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All Fire Authorities in England
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Wales

SOUTH DERBYSHIRE DISTRICT COUNCIL	
CHIEF EXECUTIVES	
PASSED TO	Neil Betts
ASSIGN TO	
DATE REC	23 MAY 2002
COPIED TO	
TO BE SENT	
SUBJECT: Consultation of misconduct	

Dear Chief Executive,

Consultation Paper - Local investigation and determination of misconduct allegations

I enclose a copy of the above consultation paper, which sets out proposals for the framework within which allegations referred by Ethical Standards Officers (ESO's) to local authorities could be investigated and determined.

Part III of the Local Government Act 2000 provides for the Standards Board for England to investigate allegations that codes of conduct have been breached by members of relevant authorities in England.

In certain circumstances, ESO's at the Standards Board can choose to refer matters that have been, or are, the subject of investigation to the monitoring officer of the relevant local authority.

Section 66 of the above Act permits the Secretary of State to make regulations in connection with the way in which monitoring officers should deal with any matter referred to them by an ESO. In addition, Section 54(4) of the Act permits the Secretary of State to make regulations with respect to the exercise of functions by standards committees, and Section 57 (3) permits the Secretary of State to make orders conferring functions on the Standards Board. The Government proposes to make regulations and an order under these powers to implement the framework described in this consultation paper.

Copies are being sent to all principal local authorities; fire, national parks and other joint bodies; parish and town councils in England; to all police authorities in England and Wales; and to the various organisations that represent relevant authorities. Copies are also being sent to a range of bodies, including academic institutions, which have an interest in the issues.

We are seeking comments by **1 July 2002**. They should either be posted or faxed to the address given above. Alternatively the comments of your authority can be emailed to the Department at LGID@dtlr.gov.uk. Any queries on this letter should be addressed to Alison Morris (0207 944 4177) or Victoria Coward (0207 944 4277).

Yours sincerely,

P. Rowsell

P ROWSELL.



INVESTOR IN PEOPLE

CONDUCT OF COUNCILLORS

**LOCAL INVESTIGATION AND DETERMINATION
OF MISCONDUCT ALLEGATIONS**

A CONSULTATION PAPER

About this consultation exercise

The Local Government Act 2000 introduced a new ethical framework for local government. The framework is intended to support high standards of conduct in local government, and to strengthen the bond of trust between councils and local communities.

The Act provides for the Standards Board for England to investigate allegations that codes of conduct have been breached by members of relevant authorities in England.

In certain circumstances, Ethical Standards Officers (ESOs) at the Standards Board can choose to refer matters that have been, or are, the subject of investigation to the monitoring officer of the relevant local authority.

Having taken the advice of the Standards Board for England, the Government sets out proposals in this paper for the framework within which allegations referred by ESOs to local authorities could be investigated and determined.

Copies of the consultation paper are being sent to all principal local authorities; fire, national parks and other joint bodies; parish and town councils in England; to all police authorities in England and Wales; and to the various organisations that represent relevant authorities. Copies are also being sent to a range of bodies, including academic institutions, which have an interest in the issues. A list of the bodies to whom this paper has been sent is at **annex A**.

Responses to the questions raised in the paper and on the proposed approach to drafting the regulations are sought by **1 July 2002**. Responses should be clearly marked as such and sent to:

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Fax: 020 7944 4109
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Any questions or comments about this consultation exercise should be sent to

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In due course, the Department may wish to publish responses to this consultation exercise or deposit them in the Department's library. Unless, therefore, a respondent specifically asks that a response be treated as confidential, it may be published, or otherwise made public. Confidential responses will be included in any statistical summary of the numbers of comments received and views expressed.

Background

The Local Government Act 2000 introduced a new ethical framework for local government. Under the new ethical framework, all relevant authorities are required to adopt codes of conduct. These set out standards of conduct which elected and co-opted members of the authority are expected to observe.

Any person who believes that a member has failed to comply with an authority's code of conduct can make a written complaint to a new independent body, the Standards Board for England, who will investigate the allegations. Ultimately, if a complaint proves to be well founded, a member who has breached a code of conduct may be suspended from the authority, or even disqualified from holding public office for up to five years.

