



STANDARDS COMMITTEE

—Agenda—

**MONDAY
19 APRIL 2004**

7.00 PM

**COMMITTEE ROOM 4
HAMMERSMITH TOWN
HALL
LONDON W6 9JU**

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Membership

Mr. Christopher Troke (Chair)
Mr. Steven Moussavi
Ms. Rafela Fitzhugh
Councillor Colin Aherne
Councillor Chris Allen
Councillor Nicholas Botterill

jpc/02/01/04

STANDARDS COMMITTEE

—Agenda—

19 APRIL 2004

<u>ITEM</u>		<u>PAGE</u>
1.	ELECTION OF CHAIR FOR THE MEETING	
1.1	If the Chair of the Committee is absent for any reason, members of the Committee (independent and Councillor) shall elect a Chair for the meeting from among the independent members present.	
2.	APOLOGIES FOR ABSENCE	
3.	MINUTES – 12 JANUARY 2004	3 – 7
3.1	To confirm and sign the Minutes of the meeting held on 12 January 2004 as an accurate record.	
	Appendix 1 to Minutes	8
4.1	DECLARATION OF INTERESTS	
4.1	If a Councillor has any prejudicial or personal interests in a particular report, they should declare an interest.	
4.2	A Councillor should not take part in the discussion or vote on a matter in which they have a prejudicial interest. They should withdraw from the meeting while the matter is under discussion unless the disability to discuss the matter has been removed by the Standards Committee.	
5.	“CRACK THE CODE” – 3RD ANNUAL ASSEMBLY OF STANDARDS COMMITTEES	9 – 18
5.1	The Committee is asked to note the attached details of the 3 rd Annual Assembly of Standards Committees, which will be held on 13 & 14 September 2004 at the ICC Birmingham, and to nominate up to two delegates to attend.	
6.	ADVICE & GUIDANCE FROM THE STANDARDS BOARD FOR ENGLAND	19 – 21
6.1	The Committee is asked to note recent advice and guidance issued by the Standards Board for England.	

**7. ODPM CONSULTATION PAPER – LOCAL AUTHORITIES
(CODE OF CONDUCT) (LOCAL DETERMINATION)
(AMENDMENT) REGULATIONS 2004** 22 – 23

7.1 The Committee is asked to note that ODPM has now published the Consultation Paper setting out proposals for the local investigation of allegations of misconduct by Monitoring Officers/Standards Committees.

[ODPM Consultation Paper](#) 24 – 38

**8. DETERMINATION & INVESTIGATIONS – PROCESS &
PROCEDURES** 39 – 43

8.1 The Committee is asked to approve the attached draft Model Procedures, which will be used locally when cases are referred to the Monitoring Officer/Standards Committee for local investigation and/or determination.

9. ANY OTHER BUSINESS

jpc/ 07/04/04

STANDARDS COMMITTEE

—Minutes—

12 JANUARY 2004

Present:

Mr.Christopher Troke (Chair)
Mr.Steven Moussavi
Ms.Rafela Fitzhugh
Councillor Colin Aherne
Councillor Chris Allen
Councillor Nicholas Botterill

ITEM		ACTION BY
Item 1	<u>APOLOGIES FOR ABSENCE</u>	PAD/JPC to note
	None.	
Item 2	<u>MINUTES – 29 OCTOBER 2003</u>	PAD/JPC to note
	<u>RESOLVED:</u> That the Minutes of the meeting held on 29 October 2003 be confirmed and signed as an accurate record.	
Item 3	<u>DECLARATIONS OF INTEREST</u>	PAD/JPC to note for minutes.
	Councillor Aherne declared a personal and prejudicial interest in a late urgent report taken at the meeting – <i>Application for Grant of Dispensation: Administration members of the Planning Applications Committee</i> – as a member of that Committee and colleague of the Councillor submitting the planning application. Councillor Aherne did not speak or vote, and left the meeting during discussion of this item.	PAD/PS to note for Members' Register
	Councillor Allen submitted a statement, a copy of which is appended to these minutes at <u>Appendix 1</u> .	
Item 4	<u>ADJUDICATION PANEL FOR ENGLAND APPEAL FORM</u>	PAC/JPC to note & log form
	The Committee received a report on the pro-forma appeal form devised by the Adjudication Panel for England for use by members wishing to appeal against Standards Committee determinations.	

Members noted that the form was a request for permission to appeal, the grant of which lay at the sole discretion of the President of the Tribunal, based on the merits of the individual case.

Members queried whether the decision of the President of the Tribunal to refuse to allow an appeal could be challenged, as this appeared to be an infringement of their inherent appeal rights.

The Chair agreed to contact the Adjudication Panel to find out whether any caselaw on the matter existed, and where requests to appeal had previously been turned down, the grounds / reasons for doing so.

Chair (Mr. Troke) to contact Adjudication Panel.

RESOLVED:

That the report and pro-forma appeal form be noted.

Item 5 **s.66 DETERMINATIONS - FORMS AND PROCEDURES**

The Committee received a Power Point presentation from the Head of Legal Services setting out a draft local procedure the Committee was likely to follow if and when a referral from an Ethical Standards Officer was received for determination .

The following points were raised by Members during discussion on the presentation:

a) Although the Standards Board had advised local Standards Committees not to re-open the ESO investigation, it seemed to members that the hearing would have to be *de novo*, otherwise the Standards Committee would not be in a proper position to make a judgement if it had not heard for itself all the facts and evidence appertaining to the allegation made.

PAD/MO (HP) & HLS (MC) to note

b) Regarding representation at hearings, it appeared that a member was permitted to be accompanied by a "Mackenzie's Friend", but that person could not also represent the member at the hearing, except by prior consent of the Standards Committee. This appeared to Members to give them less rights of representation at hearings than was accorded to the Council's own employees at lesser quasi-judicial tribunals. Members suggested that the words " ... *which shall not unreasonably be refused* " ... be added to the text of slide 7 to clarify the matter.

PAD/HLS (MC) & JPC to note

c) Members asked what sort of personal circumstances would make a hearing exempt under the Access to Information Rules? The Head of Legal Services clarified that the Determination Regulations and Article 6 of the ECHR generally provided for the hearings to be held in public, except in very strictly limited

circumstances, such as when personal medical information was being disclosed.

Members queried, if a hearing was heard part-exempt, whether the published decision letter setting out the Committee's findings and reasons would then also have to be partly exempt, as it would seem anomalous not to do so, however confusing that might be to the public. Members also queried whether the decision of the Standards Committee should be made public at this early stage, if an appeal (which might be successful) by a respondent member was lodged against it?

d) Members also queried whether paras.16 -19 of the draft procedure was strictly necessary. Members' preferred procedure was to have both parties submit their evidence (followed by questioning and cross-examination), then summing up of each case (with no new evidence being permitted and the respondent member having the last word), followed by the decision-making on the case (when all parties were asked to leave).

