
REPORT TO:	STANDARDS COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	21 ST APRIL 2005	CATEGORY: DELEGATED
REPORT FROM:	MONITORING OFFICER	OPEN PARAGRAPH NO: N/A
MEMBERS' CONTACT POINT:	ANDREA McCASKIE (5831)	DOC:
SUBJECT:	LOCAL INVESTIGATION OF REFERRED COMPLAINTS FROM THE STANDARDS BOARD FOR ENGLAND	REF:
WARD(S) AFFECTED:	ALL	

1 Introduction

The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 ("the Regulations") now enable the Standards Board for England ("SBE") to refer complaints of Councillor misconduct to the Monitoring Officer of a Local Authority for Local Investigation. This is instead of investigation by the SBE's Ethical Standards Officers ("ESO"), before a complaint is determined by the Authority's Standards Committee (or Sub-Committee). The SBE has published guidance as to how Local Authorities should arrange for the conduct of such Local Investigations, and the first cases will now start to be referred to individual authorities for Local Investigation and determination under these Regulations. The Regulations also make important amendments to the powers of Standards Committees, even in cases which have been investigated by an ESO.

This is a further step in giving Local Authority Standards Committees responsibility for complaints of Councillor misconduct, and will assist the SBE in ensuring that the less serious complaints are dealt with promptly.

This report sets out the implications of the Regulations and recommend a model procedure for such Local Investigations and an amended procedure for Local Standards Hearings for adoption by the Standards Committee.

2 Pre-Investigation

When the SBE receives a complaint, it has first to decide whether the complaint appears to relate to a possible failure to comply with the Code of Conduct, and then whether it merits investigation. The SBE will now notify the Monitoring Officer of the complaint at this early stage and ask for background information, in order to ensure that it only refers for investigation those complaints which really merits such investigation. Whilst there is no duty on the Monitoring Officer to seek to resolve the

complaint at this stage, and many complaints will not be capable of such local resolution, this may enable the Monitoring Officer in appropriate cases to explore whether there is anything which the Councillor and/or the Authority could do to resolve the complaint and thereby avoid the time and cost of a formal investigation. Such local resolution would be effected by securing the agreement of the Complainant, or otherwise persuading the SBE, that the complaint be not investigated or that no action is required on it.

3 Local Investigations

3.1 Receipt of the Complaint

Under the new Regulations, where the case is referred by the SBE for investigation, it goes to an ESO who decides whether to allocate it to one of the SBE's own investigators or, now, to refer it to the Authority's Monitoring Officer. The ESO will not refer matters for Local Investigation where the serious nature of the matter means that it is likely to require a sanction in excess of the Standards Committee's maximum sanction of 3 months' suspension. Other criteria highlighted by the SBE are:

- the matter does not appear to need the heavier penalties available only to The Adjudication Panel for England;
- the allegation is of an entirely local nature and does not raise matters of principle;
- the initial investigation by an ESO has highlighted issues that are more to do with the effective governance of the Authority than an individual's misconduct.

The ESO is less likely to refer cases if there is evidence that a Local Investigation would be perceived as unfair or biased or there are any relevant local political issues that may have a bearing on the investigation.

In referring a complaint to the Monitoring Officer, the ESO will send a copy of the original complaint letter and of any other relevant information which he/she possesses. In exceptional cases, such as a single letter containing a number of different complaints, the ESO may edit the complaint letter and merely pass on those parts relevant to the particular complaint.

On receipt of the referred complaint, the Monitoring Officer will notify the Councillor, the Complainant and the Parish Clerk (if it is a Parish Council matter) and will arrange for the investigation.

The SBE recommends that at this point the Monitoring Officer notify the members of the Standards Committee in a confidential memorandum that he/she is conducting an investigation, but should not inform them of the identity of the Councillor or the Complainant in order to avoid any risk of prejudicing any subsequent hearing.

