

Investigations by The Standards Board for England

This guide

Being the subject of an investigation is, undoubtedly, an experience that can be worrying. This guide is intended to provide information about the conduct of an investigation. It aims to answer the questions that those who find themselves in this situation may wish to ask.

The investigative process

Investigating allegations that members of relevant authorities have broken the Code of Conduct 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 write to The Standards Board for England. Once The Standards Board for England receives such an allegation, it is assessed to see whether it falls within our remit. If it does, it may be passed to an Ethical Standards Officer (ESO) who will oversee its investigation.

When does an allegation become an investigation?

The Standards Board for England may refer an allegation to one of its Ethical Standards Officers if it is satisfied that the allegation falls within its legal jurisdiction and considers the matter should be investigated. This does not mean that we believe that the allegation is necessarily true, only that it should be investigated.

What is an Ethical Standards Officer?

An ESO is someone empowered under the *Local Government Act 2000* to investigate allegations 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.

ESOs are the decision-makers in relation to each investigation. They conduct each investigation impartially.

Who conducts the investigation?

The ESO determines the appropriate manner in which an allegation is to be investigated, depending on the circumstances of each individual case. It is likely that one of our investigators will assist with any enquiries. Where appropriate, specialist advice may be sought.

How long will the investigation last?

The time taken to complete an investigation will vary depending on the facts of each case. However, 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 90 per cent of investigations within six months of them being referred – 40 percent of the total being concluded in four months and another 50 percent in between four and six months. Of the remaining 10 percent, we aim to complete 7 percent within nine months. And, based on our experience so far, we anticipate that the final 3 percent will have delays that are beyond our control.

These timeframes 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 will the member alleged of breaching the Code be told about the allegations?

During all investigations, the ESO will put in detail, to the member concerned, the allegations made against him or her and provide that member with the opportunity to respond to them.

At what stage of the investigation is the ESO likely to contact the member against whom the allegation has been made?

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

Does the ESO have the right to demand information?

Yes. The gathering of information is vital in order to enable a fair and proper finding to be made on an allegation. The ESO has a right of access to all relevant information that is necessary to conduct the investigation.

The ESO may make enquiries of any person believed to have information relevant to the investigation in progress. This may include: the member alleged to have breached the Code of Conduct, the person who made the allegation, other members of the authority and third parties. Such persons can be required to provide information and attend for interview.

How will the ESO obtain information?

The manner will vary depending on the individual case. The ESO may write to various individuals to request information. The ESO may also seek information by telephone or in person, as appropriate. The ESO will attempt to arrange any interviews at a time and place convenient for those concerned.

Can a lawyer or other person attend or participate in the ESO interview?

The ESO will allow a member to be accompanied or supported by a lawyer if such a request is made. However, the ESO will expect the member to answer any questions posed – not the lawyer. The ESO may also agree for a member to be accompanied or supported by someone who is not a lawyer. It is generally not appropriate for a member to be accompanied by someone who is a potential witness. Members should note that they are personally responsible for any legal costs that they incur during the process. The Standards Board for England has no power to meet the cost of member representation.

Will interviews be tape-recorded?

In order to save time and ensure the accuracy of notes of testimony, we will tape record some interviews. This technique is used for both face-to-face and telephone interviews. We do not tape record an interview without first gaining the consent of the person we are interviewing.

What happens if a person refuses to provide information?

It is a criminal offence to fail to comply with the ESO's requirements, without reasonable excuse.

What are the possible outcomes of the investigation?

There are four possible outcomes under Section 59(4) of the *Local Government Act 2000*. The purpose of an ESO's investigation is to determine which of the following four findings is appropriate in the circumstances:

1. That there is no evidence of failure by the member concerned to comply with the Code of Conduct;
2. That no action is required in respect of the matters which are the subject of the investigation;
3. That the matter should be referred to the Monitoring Officer of the relevant authority for determination by the local Standards Committee.
4. That the matter should be referred to The Adjudication Panel for England for adjudication by a tribunal.

Under Section 60(2) of the *Local Government Act 2000*, an ESO may also cease an investigation at any stage and refer the matter concerned back to the Monitoring Officer of the relevant authority for investigation at the local level. This procedure will also be governed by regulations under Section 66, which are likely to become operational by autumn 2003.

Why would an ESO cease the investigation?

The ESO can cease an investigation and refer the case to the local Monitoring Officer where it is considered the matter may be more appropriately handled at a local level.

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. The Monitoring Officer has a statutory duty to report breaches of the law to his or her authority and plays an important role in promoting high standards of member conduct.

Does the member alleged to have breached the Code get the opportunity to comment on the findings of an ESO?

Yes. Once the ESO has considered all available evidence, his or her draft findings will be compiled in a draft report and provided to the relevant member. The member then has the opportunity to comment on them.

Who else can comment on the draft report?

The person who made the allegation and the Monitoring Officer of the relevant authority will also be able to comment on the ESO's draft report. The ESO will take into account comments made prior to producing a final report.

