
REPORT TO:	STANDARDS COMMITTEE	AGENDA ITEM: 7
DATE OF MEETING:	2ND SEPTEMBER 2004	CATEGORY: DELEGATED
REPORT FROM:	MONITORING OFFICER	OPEN
MEMBERS' CONTACT POINT:	ANDREA McCASKIE (HEAD OF LEGAL AND DEMOCRATIC SERVICES) EXT. 5831	DOC:U:JAYNE\Committee\COMM REPI\LocalDeterminations.doc
SUBJECT:	LOCAL DETERMINATION OF ALLEGATIONS BY THE STANDARDS COMMITTEE	REF: AGM/JB
WARD(S) AFFECTED:	ALL	

1.0 Recommendations

- 1.1 That the procedure for local hearings set out in appendix 'A' to this report be adopted.
- 1.2 That the Monitoring Officer be authorised to make arrangements with other Authorities within Derbyshire and their Monitoring Officers/Deputies for mutual cover in the event of clear conflicts of interest arising as set out in the report.
- 1.3 That the independent Chair of the Standards Committee (or in his/her absence or unavailability, another independent Member) chair all local determination hearings.
- 1.4 That local determinations are dealt with by setting up a Sub-Committee of this Committee consisting of 3 Members (to include at least one independent Member and at least one Parish Representative Member if the matter relates to a Parish issue)

2.0 Purpose of Report

- 2.1 To recommend arrangements for local determination of allegations under the Code of Conduct.

3.0 Detail

- 3.1 Under the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 ("Section 66 Regulations"), Ethical Standards Officers ("ESO's") can refer completed investigation reports to Monitoring Officers, for Standards Committees to decide whether or not a Member has failed to follow the Code of Conduct and, if so, what penalty should be applied, if any.
- 3.2 At that time, it was agreed that a further report would be brought back to this Committee to establish a procedure which this Committee would apply to any such referred allegations so that, when the first one is received, all parties are clear as to how the matter will be dealt with and when they will have an opportunity to contribute to the process.

- 3.3 As you will be aware, the Standards Board for England ("SBE") has issued guidance, including practical procedural information for Standards Committees on how to hold a hearing relating to a referred allegation. Under the Section 66 Regulations, Standards Committees must take this guidance into account.
- 3.4 On the introduction of the Section 66 Regulations, the Derbyshire Secretaries and Solicitors Group, which is made up of the Monitoring Officers representing the City, County and District Councils, agreed to consider adopting a common procedure for dealing with matters under the Section 66 Regulations. This example of joint working will hopefully ensure a consistency of approach across the County and allow, in particular, Authorities with small Legal Departments the opportunity to ensure that an appropriately experienced Officer is available to advise the Standards Committee if there is a conflict of interest with our own Officers.
- 3.5 The SBE have recommended in their guidance that such joint working arrangements with neighbouring Authorities should be explored.
- 3.6 This Group has now produced a draft procedure for dealing with determinations under the Section 66 Regulations, a copy of which is attached at appendix 'A'.

Process for Local Determinations

ESO Referrals

- 3.7 The SBE receives allegations and decides whether they should be investigated. If it does, it asks an ESO to investigate and decide which of the following four findings is appropriate:-
- There is no evidence that the Member has failed to follow any part of the Code of Conduct
 - No action needs to be taken in relation to the matters investigated
 - The matter should be referred to the Monitoring Officer of the relevant Authority for local determination
 - The matter should be referred to the Adjudication Panel for England
- 3.8 Matters that the ESO are likely to refer for local determination include:-
- Matters that are of an entirely local nature and do not affect broader national issues; and
 - Matters that do not appear to need the heavier penalties available to the Adjudication Panel for England.

Arranging a Hearing

- 3.9 The Standards Committee must hold a hearing in relation to an allegation within three months of the Monitoring Officer receiving the ESO's report.
- 3.10 When the Monitoring Officer receives a report, he or she must give a copy of that report to the Member who the allegation has been made about.

- 3.11 Normally, hearings should take place at least 14 days after the Member who the allegation has been made about receives a copy of the ESO's report from the Monitoring Officer.
- 3.12 If the Standards Committee does not hear the matter within three months of receiving the ESO's report, the Committee will be failing in its legal duty and may face Judicial Review proceedings. The Standards Committee cannot refer the matter back to the SBE.

The Pre-Hearing Process

- 3.13 Authorities should use a pre-hearing process to:-
- identify whether the Member who the allegation has been made about disagrees with any of the findings of fact in the ESO's report;
 - decide whether or not these disagreements are significant to the hearing;
 - decide whether or not to hear evidence about these disagreements during the hearing;
 - decide whether or not there are any parts of the hearing 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

The Member's Response

- 3.14 The Monitoring Officer will write to the Member concerned to propose a date for the hearing, outline the hearing procedure and the Member's rights. They should also ask for a written response from the Member, within a set time, to find out whether or not 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;
 - 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;
 - 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
 - can come to the hearing

The ESO's Response

3.15 The SBE recommends that the Standards Committee also invites the relevant ESO to comment on the Member's response, within a set time, to say whether or not 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; and
- wants any part of the ESO's report or other relevant documents to be withheld from the public

Other Witnesses

3.16 The Standards Committee may also arrange for any other witnesses to be present who it feels may help in determining the case, including the person who made the original allegation. However, the Committee cannot order witnesses to appear or give evidence.

