

**LOCAL INVESTIGATION AND  
DETERMINATION OF MISCONDUCT ALLEGATIONS - CONSULTATION  
(Report by the Executive Director of Central Services and  
Monitoring Officer)**

**1. INTRODUCTION**

- 1.1 Local authorities have been awaiting the issue of guidance and Regulations relating to the treatment of complaints or allegations which may be referred by an Ethical Standards Officer (ESO) for investigation and settlement locally. Indeed, Members may recall that they approved at their last meeting a procedure to assist in the conduct of hearings in the event of the reference of cases from the Board to the Committee for local determination. It was envisaged that such references would involve allegations or infringements or breaches of the Codes which are of lesser consequence than those referred by an ESO to the Adjudication Panel for England.
- 1.2 Consultation papers now have been issued relating to the arrangements by which local authority Monitoring Officers may investigate allegations of misconduct by Members referred to them by ESOs. 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.

**2. CONSULTATION BY THE STANDARDS BOARD FOR ENGLAND  
Draft Guidance to Monitoring Officers: Local Investigation of  
Allegations of Misconduct under the Local Authorities (Code of  
Conduct) (Local Determination) (Amendment) Regulations 2004**

- 2.1 The Standards Board for England has issued guidance for Monitoring Officers of all relevant authorities in England on carrying out local investigations under Section 62 of the Local Government Act 2000. The guidance has been issued at the same time as the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004. The guidance issued by the Standards Board for England covers cases referred back 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 some suggested responses for Members of the Committee to consider. There may also be other issues on which Members of the Committee 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?**

*When considering whether or not to refer the allegation to a Standards Committee, ESO's will use their discretion and take into*

account all relevant circumstances. For example, ESOs may consider whether, in their opinion:

- ◆ *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 given a prompt, adequate and unreserved apology and whether remedial action has been taken;*
- ◆ *there is evidence that a local investigation would be perceived as unfair or biased;*
- ◆ *the allocation is of an entirely local nature and does not raise matters of principle;*
- ◆ *there are any relevant local political issues that may have a bearing on a local investigation.*

Suggested response – the circumstances proposed are considered to be reasonable. However, there may be local circumstances which, irrespective of a unreserved apology, would still be sufficient to justify local investigation (or no further action). The question of whether remedial action has been taken should be 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. In terms of “any relevant local political issues”, it would be helpful to know what sort of matters the Board consider to be relevant to assist the Committee in their understanding of the conclusions of an ESO and the Monitoring Officer in the event that he is asked to respond to this issue.

**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?**

*The powers of a Monitoring Officer relate only to the allegation that he has been given to investigate. If he uncovers evidence of a possible breach that does not relate directly to the investigation, he should ask the person from whom he has obtained the information to make an allegation to the Standards Board for England, or to make an allegation himself. He should not investigate it. If a Monitoring Officer uncovers additional matters that relate directly to the allegation referred to him – i.e. an isolated instance of rudeness that reveals a consistent pattern of behaviour, the Monitoring Officer may write to the Ethical Standards Officer to request that the original allegation be referred back to them for investigation. The ESO can decide whether to direct the Monitoring Officer to continue with his investigation or to refer the matter to them and to stop the investigation.*

Suggested response – the circumstances outlined in the guidance are considered to be reasonable. However, it could be contended that there should be an opportunity to refer back a case to the Board when the Standards Committee during a hearing 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 extent of the Monitoring Officer's and duties under the Local Government and Housing Act 1989 and Section 2 of the Local Government Act 2000. It is 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?**

*While the Monitoring Officer is conducting his investigation, it is good practise to treat the information gathered as confidential and to ask the people interviewed, and anyone else aware of the investigation, to maintain confidentiality. This will help to ensure that the investigation is not seen as prejudiced. Maintaining confidentiality reduces opportunities for evidence to be seen as unfair or biased and preserves the integrity of the investigation. Members should be reminded of their obligation under the Code of Conduct not to disclose information that they have received or that has been given to them in confidence. Any draft report issued by the Monitoring Officer on the outcome of the investigation should be marked as confidential to preserve the integrity of any further investigation that he may need to undertake. The Monitoring Officer should also consider whether the information that he collects during his investigation should be treated as confidential information under Section 100(A) to the Local Government Act 1972 or be categorised as exempt information under Schedule 12A of the 1972 Act as amended by the regulations.*

Suggested response – the Board is justified in seeking to maintain confidentiality and the guidance is clear in this respect.

