

## STANDARDS COMMITTEE – 14<sup>TH</sup> DECEMBER 2004

### MEMBERS' CODE OF CONDUCT – LOCAL INVESTIGATIONS

#### REPORT OF THE MONITORING OFFICER

##### **1.0**    PURPOSE

- 1.1        To consider regulations regarding the local investigation of complaints in respect of the Members' Code of Conduct.

##### **2.0**        BACKGROUND

- 2.1        At its meetings on the 28<sup>th</sup> July and 30<sup>th</sup> September 2003 the Standards Committee considered my reports on regulations regarding the local **determination** of complaints under the Members' Code of Conduct and the guidance issued by the Standards Board for England.
- 2.2        All complaints regarding the Members' Code of Conduct have to be referred to the Standards Board for England and they decide whether or not to investigate. Prior to November 2004 all such investigations had to be conducted by an Ethical Standards Officer but in less serious cases the report of the Ethical Standards Officer could be referred to the local Standards Committee for determination.
- 2.3        Since November 2004, however, the Ethical Standards Officer may now refer a complaint for local **investigation** by the Monitoring Officer or their appointee and this reference may take place at any point before the Ethical Standards Officer begins or completes an investigation.
- 2.4        The rules on local investigations are set out in the Local Authorities' (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 which are summarised in this report.
- 2.5        Notifying the parties to an investigation
- 2.5.1      When a complaint for local investigation and determination is referred, the Monitoring Officer will notify the member who is the subject of the complaint and the complainant. The Monitoring Officer will explain to them what will happen next and provide any directions that need to be made regarding the investigation.

## 2.6 Notifying the Standards Committee

- 2.6.1 At this early stage in the investigation the Monitoring Officer will simply let the Standards Committee know that they are carrying out an investigation the result of which will be reported to a future meeting of the Committee.

## 2.7 Conducting the Investigation

- 2.7.1 The investigation may be conducted by the Monitoring Officer personally but in most circumstances it would be preferable for the Monitoring Officer to delegate the investigation to the Deputy Monitoring Officer or another person such as the Monitoring Officer of another local authority. This will then enable the Monitoring Officer to act as adviser to the Standards Committee when it considers the report of the investigating officer.
- 2.7.2 During the course of the investigation if the investigating officer discovers new evidence suggesting that the case is more serious than originally thought, the complaint may be referred back to the Ethical Standards Officer who must decide within twenty-one days whether or not to take over the investigation.
- 2.7.3 Similarly, during the course of the investigation if evidence of a different breach of the Code of Conduct comes to light, this must be referred to the Ethical Standards Officer for further consideration.

## 2.8 Findings of Investigation

- 2.8.1 The investigating officer is able to make one of two findings following the investigation i.e. either that they consider that there has been a failure to comply with the Code of Conduct or that they do not consider that there has been a failure to comply with the Code. The investigating officer must then prepare a report and refer it to the Standards Committee and other relevant parties.

## 2.9 Draft Report

- 2.9.1 Following the investigation the investigating officer must decide whether or not to produce a draft report or proceed directly to a final version. In the majority of cases good practice would require that a draft report be produced to enable any factual errors to be corrected before the report is finalised. The draft should be sent to the member who is the subject of the complaint for comment. The response to the draft report may reveal the need for further investigation or correct any factual error or omission. Once the investigating officer has considered all the relevant facts they will be able to finalise their recommendation.

## 2.10 Final Report

- 2.10.1 A final report of the investigating officer should be clearly labelled as final. Where the finding is that there has been no breach of the Code of Conduct, the investigating officer should explain that the report will be sent to the Standards Committee for consideration. Where the finding is that there has been a breach of the Code of Conduct, the investigating officer's report should make clear that the Standards Committee will conduct a hearing to adjudicate upon the complaint.

## 2.11 Consideration of the Final Report

- 2.11.1 Where the finding is that the investigating officer considers that there has been no breach of the Code, the Standards Committee have to decide either to accept the recommendation or to consider the matter at a hearing of the Committee. At this stage they should simply consider the report and they should not seek to interview witnesses or take representations from the parties. Their role is to decide whether, based on the facts set out in the report, they agree with the investigating officer's finding. Care must be taken to ensure that they are not pre-judging the matter in advance of the hearing.

