

Leicester
City Council

WARDS AFFECTED
All Wards

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
Standards Committee

24 March 2004

**CONSULTATION - LOCAL INVESTIGATION AND
DETERMINATION OF MISCONDUCT ALLEGATIONS**

Report of the Town Clerk and Director of Resources, Access and Diversity

1. Purpose of Report

To seek the Committee's views on consultation proposals relating to the arrangements by which local authority monitoring officers may investigate allegations of misconduct by Members referred to them by ethical standards officers, which can then form a response to the consultation processes.

2. Summary

Two separate consultation exercises are being undertaken in relation to arrangements by which monitoring officers may investigate allegations of misconduct referred to them by ethical standards officers. One consultation is by the Office of the Deputy Prime Minister and the other by the Standards Board for England.

Both consultation exercises have a deadline for comments by 18 May 2004.

A commentary and suggested comments on each of the consultation documents are detailed in the supporting information.

3. Recommendations

Members are recommended to consider the suggested comments and, subject to any amendments they may wish to make, agreed to them being forwarded respectively to the Office of the Deputy Prime Minister and the Standards Board for England.

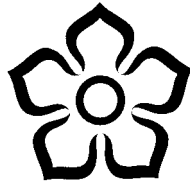
4. Headline Financial and legal Implications

There are no financial implications.

The legal implications are contained within the suggested comments for submission.

5. Report Author/Officer to contact:

Tom Stephenson,
Town Clerk and Corporate Director of Resources, Access and Diversity,
extn. 6300



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SUPPORTING INFORMATION

1. Report

Two separate consultation exercises are being undertaken on the arrangements by which local authority monitoring officers may investigate allegations of misconduct by Members referred to them by ethical standards officers. One exercise is being undertaken by the Office of the Deputy Prime Minister and the other by the Standards Board for England. The separate consultations are as follows:-

- (i) Consultation by the Office of the Deputy Prime Minister on the proposed Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004. The aim of these is to make provision for local monitoring officers to investigate allegations of misconduct by Members of relevant authorities, and to enable authorities' Standards Committees to make determinations following reports into such breaches made by monitoring officers. The consultation documents comprise a paper describing the proposals, the draft Regulations themselves, and a draft functions order which clarifies the powers of the Standards Board to issue guidance to monitoring officers and Standards Committees on conduct of conduct issues.
- (ii) Consultation by the Standards Board for England on draft guidance to monitoring officers of relevant authorities on carrying out their investigatory role under the proposed Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004.

The closing date for comments on these consultation exercises is 18 May 2004.

A copy of each of the Consultation documents is attached at Appendix A.

Suggested comments to form the Council's submission on each of the documents are given below, for consideration and amendment as necessary by the Committee.

General Principles

1. Before considering each of the documents in detail, it is perhaps worth highlighting that, in accordance with good practice in all other complaints procedures, the focus should be switch to pursuit of a solution locally before national bodies are involved. The filtering of trivial matters should happen locally (with appropriate checks and balances) to ensure speedy 'justice' and avoid wasting the Standards Board's resources. An early legislative opportunity should be sought to bring this principle into effect.

Draft Regulations (ODPM)

These Draft Regulations seem generally reasonable, indeed rather straightforward given the time to produce them. Is it clear enough that no allowance is payable during suspension? How does this apply to partial suspension?

On the four issues on which specific comments are requested:-

1 & 2 No comment.

- 3 There should be filtering arrangements, reflecting our practice, to ensure that cases are considered at the right level. The Monitoring Officer's decision not to refer a minor matter could be in consultation with the Chair and perhaps also with independent Members.

4. This is reasonable.

5. No comment.

Draft Guidance (Standards Board for England)

Overall, the guidance is reasonable and gives appropriate flexibility.

Referring Allegations : the criteria are reasonable as examples, provided "*all relevant factors*" is retained as the overall criterion. It would be wrong to investigate without being able to start from the original allegation. I challenge whether the DPA or HRA would really inhibit forwarding of the letter as part of due process of this nature. Rights are protected by a duty of confidentiality on the Monitoring Officer. If the letter cannot be forwarded, or if editing materially affects the statement or relevant context of the complaint, then the Monitoring Officer should not be expected to investigate. It should be dealt with by the Board.

Evidence of New Breaches: it is essential that the Monitoring Officer is neutral over the initiation of complaints (with one exception below). People can be advised whether or not particular conduct could amount to a breach, and they can be advised of their right to complain. However, it is inappropriate for the Monitoring Officer to make a

complaint in these circumstances, or to ask anyone to complain. To do so could prejudice his or her neutrality and any future role in the matter.

There is a reasonably clear distinction between the emergence of entirely new matters and of factors relating to the current matter. Why should the criteria for referral back be limited? If the Monitoring Officer believes there are grounds, the ESO can accept or reject them on their merits.

Confidentiality: from our experience, clear ground rules and sanctions are needed in this area

There needs to be a real sanction for disclosing confidential information relating to a Monitoring Officer investigation. This is the one breach of the Code for which I would consider complaint from the Monitoring Officer appropriate, although the Monitoring Officer could not then investigate it. I would suggest that consideration be given to extending Section 63 so that, in defined circumstances, disclosure during local investigations could be an offence.

It should be made more explicit that information can be disclosed for the purpose of publishing the final decision and reasons of the Standards Committee arising from the complaint.

Draft and Final Reports: the discretion is appropriate and clear. The checklist is fine except that including full notes of telephone conversations, interviews, etc is onerous and unnecessary. It could cause DPA & HRA problems when the report is circulated. The schedule should merely be an index of these, rather than the notes themselves.

Publishing Findings: for completion, the guidance should deal with publishing findings after a Committee hearing. This would help resolve that aspect of disclosure of confidential information.

Conflicts of Interest: if the Monitoring Officer gave advice to the Member earlier, it is “possible”, but not necessarily “likely” that a conflict would arise. The advice could have been very generalised, say to clarify the requirements of the Code without knowledge of the circumstances which gave rise to the complaint.

It would be unnecessary and patronising to give specific guidance on delegation of the investigative role. The range of possible scenarios cannot be anticipated and guidance should stop at the principles of avoiding conflict of interest and ensuring effective advice to the Committee.

I agree that the Monitoring Officer’s primary role should be to advise the Committee. However, trying to organise advice could cause practical difficulties for some authorities and the matter should be left for local discretion.

Conducting an Investigation: there is a considerable risk of this being patronising. The ability to investigate effectively is one of the requirements of the role of Monitoring Officer.

FINANCIAL, LEGAL AND OTHER IMPLICATIONS

1. Financial Implications

None.

2. Legal Implications

The legal implications are contained within the suggested comments for submission.

3. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	No		
Policy	No		
Sustainable and Environmental	No		
Crime and Disorder	No		
Human Rights Act	Yes		
Elderly/People on Low Income	No		

4. Background Papers – Local Government Act 1972

None.

5. Consultations

None.

6. Report Author

Tom Stephenson,
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