



<b>REPORT OF:</b>	MONITORING OFFICER
<b>AUTHOR:</b>	Margaret Quine
<b>TELEPHONE:</b>	01737-276023
<b>E-MAIL:</b>	<a href="mailto:margaret.quine@reigate-banstead.gov.uk">margaret.quine@reigate-banstead.gov.uk</a>
<b>TO:</b> 10	STANDARDS COMMITTEE
<b>DATE:</b>	30 <sup>th</sup> June 2003

<b>AGENDA ITEM NO:</b>	
<b>WARD(S) AFFECTED:</b>	ALL (INCLUDING PARISH/TOWN COUNCIL)

<b>SUBJECT:</b>	<b>MEMBER CODE OF CONDUCT AND LOCAL HEARINGS</b>
<b>PURPOSE OF THE REPORT:</b>	To report upon Regulations made by the Secretary of State under Section 66 of the Local Government Act, 2000 in relation to matters referred to the Standards Committee.
<b>RECOMMENDATION:</b>	<b>To note this report</b>

The Committee has authority to determine the above recommendation.

## Background

- Under the Local Government Act, 2000 where the Standards Board for England considers that an allegation that a Member has failed, or may have failed to comply with an Authority's Code of Conduct should be investigated, it must refer the case to one of its Ethical Standards Officers (ESO's). The ESO may:
  - determine there is no evidence of any failure;
  - determine no action needs to be taken in respect of the matter subject to investigation;
  - refer the matter to the Monitoring Officer; or
  - refer the matter to an Adjudication Panel for adjudication by a tribunal.
- The Secretary of State has now made Regulations under Section 66 of the Act which will come into force on 30<sup>th</sup> June, 2003 on the conduct of matters referred to the Monitoring Officer for local determination following investigation and report by an ESO.
- This report outlines these Regulations and the implications for the Council and the work of this Committee. Further practical guidance on the implementation of the Regulations is to be issued by the Standards Board on these matters and will be the subject of subsequent briefing/report to the Committee.

## **Reports Received by a Monitoring Officer**

4. Where a matter is referred to the Monitoring Officer he/she must:
  - send a copy to the Member(s) the subject of the complaint;
  - arrange for the Standards Committee to meet to consider the report.

## **Hearings by Standards Committees**

5. Following referral of a matter as described above, the Standards Committee must hear the case within three months (from receipt of the report by the Monitoring Officer) but not until 14 days after the Monitoring Officer has sent the report to the Member concerned (unless he/she agrees to an earlier hearing).
6. The Member must be given the opportunity to present evidence to support his/her case and to make oral or written representations. The Member may be represented.
7. The procedures for the conduct of the Hearing is a matter for the Standards Committee.
8. The Committee may call witnesses as it sees fit and the Member may also call witnesses although the Standards Committee may limit these witnesses if it considers the number of witnesses proposed is unreasonable.
9. If a Member fails to attend the Hearing, the Committee may either consider the case and make a determination in the absence of the Member or adjourn the Hearing to another date.
10. The Standards Board for England proposes to issue Model pre-Hearing and Hearing Procedures. The Board has advised informally that Hearings should be:
  - relatively informal;
  - not adversarial;
  - should only consider evidence when it is in dispute;

The pre-Hearing procedure will be used to:

- clarify any issues;
- identify the extent of disputed evidence in the ESO's report;
- clarify the nature of Member representation;
- confirm witnesses to be called;

- consider what part of the Hearing (if any) is to be held in private;
  - ( Note: This may require amendment to the Council's Constitution to suspend the right of all Members of the Council to attend meetings of the Committee)
- confirm the timetable to ensure the three month limit is met.

11. The Standards Board anticipates that the majority of Hearings will be by way of written representations.

### **Findings of the Standards Committee**

12. Following a Hearing, the Standards Committee must make one of the following findings (in respect of the Code of Conduct):

- (a) no failure to comply;
- (b) failure to comply but no action is required;
- (c) failure to comply and a sanction should be imposed.

