

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 a variety of 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 of the consultation paper 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 a member from any office is wide enough to secure the removal of a Cabinet seat where that appointment is made by 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 Questions

Question1 – Are the five principles the right ones?

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

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

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 Questions

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 principles?

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.