

## LONDON BOROUGH OF HARROW

<b>Meeting:</b>	STANDARDS COMMITTEE
<b>Date:</b>	7 <sup>th</sup> October 2003
<b>Subject:</b>	Complaints against Councillors: Local Determination of complaints referred from the Standards Board for England
<b>Key decision:</b>	N/A
<b>Responsible Chief Officer:</b>	Gerald Balabanoff – Borough Solicitor
<b>Relevant Portfolio Holder:</b>	N/A
<b>Status:</b>	Part 1
<b>Ward:</b>	N/A
<b>Enclosures:</b>	Procedure for the Standards Committee Panel

### 1. Summary/ Reason for urgency (if applicable)

- 1.1 The Council is required to agree a procedure for making local determinations of complaints against councillors alleged to have breached the Code of Conduct following publication of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 which came into force on 30<sup>th</sup> June 2003. The Standards Board for England has issued guidance to assist Standards Committees in drawing up their procedures, and that guidance has been taken into account in the drafting of the Harrow procedure. This report outlines the proposed procedure for dealing with referrals from Ethical Standards Officers following completion of an investigation.

## **2. Recommendations** (for decision by Council)

### **2.1 That the Committee recommend that Council agree**

- (i) to establish a panel of 5 members comprising both independent members and one from each of the main political parties to hear local determinations;**
- (ii) that the quorum for the panel hearing a local determination be 3, including at least one independent member;**
- (iii) that the panel hearing a local determination be chaired by an independent member;**
- (iv) that the independent member to fulfil the function in (iii) be appointed by the committee;**
- (v) that members attending a panel be required to vote on a local determination and not permitted to abstain;**
- (vi) the procedure at Annex 1.**

**REASON:** The Standards Board for England requires all Councils to establish procedures for Standards Committees to determine referrals from Ethical Standards Officers.

## **3. Consultation with Ward Councillors**

3.1 N/A

## **4. Policy Context (including Relevant Previous Decisions)**

4.1 The Government has now issued the first part of the Section 66 Regulations (under the Local Government Act 2000) enabling Ethical Standards Officers (ESOs) of the Standards Board for England (SBE) to refer allegations to Standards Committees for local determination.

4.1 The Local Determination Regulations do not provide a complete framework for dealing with local determination of complaints against local councillors. The Regulations issued thus far only allow investigations completed by ESOs to be referred to local Standards Committees for a decision about whether the allegation against the councillor is made out, and if so, for the determination of the appropriate sanction. The Regulations enabling Monitoring Officers to carry out investigations themselves on references from the Standards Board for England are not anticipated until later in 2003.

## **5. Relevance to Corporate Priorities**

5.1 No direct relevance.

## **6. Background Information and options considered**

6.1 HLS Briefing Note 1 for the Standards Committee issued in September 2003 outlines the main points of the new Regulations. The SBE has also issued Guidance for Councils on how they should respond to the Regulations, and committee members have received this guidance. HLS Briefing Note 2 for the Standards Committee issued in September 2003 sets out the main points of this guidance.

- 6.2 Ethical Standards Officers may now begin to refer completed investigations to local Standards Committees and it is therefore important that the Council establish the procedures for dealing with any ESO investigations which may be referred to the Committee as soon as possible.
- 6.3 Once further Regulations are issued dealing with local investigations it will be necessary to add to them to incorporate rules for undertaking a local investigation, as well as a local determination.
- 6.4 The proposed procedure is attached for Members to consider. Some key points for consideration are outlined below:

#### 6.4.1 The hearing Panel

An amendment to the Local Government Act 2003 allows delegation of functions from the Standards Committee (previously this was not legally possible).

It is recommended that the Committee agree to delegate the hearing of local determinations to a Panel, and that the Standards Committee Hearing Panel be established with a Membership of 5 (i.e. the two independent members and one member from each of the main political groups).

It is recommended that the quorum for the Panel hearing the determination should be 3, including one independent member.

#### 6.4.2 Chairing the Panel

The Guidance from the SBE strongly recommends that the Chair of the Panel hearing the determination should be an independent member. This is designed to ensure that the Panel can be seen to be led by an impartial person. Authorities who have already prepared their procedures have adopted this advice. It is therefore proposed that the chair of the Panel will be one of the two independent members of the Standards Committee, appointed by the Standards Committee for that purpose. It is suggested that this person be appointed now and that the Chair is then nominated annually by the Committee at its first meeting following the Annual Council Meeting.

#### 6.4.3 Voting

Members of Committees of the Council are able to abstain from decisions if they wish. The nature of any Panel meeting to hear a determination under the Code of Conduct is fulfilling a distinctly different role to that of other committees. Rather than deciding matters of policy, it is acting in a quasi-judicial manner, and as such it is not considered appropriate for members of the Panel to abstain. All members of the Panel will therefore be required to vote on a determination.

#### 6.4.4 Preparing the case for the Panel – the role of the legal advisor.

The Guidance from the SBE necessarily covers the process for determinations in a fairly procedural way – the Panel collect all the information that people want to put before it and then the meeting is held and a determination made. However in the same way as a tribunal may seek to give direction to the manner in which a hearing will be managed there must be room for a similar level of direction in our local procedure. Indeed the Guidance states that the Panel may decide to limit the witness evidence. Thought needs

to be given to whether there is room for negotiation within the process followed locally to ensure that all relevant information is put before the Panel, but in the most effective and efficient way. It is therefore proposed that the Chair, with assistance from the legal advisor to the Panel will provide a clear framework for the hearing as proposed in Paragraph 5 of the proposed procedure.

