

Decision guide | Will we investigate?

Last updated: 14 October 2024

[IN CONFIDENCE]

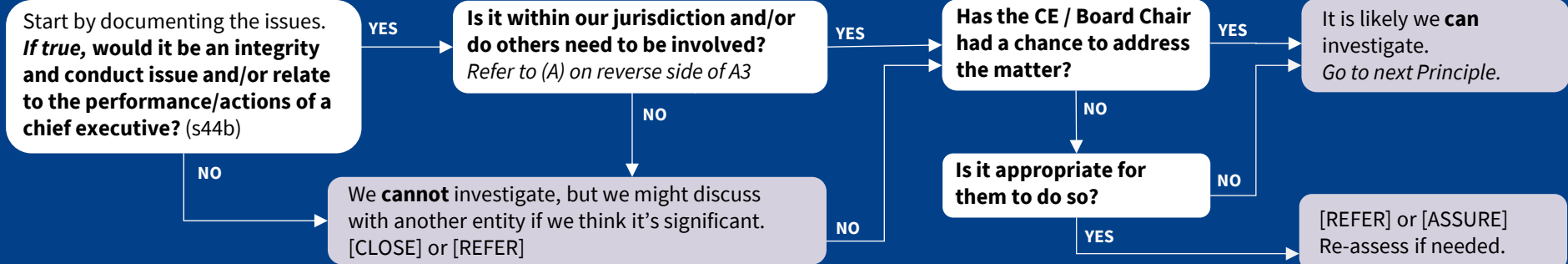


This decision guide supports us to consider whether the Public Service Commissioner will investigate matters of integrity and conduct. An investigation is our strongest and most formal intervention. We may investigate when all four principles are met. We also consider alternative actions, such as monitoring, assurance and/or referrals to other entities.

We investigate matters of integrity and conduct when:

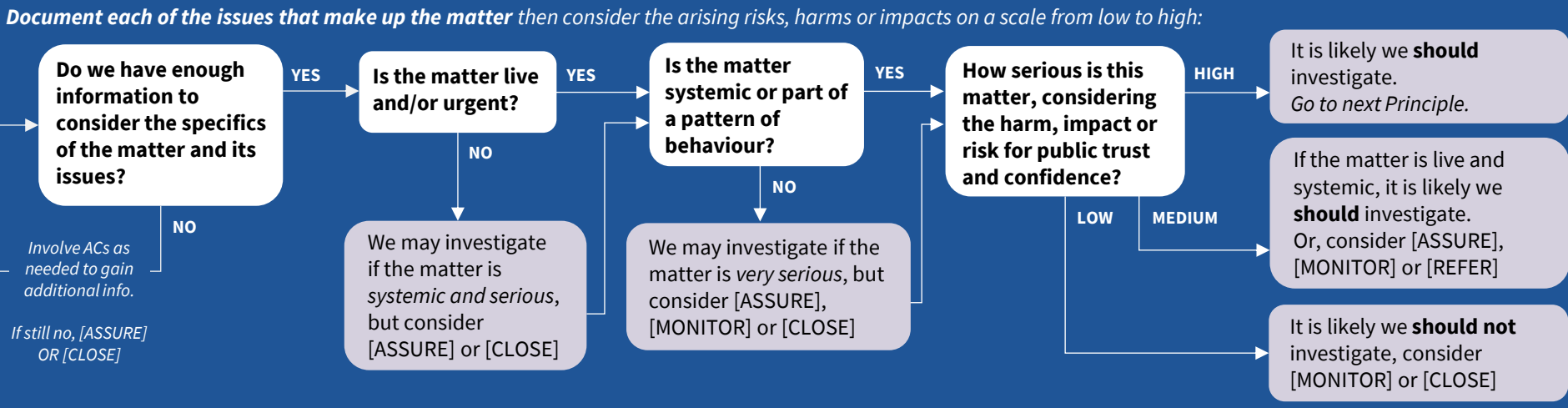
The matter sits within our responsibilities

Assess this in all cases.  
Use the information we have to hand (public sources, the complaint/ enquiry and any existing intelligence).



