

**Meeting: Standards Committee**

**Date: 20 January 2004**

**LOCAL DETERMINATION OF COMPLAINTS**

(Chief Executive)

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**1 PURPOSE**

To set out procedures for the Standards Committee and Officers for dealing with the local determination of complaints against Members.

**2 RECOMMENDATIONS**

To adopt the procedures for local Standards Committee hearings, as set out in the Appendices to this Report.

**3 BACKGROUND**

- 3.1 The statutory framework for ethical standards introduced by the Local Government Act 2000 ("the Act") included provisions for Standards Committees to deal with complaints referred to them by Ethical Standards Officers. These powers are derived from secondary legislation commonly referred to as the "Section 66 Regulations".
- 3.2 The first set of these Regulations "the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003" was summarised in a report to the last meeting of this Committee. (This also referred to the tight timescales within which the Committee would have to deal with a complaint referred to it). The remaining set of regulations, which provide for investigations to be conducted by or through the Council's Monitoring Officer, have yet to be issued even in draft form.
- 3.3 As far as officers are aware, there have been no complaints made against any member of Stevenage Borough Council since the introduction of the Act.
- 3.4 The Standards Board for England has now issued guidance for monitoring officers and standards committees and recommends that there should be effective procedures in place to make sure that standards committees can determine cases fairly and consistently.
- 3.5 The Standards Committee needs to have an efficient, consistent and fair hearing process, this will reduce the prospects of any successful appeal against the Standards Committee determination.
- 3.6 The model procedure in the Standards Board guidance is not compulsory. However, it is clearly best practice to do so and a proposed model procedure for the hearing is attached at Appendix 2 for the Committee's consideration which is largely based on the one in the Standards Committee guidance.

- 3.7 In addition to the model procedure for the hearing itself the guidance also recommends that authorities should use a pre-hearing process. A proposed model is also attached at Appendix 1 together with a checklist. In addition models of various pre-hearing forms are also produced in the guidance and it is proposed that these forms, suitably amended for local circumstances, will be employed in the event of a local determination being required.

#### **4 IMPLICATIONS**

None specific.

#### **BACKGROUND DOCUMENTS**

- Standards Board for England Standards Committee determinations – Guidance to monitoring officers and Standards Committees

#### **APPENDICES**

- Appendix 1 – Preliminary Issues Checklist
- Appendix 2 – Model Procedure for local determination of complaints

## APPENDIX 1

### Preliminary issues/Check list

1. Prior to the pre-hearing process and on receipt of the Ethical Standards Officer Report or on notification of the referral, whichever is the earlier, the Monitoring Officer will determine whether or not he is able to act as the Legal Advisor to the Committee. If, as a result of conflicts of interest, for instance because he has advised the Member on the matter in question, the Monitoring Officer is unable to advise the Committee at the hearing, the Deputy Monitoring Officer will perform this role unless he is absent or also under a disability, in which case another officer or person will be nominated as the Legal Advisor to the Committee.
2. The Standards Committee has already decided that, as a matter of policy, such a hearing will be chaired by one of the Independent Members.
3. The Legal Advisor to the Committee must give a copy of the ESO's referred report to the Member against whom the allegation has been made.
4. The Legal Advisor to the Committee, together with the Committee Clerk and in consultation with the Chair of the Committee should
  - Provide a copy of the Standards Committee's pre-hearing and hearing procedures to the member who the allegation has been made about;
  - Outline the member's rights and responsibilities;
  - Propose a date for the hearing;
  - Ask for a written response from the member by a set time to find out whether he or she:
    - disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;
    - wants to be represented at the hearing by a solicitor, barrister or any other person, noting that the committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined;
    - wants to give evidence to the Standards Committee, either verbally or in writing;
    - wants to call relevant witnesses to give evidence to the Standards Committee;
    - can come to the hearing on the proposed date;
    - wants any part of the hearing to be held in private; and
    - wants any part of the ESO's report nor other relevant documents to be withheld from the public.
- send a copy of the member's response to the ESO and invite the ESO to say by a set time whether he or she:
  - wants to be represented at the hearing;
  - wants to call relevant witnesses to give evidence to the Standards Committee;
  - wants any part of the hearing to be held in private;

- wants any part of the ESO's report or other relevant documents to be withheld from the public; and
- wants to invite any other witnesses the committee feels are appropriate.

