

**Meeting:** Standards Committee

**Date:** 13 December 2004

**LOCAL DETERMINATION OF COMPLAINTS**

(Legal)

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**1 PURPOSE**

To advise on the new arrangements for the investigation by the Monitoring Officer of certain complaints against members.

**2 RECOMMENDATIONS**

To note the report.

**3 BACKGROUND**

- 3.1 Members will be aware from previous reports that the Standards Committee now has powers to determine certain complaints referred to it by the Standards Board for England under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 ("The Determination Regulations").
- 3.2 Such referrals would be for less serious breaches, which had already been investigated by an Ethical Standards Officer of the Standards Board but were not regarded as so serious they should be dealt with by the Adjudication Panel.
- 3.3 The Committee was given powers to impose a range of sanctions from suspension of a Member for three months to a finding that no action should be taken.
- 3.4 These provisions were brought into force by regulations made under Section 66 of the Local Government Act 2000 and were a response in part to the very heavy workload on the Standards Board, their limited sources to deal with such complaints and the relatively minor nature of a number of those complaints. (There were, and still are, vocal demands across the country for councils to be fully empowered to deal with complaints made against their own members.)
- 3.5 Those regulations did not, however, permit councils to conduct their own investigations but merely to receive and determine a fully investigated complaint from the Standards Board.
- 3.6 The second, and final, part of the Section 66 Regulations has now been made – the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 which came into force on 4 November 2004. ("The Investigation Regulations").

## **4 DETAIL**

- 4.1 The Investigation Regulations now require Monitoring Officers to investigate complaints referred to them by the Standards Board for England and to make a finding of whether or not there has been a breach of the Code. This finding is then referred to the Standards Committee for determination.
- 4.2 The Ethical Standards Officer may request the Monitoring Officer to take actions other than investigations, for instance where there are wider issues for the authority.
- 4.3 Under the Local Government Act 2000 the Standards Board last month, issued guidance to Monitoring Officers on local investigations.
- 4.4 The Investigation Regulations have taken rather longer to emerge than originally anticipated. There have been a number of technical legal issues to overcome and a good deal of consultation.. Perhaps, as a result the Regulations are both prescriptive and, perhaps unusually, clear and unambiguous. This clarity extends both to procedural and substantive matters.
- 4.5 As a result this report does not propose, at least for the moment, that the Committee needs to specify any further procedures to those already adopted to cover this process (attached at Appendix B for ease of reference).
- 4.6 Guidance to Monitoring Officers notes that they have four main roles:
  - 4.6.1 To provide advice to the Standards Committee
  - 4.6.2 To advise members about conduct issues generally
  - 4.6.3 To advise members who are the subject of allegations and also the person making an allegation and conduct allegations.
- 4.7 There is clearly scope for conflict of interests. The Monitoring Officer must avoid conflicts of interest and may need to delegate the role of investigation or the role of advising the Standards Committee during the hearing. The Committee will recall that its adopted procedures require the Legal Adviser to the Standards Committee to be identified at a very early stage.
- 4.8 The Committee also has strict and tight timescales within which to determine complaints to it and Monitoring Officer reports must be dealt with in the same way.
- 4.9 This report does not contain an exhaustive analysis of the Regulations but the important features are as follows:
  - 4.9.1 Nothing in the Section 66 Regulations affects the requirement for all complaints to be made firstly to the Standards Board for England. No determinations or investigations which seek to enforce the Code of Conduct can therefore be entirely local.
  - 4.9.2 There has been much discussion about issues of confidentiality in framing these Regulations and they now require unless otherwise directed by an Ethical Standards Officer, that the Monitoring Officer advises the complainant and member concerned that he is investigating the matter and also to pass a copy of any report received from the ESO to the member. He must also give the member concerned the opportunity to comment on the allegation.

- 4.10 Monitoring Officers are advised to treat information gathered as confidential and to request those interviewed to maintain confidentiality. The Guidance also suggests that the Monitoring Officer should not advise the Standards Committee or its Chair of the identity of the complainant or the member against whom the allegation is being made. The matter should not, of course, be discussed by the Standards Committee prior to the formal hearing. The Regulations provide that the Committee, if the Chair so wishes, shall conduct the hearing under Part II and exclude the press and public from the meeting.
- 4.11 The Monitoring Officer must and have regard to the Standards Board Guidance when conducting an investigation and can require the Council to give him reasonable access to documents in order to conduct the investigations. He may also refer that matter back to the Ethical Standards Officer requesting that he takes back the investigation. The ESO can accept or deny this request.
- 4.11.1 The Guidance suggests that the Monitoring Officer may well wish to issue a draft report to key parties of the investigation and in many circumstances this is likely to be best practice.
- 4.11.2 After he has completed an investigation the Monitoring Officer must make a finding either that the member concerned has or has not breached the Code; "a finding of failure" or "a finding of no failure".
- 4.12 The Monitoring Officer report, whatever the conclusion, must be referred to the Standards Committee. If the finding is of "no failure" the Standards Committee may accept that conclusion or alternatively make its own determination under the Determination Regulations.
- 4.13 Where the Committee accepts the Monitoring Officer's finding of "no failure" the Committee shall notify the member, the complainant and, unless the member concerned objects, place a notice in the local newspaper of its finding.
- 4.14 Where the Monitoring Officer makes a finding of failure the Standards Committee would convene a meeting to be held within three months unless the member concerned agrees to it being heard earlier. During the hearing the Standards Committee may adjourn the hearing (but only once) to ask the Monitoring Officer to make further investigations. The Committee may also refer the matter back to the Ethical Standards Officer, if for instance, it regards the breach as so serious that its powers of sanction are insufficient, and, as with the similar Monitoring Officer request, the ESO may accept the request or instruct the Standards Committee to proceed.
- 4.15 The sanctions open to the Standards Committees have been slightly extended by the Investigation Regulations, which are as follows:-
- 4.15.1 censure the member;
- 4.15.2 restrict the member's access to the premises and resources of the relevant authority for up to three months, ensuring that any restrictions are proportionate to the nature of the breach and do not unduly restrict the member's ability to perform his or her duties as a member;
- 4.15.3 order the member to submit a written apology in a form satisfactory to the standards committee;

- 4.15.4 order the member to undertake training specified by the standards committee;
- 4.15.5 order the member to participate in a conciliation process specified by the standards committee;
- 4.15.6 suspend, or partially suspend, the member for up to three months;
- 4.15.7 suspend, or partially suspend, the member for up to three months, or until such time as the member submits a written apology that is accepted by the standards committee;
- 4.15.8 suspend, or partially suspend, the member for up to three months, or until such time as the member undertakes any training or conciliation ordered by the standards committee.

## **5 GENERAL**

To the knowledge of the Borough Solicitor there have to date been no complaints against any Member of Stevenage Council.

## **6 IMPLICATIONS**

There are no further implications.

## **BACKGROUND DOCUMENTS**

- Report to the Standards Committee on Local Investigations 7 July 2003
- Local Investigations Guidance for Monitoring Officers and Standards Committees Standards Board of England November 2004
- The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003
- The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004

## **APPENDICES**

### **Procedures for determinations by the Standards Committee**

- **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.