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Local investigations Guidance for monitoring officers and standards committees



Confidence in local democracy

About this guide

This guide provides information on the *Local Authority (Code of Conduct) (Local Determination) Regulations 2003*, as amended by the *Local Authority (Code of Conduct)(Local Determination)(Amendments) Regulations 2004*, which set out the framework for referring allegations of misconduct to local authorities.

In accordance with the regulations, anybody who has had a case referred to them by an ethical standards officer must take this guidance into account. In addition, they should be familiar with the regulations and have effective procedures in place for conducting local investigations and determinations.

This guide is for monitoring officers and anyone nominated by a monitoring officer to carry out local investigations in:

- district, unitary, metropolitan, county and London borough councils;
- the Greater London Authority;
- police authorities;
- fire authorities (including fire and civil defence authorities);
- the Broads Authority;
- national park authorities;
- the Common Council of the City of London;
- the Council of the Isles of Scilly.

It also covers police authorities in Wales. However, the Commissioner for Local Administration in Wales handles allegations of misconduct about members of Welsh police authorities. For this reason, references to ethical standards officers within this guide should be read as the Commissioner for Local Administration in Wales, and references to The Adjudication Panel for England should be read as the Adjudication Panel for Wales.

Referring allegations

The *Local Government Act 2000* enables ethical standards officers to refer allegations that a member has breached the Code of Conduct to monitoring officers. The regulations set out the framework under which this can be done.

An ethical standards officer may refer an allegation at any point before they complete an investigation into the allegation. When considering whether to refer the allegation, ethical standards officers will use their discretion and take into account all relevant circumstances. For example, the ethical standards officer is more likely to refer those cases in which:

- the matter does not appear to need the heavier penalties available only to The Adjudication Panel for England;
- the allegation is of an entirely local nature and does not raise matters of principle;
- the initial investigation by an ethical standards officer has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct.

The ethical standards officer is less likely to refer cases if there is evidence that a local investigation would be perceived as unfair or biased or there are any relevant local political issues that may have a bearing on the investigation.

When referring an allegation, the ethical standards officer will forward a copy of the allegation letter, along with any other significant information that they consider appropriate. Relevant legislation such as the *Data Protection Act 1998* and the *Human Rights Act 1998* may sometimes affect whether they are able to forward the original allegation letter. Where, for example, a letter contains allegations against multiple members but only one member is the subject of the investigation, the ethical standards officer may edit the allegation letter before sending it to you.

Ethical standards officers can also refer completed investigation reports to monitoring officers for local determination by a standards committee. This is a separate process explained in The Standards Board for England's guidance, *Standards committee determinations*.

Disclosure of information

Section 63 of the *Local Government Act 2000* limits the circumstances in which information obtained by an ethical standards officer during an investigation can be disclosed. Any person who discloses information in breach of section 63 is guilty of an offence.

If an ethical standards officer refers an allegation to you part-way through an investigation into that allegation, under section 63 (as amended by the regulations), they are allowed to disclose any information that they have obtained during the investigation to enable you to carry out your duties. There may, however, be circumstances in which the ethical standards officer will be unable to disclose information — for example, where the Secretary of State has advised them that the disclosure would not be in the public interest.

The information that a monitoring officer obtains during the course of a local investigation is not covered by section 63 of the Act, but you should treat this information as confidential until the investigation is completed.

Directions

Not all referrals from an ethical standards officer will require investigation. Under the regulations, an ethical standards officer can decide that some form of action other than investigation or determination is required at a local level. This is most likely to happen in situations where the ethical standards officer considers that a case has broad relevance for the ethical governance of an authority. The ethical standards officer may, for example, direct you to make recommendations to your standards committee about wider issues for the authority raised by the case, or ensure that the parties concerned attempt some form of reconciliation.

You should report back to the ethical standards officer within three months of receiving the directions on the outcome of your actions or with details of your proposed actions. If an ethical standards officer is not satisfied with the action taken or proposed to be taken, they may require you to arrange for the publication of a statement giving details of the direction and your reasons for not fully implementing the direction.

Getting started

When an ethical standards officer refers an allegation for local investigation, in addition to sending it to you, they will notify the member who is the subject of the allegation, the person who made the complaint, and the clerk of any relevant town or parish council if the subject member is a town or parish councillor.

Regulation 5(2)(a) states that you must also inform these parties when you receive a matter for local investigation. You should explain to them what will happen next, say that you will be in contact again, and provide any directions that you want to make regarding the forthcoming investigation.

Notifying the standards committee

At this stage, you should simply let your standards committee know that you are carrying out an investigation. In order to protect the confidentiality of your information, you should do this by confidential memo to the chair and all members. The memo should not name the complainant or the member against whom the allegation has been made, and should not be considered at a standards committee meeting. Keep the memo brief to avoid the perception of prejudice in your investigation and the subsequent standards committee determination.

