

Runnymede Borough Council

STANDARDS AND AUDIT COMMITTEE

Tuesday 15 February 2005 at the conclusion of the Council Meeting (which commences at 7.00 p.m.)

in the Council Chamber

at the Civic Offices, Addlestone



Members of the Committee

Councillors Ms. C.M. Simmons (Chairman), A.P. Tollett (Vice Chairman), Mrs L.M. Gillam, P.A. Greenwood, Ms R.E. Haylor and Dr. R.F. Miller and Mrs C. Spurling (Independent Members)

In accordance with Standing Order 29.2 any non-member of the Committee who is considering attending the meeting should first request the permission of the Chairman.

## **A G E N D A**

Notes:

- i) Any report on the Agenda involving confidential information (as defined by section 100A(3) of the Local Government Act 1972) must be discussed in private. Any report involving exempt information (as defined by section 100I of the Local Government Act 1972), whether it appears in Part 1 or Part 2 below, may be discussed in private but only if the Committee so resolves.
- ii) The relevant "background papers" are listed after each report in Part 1. Enquiries about any of the Agenda reports and background papers should be directed in the first instance to **Mr. R.I. Langmead, Administration and Leisure Department, Committee Section, Civic Offices, Station Road, Addlestone (Tel. Direct Line: 01932 425610). (Email: [ian.langmead@runnymede.gov.uk](mailto:ian.langmead@runnymede.gov.uk)).**
- iii) Agendas and Minutes are available on a subscription basis. For details, please ring Mr. B.A. Fleckney on 01932 425620. Agendas and Minutes for all the Council's Committees may also be viewed on [www.runnymede.gov.uk](http://www.runnymede.gov.uk).
- iv) In the unlikely event of an alarm sounding, members of the public should leave the building immediately, either using the staircase leading from the public gallery or following other instructions as appropriate.

## **LIST OF MATTERS FOR CONSIDERATION**

### **PART I**

#### **Matters in respect of which reports have been made available for public inspection**

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### **PART II**

#### **Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.**

a) Exempt Items

(No items to be considered under this heading).

b) Confidential Items

(No items to be considered under this heading).

1. MINUTES

To confirm and sign the Minutes of the Meeting held on 14 September 2004.

2. APOLOGIES FOR ABSENCE

3. DECLARATIONS OF INTEREST

If Members have an interest in an item please record the interest on the form circulated with this Agenda and hand it to the Legal Representative or Committee Administrator at meetings.

Members who have previously declared interests which are recorded in the Minutes to be considered at this meeting need not repeat the declaration when attending the meeting. Members need take no further action unless the item in which they have an interest becomes the subject of debate, in which event the Member must leave the room if the interest is personal and prejudicial.

4. INTERNAL AUDIT (DF)

1. Purpose of Report

1.1 The purpose of this report is to:

- provide information on the 2005/2006 Internal Audit plan;
- update Members on the staffing provision of the Internal Audit section;
- update Members of any internal control issues arising from the first part of this year's audit coverage.

2. Background Information

2.1 The Council's Policy and Resources Committee meeting on 26 June 1996 approved a bi-annual reporting process. Since then, Members have been provided with two reports each year:

- one presenting the annual Internal Audit plan for approval (prior to 1 April ),
- another reporting actual work performed compared to that plan (following 31 March).

2.2 This report presents the 2005/2006 Internal Audit plan.

3. The Internal Audit Plan

3.1 A copy of the 2005/2006 Internal Audit plan is reproduced at Appendix 'A'. This document has been drafted by the Chief Internal Auditor and finalised following consultation with Chief Officers and the Audit Commission auditors.

3.2 In summary, the annual plan is split as follows:

- 207 days allocated to carrying out systems based audit work to provide assurance on the Council's internal controls,
- 20 days computer audit,
- 20 days to deal with the audit of contracts,
- 20 days for providing data for the identification of possible frauds and following up information supplied by the National Anti Fraud Network,
- 35 days reserve for unforeseen work, and providing a consultancy service.

3.3 A point to note is that the total number of days in the annual plan (i.e. 302) represents a significant drop in the number of chargeable days of recent plans (378 days in 2003/04, 409 days in 2002/03, 383 days in 2001/02). This will therefore have a knock on effect on the section's daily chargeable rate.

