

**Meeting of:** STANDARDS COMMITTEE

**Date:** 19<sup>TH</sup> NOVEMBER 2004

**Report of:** CORPORATE DIRECTOR (CENTRAL SERVICES)

**Reference:** CDCS/HLS

**Title:** LOCAL INVESTIGATIONS OF MISCONDUCT ALLEGATIONS

### **PUBLIC/EXEMPT ITEM**

This item is for consideration in the public part of the meeting.

### **PURPOSE OF THE REPORT**

To enable the Committee to consider new Regulations dealing with the local investigation of allegations of misconduct and a proposed investigation and pre-hearing procedure for dealing with such matters.

### **RECOMMENDATIONS**

- 1. That the Committee note the provisions of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004**
- 2. That the Committee approve investigation and pre-hearing procedures for matters referred to the Monitoring Officer for local investigation and subsequent local determination.**

### **REPORT**

#### **Introduction**

Members will recall that the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, which came into force on the 30th June 2003 made provision for Standards Committees to consider matters referred to them by the Ethical Standards Officers (ESOs) following the completion of ESO reports on whether authority members had breached the Code of Conduct for Members.

Further Regulations have now been made amending those Regulations. The new Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 allow Monitoring Officers to investigate allegations referred to them by ESOs, and provide for Standards Committees to consider reports from Monitoring Officers following such investigations. The new Regulations came in to force on the 4th November 2004.

The Regulations are supplemented by Guidance on Local Investigations issued by the Standards Board for England.

The Guidance indicates that cases are more likely to be referred for local investigation where

- the matter does not appear to need the heavier penalties available only to the Adjudication Panel;
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- the allegation is of an entirely local nature and does not raise matters of principle;
- the initial investigation by an ESO has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct.

Cases are less likely to be referred 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.

### **Making the Reference**

All allegations of breaches of the Code of Conduct still go to the Standards Board, and the Board will decide whether or not to investigate. An ESO may then refer an allegation for local investigation at any point before the ESO completes an investigation into the allegation.

As provided in the 2003 Regulations, an ESO may still carry out the investigation and then refer the matter for local determination only.

### **Local Investigation**

Where an ESO refers an allegation for local investigation, the Monitoring Officer must notify the member who is the subject of the allegation, the complainant, and, if appropriate, the clerk of any relevant parish council. The Monitoring Officer should explain to them what will happen next, let them know the Monitoring Officer will be in contact again, and provide any directions that the Monitoring Officer wishes to make regarding the forthcoming investigation.

Members of the Standards Committee should be informed in writing that an investigation is being carried out, but to avoid prejudicing the Committee's subsequent determination, the Standards Committee should not be informed at this stage of the identity of the complainant or the member against whom the complaint has been made.

### **Role of Monitoring Officer**

The Regulations make provision for the Monitoring Officer to delegate the investigation to the Deputy Monitoring Officer or to another officer. This recognises that there may be a conflict of interest that would prevent the Monitoring Officer investigating a matter when he may have previously given advice to the member who is the subject of the complaint.

When the matter finally comes before the Standards Committee for determination, it will be important also for the Committee to receive advice from an officer who has not carried out the investigation and has no other conflict of interest.

For ease of reference, however, in this report, the investigation is assumed to be carried out by the Monitoring Officer, although it is recognised that in many cases it will be necessary for the investigation to be delegated to another officer.

### **The Investigation**

The Standards Board has indicated that it intends to publish separate and more detailed Guidance on conducting the investigation.

In conducting a local investigation, it is not possible for the Monitoring Officer to compel the attendance of witnesses, although it is suggested that a member who does not co-operate will be in breach of the Code of Conduct.

The Monitoring Officer has no jurisdiction to investigate any additional matter that comes to light during the investigation. Evidence of another breach of the code of conduct would need to be referred to the Standards Board in the normal way.