#### 6.4.5 Confidentiality

The Regulations add some additional categories of exempt information to Schedule 12 of Part V of the Access to Information rules, however it is important to note that the guidance from the SBE is that the starting point for all hearings is that they should be held in public session. Provision exists for part of the hearing to be held in private if necessary, and the deliberations of the Panel may also be in private. The procedure requires the ESO and/ or the member who is the subject of the allegation to make a request for a private hearing or for certain documents to be withheld from the public, and the procedure requires such a request to be accompanied by a reason set out in that schedule. The legal advisor to the Panel will advise the Chair on the validity of any such requests, and the Panel will have the final say in cases of disagreement.

#### 6.4.6 Appeals

Appeals against the determination and any sanction imposed by the Panel must be made to the Adjudication Panel of the SBE. In such circumstances the Panel will assist the President of the Adjudication Panel in the preparation of information as requested. Whether to appeal is a matter for the Member concerned, but it is recommended that if requested, Harrow Legal Services provide general advice to any member considering this action. Again this advice will not amount to representation for the Member, but will be designed to assist in producing an efficient outcome and minimising any adverse impact on the authority.

#### 6.4.7 The remit and allocation of responsibilities between legal officers.

There are a number of roles for legally qualified officers within the local determination procedure.

First, that of legal adviser to the Panel. This person may be the Monitoring Officer or a person appointed by him. The SBE recommend that the Monitoring Officer should be the legal adviser to the Panel. Their role is to ensure the Panel is appropriately advised throughout the process. This includes the need to ensure all papers from both parties are received and in proper order, assisting the Chair to distil the areas of disagreement between the parties, and advise on any ruling relating to which, if any, parts of the meeting or documentation should be withheld from the press and public.

Second that of 'Reporting Officer'. This person is appointed by the Monitoring Officer (and he may appoint himself to the role) in essence, to handle the case for the 'prosecution'. This person will liaise with the ESO and bring together any witnesses and information which provide evidence relating to the allegation against the Councillor. The guidance from the SBE intimates that the Reporting Officer will also liaise with the Councillor who is the subject of the investigation on some matters, but we consider this inappropriate and have suggested that the adviser to the Standards Committee Panel 'holds the ring' and fulfils the liaison role with the two parties. If the Monitoring Officer appoints himself as Reporting Officer he will appoint an alternative legal adviser to the Panel.

It is also necessary to consider whether there is a need for a further legal resource available to give advice to Members who may be involved in the process in some way. It may be that a Councillor not under investigation is or may be called as a witness in the matter. Witnesses cannot be compelled to attend, and such a member may want advice on whether or not to agree to attend. This might normally be provided by the Monitoring Officer and it is suggested that the Monitoring Officer protocol include such a role. Clearly if the Monitoring Officer is the Reporting Officer or has a conflict of interest he will need to refer such requests to an alternative legal officer. In addition it should be noted that legal officers might need to advise a member to seek their own external legal advice where necessary.

It may also be common, given the absence of any funds to pay for member representation and no prospect of success in a claim for costs, that the member who the allegation is laid against decides to represent him or herself. Whilst that is a matter for the member, it may be helpful for the effective running of the process if general procedural advice could be provided to that member in preparing the case. Again this may best be done by the Monitoring Officer, but it may be appropriate to appoint an alternative legal officer, who is not the Reporting Officer and not the legal adviser to the Panel, who is able to provide general advice. Note that it is not being suggested that the officer provide representation for the member, rather, general advice about how to identify the key issues in the case, deadlines for responses, advice on giving oral evidence or how to question witnesses etc.

## 7. **Consultation**

7.1 Not applicable

## 8. **Finance Observations**

8.1 There is no budget provision for any costs that may arise if external support is required to carry out any investigation or for any other costs that may arise.

## 9. **Legal Observations**

9.1 Contained in the body of the report.

## 10. **Conclusion**

10.1 The Standards Committee must have a procedure in place to deal with referrals to it from an Ethical Standards Officer. When further regulations are issued allowing the Standards Committee to carry out investigations the procedure will need to be amended to explain how that will be done.

10.2 Members should note however that the Standards Committee can nevertheless oversee ethical issues and inquire into complaints. The case of Broadland District Council ex parte Lashley confirmed that it was within the power of a local authority Standards Committee to oversee ethical issues and inquire into complaints concerning member conduct. The Court of Appeal ruled that such a committee fell within the powers of the Council under s111 of the Local Government Act 1972 which provides an ancillary power to do anything which is calculated to facilitate or conducive or incidental to the carrying out of its functions.

- 10.3 The Court of Appeal confirmed that the powers of the Committee within the current legislative framework are limited to the naming and shaming of individual members where conduct is regarded of a breach of the Code; removal from any office, appointment or committee or sub-committee in certain circumstances; and the possible removal of facilities (e.g. copiers) as long as such sanctions did not prevent the member from undertaking his or her role as a democratically elected member.
- 10.4 Therefore even prior to receiving the local investigation powers, the Committee does have some powers of inquiry.

11. **Background Papers**

- 11.1 The Local Authorities (Code of Conduct) (Local determination) Regulations 2003
- 11.2 Standards Committee Determinations – Guidance for Monitoring Officers and Standards Committees – Standards Board for England.
- 11.3 Local Government Act 2003
- Available from the report author.

12. **Author**

- 12.1 Alison Vydulinska –Corporate Solicitor – 020 8424 7629.  
[Alison.Vydulinska@Harrow.gov.uk](mailto:Alison.Vydulinska@Harrow.gov.uk)