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## LOCAL INVESTIGATION AND DETERMINATION OF MISCONDUCT ALLEGATIONS - CONSULTATION

### 1 SUMMARY

- 1.1 Consultation papers have been issued relating to the arrangements by which local authority Monitoring Officers may investigate allegations of misconduct by Members referred to them by Ethical Standards Officers. Two separate consultation exercises are being undertaken – one by the Office of the Deputy Prime Minister and the other by the Standards Board for England. Both are seeking comments by 18th May 2004. The consultation documents are annexed at Appendix 1 and 2 respectively

### 2 CONSULTATION BY THE STANDARDS BOARD FOR ENGLAND

- 2.1 The Standards Board for England has issued draft guidance for Monitoring Officers of all relevant authorities in England on carrying out local investigations under Section 62 of the Local Government Act 2000.
- 2.2 The draft guidance covers cases referred to Monitoring Officers by Ethical Standards Officers (ESOs). The Board has invited comments on the content of the guidance by reference to specific questions. These are set out below with suggested responses for Members of the Committee to consider. There may also be other issues arising from the consultation document on which Members may wish to express views.

**Question 1 – Are the circumstances which an ESO will consider when deciding whether to refer an allegation for local investigation reasonable? Are there other factors they should consider?**

Suggested response – the circumstances proposed are considered to be reasonable. It would be helpful to clarify that remedial action is entirely separate from the question of whether an apology has been given. The fact that remedial action has been taken is a reasonable criterion for deciding that the matter can be referred for local investigation whether or not an apology has been given.

**Question 2 – The Regulations allow cases to be passed back to the ESO in certain circumstances. Are there other circumstances where cases might be referred back?**

Suggested response – the circumstances outlined in the guidance are considered to be reasonable. However, there should be an opportunity to refer back a case to the Board when during a hearing the Standards

Committee uncovers evidence of a further possible breach of the Code. It may also be considered unreasonable to attempt to restrict the Monitoring Officer's ability to carry out local investigations into matters uncovered during his or her investigation. The suggestion that the Monitoring Officer's powers "relate only to the allegation that he has been given" fails to take into account the Monitoring Officers' responsibilities and duties under the Local Government and Housing Act 1989 and Section 2 of the Local Government Act 2000. It is also questionable whether the guidance distinguishes clearly enough the difference between those circumstances that warrant a referral back to the ESO and those circumstances that warrant a new allegation being made.

**Question 3 – Is the Board correct to want to seek to maintain confidentiality? Is the guidance clear on the issue on confidentiality?**

Suggested response – Maintaining confidentiality preserves the integrity of the investigation. The position with regard to section 63 (as amended) is made clear.

**Question 4 – Is it appropriate not to have to produce draft reports in all cases? Are the factors to take into account when considering whether to issue a draft comprehensive?**

Suggested response. It is appropriate to suggest that draft reports will not be needed in all cases. The factors to take into account appear to be comprehensive, however, the statement that "at this stage, members may make representations in whatever manner is most appropriate" needs further clarification.

**Question 5 – does the Report Checklist, with regard to draft and final reports, provide sufficient steps to produce a comprehensive report?**

Suggested response – The Report Checklist is sufficiently comprehensive to lead to the production of a draft and final report.

**Question 6 – When appointing someone else to conduct an investigation on their behalf, should the Guidance give direction as to how Monitoring Officers can delegate their investigative role and to whom?**

Suggested response – The guidance states that if a conflict of interest arises the Monitoring Officer "should delegate the investigation to somebody else". The Board accepts there may be difficulties where there is a clear reporting line between the person likely to be nominated and the Monitoring Officer and should give direction as to how the role should be delegated. In such a situation, it may be necessary to appoint somebody from outside the Council to carry out the investigation. In practical terms, the Monitoring Officers will often have been involved at an early stage advising individual Members and seeking to secure an early resolution of any alleged breach. This gives rise to an immediate conflict of interest and it is useful that Monitoring Officer can delegate investigations to a deputy or to any other person nominated in such

circumstances. While authorities have a duty to provide sufficient resources to enable the Monitoring Officer to perform his duties, smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities or engage expertise from outside the organisation to carry out investigations.

**Question 7 – Is the Section on conflicts or interests clear and appropriate? Is the Board right to suggest that a Monitoring Officer's chief role is to advise the Standards Committee rather than to investigate? The Standards Board is considering whether to issue a guide on how to conduct an investigation. Would this be helpful?**

Suggested response - The Board's advice on conflicts of interests is not sufficiently detailed to assist Monitoring Officers should they find themselves in a conflict situation. The role of the Monitoring Officer extends beyond advisor to the Committee but clearly there has to be some early consideration given by the Monitoring Officer as to what role he should take in the event of a reference to his authority of a case for investigation. There can be no suggestion that the Monitoring Officer can both be advisor and investigator in the same case. Guidance by the Board on investigations would be helpful.