Dealing with Complaints

When the Standards Board for England receive a complaint which they consider should be investigated, they will pass the matter to an Ethical Standards Officer (ESO). ESOs are employees of the Board whose functions and powers are derived directly from statute, instead of from the Board. Thus, in the matter of investigations they are operationally independently of the Board and Government.

An ESO will investigate a complaint with a view to deciding whether there has been a breach of a code of conduct. Having concluded an investigation an ESO may reach one of four findings:

- that there is no evidence of any failure to comply with a code of conduct ;
- that no action needs to be taken in respect of the matter under investigation;
- that the matters under investigation should be referred to the monitoring officer of the relevant authority;
- that the matters under investigation should be referred to the Adjudication Panel for adjudication by tribunal.

An ESO may also, before completing an investigation, decide not to proceed with the investigation, but instead, to refer the matters to the monitoring officer of the relevant authority.

Section 66 of the above Act permits the Secretary of State to make regulations in connection with the way in which monitoring officers should deal with any matter referred to them by an ESO. In addition, Section 54(4) of the Act permits the Secretary of State to make regulations with respect to the exercise of functions by standards committees, and Section 57 (3) permits the Secretary of State to make orders conferring functions on the Standards Board. The Government proposes to make regulations and an order under these powers to implement the framework described in this consultation paper.

The Government's proposals for a Local Determination Framework

Principles

1. In the Government's view the investigation and determination of allegations of misconduct – whether at national or local level – must be seen as part of an integrated process. The way in which monitoring officers should deal at local level with referrals from ESOs cannot be divorced from the procedures that the Standards Board and ESOs will adopt in investigating complaints. In drawing up these proposals, therefore, the Government have drawn on the advice of the Standards Board for England.
2. It is important that the procedures for handling cases at local level should support the Government's broad aims for the modernisation of local government. Openness and accountability are essential, and the procedures should encourage participation in local democracy both by demonstrating the high standards of conduct of those who hold office, and by providing fair and efficient processes for dealing with allegations.
3. The Government recognise that handling allegations of misconduct locally can present difficulties for councils. Local circumstances, including the political balance of the authority, can create pressures on standards committees and on monitoring officers when investigating cases and considering sanctions. The new framework established by the Local Government Act 2000, with the creation of the Standards Board, will help significantly, by allowing the more serious cases to be handled by an independent national body. It is important that the framework should also include clear, robust and workable procedures for handling the less serious cases.
4. The proposals themselves are based on the following five principles, which the Government believe should underpin any system of investigation and adjudication.

The Principles

Box 1

- ***The preservation of public trust in the new ethical framework***
- Any system must preserve the faith of the public in the ability of the new ethical framework to deal with cases of misconduct. Allegations must be seen to be properly investigated, whether at local or national level.
- ***The avoidance of duplication***
- Both for the maintenance of the integrity of the system and to minimise the cost on the public purse, it is important wherever possible to avoid duplication of effort at local and national level.

- ***The rights of individuals against whom complaints are made***
- An individual against whom a complaint is made should have the right to answer any allegations and, if found to have breached a code of conduct, should have the ability to dispute both the finding and any sanction imposed.
- ***Appropriate and proportionate sanctions***
- Any sanction imposed against a member should be proportionate to the nature of the offence.
- ***A recognition of the different circumstances in which referrals are made***
- The system must recognise and respond to the fact that referrals from ESO's will be made in one of two different circumstances. Either, where an ESO has completed an investigation and believes that there has been a breach of a code of conduct; or prior to the completion of an investigation.

Section 1 - Proposed Framework: how it could work

5. In order to understand how the Government's proposals might work, and to highlight the issues on which the views of consultees would be helpful, the following paragraphs outline how in practice cases might be handled. This is, of course, only an illustration: there will be many different circumstances leading to and surrounding alleged breaches of Codes of Conduct which may not be covered by the situations described here.

Step 1: a Councillor, Officer or member of the public thinks there may be reason to believe that another Councillor has breached the Code of Conduct

6. There is a range of possible actions that might be taken by a person who believes that a breach may have occurred. He or she may make a complaint directly to the Standards Board, or to the relevant local authority; alternatively, he or she might first seek advice, again either from the Standards Board or from the local authority.
7. It may be that there is fairly clear evidence at this stage of a potential breach. But in many cases the picture will not be clear and could include evidence of maladministration, or other grounds for a complaint. The person considering making a complaint may not be fully aware of the details of the Code, or the process for making a complaint, or indeed any of the other procedures for registering dissatisfaction with Councillors or Councils.
8. Keeping in mind the *principles* outlined above, the objective at this stage should be to guide the person considering making a complaint to do so in the most appropriate way, providing reassurance that issues will be properly investigated while avoiding unnecessary duplication.