Concluding the Pre-Hearing Process

3.17 When the Monitoring Officer has received a response from the Member concerned and the ESO, the Monitoring Officer should then write to everyone involved at least two weeks before the hearing to:-

- set the date, time and place of the hearing;
- summarise the allegation;
- outline the main facts of the case that are agreed;
- outline the main facts which are not agreed;
- note whether the Member concerned or the ESO will go to, or be represented at, the hearing;
- list those witnesses, if any, who will be asked to give evidence; and
- outline the proposed procedure for the hearing

The Hearing - Committee or Sub-Committee ?

3.18 The Standards Committee may set up a Sub-Committee under Section 55 of the Local Government Act 2000 ("the Act") to consider matters relating to Parish Councils. Section 113 of the Act now also allows Standards Committees to delegate any of their functions to a Sub-Committee so that a Sub-Committee can be set up to hear a complaint against a Member of that Authority.

3.19 The guidance of the SBE is that a hearing on an allegation of failure to comply with the Code of Conduct should be conducted by a small number of Members.

- 3.20 A meeting of the Standards Committee is not quorate unless at least 3 Members of the Committee are present for the duration of the meeting. The 3 Members must include at least one independent Member.
- 3.21 If the Committee is responsible for Parish Council matters, it must include at least one Parish Council Representative amongst its Members. However, it is only a requirement that the Parish Representative is actually present when the Committee is dealing with a Parish matter.
- 3.22 It is recommended that local determinations are dealt with by a Sub-Committee of this Committee, being chaired by the Chair of the Standards Committee, and being made up of two other Members. If the matter for determination involves a Parish Council Member, then one of the other two Members of the Sub-Committee must be a Parish Council Representative.

Hearings Procedure

- 3.23 The recommended hearing procedure agreed by the Members of the Derbyshire Secretaries and Solicitors Association is attached at appendix 'A' and is based on the SBE guidance.

After the Hearing - the findings of the Standards Committee

- 3.24 Following its hearing, the Standards Committee can make one of the following findings:-
- The Member has not failed to follow the Authority's Code of Conduct
 - The Member has failed to follow the Authority's Code of Conduct, but no action needs to be taken; or
 - The Member has failed to follow the Authority's Code of Conduct and should be penalised

Penalties

- 3.25 If the Standards Committee finds that a Member has failed to follow the Code of Conduct and that he or she should be penalised, it may do any one or a combination of the following:-
- Censure the Member. This is the only form of penalty available when dealing with a person who is no longer a Member of the Authority
 - Restrict the Member's access to the resources of the Authority for up to 3 months. This could include limiting his or her access to the premises of the Council
 - Suspend or partly suspend the Member for up to 3 months; or
 - Suspend or partly suspend the Member for up to 3 months on the condition that the suspension or partial suspension will end if the Member apologises in writing, receives any training, or takes part in any conciliation that the Standards Committee orders them to

- 3.26 Conciliation involves an independent person helping the relevant people to try and reach an agreement on the matter set out by the Standards Committee.
- 3.27 Suspension or partial suspension will normally start immediately after the Standards Committee has made its decision. However, if the Standards Committee chooses, the penalty may start at any time up to 6 months following its decision. This may be appropriate if the penalty would otherwise have little effect on the Member, for example in the case of a suspension or partial suspension if there are no Authority or Committee meetings which the Member would normally go to in the period following the conclusion of the hearing.
- 3.28 Periods of suspension or partial suspension set by the Standards Committee do not count towards the 6 month limit for absences from Authority meetings, after which a Member would normally be removed from office, under Section 85 of the Local Government Act 1972.

Making the Findings Public

- 3.29 The Standards Committee must also arrange for a summary of the decision and reasons for that decision to be published in one or more newspapers that are circulating in the area.
- 3.30 If the Standards Committee finds that a Member did not fail to follow the Authority's Code of Conduct, the public summary must say this and give reasons for this finding. In these cases, the Member involved is also entitled to ask that no summary of the decision should be passed to local newspapers.
- 3.31 If the Standards Committee finds that a Member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the Member failed to follow the Code, outline what happened and give reasons for the Standard Committee's decision not to take any action.
- 3.32 If the Standards Committee finds that a Member failed to follow the Code and it sets a penalty, the public summary must say that the Member failed to follow the Code of Conduct, outline what happened, explain what penalty has been set and give reasons for the decision made by the Standards Committee.
- 3.33 The Standards Committee's reports and minutes should be available for public inspection for 6 years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.
- 3.34 The Member who is the subject of a Standards Committee finding may apply in writing to the President of the Adjudication Panel for England for permission to appeal against the finding. The President must receive the Member's written application within 21 days of the Member receiving written notice of the Standards Committee's decision. In the Member's application, the Member must outline the reasons for the proposed appeal and whether or not he or she wants the appeal carried out in writing or in person.

4.0 Financial Implications

- 4.1 None

5.0 Corporate Implications

5.1 Article 8.02 of the Council's Constitution provides that a role of the Standards Committee is to deal with any reports from the Monitoring Officer on any matter which is referred by an ESO of the SBE to the Monitoring Officer.

6.0 Community Implications

6.1 None

7.0 Background Papers

7.1 None