3.4 There are a number of reasons for this, primarily:

- The number of days being purchased from the external provider to replace an audit post is 130 days a year. The expected number of chargeable days from an in-house auditor is usually 160+, more if they are not undergoing professional training on a day release basis. (It is important to recognise that this considers the difference between audit plans only, not actual performance. The actual level of sick leave and vacancies was not built into audit plans.)
- More time has been allowed for overheads to formally recognise the actual amount of time spent on each audit. The number of days in the annual Internal Audit plan is intended to cover the work to draft report stage. This includes background reading, planning the work, conducting the testing, compiling working papers, and producing the draft audit report. Agreeing dates to start the audit, finalising the report in closing meetings, issuing the report and following up recommendations used to take minimal amounts of time and was absorbed into overheads with little consequence.
- Over the last couple of years however, it has become increasingly time consuming to complete these additional tasks due to pressures on other staff, to the point that an estimate of the time required has had to be factored into the calculation of available audit resources. Changes to the time records maintained by staff will be made shortly so that actual time required can be identified.

3.5 A further point worthy of consideration regarding the coming year's audit plan is the computer audit. At the time the Internal Audit plan was drafted and agreed, the external provider (PPS-ACIT) was undertaking a requested Computer Audit Needs Assessment.

3.6 That work has only recently been completed and the draft report and computer audit plan are currently being agreed. However, work is sufficiently advanced now to be able to report that the audits planned for completion by a technically qualified auditor for the forthcoming period are:

- BACSTEL IP (04/05 audit plan 7 days)
- DMS and workflow (04/05 audit plan 8 days)
- PARIS Cash Receipting (05/06 audit plan 6 days)
- SX3 Revenues and Benefits (05/06 audit plan 8 days)
- E-Govt (05/06 audit plan 6 days)

3.7 These audit areas represent those with the highest risk factors as calculated by the external audit provider. PPS-ACIT's computer auditor is keen to undertake these as soon as possible, and has asked for arrangements to be made to enable her to have undertaken the work by later this year.

3.8 The annual plan is an extract of the strategic plan. The last one was compiled for the period Sept 2000 to March 2004, and rolled forward last year with a view to the Chief Internal Auditor revisiting and updating it. That task was delayed for two reasons.

- Work required to resolve the staffing situation has taken priority.
- The results of the Computer Audit Needs Assessment (as discussed above) were needed to be able to include computer audits in the strategic plan. Some of this work will need to be performed by a technically qualified computer auditor, some of it will be able to be undertaken by systems auditors. Dovetailing two types of audit into the strategic plan will ensure the best use of both types of auditors.

3.9 As a short term measure, two new audit areas have been added to the plan to keep it current and relevant. Budgetary Control has, so far, been an element of other relevant financial audits. However, the Audit Commission auditors have suggested that it ought to be considered as a discrete area of activity. Their view is accepted, so this audit area appears for the first time.

- 3.10 The other new audit is decriminalised parking, a recent new addition to the list of the Council's duties.
4. Staffing Provision of the Internal Audit Section
- 4.1 In addition to the Chief Internal Auditor post, the section's establishment has 2 auditors. Members have been kept updated of the numerous attempts to recruit and retain staff, and in April 2004, approved the proposal to replace one auditor post with consultants.
- 4.2 In contrast to the tone of previous reports, this report can present a much more optimistic outlook.
- 4.3 The consultants (PPS-ACIT) have supplied a very capable and experienced auditor to provide some stability while the section has tried to catch up with the backlog of work. This has meant the Chief Internal Auditor has only had to discuss issues relating to each impending audit with the contract auditor, rather than also having to give induction training to a number of different contract staff.
- 4.4 The other audit post was filled in November with a trainee, and the appointment looks to be very promising. The post holder is picking up the work quickly and has recently registered with the Institute of Internal Auditors to be able to start taking professional qualifications.
- 4.5 It is hoped that next year, the 2005/06 plan will be completed and the backlog of work can be cleared. Staff retention is key to this and to the section being able to provide a pro-active rather than reactive service. There are some concerns regarding the impending Job Evaluation exercise in this respect, as raised in the Annual Personnel Report.
5. Adequacy of Internal Control
- 5.1 There are no major issues arising from routine audit work that Members need to be made aware of.
- 5.2 However, there are audit concerns arising in relation to two issues in which Internal Audit has become involved outside the planned audit work. One involves the adequacy of controls over the award of Cash Incentive Housing Grants, and the other involves compliance with the requirement to issue receipts for cash payments. There have been discussions with Officers in both cases and recommendations have been made. These have been added to the section's list of recommendations to follow up.
- 5.3 Due to staff shortages, it has not been possible to conduct a systematic review of all outstanding audit recommendations to establish what progress has been made in implementing agreed actions. Each systems audit does follow up recommendations arising from the previous Internal Audit report, which works well for those areas audited regularly (i.e. annually). It is hoped that in the next few months, routine follow up of all recommendations can be resumed.
- 5.4 Rather than re-report recommendations presented to this committee in September 2004 that may have already been implemented, a list of recommendations arising from audits completed since then is included as Appendix 'B' together, with definitions of audit opinions.

