



# ISLINGTON

**Law and Public Services**  
**Town Hall, Upper Street, London N1 2UD**

**Report of : Standards Committee**

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	26 <sup>th</sup> May 2004		

Delete as appropriate	Exempt	Non-exempt
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**Subject: LOCAL INVESTIGATION AND DETERMINATION OF COMPLAINTS  
- RESPONSE TO CONSULTATION PAPER**

## **1. Synopsis**

The Office of the Deputy Prime Minister and the Standards Board for England are consulted on proposed regulations and guidance which would enable the Standards Board to refer complaints of member misconduct down to the local authority's Monitoring Officer before investigation, so that it would be the Monitoring Officer's responsibility to arrange for the local investigation of the complaint, and for the matter to be reported to the Standards Committee for determination.

At present, matters can only be referred down for local determination after the Standards Board Ethical Standards Officer has completed an investigation and concluded that there has been a breach of the Code of Conduct, and that the matter is of a level of gravity which can be dealt with appropriately within the Standards Committee's maximum sanction of 3 months' suspension. Once the proposed regulations and guidance are in place, it is anticipated that the Standards Board for England will refer for local investigation the majority of cases which appear to be of a gravity which is appropriate for local determination. The Standards Board for England intends to publish further guidance on the conduct of local investigations, on which a further report to the Committee will be made in due course.

This report sets out the key issues in the consultation and the responses, sent by officers as the closing date for responses was 18<sup>th</sup> May, 2004.

## **2. Recommendation**

That the Committee note the responses sent to the Office of the Deputy Prime Minister and the Standards Board for England.

### **Key issues in the consultation**

#### **(a) Criteria for reference for local investigation**

##### **(i) The issue**

The Standards Board proposes the following as the criteria by which ESOs would decide whether a particular matter should be sent to the Monitoring Officer for local investigation:

- The matter does not appear to need the heavier penalties only available to the Adjudication Panel for England
- The matter is an isolated occurrence and is unlikely to be repeated
- The member has made a prompt, adequate and unreserved apology and whether adequate remedial action has been taken
- There is evidence that a local investigation would be perceived as unfair or biased
- The allegation is of an entirely local nature and does not raise matters of principle
- There are any relevant local political issues that may have a bearing on a local investigation

##### **(ii) Response**

Whilst the proposed criteria address the main issues –

- If an apology is adequate, it is irrelevant whether it is unreserved
- The issue of an apology is entirely separate from whether remedial action has been taken
- The presence of such local political issues is encompassed within the probability that the investigation would be perceived as unfair or biased and so can be deleted
- The reference of a matter for local investigation carries with it a decision that the matter should be determined at a local hearing. One of the criteria should therefore be whether there are any reasons for believing that the matter will not be determined fairly and rigorously at a local hearing.

**(b) The scope of investigatory powers**

**(i) The issue**

The consultation paper proposes that the Monitoring Officer should arrange for someone (probably not the Monitoring Officer herself as she may wish to continue to act as the chief legal adviser to the Standards Committee, but more likely another senior officer, and officer of a neighbouring authority or an external investigator) to undertake the investigation and prepare a report to the Standards Committee. The Government proposes to give the investigating officer a power to require the authority to afford him access to any documents in its possession, but does not intend to make it a criminal offence to fail to co-operate with the investigation, as would be the case in an investigation by an ESO.

**(ii) Response**

Whilst a criminal sanction would be inappropriate for a local investigation, there should be a statutory requirement for members and officers to co-operate with a local investigation which, ultimately, could be enforced through the civil courts, and the Guidance should make it clear that failure to co-operate with a local investigation could itself give rise to a further complaint of conduct likely to bring the member's office or the authority into disrepute.

**(c) Reference back to the Standards Board**

**(i) The issue**

The ESO will refer the case down to the Monitoring officer before it has been investigated. So the Government proposes that, if the investigating officer considers that the matter is more serious than first thought and that the Standards Committee's maximum sanction of 3 month's suspension would be inadequate, he should be able to request the ESO to take the matter back so that it can go on to a Case Tribunal, with powers to suspend for up to a year or to disqualify for up to 5 years.

**(ii) Response**

Such a facility for referring a complaint back to the Standards Board is welcome, but should be extended so that the Standards Committee can also refer a matter back if, in the course of a hearing, it concludes that its available sanctions are inadequate for the particular matter.

**(d) The procedure for local hearings**

**(i) The issues**

The Government proposes that every case referred for local investigation should be referred to the Standards Committee (or Sub-Committee) even if the Investigating Officer finds that there has been no breach of the Code or no action is required. In such cases, the Government proposes that the Committee should consider the investigating officer's report and, if it agrees with his finding that

there has been no breach of the Code or no action is required, determine the matter accordingly. But if the Committee disagrees with such a finding or the investigating officer has found that there has been a breach of the Code, the matter would then go on to a full hearing.