PAD/HLS (MC) &
JPC to note

It was the view of Members that the decision, and any sanction to apply if a breach of the Code was found, should be made together at the same time rather than separately as in the draft procedure. It was also the view of the Committee that hearings should not be held at night, and that although a brief oral decision should be announced on the day, the full written decision (with reasons) should be available 10 working days after the hearing (rather than within 3 working days as stated in the draft procedure).

PAD/HLS (MC) &
JPC to note

RESOLVED

That a revised procedure incorporating Members' preferred methodology for hearing cases and textual changes be drafted and circulated for comment to all Committee members in time for the next meeting.

PAD/HLS (MC) &
JPC to note &
action.

Item 6

LATE URGENT ITEM: APPLICATION FOR GRANT OF DISPENSATION - ADMINISTRATION MEMBERS OF PLANNING APPLICATIONS COMMITTEE.

Reason for Urgency

The Committee was asked to consider this item as an urgent late item as the matter the subject of the dispensation request was due to be considered at the Planning Applications Committee meeting due to be held on 27 January 2004. The next ordinary meeting of the Standards Committee was not scheduled to be held until 19 April 2004, and a decision on the dispensation request was required before that date.

PAD/HLS (MC) &
JPC to note &
action.

Noted a Declaration of Personal and Prejudicial Interest by Councillor Aherne as an Administration member of the Planning Applications Committee making the dispensation request, and as a friend and colleague of the Councillor making the planning application. Councillor Aherne left the meeting, and did not speak or vote on the item.

PAD/PS to note for Members' Register

Noted a statement submitted by Councillor Allen (attached as **Appendix 1** to these minutes) in relation to this matter. Councillor Allen remained at the meeting, and spoke and voted on the item.

PAD/JPC to note for minutes

The Committee received a report on a request for the grant of a dispensation to all Administration members of the Planning Applications Committee, which was due to consider a planning application submitted by a fellow Administration Councillor at its meeting on 27 January 2004.

The Administration members on the Planning Applications Committee had all declared a personal and prejudicial interest on the item, which meant that over 50% of those members entitled and required to participate in the Planning Applications Committee were effectively prohibited from doing so, leaving insufficient members to form a quorum, and thus rendering the Committee incapable of fulfilling its statutory function in determining this particular planning application.

The Monitoring Officer clarified that the matter was only being brought to Committee as it involved a Councillor application – in normal circumstances, minor applications would be dealt with under delegated powers by planning officers – but it was necessary for officers to be seen not to be exercising any bias or favour.

Councillor Botterill stated that he did not feel it appropriate that the business of the Planning Applications Committee in carrying out its statutory function should be rendered impossible in this manner, and the Administration should give serious consideration to his earlier proposal of lowering the quorum to 4, which would permit business to be transacted without the need to constantly seek dispensations.

The recommendation to the report was put to the vote:

FOR – 3
AGAINST – 1
ABSTENTIONS – 1

The recommendation was declared **CARRIED.**

RESOLVED

1. That the Standards Committee agrees the grant of dispensations to Councillors Aherne, Cartwright, Harcourt, Khaled, Powell and Treloggan in order to enable them to participate and vote in the Planning Applications Committee, scheduled to be held on 27 January 2004.

PAD/HLS & PS
to note for
Register

PAD/RL to note
for PAC

2. That the Head of Legal Services reissue to all members of the Planning Applications Committee the Standards Board for England's advice and guidance on the definition of "friend".

HLS (MC) to
issue
appropriate
guidance to PAC
members

Item 7 **ANY OTHER BUSINESS**

None

Meeting began 7:00pm
Meeting Ended: 9.15pm

CHAIR

jpc/10/02/04

APPENDIX 1**DECLARATION OF INTEREST**

In relation to the item on the agenda of tonight's Standards Committee meeting dealing with the application for Grant of Dispensation by Administration members of the Planning Applications Committee to allow them to participate in the determination of a planning application made by Councillor Stephen Cowan, I make the following declaration.

I have the same relationship with Councillor Cowan as do the Administration members of the Planning Applications Committee. While this relationship would preclude me from participating in the decision on his planning application (failing a Grant of Dispensation), I do not consider that it precludes me from participating in the decision on the Grants of Dispensation. The matter before the Standards Committee concerns the ability of the Council to discharge its statutory duty to determine planning applications. The Standards Committee will not (indeed cannot) decide on the merits or otherwise of the planning application in question.

I have taken legal advice on the matter.

In summary, I do not believe that I have a personal or prejudicial interest in the matter to be decided by the Standards Committee, though I think it proper to make this declaration.

Councillor Chris Allen
12 January 2004

CRACK THE CODE

Third Annual Assembly of Standards Committees
13-14 SEPTEMBER 2004, ICC, BIRMINGHAM

ADVANCE PROGRAMME • ISSUE 1

AGENDA

DAY ONE | MONDAY 13 SEPTEMBER 2004

CRACK THE CODE

"There is growing support for raising standards of behaviour, but is everyone clear about the application of the Code? What are the areas of difficulty? How can the Code be improved? Our conference will confront these issues and many more.

I hope you find this programme offers a good platform on which together, with council leaders, chief executives, standards committee members and monitoring officers, we can make real progress and crack the Code."



Sir Anthony Holland Chair
The Standards Board for England

9.30 – 11.00

REGISTRATION

Refreshments available

11.00 – 11.20

WELCOME

Sir Anthony Holland, Chair, The Standards Board for England

11.20 – 11.35

REPORTING BACK

David Prince, Chief Executive, The Standards Board for England

A review of developments over the year, including the introduction of local investigations.

11.35 – 12.05

OPEN TO CHANGE

Rt Hon Nick Raynsford MP, Minister for Local Government and the Regions

The minister expresses the Government's commitment to the ethical agenda and a review of the Code.

12.05 – 12.30

DEVELOPING THE CODE

Patricia Hughes, Deputy Chair, The Standards Board for England

Key issues to consider.

12.30 – 14.00

LUNCH

14.00 – 15.00

WORKSHOP SESSION 1



Delegates will participate in one of the workshops listed below:

DEVELOPING THE CODE

Delegates come together to discuss possible revisions to the Code.

Nine workshops, each with a maximum of 50 delegates.

NOT ENOUGH LEADERS?

A look at the role of chief executives and council leaders in promoting an ethical environment and getting the culture of an authority right.

Feature workshop, maximum attendance of 500.

15.00 – 15.15

COMFORT BREAK

15.15 – 16.15

WORKSHOP SESSION 2



Delegates will participate in one of the workshops listed below, which they did not attend during workshop session 1:

DEVELOPING THE CODE

Delegates come together to discuss possible revisions to the Code. Nine workshops, each with a maximum of 50 delegates.

NOT ENOUGH LEADERS?

A look at the role of chief executives and council leaders in promoting an ethical environment and getting the culture of an authority right.

Feature workshop, maximum attendance of 500.

16.15 – 16.45

COMFORT BREAK

Refreshments available

16.45 – 17.45

WORKSHOP SESSION 3



WORKSHOP OPTIONS

• **THE BIGGER PICTURE**

Delegates debate broader issues about misconduct that concern the authority as a whole, rather than just particular individuals.

