July 2005

the Standards Board for England

How to conduct an investigation

Advice for local authorities on investigating allegations of misconduct

Confidence in local democracy

About this guide

This guide provides an introduction to the practice of investigation and is designed to help monitoring officers and anyone else delegated to investigate allegations of misconduct referred to them by The Standards Board for England.

The advice, hints and tips in the following pages are aimed primarily at those with little or no experience of investigation. We understand monitoring officers have a wide and varied range of experience and many will already be familiar with the topics covered here.

It should be read in conjunction with the statutory guidance, *Local investigations*, available from our website (see link below). However, this guide is not in itself statutory guidance, so you are not obliged to take it into account.

We hope this guide will continue to develop and benefit from your experiences and insight. Please send any thoughts you have on it, and ideas for things we could include, to our policy and guidance team at enquiries@standardsboard.co.uk.

Local investigations guidance
(www.standardsboard.co.uk/TheCodeofConduct/Guidance/Guidanceforlocalauthorities/filedownload,2147,en.pdf)

Before you begin

Before you start planning an investigation, consider carefully who should conduct it. Monitoring officers, in particular, may have a conflict of interest if they have advised a member on the same issue they are asked to investigate. You should also take care to avoid personal conflicts, such as a financial interest in the investigation or the involvement of a family member or friend.

Step-by-step investigations

For more information and advice on this subject, refer to the statutory guidance on local investigations.

We suggest you tackle your investigation in four stages:

- planning
- establishing facts
- evaluating
- reporting

Each stage is described separately over the following pages.

Planning

Effective planning is a key component of any successful investigation: it will help you define the parameters of your investigation and keep you focused on what is relevant. We recommend drawing up a standard investigation plan at the start of every investigation, capturing the key issues and structuring your actions.

Of course, you cannot ever predict with certainty what direction an investigation will take. During the course of the investigation, you may uncover issues that require further research and consideration, and could result in significant revisions to your plan. Even so, a good initial plan will help to reduce the disruption of unforeseen circumstances and keep your investigation focused.

The sample plan at the back of this guide might give you some ideas. At its most fundamental, the plan should include the following sections.

The allegation

A good investigation plan starts with a precise definition of the allegation. Knowing exactly what you are trying to establish will help you focus. Ambiguity about the exact nature of the allegation may cause difficulties later on in the investigation.

If you need clarification on any facts of the allegation you can approach the complainant. You are required to tell the complainant that you have received the matter for local investigation, so this might be a good time to check any details.

Relevant parts of the Code

It is useful to list the parts of the Code of Conduct that may have been broken, to help you focus the investigation in the right areas. We have found that one of the greatest dangers is becoming distracted by issues that only serve to muddy the waters and increase the amount of time and effort spent on an investigation.

Information

The complaint sometimes comes with a great deal of documentary information which you will need to sift through, recording the relevant parts on your plan.

From this, you should be able to work out what further information or evidence is needed to determine whether the alleged conduct occurred. Be as focused and precise as possible: being clear about what you need to know at this stage will help you avoid delays and distractions later on. You may find it helpful to produce a checklist of the elements that need to be proved.

Action plan

Set out how you intend to obtain the information you need. Your plan should include the witnesses you intend to interview, the order in which the interviews will be conducted, the questions you need to ask and the areas you need to cover. It should also include any documents, you need to obtain and any site visits you think would be useful.

It is usually best to secure all relevant documents before beginning the interviews as they may have an impact on the questions you want to ask. You should also consider what documents if any, you may wish to give to the interviewee before the interview.

Resources and targets

At this stage, you should have a reasonable idea about the resources needed to complete the investigation, such as time and expenses. Record them on your plan and make sure they are available to you.

We also recommend that you include target dates for completion of the various stages of your investigation and an overall target date for completion of the final report.

Establishing facts

In the vast majority of investigations, you will need to gather documents and conduct interviews to establish the facts of a case. This section considers how to go about it.

Gathering documents and background information

You will need to obtain the background information and other documentary evidence you have identified as relevant to the investigation. You may also wish to get written statements from witnesses, although these are usually only successful where the information you are seeking is very straightforward. They will not be helpful where you need to probe the answers given for further information, test an individual's responses, or where there is some doubt about the credibility of an individual's account of events.

Requests for information should:

- be made in writing
- explain the reasons for your request
- be precise about the information you need
- set a deadline for responding

You may wish, at this stage, to ask people to let you know if they are likely to be late responding. Ask them to explain any delays and agree a new deadline. It may also be helpful to give a copy of the letter to your chief executive, in case you need their help persuading people to co-operate.

