

**RESPONSE TO THE DRAFT REGULATIONS**

**Q1. Are the investigative powers proposed for monitoring officers necessary and sufficient?**

A. The powers are both necessary and sufficient.

**Q2. Are the powers proposed for Standards Committees to consider reports referred to them by the monitoring officer necessary and sufficient?**

A. The powers are necessary and make the role of the committee clear.

However, whilst it is arguable that such powers exist, it may be worth considering giving the committee explicit powers to require further investigation to be undertaken. The power to refer a matter back to an ethical standards officer should apply to the Standards Committee.

**Q3. Should all cases investigated by the monitoring officer be referred to the Standards Committee for a 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 opinion where there was a determination, there would be no need for the case to be considered by the Standards Committee, so such a case could be referred to the committee “for information only”. As our proposals are currently drafted however, every case will be considered by the committee (either by considering an accepting a monitoring officer’s finding there is no evidence of breach of the code or by holding a full hearing into the matter), as a reassurance that all cases including the most minor one will be subject to committee scrutiny.**

A. Given the need for transparency and public accountability it is considered more appropriate that Standards Committees are able to review the findings of a monitoring officer even where no action is recommended. It will also offer a measure of protection to monitoring officers from the not inconsiderable pressure, which may be exerted in some cases. Clarification on the role of the Standards Committee to disagree with or substitute an alternative view to that of an ethical standards officer is needed.

**Q4. Should monitoring officers be able to refer cases back to the ESO? Should there be a provision for cases to be referred back to the ESO by the monitoring officer if new evidence is discovered suggesting the case is more serious than originally thought by the ESO when he originally referred it to the monitoring officer?**

A. This will assist in ensuring that serious cases are treated appropriately and should apply to both the monitoring officer and the Standards Committee. One distinction should arguably be drawn between further evidence relating to the complaint under investigation and further evidence relating to breaches of conduct by the relevant member. The latter should be considered afresh and, there should be a power to refer back the investigation/determination of the initial breach if it is considered more advantageous and in the interests of justice and proper procedure to consider the two together.

**Q5. 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**

A. This question is not particularly clear. If the question means is sufficient regard given to the diversity of the monitoring officer's particular role then perhaps both documents do not give sufficient weight to the position on the ground. At a practical level, particularly in dealing with issues around declaration and non declaration of interests, monitoring officers will often have been called on to give advice at a very early stage. In such circumstances then, it has to be questioned how appropriate it is for a monitoring officer to either investigate a complaint or advise the Standards Committee when, it is clear that the monitoring officer may not be coming to a matter with an open mind. The role of the monitoring officer in giving general advice and guidance to members cannot be overstated as, on a national basis it is the monitoring officer working in this role which probably ensures that issues are dealt with properly at source preventing complaints arising.

## **DRAFT RESPONSE TO THE STANDARDS BOARD GUIDANCE**

### **Q1. Are the circumstances in which an ESO will consider when deciding whether to refer an allegation for local investigation reasonable?**

- A. The criteria are considered reasonable. The guidance should acknowledge the need for dialogue between an ethical standards officer and monitoring officer before a referral is made particularly where there is a possibility that a local investigation would be perceived as unfair or biased. This is something the monitoring officer may have a view on and should be taken into account by an ethical standards officer. The third bullet point could perhaps be clarified by making reference to a sufficient apology rather than using the phrase “adequate and unreserved apology”.

### **Q2. Reference back to ethical standards officers**

- A. The circumstances are broadly agreed although, as indicated in the response above there should be some dialogue between the monitoring officer and ethical standards officer around the original referral. The draft guidance states that there is no power for a referral back once a report has been sent to a Standards Committee. A Standards Committee should have the power to refer matters back to the ethical standards officer.

### **Q3. Confidentiality**

- A. The principle of confidentiality is correct.

### **Q4. The production of draft reports**

- A. The presumption should be for preparation of draft reports in the circumstances set out in the relevant part of the guidance.

### **Q5. Does the report checklist with regard to drafting a final report provide sufficient steps to produce a comprehensive report?**

- A. The checklist is a useful and comprehensive tool.

### **Q6. When appointing someone else to conduct an investigation on their behalf, should the guidance give directions as to how monitoring officers can delegate their investigative role and to whom?**

- A. This would be useful.

### **Q7. Conflicts of interest**

- A. The guidance is useful. Whilst, the view that the monitoring officer’s key role is to advise the Standards Committee is entirely commendable, monitoring officers on the ground regularly give informal and general advice to members.

Most monitoring officers would take the view that this is an essential role in helping to prevent breaches of the code of conduct at source. Another issue to consider is the hierarchical nature of the local authority management structure. In another local authority appeal mechanisms I have been aware of representations being made that an individual should not be advising a decision making body if for example their line manager is presenting a report to it. Therefore, if the monitoring officer undertakes an investigation and presents a report to the Standards Committee this may create challenge or arguments that a member of their staff should not be then advising the committee.

Guidance on investigations would be helpful.