

Meeting: STANDARDS COMMITTEE

Agenda Item:

Date: 13 January 2009

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STANDARDS COMMITTEE DETERMINATIONS

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1 PURPOSE

To consider guidance issued by the Standards Board for England on the conduct of determinations.

2 RECOMMENDATIONS

- 2.1 To adopt the model documentation referred to in para 3.8.1 of this report.
- 2.2 To adopt the model procedures referred to in para 3.8.2 of this report.
- 2.3 To appoint a Consideration and Hearing Sub-Committee with a quorum of three and which should be chaired by an independent member. Its terms of reference shall be to receive and consider an investigation report of the Monitoring Officer or an Ethical Standards Officer of the Standards Board for England.

3 DETAILS

- 3.1 At its last meeting in July 2008 this Committee considered a report on and made arrangements for the local assessment of complaints against members in the light of guidance from The Standards Board for England. These arrangements only dealt with the process as far as the initial assessment of complaints.
- 3.2 The Standards Board have now issued guidance which deals with the final two stages of the process after a decision has been taken by the Assessment Sub-Committee or Review Sub-Committee that a complaint should be investigated. The guidance is designed to help members and officers who are involved in considering the investigation report by the Monitoring Officer (or an Ethical Standards Officer of The Standards Board) and the determination of a complaint that a member has breached the Code of Conduct.
- 3.3 A copy of the guidance is appended to this report. In summary it covers the following matters:

- The appointment and role of a Consideration and Hearing Sub-Committee (pages 4 and 5).
- The procedures relating to the meeting which considers an investigation report referred to as (Pages 5-16 of Guidance).
- Suspensions (Pages 17-19 of Guidance).
- Appeals (Pages 20-21 of Guidance).
- Costs (Page 22 of Guidance).
- The role of the Monitoring Officer. (Page 23 of Guidance). In this respect the Guidance restates the view that the Monitoring Officer should be the main adviser to the Standards Committee.

3.4 Although not prescribed by statute (unlike the Assessment and Review Sub-Committees) the guidance states that "the Standards Committee should appoint a ... Consideration and Hearing Sub-Committee to consider a Monitoring Officer's investigation report and to hold a determination hearing". As the guidance is statutory it shall be followed by the Standards Committee unless it has good reasons for not doing so.

3.5 As will be seen from the guidance the purpose of the Consideration and Hearing Sub-Committee will be to receive an investigation report prepared by or through the Monitoring Officer (or possibly an Ethical Standards Officer from the Standards Board for England) and to decide whether or not to accept the recommendation of the investigation report.

3.6 If the Sub-Committee either accepts the investigation report's finding that there has been a failure to comply with the Code or rejects the report's finding that there has not been such a failure, the matter will then be referred for a full hearing by the Standards Committee who will determine whether there has been a breach of the Code of Conduct and if so what sanction to impose on the member concerned. This final meeting must take place within three months of the completion of the investigation report and at least fourteen days after the subject member has received a copy of the report unless he or she agrees otherwise.

3.7 Given that a complaint, at least in theory, could be dealt with by three sub-committees as well as the final hearing by the full Standards Committee the questions of conflicts of interest and bias might be raised. This piece of guidance effectively restates the principles set out by the Standards Board and the Government that while an Assessment Committee and Review Sub-Committee must not be composed of the same members this prohibition does not apply either to the Consideration and Hearing Sub-Committee or to the full Standards Committee hearing the complaint. At page 5 of the report the guidance notes that a member of the Standards Committee, who overturns a Monitoring Officer finding that there has been no failure to comply with the Code may participate in a subsequent hearing. These are contentious points challenged by at least one of the leading legal commentators. Nevertheless, if a complaint is processed through four meetings and at least two elected and one independent member will have to deal with the same complaint twice.

3.8 Model Documentation

3.8.1 Appendix 1 of the Guidance (pages 24-28) contains model documentation for use in

the pre-hearing process. It is recommended that this be adopted.

- 3.8.2 Appendix 2 of the Guidance (pages 29-32) contains model hearing procedures. They update previous procedures recommended by the Standards Board and adopted by the Committee in 2003. Again it is recommended that the new procedures be adopted.

4 PUBLIC ACCESS TO MEETINGS OF THE HEARING SUB-COMMITTEE

- 4.1 Although the rules about public access to meetings do not apply to the Assessment and Review Sub-Committees they do apply to the Consideration and Review Sub-Committee and also to the main hearing by the full Committee. This means that five clear days public notice of the meetings must be given and that the reports, proceedings and minutes must be open to the public and media unless they contain "exempt information" and the public interest test favours non disclosure.
- 4.2 The Guidance at pages 5 and 6 recommends that "in most cases, the public interest in transparent decision-making by the standards committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has not yet been determined". If the decision of the Consideration and Hearings Sub-Committee is that there is no evidence of failure to follow the Code then the member can prohibit the placing of a public notice in the newspaper to that effect.
- 4.3 The Guidance advises that the parties' views on holding the hearing in public should be sought as part of the pre-hearing procedure and states, perhaps controversially, that "in most cases all parties will agree that the hearing should take place in public."
- 4.4 When sending out agenda papers for a meeting which are considered to contain exempt information the usual practice of officers is not to circulate the report to the press and public at that stage since that pre-empts any decision made by the Consideration and Hearings Sub-Committee in a particular case.

APPENDICES

- [Appendix 1 – Standards Committee Determinations Guidance.](#)