



Leicester
City Council

WARDS AFFECTED
All Wards (Corporate Issue)

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
Standards Committee

24 November 2004

New Ethical Framework Regulations

Report of the Town Clerk and Director of Resources, Access and Diversity

1. Purpose of Report

To inform the Committee of Regulations which provides for monitoring officers to carry out investigations into alleged breaches by Members of their code of conduct which have been referred to them by an Ethical Standards Officer prior to his or her having carried out or concluded an investigation and Standards Committees being enabled to make determinations following such monitoring officers' reports; which clarifies that the Standards Board may issue advice to monitoring officers and local Standards Committees.

2. Report

- 2.1. The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 and the Standards Board for England (Functions) Order 2004 came into force on 4 November 2004. A copy of both the Regulations and the Order are attached to this report.
- 2.2. The Regulations provide for local authority monitoring officers to carry out investigations into alleged breaches by Members of their code of conduct which have been referred to them by an Ethical Standards Officer prior to his or her having carried out or concluded an investigation.
- 2.3. The Regulations also enable Local Authority Standards Committees to make determinations following monitoring officers' reports on the investigation of such breaches.
- 2.4. The Order clarifies that the Standards Board may issue advice to monitoring officers and local Standards Committees.
- 2.5. In tandem with the laying of the Regulations and Order, the Standards Board for England have produced Guidance to Monitoring Officers and Standards Committees on Local Investigations. A copy of this Guidance is also appended to the report.

- 2.6. It is important that all Members of Council, including Co-opted Members, are aware of these Regulations, along with officers and those members of the public who may wish to lodge a complaint regarding an Elected Member. Much of the information is contained on the Standards Board for England's web site.
- 2.7. To achieve the required level of awareness, it is recommended that:-
- (i) All Members and Co-opted Members be informed of the new procedures by way of a Briefing through the Weekly Members Bulletin.
 - (ii) This same briefing be notified to Corporate and Service Directors within the Council.
 - (iii) Copies of the Complaints Procedure, incorporating the Local Investigations Procedure be made available in both hard copy format and on the Council's web site.
 - (iv) Appropriate links be incorporated into the City Council's web site.

3. Recommendations

Members are recommended to:-

- (i) Note the contents of the Local Determination (Amendment) Regulations 2004 and Standards Board for England (Functions) Order 2004, as appended to this report, and also the associated Standards Board for England Guidance (also appended).
- (ii) Approved the proposed mechanisms to ensure the awareness of these new procedures for Members, Co-opted Members, officers and members of the public, as detailed in paragraph 2.7 of this report.

4. Headline Financial and legal Implications

- (i) Financial Implications

There are no financial implications directly associated with this report.

- (ii) Legal Implications

Legal implications are contained in the report. (Peter Nicholls).

(iii) Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	Yes	Implicit within the Regulations and Guidance	
Policy	No		
Sustainable and Environmental	No		
Crime and Disorder	No		
Human Rights Act	Yes	Addressed within the Standards Board Guidance	
Elderly/People on Low Income			

4. Background Papers – Local Government Act 1972

None.

5. Consultations

None

6. Report Author

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STATUTORY INSTRUMENTS

2004 No.2617

LOCAL GOVERNMENT

The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004

Made

7th October 2004

Laid before Parliament

14th October 2004

Coming into force

4th November 2004

The First Secretary of State, in exercise of the powers conferred upon him by sections 53(6) and (12), 54(4), 55(8), 66, 73(1) to (6) and 105 of the Local Government Act 2000^[1] hereby makes the following Regulations:

Citation, commencement and application

1. - (1) These Regulations may be cited as the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 and shall come into force on 4th November 2004.

(2) These Regulations apply to relevant authorities in England and to police authorities in Wales.

Amendment of the Relevant Authorities (Standards Committee) Regulations 2001

2. The Relevant Authorities (Standards Committee) Regulations 2001^[2] shall be

amended by the substitution, for paragraph (4) of regulation 7 (application of the Local Government Act 1972), of the following -

" (4) Where a meeting of a standards committee or a sub-committee of a standards committee is convened to consider a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Act the provisions of Schedule 12A of the 1972 Act shall apply with the addition of the following descriptions of exempt information after paragraph 15 of Part 1 of that Schedule -

" **16.** Information relating to the personal circumstances of any person.