3.2 Appointment of the Investigating Officer

The Monitoring Officer remains the chief policy adviser to the Standards Committee and the primary contact for Councillors who have enquiries on standards issues,

such as whether they have a personal or prejudicial interest in a particular matter. That role is incompatible with personally undertaking the Investigating Officer role, which includes presenting the investigation report at any Local Standards Hearing, so the Monitoring Officer will need to appoint another person to undertake the investigation. In appropriate cases, the Monitoring Officer may be able to appoint another officer of the Authority to undertake the investigation, but in sensitive cases it may be appropriate to appoint an outside investigator, either borrowing from another Authority for the purpose or appointing an experienced commercial investigator for the purpose. Whilst the Monitoring Officer has a statutory power to make such appointments, it will be necessary to make financial provision for the cost of such investigations. The actual cost is hard to estimate as we have no experience of the number or nature of the matters which will be referred for Local Investigation, so this needs to be a "contingency" item in the current year, but specific financial provision will have to be made for future years.

The Investigating Officer will be required to produce a full report, setting out his/her conclusions as to the facts of the matter and whether the Councillor did or did not fail to comply with the Code of Conduct.

Note that the position of the Monitoring Officer as prime point of advice to individual members on standards issues will give rise to conflicts of interest which would rule the Monitoring Officer out from acting as the legal adviser to the Standards Committee for individual case hearings. Accordingly, the Monitoring Officer will need to arrange for another legal officer to act as the legal adviser to the Standards Committee for individual case hearings. On occasion, this may require borrowing such an adviser from another Local Authority.

3.3 Procedure for Local Investigations

This Committee needs to approve a procedure for Local Investigations, which will form part of the instructions to the Investigating Officer and will inform both the Councillor and the Complainant as to how the matter will be dealt with. Attached at Appendix One is a recommended Procedure for Local Investigation which complies with the Regulations and guidance from the SBE. Under this procedure, the investigation would run as follows:

- a. The Monitoring Officer advises the Councillor, the Complainant and any Parish Council of receipt of the complaint, of the identity of the Investigating Officer and of the Investigation Procedure. He/she will also provide the Councillor with a copy of the complaint;
- b. The Investigating Officer will contact the Councillor and the Complainant for their comments and to identify any persons who he/she should interview and any evidence which he/she should examine;
- c. The Investigating Officer will conduct such interviews as appear to him/her to be necessary, including more detailed interviews with the Councillor if required;
- d. The Interviewing Officer will send his full draft report to the Councillor and the Complainant, and at least extracts to any person who has provided evidence which he/she has relied upon in writing the report, and give them 10 days to send him/her any comments or suggested corrections on the draft report;

- e. The Interviewing Officer will produce a final report, taking account of any such comments and suggested corrections and send it to the Monitoring Officer;
- f. Where the Interviewing Officer concludes that there has not been a failure to comply with the Code of Conduct, he/she will report to the Standards Committee. The Standards Committee will consider the report and any representations from the Councillor and will either:
 - i. accept the Investigating Officer's conclusions and take no further action, or
 - ii. resolve that the matter should be considered at a formal hearing. Note that this is not a finding of fault on the part of the Councillor but merely a conclusion that the Standards Committee are not prepared at that stage to accept the Investigating Officer's conclusions and that the matter merits examination at a formal hearing.
- g. Where the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct, the matter must go to a formal hearing without such a preliminary step.
- h. If the matter goes to a formal hearing, that hearing would be conducted in exactly the same manner as a formal hearing on an ESO's report except that the Investigating Officer takes the place of the SBE's representative in presenting the report and introducing any relevant evidence and witnesses.

Under this procedure, in order to prevent any prejudice to the Standards Committee's role in eventually determining the complaint, members of the Standards Committee will not be advised of the progress of that investigation, until they receive the agenda and papers, including the Investigating Officer's report, for the meeting which is to consider that report.

Recommendation One:

That the Committee adopt the Procedure for Local Investigations set out at Appendix A.

3.4 Additional Failures to Comply with the Code of Conduct

Where an ESO is conducting an investigation and identifies evidence of additional failures to comply with the Code of Conduct, either by the original Councillor or by other Councillors, he/she can add those matters into his/her investigation and report. The Regulations provide that where a matter is referred for Local Investigation, the Investigating Officer's remit is limited to the conduct which comprises the subject matter of the original complaint. Accordingly, where he/she identifies additional matters outside the scope of the original complaint, he/she will not be able to add them into his/her investigation. However, his/her remit is to conclude whether the conduct constitutes a failure to comply with the Code of Conduct, and he/she is therefore entitled to conclude that the conduct constitutes a failure to comply with paragraphs of the Code of Conduct other than those specifically cited by the Complainant. By way of example, if the complaint were one

of rudeness by one Councillor to another, the Investigating Officer would not be entitled to include in his/her investigation any other instances of such rudeness, but would be entitled to conclude that the instance complained of constituted a failure to treat with respect even if the original complaint only suggested that it was conduct likely to bring the authority into disrepute.

