

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Standards Committee

8 November 2006

AUTHOR/S: Chief Executive / Deputy Monitoring Officer

PROCEDURE FOR LOCAL INVESTIGATIONS

Purpose

1. The Committee is to examine a model procedure for Local Investigations and decide whether to adopt it as the procedure for the council.

Background

2. At the last meeting of Standards Committee the Chairman had introduced the draft Procedure for Local Investigations and noted that representations had been made by two Committee members, copies of which were available on the Council's website and which would be circulated to all Committee members. Rather than attempt to re-draft the procedure at the current meeting, the Committee felt that this procedure be adjourned to an extra-ordinary meeting. The Deputy Monitoring Officer undertook to receive comments from Committee members before a set deadline of 25 August 2006 and to incorporate into a revised procedure all straightforward drafting issues. A report would be prepared on substantive issues of principle for discussion. Due to a difficulty in organising an extra-ordinary meeting the item has been returned to this agenda.
3. The Deputy Monitoring Officer explained that the original procedure had been drafted by Peter Keith-Lucas, a partner with the Bevan Brittan firm of solicitors in London, and had been included as part of a resource package at a training exercise. If the committee decides to adopt this procedure it would be forwarded to the Constitution Review Working Party and then to full Council for incorporation into the Constitution. There was no immediate need for the procedures to be ratified as the Standards Board for England had issued written guidance on local investigations procedure for local authorities to follow.
4. Councillor Riley asked that Committee members receive copies of the Statutory Instruments underlying the procedures. He asked the Deputy Monitoring Officer to seek clarification from the Standards Board for England why the procedure omitted the option for the Ethical Standard Officer to find evidence of a breach but take no further action. He further queried the existence in legislation of a local filtering process allowing the investigator to acknowledge evidence of a breach but not to require a hearing in instances where it was unlikely sanctions would be imposed. The Deputy Monitoring Officer confirmed that the comment in the July 2006 *Town and Parish Standard* publication from the Standards Board for England was the first time the Ethical Standards Officer filtering process had been acknowledged in writing.

Considerations

5. All members of Standards Committee were asked to submit by 25 August 2006 their comments on the model procedure to the Deputy Monitoring Officer. Parish Councillor M Farrar and District Councillor A Riley submitted extensive comments and these have been published on the Standards Committee website. Following

these comments the procedure has been amended to take account of typographical, grammatical and other errors and inconsistencies.

6. There are a number of policy areas which the Committee should now examine in detail, following this consultation period. They are as follows:
 - (a) 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. This can 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" and consequently no power to "filter" currently available to Monitoring Officers, which could save the time and costs of holding a Standards hearings. The Deputy Monitoring Officer has written to the Chief Executive of the SBE on this point and his response is attached to this report. This issue has certainly been flagged by many councils and is likely to be reviewed in any new Regulations.
 - (b) The concept that, where an Investigating Officer finds there has been no breach, the Committee can overrule and demand a hearing but where an Investigating Officer finds there has been a breach, the Committee cannot overrule. There have been concerns raised that this could well lead to more Hearings at which technical breaches are confirmed but no sanction given.
 - (c) The role of Monitoring Officer/Investigating Officer – a comment has been received that the role of Monitoring Officer appears to be more inquisitorial than adversarial and the defined roles in the procedure appear contradictory.
 - (i) The idea is for the subject member to let the Investigating Officer have the names of their "witnesses" so they can be spoken to as part of the investigation so the Investigating Officer can gain a complete picture before forming a view. This may be a unique kind of role in Britain but similar to the role of the "investigating magistrate" in France and other European countries.
 - (ii) The Amendment Regulations set out at section 4 state that any reference in the Regulations to a "monitoring officer" shall include any nominated deputy and any person nominated....[as investigating officer]. Although the Monitoring Officer has the power to delegate the investigation to an Investigating Officer, the work of that Investigating Officer is still formally presented under the auspices of the Monitoring Officer to the Standards Committee.
 - (iii) This reflects the current situation at the Standards Board where the Ethical Standards Officer appoints an Investigating Officer who carries out the investigation, gives a draft report to the ESO which the ESO then sends to the Monitoring Officer, the complainant and the subject member, the ESO signs off the final report after considering their comments and then the ESO refers the matter to the Adjudication Panel or the Standards Committee if necessary. In the suggested procedure here the Monitoring Officer would only carry out the initial formal notifications which would include a formal appointment of the Investigating Officer and after that the Investigating Officer takes over

until the final report stage, which is then made formally in the name of the Monitoring Officer, but would effectively be the Investigating Officer's report. The Monitoring Officer would play no part in the investigations process or conclusions reached whatsoever.

- (d) Paragraph 2 (b) (ii) Possibility of withholding name of complainant. Comments have been received that if an alleged complaint is so serious that anonymity is required then the matter should be dealt with by the police and this anonymity clause is unacceptable. The SBE current guidance is that it is "unlikely" that confidentiality of the complainant could be maintained but doesn't rule out the possibility in an exceptional case
- (e) Paragraph 2 (f) 14 days for the Councillor to respond to the Investigating Officer in writing. Comments have been received that this time-frame is too short and the suggestion has been received that this is changed to 30 days.

Options

- 7. There are two options available to the Standards Committee:
 - (a) to amend the model procedure as necessary before recommending to Council its adoption; or
 - (b) to recommend to Council the adoption of the model procedure in its current form.

Implications

8.	Financial	None
	Legal	Will need to change Constitution if new procedure adopted
	Staffing	None
	Risk Management	None
	Equal Opportunities	None

Consultations

- 9. All members of Standards Committee were asked to submit by 25 August 2006 their comments a set deadline on the model procedure to the Deputy Monitoring Officer. District Councillor A Riley and Parish Councillor M Farrar submitted comments.

Effect on Annual Priorities and Corporate Objectives

10.	Affordable Homes	None
	Customer Service	None
	Northstowe and other growth areas	None
	Quality, Accessible Services	None
	Village Life	None
	Sustainability	None
	Partnership	None

Conclusions/Summary

11. The Committee should decide if it wants to have a local investigations procedure included in the Constitution or whether it wishes to retain the existing procedure based on SBE guidance.
12. If it wishes to adopt the model procedure then the Committee needs to decide if any amendments are necessary.

Recommendations

13. That the Model Procedure be recommended to Council for adoption and inclusion in the Constitution. It is recognised that some members of the committee may feel that the model procedure requires further amendment and on that basis Option (a) is recommended.

Background Papers: the following background papers were used in the preparation of this report:

SBE publications: "Local Investigations" and "How to conduct an investigation"
Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (SI 2003/1483)
Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 (SI 2004/2617)
Local Government Act 2000 (Part III)

Contact Officer: Fiona McMillan – Deputy Monitoring Officer
Telephone: (01954) 713027