

Agenda Item

Committee: **Standards**

Date: **24 September 2003**

Title: **Consideration of Ethical Standards Officers' Reports**

By: **Director of Law and Performance Management**

Purpose of report: **To advise the Committee of new powers given to Standards Committees to determine complaints of misconduct and to propose a procedure for dealing with such complaints.**

RECOMMENDATIONS -

- (1) **To note the new power for Ethical Standards Officers of the Standards Board to refer their completed reports to local authority Standards Committees for determination.**
- (2) **To authorise the Director of Law and Performance Management, after consultation with the Chairman of the Committee, to settle a guidance note on the procedure to be followed when dealing with reports received from Ethical Standards Officers on allegations of misconduct, based on the statutory Regulations and the guidance issued by the Standards Board.**
- (3) **To recommend the County Council to amend sub-paragraph (g) of the terms of reference of the Committee to read as follows:**

dealing with any reports of Ethical Standards Officers of the Standards Board on allegations of breaches of the Council's Code of Conduct that are referred to the Monitoring Officer for local determination and any such allegations referred to the Monitoring Officer for local investigation.

1. Financial Appraisal

1.1 The financial implications will be limited to officer time in processing any reports received from Ethical Standards Officers (ESOs) on allegations of misconduct against a County Councillor, employing a reporting officer should that be necessary and the expenses of any witnesses called. Actual costs will depend on the number of reports received and the complexity of the issues involved. They will be met from within existing budgets. There could be more significant financial implications if, as anticipated, the monitoring officer is asked by the Standards Board to investigate complaints. Again, much will depend upon the number of complaints and their complexity but we will endeavour to meet costs from within existing budgets.

2. Supporting Information

2.1 The Government has now made the Regulations which had been promised for some time enabling Ethical Standards Officers from the Standards Board, when they have completed an investigation, to refer their report to the monitoring officer of the relevant local authority for local determination by its standards committee. Regulations are to be made later in the year enabling the Standards Board to refer allegations to the local authority's monitoring officer before investigation. In these circumstances, the monitoring officer will arrange for the complaint to be investigated and a report made to the standards committee. A further report will

be made to the Committee on this matter when these Regulations have been made and the Standards Board has issued its guidance.

2.2 A summary of the procedure to be followed where an ESO refers his/her report to the Monitoring Officer and Standards Committee, the options open to the Committee in terms of findings when considering an allegation of misconduct, and the sanctions it may impose, are set out in **Appendix 1** to this report.

2.3 The Standards Board for England has issued guidance for monitoring officers and standards committees in dealing with investigations referred to them by ESOs and a copy of the guidance is being circulated to members of the Committee. Local authorities are being encouraged to follow this guidance to ensure a consistency of approach throughout the country.

2.4 Whilst I am sure the Committee will wish to support this approach, the County Council will need to produce its own guidance, based on that recommended by the Standards Board. This is because there are a number of places where it says, for instance, "the Standards Board recommends". By producing our own guidance we can remove any doubt over whether we will be following the Standards Board's advice. Their guidance booklet also contains background information which can be omitted from our guidance note, thus making it as succinct as possible.

2.5 When a report is received from an ESO it is likely that I will need to appoint a reporting officer to ensure that all the information which is relevant to the allegation is identified and presented to the Committee. A conflict of interest could arise if I perform the role and, at the same time, perform the role of legal adviser to the Committee. The reporting officer can be another officer of the County Council.

2.6 The Committee is recommended to authorise me to settle, after consultation with the Chairman of the Committee, a guidance note on the procedures to be followed when dealing with reports of allegations referred by an ESO.

3. Terms of Reference of the Committee

3.1 When the terms of reference of the Standards Committee were included in the Constitution in 2001 the detailed arrangements for dealing with allegations of breaches of the Code of Conduct for members had not been settled at national level. Sub-paragraph (g) (page C27 of the Members' Handbook) was drawn up based on the information available at the time. This now needs slight amendment to cover the power given to local authorities in the recent Regulations and the anticipated new power to be given to them to investigate allegations of breaches of the Code of Conduct where the matter is referred to the Monitoring Officer by the Standards Board. The Committee is recommended to recommend the County Council to approve the following revised sub-paragraph (g):

dealing with any reports of Ethical Standards Officers of the Standards Board on allegations of breaches of the Council's Code of Conduct that are referred to the Monitoring Officer for local determination and any such allegations referred to the Monitoring Officer for local investigation.