**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?**

*When the Monitoring Officer has concluded his investigation he should consider whether to produce a draft report. Factors to be taken into account when deciding whether to do this include:*

- ◆ *is there factual complexity or ambiguity in his statement of facts?*
- ◆ *is there a genuine dispute as to the material facts of the case?*
- ◆ *has his investigation created an expectation that the parties will receive a draft for comment?*

*If the Monitoring Officer decides to produce a draft report it should be sent to the complainant and to the subject of the allegation for comment on findings of fact. The Monitoring Officer does not need to send the draft to other witnesses or parties interviewed, although he should have confirmed individual statements with the witnesses who gave them. He does not need to send the draft report to the relevant*

*parish clerk. At this stage, Members may make representations in whatever manner is most appropriate to them. Responses to the draft may reveal the need for further investigation, or they may add nothing of further relevance. Once the Monitoring Officer has considered whether they add anything of substance to the investigation he will be able to make his final recommendations.*

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.

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

*Draft and final reports should contain the following information. The level of detail required will vary for each report depending on the complexity of information to be considered and presented:*

- ◆ *the confidential marking (draft reports only)*
- ◆ *the date*
- ◆ *the legislation under which the investigation is being carried out*
- ◆ *a summary of the allegation*
- ◆ *the relevant sections of the Code of Conduct*
- ◆ *evidence*
- ◆ *the Monitoring Officers findings of fact*
- ◆ *the finding*
- ◆ *the reasoning.*

*In addition final reports should also contain documents relevant to the Monitoring Officer's report:*

- ◆ *a schedule containing background documents;*
- ◆ *a schedule containing notes of telephone conversations, letters and notes of interviews with witnesses; and*
- ◆ *a schedule containing chronology of events*

Suggested response – It is considered that 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?**

*Monitoring Officers have four main roles in relation to the Code of Conduct:*

- ◆ *to provide advice to the Standards Committee;*
- ◆ *to advise Members who are the subject of an allegation and the person making the allegation;*
- ◆ *to investigate alleged breaches of the Code of Conduct that an Ethical Standards Officer has referred for local determination;*

- ◆ *to advise Members about conduct issues before any alleged misconduct takes place.*

*Each role is important but may lead to a conflict of interest in relation to an investigation. If such a situation arises the Monitoring Officer should delegate the investigation to somebody else. In previous guidance, the Standards Board has recommended that in cases referred by an Ethical Standards Officer for local determination, the Monitoring Officer should act as the main adviser to the Standards Committee, unless they have an interest in the matter that would prevent them from performing this role independently. Where a matter is referred back for local investigation, it is still vital that the Standards Committee has access to appropriate advice. The Monitoring Officer may need to consider whether he wishes to investigate the matter and delegate the role of advising the Standards Committee or if it is more important to delegate the investigative role. Such a decision will need to be based on a careful assessment of the circumstances that are appropriate to the role of the Monitoring Officer and to the Council.*

Suggested response – The guidance states that if a conflict of interest arises the Monitoring Officer “should delegate the investigation to somebody else”. The Boards 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 could be delegated. In such a situation, it may be necessary to appoint somebody from outside the Council to carry out the investigation. In addition to the Monitoring Officers role in advising the Standards Committee, there are many situations where a Monitoring Officers experience and expertise are better used in advising individual Members and seeking to secure an early resolution of any alleged breach. There is some flexibility in that Monitoring Officers can delegate investigations to a deputy or to any other person nominated providing they follow guidance issued for Monitoring Officers. Authorities have a duty to provide sufficient resources to enable Monitoring Officers and their Deputies to perform their duties. It has been suggested that smaller authorities might find it useful to make reciprocal arrangements with neighbouring authorities or engage expertise from outside the organisation to carry out investigations but there are differing views as to whether this arrangement would be acceptable or, indeed, whether the resource issue could be addressed adequately in this way.

