

<b>TITLE</b>	: ETHICAL FRAMEWORK – UPDATE JUNE 2003		
<b>TO / ON</b>	: MANAGEMENT BOARD	7 JULY 2003	
	: STANDARDS COMMITTEE	8 JULY 2003	
<b>REPORT FROM</b>	: THE MONITORING OFFICER		
<b>STATUS</b>	: FOR PUBLICATION		

**1.0 TYPE OF DECISION**

1.1 What type of decision is to be taken:-

EXECUTIVE DECISION				COUNCIL DECISION
Key	N/A	Non Key		N/A

1.2 If a key decision, has it been included in the Forward Plan

Inclusion in Forward Plan	N/A	Date of Plan	
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**2.0 SUMMARY**

This report is to inform Members of recent developments in the implementation of the Ethical Framework for Local Government pursuant to Part III of the Local Government Act 2000.

**3.0 OPTIONS AND RECOMMENDED OPTIONS (with reasons)**

That the report be noted.

**4.0 THIS REPORT HAS THE FOLLOWING IMPLICATIONS**

<b>Corporate Aims</b>	Part III of the Local Government Act 2000 will help support the Council in fulfilling all it's corporate aims.
<b>Policy Framework</b>	Implementation of Part III of the Local Government Act 2000 will help support the development of the Policy Framework.
<b>Statement by Monitoring Officer</b>	Information in this report is in accordance with the guidance and regulations arising from Part III of the Act.
<b>Statement by Director of Finance and E-Government</b>	As explained in paragraph 8.5 any additional costs will be met from within existing resources, subject to review after a reasonable period.
<b>Human Resource IT/Land and Property Implications</b>	
<b>Wards/Area Boards affected</b>	All
<b>Scrutiny Panel's Interest</b>	
<b>Consultations</b>	None

**Call-in**

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**Briefings**

Executive Members/ Chair		Chief Executive	
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## **5.0 INTRODUCTION**

- 5.1 The Government has now made the first part of the Regulations which enable the Ethical Standards Officers of the Standards Board for England to refer allegations to the Standards Committee, or a Sub-Committee, for local determination, once the Ethical Standards Officer has completed an investigation on the allegation. The Standards Board have indicated that they are unlikely to refer any cases for local determination before September.
- 5.2 A further set of Section 66 Regulations will be made later in the year, once the Local Government Bill is in force, which will enable an allegation to be referred to the Monitoring Officer before investigation of the allegation, so that the Monitoring Officer will then secure the investigation of the allegation and report to the Standards Committee, or Sub-Committee.
- 5.3 At the second annual assembly of the Standards Board for England in June 2003 their Chair reported that there had been 3500 allegations made that Councillors had failed to comply with the Code of Conduct, although more than half of these originated from Parish Councils. About 45% of the allegations received so far have been referred to an Ethical Standards Officer for investigation.

## **6.0 THE CONTENT OF THE REGULATIONS**

- 6.1 The regulations contain no great surprises in terms of the procedure which authorities will be required to follow in dealing with allegations of failure to comply with the Code of Conduct. Key features include:
- (a) Extension of the definition of “exempt information” to make it clear that the Standards Committee can meet in private session to determine allegations. In practice, to ensure public confidence in the process, the Committee should meet in public unless there are over-riding reasons for going into private session, such as the need to protect the privacy of individuals. However, these amendments do usefully allow the Proper Officer to deny press and public access to the Committee papers in advance of the meeting, and enable the Committee to retire in order to consider its findings.
  - (b) Extension of the permitted grounds of disclosure of information obtained during an investigation or hearing. This is to enable a national Appeals Tribunal to discharge its functions.
  - (c) The function of the Monitoring Officer being to report the Ethical Standards Officer’s written report to the Standards Committee, without additional investigation. However, the Committee may wish to ask the Monitoring Officer to provide additional evidence if they are unable to come to a decision on the basis of the Ethical Standards Officer’s report and the Councillor’s response thereto.

