

**Meeting:** Standards Committee

**Date:** 5 July 2004

**LOCAL INVESTIGATION OF ALLEGATIONS OF MISCONDUCT**

(Legal)

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**1 PURPOSE**

To inform the Committee on the progress of statutory arrangements for the Monitoring Officer to investigate allegations of misconduct – “Section 66 Regulations”.

**2 RECOMMENDATIONS**

That the Borough Solicitor reports back to this Committee on the final form of the Section 66 Order and Standards Board Guidance together with a draft procedure for investigating complaints.

**3 BACKGROUND**

- 3.1 The Committee will recall from previous reports that most, if not all, the interested bodies would like some of the less serious allegations of misconduct to be dealt with at a local level. Because of the way the Local Government Act 2000 is drafted, local determination can only be introduced by Regulations made under Section 66.
- 3.2 These Regulations are being made in two parts. The first, which have already been introduced, enable the Committee to receive reports from ethical standards officers (“ESOs”) appointed by the Standards Board and determine how they should be dealt with. These are now in force and, at its last meeting, the Committee adopted procedures and protocols for dealing with such referrals. The Regulations do not, however, permit the Committee or the Council to carry out investigations. A second set of regulations has been issued in draft, which will require the Monitoring Officer or his delegatee to undertake investigations and report to the Standards Committee but this will only be permitted on referral and instruction from the Standards Board. In other words, it will not be possible for complaints to be received and dealt with entirely locally.
- 3.3 As well as draft regulations, the Standards Board for England has also issued draft guidance on local investigation.
- 3.4 Both the regulations and the guidance are expected to be finally made before the end of 2004.

#### **4 Details of the draft Order and Standards Board guidance.**

- 4.1 Once the proposed regulations and guidance are in place, it is anticipated that the Standards Board will refer for local investigation the majority of cases which appear to be of a gravity which is appropriate for local determination. In practice, this may well mean that most cases are referred for local investigation and of these most will also be determined by the Standards Committee following the Monitoring Officer's Report. In due course, the Standards Committee may need to adopt additional procedures for local investigations which will complement those already in place, for the hearing of local determinations.
- 4.2 The Standards Board proposes the following as the criteria by which ESOs would decide whether a particular matter should be sent to the Monitoring Officer for local investigations:
- The matter does not appear to need the heavier penalties only available to the Adjudication Panel for England
  - The matter is an isolated occurrence and is unlikely to be repeated
  - The member has made a prompt, adequate and unreserved apology and whether adequate remedial action has been taken
  - There is evidence that a local investigation would be perceived as unfair or biased
  - The allegation is of an entirely local nature and does not raise matters of principle
  - There are relevant local political issues that may have a bearing on a local investigation
- 4.3 The Government proposes to give the investigating officer (which will be either the Monitoring Officer or his delegatee) a power to require the authority to afford him access to any documents in its possession. but does not intend to make it a criminal offence to fail to co-operate with the investigation, as would be the case in an investigation by an ESO.
- 4.4 The ESO will refer the case down to the Monitoring Officer before it has been investigated. So the Government proposes that, if the investigating officer considers that the matter is more serious than first thought and that the Standards Committee's maximum sanction of 3 month's suspension would be inadequate, he should be able to request the ESO to take the matter back so that it can go on to a Case Tribunal which could lead to more severe sanctions.
- 4.5 The Government proposes that every case referred for local investigation should have to be resolved by the Standards Committee even if the Investigating Officer finds that there has been no breach of the Code or no action is required. In such case the Committee should consider the investigating officer's report and, if it agrees with his finding that there has been no breach of the Code or no action is required, determine the matter accordingly. But if the Committee disagrees with such a finding or the investigating officer has found that there has been a breach of the Code, the matter would then go on to a full hearing.
- 4.6 The current regulations require the Standards Committee to hold the hearing within 3 months of the ESO's report being referred to the Monitoring Officer. The Government proposes to extend this requirement, so that hearings following local

investigations would have to be held within 3 months of the investigating officer completing his report.

- 4.7 ESOs have developed a custom of marking their reports as “confidential”. This has been taken to mean that, when an ESO’s report finds that there has been no breach of the Code or no action is required, the Monitoring Officer is precluded from giving copies of such reports to the Standards Committee. No statutory confidentiality is proposed for investigating officers’ reports, but the draft Guidance urges investigating officers to maintain confidentiality in order to preserve the integrity of the investigation.
- 4.8 The present regulations and the current proposals make no provision for the case where the Standards Committee does not feel that it has sufficient information at the hearing to come to a safe determination of the matter.
- 4.9 The proposals would limit the investigating officer to the specific matter referred by the ESO and do not allow the Standards Committee to consider and determine any possible additional breaches of the Code of Conduct which may be identified during the local investigation. Instead, any such additional matter would have to be reported to the Standards Board for investigation.
- 4.10 At present the sanctions available to the Standards Committee include, censure, restriction of use of Council premises and resources, and total or partial suspension or training or an apology or conciliation. The Government recognises that this is inflexible, and proposes that the Standards Committee should be able to set a total or partial suspension until such time as the member submits a written apology or undertakes training or conciliation.
- 4.11 The draft guidance suggests that, when the ESO refers a matter to the Monitoring Officer for local investigation, the ESO will notify the member and the complainant that the matter has been referred for local investigation. It then suggests that, in order to maintain confidentiality, the Monitoring Officer should notify the members of the Standards Committee by confidential letter that he is arranging an investigation, but should not name the complainant or the member, or give any details of the alleged breach of the Code of Conduct.
- 4.12 These proposals have been subjected to close scrutiny by interested parties and detailed recommendations have been submitted to the Government and the Standards Board suggesting, amongst other things greater flexibility for standards committees to deal with determinations and some relaxation on timescales which may, as currently drafted, be too tight in some circumstances.

## **5 IMPLICATIONS**

None specific

## **BACKGROUND DOCUMENTS**

- Draft Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004
- Standards Board for England – Draft Guidance to Monitoring Officers by the Standards Board for England: local investigation of allegations of misconduct under the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004.