

<i>COMMITTEE</i>	<b>STANDARDS COMMITTEE</b>
<i>DATE</i>	<b>THURSDAY, 18 NOVEMBER 2004</b>
<i>TITLE OF REPORT</i>	<b>LOCAL INVESTIGATION AND DETERMINATION OF COMPLAINTS AGAINST MEMBERS OF MEDWAY COUNCIL AND PARISHES WITHIN MEDWAY</b>
<i>RESPONSIBLE OFFICER</i>	<b>Mark Bowen, assistant director, legal and contract services</b>

**1 PURPOSE OF THE REPORT**

- 1.1 The purpose of the report is to advise members of the new regulations, which allow the Standards Board for England to refer certain complaints to local authorities for local determination.

**2 RECOMMENDATION**

- 2.1 That members note the introduction of the procedures for local determination
- 2.2 That members authorise the monitoring officer in consultation with members of the committee to revise Medway Standards Committee's Procedures for Local Determination of Complaints to accord with the regulations and guidance referred to in the report.
- 2.3 That the Standards Committee meeting on 6 January 2005 be used as a training session for members of the committee on the conduct of local investigations.
- 2.4 That members comment on proposals to indemnify members as set out in the draft regulations referred to in the report so that comments can be passed to Council when it determines the matter.

**3 DECISION ISSUES**

- 3.1 Under the council's constitution the Standards Board for England is responsible to hearing complaints against members of this council and parish councils within Medway referred to them by the Standards Board for England and for approving procedures for this process.

**4 BACKGROUND**

- 4.1 As members will be aware the prospect of local authorities being able to deal with complaints against members through their Standards Committee was raised over three years ago. Subsequently Ethical Standards Officers (ESO)

have been given the power to refer matters for local consideration where they have completed an investigation. However, the regulations to date have not allowed local authorities to undertake their own local investigations.

- 4.2 The government earlier in the year conducted a consultation exercise on proposed regulations and the government response to the representations received has been sent under separate cover to members of the committee.
- 4.3 On 4 November, the Local Authorities (Code of Conduct) Local Determination) (Amendment) Regulations 2004 came into force. The Standards Board for England has recently issued guidance to support the regulations.

## **5 THE IMPACT OF THE REGULATIONS**

- 5.1 As a consequence of the regulations coming into force local authorities can now investigate less serious breaches of codes of conduct. Under regulations an ESO appointed by the Standards Board for England can hand the job of investigating less serious allegations of breaches of codes of conduct to a local authority's monitoring officer. The regulations also allow standards committees to consider reports made by monitoring officers following these investigations.
- 5.2 The Standards Board guidance makes it clear that the monitoring officer's key role is to support the Standards Committee and the monitoring officer is permitted to delegate functions of investigations to either another employee or person who is external to the authority.
- 5.3 It is significant that the regulations have not put a monitoring officer and ESO on the same footing. The ESO has an extremely wide power to require the co-operation of people in investigations. Under the regulations although a local authority is put under an obligation to provide reasonable access to documents and to provide advice and assistance where requested to a monitoring officer, there is no requirement for individual members, officers or members of the public to provide the same. This could frustrate an investigation and lead to a matter being referred back to the ESO. Under the regulations in Medway the monitoring officer will be responsible for investigating breaches of misconduct both by Medway councillors and by parish councillors within Medway's area.
- 5.4 There is also uncertainty on how many cases will be referred back. The Standards Board for England has given an indication that it will be looking to refer approximately 50% of matters it presently handles for local determination. However, this could be higher in due course. Recently, the Standards Board for England has been setting a high threshold for deciding whether a case requires investigation. It is uncertain whether this same threshold will be maintained now referral powers are in place.

5.5 Informal indications have been given that it is only cases which reach the Standards Board for England after the 4 November which will be referred for local investigation. Confirmation is awaited on this.

## **6 KEY ISSUES FOR MEDWAY**

6.1 Historically, Medway has had a low level of complaints concerning members being made to the Standards Board for England. To date, referrals against Medway councillors are well within single figures and the Standards Board for England has only referred one of those matters for investigation to an Ethical Standards Officer when it was found there was no breach of the code of conduct. Unlike other parts of the country, there have been no complaints made about parish councillors.

6.2 Should the position change then investigations could prove expensive and time consuming to deal with. Monitoring officers in Medway, the London Borough of Bexley and authorities throughout Kent have agreed a protocol to provide mutual assistance to help mitigate cost. However, any support from other local authorities will be limited due to pressures of work on them. There may be a need to appoint investigators external to the authority who must be people of sufficient seniority and robustness to see through an investigation.

6.3 There is also the position of members who are subject to investigations. The government has produced a draft statutory instrument entitled "The Local Authorities (Indemnities for Members and Officers) Order 2004. The intention is that the order will come into force during December. Much of it is a valuable updating of a mismatch of existing indemnity provisions and will provide much needed certainty to members and officers. The regulations when in force will allow Medway to indemnify costs incurred by members in defending code of conduct allegations subject to a member reimbursing the authority if they are found to have breached the code or if they admit they have failed to comply with it.

6.4 The above indemnity power provides a further cost pressure arising from the introduction of the local investigation powers.

6.5 When the first tranche of local determination powers were brought in Medway introduced a procedure for dealing with complaints. As the Standards Board for England has now revised its guidance, that procedure will need to be revised.

6.6 A formal training session for committee members on hearing complaints brought under the new regulations needs to be introduced.

## **7 LEGAL AND FINANCIAL IMPLICATONS**

7.1 The legal implications are set out in the report.

7.2 The monitoring officer does not have a budget to fund the conduct of local investigations. It is difficult to predict expenditure as if no matters are referred through then there will be no cost. However, if an external investigators need to be appointed on a matter and an indemnity is given to the member against whom a complaint is brought then those costs alone will probably amount to a minimum of £3,000 - £4,000 per case and could materially exceed this.

## **BACKGROUND DOCUMENTS**

The Standards Board for England Local Investigations – Guidance for Monitoring Officers and Standards Committees

The Local Authorities (Indemnities for Members and Officers) Order 2004

The Standards Board for England (Functions) Order 2004

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

Medway Standards Committee procedure for dealing with local determination of complaints against members.