3.5 Reference back to the Standards Board

Matters will be referred for Local Investigation at an early stage. It is therefore possible that, during the course of the investigation, it becomes apparent that the conduct complained of is much more serious and that the Adjudication Panel for England, with powers to impose sanctions of up to one year's suspension or up to five year's disqualification, would be the appropriate forum for any hearing of the matter, rather than a Standards Committee with a limited power to suspend the Councillor for up to 3 months. The Regulations (and the recommended Investigation Procedure) therefore provide that, at any time during the course of an investigation, the Investigating Officer can report to the Monitoring Officer who can request the ESO to resume responsibility for the investigation. The final decision to resume such responsibility rests with the ESO.

4 Local Hearings

The Regulations also make certain changes in respect of the Conduct of Local Hearings. The Procedure for Local Hearings which was initially approved by the Standards Committee on 2nd September 2004 has therefore been amended to take account of these changes, as follows:

4.1 Timing

Where a matter is the subject of Local Investigation, the hearing must be held (i.e. completed) within 3 months of the date on which the Investigating Officer presents his/her final report to the Monitoring Officer.

4.2 Additional Evidence

The Regulations now state specifically that, if the Standards Committee in the course of a hearing feels that it needs additional evidence in order to come to a determination of the matter, it can adjourn and request the Monitoring Officer to provide such further information or undertake further investigation, but the Committee can only do so once on any one matter.

4.3 Sanctions

The Regulations now make it clear that the Standards Committee has the flexibility to combine sanctions. Accordingly, the Committee can now set the sanctions in any particular case as any one, or combination, of the following:

- a. censure;
- b. restriction of access to Council premises or use of Council resources for up to 3 months;
- c. a requirement to give a written apology;

- d. a requirement to undergo training;
- e. a requirement to undertake conciliation;
- f. suspension or partial suspension for a period of up to 3 months, and
- g. suspension or partial suspension until the Councillor undertakes training or conciliation or provides a written apology.

This makes it clear that the Standards Committee could, in an appropriate case, determine that the Councillor should be subject to a 3-month suspension but that, if he/she were to provide a written apology and undergo training, the suspension would be reduced to a 2-month partial suspension from just, for example, the Development Control Committee.

4.4 Reference back to the Standards Board

The Regulations also allow the Standards Committee to ask the SBE to resume responsibility for a matter at any stage. This would normally be where the Investigating Officer's report identifies conduct of such seriousness that the Committee believes that its maximum sanction would be inadequate, but it could be relevant if so many members of the Standards Committee were conflicted out of any 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 on the matter. Such a request must be directed to the ESO, who has the final decision whether to resume responsibility for the case. Such a request cannot be made once the hearing has been concluded.

The amended Procedure for Local Hearings is attached at Appendix B, with the changes to the original Procedure adopted on 2nd September 2004 set out in bold.

Recommendation Two:

That the Committee adopt the amended Procedure for Local Hearings set out at Appendix B.

5 Costs of Investigations of Parish Council Matters

South Derbyshire District Council remains responsible for standards matters in respect of Parish Councils in our District. The Regulations provide that where, in the course of an investigation, the Investigating Officer requires a Parish Council to provide any advice or assistance in connection with the investigation, the District Authority shall meet any reasonable costs incurred by the Parish Council in providing such advice or assistance. Accordingly, where the District Authority is required to arrange the investigation of a complaint against a Parish Councillor, the District Authority not only has to bear the direct costs of the investigation and any subsequent hearing but, in addition, if the Investigating Officer requires the Parish Council to provide information for the investigation, such as copies of any Codes of Conduct, minutes of meeting, records of the Parish Council's land ownerships, contracts or other activities, the Parish Council can recover the costs of providing such information from the District Authority.