Feature workshop, maximum attendance of 500.

Other workshops are designed for a maximum of 50 delegates.

- **ACROSS THE BORDER**
- **BULLYING**
- **CONFIDENCE IN LOCAL DECISIONS**
- **IS GOOD ENOUGH GOOD ENOUGH?**
- **MATTERS OF CONSCIENCE**
- **OPEN HOUSE Q & A**
- **PLANNING AND THE CODE**
- **THE LOCAL EXPERIENCE**
- **WHAT DO MONITORING OFFICERS NEED?**

17.45 – 18.45

FRINGE EVENTS (OPTIONAL)

19.30 – LATE

DRINKS RECEPTION

CONFERENCE DINNER

AGENDA

DAY TWO | TUESDAY 14 SEPTEMBER 2004

8.15 – 9.00

REFRESHMENTS

9.00 – 10.00

WORKSHOP SESSION 4



WORKSHOP OPTIONS

- **BEST FRIEND OR BIG BROTHER?**

The role of The Standards Board for England and the Code in the local government improvement agenda.

Feature workshop, maximum attendance of 500.

Other workshops are designed for a maximum of 50 delegates.

- AT THE SHARP END
- BAD, BUT NOT BAD ENOUGH
- CONFIDENCE IN LOCAL DECISIONS
- LEARNING FROM OUTCOMES
- MATTERS OF CONSCIENCE
- OPEN HOUSE Q & A
- PLANNING AND THE CODE
- SHINE YOUR LIGHT
- THE LOCAL EXPERIENCE

10.00 – 10.15

COMFORT BREAK

10.15 – 11.15

WORKSHOP SESSION 5



WORKSHOP OPTIONS

- **UP TO STANDARD?**

The Audit Commission's expectations of standards committees in the context of comprehensive performance assessments.

Feature workshop, maximum attendance of 500.

Other workshops are designed for a maximum of 50 delegates.

- ACROSS THE BORDER
- AN INDEPENDENT PERSPECTIVE
- BAD, BUT NOT BAD ENOUGH
- BULLYING
- IS GOOD ENOUGH GOOD ENOUGH?
- LEARNING FROM OUTCOMES
- MATTERS OF CONSCIENCE
- OPEN HOUSE Q & A
- WHAT DO MONITORING OFFICERS NEED?

11.15 – 11.45

COMFORT BREAK

Refreshments available

11.45 – 12.45

MORE THAN MAKING THE TRAINS RUN ON TIME?

This year's big debate asks, 'Is the ethical agenda a distraction from providing good services?'

12.45 – 14.00

LUNCH

14.00 – 15.00

WORKSHOP SESSION 6



WORKSHOP OPTIONS

- **CAMPAIGNERS AS COUNCILLORS**

Does the Code conflict with members presenting their views and representing their constituents?

Feature workshop, maximum attendance of 500.

Other workshops are designed for a maximum of 50 delegates.

- AN INDEPENDENT PERSPECTIVE
- AT THE SHARP END
- BAD, BUT NOT BAD ENOUGH
- BULLYING
- CONFIDENCE IN LOCAL DECISIONS
- LEARNING FROM OUTCOMES
- OPEN HOUSE Q & A
- SHINE YOUR LIGHT
- THE LOCAL EXPERIENCE

15.00 – 15.15

COMFORT BREAK

15.15 – 16.10

DEVELOPING THE CODE

Patricia Hughes, Deputy Chair, The Standards Board for England

Summary of feedback gained from delegates through workshops, with an opportunity for questions and answers.

16.10 – 16.15

FINAL THOUGHTS

Sir Anthony Holland, Chair, The Standards Board for England

16.15

CLOSE

Refreshments available

WORKSHOPS

There are two types of workshops available. Feature workshops have a maximum capacity of 500 delegates and will provide a platform for debating key issues. Smaller workshops, held with no more than 50 delegates, will offer the opportunity for discussion in a less formal setting.

Those workshops indicated with a ★ are feature workshops.

ACROSS THE BORDER

Local authorities in Scotland also have a body in place that oversees ethical conduct among members. It shares its experiences.

AN INDEPENDENT PERSPECTIVE

An opportunity for independent members to get together to debate issues of current interest to them.

AT THE SHARP END

Being reported to The Standards Board for England for allegedly breaching the Code is never going to be pleasant, but how can we improve the experience?

BAD, BUT NOT BAD ENOUGH

A discussion on what can be done about poor behaviour that does not warrant a full investigation.

★ BEST FRIEND OR BIG BROTHER?

FEATURE WORKSHOP

An exploration of the role of The Standards Board for England and the Code in the local government improvement agenda.

BULLYING

This session will use role-play to explore the different types of bullying and the role of the Code in combating such behaviour.

★ CAMPAIGNERS AS COUNCILLORS

FEATURE WORKSHOP

Does the Code conflict with members presenting their views and representing their constituents?

CONFIDENCE IN LOCAL DECISIONS

How can standards committees ensure their authorities, and local communities, have confidence in their independence and ability to make fair and appropriate determinations?

★ DEVELOPING THE CODE

FEATURE WORKSHOP

Delegates come together to discuss possible revisions to the Code.

All delegates will participate in this workshop either during workshop session 1 or workshop session 2.

IS GOOD ENOUGH GOOD ENOUGH?

What level of investigation is necessary for non-major cases, both locally and nationally?

LEARNING FROM OUTCOMES

What are the implications of the adjudications that have taken place so far?

MATTERS OF CONSCIENCE

Does the Code hinder a member's right to communicate with their community and is the obligation to report breaches of the Code onerous?

★ **NOT ENOUGH LEADERS?**

FEATURE WORKSHOP

A look at the role of chief executives and council leaders in promoting an ethical environment and getting the culture of an authority right.

All delegates will participate in this workshop either during workshop session 1 or workshop session 2.

OPEN HOUSE Q & A

Open house for delegates to put questions to The Standards Board for England. Representatives from legal, policy and guidance and an ethical standards officer will be on the panel.

PLANNING AND THE CODE

A look at the topical issues relating to planning and the Code.

SHINE YOUR LIGHT

What does an excellent standards committee look like?

★ **THE BIGGER PICTURE**

FEATURE WORKSHOP

Delegates debate broader issues about misconduct that concern the authority as a whole, rather than just particular individuals.

THE LOCAL EXPERIENCE

Many authorities now have experience of local investigations and determinations, but how are they working in practice? What are the issues and outcomes that have emerged? This session will include case studies.

★ **UP TO STANDARD?**

FEATURE WORKSHOP

The Audit Commission's expectations of standards committees in the context of comprehensive performance assessments.

WHAT DO MONITORING OFFICERS NEED?

Based on research commissioned by The Standards Board for England and involvement from the Association of Council Secretaries and Solicitors.