17. Information which is subject to any obligation of confidentiality.

18. Information which relates in any way to matters concerning national security.

19. The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000."

Amendment of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003

3. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003^[3] shall be amended in accordance with the following provisions of these Regulations.

Amendment of regulation 2

4. In regulation 2 (interpretation), after paragraph (2), insert the following paragraph -

" (3) Any reference in these Regulations to a monitoring officer shall include any person nominated by a monitoring officer as his deputy for the purposes of section 5(7) of the Local Government and Housing Act 1989^[4] and any person nominated under the provisions of section 82A(2) or (3) of the Act to perform any function.^[5]"

Amendment of regulation 4

5. In regulation 4 (modification of section 63 of the Local Government Act 2000) for paragraph (2) substitute the following paragraph -

" (2) Section 63(1) of the Act shall be modified by the insertion, after paragraph (a), of the following paragraph -

" (aa) the disclosure is made for any one or more of the following purposes -

(i) enabling a monitoring officer, including any person nominated by a monitoring officer as his deputy for the purposes of section 5(7) of the Local Government and Housing Act 1989 and any person nominated under the provisions of section 82A(2) or (3), to perform any of his functions under this Part, or under Regulations made under this Part, in connection with -

(a) the investigation and consideration of an allegation of a breach of an authority's code of conduct, or

- (b) any other steps he may be directed to take by an ethical standards officer in connection with an allegation of a breach of an authority's code of conduct;
- (ii) enabling a standards committee or sub-committee of a standards committee established under this Part to perform any of its functions under this Part, or under Regulations made under this Part, in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct; or
- (iii) enabling a tribunal drawn from members of the Adjudication Panel to consider any appeal from a finding of a standards committee or sub-committee of a standards committee established under this Part in connection with an allegation of a breach of an authority's code of conduct."".

Amendment of regulation 5

6. For regulation 5 (reports received by a monitoring officer) substitute the following regulation -

" Matters referred to a monitoring officer by an ethical standards officer

5. - (1) Where a matter is referred to a monitoring officer of an authority under section 64(2) or 71(2) of the Act he shall -

(a) send a copy of any report received from the ethical standards officer who has referred the matter to any member who is the subject of such a report; and

(b) arrange for the standards committee of that authority to meet to consider that report.

(2) Paragraphs (3) to (12) apply where a matter is referred to a monitoring officer of an authority under section 60(2) or (3) or 70(4) or (5) of the Act.

(3) The monitoring officer shall, unless otherwise directed by the ethical standards officer -

(a) inform

(i) any member who is the subject of the allegation of failure to comply with the code of conduct;

(ii) the person who made the allegation; and

(iii) any parish council concerned

that the matter has been referred to him for investigation;

(b) subject to paragraph (6), conduct an investigation into the matter referred to him;

(c) give any member who is the subject of the investigation the opportunity to comment on the allegation made; and

(d) have regard during the conduct of his investigation to any guidance issued by the Standards Board pursuant to section 57(5) of the Act[6] or pursuant to any order made under section 57(3) of the Act[7].

(4) The monitoring officer may, in conducting any investigation -

(a) require any of the authorities concerned to provide such advice and assistance as he may reasonably need to assist him in the investigation;

(b) require any of the authorities concerned, other than a parish council, to meet the cost of any advice and assistance provided in accordance with sub-paragraph (a) so far as such cost is reasonable;

(c) if any of the authorities concerned is a parish council, require the responsible authority^[8] to meet any costs incurred by that parish council in accordance with sub-paragraph (a) so far as such cost is reasonable; and

(d) require any of the authorities concerned to afford him reasonable access to such documents in the possession of that authority as appear to him to be necessary for the purpose of conducting his investigation.

(5) Where a monitoring officer conducts an investigation in accordance with paragraph (3)(b) he may, at any stage prior to the completion of his investigation, by a request in writing to the ethical standards officer concerned ask that the matter be referred back to that ethical standards officer for him to undertake an investigation; and any such request must set out the reasons for making it.

(6) Where a matter is referred to an ethical standards officer under paragraph (5) the ethical standards officer must respond to the request within 21 days of its receipt and may -

(a) direct that the matter be referred to him for investigation, in which case the monitoring officer concerned shall cease his investigation; or

(b) direct that the monitoring officer concerned continue his investigation in accordance with these Regulations, in which case the monitoring officer concerned shall continue his investigation and may not make any further request under paragraph (5) in respect of that matter.