(ii) Response

It is absolutely correct that all cases should finally be determined by the Standards Committee, and that the investigating officer should not have a power to close a case if he finds that there has been no breach of the Code or no action is required.

**(e) Confidentiality of ESO's reports**

(i) The issue

ESOs have developed a custom of marking their reports as "confidential". This has been taken to mean that, when an ESO's report finds that there has been no breach of the Code or no action is required, the Monitoring Officer is precluded from giving copies of such reports to the Standards Committee. No statutory confidentiality is proposed for investigating officers' reports, but the draft Guidance urges investigating officers to seek similar confidentiality.

(ii) Response

It is important that the public see that all complaints of misconduct are dealt with rigorously, and that authorities have the opportunity to learn from ESO's reports and improve their procedures in order to avoid unjustified complaints. ESO's custom of marking reports as confidential is not justified by the Local Government Act and is contrary to the public interest. Accordingly, the opportunity should be taken to make it clear that such confidentiality should be limited to the course of the investigation but does not apply to completed reports where there has been a finding of no breach or no action required.

**(f) The 3-month time limit for hearings**

(i) The issue

The current regulations require the Standards Committee to hold the hearing within 3 months of the ESO's report being referred to the Monitoring Officer. The Government proposes to extend this requirement, so that hearings following local investigations would have to be held within 3 months of the investigating officer completing his report. The model procedure for local hearings recommended by the Standards Board means that it is virtually impossible to hold a hearing within 2 months of the ESO's referring the matter to the Monitoring Officer, and the failure of the member to co-operate can easily push the hearing beyond the 3-month time limit.

(ii) Response

The 3 month time limit is an admirable objective, but the regulations and guidance should make it clear that it is an objective rather than a strict requirement, and that the Standards Committee will still be able to determine the matter even if the hearing has not been held or completed within the 3 months.

**(g) Seeking additional information**

(i) The issue

The present regulations and the current proposals make no provision for the case where the Standards Committee does not feel that it has sufficient information at the hearing to come to a safe determination of the matter.

(ii) Response

The Current and the proposed regulations should be amended to enable the Standards Committee to commission additional evidence if, during the course of a local hearing, it does not feel that it has sufficient information to come to a safe determination of the matter. In practice it might instruct the investigating officer to report back with such additional evidence.

**(h) Sanctions available to the Standards Committee**

(i) The issue

At present the sanctions available to the Standards Committee include, censure, restriction of use of Council premises and resources, and total or partial suspension or training or an apology or conciliation. The Government recognises that this is inflexible, and proposes that the Standards Committee should be able to set a total or partial suspension until such time as the member submits a written apology or undertakes training or conciliation. This is still inflexible as the Committee may well wish to require an apology, mandatory training and a total or partial suspension, or may wish to reduce the period of the suspension in the event that the member submits a written apology. Or the Committee may feel that a partial suspension should be accompanied by a restriction on access to Council premises or resources.

(ii) Response

The Standards Committee should be able to impose any combination of the available sanctions, provided that the total period during which the member is subject to any suspension or restriction should not exceed 3 months. Accordingly the sanctions available to the Committee should be as follows:

“Any one, or a combination of, the following sanctions –

- (a) censure of that member;
- (b) restriction for a maximum period of three months of that member’s access to the premises of the authority and the member’s use of the resources of the authority;
- (c) partial suspension of that member for a maximum period of three months; suspension of that member for a maximum period of three months;
- (d) requirement to submit a written apology in a form satisfactory to the Standards Committee;
- (e) requirement to undertake training as specified by the Standards Committee; and
- (f) requirement to undertake conciliation as specified by the Standards Committee.

Provided that the maximum period during which the member shall be subject to a suspension or restriction shall not exceed 3 months”

**(i) Notification to the Standards Committee of reference for local investigation**

**(i) The issue**

The draft guidance suggests that, when the ESO refers a matter to the Monitoring officer for local investigation, the ESO will notify the member and the complainant that the matter has been referred for local investigation. It then suggests that, in order to maintain confidentiality, the Monitoring Officer should notify the members of the Standards Committee by confidential letter that he is arranging an investigation, but should not name the complainant or the member, or give any details of the alleged breach of the Code of Conduct.

**(ii) Response**

It is suggested that notification to the complainant, the member and the parish clerk should be undertaken by the Monitoring Officer rather than by the ESO, as the Monitoring Officer can then advise them who has been appointed to undertake the investigation. The propose notification to the members of the Standards Committee appears to be completely pointless in the form suggested and so this requirement for notification should be dropped.

### **3. Financial Implications**

The costs of dealing with such investigations will have to be met from within the existing budgets.

## Final Report Clearance

Signed by

Chair of Standards Committee

Date

Received by

Head of Scrutiny and Democratic Services

Date

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