

LOCAL INVESTIGATION AND DETERMINATION OF MISCONDUCT ALLEGATIONS

1 SUMMARY

- 1.1 At its last meeting this Committee considered the progress of draft regulations for the local investigation and determination of misconduct allegations and instructed the Corporate Director (Law, Planning & Administration) to prepare rules of procedure for consideration once the new regulations were published. This report advises Members of the latest position in that regard.

2 INTRODUCTION

- 2.1 In June 2003 the Office of the Deputy Prime Minister (ODPM) published a summary of responses to its consultation on local determination and investigation. The consultation has resulted in some change to the original proposal and the proposed role of the Monitoring Officer requires primary legislation to be dealt with under separate legislation later in the year.
- 2.2 The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 were laid before Parliament on 6 June 2003 and come into force on 30 June. The effect of the regulations is to enable the Ethical Standards Officers of the Standards Board for England to investigate and then refer a report on allegations of misconduct to the Standards Committee for local determination.
- 2.3 Further regulations are required to enable an allegation to be referred directly to the Monitoring Officer for investigation and report to the Standards Committee.

3 THE CONTENT OF THE REGULATIONS

Key features of the regulations include:

- (a) Extension of the definition of "exempt information" to make it clear that the Standards Committee can meet in private session to determine allegations. In practice, to ensure public confidence in the process, the Committee should meet in public unless there are over-riding reasons for going into private session, such as the need to protect the privacy of individuals. However, these amendments do usefully allow the Proper Officer to deny press and public access to the Committee papers in advance of the meeting, and enable the Committee to retire in order to consider its findings.

- (b) Extension of the permitted grounds for disclosure of information obtained during an investigation or hearing to enable a national Appeals Tribunal to discharge its functions
- (c) The function of the Monitoring Officer is simply to pass the report of the Ethical Standards Officer to the Standards Committee without additional investigation. However, the Committee may wish to ask the Monitoring Officer to provide additional evidence if they are unable to come to a decision on the basis of the Ethical Standards Officer's report and the response of the Councillor concerned.
- (d) There is no provision for the Standards Committee to call the Ethical Standards Officer to give evidence in support of his /her report. The Committee may wish to ask the Standards Board for the Ethical Standards Officer to make such an appearance if there are substantial disputes of fact in a particular case, but there is no automatic right for the Committee to require such attendance.
- (e) The Committee's hearing must be at least 14 days after the Monitoring Officer has given a copy of the Ethical Standards Officer's report to the Councillor concerned, but no later than 3 months after the Monitoring Officer first received the report from the Ethical Standards Officer.
- (f) The Standards Committee is given a power to make a determination in the absence of the Councillor concerned where it is not satisfied with the Councillor's explanation for his/her absence.
- (g) Where the Councillor concerned has ceased to be a Councillor by the date of the Committee's hearing, the only sanction available to the Committee is one of censure.
- (h) Where the Councillor is still a Councillor at the date of the hearing, the range of sanctions is more varied and includes all or any of the following:
 - (i) censure;
 - (ii) restriction on access to Council premises and use of Council resources for up to 3 months, provided that this does not unduly restrict the Councillor's ability to perform his/her functions as a Councillor. This might be appropriate in barring a Councillor from the Council offices where the misconduct relates to bullying of officers, or taking away access to a Council-provided computer where the misconduct is inappropriate use of this facility;
 - (iii) Suspension for up to 3 months. This period does not count towards any disqualification by reason of failure to attend a meeting of the authority for 6 months;
 - (iv) Partial Suspension for up to 3 months. For example, this could be suspension from Planning Committee if the misconduct particularly related to his/her participation in that Committee; and

- (v) Suspension or partial suspension for up to 3 months or until the Councillor provides a written apology or undertakes remedial training or conciliation as determined by the Standards Committee,

Any such sanction takes effect immediately upon the Committee's decision, unless the Committee determines that it shall take effect from a set date within 6 months of the date of the determination.

- (i) A Councillor can apply to the President of the Adjudication Panel for England to be allowed to appeal against a determination of a Standards Committee. The Councillor has to send in a written notice and the president will decide on the basis of whether the facts as set out in that notice indicate any reasonable prospect of the appeal succeeding. Any appeal will be heard by a tribunal comprising at least 3 members of the Adjudication Panel and may be by way of written representations if the Councillor consents.
- (j) The Standards Committee must publish notification of its findings in one or more newspapers circulating in the area unless the Councillor concerned is found not to have failed to comply with the Code and requests that it is not published.

4 PROCEDURE FOR DEALING WITH REFERRED ALLEGATIONS

- (a) From 1 July 2003 Ethical Standards Officers will be able to refer allegations of misconduct meriting sanctions within the powers set out above to Monitoring Officers for report to Standards Committees. More serious matters, warranting suspension for up to one year or disqualification from any local authority for up to 5 years, will continue to be dealt with by the Standards Board.
- (b) It is a requirement of the regulations that hearings are conducted having regard to guidance issued by the Standards Board. The Board has indicated that it will be issuing such guidance by the end of June. None has been received at the time of writing this report and a procedure will be presented to the Committee when the Guidance is to hand.

5 RESOURCE IMPLICATIONS

- 5.1 It is difficult to assess the volume of referrals likely to be received or the complexity of cases to be dealt with. Experience of other tribunals suggests that each matter may take the equivalent of one or two days of senior officer time. This could increase significantly if local investigation is necessary.
- 5.2 The requirement to publish the Committee's findings in a local paper may add upwards of £500 to costs.

5.3 There is no power to make an order for, or award, costs.

6 LEGAL IMPLICATIONS

6.1 Hearings in the circumstances outlined in the report are quasi-judicial proceedings governed by regulation, Human Rights legislation and the rules of natural justice.

7 PARISH IMPLICATIONS

7.1 The Standards Committee has jurisdiction over matters referred to it by the Standards Board affecting Parish Council Members.

8 RECOMMENDATION

8.1 It is proposed that the Committee **RESOLVES**

That this report be noted and that a further report on the procedure for determining referred complaints be brought to this Committee once the Guidance from the Standards Board is received. (CD(LPA))

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Background Papers:

None

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