(7) Where a monitoring officer of an authority conducts an investigation he shall, following such investigation -

(a) make one of the following findings -

(i) that he considers that there has been a failure to comply with the code of conduct of the authority concerned or, as the case may be, of any other authority concerned ("a finding of failure"); or

(ii) that he considers that there has not been a failure to comply with the code of conduct of the authority concerned or, as the case may be, of any other authority concerned (a "finding of no failure");

(b) prepare a written report concerning his investigation and his findings;

(c) send a copy of that report to the member who was the subject of the investigation;

(d) where the report concerns a finding of failure, refer that report to the standards committee of his authority for a hearing under the provisions of these Regulations;

(e) where the report concerns a finding of no failure, refer that report to the standards committee of his authority.

(8) A standards committee which receives a report under paragraph (7)(e) shall consider the report and make one of the following findings -

(a) that it accepts the monitoring officer's finding of no failure ("a finding of acceptance"), or

(b) that the matter should be considered at a hearing of the standards committee conducted under the provisions of these Regulations.

(9) As soon as reasonably practicable after making a finding of acceptance, the standards committee shall -

(a) give written notice of that finding to -

(i) the member who is the subject of the finding of no failure;

(ii) the ethical standards officer concerned;

(iii) the standards committee of the authority concerned, if not the standards committee that made the finding;

(iv) the standards committee of any other authority concerned, if not the standards committee that made the finding;

(v) any parish council concerned; and

(vi) any person who made an allegation that gave rise to the investigation; and

(b) subject to paragraph (10), arrange for a notice to be published in at least one newspaper circulating in the area of the authority concerned or, as the case may be, in the area of each of the authorities concerned stating that the standards committee have found that there has not been a failure on the part of the member to whom the finding of no failure relates to comply with the code of conduct of the authority concerned or, as the case may be, with the code of conduct of any other authority concerned.

(10) The notice referred to in paragraph 9(b) shall not be published if the member concerned so requests.

(11) Where a monitoring officer has been directed by an ethical standards officer to deal with any matter referred to him otherwise than by conducting an investigation, the monitoring officer shall -

(a) deal with the matter in accordance with the direction, and

(b) within the period of three months beginning on the day on which he received the direction, submit to the ethical standards officer a written report giving details of what action he has taken or is proposing to take to comply with the direction.

(12) If the ethical standards officer is not satisfied with the action taken or proposed to be taken he may require the monitoring officer to arrange for a

statement to be published in at least one newspaper circulating in the area of the authority concerned or, as the case may be, in the area of each of the authorities concerned giving details of the direction given by the ethical standards officer and the monitoring officer's reasons for not fully implementing it."

Amendment of regulation 6

7. In regulation 6 (hearings by standards committees) -

(a) for paragraph (1) substitute the following paragraph -

" (1) Where -

(a) a monitoring officer refers to a standards committee of an authority -

(i) a report received from an ethical standards officer under section 64(2) or 71(2) of the Act, or

(ii) a report prepared by the monitoring officer in accordance with regulation 5(7)(b) and which concerns a finding of failure; or

(b) a standards committee makes a finding of the description in regulation 5(8)(b), the standards committee shall convene to conduct a hearing in relation to the allegation that the member failed to comply with the code of conduct of the authority concerned or, as the case may be, of any other authority concerned.";

(b) in paragraph (2), for sub-paragraphs (a) to (c), substitute the following sub-paragraphs -

" (a) the hearing is conducted having regard to any guidance issued by the Standards Board pursuant to section 57(5) of the Act or pursuant to any order made under section 57(3) of the Act;

(b) subject to sub-paragraph (c), the hearing is held within the period of three months beginning -

(i) in the case of a report referred by an ethical standards officer under section 64(2) or 71(2) of the Act, on the date on which the monitoring officer first received that report; or

(ii) in the case of a report prepared by the monitoring officer under regulation 5(7)(b), on the date on which that report is completed;

(c) the hearing shall not be held until at least fourteen days after the date on which -

(i) in the case of a report referred by the ethical standards officer under section 64(2) or 71(2) of the Act, the monitoring officer sent the report to the member who is the subject of the allegation; or

(ii) in the case of a report prepared by the monitoring officer under regulation 5(7)(b), he sent the report to the member who is the subject of the allegation

unless, in either case, the member concerned agrees to the hearing being held earlier;"; and

(c) after paragraph (8) insert the following paragraphs -

" (9) A standards committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the monitoring officer to seek further

information or undertake further investigation on any point specified by the standards committee; but the standards committee shall not adjourn the hearing on more than one occasion under the provisions of this paragraph.