### **3 CONSULTATION BY THE OFFICE OF THE DEPUTY PRIME MINISTER ON THE PROPOSED LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) (AMENDMENT) REGULATIONS 2004**

- 3.1 It is the purpose of the proposed new amendment Regulations to make provision for Monitoring Officers to investigate allegations referred to them by ESOs. They will also enable Standards Committees to consider reports made by Monitoring Officers following these investigations. The consultation paper seeks the views of the Committee on the proposals to amend the 2003 Regulations with regard to the way matters referred to Monitoring Officers should be dealt with. The proposals amend the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 and set out how a Monitoring Officer should conduct an investigation into a claim of misconduct against a council member. The Regulations also make changes to allow Standards Committees to consider reports referred to them directly by the Monitoring Officer. The intention is that the hearing and appeals procedure set out in the existing Regulations will apply in the case of investigation by a Monitoring Officer as well as an investigation by an ESO.
- 3.2 The Office of the Deputy Prime Minister has requested the views of consultees on the following questions:

**Question 1 – Are the investigative powers proposed for Monitoring Officers necessary and sufficient?**

Suggested response – the investigative powers proposed for Monitoring Officers are both necessary and sufficient although it would be helpful to clarify the implications of failure to comply with reasonable requests for information from the Monitoring Officer.

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**Question 2 – Are the powers proposed for Standards Committees to consider reports referred to them by Monitoring Officers necessary and sufficient?**

Suggested response – the powers proposed for Standards Committees to consider reports referred to them by Monitoring Officers are necessary. Additionally Standards Committees should be empowered to:

- Ask the Monitoring Officer to carry out further investigations and to report back;
- Refer a case back to the ESO as a result of additional evidence arising at a hearing;
- Consider any evidence collected by an ESO on the case, which appears to be appropriate or material to the appeal hearing.

**Question 3 – Should all cases investigated by the Monitoring Officer be referred to the Standards Committee for decision or, alternatively, is there a case for giving the Monitoring Officer the function of determining whether for the most minor cases no evidence of a breach of the Code has occurred, so no further action is needed?**

Suggested response – There is a case for giving the Monitoring Officer power to determine that no further action is needed. However, review by the Standards Committee of such decisions safeguards against pressure being placed on Monitoring Officer to reach such a finding which could have important local consequences. The Standards Committees should be given the same power to review the conclusions of an ESO, for example, to allow them to conclude that there has been no breach at all (where an ESO concludes that there may have been a breach but no further action is required), or that there was a breach and action is required (where an ESO has concluded otherwise).

**Question 4 – Should Monitoring Officers be able to refer cases back to the ESO? Should there be provision for cases to be referred back to the ESO by the Monitoring Officer if new evidence is discovered suggesting that the case is more serious than first thought by the ESO when he originally referred it to the Monitoring Officer?**

Suggested response – both Monitoring Officer and Standards Committees should have the power to refer cases back to an ESO. This will allow a view to be taken of any additional evidence which arises during the Monitoring Officer's investigation and during a Standards Committee hearing. This should assist in ensuring that serious cases are appropriately treated.

**Question 5 – Is the balance between the actions required of Monitoring Officers under the proposed amendment regulations and the Standards Board proposed guidance to Monitoring Officers appropriate?**

Suggested response – this does appear to be appropriate.

**4 CONCLUSION**

- 4.1 The implementation of the new ethical framework in itself has been problematic. The scope for some alleged breaches of the Code now to be dealt with locally is useful and the guidance offered by the Standards Board for England and the amendment Regulations issued by the Office of the Deputy Prime Minister in this respect is to be welcomed.

**5 LEGAL IMPLICATIONS**

- 5.1 Determinations made by the Standards Committee in circumstances outlined in the report are quasi-judicial and the process is governed regulation, Human Rights legislation and the rules of natural justice.

**6 PARISH IMPLICATIONS**

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

**7 RECOMMENDATION**

- 7.1 It is proposed that the Committee **RESOLVES**

to determine a response to the Standards Board for England and Office of the Deputy Prime Minister.

John Honey

Corporate Director (Law, Planning & Administration)

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**Background Papers:**

None

For further information please contact John Honey on:-

Tel:- 01702318004

E-Mail:- [john.honey@rochford.gov.uk](mailto:john.honey@rochford.gov.uk)