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REPORTS RECEIVED FROM ETHICAL STANDARDS OFFICERS

SUMMARY OF PROCEDURE AND OPTIONS OPEN TO THE STANDARDS COMMITTEE

1. Introduction

1.1 Where a report is referred to the Monitoring Officer and the Standards Committee by an Ethical Standards Officer, the Monitoring Officer must send a copy of the report to the member who is the subject of the report and arrange for the Standards Committee to meet to consider the report.

2. Hearings

2.1 The hearing should be conducted in accordance with guidance issued by the Standards Board for England. The hearing should be held within three months of the date of receipt of the report by the Monitoring Officer and at least 14 days after the report has been sent by the Monitoring Officer to the member who is to be the subject of the hearing. Any member who is the subject of such a report must be given an opportunity to present evidence in support of his/her case and to make representations at the hearing either orally or in writing and either personally or through their representative.

2.2 The Standards Committee may arrange for the attendance of witnesses as it considers appropriate and the member who is the subject of a hearing may arrange for the attendance of such witnesses as he/she wishes, although the Committee may place a limit on this if it feels the number proposed is unreasonable.

2.3 Any member who is the subject of a hearing may be represented by counsel, a solicitor or, with the prior consent of the Committee, by anyone who he/she wishes to represent him/her. If the member fails to attend the hearing, the Committee may, in certain circumstances, decide to consider the allegation and make a determination in his/her absence or adjourn the hearing to another date.

2.4 There is a clear presumption that hearings should be held in public. However, there will be circumstances where it is appropriate to exclude the public and press. These are summarised below.

- A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
- The law also gives the Standards Committee the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of 'exempt information' are those which apply to any other County Council meeting with the addition of the following extra categories:
 - (i) information relating to the personal circumstances of any person;
 - (ii) information which is subject to any obligation of confidentiality, for example, under a contract;
 - (iii) information which relates in any way to matters concerning national security;
 - (iv) the deliberations of the Standards Committee when hearing matters referred by an ESO.

3. Findings

3.1 The Standards Committee may make one of three findings:

- (a) that the member had **not** failed to comply with the Code of Conduct;
- (b) that the member had failed to comply with the Code of Conduct but that no action needed to be taken; or
- (c) that the member had failed to comply with the Code of Conduct and that a sanction should be imposed.

3.2 Where the Committee finds that a member has failed to comply with the Code and that a sanction should be imposed, it may impose any of the following sanctions or combinations of these sanctions:

- (i) censure of the member;
- (ii) restriction of the member's access to the Council's premises and use of the Council's resources;
- (iii) partial suspension of the member for up to three months;
- (iv) partial suspension of the member for up to three months or until he/she submits a written apology or undertakes any training or conciliation specified by the Committee;
- (v) suspension of the member for up to three months;
- (vi) suspension of the member for up to three months or until he/she submits a written apology or undertakes any training or conciliation specified by the Committee.

4. Notification of Findings

4.1 The Standards Committee must, as soon as reasonably practical, give written notice of the finding and its reasons to the member who is the subject of the finding and the Ethical Standards Officer concerned.

4.2 A summary of the findings must be published in at least one local newspaper, unless the Committee has found in favour of the member and the member requests that there be no publication.

5. Appeals

5.1 A member may request permission to appeal against the Standards Committee's findings by writing to the President of the Adjudication Panel at the Standards Board within 21 days of receiving notification of the Standards Committee's decision and specifying the reasons for the appeal and whether or not he/she consents to the appeal being conducted by written representations. The President has 21 days in which to notify his decision on the request.

5.2 The Regulations lay down the procedures to be followed by appeals tribunals where permission for an appeal is given. The procedure for dealing with appeals, the findings which may be made and the penalties which may be imposed are similar to those which apply in the case of the Standards Committee.