

The Standards Committee of 18 June 2002

Report title: **Local Investigation and Determination of Misconduct Allegations - Draft Response to DTLR Consultation Paper**

1. Purpose

The purpose of this report is to provide a draft response to the DTLR Consultation to members of the Standards Committee for the Committee's consideration.

2. Recommendations

It is recommended that The Standards Committee

- **Consider amendments to the draft response**
- **Endorse the final response for transmission to the DTLR**

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3. EXECUTIVE SUMMARY

This Item relates to the consultation paper issued by the DTLR, in May 2002 containing proposals to enable standards committees and monitoring officers to conduct investigations and adjudicate on complaints made under the Code of Conduct which are referred back to the authority by an Ethical Standards Officer.

4. Access to information:

Local Government (Access to Information) Act 1985
Local Government Act 2000 and Model Code of Conduct.

5. Background

- 5.1 The DTLR issued their consultative paper in May 2002 and the Council has until 1 July to comment on its proposals, which include giving the Standards Committee new powers to adjudicate on complaints of breaches of the Haringey Code of Conduct that are referred back to them by an Ethical Standards Officer.
- 5.2 The consultative paper also proposes that where following this process a complaint is upheld, the Standards Committee should have the power to censure the member, or to remove them from any office, position or committee of the Council, or to suspend or partially suspend them for a period of up to 6 months or suspend them for a conditional period or require the member to make a public apology.

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Conduct of Councillors – Local Investigation and Determination of Misconduct Allegations: Response to DTLR Consultation Paper of May 2002

By

London Borough of Haringey Council

(As approved by the Council's Standards Committee on June 2002)

The Council's response to the consultation paper is set out below. Comment is made under each relevant paragraph number in the consultation paper. A response to the specific questions posed in the consultation paper is given at the end of the document.

The Governments proposals for a Local Determination Framework

Paragraph 4

The Council agrees with the five principles which it is proposed should underpin any system of investigation.

Section 1 – Proposed Framework: how it could work

Paragraphs 13 – 15

The Council notes that the proposals will require the Standards Board to produce guidance on the balance to be struck between the need to inform the subject of an allegation of the complaint as soon as possible and the need to ensure that investigations are not prejudiced by premature disclosure.

*The Monitoring Officer should not be directed not to investigate an allegation as is proposed at **paragraph 13**.*

Where a formal allegation is made to the Council as opposed to the Standards Board then the need to immediately pass this on to the Standards Board is recognised. This should not preclude the Monitoring Officer investigating the facts surrounding a complaint in certain circumstances. The most obvious of these will be where the alleged misconduct has potentially serious repercussions for the authority, for example regarding the legality of a contract or of a planning decision. In this situation, such investigation should be allowed as is necessary to protect the Council's corporate interest.

Subject to the guidance that comes from the Standards Board, the requirement that the monitoring officer "should not attempt to recommend to

the subject of an allegation that he or she should take any steps to apologise or make amends" is an unnecessary restriction and should be removed.

Such approaches and suggestions are part of the monitoring officer's role:

- They do not of necessity require the carrying out of a parallel investigation by the monitoring officer.
- They may constitute important mitigation for the member complained against
- They need not prejudice the subsequent involvement of the monitoring officer in investigating the complaint.

Step 3: Investigation

When conducting inquiries referred to him/her by an ESO, Paragraph 23 recognises that monitoring officers will need powers to:

- Arrange for any person to assist him, or her, in the investigation.

As presently formulated, this would not amount to giving the monitoring officer the power to delegate their investigative function to their deputy or another suitably qualified person. There may be circumstances where this ability to delegate to another the investigation of an allegation would be important:

- Where the monitoring officer feels that his/her involvement in giving advice to the complainant at paragraph 11 has prejudiced his/her role as investigator.
- Where the number of complaints referred back to the monitoring officer and the increased responsibilities under the Local Government Act 2000 make this necessary.

The Council proposes that the regulations should remove the restrictive provisions of Section 5 of the Local Government and Housing Act 1989 which make the discharge of the monitoring officer's duties a personal function and that the discretion given to the monitoring officer to delegate should include delegation to outside resources including monitoring officers of other authorities.

Paragraph 24

This paragraph accepts that in carrying out an investigation, the monitoring officer will need powers to make inquiries of any person he/she thinks necessary but does not propose giving monitoring officers the means to enforce these powers. This may present significant practical difficulties for the monitoring officer being able to complete his/her investigative role.

The Council proposes that the national Model Code of Conduct for councillors should be amended to include a requirement to co-operate with the monitoring officer's investigations.

Paragraphs 26 and 27

The Regulations should not require or suggest that the adjudication stage should always involve the calling of witnesses and the hearing of evidence or that proceedings should be carried out in an adversarial rather than an inquisitorial manner. In many cases, it may be possible for decisions to be made by the standards committee on the basis of documentation providing the respondent member has had an opportunity to comment on the documents.