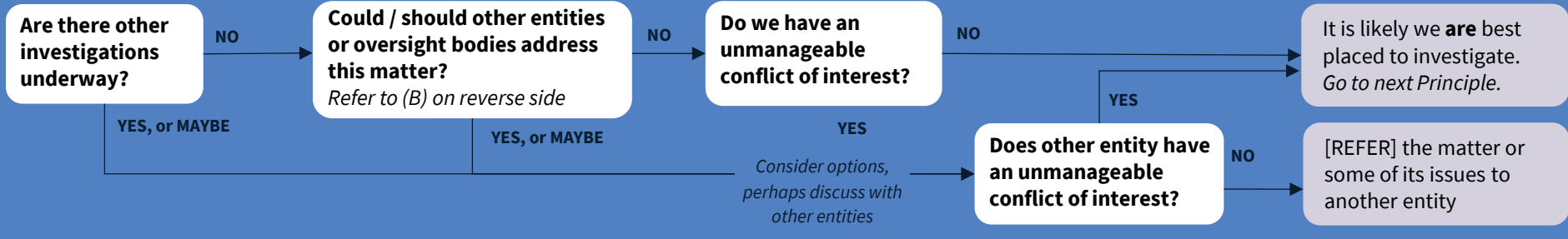
The substance and significance of the matter warrants investigation

Assess this in all cases.  
If it's within our responsibilities, we can seek additional information if required.



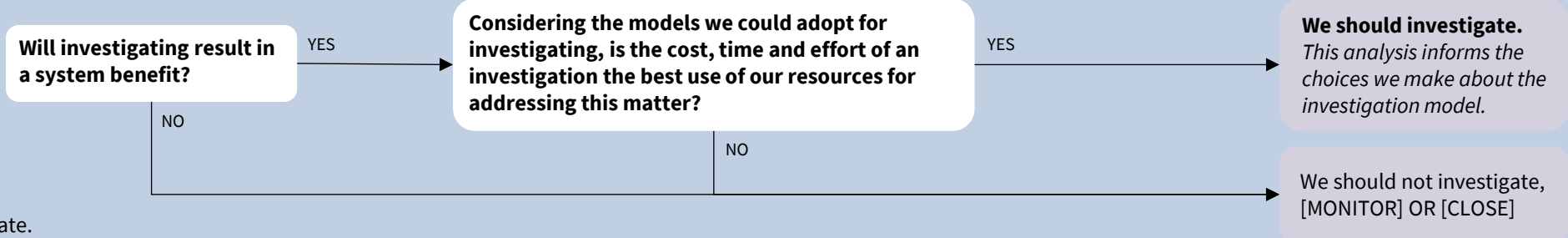
We are best placed to investigate

Assess this if the matter is serious (rated medium or high).



Investigating is an effective use of our resources

Assess this if the matter is serious and we are best placed to investigate.



We have alternatives to an investigation:

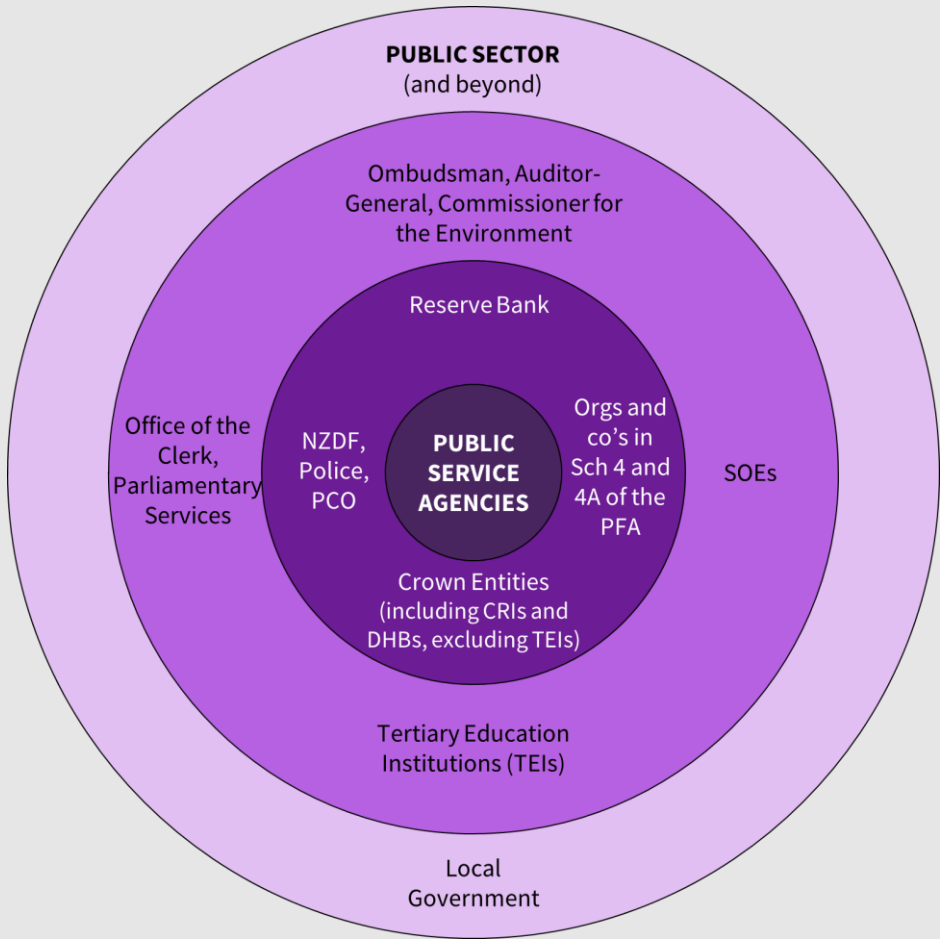
Option	What this could look like, e.g.
CLOSE	There is insufficient information to proceed. Document what is known.
	The matter is not significant enough to warrant investigation or other intervention. (Document in case a pattern emerges.)
	Recommendations from an investigation report have been satisfactorily implemented and the matter is addressed.
REFER	Take no further action, unless/until new information is received that would prompt re-assessment.
	Refer to home agency (direct referral)
	If raised through an enquiry or complaint, suggest alternative resolution route (indirect referral).
	Refer to an enforcement agency or oversight body to consider the matter and action if needed.
MONITOR	Refer to a monitoring agency.
	Wait and see what happens next.
	Ask the agency to share lessons learned (e.g. with PSLT, Integrity Champions, other networks).
ASSURE	Gather intelligence and/or maintain a watching brief, usually on an agreed reporting cycle.
	Monitor integrity measures at agency or system level.
	Agency report on implementation of recommendations.
	Bring the standards and guidance to the CE/Chair's attention.
	Ask the CE/Chair to assure us that the matter has been or will be resolved, and how.
ASSURE	Request the agency conduct a review and provide assurance that the matter has been resolved.
	Request documents from an agency for us to assure they have resolved a matter.
	Provide advice, training or resources to support and educate the agency.

