

HARROW LEGAL SERVICES

BRIEFING NOTE 2

STANDARDS COMMITTEE DETERMINATIONS **Summary of the Standards Board for England guidance**

This guidance was issued in July 2003 and under the Regulations, Standards Committees must take it into account. It deals only with the situation where Ethical Standards Officers (ESO) refer a completed investigation report to a Monitoring Officer (MO) for the Standards Committee to determine. The key points of the guidance are summarised below, but do not repeat the description of the Regulations (covered in Briefing Note 1 on the section 66 Regulations).

1. Referrals from ESOs

The Guidance sets out the possible findings available to an ESO on completion of an investigation – one of which is that the matter should be referred to the MO of the relevant authority for local determination. The matters likely to be referred for local determination include matters that are of an entirely local nature and which do not affect broader national issues, and matters that do not appear to require the heavier penalties available to the Adjudication Panel for England.

Nevertheless ESOs will refer matters on their individual merits. So a case of severe harassment or bullying within an authority, although entirely of a local nature, may be inappropriate for referral for local determination.

Only completed investigations will be referred, and it is not open to Standards Committees to re-open the investigation. However, the member who is the subject of the allegations has the right to give evidence to the Standards Committee, and if further evidence becomes available after the completion of the ESOs investigation the Standards Committee may consider it.

When the MO receives the ESO's report s/he must provide a copy to the member who the allegation has been made about (the assumption here seems to be that the ESO will not provide the member with a copy).

2. Scheduling a hearing

The Regulations state that the matter must be heard by the Standards Committee within 3 months of receiving the ESO's report. The Regulations do not say what happens if the Committee do not meet this timetable, but the guidance say that the committee will be failing in its legal duty and may face judicial review proceedings. The committee cannot refer the matter back the SBE so it must be dealt with locally.

The guidance says that unless the case is particularly complicated the Committee should aim to hear the case in one sitting or consecutive sittings of no more than one working day in total. Committees should bear in mind that late night sittings are not conducive to effective decision-making.

3. The pre-hearing process

A pre-hearing process should be established to deal only with procedural issues, namely to:

- Identify whether the member concerned disagrees with the findings of the ESO;
- Decide whether those disagreements are significant to the hearing;
- Decide whether to hear evidence of those disagreements at the hearing;
- Decide whether or not any parts of the hearing should be held in private;
- Decide whether any parts of the ESO's report or other documents should be withheld from the public.

The SBE guidance suggests that the pre-hearing process can usually be done in writing, though a meeting of the Chair, the people involved and their representatives (if any) may be needed in some cases.

4. The Member's response

The MO's administrator should, in consultation with the Chair of the Committee, write to the member concerned to propose a date for the hearing, and set out the hearing procedure and the member's rights. They should also request a written response from the member, within a set time, on the following issues:

- Does the member disagree with any findings of fact in the report and why;
- Do they want to be represented at the hearing;
- Do they want to give evidence orally or in writing;
- Do they want to call witnesses;
- Do they want any part of the hearing to be held in private;
- Do they want any part of the ESO report or other relevant documents to be withheld from the public; and
- Whether they can attend the hearing.

The emphasis on establishing disagreements of fact is designed to enable the Committee to see if any witnesses will be needed. The member concerned should not be allowed to raise new disagreements at the hearing unless there are good reasons for so doing –for example where new evidence becomes available.

The SBE has provided model form to help the member identify findings of fact that s/he may disagree with and outline further evidence for the Committee.

5. An ESO response

The SBE recommend that the Committee also invite the ESO to comment on the member's response within a set time to say whether s/he:

- wants to attend the hearing and give evidence;
- wants to call relevant witnesses;
- wants any part of the hearing to be held in private; and
- wants any part of the report or relevant documents to be withheld from the public.

6. Other witnesses

The Committee can invite other witnesses who it feels may help in determining the case but cannot compel any witness to give evidence.