**Question 7 – Is the Section on conflicts or interests clear and appropriate? Is the Board right to suggest that a Monitoring Officers chief role is to advise the Standards Committee rather than to investigate? The Standards Board are considering whether to issue a guide on how to conduct by investigations would this be helpful?**

See answer to question 6. It could be contended that the Boards 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. The guidance offered 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 that the Code of Conduct has been breached. 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, referred to him by an ESO. The Regulations also make changes to allow Standards Committees to consider reports referred to them by the Monitoring Officer and not just, as now, reports by a ESO. 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?**

*“Where a matter is referred to a Monitoring Officer of an Authority he may:*

- ◆ *call upon such advice and assistance as he may reasonable require to assist him in the investigation;*
- ◆ *require any authority concerned to meet the cost of such advice and assistance so far as such cost is reasonable; and*
- ◆ *require any authority concerned to afford him reasonable access to such documents in the possession of that authority as appear, to him to be necessary for the purpose of conducting his investigation.*

*Where a matter is referred to a Monitoring Officer of an authority he may at any stage prior to the completion of his investigation make a written request to the Ethical Standards Officer concerned requesting that the matter be referred back to that Ethical Standards Officer for him to undertake an investigation and any such request must set the reason for making that request”*

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

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

*‘Where a Monitoring Officer refers to the Standards Committee a report received from a ESO, a report prepared by the Monitoring Officer or the Standards Committee makes a finding that a matter should be considered at hearing of the Standards Committee then the Standards Committee shall convene to conduct a hearing in relation to the allegation that the Member failed to comply with the authority’s Code of Conduct or with the Code of Conduct of any other authority concerned’.*

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; and
- ◆ consider evidence collected by an ESO on the case and including elements of the ESOs report and evidence 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?**

*In the latter option, where there was such a determination, there would be no need for the case to be considered by the Standards Committee, and so such a case could be referred to the Committee “for information only”. As the proposals are currently drafted, however, every case will be considered by the Committee (either by considering and accepting a Monitoring Officer’s finding that there is no evidence of a breach of the Code or by holding a full hearing into the matter), as a reassurance that all cases, including the most minor, will be subject to Committee Scrutiny.*

Suggested response – it could be contended that there is a case for giving the Monitoring Officer power to determine that no further action is needed. However it is accepted that a review by the Standards Committee of such decisions would be a necessary safeguard against pressures being placed on Monitoring Officers. Such a conclusion by Monitoring Officers could have important local

consequences particularly if publicity arises before the Standards Committee meets. Additionally, Standards Committees should be given explicit powers to review the conclusions of an ESO 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 Officers 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 – yes – the balance between the actions required of Monitoring Officers under the proposed amendment Regulations and the Standards Board proposed guidance appears to be appropriate.

#### **4. CONCLUSION AND RECOMMENDATION**

- 4.1 The framework for the local investigation and determination of complaints was always likely to be complex. However the acknowledgement by the Government of the scope for some alleged breaches of the Code to be dealt with locally is to be welcomed and the guidance offered by the Standards Board for England and the amendment Regulations issued by the ODPM in this respect will prove valuable.
- 4.2 In the light of the foregoing summary of both the consultation papers issued by the ODPM and the Standards Board for England, the Committee is recommended to approve the suggested responses contained herein to the consultation papers on behalf of the District Council.

#### **BACKGROUND PAPERS**

Consultation by the Office of the Deputy Prime Minister on the proposed Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004.



Draft guidance to Monitoring Officers by the Standards Board for England:  
Local Investigation of Allegations and Misconduct under the Local Authorities  
(Code of Conduct) (Local Determination) (Amendment) Regulations 2004.

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