**(FOR INFORMATION)**

Background Papers

None stated

5. REVIEW OF ARRANGEMENTS FOR INTERNAL CONTROL FOR 2004/05 (DF)  
(Ref: Minutes of Corporate Management Committee, 29 June 2004, page 76, para. 50)

**1. Purpose of Report**

- 1.1 The purpose of this report is to invite the Committee to consider the arrangements for internal control in the authority and to consider the issues that might be reported in the Statement on Internal Control for the 2004/05 financial year.**

## 2. Background Information

- 2.1 The Standards and Audit Committee has responsibility to consider any matters relating to control procedures, risk exposure and corporate governance generally. The consideration of the arrangements for internal control in the authority and the Statement on Internal Control falls under this duty.
- 2.2 The need to review arrangements for internal control and the Statement on Internal Control (SIC) is given statutory backing by the Accounts and Audit Regulations 2003. In particular these Regulations say that the Council has responsibility for:
- Ensuring that the financial management and control systems are adequate and that there is effective risk management,
  - Include a statement on internal control, prepared in accordance with proper practice, in its financial statements, and
  - Conduct a review at least once a year of the effectiveness of its system of internal control.

The review should set out a strategy to mitigate any key risks to service delivery that are identified.

- 2.3 The SIC looks beyond financial controls to include all aspects of the conduct of the Council's business and takes the form of a review of the effectiveness of the internal control systems. Statutory guidance requires the Statement on Internal Control to be signed by the most senior officer (Chief Executive Officer) and the most senior Member of the Council (the Leader) at the same time as the Statement of Accounts is approved.
- 2.4 CIPFA published a statement in April 2004 to help authorities prepare the SIC. This statement constitutes "proper practice" under the 2003 Regulations. It was deliberately not prescriptive and authorities were encouraged to determine the exact form and content for much of the SIC for reporting with their 2003/04 accounts. It was used to prepare the 2003/04 SIC for Runnymede.
- 2.5 The Corporate Management Committee received a report on the Statement of Accounts that included the first Statement of Internal Control produced - for the financial year 2003/04 - at its meeting on 29 June 2004. The Corporate Management Committee decided that in future an annual review of the internal control framework of the Council would be presented to the Standards and Audit Committee. This would allow the Committee to be better informed of the overall framework prior to the approval of the Statement of Internal Control in the Statement of Accounts.
- 2.6 In November 2004 the CIPFA Finance Advisory Network published a draft guide for practitioners on meeting the requirements of the 2003 Regulations. This guide has been extensively used in preparing this report.
- 2.7 The Audit Commission is keen that the annual review of internal controls should not be seen as an add-on end of year activity simply to comply with legislation.

## 3. Corporate Governance

- 3.1 Corporate governance came to public prominence with the publication of the Cadbury Report in 1992 that was prepared in response to high profile financial scandals in the private sector. The Cadbury Report and subsequent developments have addressed those aspects of corporate governance relating to financial reporting and accountability. Early responses to governance issues in the public sector also focused on accountability and there have since been a number of codes relating to NHS bodies in particular.
- 3.2 For local authorities, the framework for reporting on internal controls has been less developed until recently. In the 2002/03 Statement of Accounts a "Statement on the System of Financial Internal Control" was published for the first time. However this was limited in scope and covered financial controls only. The SIC is a considerable change to this statement.