It may be, however, that by the very nature of things, proceedings will take an adversarial form although much will depend on the standards committee and the procedures it adopts.

Paragraphs 26 and 27 bear on the nature of the adjudication stage of a complaint and the role of the monitoring officer in this.

The Council does not agree that the conclusions which the monitoring officer is entitled to present to the standards committee should be restricted in the way outlined at Paragraph 26:

- These are not the only conclusions possible at the end of an investigation and forcing the monitoring officer to adopt one or other may prejudice the fairness of any subsequent hearing.
- Such a restriction will fix the monitoring officer in the role of prosecutor and reinforce the tendency for hearings to become adversarial in nature.

The Council proposes that the monitoring officer should be entitled to reach one of three conclusions as a result of his/her investigation:

- a) *that there is no evidence insufficient evidence of any failure to comply with the code of conduct; or*
- b) *that there is sufficient evidence of a breach of the code to require the complaint to be considered by the standards committee*
- c) *that on the balance of probabilities the code of conduct has been breached*

The Council accepts that this could lead to different approaches being taken by monitoring officers and standards committees in the presentation and adjudication of complaints and that there may be a tendency for monitoring officers to opt for b) and thereby retain a more neutral role in the process. The Council does not, however, think that the drive for uniformity should restrict the monitoring officer to the two choices presently contained at paragraph 26.

It is further proposed that the monitoring officer or standards committee should have the discretion to refer a complaint back to the ESO where on further investigation the breach is discovered to be more serious than was seen to be the case when it was referred to the monitoring officer.

The Role of the Standards Committee

Paragraph 29

The Council considers that restricting to five the number of standards committee members considering a report from an ESO is sensible providing this is a maximum but not a minimum figure.

The Council agrees with the proposal that the chair of the sub-committee elected to consider a report from an ESO should be an independent member but does not agree that the chair of the sub-committee should select its membership.

The Council proposes that the standards committee should have the role of deciding the membership of any sub-committee as in the normal way of appointing sub-committees and of agreeing who the independent member chair will be as would be the normal procedure..

There is some doubt that standards committees have the power to delegate to sub-committees at all, being creations of the Local Government Act 2000 and not of the Local Government Act 1972. If it is proposed to legislate to confirm such a power, the Council asks that this be done in such a way as to enable the standards committee to delegate to a sub-committee the giving of dispensations under the recently published Regulations.

Paragraph 30

The Council welcomes the proposal for the standards committee to be free to decide their own practice and procedures, subject to any guidance issued by the Board.

Paragraph 31

For the proposal to give the power to remove a member "from any office, position or committee of the Council" to be effective, it needs to take account of the fact that this appointment in most cases has been by full Council. It also needs to address the implications of such removal for the payment of allowances which are themselves determined by full Council.

Step 5: Appeal

The Regulations will need to clarify the basis of the appeal process whether it is a full re-hearing or something falling short of this – i.e. a review process.

If it is the former, it is not clear whether the delegation to standards committees envisaged by the Consultation Document will fulfil the function of allowing local determination of the less serious cases in order to free up the national resources for the more serious allegations.

If it is the latter, then presumably in order to make the procedure comply with the Human Rights Act and the principles of natural justice there will have to be a much greater procedural prescription and uniformity at local standards committee level than is presently envisaged.

Role of Standards Committees

Any regulations must clarify the various routes that can be taken by a complainant in making a complaint and the corresponding responsibilities that the monitoring officer, individual council members and members of the standards committee have. At present the Consultative Document does not fully do this.

Paragraphs 12 and 13

These suggest that the monitoring officer's role is limited to giving such advice as an individual member needs in order to decide whether to make a complaint. This is consistent with the member's individual duty under paragraph 7 of the Code of Conduct.

Regulations should clarify what duty the monitoring officer has to refer allegations to either the Standards Board or standards committee where a member decides not to make an individual complaint, and where the monitoring officer identifies a potential breach of the Code.

The proposal that any formal allegations received by a relevant authority should be referred to the standards committee may be a practical way of ensuring that allegations are vetted to exclude the vexatious or frivolous. It does not, however, address whether members should be advised to send in any complaints to the standards committee for them to vet and decide whether to process and whether in that circumstance the member will have discharged their duty under paragraph 7 of the Code.

Costs

Paragraph 53

The Council considers that the implementation of the new ethical framework and the present proposals to extend the power of the standards committees will in some cases provoke highly contentious hearings. The proposal to allow respondent members to be represented at standards committee level by a lawyer is a tacit recognition of this.

In this context, a power for the local authority to award costs in certain circumstances – perhaps on direction by the adjudication panel following an appeal – should realistically be provided for.