(10) A standards committee may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request to the ethical standards officer concerned that the matter be referred back to the ethical standards officer for him to undertake an investigation; and any such request must set out the committee's reasons for making it.

(11) Where a matter is referred to an ethical standards officer under paragraph (10) the ethical standards officer must respond to the request within 21 days of its receipt and may -

(a) direct that the matter be referred to him for investigation, in which case the standards committee shall cease its consideration of the matter; or

(b) direct that the standards committee shall continue to deal with the matter in accordance with these Regulations, in which case the standards committee shall do so and shall not make any further request under paragraph (10) in respect of that matter.

(12) Where an ethical standards officer gives a direction under paragraph (11)(b), the standards committee shall convene to continue its consideration of the matter within three months of the receipt of the ethical standards officer's direction." .

Amendment of regulation 7

8. In regulation 7 (findings of standards committees) -

(a) in paragraph (3), for sub-paragraphs (i) to (vi) substitute the following -

" (i) censure of that member;

(ii) restriction for a period up to a maximum of three months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that any such restrictions imposed upon the member -

(aa) are reasonable and proportionate to the nature of the breach; and

(bb) do not unduly restrict the member's ability to perform his functions as a member;

(iii) partial suspension^[9] of that member for a period up to a maximum of three months;

(iv) suspension^[10] of that member for a period up to a maximum of three months;

(v) a requirement that that member submit a written apology in a form specified by the standards committee;

(vi) a requirement that that member undertake training as specified by the standards committee;

(vii) a requirement that that member undertake conciliation as specified by the standards committee;

(viii) partial suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the standards committee;

(ix) partial suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the standards committee may specify;

(x) suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the standards committee;

(xi) suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the standards committee may specify.", and

(b) for paragraph (5), substitute the following -

" (5) A standards committee may direct that a sanction imposed under any of subparagraphs (ii) to (xi) of paragraph (3) shall commence on such date, within a period of six months after the imposition of that sanction, as the committee may specify in their direction."

Signed by authority of the First Secretary of State

Nick Raynsford
Minister of State, Office of the Deputy Prime Minister

7th October 2004

EXPLANATORY NOTE

(This note is not part of the Order)

Under the provisions of Part III of the Local Government Act 2000 ethical standards officers may carry out investigations into allegations that a member of a relevant authority in England has failed to comply with the authority's code of conduct. A Local Commissioner in Wales may carry out a similar investigation into an allegation that a member of a police authority in Wales has failed to comply with the authority's code of conduct. The ethical standards officer or the Local Commissioner, as the case may be, may choose to refer the report on the outcome of his investigation to the monitoring officer of any authority concerned. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 ("the 2003 Regulations") made provision in respect of the way such matters referred to monitoring officers are dealt

with by the authority's standards committee.

The ethical standards officer may also choose to refer an allegation to the monitoring officer of an authority concerned prior to his having carried out or concluded an investigation. These Regulations amend the 2003 Regulations to make provision in respect of the way such matters should be investigated by monitoring officers and also in respect of the way standards committees should then deal with reports prepared by the monitoring officer on the outcome of any such investigation.

Regulation 1 provides for the commencement of the Regulations and for their application to relevant authorities in England and police authorities in Wales.

Regulation 2 amends the Relevant Authorities (Standards Committees) Regulations 2001 ("the 2001 Regulations"). The 2001 Regulations make provision in respect of standards committees of relevant authorities in England and police authorities in Wales. They apply, with certain modifications, the provisions of Part VA of the Local Government Act 1972 (which relates to access to meetings and documents of certain authorities, committees and sub-committees) to meetings of standards committees. The 2001 Regulations are amended so as to apply the provisions of Part VA where a standards committee is considering a report from either a monitoring officer or an ethical standards officer.

Regulation 4 amends regulation 2 of the 2003 Regulations (interpretation) so as to clarify the meaning of the term "monitoring officer".

Regulation 5 amends regulation 4 of the 2003 Regulations (modification of section 63 of the Local Government Act 2000). It further modifies the application of section 63 of the Local Government Act 2000 in relation to monitoring officers, standards committees and appeals tribunals in the performance of their functions under Part III of that Act. Section 63, as so modified, provides that disclosure of any information obtained by an ethical standards officer will not be prohibited if it is made for the purpose of enabling any of those functions to be carried out.