Who will be told the final outcome of the investigation?

Where the finding is either no evidence of a failure to comply with the Code or that no action is required, the ESO will send a copy of the final report to the member against whom the allegation has been made, and he or she will also send a copy of the final report to the person who made the allegation and to the Monitoring Officer of the relevant authority.

In the case of town or parish councils, the ESO will write to the clerk informing them of the outcome.

If the finding requires that the matter should be referred back to the Monitoring Officer of the relevant authority for determination by the local Standards Committee, the ESO will send the final report to the Monitoring Officer and will advise the member against whom the allegation has been made and the person who made the allegation that she/he has done so. Again, in

the case of town or parish councils, the ESO will write to the clerk informing them of the outcome.

The Monitoring Officer will send the final report to the member against whom the allegation has been made and to the Standards Committee panel members selected to hear the case.

Finally, where the finding is that the matter should be referred The Adjudication Panel for England, the ESO will send the final report to the President of The Adjudication Panel for England and will advise the member against whom the allegation has been made and the person who made the allegation that she/he has done so.

In the case of town or parish councils, the ESO will write to the clerk informing them of the outcome.

Please visit the website of The Adjudication Panel for England for details of the process they follow (www.adjudicationpanel.co.uk).

How do the 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 prejudice the outcome of an investigation or tribunal.

We do not comment on, or even acknowledge, allegations that have not yet been considered by our Board. Once they have been considered, we will respond to press enquiries by giving the name of the person the allegation is against, their authority, whether the person making the allegation is a member or officer of the same authority or a member of the public and the area of the Code that it is alleged to have been broken.

In addition to talking generally about procedure and process, we always make the point that just because an investigation is taking place, no one should presume that a breach of the Code has taken place.

Once the case has been concluded, with any Adjudication Panel tribunal or local Standards Committee consideration completed, the summary of the case, which is published on our website, is also made available to the press.

When are the ESO's findings made public?

Where the finding is either no evidence of a failure to comply with the Code or that no action is required, summary information about the case will appear on the Board's website a few days after the final report has been sent to the relevant parties.

From time to time, circumstances will arise which will result in the ESO using his/her powers under the *Local Government Act 2000* to publish a summary of his/her report in local newspapers circulating in the area of the relevant authority.

If the finding requires that the matter should be referred back to the Monitoring Officer of the relevant authority for determination by the local Standards Committee, the ESO's decision will be published on the Board's website a few days after the relevant parties have been notified of it.

Finally, where the finding is that the matter should be referred to The Adjudication Panel for England, the ESO's decision will be published on the Board's website a few days after the relevant parties have been notified.

What happens if the matter is referred for local determination?

When an ESO refers a matter to the Monitoring Officer of the relevant authority for local determination, the Monitoring Officer will arrange for the authority's Standards Committee to hold a hearing, where it will consider the ESO's report and determine the matter. The committee has a range of sanctions at its disposal up to and including suspending a member for up to three months.

The Standards Committee will announce its decision at the hearing. Following the hearing, the Standards Committee will arrange to publish its decision in a local newspaper unless, in the event of finding that there is no evidence of a breach of the Code, the member against whom the allegation was made requests them not to.

A summary of the Standards Committee's full written decision will also be published on The Standards Board for England's website a few days after the relevant parties have been notified of it.

What happens if the matter is referred to The Adjudication Panel for England?

The Adjudication Panel for England is independent of The Standards Board for England. When a matter is referred to the Panel, a hearing is fixed where the alleged breach of the Code is considered.

There is a range of sanctions available to the Panel, including suspension of a member from office for up to one year, or disqualifying them from standing or acting as a member for up to five years. Its findings will be published. The member alleged of breaching the Code may appeal to the High Court if they disagree with the findings.

The Panel may choose to place a notice of its decision in a local paper.

The Adjudication Panel for England's decision will be made available on the Board's website soon after the hearing. Two weeks after that, a detailed summary of The Adjudication Panel for England's report will also be published on the Board's website.

More information about The Adjudication Panel for England can be found at www.adjudicationpanel.co.uk

To whom may information obtained by an ESO be disclosed?

Section 63 of the *Local Government Act 2000* limits the disclosure of information obtained during investigations. Any person who discloses information in breach of Section 63 is guilty of an offence.

Obviously, the ESO may need to disclose information during the course of investigation to the parties concerned, or to a witness.

The ESO may also disclose information to others, notably the Audit Commission and the Local Government Ombudsman, under Sections 63 and 67 of the *Local Government Act 2000*.

Is there a right of appeal against a finding by an ESO?

There is no right of appeal against anything that appears in an ESO's report. However, there is an opportunity to comment on anything that appears in the ESO's draft report.

In exceptional circumstances, it may be possible to seek judicial review of a decision made by an ESO, but we strongly recommend that legal advice be sought when considering action of this kind.

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 The Standards Board for England's website at www.standardsboard.co.uk

Alternatively, you can contact us at:

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