9. If an allegation with clear evidence is made to the Standards Board, the Board will notify the monitoring officer of the relevant council that an allegation has been made. The Standards Board will decide if a case should be investigated. If the Standards Board decide it should be investigated, the case will be referred to an Ethical Standards Officer, who may conduct the investigation or refer the case back to the monitoring officer of the relevant authority.
10. If an allegation with clear evidence is made to a local authority, then it should be referred to the Standards Board who will decide whether to investigate the case or to refer it back to the local authority. By giving the Standards Board the central role in deciding how allegations are handled, it will be possible to establish consistency in the treatment of allegations.
11. If the evidence is unclear, or if the person considering an allegation is seeking initial advice, or if the issue at the heart of the allegation appears to touch on more than simply a breach of the Code of Conduct, then it is important that sound advice is provided to the potential complainer on how to proceed. If the first approach has been made to the Standards Board then they will be able to provide this advice. If the approach is first made to the Council, then the monitoring officer should be able to offer advice.
12. The monitoring officer should be able to provide sound advice on the scope of an authority's Code of Conduct, allowing potential complainers to judge for themselves whether a breach may have occurred. The monitoring officer should also be able to advise on the process for handling allegations of potential breaches. In addition, monitoring officers should be able to advise on the range of other sources of redress, including the Council's own complaints procedure and the role of the Local Government Ombudsman.
13. At this stage the monitoring officer should not take on the task of investigating an allegation. The aim is to make sure that a potential complainer is fully informed of the avenues open (and in the case of Councillors, of the obligations placed upon them by the Code) before deciding whether to proceed with an allegation or complaint.
14. There may be cases in which a Councillor has behaved in a way that breaches the code of conduct, but recognises that and wishes to make amends – for example by apologising to an offended party. In principle, early actions to put right any offence should be encouraged. However, the monitoring officer should not seek to short-circuit the proper process of investigation and so should not attempt to recommend to the subject of an allegation that he or she should take any steps to apologise or make amends. Where a Councillor who has breached the code does take such steps voluntarily, this can be taken into account when the allegation is formally investigated.
15. The Councillor who is the subject of an allegation may not be aware that an allegation has been made. Fairness demands that he or she should be told quickly of any allegations: and indeed, this may prompt an early apology. However, there could also be cases where notifying the subject of the allegation could hamper the investigation – for example by leading to the destruction of evidence. There is a balance to be struck, therefore,

in giving duties to the monitoring officer in connection with informing Councillors that allegations have been made against them. Rather than attempt to define a single approach in regulations, the Government proposes to require the Standards Board to produce guidance in this matter.

16. The conclusion of *Step 1* should be either that a formal allegation is made that the Code has been breached, or that the person considering making such a complaint decides to seek redress through a more appropriate route, or to drop the matter entirely. A formal allegation relating to the Code could also be made alongside a complaint through another process.
17. The allegation could be made to the Standards Board, or to the relevant local authority. As noted above, allegations made to a local authority should be referred to the Standards Board, in order to establish a common, unified framework for investigations. The Government intends to make regulations providing for all complaints relating to Codes of Conduct, which are received by a local authority to be referred to the authority's standards committee. The standards committee should have the duty of referring these complaints to the Standards Board.

Step 2: After a formal allegation has been made that the Code has been breached

18. The process described under *Step 1* above should mean that all allegations of breaches of the Code are either made directly to the Standards Board or are referred to the Standards Board by local standards committees. The Standards Board will at that stage consider whether the case should be investigated.
19. If the Standards Board decide that a case should not be investigated, the Board will explain their decision to the person making the allegation, and will notify the monitoring officer of the relevant authority.
20. If the decision is made that the case should be investigated, it will then be referred to an Ethical Standards Officer (ESO). The ESO will be able to come to one of the following findings:
 - a) that there is no evidence of any failure to comply with the code of conduct;
 - b) that no action needs to be taken;
 - c) that the case should be referred to the monitoring officer of the relevant authority; or
 - d) that the case should be referred to the Adjudication Panel.
21. Referral to the monitoring officer of the relevant authority ((c) above) may also take place before detailed investigations have been completed. *Step 3* below describes the process to be followed if further investigations are needed. If, however, investigations have been completed by the ESO before referral then a report will have been prepared and it will be for the local standards committee to consider that report and to determine the outcome. This process is described in *Step 4*.