- 3.3 Corporate governance extends beyond financial probity to include all aspects of the conduct of an authority's business. It is not just a finance issue and covers the governance aspects of accountability, effectiveness, openness and integrity. However, governance issues relating to internal controls are particularly pertinent to the preparation and publication of the Statement of Accounts.
- 3.4 It is emphasised that the SIC is a **corporate** responsibility, not just a finance or audit responsibility. Runnymede has always prided itself on good corporate governance. It is suggested that preparing the SIC and gaining the necessary level of assurance that controls are working should not be too much extra work for a well-run authority. The approach taken in this report is to document and codify existing good practice, citing evidence of what currently exists.
4. Statement of Internal Control (SIC)
- 4.1 The Statement on Internal Control sets out the framework within which internal control is managed and reviewed and the main components of the system, including the arrangements for internal audit. The SIC also reports on significant weaknesses and the actions taken to remedy these.
- 4.2 The SIC is to relate to the system of internal financial control as it applied during the financial year – in this case the review is for the 2004/05 financial year. Any significant developments between now and the date that the Statement of Accounts are signed by the Director of Finance will need be incorporated into the SIC. The SIC will then be presented to the meeting of the Corporate Management Committee on 7 July 2005 as part of the approval process for the Statement of Accounts.
- 4.3 The Council's external auditor is expected to review the SIC for 2004/05 closely. The transitional arrangements available in 2003/04 (the first year) will no longer apply. Furthermore, the Audit Commission's Code of Audit Practice 2005 (applies from 2005/06) will state that the SIC and underlying process will form a key piece of evidence for auditors' work on the authority's arrangements to secure economy, efficiency and effectiveness. In summary, the SIC will form an increasingly important part of the external auditors' work and subsequent opinion on the control arrangements of the Council.
5. Reviewing the effectiveness of Internal Control
- 5.1 The scope of internal control spans the whole range of local authority activities and includes those controls designed to ensure that:
- Council policies are put into practice
  - Values are met
  - Compliance with law and regulation
  - Agreed procedures followed
  - Reliability and accuracy of financial statements and other published information
  - Efficient and effective use of management and resources
  - High quality services are delivered efficiently and effectively
- 5.2 The draft guide for practitioners contains a useful flowchart that sets out some of the typical dynamics that an authority should consider and shows how they can be brought together and evidenced. This is set out in the diagram in Appendix 'C'. Of course, not all the elements will apply to Runnymede, but it serves as a useful guide to the overall process. For instance, the "management group" referred to in the centre of the flowchart is replaced by a consultation process involving all Directors, other senior Officers, and the Chief Internal Auditor. The flowchart also suggests that authorities consider producing a broader governance statement. It is not proposed to do this at the present time.

- 5.3 The flowchart also identifies the need for a review body in this process to critically examine the SIC and supporting documentation. This is the role of this Committee.
- 5.4 The CIPFA statement recommends that the Council should satisfy itself that it has obtained relevant and reliable evidence to support the Statement and sets out an **assurance gathering process** framework. This framework comprises the following stages:

1. Establish principal statutory obligations and organisational objectives
2. Identify key risks to their achievement
3. Identify and evaluate key controls to manage principal risks
4. Obtain assurances on the effectiveness of key controls
5. Evaluate and identify gaps in controls and assurances
6. Action Plan to address gaps and ensure continuous improvement in internal controls
7. Statement of Internal Control
8. Report to Committee

It is obtaining **assurance** that is the most challenging part of the process.

- 5.5 The sources of assurance include:

- Published documents (e.g. Constitution)
- Directors and managers throughout the organisation assigned with the ownership of risks and delivery of services
- The Monitoring Officer
- The Responsible Financial Officer
- Internal Audit
- External Audit
- Review agencies and inspectorates

The input of Members, and specifically this Committee, forms a very important part of the assurance gathering process.

- 5.6 The schedule in Appendix 'D' sets out the sources and examples of controls and procedures that are available to provide the evidence that is needed to support the SIC. The headings used in the Schedule follow those used in the guide for practitioners.

