislation in this guidance are to the 2000 act unless otherwise specified.
- 2) This guidance sets out the principles under which ethical standards officers should carry out their functions. The Board may issue further detailed guidance from time to time on particular aspects of investigations and other actions of ethical standards officers.
- 3) The functions of ethical standards officers are set out in the same act. They are, in summary, to carry out investigations into cases where a member of a relevant authority¹ is alleged to have breached their authority’s code of conduct and which:
 - have been referred to them by the Standards Boardor
 - have come to the attention of the ethical standards officer while carrying out such an investigation
- 4) Further details of how these functions are to be carried out, with specific powers and restrictions, are contained in the legislation.
- 5) The 2000 act provides that the conduct of investigations and the findings reached are at the discretion of the ethical standards officer appointed to carry out the investigation. While recognising this necessary independence, the Standards Board hopes this guidance will help ethical standards officers carry out their functions in a consistent manner, in accordance with the high standards of investigative practice appropriate to a conduct regulator, and in a timely and cost effective manner.
- 6) In carrying out their functions, ethical standards officers should be mindful of the importance of upholding standards in public life and the role and reputation of the Standards Board. Where ethical standards officers consider that any matter is likely to assist the Standards Board in carrying out its functions under the act, they should draw the matter to the attention of the Director of Casework and the Standards Board.
- 7) In carrying out their functions, ethical standards officers must be mindful of their obligations under other legislation including the Human Rights Act 1998 and the Data Protection Act 1998 (as amended).

¹ Relevant authorities are those set out in 49(6) of the act.

Referring and allocating investigations

- 8) The Standards Board for England is required to appoint ethical standards officers under Section 57(5). The Standards Board decides which cases should be investigated by the ethical standards officers and may make arrangements whereby cases should be assigned to particular ethical standards officers. The Standards Board has delegated the allocation of cases to ethical standards officers to its Director of Casework (who is also an ethical standards officer).

Method of investigation

- 9) Section 61(1) provides that the procedure for conducting an investigation is such as the ethical standards officer considers appropriate in the circumstances of the case. Without derogating in any way whatsoever from that degree of independence in any individual case, the Standards Board for England requires ethical standards officers to have regard to this guidance.
- 10) If an ethical standards officer considers that, in a particular case, they should depart from this guidance, then a note of the reasons for the departure should be made on the file. This may be the subject of later investigation if a challenge to the ethical standards officer's approach is made, so the recorded reasons should be full enough for others to understand why that particular approach was adopted.
- 11) In general, investigations should be carried out in a fair, proportionate and timely manner. They should respect the proper interests of the complainant, the member who is the subject of the complaint and the authority concerned.
- 12) For investigations to be fair, they should wherever possible follow a consistent pattern, which should include:
- notification to all parties of the name of the ethical standards officer who is conducting the case, of the procedure to be followed and the likely timeframe for investigations
 - any questioning of witnesses to be fair and balanced
 - an impartial assessment of the evidence relevant to the alleged misconduct
 - an opportunity for the member complained of to comment on the allegation and on any evidence which conflicts with the member's comments
- 13) To achieve consistency and good practice, the Director of Casework should carry out regular quality assurance of the effectiveness of the investigation procedures.
- 14) Ethical standards officers should follow consistent procedures unless there is a sound reason to depart from them. Any departure from those procedures should be in consultation with the Director of Casework and other ethical standards officers and reasons for the departure should be recorded fully enough for others to understand why that change was made.
- 15) Investigations should be carried out in a timely manner. Being the subject of an investigation can be stressful for the member complained of, injurious to their

reputation, and in some cases can have a serious effect on the workings of their authority. It is a truism that justice delayed is justice denied, but the time taken to complete an investigation is the single biggest reason for dissatisfaction with the standards regime.

- 16) The Standards Board expects each case to be completed as soon as practicable, taking into account its complexity, the number of allegations and availability of witnesses and evidence. In consultation with the ethical standards officers, the Standards Board will set target time frames from time to time for the completion of investigations and expects the ethical standards officers to adhere to those times unless there is good reason not to do so.
- 17) The procedure adopted for investigations should be proportionate to the alleged misconduct. In considering how an investigation is to be conducted, ethical standards officers should take into account:
 - the seriousness of the alleged misconduct
 - the impact on standards of conduct in public life
 - the understanding and practice of standards and conduct issues in the authority concerned
 - the efficient functioning of the authority
 - in appropriate circumstances, the mental and physical health of the people involved

Instigating an investigation

- 18) Allegations that a member of a relevant authority has breached the Code of Conduct (which authorities were able to adopt from May 2007 and which became mandatory in October 2007) must be made in the first instance to the standards committee of that authority. However, if, during the investigation of a case referred to an ethical standards officer by the Standards Board for England, evidence comes to the attention of the ethical standards officer which leads the ethical standards officer to suspect another failure to comply with the Code by the subject member or any other member, they may, at their discretion, investigate that matter, under Section 59(1)(b), without any allegation being made to the standards committee.