Regulation 6 amends regulation 5 of the 2003 Regulations (reports received by a monitoring officer). It specifies how matters referred by ethical standards officers to monitoring officers for investigation shall be dealt with.

Regulation 7 amends regulation 6 of the 2003 Regulations (hearings by standards committees). It specifies how standards committees will deal with reports referred to them by monitoring officers.

Regulation 8 amends regulation 7 (findings of standards committees) so as to make further provision concerning the combinations of sanctions that may be imposed by a standards committee.

Notes:

[1] 2000 c. 22.[back](#)

[2] S.I. 2001/2812. Paragraph (4) was inserted by S.I. 2003/1483, regulation 3(3).[back](#)

[3] S.I. 2003/1483.[back](#)

[4] 1989 c. 42.[back](#)

[5] Section 82A was inserted by section 113(2) of the Local Government Act 2003 (2003 c. 26).[back](#)

[6] Section 57(5)(b) of the Act gives the Standards Board for England power to issue guidance to relevant authorities in England and police authorities in Wales on matters relating to the conduct of members and co-opted members of such authorities.[back](#)

[7] Section 57(3) of the Act gives the Secretary of State power to make an order conferring functions on the Standards Board for England in addition to those already conferred by Part III of the Act.[back](#)

[8] See section 55(12) of the Act for the definition of "responsible authority".[back](#)

[9] See section 83(7), (9) and (10) of the Act for the interpretation of partial suspension.[back](#)

[10] See section 83(9) and (10) of the Act for the interpretation of suspension.[back](#)

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STATUTORY INSTRUMENTS

2004 No. 2618

LOCAL GOVERNMENT

The Standards Board for England (Functions) Order 2004

Made

7th October 2004

Laid before Parliament

14th October 2004

Coming into force

4th November 2004

The First Secretary of State, in exercise of the powers conferred upon him by sections 57(3) and 105(2) of the Local Government Act 2000^[1] hereby makes the following Order:

Citation, commencement and application

1. - (1) This Order may be cited as the Standards Board for England (Functions) Order 2004 and shall come into force on 4th November 2004.

(2) This Order applies in relation to relevant authorities in England and police authorities in Wales^[2].

Interpretation

2. In this Order -

"the Act" means the Local Government Act 2000;

"authority" means a relevant authority in England and a police authority in Wales;
and

"monitoring officer", in relation to an authority, means the person for the time being designated in respect of the authority in accordance with the provisions of section 5 of the Local Government and Housing Act 1989^[3] and includes any person nominated by a monitoring officer as his deputy for the purposes of section 5(7) of the Local Government and Housing Act 1989 and any person nominated under the provisions of section 82A(2) or (3) of the Act to perform any function^[4].

Power to issue guidance

3. In respect of matters referred by an ethical standards officer under section 60(2) or (3) or 64(2) of the Act, or by a Local Commissioner in Wales under section 70(4) or (5) or 71(2) of the Act, the Standards Board for England may issue guidance to -

(a) monitoring officers of authorities; and

(b) standards committees of authorities.

Signed by authority of the First Secretary of State

Nick Raynsford
Minister of State Office of the Deputy Prime Minister

7th October 2004

EXPLANATORY NOTE

(This note is not part of the Order)

Section 57 of the Local Government Act 2000 provides for the establishment of the Standards Board for England ("the Standards Board"), which is to have the functions conferred on it by Part III of that Act and such other functions as may be conferred on it by order by the Secretary of State.

This Order enables the Standards Board to issue guidance to monitoring officers and standards committees of relevant authorities in England and police authorities in Wales in respect of certain matters referred to them by the Standards Board's ethical standards officers or, in Wales, Local Commissioners.

Notes:

[1] 2000 c. 22 ("the Act").[back](#)

[2] See section 49(6) of the Act for the meaning of "relevant authority" and section 83(1) of the Act for the meaning of "police authority".[back](#)

[3] 1989 c. 42. See section 83(12) of the Act for the exercise of functions by a monitoring officer of a responsible authority in relation to parish councils.[back](#)

[4] Section 82A was inserted by section 113(2) of the Local Government Act 2003 (2003 c. 26).[back](#)

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Local investigations

Guidance for monitoring officers and standards committees November 2004

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.

1

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.

3

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 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.

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