HOW TO GET THERE

The ICC is located in the centre of Birmingham. You can travel there in a number of ways:

BY TRAIN

Services to Birmingham New Street Station travel from locations all over the country. Services to Birmingham Snow Hill Station run in the local area. Please telephone National Rail Enquiries on 08457 48 49 50 for further information.

BY CAR

Birmingham is easily accessible via a network of motorways.

BY BUS

Shuttle buses will operate between Birmingham New Street Station, the hotels listed on the hotel reservation form, and the ICC during the morning of 13 September and at the close of conference on 14 September.

TAXI

The venue is a short taxi ride from Birmingham New Street and Birmingham Snow Hill stations.

CAR PARKING

There are five public multi-storey car parks close to the ICC.

A location map and a shuttle bus schedule will be sent to delegates in a final mailing, shortly before the conference. The map will indicate the motorways, train stations and car parks.

FURTHER INFORMATION

If you have any enquiries regarding the conference, please contact:

Benedict Business Resources, St Jude's Place,
PO Box 617, Albury, Guildford, Surrey, GU5 9XU

Telephone: 01483 205 432 Fax: 01483 202 335

E-mail: benedictbr@btinternet.com

Alternatively, visit www.standardsboard.co.uk/events

19 APRIL 2004

CONTRIBUTORS

STANDARDS BOARD FOR ENGLAND –
ADVICE & GUIDANCE FOR MEMBERS

ALL WARDS

PAD (DPA)

The Standards Board for England has recently issued advice and guidance for members relating to:

- Registering and declaring membership of the Freemasons;
- Registering and declaring membership of political-party councillor associations;
- Requesting a review of a Standards Board decision not to refer an allegation to an ESO for investigation

In addition, at the last meeting of the Committee (12 January 2004), members requested further clarification of the meaning of the term “friend” in the context of the Code of Conduct.

The advice of the Standards Board on this matter, taken from its Case Review (Vol.1 No.1), is set out in the attached report for members’ information.

RECOMMENDATIONS:

1. That the Committee notes the Standards Board for England’s advice and guidance.
2. That the advice and guidance be circulated to all Councillors for their information.

1. Registering & declaring membership of the Freemasons

Following discussions with the United Grand Lodge of England, the Standards Board for England has advised that it is necessary for Freemasons to declare their membership of the Freemasons' Grand Charity under paragraph 15(c) of the Code of Conduct, which states that members need to register with their Authority their membership of charities or other bodies that are "directed to charitable purposes".

All Freemasons pay an annual subscription fee to their own individual Masonic Lodges, a part of which automatically goes to the Freemasons' Grand Charity. As a result, Freemasons are obliged under the Code of Conduct to register their membership of the Grand Charity on the Register of Members' Interests, and to declare this interest, whenever it is appropriate.

2. Registering & declaring membership of political-party councillor associations

Following an enquiry from the Conservative Party about membership of the Conservative Councillors' Association, the Standards Board for England has advised that membership of councillor associations should be registered with the Authority in the Register of Members' Interests under paragraph 15(d) of the Code of Conduct.

Paragraph 15(d) of the Code of Conduct requires the registering of membership of bodies "whose principal purposes include the influence of public opinion and policy". Political-party councillor associations fall within that definition under paragraph 15(d) of the Code, and therefore need to be registered.

3. Applying for review of a Standards Board decision not to refer an allegation for investigation

The Standards Board has advised that, whereas previously a decision taken by the Board not to refer an allegation to an ESO for investigation could not be reviewed except by way of an action for judicial review, it is now possible to seek a review of such decisions, following changes made by the Government to the primary legislation under s.112 of the Local Government Act 2003.

Prior to the changes to the primary legislation, the decision whether or not to investigate an allegation lay with the Standards Board alone and could not be delegated, as the Board was the highest level of the organisation. Following the changes to the legislation, the Board has delegated to the Head of its Referral Unit the role of deciding which cases should be referred for investigation, thus enabling a right of review to the Standards Board against any decisions not to refer.

Any parties dissatisfied with the decision of the Head of the Referral Unit should write to the Chief Executive of the Standards Board, quoting the case reference number, requesting that the decision be reviewed.

4. Clarification of the term “friend” in the context of the Code of Conduct

The Standards Board for England, in its Case Review (Vol.1 No.1), has given a useful working definition of the meaning of the term “friend” in the context of the Code of Conduct.

A friend is defined as someone well-known to another, and regarded with liking, affection and loyalty by that person. A closer relationship is implied here rather than a mere acquaintance. Mutual membership of an organisation (such as a local charity, service association, lobbying group, political party or even a political group on an authority) is unlikely to be sufficient on its own to establish the existence of a “friendship” between two people.

The Standards Board advises that Members and Monitoring officers might wish to consider the following questions when considering whether or not a “friendship” exists:

- How many times do the two people meet?
- Where do they meet?
- Do they regularly attend the same social events?
- Do they know each other’s families?
- Do they visit one another’s homes?
- Are they close or connected in other ways?

The Standards Board advises that these questions however should never be taken in isolation, as it is the cumulative evidence of a close relationship that will establish a “friendship”. A certain amount of caution also needs to be exercised, as most members will know each other, and will often attend the same functions because of their positions in the community. A level of relationship above and beyond that which usually exists between colleagues and political associates will therefore be required to establish the existence of the “friendship”.

jpc/29/03/04

19 APRIL 2004

CONTRIBUTORS

PAD (DPA)

ODPM CONSULTATION PAPER – LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) (AMENDMENT) REGULATIONS 2004

ALL WARDS

Members will recall that the Local Authorities (Code of Conduct) (Local Determination) Regulations came into force last year on 30 June 2003. Under those Regulations, an Ethical Standards officer could refer a case to a local Standards Committee for determination, having conducted the necessary preliminary investigation beforehand.

The ODPM has now issued the long-awaited Consultation Paper and draft Regulations setting out the Government's proposals for the local investigation of misconduct allegations by local Standards Committees (*attached*).

The ODPM Consultation Paper sets out proposals to make amendments to the 2003 Local Determination Regulations which will permit Monitoring officers, for the first time, to carry out local investigations into allegations referred to them from the Standards Board that the Code of Conduct has been breached. The proposed amendments will also provide for local Standards Committees to conduct hearings to consider their Monitoring Officer's findings following such local investigations.

These new draft Regulations form the corollary half of the local determination/investigation regime and will finally empower local Monitoring Officers and Standards Committees with their own investigatory and determination powers. The ODPM has asked for any comments on the proposals to be submitted by 18 May. The Monitoring officer has considered the draft proposals as set out in the Consultation Paper, but has no further comments to make other than to welcome the proposals.