In deciding whether to exercise this function, the ethical standards officer should consider whether the public interest will be served by undertaking any such investigation, taking into account the following criteria (this list is not exclusive):

- Is it serious enough, if proved, to justify the range of sanctions available to the Adjudication Panel for England or a local standards committee?
- If less serious, is it part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and there is no other avenue left to deal with it, short of investigation?
- Has the time that has passed since the alleged conduct occurred seriously jeopardised the likelihood of a fair investigation or meant that there is little public benefit to be achieved by an investigation?

- If the same, or a substantially similar, complaint has already been the subject of an investigation or inquiry, is there anything further to be gained by seeking the sanctions available to the Adjudication Panel or a local standards committee?
 - Does the information available to the ethical standards officer justify a decision to investigate?
 - Except in the most serious of cases, is it conduct that would not be considered to be a breach of the current Code of Conduct (although it might be a breach of a code in force at the time of the conduct)?
- 19) If a new investigation is instigated, the matters that are to be investigated should be specified and communicated to the member who is to be the subject of the investigation and to the monitoring officer of the authority concerned.
- 20) In exercising this function, the ethical standards officer should not encourage complainants to bypass the statutory submission of complaints in the first instance to the local standards committee. Where concerns arise because of a separate allegation, which is unrelated to the complaint referred by the Standards Board, it may be more appropriate to advise the complainant to address their concerns to the standards committee.
- 21) Before exercising this power, ethical standards officers must consult with the Director of Casework and the other ethical standards officers, to ensure a consistency of approach.

Referral to monitoring officer with directions

- 22) Section 60(2) provides that an ethical standards officer may cease any investigation before it is completed and refer the matter to the monitoring officer of the authority concerned. Section 66(6) authorises the ethical standards officer to give directions to the monitoring officer as to how the matters referred are to be dealt with. Before exercising this function, ethical standards officers should consult with, and take into account, the comments of the monitoring officer concerned.
- 23) The range of directions which may be given is not restricted. In deciding whether to substitute a direction of this kind for an investigation, an ethical standards officer should consider:
- the likely impact of the direction on the authority concerned, against the effect of a completed investigation
 - the seriousness of the matters being investigated
 - which course of action is likely to be the better use of public resources
- 24) Ethical standards officers should also bear in mind that the power of direction may be used in relation to complaints concerning one or more members of an authority. Under this power, monitoring officers have been directed to:
- provide training on the Code of Conduct, or specific aspects of it to some or all members of a council

- assist a council in drawing up a protocol to govern relations between members and officers
 - assist a council in drawing up standing orders or other aspects of corporate governance
 - assist a council in distinguishing the nature of bodies with which the authority has a partnership arrangement
 - arrange mediation between two or more factions of a council
- 25) It is likely that other courses of action will be developed in the future, particularly since standards committees also have the power to direct monitoring officers to take other steps. The Standards Board for England wishes to encourage innovation in developing this power. To make best use of this, ethical standards officers should consult the Director of Casework and other ethical standards officers before issuing novel directions.
- 26) The direction should normally be copied to the complainant and to the member who was the subject of the complaint, together with the reasons for making the direction.

Assistance in the conduct of investigations

- 27) Ethical standards officers may arrange for any person to assist them in the conduct of an investigation in accordance with Section 60(1) and may under Section 62(5) obtain advice from anyone they believe qualified to give it.
- 28) There may be occasions when specialist assistance is needed, such as consultants on forensic matters, charity and employment law issues, town and country planning or information technology. In such cases, ethical standards officers should consult with the Director of Casework before any appointment is made.
- 29) Any appointment of an external advisor should be made in accordance with the Standards Board for England's procurement procedures.