- 5.7 The Schedule places a great deal of emphasis on the first stage of the assurance gathering process - establish principal obligations and objectives – as the other stages follow on from this. There are 4 steps to this stage:

1. There is a mechanism to identify the principal statutory obligations of the Council.
2. That there is a mechanism to establish that corporate objectives exist and that it works, i.e. that the Council has decided what it **wants** to do.
3. Corporate governance arrangements are embedded in the Council – so that the Council runs properly and has a fair chance of doing what it wants to do

4. Effective performance management (not just performance reporting) so the authority finds out what it is doing and can correct drift.
- 5.8 Members are invited to review this Schedule closely and to satisfy themselves that the evidence is consistent with their own experience. Members are also invited to question the Officers at this meeting and to request further evidence as is considered necessary in order to obtain satisfaction about the Council's overall control framework.
- 5.9 This process will form part of the basis on which the SIC for 2004/05 will be prepared. As a guide only, a draft SIC for 2004/05 (very similar to the SIC for 2003/04 at present) is set out in Appendix 'E'.
6. Significant Internal Control Issues
  - 6.1 The guidance requires that SIC is to conclude with a section that identifies the actions taken (or proposed) to deal with significant internal control issues.
  - 6.2 The SIC for Runnymede in 2003/04 identified no significant internal control issues. This was not to say that there were no control problems whatsoever, only that they were not considered significant. The external auditor questioned this approach, and the view held at seminars attended by Officers appears to be that it is necessary for even the best authorities to identify "areas for improvement" (despite these being very different in nature from a control weakness).
  - 6.3 Therefore the SIC for 2004/05 will need to identify areas that it is felt that improvements can be made (and these will be identified as areas for improvement accordingly). At present, Officers suggest that the following areas of improvement would be usefully reported in the SIC for 2004/05:
    1. Risk Management

The formal process of risk management is still at a relatively early stage of development in Runnymede. The SIC will need to refer to the action plan that sets out how improvements will be made.
    2. Member Working Groups

Member Working Groups are convened to consider specialist topics in greater detail than could be achieved in full Committee. However, they are not subject to the same reporting disciplines as formal Committees and there is a risk that this could lead to a situation where comprehensive Officer advice or information is not provided to Members.
  - 6.4 Members are asked to review these areas for improvement and identify any further areas they consider important.
7. Legal Implications
  - 7.1 Regulation 4 of the Accounts and Audit Regulations 2003 require a statement of internal control to be published with the Statement of Accounts. Regulation 4(2) requires the Council to carry out an annual review of the effectiveness of its system of internal control. The Statement included in the Accounts is designed to meet both these requirements. Guidance has also recently been issued on the required contents of this Statement and the process for establishing and maintaining a system of internal control and the annual review process. The Guidance requires the Statement to be signed by the Chief Executive Officer and the most senior Member of the Council (the Leader).
8. Conclusions
  - 8.1 Corporate governance is a developing area in both public and private sectors. The approach taken in this report is to identify and provide evidence of the systems that already exist in the Council and actions taken.

- 8.2 There are areas that can be usefully developed, for example, in the control of risk. However, care will need to be taken to ensure that procedures remain proportionate to the risk and scale of activities in an authority the size of Runnymede

**MEMBERS ARE REQUESTED TO**

- i) review the Schedule of evidence set out in Appendix “D” closely and to satisfy themselves that the evidence is consistent with their own experience**
- ii) review the areas for improvement contained in the draft SIC and identify any further areas they consider important**
- iii) review the content of the draft SIC for 2004/05 generally**

**(TO RESOLVE)**

Background Papers

1. “Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice: Guidance Notes for Practitioners”, published by CIPFA.
2. Accounts and Audit Regulations 2003 – Statutory Instrument and Guidance Circular; ODPM Circular 04/2003.
3. “The Statement of Internal Control in Local Government – Meeting the requirements of the Accounts and Audit Regulations 2003”, published by CIPFA.
4. “The CIPFA Finance Advisory Network: The Statement of Internal Control - Meeting the requirements of the Accounts and Audit Regulations 2003. A guide for practitioners”, published by CIPFA , January 2005.

6. OMBUDSMAN INVESTIGATIONS (DAL)

The following matters have arisen with the Commissioner for Local Administration since the last meeting of the Committee:

<u>Matter</u>	<u>Date Notified</u>	<u>Outcome</u>
Complaint that appropriate action not taken to deal with alleged breaches of planning control on land at Thorpe	12 February 2004	Investigation discontinued - no evidence of maladministration.
Alleged defects in handling application for Housing Benefit	8 July 2004	Investigation discontinued - outside jurisdiction.
Alleged failure to control late night misuse of Gogmore Farm Park	13 August 2004	Not pursued - no evidence of maladministration.
Alleged wrong categorisation of property in respect of business rates.	4 October 2004	Complaint not pursued - outside jurisdiction.
Handling of unauthorised development at Clockhouse Lane West	23 November 2004	Discontinued. No or insufficient evidence of maladministration.
Alleged mishandling of Compulsory Purchase procedure adjacent to Bell Bridge Road, Chertsey, and failure to pay adequate compensation	29 December 2004	Not pursued at discretion of Ombudsman in light of general circumstances and age of matter.