RECOMMENDATION:

That the Standards Committee agree the ODPM proposals, as set out in the attached Consultation Paper.

jpc/07/04/04



Office of the
Deputy Prime Minister

Creating sustainable communities

Local investigation of allegations of misconduct

Consultation by the Office of the Deputy Prime
Minister on the proposed Local Authorities
(Code of Conduct)(Local Determination)
(Amendment) Regulations 2004

Office of the Deputy Prime Minister
Eland House
Bressenden Place
London SW1E 5DU
Telephone 020 7944 4400
Internet service www.odpm.gov.uk

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Introduction

The Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, which came into force on 30 June 2003, make provision for the consideration by standards committees of relevant authorities of matters referred to them by ethical standards officers (ESOs) following the completion of ESOs' reports on whether authority members have breached the code of conduct for members. The Regulations include arrangements for the convening of committee hearings to consider ESOs' reports and appeal arrangements to apply in cases where members who are the subject of committees' findings seek and receive permission to appeal against those findings.

The aim of the proposed new Amendment Regulations is to make provision for monitoring officers to investigate allegations referred to them by ESOs that the code of conduct has been breached. They also provide for standards committees to consider reports made by monitoring officers following these investigations.

Purpose of consultation

This consultation paper seeks views on our proposals to amend the 2003 Regulations with regard to the way matters referred to the monitoring officer of the authority should be dealt with. The proposals amend the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 and set out how a monitoring officer should conduct an investigation into a claim of misconduct against a council member, referred to him by an ESO. They also make changes to allow standards committees to consider reports referred to them by the monitoring officer, and not just, as now, reports by ESOs. The intention is that the hearing and appeals procedures set out in the existing Regulations will apply in the case of an investigation by a monitoring officer, as well as an investigation by an ESO.

These proposed Regulations follow the coming into effect on 18 November 2003 of section 113 of the Local Government Act 2003, which gave a new power to the monitoring officer to delegate his or her functions to a person nominated by him or her. Without this provision, the proposed Regulations would not have been workable, since monitoring officers are the usual source of advice to members, and in some cases conflicts of interest could have arisen if a monitoring officer had to investigate actions taken after he or she had provided advice on the same issue.

In addition, we are consulting on a draft functions order under section 57(3) of the Local Government Act 2000. The purpose of this is to clarify and put beyond doubt the extent of the powers available to the Standards Board for England in issuing guidance to standards committees and monitoring officers on carrying out their determination and inspection roles under the Regulations.

ODPM is consulting on these Amendment Regulations and functions order in parallel with consultation being carried out by the Standards Board on guidance to monitoring officers on how they should carry out their role.

The draft Amendment Regulations and draft functions order are enclosed at Annex A, and below, at Annex B, is a summary of the intended effect of the changes.

Issues for consultees

The Government would be interested to hear the views of consultees on any issues raised by the draft Regulations enclosed, and in particular on the following questions:

1. Are the investigative powers proposed for monitoring officers necessary and sufficient?
2. Are the powers proposed for standards committees to consider reports referred to them by monitoring officers necessary and sufficient?
3. Should all cases investigated by the monitoring officer be referred to the standards committee for decision? Or, alternatively, is there a case for giving the monitoring officer the function of determining whether for the most minor cases no evidence of a breach of the code has occurred, so no further action is needed? In the latter option, where there was such a determination, there would be no need for the case to be considered by the standards committee, and so such a case could be referred to the committee 'for information only'. As our proposals are currently drafted, however, every case will be considered by the committee (either by considering and accepting a monitoring officer's finding that there is no evidence of a breach of the code or by holding a full hearing into the matter), as a reassurance that all cases, including the most minor, will be subject to committee scrutiny.
4. Should monitoring officers be able to refer cases back to the ESO? Should there be provision for cases to be referred back to the ESO by the monitoring officer if new evidence is discovered suggesting that the case is more serious than originally thought by the ESO when he originally referred it to the monitoring officer? This could assist in ensuring that serious cases are appropriately treated.
5. Is the balance between the actions required of monitoring officers under the proposed Amendment Regulations and the Standards Board's proposed guidance to monitoring officers appropriate?

About this consultation exercise

Copies of this consultation paper are being sent to all principal local authorities, parish councils and other relevant bodies.

Any views which consultees may have on the proposals, including on the questions raised above should be sent by **18 May 2004** to:

William Tandoh
Office of the Deputy Prime Minister
Democracy and Local Governance Division
5/A1 Eland House
Bressenden Place
London SW1E 5DU

e-mail: william.tandoh@odpm.gsi.gov.uk

In due course, the Office may wish to publish responses to this consultation exercise or deposit them in the Office's library. Unless, therefore, a respondent specifically asks that a response be treated as confidential, it may be published or otherwise made public. Confidential responses will be included in any aggregate summary of the numbers of comments received and views expressed.

Annex A

STATUTORY INSTRUMENTS

2004 No. 0000

LOCAL GOVERNMENT

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

<i>Made</i> - - - -	2004
<i>Laid before Parliament</i>	2004
<i>Coming into force</i> - -	2004

The First Secretary of State, in exercise of the powers conferred upon him by sections 53(6) and (12), 54(4), 55(8), 66, 73(1) to (6) and 105 of the Local Government Act 2000^(a) hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 and shall come into force on *****2004.

(2) These Regulations apply to relevant authorities in England and to Police Authorities in Wales.

Amendment of the Relevant Authorities (Standards Committee) Regulations 2001(b)

2.—(1) The Relevant Authorities (Standards Committee) Regulations 2001 shall be amended as follows.

(2) In regulation 7(4) for the words “section 64(2) or 71(2) of the Act” there shall be substituted the words “section 60(2)(b), 60(3), 64(2), 70(4), 70(5) or 71(2) of the Act”.

(3) In regulation 7(4) for the words “section 64(2) of 71(2) of the Local Government Act 2000” there shall be substituted the words “section 60(2)(b), 60(3), 64(2), 70(4), 70(5) or 71(2) of the Local Government Act 2000”.

(a) 2000 c.22.
(b) 2001/2812.

Amendment of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003

3. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003(a) shall be amended in accordance with the provisions of these Regulations.

Amendment of Regulation 2 (Interpretation)

4.—(1) Regulation 2 shall be amended as follows.

(2) After paragraph (2) there shall be inserted the following paragraph—

“(3) Any reference in these Regulations to a monitoring officer shall include any person nominated by a monitoring officer as his deputy for the purposes of section 5(7) of the Local Government and Housing Act 1989(b) and any person nominated under the provisions of section 82A (2) or (3) of the Local Government Act 2000 to perform any function.(c)”

Amendment of Regulation 4 (Modification of section 63 of the Local Government Act 2000)

5.—(1) Regulation 4 shall be amended as follows.

(2) For paragraph (2) there shall be substituted the following paragraph—

“(2) Section 63(1) of the Act shall be modified so that after paragraph (a) there is inserted the following paragraph—

“(aa) the disclosure is made for any one or more of the following purposes—

- (i) enabling a monitoring officer to perform any of his functions under this Part or under Regulations made under this Part in connection with the investigation and consideration of an allegation of a breach of an authority’s code of conduct;
- (ii) enabling a standards committee or sub-committee of a standards committee established under this Part to perform any of its functions under this Part or under Regulations made under this Part in connection with the investigation and consideration of an allegation of a breach of an authority’s code of conduct; or
- (iii) enabling a tribunal drawn from members of the Adjudication Panel to consider any appeal from a finding of a standards committee or sub-committee of a standards committee established under this Part in connection with an allegation of a breach of an authority’s code of conduct.””.

