

LOCAL INVESTIGATIONS AND DETERMINATIONS

Report By: County Secretary and Solicitor

Wards Affected

County-wide

Purpose

1. To agree an approach to the new powers of local investigation of complaints set out in this Report.

Background

2. The Committee will be aware that complaints that a councillor has breached the Code of Conduct could be referred by Ethical Standards Officers to Standards Committees for local determination. As expected, new regulations now allow for local investigations to be carried out by or on behalf of Council Monitoring Officers. This is a significant change and it is anticipated that up to 50% of investigations will be carried out locally.
3. The basic process remains the same as now. All allegations that the Code of Conduct has been breached will still go to the national Standards Board. That Board will still decide whether to cause the allegation to be investigated, and pass to an independent Ethical Standards Officer if so. What is new is that the ESO can decide to refer a particular allegation for local investigation. The discretion to do so remains entirely with the ESO. The Board says there will be contact with the Monitoring Officer before referring cases for local determination. At present, 35% of cases are being referred for local investigation, the majority involving personal and prejudicial interests.
4. The Standards Board Guidance says referral for local investigation is more likely where:
 - even if proven, the matter would not need the heavier penalties available only at the national Adjudication Panel
 - the allegation is of an entirely local nature and does not raise matters of principle
 - initial investigation by the ESO has highlighted issues more to do with the effective governance of the authority itself than an individual's misconduct.
5. Referral for local investigation is less likely where:
 - a local investigation would be perceived as unfair or biased; or
 - there are local political issues that may affect the investigation.
6. The Standards Committee will control the outcome of all local investigations. Even if the local investigator finds there has been no breach of the Code, the matter must still be referred to the Committee to agree. If it does not agree, or the local

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investigator considers there has been a breach of the Code, the Committee will hold a hearing into the allegations within 3 months of the final report.

Local Investigations

7. The Standards Board has issued general Guidance on local investigations and has promised further guidance on the practicalities of investigation.
8. Once referred by the ESO, the Monitoring Officer (MO) or her nominee must investigate the complaint. Monitoring Officers now have specific power to delegate investigations to their deputies or any other person. The Standards Board recommends, rightly, that the same person should not both carry out an investigation and advise the Committee on the same case. It is probably best left to a case-by-case decision as to what respective roles officers take. In appropriate cases investigations might be carried out externally, perhaps under reciprocal arrangements. The Council is legally obliged to provide the Monitoring Officer with sufficient resources to perform the monitoring function.
9. On referral of a complaint to be investigated locally, the Monitoring Officer (MO) will:
 - inform the relevant member and the complainant and
 - conduct or arrange an investigation into the complaint.
10. The Standards Board recommends that all members of the Committee should be notified that an allegation has been made without naming the member or the complainant. However, at consultation stage the Committee felt this was pointless and that the MO should notify only the chairman and/or vice-chairman in the first instance, which seems a sensible approach.
11. The powers of investigation relate only to the specific breach referred. If evidence of further breaches is uncovered, the investigator is not permitted to investigate it but he/she, the complainant and other person should consider making a fresh allegation to the Standards Board.
12. During the course of an investigation, the investigator may ask the ESO to take the case back (e.g. should further breaches be discovered or the investigation obstructed). Such a request can only be made once during the referred investigation and the ESO decides whether to direct that a local investigation continue.
13. The investigator will carry out such investigation and interviews as appropriate and necessary. This will usually involve interviewing the relevant member, complainant and other witnesses as appropriate but the relevant member must be given the opportunity to comment on the allegation made.
14. The investigator should consider whether to produce a draft report in advance of finalisation. A draft report could be given to key parties to review and comment in order to check facts and ensure that all aspects have been sufficiently explored. Draft reports will not be necessary in all cases, but should be considered where the facts are complex, ambiguous, or in significant dispute.
15. The investigator must find either:
 - there has been a failure to comply with the Code; or
 - there has been no such failure.

16. The investigator must prepare a final written report concerning the investigation and the findings. The report should include any findings of fact, whether there has been a breach, and reasoning.
17. The report should generally attach relevant documentary information (such as notes of interviews with witnesses, letters, etc) and a chronology where that would be useful. The final report must be sent to:
 - the relevant member
 - the complainant
 - the Standards and Ethics Committee; and
 - the ESO.

Consideration of the Final Report

18. The matter must be reported to Committee whether or not the investigator considers there has been a breach of the Code.
19. Where the investigator considers there has been no breach the Committee must still decide if it agrees with that finding. It should not at that stage carry out its own factual investigation or hold a full hearing but decide whether:
 - it accepts the investigator's finding; or
 - there is a case to answer at a full hearing.
20. If the Committee accepts the investigator's finding of no breach, written notice of its acceptance must be given to the relevant member, the ESO and complainant and advertised in a local newspaper (unless the member requests otherwise).
21. If either:
 - the investigator considers there has been a breach; or
 - the committee considers there is a case to answer,the matter must move to a full hearing through the local determination procedure.
22. The Committee has already authorised a formal procedure governing local determination which can apply whether the investigation report has been compiled by the ESO or by a local investigator.
23. The new regulations have given additional powers to Standards Committees to adjourn a local determination hearing and require the MO to seek further information or undertake further investigation. Only one such adjournment is permissible. The Committee may also adjourn the hearing to ask the ESO to take back the investigation.
24. The local procedure remains sound but it is recommended that the County Secretary and Solicitor be authorised to update the agreed procedure for local determination.

Increased Sanctions

25. The scope of penalties available at the local level has also been expanded irrespective of whether there has been an ESO or local investigation. The maximum suspension remains 3 months but the Committee can now also order a written

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apology, training or conciliation, and make suspension contingent upon these not being done.

26. Standards Committees can now impose 1 or more of the following sanctions should they find a breach of the Code:
- censure;
 - a reasonable and proportionate restriction of members' access to premises and use of resources (providing these do not unduly restrict the ability to perform functions as a member);
 - order the member to submit a written apology in a form satisfactory to the Committee;
 - order the member to undertake training or conciliation process as specified by the Committee;
 - suspend or partially suspend the member for up to 3 months or until the member submits a written apology or undertakes training or conciliation as specified within those 3 months.
27. Censure is obviously an immediate sanction, but the other sanctions can be ordered to commence at any specified point within the following 6 months.

RECOMMENDATION

THAT the Committee:

- (a) **adopts the approach to the new powers of local investigation as set out in this report;**
- (b) **notes the extension of sanctions available to it within local determinations; and**
- (c) **authorises the County Secretary and Solicitor to update the Committee's procedure for local determinations.**

BACKGROUND PAPERS

- None identified.