

## STANDARDS COMMITTEE – 27TH JUNE 2006

### NEW PROCEDURES AND DOCUMENTATION FOR HANDLING LOCAL INVESTIGATIONS AND A REVISED LOCAL DETERMINATION PROCEDURE

Report of the: Monitoring Officer

Status: For Consideration and Adoption

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**This report supports the Key Aim of** promoting and maintaining high standards of conduct in local government

**Portfolio Holder** Cllr. Loney

**Head of Service** Head of Legal and Committee Services – Mrs. Christine Nuttall

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**Recommendation:** To authorise the adoption of new procedures and documentation for handling local investigations as set out in this report and Appendix A and B and a revised Local Determination Procedure as set out in Appendix C and due to the developing nature of the process, such other procedures and documentation as the Standards Board for England may from time to time recommend with power to make such amendments as the Monitoring Officer may think fit.

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#### Background

- 1 The report sets out the changes required by the new regulations and proposes procedures for investigating Member misconduct locally.

#### Introduction

- 2 Under the new regulations, (The Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004), the Standards Board for England may refer allegations of Members misconduct to the Monitoring Officer of a local authority for local investigation, instead of investigation by the Standards Board's Ethical Standards Officers (ESOs), before an allegation is determined by the Standards Committee (or Sub-Committee).
- 3 This report sets out the implications of the new regulations and a model procedure for handling local investigations has been prepared by The Standards Board as set out in Appendix A.
- 4 The Standards Board has published statutory guidance as to how local authorities should conduct local investigations and this is set out in Appendix B. The new regulations also make important amendments to the powers of any Hearing Panel, even in cases which have been investigated by an Ethical Standards Officer and these changes as set out in the published statutory

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guidance are incorporated into a revised Local Determination Procedure as set out in Appendix C.

**Pre-Investigation**

- 5 Details of how the Standards Board will refer complaints is set out in the statutory guidance. The Standards Board will now notify the Monitoring Officer of the complaint and ask for background information, in order to ensure that it only refers for investigation those complaints which really merit such investigation.
- 6 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 Member and/or the authority could do to resolve the complaint and thereby avoid the time and cost of an investigation. Such local resolution could be affected by securing the agreement of the complainant, or otherwise persuading the Standards Board, that the complaint should not be investigated or that no action was required.

**Local Investigations**

- 7 Under the new regulations, where the case is referred by the Standards Board for investigation, it goes to an Ethical Standards Officer who decides whether to allocate it to one of the Standards Board'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 Hearing Panel's maximum sanction of 3 months' suspension. Other criteria highlighted by the Standards Board for referring allegations to the Monitoring Officer are:
  - where the matter does not appear to need the heavier penalties available only to the Adjudication Panel for England;
  - where the allegation is of an entirely local nature and does not raise matters of principle; and
  - where 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.
- 8 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.
- 9 It is important to note that whilst the Standards Board recommends that the Monitoring Officer notify members of the Standards Committee in a confidential memorandum that she is conducting an investigation, she should not inform them of the identity of the Member or the Complainant, in order to avoid any risk of prejudicing any subsequent hearing. Members of the

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Standards Committee will therefore be provided, under a requirement for confidentiality with:

- a brief description of the conduct which is the subject of the allegation;
- the section(s) of the Code of Conduct or local protocol which appear to the Monitoring Officer to be relevant to the allegation; and
- the identity of the Investigation Officer.

