

<i>COMMITTEE</i>	STANDARDS COMMITTEE
<i>DATE</i>	THURSDAY 27 JUNE 2002
<i>TITLE OF REPORT</i>	CONSULTATION PROPOSED LOCAL INVESTIGATION AND DETERMINATION OF MISCONDUCT ALLEGATIONS
<i>RESPONSIBLE OFFICER</i>	Mark Bowen, Assistant Director, Legal and Contract Services

1. SUMMARY

- 1.1 The Local Government Act 2000 (the act) introduced a new ethical framework for local government. All local authorities were required to adopt a code of conduct. Members of those authorities must give an undertaking to comply with the adopted code. Medway adopted its code of conduct on 17 April 2002.
- 1.2 A new independent body – The Standards Board has been set up to deal with complaints that a member has broken the provisions of a local authorities code of conduct.
- 1.3 On the 20 May the then Department of Transport Local Government and the Regions (DTLR) issued a consultation paper on Local Investigation and Determination of Misconduct allegations as a precursor to the introduction of regulations extending the powers and responsibilities of the Standards Board for England, standards committees and monitoring officers.

2. DECISION ISSUES

- 2.1 The terms of reference of the standards committee includes the promotion and maintenance of high standards of conduct by councillors, co-opted members and church and parent governor representatives.
- 2.2 The Committee's terms of reference also extend to Parish Councils.

3. BACKGROUND

- 3.1 At present where the Standards Board receive a complaint on the conduct of a member of a local authority which they consider should be investigated, the complaint is passed on to an Ethical Standards Officer (ESO). An ESO on concluding an investigation may reach one of four findings
 - that there is no evidence of any failure to comply with the code of conduct
 - that no action needs to be taken in respect of the allegation

- that the matters under investigation should be referred to the monitoring authority of the relevant authority
 - that the matters under investigation should be referred to the Adjudication Panel for adjudication by tribunal.
- 3.2 The Standards Board has stated that complaints will not be referred back for local determination until regulations are in place to allow this. The Act includes the power for the Secretary of State to extend the powers of the Standards Board, standards committees and the monitoring officer.
- 3.3 A consultation paper was issued by DTLR on 20 May and the Government proposes to make regulations and an order under the Act to implement the framework described in the consultation paper.
- 3.4 The consultation paper sets out five principles which the Government believes should underpin any system of investigation and adjudication and seeks views on whether these are the right principles. The five principles are:
- the preservation of public trust in the new ethical framework
 - the avoidance of duplication
 - the rights of individuals against whom complaints are made
 - appropriate and proportionate sanctions, and
 - a recognition of the different circumstances in which referrals are made.
- 3.5 The response to the Consultation paper is required by 1 July and a proposed response is appended to this report.

4. RECOMMENDATIONS

- 4.1 That the Committee endorses the proposed response and authorises the monitoring officer to submit it in response to the consultation.

5. LEGAL IMPLICATIONS

- 5.1 The legal implications are set out in the body of the report.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications arising from this report.

Background Papers: None

LOCAL INVESTIGATION AND DETERMINATION OF MISCONDUCT ALLEGATIONS

A Response to the Consultation Paper

General Comments on the 5 Stages

Stage 1

The understanding that complaints may be made through variety routes is welcomed. It is likely that until the Standards Board becomes more clearly established in the public perception that the majority of complaints will be made at a local level. It would achieve consistency and assist Monitoring officers to give the advice envisaged in paragraphs 7 and 12 if complainants at a local level were required to complete their complaint in a prescribed form. This would also assist in determining whether the complaint demonstrates a potential breach of the Code of Conduct. Complainants could be required in completing the form to authorise the passing of the complaint to the Standards Committee/Board and this would overcome some legal reservations on the ability of the Monitoring officer to pass on personal information.

Where a complaint is made, it is probable that both parties will want matters resolved swiftly. Where matters are raised at a local level, there can in principal be nothing wrong with a monitoring officer enquiring of a complainant, what remedy they are seeking or whether there is a form of local or informal resolution that would be acceptable. As is identified in paragraph 14 some complainants will be happy with an apology or general recognition that behaviour or a remark made was not acceptable. In such cases, even where there is a potential breach of the code, unless there is an issue of public policy involved, a complaint could be resolved informally without reference to the Standards Board. Whilst it is important that high standards in public life are maintained, it is important that resources are applied to ensure the expeditious handling of matters which need investigation rather than those where both parties are happy with an informal resolution. Where after a complaint had been passed between local and national level over a period of weeks or months the parties are advised that a matter should be resolved in a way which the complainant would have been willing to accept at the outset, this may lead to public dissatisfaction.

However it is accepted that informal resolution should not be used to avoid a formal process. If powers to achieve local settlement were granted then a safeguard could be requiring the Monitoring officer to report local settlements to the Standards Board with a power for the Standards Board to direct that powers for local settlement be suspended if they had been used inappropriately at an authority.

