

Southend-on-Sea Borough Council

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Dear Mr Toft,

**Draft Guidance to Monitoring Officers by the Standards Board:
Local Investigation of allegations of Misconduct under the
Local Authorities (Code of Conduct) (Local Determination)
(Amendment) Regulations 2004**

The Council's Standards Committee considered your Consultation Paper at its meeting on 1 April 2004 and makes the following comments:-

- (1) Are the circumstances which an ESO will consider when deciding whether to refer an allegation for local investigation reasonable? Are there any other factors they should consider? (page 4)
 - *It will inevitably be difficult for a Monitoring Officer to investigate a politician from his own authority and the more senior the politician the greater the problem is likely to be. Undue pressure may be applied and conflicts of interest are a very real problem.*

The less serious cases referred to the Monitoring Officer could well be more difficult to investigate. Serious breaches of the Code will commonly be clear cut and the Member seen as culpable - not so with marginal issues where allegations will be made of political partiality with the Monitoring Officer placed in an invidious position.
 - *The Council's Standards Committee is pleased to note that the ESO will consider whether a local investigation would be perceived as unfair or biased and relevant local political issues that may have a bearing on a local investigation. However there should be an additional paragraph namely "there are significant conflict of interest problems that would make a local investigation difficult e.g., Monitoring Officer and at least one deputy are already conflicted out". In addition the ESO should be obliged to discuss such issues with the Monitoring Officer before a referral.*
- (2) The regulations allow cases to be passed back to the ESO in certain circumstances. The Standards Board has set out what it believes these limited circumstances might be (pages 5 and 6).
 - (i) Are there other circumstances where cases might be referred back?
 - *As well as cases where new evidence is discovered, Monitoring Officers should also have the right to refer a case back to the ESO if he considers the complaint is:-*

- *Too politically controversial for him to investigate (by reason of the Member involved or the subject matter); or*
 - *There are significant conflict of interest problems with a local investigation - perhaps because the Monitoring Officer and at least one deputy are already conflicted out.*
- *Similarly Standards Committees should also be able to refer cases back to the ESO for the same reasons as the Monitoring Officer.*
- (ii) Does the guidance distinguish clearly between those circumstances that warrant a referral back to the ESO and those circumstances that warrant a new allegation being made?
- Yes.
- (iii) Are the circumstances outlined in the guidance reasonable?
- See 2(i) above.
- (3) Is the Board correct to want to seek to maintain confidentiality? Is the guidance clear on the issue of confidentiality? (pages 6 and 7)
- The Board is justified in seeking to maintain confidentiality. However, a Standards Committee should have the power to consider evidence collected by ESO's as an explicit exception to S.63 Local Government Act 2000. Some doubt has arisen about the ability of a Monitoring Officer to report the ESO's evidence to the Standards Committee. The Regulations should make it clear that the Monitoring Officer may include in his report such elements of the ESO's report and evidence as appear to him to be appropriate - and representations have been made to ODPM on this point in the context of their consultation document.*
- (4) Is it appropriate not to have to produce draft reports in all cases? Are the factors to take into account when considering whether to issue a draft comprehensive? (pages 7 and 8)
- It is appropriate to provide that draft reports will not be needed in all cases. The factors to take into account appear to be comprehensive.*
- (5) Does the Report Checklist, with regard to draft and final reports, provide sufficient steps to producing a comprehensive report? (pages 7 and 8)
- Yes.
- (6) When appointing someone else to conduct an investigation on their behalf, should the guidance give direction as to how Monitoring Officers can delegate their investigative role and to whom? (pages 9 and 10)

The guidance states that if a conflict of interest arises, the Monitoring Officer "should delegate the investigation to somebody else". There may, however, be difficulties where there is a clear reporting line between the person likely to be nominated and the Monitoring Officer or the nominee may be conflicted out as well. In such a situation, it may be necessary to appoint somebody from an outside authority to carry out the investigation.

- (7) Is the section on conflicts of interest clear and appropriate?
Is the Standards Board right to suggest that a Monitoring Officer's chief role is to advise the Standards Committee rather than to investigate?

The Standards Board is not right to suggest that a Monitoring Officer's chief role is to advise the Standards Committee. There are many situations where a Monitoring Officer's experience and expertise are better used in advising individual Members and seeking to secure an early resolution of any alleged breach.

The Standards Board is additionally issuing a guide on how to conduct an investigation. Would Monitoring Officers find this helpful?

Yes.

Yours sincerely,

John Williams
Deputy Town Clerk and Monitoring Officer

First Class Post

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