7. Preparing for the hearing

When the Committee has received the response from the member concerned and the ESO, and at least 2 weeks before the hearing, the Chair in consultation with the legal advisor to the Committee should write to everyone involved to:

- set the date, time and place for the hearing;
- summarise the allegation;
- outline the main agreed facts;
- outline the main facts which are not agreed;
- note whether the member concerned or the ESO will attend and be represented at the hearing;
- list any witnesses who will give evidence;
- outline the process for the hearing.

8. The hearing

The SBE provides model hearing procedures which, though not compulsory, are expected to have a close relationship to those used locally. These will be adapted for use in Harrow.

The Committee cannot currently delegate the determination of a case to a sub-committee (note amendments to the Local Government Bill before Parliament will allow delegation). All the members of the Committee may currently take part in the hearing but the SBE recommend that only 3/5 members take part– it being fairer and more efficient that way. The SBE suggest that the Committee must be seen to fair and politically unbiased. To assist in this they recommend that an independent member chairs the hearing.

9. Representatives

The member concerned may be represented by a barrister, solicitor or anyone else, though the person must not be directly involved in the matter being determined. The Committee can remove the representative from the hearing if they disrupt it.

10. Witnesses

The member who is the subject of the report may call any witnesses they wish, though the Committee may limit the number if they consider it unreasonable. The Committee can govern its own procedures as long as it acts fairly, and so it may choose not to hear from certain witnesses if they believe they will repeat the evidence of earlier witnesses or will not provide evidence to help them reach a determination. (Quite how its possible to know this in advance isn't clear)

11. Evidence

The Committee controls the procedure and evidence presented at the hearing, including the way witnesses are questioned. The member under determination must be allowed to make

representations (verbally or in writing either direct or through a representative), to give evidence to the committee and to call witnesses to give evidence.

It may not be necessary to have any evidence other than the ESOs report in some cases, for example where the member concerned does not dispute any of the findings within it.

The committee itself can question witnesses and allow them to be questioned and cross examined by the member who is the subject of the allegation and/or the Reporting Officer as appropriate.

12. The finding of the Standards Committee and penalties available.

These are set out in paragraph 1.4 of Briefing No 1 on the section 66 Regulations. A penalty of suspension or partial suspension will normally start immediately following the Committee decision, but the Committee may choose to commence the penalty any time up to six months following its decision (for example if the determination is just prior to a recess and would therefore not have an effect on the member). Note that suspension and partial suspension do not count towards the six month limit for absences from local authority meetings under which a member could be removed from office under section 85 of the Local Government Act 1972.

13. Deciding on a penalty

Any penalty imposed should be reasonable and in proportion to the member's behaviour. Before deciding on the appropriate penalty the Committee should consider the following questions and any other relevant circumstances:

- what was the member's intention? Did the member know they were failing to follow the Code of Conduct?
- Did the member get advice from officers before the incident? Was the advice acted upon in good faith?
- Has there been a breach of trust?
- Has there been any financial impropriety?
- What was the result of them failing to follow the Code of Conduct?
- How serious was the incident?
- Does the member accept that s/he was at fault?
- Did the member apologise to the relevant people?
- Has the member previously been warned or reprimanded for similar misconduct?
- Has the member failed to follow the Code of Conduct before?
- Is the member likely to do the same things again?

There may be local factors that the Committee want to consider when deciding on a penalty. The penalties in other similar cases decided by the Adjudication Panel or other Standards Committees may also be considered.

Suspension may be appropriate for more serious offences e.g. bullying officers, or trying to obtain an advantage or disadvantage others, or dishonesty or breaches of trust.

Inappropriate uses of council resources might result in the removal of those resources but should not unnecessarily restrict a member's ability to carry out their responsibilities as a member.

14. Notice of the Standards Committee findings

The committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the meeting and prepare a full written decision in draft at the time before memories fade. The committee administrator should also draft minutes of the meeting.

As soon as practicable after the hearing the Committee must give its full written decision to the relevant people. The SBE suggests 2 weeks as an appropriate time and suggests the following people receive it:

- The member who is the subject of the finding;
- The relevant ESO;
- The Standards Committee of any other authorities concerned;
- Any person who made the allegation.

