

**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN at 4.00 pm on 22 MARCH 2004**

Present:- Mr S Brady – Chairman.
Councillors C A Cant, V J T Lelliott and R M Lemon.

Officers in attendance:- C Hughes, C Oliva, M J Perry and M T Purkiss.

S19 APOLOGIES

Apologies for absence were received from Councillor C D Down, M Hall, D James and R A Merrion.

The Chairman also welcomed to the meeting Christine Oliva, the new Planning and Litigation Solicitor.

S20 DECLARATIONS OF INTEREST

Councillor C A Cant declared an interest as a member of SSE and drew attention to the dispensation from the Standards Committee.

S21 MINUTES

The Minutes of the meeting held on 20 January 2004 were received, confirmed and signed by the Chairman as a correct record.

S22 BUSINESS ARISING

In relation to Minute S13, the Committee & Communications Manager circulated the Council's Committee Timetable for 2004/05. He reported that the meeting of the Standards Committee on 19 July 2004 clashed with a meeting of the Development Control Committee and at the next meeting, he would recommend that the Standards Committee now meet a week earlier on Monday 12 July 2004.

The Head of Legal Services also reported that a hearing of the Adjudication Panel would be held on 14 June 2004 at the Novotel London West and Members of the Committee were asked to advise him if they wished to attend so that the necessary notification could be made.

**S23 LOCAL INVESTIGATIONS OF ALLEGATIONS OF MISCONDUCT – A
GOVERNMENT CONSULTATION**

The Head of Legal Services submitted a detailed report on this Government Consultation Paper. He said that Section 66 of the Local Government Act 2000 had given the Government power to make regulations enabling Ethical Standards Officers (ESO's) to refer allegations of breaches of the Code of Conduct to Monitoring Officers (MO's) for investigation and determination by

the Standards Committee. He said that due to a defect in the drafting of the primary legislation, the introduction of the regulations had been delayed. The Committee was reminded that the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 permitted ESO's to refer cases to the MO for determination by the Standards Committee, but not for local investigation.

It was reported that the Government now proposed amending the 2003 regulations to permit ESO's to refer cases for local investigation as well as local determination and was consulting councils on the proposed amendments. The report outlined the proposed amendments and the Committee was asked whether it wished to respond to the consultation paper.

The consultation paper posed five specific questions which were considered in detail by the Committee.

On the issue as to whether the powers of a Monitoring Officer were necessary and sufficient Members agreed that they were necessary but felt that they were insufficient. In reaching this conclusion Members compared the powers of an Ethical Standards Officer in conducting investigations with those contained in the draft regulations. Members noted that effectively an Ethical Standards Officer could compel third parties to give evidence as failing to co-operate with an Ethical Standards Officer was a criminal offence. Members were concerned that a Monitoring Officer was not placed in the same position with the result that non-co-operation by witnesses could prevent an investigation being completed leaving the Committee with insufficient evidence to deal with a complaint. Members therefore requested the Government to give the Monitoring Officer the same powers as an Ethical Standards Officer in dealing with complaints.

Members considered that the powers of the Standards Committee to consider reports from the Monitoring Officer were both necessary and sufficient. However they expressed concern that if they were to receive a report which indicated that the Monitoring Officer had found that there had not been a breach of the Code of Conduct but took a contrary view and requested a hearing Members could be seen to have pre-judged the case. Members were further concerned that they would be presented with findings of fact and findings that there had or had not been a breach of the Code (either by an Ethical Standards Officer at present or by an Ethical Standards Officer or the Monitoring Officer once the new regulations were in place) and that this could be seen as pre-judgment of the issues by the investigator rather than the Committee.

Members concluded that all cases should be the subject of a full report to the Committee and that the Monitoring Officer should not have the power in any case to reject a complaint on the basis that (s)he had not found a breach of the Code.

Members took a view that the Monitoring Officer should have the power to refer cases back to the Ethical Standards Officer in the following cases:-

- a. Where evidence comes to light that the complaint is more serious than was at first thought

- b. Where evidence comes to light of other potential breaches of the Code. Members did not consider it appropriate to require a fresh complaint to be made which would then go through the entire procedure. This would leave those complained of under the strain of an investigation for an undue period of time and would also leave complainants waiting longer for complaints to be dealt with. Where evidence of further breaches of the Code by a councillor under investigation comes to light. Members considered it would be speedier and a better, more proportionate use of resources to have all matters investigated at the same time.
- c. Where the Monitoring Officer is the person who has made the complaint on his or her own behalf. Although the Monitoring Officer can delegate the investigation of the complaint to someone else Members considered the conflict of interests in these circumstances to be so significant that the choice of a deputy for that purpose could be seen to be tainted and that in those circumstances it was important that the investigation should be seen to be carried out by a person wholly independent from the Monitoring Officer - i.e. the Ethical Standards Officer.

Members also took a view that the Standards Committee should be able to refer cases back to the Ethical Standards Officer in exceptional cases e.g. if evidence comes to light during the course of a hearing which suggests to the Committee that its powers of sanction were insufficient to deal with the case. Experience at trials shows that on occasions fresh evidence does emerge during hearings which had a bearing on the outcome of a case. If cases could not be referred back once a report had been made to the Standards Committee injustice might result. (Members considered a scenario where a councillor was accused of a minor infringement of use of the Council's computer equipment where the Committee's powers of sanction might well be considered sufficient but at the hearing it emerges for the first time that the equipment had also been used for accessing websites of a pornographic nature which would be a matter usually reserved for the Adjudication Panel).

