

<i>COMMITTEE</i>	STANDARDS COMMITTEE
<i>DATE</i>	WEDNESDAY, 8 JUNE 2005
<i>TITLE OF REPORT</i>	LOCAL INVESTIGATION AND DETERMINATION OF COMPLAINTS AGAINST MEMBERS OF MEDWAY COUNCIL AND PARISHES WITHIN MEDWAY
<i>RESPONSIBLE OFFICER</i>	Mark Bowen, assistant director, legal and contract services

1 PURPOSE OF THE REPORT

- 1.1 The purpose of the report is to present for members' approval revised procedures for dealing with the local investigation and determination of complaints, which are referred to the Standards Committee for determination. The report also recommends the same procedures are used to deal with breaches of locally adopted protocols. The report also considers changes to the indemnity provisions.

2 RECOMMENDATION

- 2.1 Members agree to adopt the procedure for local investigation of complaints as appended to this report.
- 2.2 Members agree to adopt the procedure for local determination of complaints following local investigation as appended to this report.
- 2.3 Members agree that the investigation and local determination procedures shall also be used where a member has breached either the local planning protocol or the member/employee relations protocol.
- 2.4 The Committee agrees to recommend that the Council indemnify a Medway member against the costs of involvement in any proceedings pursuant to Part 3 of the Local Government Act 2000 provided that a member who admits a breach of the code of conduct or who is found to have failed to comply with the code of conduct must reimburse the council or any insurer in respect of any sums expended in relation to the part 3 proceedings.

3 DECISION ISSUES

- 3.1 Under the council's constitution the Standards Committee is responsible for 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. Granting an indemnity is a matter for Council.

4 BACKGROUND

- 4.1 Medway Council has a process for local determination of complaints primarily designed to deal with references from an Ethical Standards Officer (ESO). Whilst Medway has historically had a low level of member complaints, it is considered appropriate to modify the procedure to make it more relevant to hearing of complaints following a local investigation.
- 4.2 It is also considered appropriate to introduce a formal investigation procedure.
- 4.3 ESOs will usually only refer contraventions, which can be dealt with by the maximum locally imposed sanction of a three-month suspension for local investigation and determination. They also will not routinely refer matters for local investigation where there are political issues, which may have a bearing on the investigation – for example, investigations concerning group leaders will rarely be referred back.
- 4.4 More serious matters can be referred back to the ESO in some circumstances by the monitoring officer and/or Standards Committee. However the final decision on whether to accept a referral back rests with the ESO.

5 INVESTIGATION PROTOCOL

- 5.1 Guidance from the Standards Board for England makes it clear that it is envisaged that the monitoring officer's key role will be to act as advisor to the committee. Therefore, it is likely that in the majority of cases the investigating officer will be another officer of the council, an officer from another local authority or an external practitioner. Given this, it is considered best to have a clear procedure to deal with investigations. Appendix 1 to the report sets out a draft procedure, which follows the guidance issued by the Standards Board for England. Under this procedure in order to prevent any prejudice to the committee's role in eventually determining the complaint, members of the Standards Committee will not be advised of the progress of an investigation until they receive the agenda and papers including the investigation officer's report for the meeting, which is to consider the report.

6 PROCEDURE FOR HEARING FOLLOWING LOCAL INVESTIGATION

- 6.1 Appendix 2 sets out a revised hearing procedure, which will be used where a local investigation has taken place rather than a direct referral from an ESO. The process broadly follows the current adopted procedure with the necessary amendments to reflect this being put in place.
- 5.2 Members should note that the Standards Committee can ask the Standards Board to resume responsibility for a matter at any stage before they have made a final decision. This would normally be where an investigating officer's report identifies conduct of such seriousness that the committee believes its maximum sanction would be inadequate, but it could also be relevant if so many members of the Standards Committee were conflicted out of a hearing on a matter that it would not be possible to hold a hearing, or if the committee

felt that local circumstances made it impossible to hold a proper and impartial hearing. Such requests must be made before a hearing has been concluded and the decision rests with the ESO on whether to accede to the request or not.

7 LOCAL PROTOCOLS

7.1 The council has adopted a range of local protocols including:

- the protocol on member/employee relations
- the planning protocol

7.2 These protocols do not form part of the code of conduct for members and are not enforced by the Standards Board for England unless the particular breach of the protocol is also a failure to comply with the code of conduct.

7.3 Enforcement of such protocols rests with the council, which has delegated such responsibility to this committee. The process for enforcing the protocols must be fair, so it is appropriate to apply the same procedure used for investigation and determination of complaints referred from the Standards Board. The only changes will be that such complaints would only require such enforcement where the monitoring officer was unable to resolve the matter to the satisfaction of the complainant and there would be no scope for referring the matter back to the Standards Board for England.

8 INDEMNITY PROVISIONS

8.1 The Local Authorities (Indemnities for members and officers) Order 2004 allows for a member to be given an indemnity in respect of resisting an allegation that the member has breached the Code of Conduct.

8.2 This is subject to a requirement that the member repays the cost of any indemnity given by the council or the cost of an insurance policy taken out by way of indemnity where the member either admits the breach or is found to have committed the breach.

8.3 Members may in the course of their duties find that unjustified complaints are made. Whilst it would be hoped that the national and or local filtering process would prevent these proceeding, a members should not be denied the opportunity to defend a claim they consider to be unfounded because they are unable to fund that defence personally. Therefore committee may want to recommend to council that it extends the indemnities available to members to cover this situation.

9 LEGAL AND FINANCIAL IMPLICATIONS

- 9.1 The legal implications are set out in the report.
- 9.2 The monitoring officer does not have a budget to fund the conduct of local investigations. Further, Medway is also required to carry the costs of investigations in respect of parish councils. It is difficult to predict expenditure as if no matters are referred then there will be no cost. However, if external investigators need to be appointed on a matter and an indemnity is given to a member against whom a complaint is brought then the cost of a single case could easily exceed £5,000.

BACKGROUND PAPERS

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

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

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