Amendment of Regulation 5 (Reports received by a monitoring officer)

6.—(1) Regulation 5 shall be amended as follows.

(2) For Regulation 5 there shall be substituted the following regulation.

“Matters referred to a monitoring officer by an ethical standards officer

5.—(1) Where a matter is referred to a monitoring officer of an authority under section 64(2) or 71(2) of the Act he shall—

- (a) send a copy of any report received from the ethical standards officer who has referred the matter to any member who is the subject of such a report; and

(a) S.I. 2003/1483.

(b) 1989 c. 42.

(c) Section 82A was inserted in the Local Government Act 2000 by section 113(2) of the Local Government Act 2003 (2003 c.26).

- (b) arrange for the standards committee of that authority to meet to consider that report.
- (2) where a matter is referred to a monitoring officer of an authority under section 60(2)(b), 60(3), 70(4) or 70(5) of the Act he shall—
- (a) inform
 - (i) any member who is the subject of the allegation of the breach of the code of conduct;
 - (ii) the person who made the allegation; and
 - (iii) any parish council concerned
 that the matter has been referred to him for investigation;
 - (b) subject to paragraph (5), conduct an investigation into the matter referred to him;
 - (c) give any member who is the subject of the investigation the opportunity to comment on any allegations made;
 - (d) have regard during the conduct of his investigation to any guidance issued by the Standards Board pursuant to section 57(5) of the Act^(a) or pursuant to any order made under section 57(3) of the Act^(b).
- (3) Where a matter is referred to a monitoring officer of an authority under section 60(2)(b) 60(3) 70(4) or 70(5) of the Act he may—
- (a) call upon such advice and assistance as he may reasonably require to assist him in the investigation;
 - (b) require any authority concerned to meet the cost of such advice and assistance so far as such cost is reasonable; and
 - (c) require any authority concerned to afford him reasonable access to such documents in the possession of that authority as appear to him to be necessary for the purpose of conducting his investigation.
- (4) Where a matter is referred to a monitoring officer of an authority under section 60(2)(b), 60(3), 70(4) or 70(5) of the Act he may at any stage prior to the completion of his investigation make a written request to the ethical standards officer concerned requesting that the matter be referred back to that ethical standards officer for him to undertake an investigation and any such request must set out the reasons for making that request.
- (5) Where a matter is referred to an ethical standards officer under paragraph (4) the ethical standards officer may at his discretion—
- (a) direct that the matter be referred to him for investigation, in which case the monitoring officer concerned shall cease his investigation; or
 - (b) direct that the monitoring officer concerned continue his investigation in accordance with these Regulations.
- (6) Where a matter is referred to a monitoring officer of an authority under section 60(2)(b), 60(3), 70(4) or 70(5) of the Act he shall, following investigation of the matter—
- (a) make one of the following findings—
 - (i) that he considers that there has been a failure to comply with the code of conduct of the authority concerned or of any other authority concerned; or
 - (ii) that he does not consider that there has been a failure to comply with the code of conduct of the authority concerned or of any other authority concerned;
 - (b) prepare a written report concerning his investigation and his findings;

(a) Section 57(5)(b) of the Act gives the Standards Board for England power to issue guidance to relevant authorities in England and police authorities in Wales on matters relating to the conduct of members and co-opted members of such authorities.

(b) Section 57(3) of the Act gives the Secretary of State power to make an order conferring functions on the Standards Board for England in addition to those already conferred by Part III of the Act.

- (c) send a copy of his written report prepared in accordance with sub-paragraph (b) to any member who was the subject of the investigation;
 - (d) refer any report prepared in accordance with sub-paragraph (b) and which makes a finding in accordance with sub-paragraph (a)(i) to the standards committee of that authority for a hearing under the provisions of these Regulations;
 - (e) refer any report prepared in accordance with sub-paragraph (b) and which makes a finding in accordance with sub-paragraph (a)(ii) to the standards committee of that authority for its consideration.
- (7) Where a report is referred to the standards committee of an authority under the provisions of paragraph (6)(e) the standards committee shall make one of the following findings—
- (a) that it accepts the monitoring officer's finding that there has not been a failure to comply with the code of conduct of the authority concerned or of any other authority concerned, or
 - (b) that the matter should be considered at a hearing of the standards committee held under the provisions of these Regulations.
- (8) Where a standards committee makes a finding in accordance with of paragraph (7)(a) it shall, as soon as reasonably practicable—
- (a) take reasonable steps to give written notice of that finding to—
 - (i) any member who is the subject of that finding;
 - (ii) the ethical standards officer concerned;
 - (iii) the standards committee of the authority concerned;
 - (iv) the standards committee of any other authority concerned;
 - (v) any parish councils concerned; and
 - (vi) any person who made an allegation that gave rise to the investigation; and
 - (b) subject to paragraph (9)(b), arrange for notification of the finding to be published in one or more newspapers circulating in the area of the authorities concerned.
- (9) The notice under paragraph (8) (a) shall—
- (a) state that the standards committee found that there had not been a failure to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned; and
 - (b) not be published in accordance with paragraph (8)(b) if the member concerned so requests. ”

Amendment of Regulation 6 (Hearings by Standards Committees)

7.—(1) Regulation 6 shall be amended as follows.

(2) For paragraph (1) there shall be substituted the following paragraph—

“(1) Where

- (a) a monitoring officer refers to a standards committee—
 - (i) a report received from the ethical standards officer under section 64(2) or 71(2) of the Local Government Act 2000, or
 - (ii) a report prepared by the monitoring officer in accordance with regulation 5(6)(b) of these Regulations and which makes a finding in accordance with regulation 5(6)(a)(i); or
- (b) a standards committee makes a finding in accordance with regulation 5(7)(b) that a matter should be considered at a hearing of the standards committee held in accordance with these Regulations,

the standards committee shall convene to conduct a hearing in relation to the allegation that the member failed to comply with the authority's code of conduct or with the code of conduct of any other authority concerned."

(3) In paragraph (2) for sub-paragraphs (a), (b) and (c) there shall be substituted the following sub-paragraphs—

- “(a) the hearing is conducted having regard to any guidance issued by the Standards Board pursuant to section 57(5) of the Act or pursuant to any order made under section 57(3) of the Act;
- (b) subject to sub-paragraph (c), the hearing is held within the period of 3 months beginning—
 - (i) in the case of a report referred by an ethical standards officer under section 64(2) or 71(2) of the Act, on the date on which the monitoring officer first received that report; or
 - (ii) in the case of a report prepared by the monitoring officer under the provisions of regulation 5(6)(b), on the date on which that report is completed;
- (c) the hearing shall not be held until at least 14 days after the date on which—
 - (i) in the case of a report referred by the ethical standards officer under section 64(2) or 71(2) of the Act, the monitoring officer sent the report under the provisions of regulations 5(1)(a) to the member who is the subject of the hearing; or
 - (ii) in the case of a report prepared by the monitoring officer under the provisions of regulation 5(6)(b), he sent the report under the provision of regulation 5(6)(c) to the member who is the subject of the hearingunless in either case the member concerned agrees to the hearing being held earlier”.