- (d) There is no provision for the Standards Committee to call the Ethical Standards Officer to give evidence in support of his/her report. The Committee may wish to ask the Standards Board for the Ethical Standards Officer to make such an appearance if there are substantial disputes of fact in a particular case, but there is no automatic right for the Committee to require such attendance.
  - (e) The Committee's hearing must be at least 14 days after the Monitoring Officer has given a copy of the Ethical Standards Officer's report to the Councillor concerned, but no later than 3 months after the Monitoring Officer first received the report from the Ethical Standards Officer.
  - (f) The Standards Committee is given a power to make a determination in the absence of the Councillor concerned where it is not satisfied with the Councillor's explanation for his/her absence.
  - (g) Where the Councillor concerned has ceased to be a Councillor by the date of the Committee's hearing, the only sanction which the Committee can impose is one of censure as to his/her conduct.
  - (h) Where the Councillor is still a Councillor at the date of the hearing, the range of sanctions is more varied and includes all or any of the following:
    - (i) Censure of the Councillor;
    - (ii) Restriction of the Councillor's access to Council premises and use of Council resources for up to 3 months, provided that this does not unduly restrict the Councillor's ability to perform his/her functions as a Councillor. This might be appropriate where the misconduct was the bullying of Officers, or removing their Council-provided computer where the misconduct was inappropriate use of this facility;
    - (iii) Suspension as a Councillor of the relevant authority for up to 3 months. Note that this period does not count towards any disqualification by reason of failure to attend a meeting of the authority for 6 months;
    - (iv) Partial suspension as a Councillor of the relevant authority for up to 3 months. This could be suspension from Planning Committee if the misconduct particularly related to his/her participation in Planning Committee; or
    - (v) Suspension or partial suspension for up to 3 months or until the Councillor provides a written apology or undertakes remedial training or conciliation as determined by the Standards Committee.
- Any such sanction take effect immediately upon the Committee's decision, unless the Committee determines that it shall take effect from a set date within 6 months of the date of the determination.
- (i) A Councillor can appeal to the National Adjudication Panel.

## **7.0 PROCEDURE FOR DEALING WITH REFERRED ALLEGATIONS**

- 7.1 (a) Ethical Standards Officers will now start to refer allegations to Monitoring Officers and Standards Committees where they consider that the alleged misconduct is of such a nature that, if proven, it would merit a sanction within the powers set out above, rather than the more draconian sanctions available to a national Case Tribunal, of suspension for up to one year or disqualification from any local authority for up to 5 years.
- (b) It is important for the Authority to have determined a procedure which it will apply to any such referred allegations so that, when the first one is received, all parties are clear as to how the matter will be dealt with and when they will have an opportunity to contribute to the process. The Standards Board will be issuing guidance on such procedures shortly, and I propose to recommend a procedure to the Committee once we have received that Guidance.

## **8.0 IMPLICATIONS FOR THE ROLE OF THE MONITORING OFFICER**

- 8.1 The Monitoring Officer has no statutory or legal duty to report any breach of the code to the Standards Board, whereas Members are required by the Code to report any breach by another Member. The Standards Committee is responsible for upholding standards of conduct but it is generally accepted that the Monitoring Officer has a responsibility to support the Committee. Many Monitoring Officers take the view that they should advise Members about their duties under the Code and advise complainants about the process for reporting to the Standards Board and should themselves only report individual cases as a “last resort.”
- 8.2 Standards Committees will generally expect the Monitoring Officer to advise them in their proceedings, including in the conduct of any local determination of an allegation. It is arguable that, if the Monitoring Officer has previously given advice to the Member concerned about his/her conduct, the Monitoring Officer would have a conflict of interest. The view taken is that unless the advice given previously by the Monitoring Officer is a matter of contention, the Monitoring Officer should still normally be able to advise the Standards Committee on procedure.
- 8.3 If and when the Monitoring Officer is empowered to investigate individual allegations, which may result in a report and presentation of the case to the Standards Committee, she will not be able to also act as advisor to the Committee. It will therefore be necessary for the roles to be separated in such cases and this could be achieved by the Deputy Monitoring Officer (or another officer) undertaking an appropriate role in any particular case.

Alternatively, reciprocal arrangements with other local authorities could assist, or support could be obtained from specialist legal advisors. The Greater Manchester District Secretaries Group have already discussed the possibility of establishing mutual arrangements within Greater Manchester and have agreed to consider this further in light of the regulations and Standards Board guidance.

- 8.4 Monitoring Officers have a statutory right to be provided with sufficient resources to carry out their duties. The Standards Board suggests that Monitoring Officers request appropriate finance and staffing resources to enable the role to be fulfilled effectively.

- 8.5 No specific provision has been made in existing budgets for additional resources for Monitoring Officer purposes. It is envisaged that the requirements can be met from existing resources, although this will need to be reviewed once the arrangements for local determination (and in due course, local investigation) have been in operation for a reasonable period.

## **9.0 RECOMMENDATION**

That this report be noted and that the Monitoring Officer report further on a procedure for determining referred complaints once the Standards Board's Guidance has been received.

### ***Background documents:***

### ***For further information on the details of this report, please contact:***

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