Access to documents and information

- 30) Ethical standards officers have wide ranging powers under Section 62 to require the provision of documents and other information, including the power to require attendance for interview. In almost all cases, information and documents will be provided voluntarily and these powers of compulsion should only be used after all reasonable requests for such documents and information have failed, and when the attention of the person to whom the request has been made has been drawn to the relevant statute.
- 31) Before taking any formal step the Director of Casework should be consulted. In exercising these powers ethical standards officers may have regard to other relevant legislation and the likely value of the information sought if provided under compulsion. Full reasons should be formulated and recorded for any decision to exercise these powers.

Findings

- 32)** At the completion of an investigation an ethical standards officer should produce a report of the investigation. This should make clear what allegations and which clauses of the Code of Conduct they have considered. For complaints made after 1 April 2008, ethical standards officers must make one of four findings:
- 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) That the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority concerned.
- or
- d) That the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for England for adjudication by a tribunal falling within Section 76(1).
- 33)** In reaching a finding, ethical standards officers should consider all relevant evidence. They should take into account all those matters listed in paragraph 17 above. They should also be mindful of the decisions of the Adjudication Panel for England and of the Courts.
- 34)** Ethical standards officers should give full reasons for their findings.
- 35)** To ensure consistency, before reaching a (c) or a (d) finding, ethical standards officers should consult with the Director of Casework and other ethical standards officers. This might consist of a review of the draft report, before it is issued for comment elsewhere. The Director of Casework and ethical standards officers should consult each other on any case that produces new or difficult issues and review a sample of reports of cases producing an (a) or (b) finding.
- 36)** Before issuing a report of an investigation, ethical standards officers should normally submit a draft report to the complainant, the member complained of and the monitoring officer of the authority concerned. A reasonable time should be allowed for comments to be received by the ethical standards officer and for those comments to be considered.
- 37)** Ethical standards officers should give reasons for all decisions they make both of fact and of their finding. Reports of cases in which a (c) or (d) finding is made should take into account the views of the Adjudication Panel for England, as expressed from time to time, on the appropriate structure and style for a report.

Other regulators

- 38)** The Standards Board for England encourages co-operation and sharing of information with other regulators of local authorities and their members insofar as this is allowed by law. The Standards Board has arrangements to share information with the Audit Commission and auditors appointed by the Commission, the Local Government Ombudsman and the Electoral Commission.
- 39)** Where other regulators are carrying out investigations or other procedures arising from the same or related allegations, ethical standards officers should discuss with the other body concerned whether it is beneficial for two processes to run simultaneously, and if not, in what order they should be carried out. If legal proceedings are in progress, it will normally be appropriate to defer the ethical standards officer's investigation until they are completed. Ethical standards officers should normally defer investigations if requested to do so by the police when the police are carrying out enquiries.

Disclosure and publicity

- 40)** Although the disclosure of information assembled by ethical standards officers during the course of an investigation is restricted to certain circumstances, as set out in Section 63, the reports of an investigation must be sent to the monitoring officer of the authority concerned. Reports should also be sent to the complainant and the member who is the subject of the complaint.
- 41)** Ethical standards officers may send a copy of reports of cases with an (a), (b) or (d) finding to the standards committee of the authority concerned if they believe that it will assist that committee in the discharge of its functions. The Standards Board for England believes that it will usually be helpful for a standards committee to have sight of reports of cases leading to an (a) or (b) finding. Reports of (d) findings will normally be available as public documents when the allegation is considered by the Adjudication Panel for England. At the same time, the Standards Board recognises that there may be exceptional circumstances when the ethical standards officer should not forward the report to the committee. In such cases, clear reasons should be given about why the report is not being made available.
- 42)** Ethical standards officers may publish a summary of the report of an investigation under Section 64(2) and should produce a summary promptly for publication on the Standards Board's website. Summaries of cases leading to a (c) or (d) finding should not normally be published until after the case has been heard by the standards committee or the Adjudication Panel for England.

Support for local authorities

- 43)** The Standards Board for England believes that ethical standards officers have a valuable level of experience and expertise in the investigation of alleged breaches of the Code of Conduct. In its new role as an over-arching regulator and as more investigations are undertaken by local authorities, the Standards Board is anxious to encourage ethical standards officers to offer advice and guidance to monitoring officers and local investigators both individually and through formal events.

- 44) In exercising all their functions, ethical standards officers should consider whether lessons learnt during their experience would be helpful to the Standards Board in carrying out its functions or to authorities regulated by the Standards Board and should make recommendations to the Standards Board accordingly.

Review of guidance

- 45) To ensure that this guidance incorporates the current legislative position and best practice it should be reviewed regularly. Any review should also take into account the experience of using the guidance. The proposed review date for this guidance is September 2010.

16 September 2008