
REPORT TO:	STANDARDS COMMITTEE	AGENDA ITEM:	5
DATE OF MEETING:	13TH AUGUST 2003	CATEGORY:	DELEGATED
REPORT FROM:	MONITORING OFFICER	OPEN	
MEMBERS' CONTACT POINT:	ANDREA MC CASKIE LEGAL & DEMOCRATIC SERVICES MANAGER 01283 595831 (5831)	DOC:	tlcommitteeskarinscommittelstanda rdslagendaslreportagmc.doc
SUBJECT:	DETERMINATION OF STANDARDS ALLEGATIONS BY THE STANDARDS COMMITTEE	REF:	AGMCC/KW
WARD(S) AFFECTED:	ALL		

1.0 Recommendation

That this report be noted and that the Monitoring Officer report further on a procedure for determining referred complaints once the Standards Board's Guidance has been received.

2.0 Purpose of Report

2.1 The Government has now made the first part of the Section 66 Regulations. This enables the Ethical Standards Officers of the Standards Board for England ("ESO's") to refer allegations to the Standards Committee, for local determination, once the ESO has completed an investigation of and report on the allegation. A further set of Section 66 Regulations will be made later in the year, once the Local Government Bill is in force. These Regulations will enable an allegation to be referred to the Monitoring Officer before investigation of the allegation, so that the Monitoring Officer can undertake the investigation of the allegation and report to the Standards Committee.

3.0 Detail

3.1 The first part of the Section 66 Regulations ("the Regulations") contain no great surprises in terms of the procedure which authorities will be required to follow in dealing with allegations of failure to comply with the Members' Code of Conduct. Key features include:

- (a) Extension of the definition of "exempt information" to make it clear that the Standards Committee can meet in private session to determine allegations. In practice, to ensure public confidence in the process, the Committee should meet in public unless there are over-riding reasons for going into private session, such as the need to protect the privacy of individuals. However, these amendments can prevent public access to the Committee papers in advance of the meeting, and enable the Committee to retire in order to consider its findings.

- (b) Extension of the permitted grounds of disclosure of information obtained during an investigation or hearing, in order to enable the Standards Committee or a national Appeals Tribunal to discharge its functions
- (c) The function of the Monitoring Officer is simply to report the ESO's findings to the Standards Committee, without additional investigation. However, the Committee may wish to ask the Monitoring Officer to provide additional evidence if they are unable to come to a decision on the basis of the ESO's report and the Councillor's response thereto.
- (d) There is no provision for the Standards Committee to call the ESO to give evidence in support of his/her report. The Committee may wish to ask the Standards Board for the ESO to make such an appearance if there are substantial disputes of fact in a particular case, but there is no automatic right for the Committee to require such attendance.
- (e) The Committee's hearing must be at least 14 days after the Monitoring Officer has given a copy of the ESO's report to the Councillor concerned, but no later than 3 months after the Monitoring Officer first received the report from the ESO.
- (f) The Councillor concerned must be given the opportunity to present evidence in support of his/her case and make representations at the meeting either verbally or in writing, either him/herself or through an appointed representative who may be legally qualified.
- (g) A Standards Committee and/or Councillor concerned may arrange for witnesses to attend the hearing. However, the Committee may place a limit on the number of witnesses if it views the number unreasonable.
- (h) The Standards Committee is given a power to make a determination in the absence of the Councillor concerned where it is not satisfied with the Councillor's explanation for his/her absence.
- (i) There is nothing in the Regulations that allows the Standards Committee to award costs to any party.
- (j) The Standards Committee can make one of three findings:-
 - (i) No failure to comply with the Code
 - (ii) Failure to comply with the Code but no action needs to be taken
 - (iii) Failure to comply with the Code and a sanction needs to be imposed.
- (k) Where the Councillor concerned has ceased to be a Councillor by the date of the Committee's hearing, the only sanction which the Committee can impose is one of censure as to his/her conduct.
- (l) Where the Councillor is still a Councillor at the date of the hearing, the range of sanctions is more varied and includes all or any of the following:
 - (i) Censure of the Councillor;

- (ii) Restriction of the Councillor's access to Council premises and use of Council resources for up to 3 months, provided that this does not unduly restrict the Councillor's ability to perform his/her functions as a Councillor. This might be appropriate in barring a Councillor from the Council offices where the misconduct were the bullying of officers, or taking away their Council-provided computer where the misconduct were inappropriate use of this facility;
- (iii) Suspension as a Councillor of the relevant authority for up to 3 months. Note that this period does not count towards any disqualification by reason of failure to attend a meeting of the authority for 6 months;
- (iv) Partial suspension as a Councillor of the relevant authority for up to 3 months. This could be suspension from Development Control Committee if the misconduct particularly related to his/her participation in that Committee; or
- (v) Suspension or partial suspension for up to 3 months or until the Councillor provides a written apology or undertakes any training or conciliation as determined by the Standards Committee.

Any such sanction take effect immediately upon the Committee's decision, unless the Committee determines that it shall take effect from a set date within 6 months of the date of the determination.

- (m) The Standards Committee shall as soon as reasonably practicable give written notice of its findings to the Councillor concerned, the ESO, the Standards Committee of any other authority concerned, any parish council concerned and any person who made an allegation that gave rise to the investigations. The Committee must also arrange for a summary of the findings to be published in a local newspaper.
- (n) A Councillor can apply within 21 days of receiving notification of the determination to the President of the national Adjudication Panel to be allowed to appeal against a determination of a Standards Committee. The Councillor will have to send in a written notice and the President will decide on the basis of whether the facts as set out in that notice indicate any reasonable prospect of the appeal succeeding. Any appeal will be heard by a tribunal comprising at least 3 members of the Adjudication Panel and may be by way of written representations if the Councillor consents.

4.0 A Procedure for Dealing with Referred Allegations

- 4.1 ESO's will now start to refer allegations to Monitoring Officers and Standards Committees where they consider that the alleged misconduct is of such a nature that, if proven, it would merit a sanction within the powers set out above, rather than the more draconian sanctions available to a national Case Tribunal, of suspension for up to one year or disqualification from any local authority for up to 5 years.
- 4.2 The Standards Board has recently issued guidance including practical procedural information for Standards Committees on how to hold a hearing relating to a referred allegation. Under the Regulations, Standards Committees must take this guidance into account.

- 4.3 It is important for the authority to have determined a procedure which it will 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.
- 4.4 The Derbyshire Secretaries and Solicitors Group, which is made up of the Monitoring Officers representing the City, County and District Councils have agreed to consider adopting a common procedure for dealing with matters under the Regulations. This example of joint working will ensure a consistency of approach across the County and allow in particular the 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.
- 4.5 The Standards Board have recommended in their Guidance that such joint working arrangements with neighbouring authorities should be explored. I therefore propose to bring to a future meeting of the Standards Committee the draft procedure for dealing with determinations under the Regulations and the draft protocol for joint working with the other authorities in Derbyshire for consideration.

5.0 **Background Papers**

The Local Authorities (Code of Conduct)(Local Determination) Regulation 2003