## 2.12 Arranging a Hearing

- 2.12.1 A hearing by the Standards Committee must be arranged if: -
- The investigating officer's finding is that there was a breach of the Code of Conduct; or
  - If the Standards Committee, having considered a report that concludes that there was no failure, nevertheless decides that there is a case to answer.
- 2.12.2 The hearing must be arranged within three months of the issue of the final report and must be carried out in accordance with the regulations and guidance referred to in paragraph 2.1 above.
- 2.12.3 The Standards Committee may adjourn the hearing to obtain further information or to ask the investigating officer to carry out further investigations but they may only do this once. The Standards Committee may also adjourn to make a request to the Ethical Standards Officer to take the matter back. The Ethical Standards Officer has twenty-one days to either take the matter back or instruct the Standards Committee to carry on.

## 2.13 Findings of Standards Committee

2.13.1 Following a hearing the Standards Committee may make one of the following findings: -

- that the member concerned has not failed to comply with the Code of Conduct
- that the member concerned has failed to comply with the Code of Conduct but that no action needs to be taken; or
- that the member concerned has failed to comply with the Code of Conduct and that a sanction should be imposed.

## 2.14 Sanctions

2.14.1 The Standards Committee may impose one or any combination of the following sanctions: -

- Censure
- Restriction for a maximum period of three months of the member's access to the premises of the Council and that member's use of the resources of the Council, provided that any such restrictions imposed upon the member are reasonable and proportionate and do not unduly restrict the member's ability to perform their functions and duties as a member.
- Partial suspension of the member for a maximum period of three months (e.g. if the complaint relates to a planning matter, suspending the member from membership of the Development Control Committee).
- Suspension of the member for a maximum period of three months.
- A requirement that the member submit a written form of apology in a form specified by the Standards Committee.
- A requirement that the member undertake training in a form specified by the Standards Committee.
- A requirement that the member undertake conciliation in a form specified by the Standards Committee.
- Partial suspension of the member for a period of three months or until such time as they submit a written apology in a form specified by the Standards Committee.
- Partial suspension for a maximum period of three months or until such time as they undertake any training or conciliation specified by the Standards Committee.
- Suspension of the member for a maximum period of three months or until such time as they submit a written apology in a form specified by the Standards Committee.
- Suspension of the member for a maximum period of three months or until such time as they undertake any training or conciliation specified by the Standards Committee.

2.14.2 Any sanction imposed will commence immediately. However, except in the case of censure, the Standards Committee may direct that the sanction will start on any date within a period of six months.

## 2.15 Appeal

- 2.15.1 The member concerned can apply to the President of the national Adjudication Panel to be allowed to appeal against a determination of the Standards Committee. This appeal is by way of written notice, and the President will decide on the basis of whether the facts as set out in the notice indicate any reasonable prospect of the appeal succeeding. The appeal will be heard by a Tribunal comprising of at least three members of the Adjudication Panel and may be by way of written representations if the member consents.

## 2.16 Publicity

- 2.16.1 Following the decision the Standards Committee must arrange for a summary of the decision and the reasons for the decision to be published in one or more local newspapers that are independent of the Council. However, if the finding was that a member did not fail to follow the Code of Conduct, the member involved is entitled to ask that no summary of the decision should be passed to local newspapers. In addition, as soon as is reasonably practicable after the hearing, the Standards Committee must give its full written decision to the relevant people including: -
- the member who is the subject of the finding
  - the Standards Board for England
  - the complainant
  - the Standards Committee of any other Authority concerned.

## 2.17 Public and Press Access to the Hearing

- 2.17.1 This matter was dealt with in my report to the Standards Committee on the 30<sup>th</sup> September 2003. In summary, the hearing will normally be in public unless the Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing. However, whether or not the hearing is in public, the 2004 Regulations permit the Committee to deliberate in private session.
- 2.18 At the present time, so far as I am aware, there are no current complaints regarding a Dudley member before the Standards Board for England or an Ethical Standards Officer. It is possible, therefore, that it may be quite some time before there is any need to conduct a local investigation or local determination.

## 3.0 PROPOSALS

- 3.1 It is proposed that this report be noted.

#### 4.0 **FINANCE**

- 4.1 Any costs arising from the appointment of an external investigating officer will be met within existing budgetary resources.

#### 5.0 **LAW**

- 5.1 The relevant provisions regarding local investigations are set out in the Local Authorities' (Code of Conduct) (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 which came into force on the 4<sup>th</sup> November 2004.

#### 6.0 **EQUAL OPPORTUNITIES**

- 6.1. This report complies fully with the Council's policies on equal opportunities and diversity.

#### 7.0 **RECOMMENDATION**

- 7.1 It is recommended that this report be noted.

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Monitoring Officer

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### **BACKGROUND PAPERS**

1. Report to the Standards Committee on the 28<sup>th</sup> July and 30<sup>th</sup> September 2003 regarding local determinations.