Conducting your investigation

When carrying out local investigations, you should be aware at all times of your obligations under the *Data Protection Act 1998*, the *Human Rights Act 1998* and other relevant legislation.

We will publish a separate guide to conducting investigations at a later date. This will not be statutory guidance and is therefore not included here.

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 relate only to the allegation that you have been given. If you uncover evidence of a possible breach that does not directly relate to the

investigation, you should ask the person from whom you have obtained the information to make an allegation to The Standards Board for England, or make an allegation yourself. You should not investigate it.

Monitoring officers have no jurisdiction to investigate additional matters identified; only ethical standards officers have the power, under section 59(1)(b) of the *Local Government Act 2000*, to extend an investigation.

Referring cases back to ethical standards officers

During the course of an investigation, circumstances may arise that prompt you to ask an ethical standards officer 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**

For example, where a member refuses to co-operate with your investigation. The member must be attempting to derail the investigation. The ethical standards officer is likely to accept a case back only if he or she believes you have genuinely been prevented from completing the investigation.

Cases where an officer obstructs an investigation are not a matter for The 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 back, you must state in writing to the ethical standards officer the reasons why you believe it should be referred back. All requests should be made prior to the completion of your investigation.

You can ask an ethical standards officer to take a case back only once during the course of an investigation, so it is important to make sure you are satisfied that it 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 back as requested.

Confidentiality

We appreciate that it may be difficult at times to ensure complete confidentiality about an investigation within your authority. Even so, during your investigation, it is good practice to treat the information that you gather as confidential. This will help to 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. (The fact that an investigation is being conducted does not need to remain confidential.)

We recommend that you also ask the people you interview, and anyone else aware of the investigation, to maintain confidentiality, and you should remind members of their obligation under paragraph 3(a) of the Code of Conduct not to disclose information that they have received in confidence.

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 to perform his or her statutory functions;
- you have permission from the person to whom the information relates to disclose it;
- the information has already lawfully been made public;
- the disclosure is made for the purposes of criminal proceedings in the UK.

Any draft report that you issue on the outcome of the investigation should be marked as confidential, to preserve the integrity of any further investigation that you may need to undertake. Final reports should be made available for public inspection at your authority unless they contain confidential or exempt information as defined by part VA of the *Local Government Act 1972*.

Information about confidentiality in relation to standards committee hearings is included in our guidance, *Standards committee determinations*.

Producing draft and final reports

When you have concluded your investigation, you should consider whether to produce a draft report before your final report. A draft report is issued to key parties in the investigation for review and comment, giving 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?

Report checklist

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

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

Draft reports should also state that the report does not necessarily represent your final finding, and explain that you will present a final report to the standards committee once you have considered any comments received on the draft report.

Final reports should state that the report represents your final findings and will be presented to the standards committee, and include documents that you have relied on in reaching your conclusions, such as:

- background documents of telephone conversations, letters, and notes of interviews with witnesses;
- a chronology of events.

Issuing draft reports

If you decide to issue a draft report, copies should be sent to the complainant and the member who is the subject of the allegation for comment. You do not need to send the draft to other witnesses or parties interviewed, although you should confirm their statements before issuing the report. And you do not need to send it to the relevant parish clerk.

At this stage, members may make representations in whatever manner is most convenient for them. Responses to your draft may reveal the need for further investigation, or they may add nothing of relevance. There may be occasions when responses reveal a need for further investigation and result in such significant changes to the report that you may wish to consider whether to issue 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.

Final reports

The final report should be sent to:

- the member who is the subject of the allegation;
- the person who made the allegation;
- the standards committee of your authority;
- the clerk of any relevant town or parish council;
- the ethical standards officer who referred the matter for investigation.

If you find that there has been no breach of the Code of Conduct, you should explain in a covering letter to the people listed above that the report will be sent to the standards committee for consideration.

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

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

Consideration of the final report

If you find that there **has not been a breach** of the Code of Conduct, the standards committee must decide at a meeting if it agrees with that finding.

At this 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 at this stage is to decide whether, based on the facts set out in the report, it agrees with your finding or believes there is a case to answer.

If the standards committee agrees that the Code of Conduct has not been breached, you should arrange for a notice to be published. The notice should state the standards committee's finding, and give reasons for it. In these cases, the member involved is entitled to ask that the notice not be passed to local newspapers.

If the standards committee decides there is a case to answer, the full committee, or an appointed sub-group of the committee, will hold a hearing to make a final determination on whether the Code of Conduct was breached. The standards committee's decision to hold a hearing will be based on careful consideration of the information in your report and on other information given by witnesses.

Standards committees may, at this point, make recommendations to their authorities on matters arising from the report.

If you find that there **has been a breach** of the Code of Conduct, you must refer it to the standards committee, or an appointed sub-group of the committee, for determination.

