

Committee: STANDARDS COMMITTEE

Agenda Item

Date: June 19, 2006

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Title: INVESTIGATIONS INTO ALLEGATIONS OF A BREACH OF THE CODE OF CONDUCT

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Item for decision

Summary

- 1 The Local Government Act 2000 created a body known as the Standards Board for England to monitor complaints regarding breaches of the Code of Conduct established under the Act.
- 2 Prior to 4 November 2004 all investigations had to be dealt with by an Ethical Standards Officer. Since 4 November 2004 the Ethical Standards Officer has power to refer complaints to a Monitoring Officer for investigation.
- 3 Members will recall taking part in a consultation exercise run by the Standards Board regarding proposed changes to the Code of Conduct. As a result of the Standards Board's subsequent report to the Government and the report of the Gram Committee on Standards in Public Life, changes are being proposed to the Code of Conduct and the Standards Board have indicated that they propose changing with immediate effect the emphasis it places upon investigations. This report is to inform members how these changes will impact upon the role of the Council's Monitoring Officer.

Recommendations

- 4 Members determine whether the prime role of the Monitoring Officer for Members of the District Council and/or Town and Parish councils should be advisory or investigatory.
- 5 In the event that Members determine the main function of the Monitoring Officer should be advisory, Members determine how investigations referred to local determination should be dealt with.

Impact

Communication/Consultation	In the event that the main role of the Monitoring Officer is to be investigatory, Town and Parish Clerks will be unable to consult the Monitoring Officer with regard to specific issues.
Community Safety	None

Equalities	None
Finance	In the event that the principal role of the Monitoring Officer is to be advisory but it may be required to pay outside sources to carry out investigations.
Human Rights	Article 6 Schedule 1 Human Rights Act 1998 provides that “in the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. Whilst the Monitoring Officer is not a member of the Standards Committee, if the Monitoring Officer is investigating an alleged breach of the Code of Conduct in a situation where he has given advice on the issue before the alleged breach took place, he could be said to be bias as he will effectively be investigating his own advice. This could arguably breach Article 6.
Legal Implications	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

1. Until the publication of the Government’s response to the Standards Board and Gram Committee’s submissions, most investigations into allegations of a breach of the Code were carried out by Ethical Standards Officers. However, that situation has now changed. There are two factors which have influenced this. The first is that the High Court has indicated in some fields that the sanctions imposed by the Adjudication Panel on occasions have been too severe. The inference is that a softer approach to applying sanctions is to be preferred. This means that more cases may be suitable for local determination. Secondly, the Government has given its approval to fundamental changes in the operation of the ethical framework. The intention is that Standards Committees (as opposed to the Standards Board) will be responsible for vetting allegations of breaches of the Code and determining whether or not they should be investigated. Further, only the most serious cases would be accepted by the Standards Board for investigation and determination by the Adjudication Panel.
- 2 The above mentioned changes will require primary legislation. However, the Standards Board have indicated that they intend to refer many more cases for local investigation and determination than they have done to date. Indeed,

the Board have stated that already more than one half of allegations are being referred for local investigation.

- 3 Members of the District, Town and Parish Councils have all had some training on the Code of Conduct. However, of necessity this has been limited. Members frequently require advice with regard to their position on specific issues. Occasionally, issues are so wide reaching that the Monitoring Officer would wish to give advice to all Members of the Council concerned.
- 4 Difficulties will arise in circumstances where a Member receives advice from the Monitoring Officer and subsequently it is alleged that the Member has breached the Code. If that allegation were to be referred to me for investigation, I would in effect be investigating my own advice. If I had advised that an interest is not prejudicial and there was a complaint that it was, would the hypothetical man in the street consider that objectively if I reported to the Standards Committee that I was of the opinion there had been no breach of the Code? Similarly if I had advised I considered an interest to be prejudicial and the Member exercising his or her discretion decided it was not if I were to report to the Committee that there had been a breach of the Code, would an outsider consider that was an objective approach?
- 5 It follows that the Monitoring Officer should not investigate complaints where the act or omission complained of had been the subject of advice previously given by him.
- 6 In the immediate future where such a conflict arises, it is likely that the Ethical Standards Officer will retain control of the investigation, referring the matter to the Standards Committee for local determination if he considers it appropriate. However, that situation will change, of necessity when the new legislation is on the Statute Book but probably before that as the Standards Board slims down its staff and puts pressure upon Councils to make other arrangements where the position of the Monitoring Officer has been compromised.
- 7 A range of options is open. These will be considered below.
- 8 The first is that the Monitoring Officer ceases to undertake an advisory role on specific issues. If that were to be the case, a request for advice could be directed to the Deputy Monitoring Officer or to the other solicitor within the Legal Services Team. This would apply also to queries from Town and Parish Councils.
- 9 The Monitoring Officer could undertake the advisory role delegating investigations and servicing the Committee when considering reports to the Deputy Monitoring Officer and other solicitor in Legal Services Team.
- 10 There is a suggestion that District Councils within Essex should form a pool of Monitoring Officers with a view to either having a system whereby Monitoring Officers are not required to investigate complaints into their own advice or with a view to all investigations being carried out by an independent Monitoring Officer from outside the District for there are already firms offering

investigatory services when complaints of a breach of the Code are referred for local investigation.

Pay-Offs/Penalties

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Options	Pros	Cons
The Monitoring Officer ceases to advise	The Monitoring Officer is available to carry out investigations.	Members lose the Monitoring Officers experience when receiving advice regarding the Code of Conduct.
The Monitoring Officer does not carry out any investigations.	The Monitoring Officer is free to give advice both generally and on specific issues.	As I am responsible for managing the Legal Services Team would an impartial observer reasonably believe that my staff would prepare a report to Committee stating that I had made an error?
Arranging for investigations by Monitoring Officers from neighbouring authorities.	Guaranteed independence of the Monitoring Officer carrying out the investigation.	There has been no investigation as yet as to the capacity of Monitoring Officers to carry out investigations on behalf of others. It is also likely that there will be an inequality of workload making trade offs impossible and there would therefore be budgetary implications.
Use of outside agencies for investigations.	Independence of investigation.	Inability to monitor quality of investigations and knowledge of the Ethical Code and budgetary implications.