15. Making the finding public

The Committee must arrange for a summary of the decision and reasons for it to be published in one or more newspapers (independent of the Council) circulating in the authority's area. The publication requirements are set out in Briefing No 1 on the section 66 Regulations.

The Committee report and minutes of the meeting must be available for public inspection for six years after the hearing (except any relating to parts of the hearing which were held in private)

16. Full written decision format

The Guidance recommends a report format for full written decisions.

17. Public access to hearings and documents

The SBE recommends that hearings should be held in public where possible to make sure the process is open and fair.

18. Confidential and exempt information

The Regulations state that a modified version of the rules on access to information (contained in Part VA of the Local Government Act 1972) should apply to Standards Committees when making local determinations. There is a clear presumption that meetings will be held in public.

There are two situations where hearings (or parts of hearings) can be held in private:

- Where it is necessary to prevent confidential information being revealed (i.e. that provided by a Government Department on condition that it must not be revealed, and information that cannot be revealed under legislation or court order;

- To prevent 'exempt' information being revealed to the public (i.e. those categories in the Access to Information Rules in part 4 of the Constitution plus four additional categories of exempt information. These are set out in Briefing No1)

Confidential and exempt information is treated differently. Therefore the committee must meet in private where confidential information is likely to be revealed but they have the discretion to decide whether or not to exclude the public if exempt information may be revealed.

19. Deciding whether to withhold exempt information.

The SBE advises that Committees should follow Article 6 of the European Convention on Human Rights as there may be an obligation to do so under s6 (1) of the Human Rights Act, though the legal position is not entirely clear. In any event the Committee needs to act fairly and in line with the rules of natural justice. Article 6 favours public hearings and this should be the starting point for the Committee. If the Committee decides exempt information needs to be protected then it should only exclude the public for part of the proceedings in order to protect that information. If evidence is heard in private it is important that participants understand that that evidence must not be mentioned in the public parts of the hearing.

20. Access to documents

The agenda and reports for the hearing should also be available for public inspection before and during the hearing, and for six years following the hearing. It is possible for the proper officer to prevent a report or part of it from being made public if it relates to parts of the hearing to be held in private, though the SBE recommends that this power should only be used where one of the people involved has requested that a document be kept confidential.

21. Appeals to the Adjudication Panel for England.

The member who is the subject of a finding may apply in writing to the President of the Adjudication Panel for England for permission to appeal. The process for this is set out in Briefing No 1.

22. Costs

Members are responsible for meeting the costs of any representation at a Standards Committee or appeal tribunal.

The Office of the Deputy Prime Minister is considering allowing Councils to cover the costs of members going to and being represented at hearings and appeal tribunals.

23. The role of the Monitoring Officer

MO's need to be aware of the potential conflicts involved in advising the Standards Committee and members.

23.1 Advising the Standards Committee

The SBE recommend that the MO advises the Standards Committee unless they have an interest in the matter that would prevent them from doing so independently. If this happens the MO must arrange for an alternative appropriately qualified officer to advise the committee.

In advising the committee the MO/legal advisors role is to:

- Make sure that members understand their powers and procedures;
- Make sure the determination process is fair and that the allegation is dealt with as effectively and efficiently as possible;
- Make sure the member who the allegation has been made about understands the procedures the committee will follow;
- Provide advice to the Committee during the hearing and deliberations; and
- Help the Committee produce a written decision and a summary of it.

23.2 Advising members

In some cases it is possible that if the MO advises a member then they may not be able to advise the Committee if a hearing is subsequently required. This is unlikely to happen where the discussions between the MO and the member have been informal.

To reduce the likelihood of such conflicts MO's should:

- Arrange for another officer to advise members; OR
- Continue to advise members but reassure them that if their advice could be material to the investigation another appropriately experienced officer will be available to advise the Standards Committee.

The idea of coming to agreements with neighbouring authorities is suggested.

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