It's important you contact anyone who missed the deadline straight away to ask them when the information will be provided. Do not accept vague promises; insist on a precise date. You may even want to offer to have it collected and agree a date and time for this.

Getting information from your own authority and other local authorities should be quite straightforward. These bodies have a statutory duty to provide the information you require and ethical standards officers are unlikely to refer cases to you for local investigation if they believe you will need information from other sources.

Of course, in some cases you may still need information from other sources, and you should tackle these requests in the same way as any other. If the people you approach refuse to co-operate and obstruct your investigation, you may be able to refer the case back to The Standards Board for England. There is more information on this topic in the statutory guidance.

Conducting interviews

You should already have identified the people you need to interview and the areas you need to cover for your investigations plan, and considered the order in which they should be approached.

As a rule, you should plan the order of your interviews so that each witness is interviewed only once, although repeat interviews are sometimes unavoidable.

Interviewing the member who is the subject of the investigation first may save you a lot of time if, for example, they admit to the alleged breach of the Code of Conduct. It may also help you establish which facts, if any, are disputed. However, you may learn things during other interviews that you need to discuss with the subject member, requiring a second interview. If you think this is likely, you may wish to leave the subject member's interview until last. Alternatively, to help manage the subject member's expectations, you could explain at the start of the first interview that there may be a need for further interviews.

Two types of interview

You can conduct interviews in person or on the telephone. Each method has its advantages and disadvantages, and is best suited to certain circumstances.

Face-to-face interviews are the only way to observe a person's whole range of reactions to your questions. They may be the best option when they involve little or no travel for you and the interviewee. They can be particularly useful if:

- the subject matter is sensitive
- the interviewee is the member being investigated
- the facts are clearly disputed and can only be resolved by witness evidence
- you need to assess the credibility of the witness
- the interviewee is a vulnerable person
- the case involves a lot of documentary evidence that you need to discuss with the interviewee

Telephone interviews can be a speedy and effective way of obtaining information from witnesses where there are no communication problems, such as hearing difficulties, and in certain circumstances may be ideal — for example, where the complaint is straightforward or you only need to check simple facts. Clearly, if your resources are stretched and the interviewee is a considerable distance away, a face-to-face interview may not be practicable.

You also need to consider whether to conduct the interview in person or over the telephone. With face-to-face interviews, you should agree a time, date and venue for the interview in advance, and confirm these details in writing. You can also use this letter to remind members being investigated that they may wish to have legal representation, and advise interviewees if the interview is to be recorded (see *Recording interviews* on the following page). Some interviewees may prefer to be accompanied by a friend or colleague. This should not present a problem as long as the companion is not connected with the investigation in any way — for example, someone the member is accused of trying to secure an advantage for.

For telephone interviews, people may be happy to talk when you first call, but you should realise that it might not be convenient or they may need time to prepare. It might also be seen as unfair to spring an interview on someone without warning. Always check with the interviewee first, and where appropriate agree a convenient time to call them back. Ensure you keep the appointment as punctually as you would a face-to-face interview. Again, it might be a good idea to confirm the details of the interview in writing and explain if it will be recorded.

Recording interviews

If you intend to tape record an interview, you must ask permission of the person being interviewed in advance of the interview. You should never start to record and then ask permission. Once you begin recording, we recommend you get the interviewee to confirm for the record that they have given their permission to be recorded.

In face-to-face interviews, you may wish to ask a colleague to take notes for you if you are unable to record it. This will enable you to maintain eye contact with the interviewee and concentrate on their responses to your questions. The interview will also take a little less time. For telephone interviews, you might want to consider using a headset to keep both hands free for taking notes.

At the end of an interview, the interviewee should be offered a copy of any tapes made and told that they will be given the chance to approve or dispute the transcript or notes of the interview. We recommend you supply the tape straight away unless you have a specific reason not to — for example, if you are concerned it may be passed to other interviewees or the press. All statements should be confirmed promptly with the person who gave it, while the interview is still fresh in their mind.

Confidentiality

The statutory guidance asks you to treat the information you gather during an investigation as confidential, to ask interviewees to maintain confidentiality, and remind members of their obligations around confidentiality under the Code of Conduct. We suggest you do this both before and after the interview. However, it should be made clear to the person you are investigating that they are allowed to discuss the case with a friend, adviser or solicitor.