Step 3: Investigation

22. Cases may be referred by the Ethical Standards Officer to the Monitoring Officer of the relevant authority before investigations have been completed. It will then be for the Monitoring Officer to conduct investigations.
23. In order to conduct inquiries, monitoring officers will need powers to:
- arrange for any person to assist him, or her, in the investigation
 - make inquiries of any person he or she thinks necessary
 - obtain advice from any person who (s)he believes is qualified to provide it and to pay that person any fee or allowance that (s)he sees fit.
24. These powers are less extensive than those available to ESOs, who can compel any person to provide them with information, documentation or explanation under threat of criminal conviction. The Government does not believe that monitoring officers should have similar powers available to them. While regulations could be made which would allow monitoring officers to compel information to be provided, it would be inappropriate to use secondary legislation to provide for criminal sanctions. Without such sanctions, the power to compel information, documentation or explanation would be worthless.
25. The Government does not intend to regulate the procedures that monitoring officers should follow when conducting investigations. The process of investigation will be for monitoring officers to determine, having regard to the circumstances of the case and the requirement to ensure fair process. However, in order to ensure that members are permitted an opportunity to answer any allegations of misconduct, we propose that the regulations should require a monitoring officer to give an individual who is subject to investigation an opportunity to comment upon the allegations before the monitoring officer finalises his, or her report.
26. The Government intend that the regulations should require a monitoring officer to reach one of two conclusions as a result of his, or her, investigation, namely:
- a) that there is no evidence of any failure to comply with the code of conduct; or
 - b) that the code of conduct has been breached.
27. When the investigation has been concluded, the monitoring officer should prepare a report for the standards committee.

Step 4: Determination of the allegation

28. Some cases will be referred back to local authorities by the Standards Board after the Ethical Standards Officer has completed a report; other cases will need to be investigated locally by the Monitoring Officer. In either case, it will be for the standards committee to consider the report and to determine what action should be taken.
29. The Government proposes that standards committees should have a duty to consider all reports referred to it by ESOs or by monitoring officers. When considering such reports, it would not be appropriate to have a large number of members present: this could both be intimidating and could add to the risks of party political influence. The Government proposes that standards committees when considering report should normally include no more than five members and should be chaired by an independent member who would be responsible for selecting the other members. When a district council standards committee is considering a case involving a parish councillor, the committee should include at least one member from a parish council.
30. Standards committees will be free to decide their own practice and procedures, subject to any guidance issued by the Standards Board.
31. The standards committee should have the power, after considering reports and representations, to reach one of the following conclusions:
- a) That there is no evidence of any failure to comply with the Code;
 - b) That a member has failed to comply with the Code, but that no action needs to be taken;
 - c) That a member has failed to comply with the Code and should be:
 - Censured, or
 - Removed from any office, position or committee of the Council; or
 - Suspended or partially suspended for a period of up to 6 months; or
 - Suspended for a conditional period (e.g. until making an apology or undertaking training); or
 - Required to make a public apology.

(It should also be possible to 'suspend' sanctions so that they only come into effect in the event of further misconduct.)

32. Following the decision, standards committees should be required to publish their findings (or a summary) – except where the finding is that no breach has occurred, in which case the standards committee should have the discretion to publish or not.

Step 5: Appeal

33. If a standards committee decides that there has been a breach of the Code, it will be possible for the Member concerned to appeal against the decision. Appeals will be heard by an appeals tribunal drawn from the Adjudication Panel.
34. The appeals tribunal will consist of at least three members of the Adjudication Panel, appointed by the President of the Adjudication Panel. The tribunal will be able to:
- a) Uphold the decision of the standards committee that the Code has been breached; and either:
 - Endorse the penalty imposed; or
 - Impose a different penalty. Or
 - b) Overturn the decision of the standards committee.

