

# **HARROW LEGAL SERVICES**

## **BRIEFING Note 1 for the Standards Committee**

### **SECTION 66 REGULATIONS**

The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 were laid before Parliament on 6<sup>th</sup> June and came into force on 30<sup>th</sup> June 2003.

Part 2 of the Regulations set out the rules that apply where an Ethical Standards Officer (ESO) carries out an investigation and decides that the matters investigated should be referred to the monitoring officer of the authority concerned (under Section 64(2) of the Local Government Act 2000).

#### **1. Consideration of breaches by the Standards Committee.**

The new regulations relate only to the procedure following referral of a completed investigation to the monitoring officer by an ethical standards officer.

##### **1.1 Reports received by the monitoring officer:**

First, the ESO must send the report to the monitoring officer. He then must send it to the member who is the subject of the report (for simplicity I will refer to them throughout as ‘the relevant member’) and arrange for the Standards Committee to meet to consider the report.

##### **1.2 Hearings by Standards Committees:**

The standards committee must convene to conduct a hearing on the matter. That hearing must:

- follow any guidance issued by the Standards Board for England (SBE) (guidance has been issued by the SBE –see briefing note 2)
- be held within 3 months of the monitoring officer receiving the report;
- be held not less than 14 days after the date on which the monitoring officer sent the report to the relevant member (though it can be earlier if that member agrees);
- the relevant member must be given an opportunity to present evidence in support of their case; and
- must be given the opportunity to make representations at the hearing (either orally, or in writing, either personally or through a representative they appoint to speak on their behalf).

The committee can conduct the hearing using any procedures it considers appropriate.

The committee can arrange for any witnesses they consider appropriate to attend, as can the relevant member.

The Standards Committee can put a limit on the number of witnesses a relevant member may call if they think the number s/he proposes to call is unreasonable.

The relevant member can be represented at the hearing by counsel, a solicitor, or, with the prior consent of the standards committee, any person who the member wants to represent them.

There is no provision to require attendance of an ESO as a witness, however I presume an approach to the SBE to request their attendance could be made.

If the relevant member fails to attend the hearing (and provided they have had notice of it) the Standards Committee may consider the allegation and make a determination in the absence of the relevant member (as long as they do not consider there to be a sufficient reason for the relevant member's failure to attend) or they can adjourn the hearing to another date.

### 1.3 Extension of the definition of exempt information

The Regulations also extend the definition of exempt information to ensure that standards committees can meet in private session to determine allegations and that case papers can remain confidential if appropriate. That is not to say that meetings should not be held in public, but there is the ability to hold them in private if appropriate; to withhold papers before the hearing and for the committee to retire to consider its findings. The new categories of exempt information for Standards Committees are: where the information relates to the personal circumstances of any person; where it is subject to the obligation of confidentiality; where it relates to matters concerning national security or where it concerns the deliberations of Standards Committees.

### 1.4 Findings of the Standards Committee

The Standards Committee can make one of the following findings.

That the relevant member:

- a) has not failed to comply with the code of conduct <sup>1</sup>
- b) has failed to comply with the code of conduct but no action needs to be taken
- c) has failed to comply with the code of conduct and a sanction should be imposed.

If the committee make a finding under paragraph c) above, in respect of a person who is no longer a member of the authority they must censure that person.

If the committee make a finding under paragraph c) in respect of a person who is still a member of the authority it must impose one, or any combination, of the following sanctions:

- Censure of the member

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<sup>1</sup> The Regulations actually say the Committee can make a finding that they have failed (or not failed) to comply with the code of conduct of the authority **or any other authority concerned** – I do not understand the last point as I am not sure what jurisdiction our committee has over other codes.

- Restriction of the relevant member's access to the premises of the authority and their use of the resources of the authority for a maximum of three months, and providing those restrictions:
  - Are reasonable and proportionate to the nature of the breach;
  - Do not unduly restrict the member's ability to perform his functions and duties as a member
- Partial suspension for a maximum period of three months;<sup>2</sup>
- Partial suspension of the relevant member for a maximum of three months or until the member submits a written apology of undertakes training or conciliation specified by the Standards Committee
- Suspension of the relevant member for a maximum of three months<sup>3</sup>
- Suspension of the relevant member for a maximum of three months or until the member submits a written apology of undertakes training or conciliation specified by the Standards Committee.

A standards committee may direct that a sanction imposed commence on any date within a period of six months of its declaration, however if they do not so direct the sanction will commence immediately.

### 1.5 Notification of the findings of the Standards Committee

As soon as is practical after the standards committee meeting, the committee must give written notice of their finding to:

- The relevant member
- The ESO concerned
- The Standards Committee (I presume this refers to situations whether a sub-committee of the parent committee makes the finding, though a change in the law is needed before this can be done)
- The Standards Committee of any other authority concerned;
- Any person whose allegations gave rise to the investigation.