Finally Members were satisfied (so far as they could be without experience of working under the regulations) that the balance struck between the draft regulations and the draft guidance promulgated by the Standards Board was appropriate.

RESOLVED that the above comments be submitted to the Government on the Consultation Paper.

S24

DRAFT GUIDANCE TO MONITORING OFFICERS – LOCAL INVESTIGATIONS OF ALLEGATIONS OF MISCONDUCT – A STANDARDS BOARD CONSULTATION

The Head of Legal Services advised the Committee that the Government now proposed amending the 2003 Regulations to permit ESO's to refer cases for local investigation as well as local determination. The draft regulations required MO's to have regard to guidance issued by the Standards Board

(SB) when conducting investigations. Draft guidance had now been published for consultation.

It was reported that complaints would still be referred initially to the ESO for investigation. At any time before he completed his investigation, the ESO may refer the matter to the MO for investigation. If he does not do so, having concluded his investigation, he may refer the case to the MO for local determination by the Standards Committee or refer it to the Adjudication Panel (AP). Factors which the ESO would take into account in deciding whether to refer a case for local investigation were:-

- Whether the case does not appear to need the heavier penalties available only to the AP
- Where the matter appears to be an isolated incident unlikely to be repeated
- Where the Member has given a prompt, adequate and unreserved apology and whether remedial action has been taken
- Whether there is evidence that a local investigation is likely to be perceived as unfair or biased
- The allegation is of a purely local nature and does not raise matters of principle
- Whether there are any relevant local political issues that may have a bearing on a local investigation

In addition to the above list of factors suggested for consideration by an Ethical Standards Officer in determining whether to refer a case for Local Determination Members felt that the Ethical Standards Officer should consider whether the Monitoring Officer might have a conflict of interest.

Members took a view that the Monitoring Officer should have the power to refer cases back to the Ethical Standards Officer in the following cases:-

- (a) Where evidence comes to light that the complaint is more serious than was at first thought
- (b) Where evidence comes to light of other potential breaches of the Code.
- (c) Where the Monitoring Officer is the person who had made the complaint on his or her own behalf

Members also considered that the Standards Committee should be able to refer cases back to the Ethical Standards Officer in exceptional cases

Subject to paragraph (b) Members were satisfied that the distinction between cases where there should be a referral back to the Ethical Standards Officer and cases where a fresh complaint was justified was clear. For the reasons supporting (b) however (discussed in the consideration of the Government's consultation paper), the circumstances were not considered reasonable.

Members agreed that it was right to seek to maintain confidentiality during the course of an investigation and that the guidance given was clear.

Members were of the opinion that draft reports should be limited to cases where there were complex issues of fact or where the facts were disputed. In other cases draft reports would not be helpful but would unduly delay the process and be an inappropriate use of resources. Members also suggested that the guidance should indicate that the Monitoring Officer should give reasons for his or her findings of fact as well as reasons for whether there had or had not been a breach of the Code. Where the evidence of one party was preferred to that of another the Monitoring Officer should say why he or she came to that conclusion. These reasons should be repeated in the final report to the Standards Committee. Members felt that subject to this comment a report prepared in accordance with the guidance would enable them to adequately deal with the consideration of reports and hearings.

Members considered that the guidance given on conflicts of interests was clear although suggested an amendment in the terms set out above.

Members felt that Monitoring Officers might find non-statutory guidance on the conduct of investigations useful but without having an indication as to the likely content of that guidance could not comment further.

The Committee considered that when confidential papers were circulated to committee Members, they should be returned for destruction when the matter had been completed. The Committee felt that as a general principle, it would be good practice for Councillors to return all confidential committee reports to officers for destruction and suggested that this be recommended to Council.

Members were asked to consider whether they felt that the guidance should be clarified to require the MO to give reasons for findings of fact as well as on the issue on the breach of the code. Members were also asked to consider if a report following these guidelines would enable them to adequately deal with the consideration of the report or hearings. The Committee agreed that it would be unnecessary for a MO to give reasons for findings in cases where the facts were not in dispute. However, where the MO gives a statement in the draft report that he prefers the evidence of one or other of the parties, there should be a requirement to give reasons. Also, these reasons should be included in the final report which goes to the Standards Committee. Subject to this the Committee considered that the draft guidance was sufficient.

The Standards Board also asked whether the draft guidance on conflicts of interest was clear and appropriate and whether its previous guidance that the MO's main function was to advise the Standards Committee rather than carry out the investigation was correct. The Committee agreed that this guidance was clear and correct.

RESOLVED that the above comments be submitted to the Standards Board on the consultation paper.

RECOMMENDED that, as good practice, Councillors be asked to return confidential papers to the Council for destruction.

S25

THE STANDARDS BOARD

The Chairman agreed to the consideration of the following item on the grounds of urgency as it was in the interests of the Committee to receive the information as soon as possible.

The Head of Legal Services reported that following a change in legislation, the Standards Board could now delegate the decision as to whether a complaint should be investigated to an officer of the Board with a right for the complainant to seek a review by a more senior officer in the event that the decision was taken not to investigate his complaint.

The meeting ended at 5.30 pm.