The Chair of the Committee, in consultation with the Legal Advisor to the Committee, should then:

- confirm a date, time and place for the hearing;
- confirm the main facts of the case that are agreed;
- confirm the main facts which are not agreed;
- confirm which witnesses will give evidence;
- outline the proposed procedure for the hearing; and
- provide this information to everyone involved in the hearing at least two weeks before the proposed date of the hearing.

### **Pre-hearing process**

The pre-hearing process will be used to:-

- Identify whether the member who the allegation has been made about disagrees with any findings of fact in the ESO's report;
- Decide whether those disagreements are significant to the hearing;
- Decide whether to hear evidence about those disagreements during the hearing;
- Decide whether or not there are many parts of the hearings that should be held in private; and
- Decide whether or not any parts of the ESO's report or other documents should be withheld from the public.

## APPENDIX 2

### **STEVENAGE BOROUGH COUNCIL Standards Committee Procedure for Local Standards Hearings**

#### **Interpretation**

1. 'Member', unless stated otherwise, means the member of the authority who is the subject of the allegation being considered by the Standards Committee. It also includes the member's nominated representative.
2. 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator mean the Monitoring Officer or other investigating officer, and his or her nominated Representative.
3. 'Committee' also refers to 'a standards sub-committee'.
4. 'Legal advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

#### **Modification of Procedure**

**The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.**

#### **Representation**

5. The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

#### **Legal advice**

6. The committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the member and the investigator if they are present.

#### **Setting the scene**

7. **At the start of the hearing, the Chairman shall introduce each of the members of the Committee, the member (if present), the investigator (if present) and any other officers present, and shall then explain the procedure, which the Committee will follow in the conduct of the hearing.**

## **Preliminary procedural issues**

8. The Committee shall then deal with the following preliminary procedural matters in the following order:

**(a) Disclosures of interest**

The Chairman shall ask members of the Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

**(b) Quorum**

The Chairman shall confirm that the Committee is quorate.

**(c) Hearing procedure**

The Chairman shall confirm that all present know the procedure which the Committee will follow in determining the matter.

**(d) Proceeding in the absence of the member**

If the member is not present at the start of the hearing:

- (i) the Chairman shall ask the Monitoring Officer whether the member has indicated his/her intention not to attend the hearing;
- (ii) the Committee shall then consider any reasons which the member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
- (iii) if the Committee is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iv) if the Committee is not satisfied with such reasons, or if the member has not given any such reasons, the Committee shall decide whether to consider the matter and make a determination in the absence of the member or to adjourn the hearing to another date.

**(e) Exclusion of Press and Public**

The Chairman shall ask the member, the investigator and the legal adviser to the Committee whether they wish to ask the Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

## **Making findings of fact**

9. After dealing with any preliminary issues, the committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

10. If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.
11. If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.
12. The member should then have the opportunity to make representations to support his or her version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.
13. At any time, the committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
14. If the member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
15. If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:
  - a continue with the hearing, relying on the information in the investigator's report;
  - b allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
  - c postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.
16. The committee will usually move to another room to consider the representations and evidence in private.
17. On their return, the Chair will announce the committee's findings of fact.

#### **Did the member fail to follow the Code?**

18. The committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.

19. The member should be invited to give relevant reasons why the committee should not decide that he or she has failed to follow the Code.
20. The committee should then consider any verbal or written representations from the investigator.
21. The committee may, at any time, question anyone involved on any point they raise in their representations.
22. The member should be invited to make any final relevant points.
23. The committee will then move to another room to consider the representations.
24. On their return, the Chair will announce the committee's decision as to whether or not the member has failed to follow the Code of Conduct.

#### **If the member has not failed to follow the Code of Conduct**

25. If the committee decides that the member has not failed to follow the Code of Conduct, the committee can move on to consider whether it should make any recommendations to the authority.

#### **If the member has failed to follow the Code**

26. If the committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:
  - a whether or not the committee should set a penalty; and
  - b what form any penalty should take.
27. The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
28. The committee will then move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be.
29. On their return, the Chair will announce the committee's decision.

#### **Recommendations to the authority**

30. After considering any verbal or written representations from the investigator, the committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

#### **The written decision**

31. The Committee will announce its decision on the day of the hearing, save that where, owing to exceptional circumstances, it is unable to take a decision on the same day, the announcement may be made not later than 48 hours after the



**hearing. The Committee will provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the member as soon as practicable.**

Following the close of the hearing, the Committee Support officer will agree a formal written notice of the Committee's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required), in accordance with Regulation 8 of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003.