**(FOR INFORMATION)**

## Background Papers

DAL File 61.21. (Exempt)

### 7. ADJUDICATION PANEL FOR ENGLAND - RECENT CASES (DAL)

The Committee may be interested to note the following decisions of the Adjudication Panel for England:

1. A Member of Burnley Borough Council, representing the British National Party, attended a BNP Festival. Before the Festival opened it was alleged that he made an "xenophobic remark" about a stallholder's husband and "took a swing" at the female stallholder. He was later involved in a drunken brawl and allegedly afflicted injuries on another man requiring seven stitches in the cheek. Notwithstanding the fact that he was attending the Festival in a private capacity, the seriousness of the behaviour was regarded as bringing his office or authority into disrepute. The Member had already resigned from the Council but he was disqualified from being a Member of a Local Authority for three years.
2. The Leader of Wyre Borough Council, a practising solicitor, represented a client at short notice before the Council's Licensing Committee. He said that he had done the same thing a number of years previously without any issue being raised. The tribunal found that the Councillor had a personal and prejudicial interest in the matter and failed to take the appropriate action. It did not find that he had acted other than in a professional capacity and thus had not sought improperly to influence the decision. However, it did find that his actions brought the Authority into disrepute. The tribunal recognised that he had no improper motives, and that he was placed in a difficult position by a late request from a long-standing client. The breach of the code was through failure to give proper consideration to it rather than a wilful breach. Both breaches were serious but the tribunal felt that the "disrepute" matter was particularly so, because an experienced Councillor should have recognised the possible impression created on a member of the public. Taking all the circumstances into account, the Councillor was suspended for six months.
3. A Member of Bedford Borough Council with an architectural practice addressed the Planning Committee on a client's application under the Public Right to Speak provisions, despite having been warned that it was very likely he had a personal and prejudicial interest. The Member claimed to have misunderstood this advice. The tribunal found that he had failed to comply with the Code of Conduct by failing to declare the interest and in so doing had brought the Council into disrepute. It recognised that at the meeting itself neither Officers nor fellow Members had drawn the problems to his attention. However, it disqualified him from being a Member of any Authority for a period of a year. It also recommended that Officer advice to Members on compliance with the Code of Conduct should be recorded in writing, that advice to Members regarding attendance at meetings be reviewed, and that the position of Members under the "right to speak" scheme should be also reviewed.
4. A Member of Forest Heath District Council disclosed in Council debate some of the content of an exempt Committee Report relating to an income tax error which had cost the Council money. When later interviewed by telephone by the Standards Board's Ethical Standards Officer, he arranged for two local journalists to hear the interview on a speaker phone and take notes. Although he claimed not to have anticipated this, his interview was the subject of an article in the local press. He had been told the confidential nature of the interview. The tribunal accepted that there had been a shortage of advice and intervention at the Council Meeting at which the matter originally arose. It decided that he had disclosed confidential information in contravention of the Code and that this, and his further actions, had brought his office into disrepute. The tribunal suspended him for twelve months and recommended that the Council urgently review its procedures relating to the preparation of Council papers and the conduct of Council meetings.

### **(FOR INFORMATION)**

## Background Papers

None.

8. COMPLAINTS MADE AGAINST MEMBERS OF RUNNYMEDE BOROUGH COUNCIL (DAL)

There have been no complaint of breaches of the Code of Conduct against Members of the Council to date.

**(FOR INFORMATION)**

Background Papers

None.

9. LOCAL INVESTIGATIONS (DAL)

(Ref: Minutes of Standards and Audit Committee, September 2004, para. 200, page 274)

1. Purpose of Report

1.1 **The purpose of this report is to inform Members of the new procedures for local investigation introduced by the Local Authority (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, and to recommend action regarding the procedure for dealing with local determinations.**

2. Background Information

2.1 All complaints that Councillors have breached their Authority's Code of Conduct are dealt with in the first instance by the Standards Board for England.

2.2 Section 66 of the Local Government Act 2000 allows regulations to be made under which the Standards Board can refer to local level the action to be taken following a report, or indeed a complete investigation.