Hearings

You will need to arrange a standards committee hearing if the final report concludes that there was a breach of the Code of Conduct or the standards committee, having considered a report that concludes there was no breach, decides there is a case to answer.

The hearing must be held within three months of issuing the final report. It must also be carried out in accordance with the *Local Authorities (Code of Conduct)(Local Determination) Regulations 2003* as amended by the 2004 regulations, and our guidance, *Standards committee determinations*.

During the course of a hearing, the standards committee may decide that it needs additional information in order to reach a decision. Under regulation 6(9), it can ask you to obtain further information or undertake further investigation. It can make this request only once per case.

On occasion, a standards committee may decide that the sanctions available to it are not adequate for the seriousness of the situation, or that the evidence indicates that the alleged breach is more serious than initially thought, and the case should be not be dealt with at the local level. In this situation, it may, under regulation 6(10), write to the ethical standards officer to request that the original allegation be referred back to the ethical standards officer for investigation. The standards committee must set out reasons why the case should be referred back. It can make this request only once and must be made before completion of the hearing.

The ethical standards officer must respond to the request within 21 days. Regulation 6(11) enables them to direct the standards committee to continue with the hearing or stop the hearing and recall the matter for further investigation. Where the ethical standards officer directs the standards committee to continue with the hearing, the hearing must be held within three months of the direction.

Penalties

If a standards committee finds that a member has failed to follow the Code of Conduct, it can impose a number of penalties. The scope of these penalties has been expanded since we published our previous

guidance on standards committee determinations. *The Local Authority (Code of Conduct)(Local Determination)(Amendment) Regulations 2004* provide additional penalties and greater flexibility for standards committees, and apply both to cases investigated locally and to those investigated by an ethical standards officer before being sent back to the standards committee for local determination.

Under the new regulations, standards committees can impose one, or any combination, of the following:

- censure the member;
- restrict the member's access to the premises and resources of the relevant authority for up to three months, ensuring that any restrictions are proportionate to the nature of the breach and do not unduly restrict the member's ability to perform his or her duties as a member;
- order the member to submit a written apology in a form satisfactory to the standards committee;
- order the member to undertake training specified by the standards committee;
- order the member to participate in a conciliation process specified by the standards committee;
- suspend, or partially suspend, the member for up to three months;
- suspend, or partially suspend, the member for up to three months, or until such time as the member submits a written apology that is accepted by the standards committee;
- suspend, or partially suspend, the member for up to three months, or until such time as the member undertakes any training or conciliation ordered by the standards committee.

Any conciliation process should have an agreed timeframe for resolution. The process may be of an informal or formal nature, involving elements of training and mediation that will lead to an effective and fair conclusion of the matter. Any decisions reached during the process regarding future behaviour of the member concerned, and measures to prevent a repetition of the circumstances that gave rise to the initial allegation, should be agreed by all parties.

At the end of a hearing

As soon as is reasonably practical after the hearing, the standards committee must give its full written decision to the relevant people. We recommend that the standards committee give its full written decision to those people within two weeks.

Conflicts of interest

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

- to provide advice to the standards committee;
- to advise members who are the subject of an allegation and the person making the allegation;
- to deal with cases of alleged misconduct referred to them by an ethical standards officer (this is a statutory role that can be delegated);
- to advise members about conduct issues before any alleged misconduct takes place.

An investigation could potentially create a conflict of interest between these roles. For example, if you were asked to investigate an allegation against a member that you had advised on the same issue, it is likely that a conflict of interest would arise. In these situations, you should delegate the investigation to somebody else.

Advising standards committees

In previous guidance, we recommended that monitoring officers should act as main advisers to standards committees on cases referred by an ethical standards officer for local determination unless 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 determination.

The Standards Board for England believes that you should not conduct an investigation and advise the standards committee on 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 delegate the investigative role.

Personal conflicts

Take care to avoid any personal conflicts of interest. If you find that you have a direct or indirect interest in a local investigation — for example, you have a direct financial interest in the subject of the allegation or a family member or friend is involved — you must not participate. Instead, you should notify the standards committee, the member concerned, the complainant and the ethical standards officer, explaining:

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

Delegation of investigations

Under section 113 of the *Local Government Act 2003*, monitoring officers can delegate investigations to their deputy or to any other person they wish to conduct a local investigation. As with monitoring officers, deputies and nominated people do not have to be legally qualified but are obliged to follow guidance issued for monitoring officers.

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. Deputies 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 to make sure that an experienced officer is available to carry out an investigation, should the need arise. Authorities may also decide to hire suitable people from outside the organisation to carry out investigations.

To ensure that there is no confusion concerning the role and authority of the person delegated to conduct the investigation, monitoring officers should use a formally instituted procedure to record that they have delegated their investigative role to another person. You must inform an ethical standards officer if you delegate an investigation, in case they need to provide the investigator with more information.

Contact information

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