Top tips for interviews

- Ensure that you explain the interview process to the interviewee. The process of being interviewed can be a stressful experience for some people. A clear explanation of the process can help to allay the concerns and avoid misunderstandings that could potentially compromise the value of their evidence.
- Consider what documents, if any, should be made available to the interviewee in advance of the interview
- Before starting, tell the person you are interviewing how long the interview is likely to take. And during the interview, offer regular breaks.
- Ensure that the interview is adequately recorded, either by taping with the interviewee's prior consent or by taking adequate notes.
- Be prepared. Make sure that you are clear about the nature of the information you are seeking. You may find it helpful to prepare an interview plan with either specific questions or general topics to be explored.
- Be aware of the benefits of both open and closed questions in interviews:
  - Open-ended questions, such as who, what, where, how and why, encourage people to talk, provide information in a broader context, and expand on the subject. This is very helpful in obtaining information and assessing credibility.
  - Close-ended questions, which can only be answered 'yes' or 'no', should be used sparingly. They are good for confirming information, and getting precise answers from subjects who are seeking to distract you with details or failing to focus on what you want to know.
- Try to begin interviews with a few easy questions to help the interviewee relax. Good examples include "how long have you been a member with this authority?" and "what roles have you held during this time?"

Evaluating

You need to review all the evidence you gather to determine if there are any gaps in it. You must be able to take a view on all disputed relevant matters. Absolute certainty is desirable, of course, but not necessary. It is sufficient to form your opinion based on the balance of probabilities. If you cannot do this, you may need to seek further information.

You then need to weigh up all the evidence and decide if the alleged conduct occurred. Again, you do not need absolute certainty — it is acceptable to come to your conclusion based on the balance of probabilities. If you decide that the subject member acted as alleged, you will need to consider whether his or her conduct involved a failure to comply with the Code of Conduct.

In cases where you have difficulty deciding whether the Code of Conduct was breached, it may help to refer to The Standard Board for England's *Case Reviews*, case summary archive, and FAQs on our website. You may also find The Adjudication Panel for England's website useful.

the Case Review
(www.standardsboard.co.uk/Publications/TheCaseReview/)

case summary archive
(www.standardsboard.co.uk/cases/)

FAQs
(www.standardsboard.co.uk/TheCodeofConduct/FrequentlyaskedquestionsabouttheCode/)

The Adjudication Panel for England
(www.adjudicationpanel.co.uk)

Reporting

When you have concluded your investigation, you need to write up your findings in a report to the standards committee. The statutory guidance includes detailed advice on this aspect of the investigation process but key points are summarised here.

You have the option of producing a draft version of your report first, giving key parties opportunity to review and comment on your findings and enabling you to check facts and ensure all aspects of the case have been explored sufficiently. A draft report may be particularly suitable if the facts are complex, ambiguous or disputed, or if the parties expect one. But it is not always necessary, and going straight to a final report will save considerable time.

Draft reports should be sent for comment to the complainant and the member who is the subject of the allegation. Ordinarily you should not need to send the draft to other witnesses or parties interviewed but you should have confirmed their statements first (see *Recording interviews* on page 7). However, there will be occasions when you will need to disclose extracts of a draft report to any potential witnesses, especially if the report is critical of their actions.

Members may respond 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. For more information on producing reports and directions on issuing your final report, refer to the statutory guidance.

Confidential information

Before issuing draft or final reports, consider whether the report contains any confidential information that should not go into the public domain, such as financial or medical details. All information of this kind should be deleted from any copies of the report before they are made public. Your authority will be able to advise you further on this process, known as redaction.

Report checklist

Your report should include:

- ☑ 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
- ☑ background documents and interview records (final reports only)

In addition, you should attach the evidence, such as background documents and interview records, to the final report.

Draft reports should 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 finding and will be presented to the standards committee.

Help us to help other monitoring officers

If you have been through the investigations process following this advice we want to hear from you. What do you think worked well, what didn't, and what would you like to see here that isn't included now?

With your help developing this guide, we hope it will become an invaluable resource for both first-time and experienced investigators. Please send your comments and ideas to our policy and guidance team:

- by email, to enquiries@standardsboard.co.uk
- by post, to The Standards Board for England, first floor, Cottons Centre, Cottons Lane, London SE1 2QG

Appendix: sample investigations plan

Sample title		**Reference**	
Date received		**Target completion date**	
Subject member			
Date notified of investigation			
Complaint			
Standards Board contact			

Allegation

Define the allegation and list the key issues.

State if clarification was required from the complainant.

Relevant parts of the Code of Conduct

List the sections of the Code involved and identify the elements to be proved.

Information

Include:

- all relevant information on file
- any additional information required

Action plan

List where and how you could obtain outstanding information (documents, interviews etc).

Resources and targets

List the resources you will need to complete your investigation and set out a schedule of key targets, such as:

- planned dates for securing documents
- planned dates for completing interviews
- planned date for issuing draft and final reports
- planned date for presentation to the standards committee