13. Sanctions available to the Standards Committee are any one or combination of the following:

- (i) censure
- (ii) restriction for up to three months of access to premises and use of resources of the Authority provided the restriction is:
  - reasonable and proportionate to the nature of the breach;
  - does not unduly restrict the Member's ability to perform his functions and duties as a Member;
- (iii) partial suspension for up to three months, i.e. being prevented from:
  - exercising Executive functions/responsibilities;
  - Committee, Sub-Committee, Joint Committee membership:  
or
  - Executive Membership
- (iv) partial suspension for up to three months or until such time as the Member submits an apology or undertakes any training or conciliation specified by the Standards Committee.
- (v) suspension for up to three months;
- (vi) suspension for up to three months or until such time as the Member submits an apology or undertakes any training or conciliation specified by the Standards Committee.

14. Where a finding under 12(c) above is found in respect of a person no longer a Member (of any Authority in relation to which the Standards Committee exercises functions) it shall censure that person.
15. Sanctions will be imposed immediately following the decision of the Standards Committee unless the Committee decides to impose sanctions (ii) - (vi) commencing on any later date within a six-month period.

### **Notification**

16. Regulations specify arrangements for notification of findings. The Regulations state that where the Committee makes a finding:
  - that a Member has not failed to comply it shall give its reasons for the finding but shall not publish its findings in summary if the Member so requests;
  - that a Member has failed to comply, the Committee shall:
    - specify the details of the failure;
    - give reasons for the finding;
    - specify the sanction (if appropriate);
    - detail the appeal process;
    - publish the findings in a local newspaper.

### **Appeals**

17. A Member who is the subject of a finding may appeal to the President of the Adjudication Panel for permission to appeal against the decision of the Standards Committee within 21 days. The President will make a decision on the application within a further 21 days.
18. Where permission is given for an appeal, the matter will be referred to a Tribunal. The appeal may be considered by written representations.
19. The Appeal Tribunal must uphold or dismiss the finding of the Standards Committee.

Where the decision is upheld (in whole or in part) the Tribunal may:

- approve any penalty imposed by the Committee;
- require the Committee to impose a penalty;
- require the Committee to impose a different penalty.

Where the decision is dismissed the decision of the Committee ceases to have effect. Costs cannot be awarded.

### **Referrals from ESO's**

20. The Standards Board has indicated that it will not refer cases until September to give Authorities an opportunity to prepare. It is envisaged that the cases referred will involve breaches of the Code requiring lower level sanctions (see above) and which do not have wider implications.

21. The Standards Board anticipates that, on the basis of current complaints analysis, most Authorities are likely to receive one or two referrals per year.

### **Other Considerations**

22. The Standards Board guidance is likely to involve advice on best practice and the Board has indicated this will include:
- Chairing of Hearings by an Independent Member;
  - presumption that Hearings should be held in public;
  - Hearings should be held during the day but if held during the evening should involve consecutive days.

### **The Role of the Monitoring Officer**

23. The Monitoring Officer's primary role is to advise the Standards Committee. However, the Monitoring Officer also has a role in advising Members generally on the Code and this could give rise to potential conflicts of interest. Additional Regulations will be made later in the year which will require Monitoring Officers to investigate allegations referred from ESO's, further complicating the issues around the role of the Monitoring Officer.
24. Consideration is being given to options available to the Council to ensure that the Council's ethical framework is properly resourced. It will be essential that sufficient qualified and senior staff/external advisers are available to ensure the avoidance of conflicts of interest and compliance with the rules of natural justice. A further report on this aspect will be submitted to a future meeting.

### **Training**

25. Training for members of the Committee on the conduct of Hearings will be arranged following receipt of Standards Board Guidance.

### **Resource Implications**

26. The resource implications of these Regulations have not yet been fully assessed. There will clearly be additional Monitoring Officer time to support the extended role of the Committee and, in due course, to undertake investigations referred by ESO. It is likely that, on the basis of the current complaints profile, complaints are more likely to fall to be considered locally. Arrangements to cover the various roles/responsibilities and ensure a robust framework to support the Committee will be submitted to a future meeting.

Background Papers: Published Documents