

**LOCAL INVESTIGATION REGULATIONS
(Report by the Director of Central Services and Monitoring Officer)**

1. INTRODUCTION

- 1.1 At their meeting held on 24th March 2004 (Minute No. 24 refers), the Committee responded to the content of two consultation papers published by the Office of the Deputy Prime Minister and Standards Board for England on a proposed framework for the local investigation and determination of complaints. The consultation papers related to arrangements by which local authority Monitoring Officers might investigate allegations of misconduct by Members referred to them by the Standards Board for England.

2. NEW ETHICAL FRAMEWORK REGULATIONS

- 2.1 The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 and the Standards Board for England (Functions) Order 2004 were laid before Parliament on 14th October and came into force on 4th November 2004.
- 2.2 In brief, the Regulations provide for local authority Monitoring Officers to carry out investigations into alleged breaches by Members of their Code of Conduct which have been referred to them by an Ethical Standards Officer prior to his or her having carried out or concluded an investigation. The Regulations also enable local authority Standards Committees to make determinations following Monitoring Officers reports on the investigation of such breaches. The order clarifies that the Standards Board may issue advice to Monitoring Officers and local Standards Committees.
- 2.3 The Standards Board for England has published statutory guidance on the Regulations for Monitoring Officers and Standards Committees and a copy is enclosed for Members of the Committee only.

3. GUIDANCE FOR MONITORING OFFICERS AND STANDARDS COMMITTEES – NOTES

- 3.1 The statutory guidance includes information on some of the factors Ethical Standards Officers will consider when deciding whether to refer the matter to a Monitoring Officer. Standards Committees are most likely to hear allegations of an entirely local nature, or which do not appear to need the heavier penalties available only to The Adjudication Panel for England.
- 3.2 At the end of the Monitoring Officer's investigation, the Standards Committee will still determine whether or not the Code of Conduct has been breached and what action to take, although the Regulations have extended the flexibility of the sanctions available to Standards Committees. They also enable Standards Committees to combine different sanctions to fit the circumstances of a case. For example, a Standards Committee can suspend a Member for up to three months or until such time as the Member undertakes training or conciliation specified by the Standards Committee.

- 3.3 Under the Regulations, an Ethical Standards Officer can decide that some form of action other than investigation or determination is required at a local level. This is most likely to happen in situations which have broad relevance for the ethical governance of an authority. The Ethical Standards Officer may, for example, direct the Monitoring Officer to make recommendations to the relevant Standards Committee about wider issues for the authority raised by the case, or ensure that the parties concerned attempt some form of reconciliation through a formal dispute resolution process or otherwise.
- 3.4 In previous guidance the Board has recommended that Monitoring Officers should act as main advisers to Standards Committees on cases referred for local determination. However, the Board believes that a Monitoring Officer should not conduct an investigation and advise the Committee on the same case. Under Section 113 of the Local Government Act 2003, Monitoring Officers can delegate investigations to their deputy or to any other person they wish to conduct a local investigation. Irrespective of who undertakes an investigation, the Officer concerned will be required to produce a report setting out his conclusions as to the facts of the matter and whether or not a Councillor has failed to comply with the Code of Conduct. One area of concern to any Investigating Officer will be the risk of a defamation claim from the Councillor or any other person mentioned in the report. Whilst the likelihood of such a claim is low, it would be prudent to ask the Council's insurers to indemnify against the risk of the legal costs of defending any such claim and any damages which might be awarded.
- 3.5 It is the intention of the Board to publish a separate guide to assist Monitoring Officers in conducting investigations. However, Members may recall that the Committee has previously authorised the Director of Central Services and Monitoring Officer, after consultation with the Chairman, to administer the pre-hearing process and to appoint Member to hearings as necessary. As an Ethical Standards Officer can from now refer an allegation for local investigation, it may be appropriate in advance of publication of the guidance from the Board to also authorise the Director of Central Services and Monitoring Officer, after consultation with the Chairman of the Committee, to take the necessary action to undertake investigations into allegations of misconduct referred to him by the Board should these arise in the interim.

4. CONCLUSION

- 4.1 (a) The Committee are requested to note –
- ◆ the coming into force of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004;
 - ◆ the publication of guidance on local investigations by the Standards Board for England; and
 - ◆ the advice which urges Standards Committees to take into account the guidance issued by the Board, to become familiar with the Regulations and to have effective procedures in place for conducting local investigations and determinations; and

- (b) in the event of the reference by an Ethical Standards Officer of an allegation of misconduct for local investigation the Committee is required to –
- ◆ authorise the Director of Central Services and Monitoring Officer, after consultation with the Chairman of the Committee to undertake locally the investigation of allegations of misconduct by Councillors; and
 - ◆ request the Council's insurers to consider the degree of risk involved from any potential claim for defamation against investigating officers.

BACKGROUND PAPERS

The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004.

Guidance issued by the Standards Board for England on Local Investigations.

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