Amendment of Regulation 7 (Findings of Standards Committees)

8.—(1) Regulation 7 shall be amended as follows.

(2) In paragraph (3), for sub-paragraphs (iii) to (vi) there shall be substituted the following—

- “(iii) partial suspension^(a) of that member for a maximum period of three months;
- (iv) partial suspension of that member for a maximum period of three months or until such time as he submits a written apology;
- (v) partial suspension of that member for a maximum period of three months or until such time as he undertakes any training or conciliation specified by the standards committee;
- (vi) suspension^(b) of that member for a maximum period of three months;
- (vii) suspension of that member for a maximum period of three months or until such time as he submits a written apology;
- (viii) suspension of that member for a maximum period of three months or until such time as he undertakes any training or conciliation specified by the standards committee.”.

^(a) See section 83(7), (9) and (10) of the Act for the interpretation of partial suspension.

^(b) See section 83 (9) and (10) of the Act for the interpretation of suspension.

Signed by authority of the First Secretary of State

*****2004

Name
Parliamentary Under Secretary of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

[TO BE DRAFTED WHEN REGULATIONS IN FINAL FORM]

2004 No.

LOCAL GOVERNMENT

The Standards Board for England (Functions) Order 2004

<i>Made</i> - - - -	2004
<i>Laid before Parliament</i>	2004
<i>Coming into force</i> - -	2004

The Secretary of State, in exercise of the powers conferred upon him by sections 57(3) and 105(2) of the Local Government Act 2000(a) hereby makes the following Order:

Citation, commencement and application

1. —(1) This Order may be cited as the Standards Board for England (Functions) Order 2004 and shall come into force on [] 2004.

(2) This Order applies in relation to relevant authorities in England and police authorities in Wales.

Interpretation

2. “the Act” means the Local Government Act 2000;
“authority” means a relevant authority in England and a police authority in Wales; and
“monitoring officer” means the monitoring officer who exercises functions in relation to an authority under Part III of the Act(b);

Power to issue guidance

3. In respect of matters referred by an ethical standards officer under section 60(2)(b), 60(3), 64(2), 70(4), 70(5) or 71(2) of the Act, the Standards Board may issue guidance to—

- (a) monitoring officers of authorities; and
- (b) standards committees of authorities.

(a) 2000 c. 22 (“the Act”).

(b) See section 83(12) of the Act for the exercise of functions by a monitoring officer of a responsible authority in relation to parish councils.

Signed by authority of the Secretary of State

Date

Name
Minister of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

[TO BE DRAFTED WHEN REGULATIONS IN FINAL FORM]

Annex B

Summary of the main effects of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 – Amendments to the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 – And the Standards Board for England (Functions) Order 2004

Regulation 2; amendment to Regulation 7 of the Relevant Authorities (Standards Committee) Regulations 2001

Under the existing Regulation, the deliberations of a standards committee in reaching its findings in a case following a report by an ethical standards officer (ESO) are regarded as exempt information and not to be disclosed. The amendment provides for this provision requiring that information is not disclosed also to apply where the case has been referred by the ESO to the monitoring officer for investigation.

Regulation 3

This Regulation states that these Amendment Regulations amend the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.

Regulation 4; amendment to Regulation 2 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003

To amend the definition of “monitoring officer” in the Regulations to make clear that it includes any deputy nominated to act during his absence or illness (as permitted by section 5(7) of the Local Government and Housing Act 1989) and also any person nominated to perform any function under section 82A (2) or (3) of the Local Government Act 2000. This latter provision was introduced by the Local Government Act 2003 and enables a monitoring officer to nominate someone else to carry out his functions relating to local investigation of allegations of a breach of the code of conduct when he considers that in that particular case he ought not to carry out the functions himself. This is intended to avoid potential conflicts of interest.

Regulation 5; amendment to Regulation 4 of the 2003 Regulations

Under section 63(1) of the Local Government Act 2000, information gained in the course of an investigation by an ESO must not be disclosed unless one or more of a number of considerations are satisfied. The 2003 Regulations amended section 63 so as to add further circumstances under which there could be disclosure, namely to enable a standards committee to carry out its role or to enable a tribunal drawn from members of the Adjudication Panel to consider appeals from findings of standards committees. This amendment adds a further circumstance to those listed in the Act, as amended by the 2003 Regulations, so that disclosure of information obtained by the ESO may also be made to enable the monitoring officer to carry out his investigation role.

Regulation 6; amendment to Regulation 5 of the 2003 Regulations

To make provision for procedures to allow the monitoring officer to conduct an investigation, including getting access to relevant information and advice. To allow the monitoring officer to be able to make one of two findings following his investigation (ie either that he considers that there has been a failure to comply with the code of conduct, or that he does not consider that there has been a failure to comply with the code), to prepare a report and refer it to the standards committee and other relevant parties. These provisions parallel similar powers already available to ESOs to carry out investigations.

To make provision to allow the monitoring officer at any stage before he has completed his investigation to make a request to the ESO that the matter be referred back to the ESO for him 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. This provision will be supported by guidance from the Standards Board giving advice to monitoring officers about the circumstances in which it is envisaged that cases should be referred back. The aim is to ensure that serious cases are appropriately treated.

Where the monitoring officer makes a finding that he considers there has been no breach of the code, he must refer the case to the standards committee, who can make a decision either to accept the monitoring officer's recommendation, or else to consider the matter at a hearing of the committee. The intention is that any hearing should take place within the three month deadline set out in Regulation 7 of the amending Regulations.

Regulation 7; amendment to Regulation 6 of the 2003 Regulations

To provide that the procedures which apply for the setting up of hearings apply when a report by a monitoring officer is presented for consideration to the standards committee, and not just, as now, when a report by an ESO is presented.

Regulation 6 of the 2003 Regulations requires that a hearing of the standards committee must be held within three months after the date the monitoring officer receives the ESO's report. That Regulation also provides that there should be at least 14 days between the monitoring officer sending the ESO's report to the member who is the subject of the hearing, and the date of the hearing. Regulation 7 of the Amendment Regulations therefore provides for equivalent timescales to apply in the circumstances where the monitoring officer rather than the ESO provides the report for the committee to consider. The amendments provide that, when the monitoring officer has carried out the investigation, the hearing will be held within three months of the completion of his report. The amendments also provide that there will be at least 14 days between the sending of the monitoring officer's report to the member who is the subject of the hearing, and the holding of the hearing.

