

# STANDARDS COMMITTEE

## PROCEDURE FOR CONSIDERING REPORTS ON INVESTIGATIONS OF ALLEGED BREACHES OF COUNCIL PROTOCOLS

23rd February 2007

### Report of Head of Legal and Human Resources/Monitoring Officer

#### PURPOSE OF REPORT

To establish a procedure for the Committee to consider reports on the investigation of alleged breaches of local protocols.

This report is public.

#### RECOMMENDATIONS

- (1) That the Committee confirm that it would wish to follow a procedure for considering reports on investigations relating to local Protocols that is similar to the procedure for considering reports on investigations initiated by the Standards Board.

#### 1.0 Introduction

- 1.1 Members will recall that the Council's Constitution contains a number of Protocols relating to the conduct of Members. Breach of a local Protocol is not a breach of the Code of Conduct, and therefore falls outside the remit of the Standards Board for England, and outside the Local Government Act 2000, and must be dealt with locally.
- 1.2 The Terms of Reference of this Committee include the consideration of reports referred from the Monitoring Officer. In the case of reports relating to matters outside the Code of Conduct, the Committee has limited powers in the event that there is found to have been unsatisfactory conduct. This was confirmed by the High Court and the Court of Appeal in the case of Broadland District Council ex parte Lashley in 2001.
- 1.3 If the Standards Committee finds that a Member's conduct has fallen short of the standards properly to be expected of a Councillor, its powers are limited to the "naming and shaming" of the individual member, the offering of advice to that member, or a recommendation to the Council for the removal of the member from any office, appointment or Committee or Sub-Committee (although it is recognised that this is subject to challenge, and may be circumvented by political groups under the rules of proportional representation). Equally, having considered the matter, it is

open to the Standards Committee to dismiss the complaint, or simply suggest changes to working practices to prevent such a problem or complaint arising in the future.

- 1.4 The Monitoring Officer is currently investigating an allegation of a breach of a local Protocol. This is the first occasion on which the Committee has been required to consider an allegation of a breach of Protocol, and it has come to light that whilst the Committee has in place a procedure for dealing with the determination of allegations of a breach of the Code of Conduct, as this is prescribed by Regulations, it has never formally applied that procedure to the consideration of breaches of Protocol.

## **2.0 Proposal Details**

- 2.1 The Committee is therefore asked to consider how it wishes to deal with reports on investigations of alleged breaches of local Protocols.

- 2.2 Members will recall that in respect of an alleged breach of the Code of Conduct, the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 provide that where a monitoring officer conducts an investigation, he shall make one of the following findings:

- (i) that he considers that there has been a failure to comply with the code of conduct of the authority concerned, (“a finding of failure”) or
- (ii) that he considers that there has not been a failure to comply with the code of conduct of the authority concerned, (“a finding of no failure”)

He must then prepare a written report concerning his investigations and his findings.

- 2.3 Where the report concerns a “finding of no failure”, it must be referred to the Standards Committee, and the Committee must consider the report and make one of the following findings:

- (i) that it accepts the monitoring officer’s finding of no failure (“a finding of acceptance”), or
- (ii) that the matter should be considered at a hearing of the Standards Committee

- 2.3 Guidance from the Standards Board states that where the Standards Committee is considering a report concerning a “finding of no failure”, it should simply consider the written report; it should not seek to interview witnesses or take representations from the parties, and should not hear from the investigating officer. The Committee’s role at this stage is to decide whether, based on the facts set out in the report, it agrees with the finding in the report or believes there is a case to answer.

- 2.4 If the Monitoring Officer finds that there has been a breach, or if the Committee finds that there is a case to answer, there are procedures in place for the hearing process, and for establishing a sub-committee to deal with the hearing.

- 2.5 In the interests of consistency, it would seem appropriate for the Committee to deal with reports on the investigation of alleged breaches of local Protocol in a similar way. That is, if the Monitoring Officer’s report does not find that there has been a breach of Protocol, then the Committee should consider the written report and decide whether it accepts this finding or whether it considers that there is a case to answer. If the Committee considers that there is a case to answer, a hearing would be arranged using the same procedures that would be used for a Code of Conduct case.

Likewise, if the Monitoring Officer's report found that there had been a breach of Protocol, a hearing would be arranged in the same way

### **3.0 Details of Consultation**

3.1 There has been no consultation. However, the proposal follows the established procedure for dealing with Code of Conduct cases.

### **4.0 Options and Options Analysis (including risk assessment)**

4.1 The options open to the Committee are to approve the proposed procedure, or to determine an alternative procedure for dealing with reports on alleged breaches of local Protocols. The officers' recommendation would be to approve the proposed procedure which is consistent with the statutory procedure for dealing with alleged breaches of the Code of Conduct.

### **5.0 Conclusion**

5.1 The Committee is recommended to approve the proposed procedure.

#### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

The proposed procedure will provide for a fair hearing in accordance with the Human Rights Act 1998.

#### **FINANCIAL IMPLICATIONS**

Financial Services have not been consulted.

#### **SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments to add.

#### **LEGAL IMPLICATIONS**

Legal Services have been consulted and have no further comments.

#### **MONITORING OFFICER'S COMMENTS**

The Deputy Monitoring Officer has been consulted and has no further comments to add.

#### **BACKGROUND PAPERS**

None

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