



the
Standards Board
for England

A guide to our investigations process

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A guide to our investigations process

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 the Standards Board for England works 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 the Standards Board for England. Each allegation we receive is assessed to see if it falls within our remit. If it does, it may be passed to an ethical standards officer, who will decide whether to:

- > oversee its investigation
- > refer the matter to the local authority to be investigated locally
- > direct the monitoring officer of the local authority to take action other than investigation to resolve the situation

All of our investigations are carried out in accordance with a defined set of values — a copy of which can be found in the *Complaints and investigations* section of our website www.standardsboard.gov.uk under *What happens in an investigation?*

Leading up to our investigation

When does an allegation become an investigation?

We may refer an allegation to an ethical standards officer if we are satisfied that the allegation falls within our legal jurisdiction and believe the matter should be investigated.

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

What is an ethical standards officer?

An ethical standards officer is someone empowered by the *Local Government Act 2000* to investigate allegations referred to him or her 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 make the decisions.

Who conducts the investigation?

Allegations referred to be investigated may be investigated by an ethical standards officer or referred to the monitoring officer of the relevant local authority to be investigated locally. (See page 11 for more information about local investigations.)

Alternatively, in certain circumstances, an ethical standards officer may decide to issue a direction to the monitoring officer to take certain other action. (See page 13 for information on directions.)

How will an ethical standards officer conduct the investigation?

The ethical standards officer determines 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.

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

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.

For these reasons, we aim to complete 40% of investigations within four months, 90% within six months, and 97% within nine months. Based on our experience so far, we anticipate that the final 3% will involve significant delays that are beyond our control.

These timeframes are calculated from the point when the allegation is referred to an ethical standards officer, and include 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.

What are members told about the allegations against them?

During all 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 contact the member being investigated?

This depends on the circumstances of each case. It is often more effective for the ethical standards officer to seek information from the person making the allegation, and others involved, before contacting the member concerned.

However, in certain circumstances it may be appropriate for the ethical standards officer to contact the member at the beginning of the investigation. It may also be necessary to conduct an interview on more than one occasion.

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 them 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. 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 attempt to arrange interviews at a time and place convenient for those concerned.

Can a legal adviser or other person attend or participate in the 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 advisor. 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 (see the following page).

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 and given the opportunity to comment on it.

If the draft report finds the matter should be referred to the Adjudication Panel for England or standards committee, the member will also be sent copies of the evidence relied upon by the ethical standards officer in reaching their decision.

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 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 they think it will assist the investigation or in circumstances where their conduct may be directly referred to in the report.

At the end of our investigation

What are the findings an ethical standards officer can reach?

There are four possible findings, defined by section 59(4) of the *Local Government Act 2000*. The purpose of an ethical standards officer's investigation is to determine which of the following four findings is appropriate in the circumstances:

1. there is no evidence of failure by the member concerned to comply with the Code of Conduct
2. no action is required in respect of the matters which are the subject of the investigation
3. the matter should be referred to the monitoring officer of the relevant authority for determination by the local standards committee
4. 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. In cases where the finding is that no action should be taken, the ethical standards officer may express their view as to whether there may have been a breach of the Code. However, this is their considered 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 is no evidence of 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 is no evidence of 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.

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 up to three 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 evidence of a 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.

Obviously, 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 the member being investigated 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) the information to be disclosed relates directly to the member being investigated and does not involve any other individual,
- d) for the purposes of seeking advice in relation to the investigation from a solicitor or other professional adviser.

However, the member being investigated 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?

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.

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.

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. 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 the Standards Board for England and plays an important role in promoting high standards of member conduct.

How do you decide what will be investigated locally?

When considering whether to refer an allegation to the monitoring officer for investigation at the local level, the ethical standards officer will use their discretion and take into account all relevant circumstances. These may include:

- > the apparent degree of seriousness of the allegation
- > whether the allegation is of an entirely local nature and does not raise matters of principle
- > whether an initial investigation by an ethical standards officer highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct

- > any evidence that a local investigation would be perceived as unfair or biased
- > any relevant local political issues that may have a bearing on the investigation

Our policy is to refer allegations to be investigated locally wherever possible.

Who is notified when a case is referred for local investigation?

The ethical standards officer will notify the member being investigated, the person who made the allegation, and, in cases involving parish and town councillors, the clerk of the relevant authority. The monitoring officer will then contact the parties and make arrangements to conduct the investigation.

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 the case back to the Standards Board?

During the course of the investigation, a monitoring officer may ask the ethical standards officer to take the investigation back. Depending upon the circumstances of the case, the ethical standards officer may consider it appropriate to accept the matter back and continue the investigation. Circumstances where it may be appropriate for the ethical standards officer to take the matter back include (but are not limited to):

- > where investigation shows that the matter is more serious than it first appeared
- > where investigation reveals further conduct which may amount to a failure to comply with the Code of Conduct — the monitoring officer has no power to extend an investigation beyond the matters referred to him or her, whereas an ethical standards officer has
- > the member is obstructing or refusing to co-operate with the investigation

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 three 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?

In certain circumstances, an ethical standards officer may decide that some form of action other than investigation is appropriate. This is most likely to happen in situations where the ethical standards officer considers 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 ethical standards officer may decide in this instance to issue a direction to the monitoring officer to take certain other action, rather than carry out an investigation. For example, the ethical standards 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 topics

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
- > whether the allegation was referred for investigation, and if not, why not
- > when the allegation was received and when we decided whether or not to investigate
- > if the allegation was referred, whether it is being investigated by an ethical standards officer or was referred to the local authority
- > 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 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 visit our website at www.standardsboard.gov.uk.

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

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