The Regulations also make provision to allow the Monitoring Officer at any stage before he/she has completed the investigation, to make a request to the ESO that the matter be referred back to the ESO for investigation. This is to ensure that, if evidence comes to light which suggests that the case is more serious than originally thought, it may be referred back to the ESO who may decide to take over the conduct of the investigation. Only one request to refer back may be made.

The Standards Board Guidance on local investigations deals with confidentiality issues, and provides a checklist for the Monitoring Officer's draft and final report following the investigation.

### **Findings of Investigation**

The outcome of the investigation must be one of two possible findings:

- that there has been a failure to comply with the Code of Conduct, known as "finding of failure"
- that there has not been a failure to comply with the Code, known as "finding of no failure".

The Monitoring Officer's report must be copied to the relevant parties and referred to the Standards Committee.

Where the report states that there has not been a breach of the Code of Conduct, the Standards Committee must decide either to accept that recommendation, or to consider the matter at a hearing of the Committee. In deciding whether it agrees with the finding, the Standards Committee must consider only the report, and must not hear any representations or evidence. The Committee's role is to decide whether, based on the facts set out in the report, it accepts the Monitoring Officer's finding; members of the Committee must take care not to appear to have formed a view on the merits at this stage.

If the Standards Committee decides that, on the balance of probabilities there is a case to answer, a hearing must be held to make a final determination.

Likewise, if the Monitoring Officer's report concludes that there was a breach of the Code of Conduct a hearing must be arranged.

The procedure at the hearing will be the same as that approved by the Committee in November 2003 for the conduct of hearings of matters referred by the ESO for local determination.

The new Regulations provide that in respect of any hearing, the Standards Committee may adjourn the hearing to obtain further information or ask the Monitoring Officer to carry out further investigation, but only once. The Committee may also adjourn to make a request to an ESO to take the matter back.

## Sanctions

If the Committee finds that there has been a breach of the Code of Conduct, it may impose one or any combination of sanctions. In the new Regulations, the sanctions available are now listed separately to make clear the range of options available to the Standards Committee.

These are:

- censure of the member;
- restriction for a maximum period of three months of the member's access to the premises of the authority and the member's use of the resources of the authority, provided that any such restrictions imposed upon the member -
  - are reasonable and proportionate to the nature of the breach; and
  - do not unduly restrict the member's ability to perform his/her functions and duties as a member.
- partial suspension of the member for a maximum period of three months;
- suspension of the member for a maximum period of three months;
- a requirement that the member submit a written form of apology in a form specified by the Standards Committee;
- a requirement that the member undertake training in a form specified by the Standards Committee;
- a requirement that the member undertake conciliation in a form specified by the Standards Committee;
- partial suspension of the member for a maximum period of three months or until such time as he/she submits a written apology in a form specified by the Standards Committee;
- partial suspension of the member for a maximum period of three months or until such time as he/she undertakes any training or conciliation specified by the Standards Committee;
- suspension of the member for a maximum period of three months or until such time as he/she submits a written apology in a form specified by the Standards Committee;
- suspension of the member for a maximum period of three months or until such time as he/she undertakes any training or conciliation specified by the Standards Committee;

## **Conclusion**

The coming into force of the Regulations means that allegations of breaches of the Code of Conduct may now be conducted locally if so referred by an ESO. The Standards Committee now has jurisdiction to determine matters investigated by an ESO and referred for local determination, and also matters which the ESO has referred to the Monitoring Officer for local investigation.

The Deputy Monitoring Officer has prepared an investigation and pre-hearing procedure for cases referred for local investigation. This is attached at Appendix 1 for Members' consideration and approval. It should be noted, however, that it may subsequently need to be amended in the light of any further Guidance published by the Standards Board on the conduct of investigations.

The hearing procedure before the Standards Committee will be the same, whether the matter has been investigated locally or by an ESO.

## **FINANCIAL IMPLICATIONS/SECTION 151 OFFICER'S COMMENTS**

There are no financial implications.

## **LEGAL IMPLICATIONS/MONITORING OFFICER'S COMMENTS**

The report has been prepared in conjunction with the Head of Legal Services.

## **BACKGROUND PAPERS**

None