Section 2 - Roles, Responsibilities and Regulations

35. In order to put in place the procedures outlined above, it will be necessary to introduce regulations giving certain roles and responsibilities to the relevant parties. This section summarises those roles and responsibilities. (Note that in order to provide a comprehensive picture, some of the information from earlier sections is repeated here.)

Parish Councils

36. Parish councils are, quite rightly, firmly included within the new ethical framework. At this, the most local tier of government, maintaining public confidence in high standards of conduct is no less important than at district or county level. However, the resources of parish councils in the great majority of cases are limited, and it would not be sensible to require each parish council to keep in place the machinery for investigating and determining allegations of misconduct. The Government therefore proposes that any cases relating to parish councillors which are referred for local determination should be handled by the monitoring officer and standards committee of the responsible district or county council. In hearing such cases, as noted above, standards committees should include parish council members.

Role of the Standards Board for England

37. The Standards Board for England has been established in order to promote and maintain high standards of conduct by members of local authorities. It has a central role in the operation of the overall framework for promoting ethical behaviour and investigating allegations of breaches of codes of conduct.

38. The Government believes that the Standards Board should also have a significant role in the framework for local investigation and determination. This should contribute to the achievement of the *principles* outlined above, especially by contributing to public confidence in the overall framework and by helping to avoid duplication.
39. Under the Local Government Act 2000, the Standards Board has the power to refer to its Ethical Standards Officers any written allegations that are made to the Board. ESOs can also investigate other cases that come to their attention during the course of their investigations into cases that have been referred to them. In order to establish a framework which allows the Standards Board to decide which cases should be handled locally and which centrally, it is necessary to give the Standards Board additional powers to investigate cases which are *referred* to it by local standards committees.
40. The Government therefore proposes that the Standards Board should have the following role:
- All allegations of breaches of Codes of Conduct should be referred to the Standards Board. This will include referrals by local authorities of any potential breaches that come to their attention.
 - The Standards Board should have powers to investigate all allegations *referred* to it.
 - The Standards Board will decide which cases should be referred to local monitoring officers. Typically, this will be cases where the alleged breach of the Code is less serious: it will however be for the Standards Board to develop its policy in regard to which cases should be referred to local standards committees. Cases could be referred before any investigation has been carried out; after a partial investigation; or on completion of an investigation by an Ethical Standards Officer.
 - The Standards Board should be able to issue guidance to monitoring officers on how to handle cases referred to them.

In order to give the Standards Board this role, it will be necessary to make orders under Sections 54(4) and 57(3) of the Local Government Act 2000 and regulations under Section 66.

Role of the Monitoring Officer

41. Monitoring officers of local authorities will have a pivotal role to play in the proposed framework for local determination. This role will include providing good advice to Members, officers and the public on the operation of the Code and how alleged breaches should be investigated.
42. Monitoring Officers will need to be able to conduct investigations into some cases referred to local Standards Committees. They will therefore need powers to:
- arrange for any person to assist him, or her, in the investigation
 - make inquiries of any person he or she thinks necessary

- obtain advice from any person who he or she believes is qualified to provide it and to pay that person any fee or allowance that he or she sees fit.

In order to give Monitoring Officers this role, it will be necessary to make regulations under Section 66.

Role of the Standards Committee

43. Standards committees have existed in some authorities for many years: under Section 53 of the Local Government Act 2000 each authority (except for parish councils) must establish a standards committee. The role of standards committees includes those functions set out in Section 54 of the Act, namely:

- (a) Promoting and maintaining high standards of conduct by the members and co-opted members of the authority;
- (b) Assisting members and co-opted members of the authority to observe the authority's code of conduct.
- (c) Advising the authority on the adoption or revision of a code of conduct;
- (d) Monitoring the operation of the authority's code of conduct;
- (e) Advising, training or arranging to train members or co-opted members of the authority on matters relating to the authority's code of conduct.

44. Standards committees are therefore at the heart of each local authority's efforts to promote ethical conduct. The Government intends to support that role, while at the same time ensuring that there is an integrated overall process for investigating allegations of breaches of the code.