Further points on Stage 1 are

- Paragraph 9 – this may be more appropriate to stage 2.
- Paragraph 15 – any guidance produced should be based on the presumption of innocence of the person complained of.

- Paragraph 17 – the process of referral of locally received complaints to Standards Committee and then on to the Standards Board may because of the additional time built in to the process reduce any incentive to raise matters at a local level as complaints made directly to the Standards Board will be picked up more quickly.

Step 2

It is considered important that the person complained of is kept informed of the process in paragraph 19.

Step 3

ESOs have greater power to obtain evidence and documents than Monitoring Officers do. Where a partially completed investigation is passed back for local consideration, any regulations made must ensure that the Monitoring officer and standards Committee can have access to evidence which has been obtained by an ESO but which could not have been obtained at a local level.

Where matters are referred back to a Monitoring Officer, then provisions will need to be put in place to recognise that on some matters a Monitoring Officer may have a conflict of interest. An example could be either where before a matter complained of the Monitoring Officer has in response to a request for guidance from a Member advised that a possible action may or may not breach the code. Therefore the circumstances where a Monitoring officer can appoint a Deputy will need to be expanded from cover for illness to absence to allow for circumstance where the Monitoring officer has a conflict of interest.

The local freedoms to undertake investigations and hearings in paragraph 25 are welcomed. However to ensure consistency and widespread good practice, will the Standards Board be producing model procedures?

Step 4

Having undertaken an investigation and prepared a report for the Standards Committee, a Monitoring Officer will be unable to advise the committee when it comes to determine the allegation. As the Monitoring Officer will usually be the authority's senior legal advisor, and the issue of guidance by the Standards Board to ensure appropriate support is given to the Standards committee would be welcomed.

Whilst Independent Chairs need to be robust, at some authorities, the responsibility for selecting members, particularly members of political parties to sit may prove a particularly onerous one.

With paragraph 30 of Step 3, whilst local flexibility is important, so is the need for good practice to be developed and shared nationally.

Confirmation would be welcomed that the ability to remove from any office is wide enough to secure the removal of a Cabinet seat where that is at the gift of the Leader/Mayor.

Step 5

No comments

Section 2 – Roles, Responsibilities and Regulations

The majority of comments are set out above. However, the further additional points are made:

Paragraph 45 – there is the potential for guidance to be given to the Standards Committee to be limited given the Monitoring officers limited role to undertake preliminary investigations

Paragraph 51 – it is important that the quality of representation that a complainant or member is able (or unable) to secure does not become a critical factor in the outcome of hearings.

Paragraph 53 – the presumption against an award of costs is broadly agreed. However on a linked point there should be power to provide some reimbursement for lost time to witness and for payment to any expert who is needed to assist either the Monitoring Officer or the Standards Committee.

Section 3

General

Question 1 – Are the five principals the right ones?

Yes. However a sixth principal of expeditious decision making could be added.

Question 2 – does the proposed framework fully support these 5 principals?

The process will need to work expeditiously to retain public trust and confidence.

The system of referrals between local and national level will have to be considered carefully to avoid delay and duplication of work.

There is limited content on the rights of individuals against whom complaints are made. A presumption of innocence could be reaffirmed and more could be done to keep them advised of the progress of a complaint.

Question 3 – is the overall balance right between the proposed roles of the Standards Board for England and the Standards Committee?

There is possibly the need for more power to filter and investigate complaints at a local level. This could be regulated by guidance from the Standards Board, the need to report outcomes to the Standards Board and the possible sanction of withdrawal of a local power to deal with some matters locally where there had been avoidance of responsibility.

Detailed

Question 4 – should all allegations of possible breaches of codes be referred to the Standards Board?

No – minor issues should be dealt with/filtered at a local level to avoid delay. The Standards Committee could also refer only where it considers there is a breach.

Question 5 – Should the Standards board have responsibility as proposed for dealing with complaints locally?

Section 60 of the Act vests this power in the ESO. This should remain the case, although, a process of consultation between local and national level would help develop good working relationships.

Question 6 – Are the powers proposed for the Monitoring Officer necessary and sufficient?

It is recognised that it may not be appropriate to give Monitoring officers the same power as the ESO. However, there should be a requirement in law for Members to co-operate in a local investigation.

Question 7 – Are the powers for Standards Committees necessary and sufficient for them to fulfil, their statutory functions?

Yes

Question 8 – are the proposals on composition of standards committees right?

A five-member committee may lead to a Chair either reducing independent membership or possibly excluding a political party from a hearing. The ability to appoint a six or 7-member committee may give greater comfort to independent chairs.

Question 9 – do the proposals on appeals, representation and costs fully support the five principals?

A right of appeal from local level is supported. However, having to fund professional advisors at a re-hearing of a complaint may prove a deterrent to some individuals exercising their right of appeal.

It is also important that individuals who can not afford representation to argue their case are not placed at a disadvantage.