

STANDARDS COMMITTEE – 14TH DECEMBER 2004

THE LOCAL AUTHORITY (CODE OF CONDUCT)(LOCAL DETERMINATION) (AMENDMENTS) REGULATIONS 2004

Report of the: Monitoring Officer

Status: For Information

Executive Summary:

This report gives guidance on the new Regulations that came into force on the 4th November 2004 that will enable authorities to receive allegations of member misconduct for investigation.

This report supports the Key Aim of achieving compliance with new legislation.

Portfolio Holder Cllr. N. Dean

Head of Service Christine Nuttall

Recommendation:

Members are requested to note this report.

Background

- 1 On the 30th June 2003 the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 came into force. These Regulations allowed Standards Committees to consider matters referred to them by an Ethical Standards Officer (ESO) following the completion of an ESO's report on whether a member had breached the Code of Conduct for members.
- 2 Following a period of consultation which Members of this Committee contributed towards the Local Authorities (Code of Conduct) (Local Determination)(Amendment) Regulations 2004 (the new Regulations) came into effect on the 4th November 2004. The structure of the new Regulations is that they amend the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003. A copy of the Standards Board for England's Local investigations Guidance for monitoring officer and standards committees is attached as an Appendix to this Report.

Making the Reference

- 3 All allegations will still go to the Standards Board for England (the Board). The Board will decide whether or not to investigate. The decision to refer the matter for local action is with the ESO. An ESO may refer an allegation for local investigation at any point before he or she completes an investigation

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into the allegation. When considering whether or not to refer the allegation to the Monitoring Officer, an ESO will use his or her discretion and take into account all relevant circumstances.

- 4 The ESO has power to give directions to the Monitoring Officer on the reference. A direction by the ESO can require matters referred to be dealt with otherwise than by conducting an investigation.
- 5 The new Regulations also makes provision to allow the Monitoring Officer at any stage before he or she has completed his or her investigation to make a request to the ESO that the matter be referred back to the ESO for him or her to investigate the matter. The purpose of this is to make sure that if new evidence is discovered by the Monitoring Officer suggesting that the case is more serious than originally thought, it may be referred back to the ESO who may decide to take over conduct of the investigation.
- 6 The Standards Board for England (Functions) Order 2004 amends the definition of "Monitoring Officer" to make clear that it includes any deputy nominated to act and also any person nominated to act. Without provision to delegate the new Regulations would not be workable since Monitoring Officers are the usual source of advice to members and when fulfilling such role would not be in a position to investigate.

Findings of Investigation

- 7 A Monitoring Officer is able to make one of two findings following the investigation, either that he or she considers that there has been a failure to comply with the Code of Conduct, or that he or she does not consider that there has been a failure to comply with the Code. These finds are called "findings of failure" and "findings of no failure".

Draft Reports

- 8 When the Monitoring Officer has concluded an investigation, he or she should consider whether to produce a draft report or proceed directly to a final version.

Consideration of the final report

- 9 When the Monitoring Officer makes a final report this must be referred to the authority's standards committee for consideration. The Monitoring Officer will need to arrange a Standards Committee hearing if
 - the final report concludes that there was a breach of the Code of Conduct; or
 - if the Standards Committee, having considered a report that concludes there was no failure, decides there is a case to answer.

Findings of the Standards Committee

- 10 The Standards Committee can make one of three findings which comprise:-

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- a. that the member had not failed to comply with the Code
- b. that the member had failed to comply with the Code but no action needs to be taken
- c. that the member had failed to comply with the Code and a sanction should be applied

Sanctions

11 The Standards Committee can impose any one of or any combination of the following sanctions:-

- censure of that member;
- restriction for a maximum period of three months of that member's access to the premises of the authority and that member's use of the resources of the authority;
- partial suspension of that member for a maximum period of three months;
- suspension of that 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 Standard 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 that member for a maximum period of three months or until such time as he or she submits a written apology in a form specified by the Standards Committee;
- partial suspension of that member for a maximum period of three months or until such time as he or she undertakes any training or conciliation specified by the Standards Committee;
- suspension of that member for a maximum period of three months or until such time as he or she submits a written apology in a form specified by the Standards Committee;
- suspension of that member for a maximum period of three months or until such time as he or she undertakes any training or conciliation specified by the Standards Committee.

Conclusion

12 In theory authorities may now receive allegations of member misconduct for investigation. The Board has stated that they will be publishing a separate

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guide to conducting investigations at a later date. Peter Keith-Lucas has produced a very lengthy Model report and procedure for local investigation of standards complaints that this Committee could adopt if a referral was received. However, the Monitoring Officer, time permitting, would prefer to wait for the Board's guidance before recommending to this Committee a particular local investigation procedure.

Sources of Information: Local Authorities (Code of Conduct)(Local Determination) (Amendment) Regulations 2004

The Standards Board for England (Functions) Order 2004

Local investigation Guidance for monitoring Officers and standards committees produced the Standards Board for England

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RISK ASSESSMENT STATEMENT

The Standards Committee may now receive allegations of member misconduct for investigation. The information contained in this Report will enable the Council to prepare to receive allegations of member misconduct for investigation.