45. The Government therefore proposes that standards committees should have the following role:

- Any formal allegations received by a relevant authority that a member may have failed to comply with the authority's code should be referred to the standards committee.
- The standards committee shall keep a register of complaints, and shall pass to the Standards Board for consideration all complaints as they are received. (Note that the Government does not intend that the standards committee should be referring to the Standards Board any or all casual remarks made, for example, in the heat of a Council debate. With the help of advice from the monitoring officer, it should be possible to make sure that any allegations made are done so on the basis of reasonable evidence, and with a good understanding on behalf of the person making the complaint of the terms of the Code of Conduct.)
- Any reports from ESOs referred for local determination (that is, cases which have been investigated by the Standards Board), and any reports prepared by monitoring officers following referral by the ESO, shall be considered by the standards committee.
- The standards committee should be free to decide its own practice and procedures, subject to any guidance issued by the Standards Board.

- The standards committee, after considering reports and representations, should have the power to determine:
- That there is no evidence of any failure to comply with the Code;
- That a member has failed to comply with the Code, but that no action needs to be taken;
- That a member has failed to comply with the Code and should be:
 - Censured, or
 - Removed from any office, position or committee of the Council; or
 - Suspended or partially suspended for a period of up to 6 months; or
 - Suspended for a conditional period (e.g. until making an apology or undertaking training); or
 - Required to make a public apology.
- (It should also be possible to 'suspend' sanctions so that they only come into effect in the event of further misconduct.)
- The standards committee should be required to produce a report on the outcome of each case it determines, send a copy of the report to the Board, and after the expiry of the appeals process (see below) this report should be published.

46. Standards committees when considering a report should normally include no more than five members and should be chaired by an independent member who would be responsible for selecting the other members. When a district council standards committee is considering a case involving a parish councillor, the committee should include at least one member from a parish council.

In order to give Standards Committees these roles, it will be necessary to make regulations under Sections 54(4) and 66 of the Local Government Act 2000.

Appeals

47. The Government proposes that where a standards committee determines that a person has failed to comply with the Code of the relevant authority that person may appeal against the determination to an appeals tribunal drawn from the Adjudication Panel.

48. The appeals tribunal should consist of at least three members of the Adjudication Panel, appointed by the President of the Adjudication Panel.

49. The appeals tribunal should have the power to:

- Uphold the determination of the standards committee that the person investigated did breach the Code, and either:
 - Endorse any penalty imposed; or
 - Impose a different penalty. Or
- Overturn the determination of the standards committee that the person investigated did breach the Code.

In order to implement these procedures, it will be necessary to make regulations under Section 105 of the Local Government Act 2000.

50. Where a case tribunal determines that a person has failed to comply with the code of the relevant authority, section 79(15) of the Act already provides for a right of appeal to the High Court.

Representation

51. The Government propose that a person who makes oral representations to a standards committee, or who appeals to an appeals tribunal, may appear before the committee or tribunal in person, or may be represented by Counsel, or by a solicitor, or by any other person (at the expense of the respondent).

In order to implement this provision, it will be necessary to make regulations under Section 66 of the Local Government Act 2000.

52. Section 77(1) of the Act already provides that a person who is called to appear before a case tribunal may appear before the tribunal in person or may be represented by Counsel, solicitor or any other person.

Costs

53. The Government proposes that standards committees should have no power to make an award of any costs or expenses arising from any of their proceedings. Tribunals should not normally make an order awarding costs or expenses, but may do so in exceptional circumstances such as the postponement of a hearing due to unreasonable conduct or if the pursuit of an appeal is judged to have been unreasonable. Section 77(6) of the Act contains powers enabling such provision.

Section 3 - Questions

The Government would be interested to hear the views of consultees on all the issues raised in this paper, and in particular on the following questions:

General

1. Are the five principles set out in Box 1 the right ones?
2. Does the proposed framework fully support these five principles?
3. Is the overall balance right between the proposed roles of the Standards Board for England and local Standards Committees?

Detailed

4. Should all allegations of possible breaches of Codes be referred to the Standards Board?
5. Should the Standards Board have responsibility, as proposed, for deciding which allegations should be handled locally?
6. Are the powers proposed for monitoring officers necessary and sufficient?
7. Are the powers proposed for standards committees necessary and sufficient for them to fulfil their statutory functions?
8. Are the proposals on composition of standards committees' right?
9. Do the proposals on appeals, representation and costs fully support the five principles?