

**Committee:** Standards Committee  
**Date:** 15 November 2004  
**Agenda Item No:** 4  
**Title:** Local Authorities (Code of Conduct) (Local Determination) (Amendments) Regulations 2004  
**Author:** Michael Perry (01799) 510416

### **Summary**

- 1 Section 66 Local Government Act 2000 empowered the Secretary of State to make regulations to permit allegations of breach of the Councillors Code of Conduct to be referred to the Monitoring Officer for local investigation and/or local determination.
- 2 The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 permitted Ethical Standards Officers (ESO) to refer allegations which had been investigated by an ESO to be referred to the Monitoring Officer for determination by Standards Committees. These regulations have been in force for some time and whilst there have been a number of references elsewhere in the country, to date no references have been made to this Council for local determination by the Committee.
- 3 On 22 March 2004 this Committee considered a report on the Government's consultation paper dealing with draft regulations to permit local investigation. Following that meeting the committees representations were referred to the Government for consideration.
- 4 This report is to inform members of the regulations which have now been passed as a result of which ESO will be able to refer allegations of breaches of the code to the Monitoring Officer for local investigation and determination.

### **Background**

- 5 The regulations provide that where a matter is referred for local investigation the Monitoring Officer must inform the member who is the subject of the allegation, the person who made the allegation and any town or parish council concerned.
- 6 In carrying out the investigation the Monitoring Officer may require any authority concerned to provide such advice and assistance as may reasonably be needed to assist the investigation. As drafted, the regulations would have permitted the costs of an investigation to be passed on to any parish council concerned. This has now been deleted and the costs of investigations into allegations relating to parish councillors will be borne by the District Council. Any Local Authorities concerned must provide the Monitoring Officer with reasonable access to any documents, which they may hold, which are reasonably necessary for the purpose of the investigation.

- 7 The consultation paper had limited provisions for the Monitoring Officer to refer investigations back to an ESO. These limitations have now been removed. The Monitoring Officer may make a written request to the ESO at any stage before the conclusion of his or her investigation for the ESO to take the case back for investigation. The request must state the reasons for making it. Within 21 days of receiving such a request the ESO must respond and either direct the matter be referred back to the ESO for investigation, or direct that the Monitoring Officer continue with the same. The consultation paper contained no provision permitting a reference back to the ESO by the Standards Committee. This Committee suggested that such a power maybe appropriate in certain circumstances. The regulations provide that the Committee may adjourn a hearing at any time prior to its conclusion and make a written request to the ESO that he take the matter back and undertake an investigation. The request must state the Committees reasons for it. The ESO must respond within 21 days and either direct that the matter be referred back to him for investigation or direct that the Standards Committee shall continue to deal with the case.
- 8 Upon conclusion of an investigation the Monitoring Officer must either make a finding that there has been a failure to comply with the code or that there has not been a breach of the code. The Monitoring Officer must prepare a written report regarding the investigation and findings a copy of which must be sent to the member which was subject to the investigation. Where the finding of the Monitoring Officer is a breach of the code then he or she will arrange for there to be a hearing before the Standards Committee. Where the finding is that there has been no breach of the code the report must be considered by the Committee, which must either accept the Monitoring Officers finding or determine that there should be a hearing of the Committee to determine the allegation.
- 9 If the Standards Committee accept the finding of no breach of the code then written notice must be given to the member concerned, the ESO, any parish council concerned, and the person who made the allegation. Notice of the finding must be published in at least one local newspaper unless the member concerned requests otherwise.
- 10 Although not subject of the initial consultation the regulations make reference to an ESO directing a Monitoring Officer to deal with a matter other than by way of investigation (this can only refer to a reference for a local determination of a matter investigated by an ESO). The Monitoring Officer is required to give a written report to the ESO detailing what steps have been taken or are proposed to comply with the direction. If the ESO is not satisfied with the report he may require the Monitoring Officer to arrange for a statement to be published in a local newspaper giving details of the direction and the Monitoring Officers reasons for not fully implementing it.
- 11 As anticipated the regulations provide for those carrying out investigations to have regard to guidance issued by the standards board.
- 12 The Standards Committee is given a new power to adjourn a hearing (but not more than once) to require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee.

Again although not subject to consultation the regulations amend the range of sanctions which can be imposed by a standards Committee. In addition to those already in force the Committee may now require a written apology in a form specified by the Committee or that the member concerned undertakes specified training or that the member concerned undertakes specified conciliation. These are in addition to, and not in substitution for, similar requirements which may be linked to a partial or full suspension. As worded the failure to comply would not carry any sanction. Failure to comply with a requirement of the Standards Committee in this respect may in itself be seen to be a breach of the code of conduct in that the member concerned would not be treating members of the Committee with respect and maybe seen to be bringing the authority and the office of councillor into disrepute. However, as this would involve a separate complaint to the standards board members may consider that if they were to require an apology, training or conciliation that it would be more proportionate to link the same with a partial or full suspension particularly bearing in mind that the Committee has the power to defer the effect of such with the result that by undertaking the appropriate conduct before the commencement date for the suspension the member could avoid sanction.

- 13 Members will recall that as part of their representations it was suggested that the Monitoring Officer should have the same powers of compulsion with regard to information gathering as are held by ESO's. The Committee also expressed its concern that where members did not accept a finding by the Monitoring Officer that there had not been a breach of the code and required a hearing they could be seen to have pre-judged the case. Further, where there has been a finding of the breach of the code (whether by an ESO or the Monitoring Officer) this again could be seen as pre-judgement of the case by the investigator rather than the Committee. There is nothing in the regulations to address these concerns.

RECOMMENDED that members note this report.

**Committee:** Standards Committee  
**Date:** 15 November 2004  
**Agenda Item No:** 5  
**Title:** Review of Training Needs  
**Author:** Mick Purkiss (01799) 510430

### **Summary**

- 1 This report outlines the training which has taken place and seeks Members' views on further training.

## **Background**

- 2 It is vitally important that Members of the Standards Committee receive adequate training.
- 3 A comprehensive role-playing training session took place on 18 October and feedback was provided at the end of the session. This session highlighted problems with Declarations of Interests and has led to the Members' Workshop which will be held on 15 November to which all Members of the Standards Committee are invited.
- 4 Some Members of the Committee attended an Adjudication Panel hearing at Hammersmith on 14 June 2004 and a visit to a further hearing at Newmarket has been arranged for 23 November 2004.
- 5 Members also receive regular reports and updates at their meetings and more information is available on the websites of the Adjudication Panel and the Standards Board.

RECOMMENDED that Members determine what further training, if any, they feel they need.

Background Papers:- Nil.