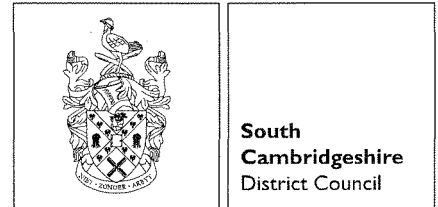


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## LEGAL OFFICE

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The Standards Board for England  
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22<sup>nd</sup> August 2006

Dear Mr Prince,

I am the Acting Monitoring Officer at South Cambridgeshire District Council. The Council's Standards Committee has tasked me to write to you seeking guidance on an issue relating to the procedures for local investigations and their statutory basis which the Committee has recently considered.

Currently an Ethical Standards Officer has the ability to recommend that no action should be taken even though he or she has found that a member has breached the Code of Conduct. I understand this to be where the ESO considers that no sanction is likely to be imposed and any subsequent hearing. However, in the Local Investigations procedure where a Monitoring Officer concludes that there has been a failure to comply with the Code of Conduct he must refer his report to the Standards Committee for a formal hearing. There is no option to declare that "no action should be taken".

This issue is highlighted in the latest edition of the Town and Parish Standard at the bottom of Page 3 it states that: "Officers went on the explain that even if it is considered that there may have been a breach, in order to justify an investigation, it is the referrals officer's role to decide whether the alleged conduct would be likely to attract a sanction at a Standards Committee or Adjudication Panel for England hearing." However there is no such power to "filter" currently available to Monitoring Officers. The members here feel that some Standards Committee hearings, which are extremely expensive and time-consuming to run, could be avoided if this local filtering process was an option.

I would be grateful if you would let me know the rationale behind this perceived anomaly and whether there are any plans to change this in the forthcoming changes to the legislation. I look forward to hearing from you.

Yours sincerely,

Fiona McMillan  
Acting Monitoring Officer

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31 August 2006

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Dear Ms McMillan

### **Local Investigations**

Thank you for your letter dated 22 August regarding the filtering process for allegations.

The legislation relating to the findings that may be made by Ethical Standards Officers (ESOs) does differ to that of monitoring officers and the Standards Board is endeavoring to change this. In your letter, however, you also refer to an article in the latest issue of the Town and Parish Standard which relates to the role of our Referrals Unit and it may be helpful if I explain the role of the unit and how it fits into the process of dealing with allegations as it is quite separate from that of the role of ESOs in investigating and reporting on allegations that the code has been breached.

At the present time, all allegations that are received are assessed by our referrals unit to establish whether, on the basis of the information supplied, it appears that there may have been a breach of the code of conduct. Even if it is considered that there may have been a breach, it is only in those cases where we are of the view that the alleged conduct would be likely to attract a sanction at a standards committee or Adjudication Panel for England hearing that the matter is referred for investigation. This reflects the cost of conducting an investigation whether by an ESO or a monitoring officer. In other words, a filtering exercise is currently undertaken in respect of all allegations that are received, and this results in over 75% of complaints received not being investigated.

Proposals are currently being developed to transfer the responsibility for the initial filtering of allegations to standards committees. It is recognised, however, that this is an additional burden on standards committees, albeit something that they have requested. This will mean that standards committees themselves will be responsible for deciding which complaints are referred for investigation but will require them to consider all allegations that are received in relation to those councils for which they are responsible.

Where an allegation is referred for investigation, Section 59(4), Local Government Act 2000 provides that where the investigation is undertaken by an ESO, the ESO can make one of four findings, namely:

- a) that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned,
- b) that no action needs to be taken in respect of the matters which are the subject of the investigation,
- c) that the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority concerned, or
- d) that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for England for adjudication by a tribunal falling within section 76(1).

Section 60(2) of the Act provides that an ESO may refer an allegation to a monitoring officer for investigation, although this has only been possible since November 2004 when the Local Authorities (Code of Conduct)(Local determination)(Amendment) Regulations 2004 were introduced.

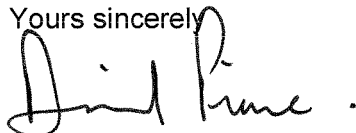
These Regulations provide that when a monitoring officer conducts an investigation they may make one of two findings, namely:

- a) that they consider that there has been a failure to comply with the code of conduct ("a finding of failure"), or
- b) that they consider that there has not been a failure to comply with the code of conduct ("a finding of no failure").

The Standards Board does wish to see this difference in approach reconciled, and is seeking in any revised legislation that an ESO should be required to make a finding on a similar line to that made by monitoring officers, that is either a finding of "failure" or "no failure". All reports which conclude that there has been a breach of the code of conduct will therefore require a hearing by either a standards committee or an APE case tribunal depending on the severity of the breach.

I hope this information is helpful in advising your standards committee on the filtering process that is currently in place and the changes that may be introduced in the future.

Yours sincerely



**David Prince**  
**Chief Executive**