

Southend-on-Sea Borough Council

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Dear Mr Tandoh,

**Consultation on the Proposed 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:-

(A) General Comments

- Investigations by the Monitoring Officer will not be viewed as independent by the public - and most, if not all investigations, should be carried out by a Standards Board ESO.
- 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 of Conduct 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.
- There could be a temptation for the Standards Board to refer as many cases as possible to Monitoring Officers to lighten their workload and clear backlogs. Even if the number of cases referred to the Monitoring Officer is small, the work involved will be considerable and unlike the Standards Board, the Council has not been allocated resources to deal with them.
- At the very least the ability of the Monitoring Officer to refer cases back to the Standards Board need to be much wider than proposed. In particular, if the Monitoring Officer considers that 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, he should have the right to refer it back for an ESO investigation.

(B) Specific Questions Raised

- (1) Are the investigative powers proposed for Monitoring Officers necessary and sufficient?

Yes. The inclusion in the draft regulations of a power to "call on such advice and assistance" as the Monitoring Officer may reasonably require, is welcome. However, clarification is needed about what happens if an Officer or Member does not comply with the reasonable request of the Monitoring Officer.

- (2) Are the powers proposed for standards committees to consider reports referred to them by Monitoring Officers necessary and sufficient?
- *The powers proposed are necessary.*
 - *There should also be powers for Standards Committees to:*
 - (i) *Refer a case back to the ESO for the same reasons as the Monitoring Officer can (see 4 below); and*
 - (ii) *Consider evidence collected by ESOs as an explicit exception to Section 63 of the 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. It would be helpful if the regulations could 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.*
 - *The regulations are silent about the reporting to Standards Committees of reports by ESOs sent to Monitoring Officers where the ESO has concluded that the Member has not breached the Code and that no further action is required. The regulations should prescribe what should happen.*
 - *It would also be helpful if the regulations could make it clear that it would be sufficient for the Standards Committee to commence (and adjourn) the hearing within the required timescale of 3 months so that there would be no doubt about the competence of the Committee to continue to hear the matter after that date.*
- (3) Should all cases investigated by the Monitoring Officer be referred to the Standards Committee for decision? Alternatively, is there a case for giving the Monitoring Officer the function of determining whether for the most minor cases, no evidence of a breach of the Code of Conduct has occurred, so no further action is needed? In the latter option, where there was such a determination, there would be no need for the case to be considered by the Standards Committee, and so such a case could be referred to the Committee 'for information only'. As the proposals are currently drafted, however, every case would be considered by the Committee (either by considering and accepting a Monitoring Officer's finding that there is no evidence of a breach of the Code or by holding a full hearing into the matter), as a reassurance that all cases, including the most minor, will be subject to Committee scrutiny.

Yes. A review by the Standards Committee is a necessary safeguard against pressures on Monitoring Officers.

- (4) Should Monitoring Officers be able to refer cases back to the ESO? Should there be provision for cases to be referred back to the ESO by the Monitoring Officer if new evidence is discovered suggesting that the case is more serious than originally thought by the ESO when he originally referred it to the Monitoring Officer ? This could assist in ensuring that serious cases are appropriately treated.
- *Monitoring Officers should certainly be able to refer cases back to the ESO - and not just if new evidence is discovered.*
 - *A Monitoring Officer should also have the right to refer a case back to the ESO if he considers the complaint is;*
 - (i) *Too politically controversial for him to investigate (by reason of the Member involved or the subject matter); or*
 - (ii) *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.*
 - *Standards Committees should also be able to refer cases back to the ESO for the same reasons as the Monitoring Officer - see 2(i) above.*

- (5) Is the balance between the actions required of Monitoring Officers under the proposed amendment regulations and the Standards Board's proposed guidance to Monitoring Officers appropriate?

Yes.

Yours sincerely,

John Williams
Deputy Town Clerk and Monitoring Officer

First Class Post

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