**Appointment of the Investigating Officer**

- 10 The Monitoring Officer remains the chief policy adviser to the Standards Committee and the primary contact for Members who have standards issues, such as whether they have a personal or prejudicial interest. That role may at times be incompatible with personally undertaking the Investigating Officer role, which includes presenting the investigation report at a meeting of the Hearing Panel, so the Monitoring Officer will need to appoint another person to undertake the investigation. In appropriate cases, the Monitoring Officer will appoint the Deputy Monitoring Officer to undertake the investigation, but in other cases it may be appropriate to appoint an outside investigator, which could involve borrowing from another authority. It is envisaged that the appointment of an external investigator will be considered only where internal resources cannot undertake the investigation because of bias or insufficient time to conduct the investigation fairly and effectively.
- 11 The Monitoring Officer will be required to produce a full report, setting out his/her conclusions as to the facts of the matter and whether the Member did or did not fail to comply with the Code of Conduct for Members.
- 12 The position of the Monitoring Officer as prime point of advice to individual Members on standards issues may give rise to conflicts of interest which could rule out the Monitoring Officer from acting as the legal adviser to the Hearing Panel for individual case hearings. Accordingly, the Monitoring Officer may need to arrange for the Deputy Monitoring Officer to act as the legal adviser to the Hearing Panel for individual case hearings.

**Procedure for Local Investigations**

- 13 The 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 Member and the Complainant as to how the matter will be dealt with. There are no strict rules laid down for conducting an investigation. However, The Standards Board have now published a separate guide entitled "How to conduct an investigation" as set out in Appendix A as well as the statutory guidance entitled "Local investigations" as set out in Appendix B as referred to above and it is proposed these published guide lines be adopted as the Council's procedures for local investigations.
- 14 Under these procedures, in order to prevent any prejudice to the Hearing Panel's role in eventually determining the complaint, members of the Hearing

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Panel will not be advised of the progress of the investigation, until they receive the agenda and papers, including the Investigating Officer's report, for their meeting which is to consider that report.

- 15 The new regulations also make certain changes in respect of the conduct of local determination hearings as referred to in the statutory guidance. The Procedure for Local Determination Hearings has therefore been rewritten to take account of these changes, as set out in Appendix C as referred to above.

**Local Protocols**

- 16 The Council has and may adopt local protocols as additional local guidance for members. Such local protocols do not form part of the Code of Conduct for Members and so are not enforced by the Standards Board for England unless the particular conduct is also a failure to comply with the Members' Code of Conduct. Enforcement of such local protocols rests with the Council, which may delegate that responsibility to the Standards Committee, although certain sanctions will require confirmation by Council.

**Proposals**

- 17 Members are asked to adopt the procedures as set out in this report to secure procedures by which Members subject to allegations of misconduct can relate. The procedures will clarify for such Members how investigations will be conducted and they will assist in promoting fairness and transparency throughout such investigations. They also provide a clear process by which hearings may be conducted into Member misconduct to ensure consistency with any decisions made by the Standards Committee or Sub Committee.

**Financial Implications**

- 18 The new regulations for local investigation of Member misconduct will have financial implications in terms of any officer time taken to deal with the complaints arising. In instances where a conflict of interest arises for the Council's Monitoring Officer, the Council will have to draw on officer support from either the Deputy Monitoring Officer, or from either adjoining authorities through partnering arrangements or outside private firms or Counsel who specialise in this type of investigation.
- 19 Use of external investigators will have financial implications for the Council depending on the nature and scope of the investigation undertaken.
- 20 It is not considered necessary to set aside specific budgetary provision to cover potential referral costs as currently this is being met from within the departmental budget. However, if the number of investigations continue to increase it is likely that budgetary provision will need to be sought.

### **Legal Implications**

- 21 Adoption of these procedures will provide the fairness and clarity needed by Members faced with an allegation of member misconduct.

### **Conclusions**

- 22 The Committee is advised to recommend that the procedures and documentation set out in this report and in Appendix A, B and C be adopted and due to the developing nature of the process such other procedures and documentation that the Standards Board for England may from time to time recommend with power to make such amendments as the Monitoring Officer may think fit.

### **Sources of Information:**

The Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004

How to conduct an investigation – the Standards Board for England

Local investigations – the Standards Board for England

### **Contact Officer(s):**

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### **RISK ASSESSMENT STATEMENT**

Not to adopt any procedures for investigating Member misconduct may give rise to allegations that hearings are not being carried out fairly and reasonably taking into account the rules of natural justice.

