

<p><b>LONDON BOROUGH OF BRENT</b></p> <p><b>Standards Committee – 8 June 2005</b></p> <p><b>Report from the Borough Solicitor</b></p>	
For action/information	Wards affected: ALL

**REPORT TITLE : LOCAL INVESTIGATIONS**

**1.0 SUMMARY**

- 1.1 The Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004 make provision for local monitoring officers to investigate allegations of misconduct by members of relevant authorities, and to enable authorities' Standards Committees to make determinations following reports into such breaches made by Monitoring Officers.

These regulations came into force on 4 November.

**2.0 RECOMMENDATIONS**

- 2.1 That the Committee note this report which is for information.

**3.0 FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications.

**4.0 STAFFING IMPLICATIONS**

- 4.1 There are no staffing implications.

**5.0 DIVERSITY IMPLICATIONS**

- 5.1 There are no diversity implications arising from this report.

**6.0 LEGAL IMPLICATIONS**

- 6.1 The Monitoring Officer is required to report back to the ESO within three months of receiving the directions on the outcome of the local investigation or with details of proposed actions. If an ESO is not satisfied with the action taken or proposed, they may require the Authority to publish a statement giving details of the direction and the reasons for not fully implementing the direction.

## 7.0 DETAIL

- 7.1 ESOs may refer an allegation to a Monitoring Officer for local investigation at any point before they themselves complete their own investigation into the allegation. When considering whether to refer the allegation, they will use their discretion and take into account all relevant circumstances. For example, the ESO is more likely to refer those cases in which:
- the matter does not appear to need the heavier penalties available only to the Adjudication Panel for England
  - the allegation is of an entirely local nature and does not raise matters of principle
  - the initial investigation by an ESO has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct
- 7.2 The ESO is less likely to refer cases if there is evidence that a local investigation would be perceived as unfair or biased or there are any relevant local political issues that may have a bearing on the investigation. When referring an allegation, the ESO will forward a copy of the allegation letter, along with any other significant information that they consider appropriate.
- 7.3 Not all referrals from an ESO will require investigation. Under the regulations, an ESO can decide that some form of action other than investigation or determination is required at a local level. This is most likely to happen in situations where the ESO considers that a case has broad relevance for the ethical governance of an authority. The ESO may, for example, direct the Monitoring Officer to make recommendations to the Standards Committee about wider issues for the authority raised by the case, or ensure that the parties concerned attempt some form of reconciliation.
- 7.4 When an ESO refers an allegation for local investigation, they will also notify the member who is the subject of the allegation and the person who made the complaint. The Monitoring Officer is also required to inform these people and explain to them what will happen next. At this stage, the Standards Committee members will be informed by confidential letter that an investigation is being carried out. This letter must not name the complainant or the member against whom the allegation has been made, and should not be considered at a Standards Committee meeting (to avoid prejudicing the investigation and subsequent Standards Committee determination.)
- 7.5 During the course of an investigation, the Monitoring Officer may uncover evidence of conduct by members that breaches the Code of Conduct but extends beyond the scope of the investigation referred to him/her. As the Monitoring Officers' powers relate only to the specific allegations referred to them, further allegations must be referred back to

the Standards Board for England. The Monitoring Officer may also refer a case back to the ESO in other circumstances, such as:

- evidence of a further possible breach that relates directly to the investigation, revealing, for instance, a consistent pattern of behaviour
- Obstruction of an investigation: for example, where a member refuses to co-operate with the investigation. Cases where an officer obstructs an investigation are not a matter for the Standards Board for England but should be dealt with as a disciplinary matter.

7.6 Once the Monitoring Officer has completed her investigation a final report is produced. If the finding is that there has been no breach of the Code of Conduct the report should be put to the Standards Committee. If the Committee agrees with that finding a notice must be published to that effect. If the Committee disagrees then a hearing of the Committee or a sub-group of its members must be set up. If the Monitoring Officer's report concludes that there has been a breach of the code then the process moves straight to a hearing of the Committee or a sub-group of its members.

7.7 If the Standards Committee finds that a member has failed to follow the Code of Conduct, it can impose a number of penalties. The scope of these penalties has been expanded by the most recent regulations and now provide additional penalties and greater flexibility for Standards Committees. They apply both to cases investigated locally and to those investigated by an ESO before being sent to the Standards Committee for local determination. Standards Committees can do one, or any combination, of the following:

- censure the member
- restrict the member's access to the premises and resources of the authority for up to three months, ensuring that any restrictions are proportionate to the nature of the breach and do not unduly restrict the member's ability to perform his or her duties
- order the member to submit a written apology in a form satisfactory to the Standards Committee
- order the member to undertake training specified by the Standards Committee
- order the member to participate in a conciliation process
- suspend, or partially suspend, the member for up to three months
- suspend, or partially suspend, the member for up to three months, or until such time as the member submits a written apology that is accepted by the Standards Committee

- suspend, or partially suspend, the member for up to three months, or until such time as the member undertakes any training or conciliation ordered by the Standards Committee.
- 7.8 If the Standards Committee decides that the sanctions available to it are not adequate for the seriousness of the case, it can request the ESO to take the case back for investigation.
- 7.9 By way of summary, the obligations of Councillors and officers in assisting in and cooperating with the conduct of local investigations are set out below:

The **Monitoring Officer** may:

- Appoint such officers as she considers to be appropriate to carry out investigations into the conduct of Councillors and Co-opted members of the Council. Such officers may be from any Council department or service.
- Require any Council officer to provide a statement, answer questions or supply information to assist in the conduct of an investigation.
- Require Councillors and Co-opted members to provide such statements, answer questions or supply information.

**Officers** must:

- Carry out investigations or elements of investigations on behalf of the Monitoring Officer as allocated and in accordance with the local investigation procedure.
- Co-operate with the conduct of any investigation including the provision of a statement, answering questions and supplying information in accordance with the requirements of the Monitoring Officer or any officer carrying out an investigation on her behalf.

**Councillors and Co-opted Members** must:

- Co-operate with the conduct of any investigation including the provision of a statement, answering questions and supplying information in accordance with the requirements of the Monitoring Officer or any officer carrying out an investigation on her behalf.

## 8.0 BACKGROUND INFORMATION

Any persons wishing to inspect the papers in connection with the above proposals should contact Jane Alver at [jane.alver@brent.gov.uk](mailto:jane.alver@brent.gov.uk) or on x1368.