2.3 Regulations allowing completed reports to be referred to local Monitoring Officers were made at the end of 2003, and were considered by this Committee in February 2004. The Council adopted procedures for local reporting and hearing on this Committee's recommendation.

2.4 As reported to the Committee in September 2004, further regulations have now been made allowing the Standards Board to refer a complaint to a local Monitoring Officer before or during investigation. It will then fall to the Monitoring Officer to arrange for investigation, report, and hearing by the Local Standards Committee.

2.5 The Standards Board have said that their Officers are more likely to refer 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 Ethical Standards Officer has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct.

Cases are less likely to be referred if there is evidence that a local investigation would be perceived as unfair or biased, or if there are any relevant local political issues that may have a bearing on the investigation.

2.6 Investigations may be referred to the Monitoring Officer even if they have already been started.

2.7 The Standards Board for England has issued guidance on local investigations for Monitoring Officers and Standards Committees, and this is reproduced at Appendix 'F'.

3. Procedure and Guidance

3.1 The Ethical Standards Officer who has been deputed to examine the case by the Standards Board for England will, if he decides that it should be investigated locally, send a copy of the

allegation letter to the Monitoring Officer. The Ethical Standards Officer will tell the complainant and the relevant Member that this is being done. The Monitoring Officer must also notify them when he has received the matter.

- 3.2 The Standards Board recommend that the Monitoring Officer should advise the Standards Committee that a Local Investigation is being carried out, but without naming the Member or the complainant and giving only brief details. This is to avoid any impression of prejudice or unfair procedure when the Standards Committee later has to hear the allegation.
- 3.3 The Standards Board recommends that the Monitoring Officer should not both investigate the allegation and also advise the Standards Committee during any ensuing hearing. The Monitoring Officer has the power to delegate either function to another person, and will have to choose which. Given further Standards Board advice that the Monitoring Officer should act as the main adviser to the Standards Committee, it is likely that the investigation would be delegated unless in the particular circumstances the balance favoured the Monitoring Officer undertaking the investigation personally.
- 3.4 If the matter is one in which the Monitoring Officer has a personal interest - for example by involvement with the subject matter or through having advised the Member in question on the course of conduct which is now the subject of complaint - he or she must arrange for both investigation and advice to be carried out by someone else. The Standards Committee should be advised of this and the reasons.
- 3.5 It remains to be seen how much the power of delegation will have to be used. As well as the possibility of delegating a function to another Officer of the Authority such as the Deputy Monitoring Officer, it is also possible to delegate it to an Officer of another Authority, or to someone else entirely if they possess the relevant skills.
- 3.6 If during the course of the investigation the Monitoring Officer discovers evidence of other breaches of the Code of Conduct, he or she cannot investigate these and they would have to be referred back to the Standards Board.
- 3.7 The Monitoring Officer may also ask to refer an investigation back to the Ethical Standards Officer if, for example, the evidence suggests the case is more serious than was thought, or if a Member is refusing to cooperate (the Ethical Standards Officer has greater powers). The Ethical Standards Officer is not obliged to take the case back, but must decide within 21 days. Only one such request can be made.
- 3.8 After the investigation, the Monitoring Officer must decide whether to make a finding of no failure to comply with the Code, or of failure to comply. He or she may produce a draft report and obtain the comments of the key parties (the Standards Board gives guidance as to circumstances when this might be appropriate).
- 3.9 Once the final report is produced, the Monitoring Officer must send it to the Member who is the subject of the allegation, the complainant, the Authority's Standards Committee, and the Ethical Standards Officer who referred the matter for investigation.

#### 4. Procedure following the Monitoring Officer's Report

- 4.1 If the Monitoring Officer has found that there is no failure to comply with the Code, the Standards Committee will meet to consider the report. It may either accept the conclusion or decide to hold a hearing. In deciding which course to follow the Committee will not take evidence or hear representations. These may be presented at the hearing should one be held.

If the Committee accepts the finding that there has been no failure to comply, the Monitoring Officer will publish notice of the decision with reasons. The Member involved can request the notice is not published.

- 4.2 If the Monitoring Officer has concluded that there was a breach of the Code of Conduct, or the Committee decides to hold a hearing in any event, the hearing must be arranged within 3 months of the issue of the Monitoring Officer's report. The Member concerned may be represented by Counsel or Solicitor or, with the Committee's consent by any other person. The Committee has the right to ask the Monitoring Officer to obtain further information or to undertake a further investigation, but may only do this once per case. It may also, like the

Monitoring Officer, ask the Ethical Standards Officer, once, to take back the original allegation for investigation, provided that it does so before completion of the hearing. The Ethical Standards Officer has 21 days to respond.