Regulation 8; amendment to Regulation 7 of the 2003 Regulations

An amendment has been made to Regulation 7(3)(iv) and (vi) of the 2003 Regulations to clarify the fact that it should be open to a standards committee to require a member to apologise and undertake training or conciliation, if it wishes, and not merely to apologise or undertake any training or conciliation. The standards committee may impose one or any combination of sanctions. The sanctions available are now listed separately to make clear the range of options open to the standards committee.

The Standards Board for England (Functions) Order 2004

We propose to issue a functions order under section 57(3) of the Local Government Act 2000 conferring further functions on the Standards Board for England relating to the issue of guidance. The Standards Board currently has the functions as set out at section 57(5) of the Act. These include the issuing of guidance to relevant authorities on matters relating to the conduct of members of such authorities. The aim of the functions order is to clarify and put beyond doubt the extent of the powers available to the Standards Board for England in issuing guidance to standards committees and monitoring officers on carrying out their roles under the Regulations.

19 APRIL 2004

CONTRIBUTORS

PAD (DPA)

DETERMINATIONS & INVESTIGATIONS – PROCESS & PROCEDURES

ALL WARDS

The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 came into force on 30 June 2003.

At its meeting held on 12 January 2004, the Standards Committee received and considered a report and power-point demonstration on draft Model Procedures to be used locally in the eventuality of an allegation of misconduct being referred by an ESO to the Committee for determination. (Similar procedures will also be used when local investigations are undertaken once new Regulations come into force – item 7 of this Agenda refers.)

The Committee agreed a number of suggested changes to the original draft Model Procedures, and officers have now actioned these changes in revising the draft as members' requested.

The revised draft Model Procedures is therefore now being brought back to the Committee for final approval and implementation.

RECOMMENDATION:

That the Standards Committee approve the model procedures to be followed locally during the investigation or determination of matters referred to the Monitoring Officer by an ESO or the Standards Board for England.

Model Hearing Procedures for the LBHF Standards Committee

Interpretation of terms

1. "Member" means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. (For the purposes of this procedure, the reference also includes the member's nominated representative, if any).
2. "Investigator" means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. (In the case of matters referred for local investigation, references to the investigator mean the Monitoring Officer or another investigating officer, and his or her nominated representative).
3. "Committee" also refers to "a Standards Sub-Committee" where one has been established.
4. "Legal Advisor" means the officer responsible for providing legal advice to the Standards Committee, usually the Council's Head of Legal Services.

Representation

5. The member may be accompanied or represented during the hearing by a Solicitor, Counsel or, by permission of the committee, another person, agreement to which shall not be withheld unreasonably.

Legal Advice

6. The Committee may take advice from the legal advisor at any time during the hearing or while considering the outcome. The substance of any legal advice given to the committee will be shared with the member and the investigator if they are present, where appropriate.

Setting the scene

7. After the members and the parties to the hearing have been formally introduced, the Chair will explain the procedures for the hearing.

Preliminary procedural issues

8. The committee will then resolve any issues or disagreements which have not been resolved during the written pre-hearing process (e.g. whether all or part of the hearing should be heard in public or in private).

Making findings of fact

9. After dealing with any preliminary issues, the committee will then move on to consider whether or not there are any significant disagreements about the facts, as contained in the investigator's report.

10. If the member disagrees with any relevant fact in the investigator's report without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will need to consider whether it would be in the public interest to continue the hearing in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the committee may decide to :
- (a) continue with the hearing, relying on the information in the investigator's report;
 - (b) allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
 - (c) postpone the hearing to arrange for the investigator and/or any appropriate witnesses to be present.
11. If there is disagreement, and the investigator is present, he or she will be invited to make representations to support their report including any findings of fact . The investigator may call any supporting witnesses to give evidence at this stage. Following the submission, the committee will ask questions, and will give the respondent member an opportunity to ask questions and/or challenge the evidence put forward by any witness called by the investigator.
12. The roles set out above will then be reversed, and the member has the opportunity to make representations in support of his or her case, and to call any witnesses to give evidence in support or present mitigation as the member sees fit. The committee will then ask questions, and will give the investigator the opportunity to ask questions and/or challenge the evidence put forward by any witnesses called by the respondent member.
13. This will then be followed by a brief summing-up by each side of their case. (No new evidence may be introduced by either party at this stage). The respondent member will go second so as to have the last word on the matter.
14. Both parties and their witnesses will usually be asked to leave (after the committee has passed the appropriate resolution) while the committee considers the facts and evidence and reaches a decision in private.

Did the member fail to follow the Code?

15. The committee will then consider and determine, on the facts and evidence presented to it, whether or not the member has failed to follow the Code of Conduct.
16. The committee may make one of the following findings on the case:
- (a) the member has not failed to follow the code;
 - (b) the member has failed to follow the code, but no further action need be taken;
 - (c) the member has failed to follow the code, and a sanction should be applied.

If the member has not failed to follow the Code of Conduct

17. If the committee decides that the member has not failed to follow the Code of Conduct, it should consider whether any recommendations need to be made to the authority about the case, with a view to promoting higher standards of conduct generally among members.

If the member has failed to follow the Code

18. If the committee decides that the member has failed to follow the Code of Conduct, it must determine what penalty (if any) should be applied.
19. When determining the penalty, the committee must be careful to ensure that it is reasonable and in proportion to the member's behaviour. The committee needs to consider:
 - The member's intention - was the member aware he/she was breaching, or was likely to breach, the code at the time of the incident?
 - Had the member sought or received any advice before the incident, and if so, was it acted upon?
 - Had there been a breach of trust?
 - Had there been any financial impropriety?
 - How serious was the incident?
 - Did the member accept he/she was at fault?
 - Did the member apologise subsequently to the relevant people?
 - Had the member been warned or reprimanded for similar misconduct or had they previously breached the code?
20. Where a member has repeatedly or blatantly misused or abused the authority's resources or facilities, the committee may need to consider the withdrawal of use of those resources or facilities from the member.
21. In more serious cases, such as bullying of officers/members of the public, attempting to gain advantage for themselves or others, or dishonesty or breaches of trust, suspension from office (maximum 3 months) may be in order.
22. The committee may decide on one or a combination of the following penalties:
 - to censure the member. (This is the only penalty available where the person is no longer a member);
 - to restrict the member's access to the resources/facilities of the authority for any period up to 3 months;
 - suspend * or partly suspend the member for any period up to 3 months; or
 - suspend * or partly suspend the member for any period up to 3 months, on condition that the suspension will be lifted if the member undertakes appropriate training, or publicly apologises, or takes part in appropriate conciliation, as ordered by the Committee.

(*Note: a suspension may also involve loss of financial allowance, depending on the circumstances of the breach of the Code.)

The decision

23. The committee may give a short oral decision on the case if practicable at the conclusion of the hearing (although it may reserve judgement at this time), and in any event, will notify all parties of the full decision, including reasons, in writing within 10 working days of the hearing.

Publicity

24. The committee's findings and decision on the case will be published in summary form in a local newspaper unless the finding is "No breach of the Code" and the member requests non-publication.

jpc/MC/April 2004