This supporting information helps us make good decisions about when we will investigate.

(A) Public Service Act 2020 – jurisdiction and mandate for investigating matters of integrity and conduct

A general function of the Commissioner is to *promote integrity, accountability and transparency throughout agencies in the State services, including by setting standards and issuing guidance* (s44(b) of the Public Service Act 2020).

Under Schedule 3 of the Act, the Commissioner may may conduct investigations and inquiries, and make and receive reports, that the Commissioner thinks necessary or desirable or that the Minister directs.



	Can we investigate?
Public service agencies (1)	✓
If directed by the PM or asked by the responsible Minister or the head of an agency (2)	✓
If there is a potential breach of minimum standards of integrity and conduct (3)	✓
In other circumstances	✗
	✗
Public sector	✗

Initiating an investigation

If the subject of an investigation/inquiry includes an individual or agency outside of the Public Service and the issue is not a potential breach of the Standards of Integrity and Conduct (the Code) or the Code does not apply to the agency or individual, then the matter will need to be referred to the Commission by a Minister or the Head of the implicated agency.

- (1) If the agency is Crown Law the investigation must not pertain to the performance of the independent and constitutional functions of the Solicitor-General or the performance of persons assisting the Solicitor-General in the performance of those functions (s44(1A) of the Public Service Act 2020 – which applies to investigations by extension)
- (2) If the agency is the Police the investigation can only look at conduct and/or management issues not operational matters (s100 of the Policing Act)
- (3) In the State Services, minimum standards of integrity and conduct only apply to Crown entities (except CRIs and TEIs), companies in schedule 4A of the Public Finance Act 1989 and PCO.

(B) Alternative investigating agencies

Specific issues	
Criminal offending	Police or SFO
Administrative acts / decisions	Ombudsman
Privacy	Privacy Commissioner
Spending public funds	Auditor-General
Human rights	Human Rights Commission
Health & safety	WorkSafe
Health or disability	Health & Disability Commissioner
Disability or prisons	Ombudsman
Children	Children’s Commissioner
Transport accident	TAIC or CAA
Unexplained death	Coroner

Specific agencies	
NZ Police	IPCA
An intelligence agency	IGIS
A crown entity	The monitoring agency
A crown research institute	Treasury
A departmental agency	The host agency
An agency with no conflict	The home agency

Individuals	
A Public Service CE	Te Kawa Mataaho
A crown entity member or CE	The monitoring agency
A public servant	The home agency

National significance	
Of highest national significance	DIA – Royal Commission
Of high national significance	DIA – Public Inquiry
Of national significance	DIA – Government Inquiry

Other options for Parliament or the Executive

Ministerial non-statutory inquiry	Select committee investigation	Independent working group	Independent advice	Law Commission project	Commerce Commission market study
Shorter-term options				Longer-term options, external bodies	

KEY:	The home agency	Monitoring agency	Enforcement agency	DIA-led	Oversight body	Te Kawa Mataaho
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