4.3 In other respects the hearings procedure will be the same as where the Ethical Standards Officer has referred a report for determination by the Authority, and will be covered by the rules adopted by this Council last year.

## 5. Penalties

5.1 Whether the Committee has determined a case reported by its Monitoring Officer, or one referred to it by the Ethical Standards Officer, it may impose one or more of the following penalties on the Member if it finds the case proven:

- censure;
- restrict the Members access to the premises and resources of the Authority up to 3 months;
- require the Member to submit a written apology in a form satisfactory to the Committee;
- require the Member to undertake training specified by the Committee;
- require the Member to participate in a conciliation process specified by the Committee within an agreed time frame;
- suspend or partially suspend the Member for up to 3 months;
- suspend or partially suspend the Member for up to 3 months or until such time as he or she submits a written apology acceptable to the Committee;
- suspend or partially suspend the Member for up to 3 months or until such time as he or she undertakes any training or conciliation ordered by the Committee.

5.2 A full written copy of the Committee's decision must be sent within two weeks to the Member, the Ethical Standards Officer, and the complainant. A summary of the decision and the reasons must also be published in a local newspaper.

## 6. Appeals

6.1 If the Member in question wants to appeal against the decision of a Standards Committee he may apply for permission to do so to the Adjudication Panel for England. If permission is granted, there will be a further hearing before a tribunal of the Adjudication Panel. This will either be by way of oral hearing or, if the Member concerned agrees, by written submissions.

## 7. Other Referrals

7.1 An Ethical Standards Officer may ask the Monitoring Officer to undertake action other than mounting an investigation or arranging for a determination - for example to make recommendations to the Committee about wider issues for the Authority, or ensure that the parties attempt some form of reconciliation. The Monitoring Officer must report the outcome to the Ethical Standards Officer within 3 months.

## 8. Procedural Issues

8.1 As mentioned above, the Council has already adopted a procedure for hearings conducted by the Committee. This procedure requires only consequential amendments to deal with the situation where the Monitoring Officer, and not an Ethical Standards Officer, has carried out the investigation under the new regulations. It already provides that the Monitoring Officer may agree variations with the Chairman of the Committee if the circumstances so require and for the time being this should suffice.

8.2 Accordingly it is recommended that the Monitoring Officer review the procedure in conjunction with the annual review of the Constitution, to ensure that it reads consistently

with the new regulations, but that there is no need for the Committee to recommend changes to the procedure at this stage.

9. Training

9.1 It has not yet proved possible to arrange the joint training with Spelthorne Council about which the Monitoring Officer contacted Committee Members recently. Should this fall through for any reason, the Monitoring Officer will endeavour to identify other suitable training which will assist the Committee Members in mounting a hearing.

10. Resource Implications

The work can be absorbed within existing resources if occasional. There may sometimes be a need to pay a fee or expenses if the Monitoring Officer has to delegate a function outside the Authority. A report will be brought if it appears budgetary provision is insufficient.

**OFFICERS' RECOMMENDATION that -**

- i) the Monitoring Officer be instructed to review Standing Order 51 and its Annexed procedure in the light of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, in conjunction with the annual review of the Constitution;**
- ii) the Monitoring Officer be instructed to identify suitable training opportunities for the Committee in hearings procedures.**

**(TO RESOLVE)**

Background Papers

Regulations referred to above;

Standards Board Guidance: "Local Investigations";

Report of Clerk and Monitoring Officer to Nottinghamshire and City of Nottingham Fire and Rescue Authority December 2004.

10. EXCLUSION OF PRESS AND PUBLIC

If the Committee is minded to consider any of the foregoing items in private, it is the

**OFFICERS' RECOMMENDATION that -**

**the press and public be excluded from the meeting during discussion of the following reports under Section 100A(4) of the Local Government Act 1972 on the grounds that the reports in question would be likely to involve disclosure of exempt information of the description specified in appropriate paragraphs of Part I of Schedule 12A of the Act.**

**(TO RESOLVE)**

**Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.**

a) Exempt Items

(No items to be considered under this heading).

b) Confidential Items

(No items to be considered under this heading).