

HERTFORDSHIRE COUNTY COUNCIL

**STANDARDS COMMITTEE
28 JUNE 2002 AT 10.30 A.M.**

Agenda Item No.

6

**LOCAL INVESTIGATION AND DETERMINATION OF MISCONDUCT
ALLEGATIONS – CONSULTATION PAPER**

Report of the County Secretary

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1. Summary

To enable the Committee to consider and, if they wish, respond to the Government's proposals to allow local authorities (rather than the Standards Board) to deal with certain complaints against members.

The Government have asked for responses to the consultation to be sent in by 1 July 2002.

A copy of the full consultation paper is attached.

2. Background

At present, all complaints about alleged breaches of the Code of Conduct are dealt with by the Standards Board for England. If the Board consider that a complaint should be investigated they refer it to an Ethical Standards Officer (ESO). The ESO has four options once the investigation is concluded:

- (1) to decide there is no evidence of breach of the Code
- (2) to decide that no action needs to be taken
- (3) to refer the matter to the Monitoring Officer
- (4) to refer the matter to the Adjudication Panel for adjudication by a Tribunal.

If option (3) is followed, the Monitoring Officer and Standards Committee can note the result of the investigation and could review the Council's own internal procedures in the light of it; but there is no power at present for them to administer any sanctions. Under option (4), the Adjudication Panel's Tribunal is able to administer sanctions, including suspension and disqualification from office.

The Government has now issued a consultation paper proposing that certain complaints should be investigated and determined locally – i.e. by the Monitoring Officer and Standards Committee.

The following section summarises the main proposals and adds comments on each.

3. **The Proposals**

3.1 *The consultation paper invites comments on 5 principles which the Government believes should underpin any system of investigation and adjudication of complaints as follows:*

- (a) *The preservation of public trust in the new ethical framework*
- (b) *The avoidance of duplication*
- (c) *The rights of individuals against whom complaints are made*
- (d) *Appropriate and proportionate sanctions, and*
- (e) *A recognition of the different circumstances in which referrals are made.*

Comment These principles are unobjectionable.

3.2 *If the Council receives a complaint about an alleged breach of the Code, it must be referred to the Standards Committee. The Standards Committee must then refer it to the Standards Board.*

Comment It is not clear why this is proposed. At present, a complainant who contacts the Council is advised to write direct to the Standards Board. If the Board choose to investigate the complaint, they inform the Monitoring Officer who can in turn inform the Standards Committee. The proposal means that the Committee will be used simply as a post box and this will cause unnecessary delay. A better alternative would be to formalise the current practice and require the Monitoring Officer to pass any complaints received by the Council direct to the Board, and to notify members of the Committee at the same time.

3.3 *The ESO who is handling the complaint may decide to refer it to the Monitoring Officer for investigation. It will be for the ESO to decide whether to do this, but it is anticipated that only “less serious cases” will be referred. Where this happens the Monitoring Officer will be given power to make enquiries, and obtain independent advice and assistance, though he/she will not have power to compel people to give information. Having conducted the investigation, the Monitoring Officer must decide either that there is no evidence of a breach of the Code; or that the Code has been breached. The Monitoring Officer must then prepare a report to the Standards Committee.*

Comment It would be helpful to have clear definition (or at least some guidance) of the kind of cases which will be regarded as “less serious”.

3.4 *The Standards Committee must consider the report of the Monitoring Officer. They decide their own procedures for so doing, but when considering a report the Committee must be chaired by an independent and comprise no more than 5 people. A person who appears before the Committee may be legally represented (at their own expense). The Committee will not have power to award costs to any person. Having considered the report, the Committee may decide*

- a) *that there is no evidence of breach of the Code*
- b) *that there has been a breach but no action needs to be taken*
- c) *that there has been a breach, and the member should be*
 - *censured*
 - *removed from office, position or Committee*
 - *suspended or partially suspended for up to 6 months*
 - *suspended for a conditional period (e.g. until making an apology or undertaking training)*
 - *required to make a public apology.*

Comment The Committee may wish to take a view on

- whether it is right to limit the size of the Committee to 5. In our case, this would probably mean one of the 4 independents would have to step down for the meeting
- whether all persons who make representations to the Committee should be entitled to legal representation (i.e. the complainant and any other interested party as well as the member complained about)
- whether the member complained about should be able to obtain funding for legal representation from the Council, particularly if the complainant is legally represented
- whether the sanctions available to the Committee are sufficiently clear; it appears that “removal” and “suspension” do not refer to the office of councillor itself but this needs clarifying. And should the sanctions also include withdrawal of facilities (e.g. Internet access) and removal or reduction of basic and special responsibility allowances?

3.5 *The Standards Committee will follow the same procedure as in 3.3 above when considering a report from an ESO.*

Comment This seems sensible.

3.6 *A member will have the right of appeal from a decision of the Standards Committee to a Tribunal drawn from the Adjudication Panel. The Tribunal will be able to uphold or overturn the decision of the Committee and impose a different penalty if it wishes. There is already a further right of appeal to the High Court.*

Comment The Government needs to consider whether a sanction imposed by the Standards Committee takes effect immediately or only after any appeal is disposed of. The former seems more sensible.

4. Financial Implications

The proposals should not impose any significant additional financial burden.

5. Conclusion

When the Government first proposed the new ethical framework, there was much criticism from local authorities that the centralisation of complaints handling under the Standards Board was a bad thing. The Government now proposes to relax that centralisation and allow local handling of some complaints. The Committee may take the view that that is in itself a good thing; but that the Regulations which will implement the changes should take account of the comments in this report.