The Standards Committee must also arrange for a summary of the finding to be published in one or more newspapers circulating in the area, though this is subject to some qualification depending on the outcome of the case.

Where the Standards Committee finds that the relevant member has not failed to comply with the code the 'notice' must state that this is the finding and list its reasons for it. However, the relevant member can request that there be no notice published in a newspaper (and the committee cannot publish it if this is the case).

Where the committee find that the relevant member failed to comply with the code but that no action need be taken, the notice to be published must state this fact and specify the details of the failure to comply; give the reasons for the decision the committee reached and state that the relevant member may apply for permission to appeal against the finding.

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<sup>2</sup> (this means being prevented from exercising particular functions or having particular responsibilities but doesn't include being suspended from being a member of a committee, sub-committee or joint committee of the authority, nor does it include being suspended from the Executive if you are an Executive member);

<sup>3</sup> Here, in contrast to the position in relation to a partial suspension, a member may be suspended from membership of the Executive or a committee, sub-committee or joint committee.

Where the committee find that the relevant member failed to comply with the code and that a sanction should be applied, the notice should state this and specify the details of the failure, give reasons for the decision reached by the committee and specify the sanction imposed. The notice should also state that the relevant member may apply for permission to appeal against the funding.

## **2. Appeals**

### **2.1 Notice of appeals**

Where the standards committee make a finding that a relevant member has failed to comply with the code of conduct, that member may write to the president of the Adjudication Panel seeking permission to appeal.

The president of the Adjudication Panel must receive the request for an appeal within 21 days of the member's receipt of notification of a finding by the standards committee. The notice must specify the reasons for the appeal and whether the relevant member consents to the appeal being dealt with through written representations.

The president (or deputy) will decide whether or not to allow an appeal in the absence of the relevant member or other parties unless s/he considers that special circumstances require the parties to attend.

In deciding whether to grant an appeal the president (or deputy) must take into account whether or not there is a reasonable prospect of the appeal being successful (in whole or in part).

Within 21 days of receipt of the appeal request the president (or deputy) must send a notice of the decision to the relevant member, the ESO concerned, the local standards committee, and the person whose allegation gave rise to the investigation. If permission is refused, the notice must also give the reasons for that decision.

### **2.2 Conduct of appeals**

Where the president of the Adjudication Panel gives permission for an appeal hearing, the matter will be referred to the appeals tribunal that shall conduct the appeal.

Where the relevant member has said s/he does not wish the appeal to be decided on written submissions a hearing will be conducted, and the relevant member must be given 21 days notice of the date of the hearing.

Where the relevant member consents to the hearing being conducted by way of written representations it may be conducted in that way or the appeal tribunal may in any event convene a hearing.

The relevant member may appear at the hearing in person or may be represented by counsel, a solicitor or, subject to the prior consent of the appeals tribunal, any person whom he wishes to represent him.

### 2.3 Composition of the appeals tribunals

The appeals tribunal shall consist of not less than three members (of the Adjudication Panel) appointed by the president. The president or deputy may be a member of the panel.

No member may sit on an adjudication tribunal hearing an appeal relating to a member in whose authority that panel member worked in or served as a councillor in the past 5 years.

Any member of the appeals tribunal who has a direct or indirect interest, or is likely to have such an interest in the subject matter of an appeal must disclose this to the president and may not sit on the appeal tribunal.

The appeals tribunal may use procedures as it sees appropriate in the circumstances.

### 2.4 Failure of a member to attend an appeal tribunal hearing.

If the relevant member fails to attend the appeal tribunal the tribunal may decide the matter in their absence unless they are satisfied there is sufficient reason for the absence, or they may adjourn the hearing.

Before determining an appeal in the absence of a member, the tribunal should consider any written submissions from the person made in response to the notice of the hearing. Any such reply will be treated as a written submission at the tribunal hearing.

### 2.5 Outcome of appeals

The appeals tribunal must uphold or dismiss (in whole or part) the finding of the standards committee. It may approve the penalty imposed by the standards committee, or require the standards committee to impose a penalty or require the standards committee to impose a different penalty to that already imposed.

Where the tribunal dismisses the findings of the standards committee the decision taken by the committee (and any sanction imposed) shall cease to have effect from the date of that dismissal.

The appeals tribunal must give written notice of its decision to the relevant member, the ESO concerned, the standards committee of the authority concerned, and the person whose allegation led to the investigation.

The tribunal must also arrange for a summary to be published in one or more papers circulating in the area of the authority concerned.

The standards committee must comply with any decision of an appeals tribunal.