

# Item 4

**ITEM No.**

**REPORT TO STANDARDS  
COMMITTEE**

**4TH NOVEMBER 2003**

**REPORT OF THE MONITORING  
OFFICER**

## **DETERMINATION OF STANDARDS ALLEGATIONS BY THE STANDARDS COMMITTEE**

### **1. INTRODUCTION**

The Government has now made the first part of the Section 66 Regulations which will enable the Ethical Standards Officers of the Standards Board for England to refer allegations to the Standards Committee, or a Sub-Committee of the Standards Committee for local determination, once the Ethical Standards Officer 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, and which will enable an allegation to be referred down to the Monitoring Officer before investigation of the allegation, so that the Monitoring Officer will then secure the investigation of the allegation and report to the Standards Committee, or Sub-Committee.

### **2. THE CONTENT OF THE REGULATIONS**

The regulations, which come into force on 30th June 2003, 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 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 overriding reasons for going into private session, such as the need to protect the privacy of individuals. However, these amendments do usefully allow the Proper Officer to deny press and public access to the Committee papers in advance of the meeting, and enable the Committee to retire in order actually to consider its findings.
- (b) Extension of the permitted grounds of disclosure of information obtained during an investigation or hearing, in order to enable a national Appeals Tribunal to discharge its functions.
- (c) The function of the Monitoring Officer is to report the Ethical Standards Officer's report 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 Ethical Standards Officer's report and the Councillor's response thereto.

- (d) There is no provision for the Standards Committee to call the Ethical Standards Officer to give evidence in support of his/her report. The Committee may wish to ask the Standards Board or the Ethical Standards Officer 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 Ethical Standards Officer's report to the Councillor concerned, but no later than 3 months after the Monitoring Officer first received the report from the Ethical Standards Officer.
- (f) 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.
- (g) 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 s to his/her conduct.
- (h) 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 was 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 for the relevant authority for up to 3 months. This could be suspension from Planning Committee if the misconduct particularly related to his/her participation in Planning Committee; or
  - (v) Suspension or partial suspension for up to 3 months or until the Councillor provides a written apology or undertakes remedial 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.

- (i) A Councillor can apply 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.

### **3. A PROCEDURE FOR DEALING WITH REFERRED ALLEGATIONS**

- (a) Ethical Standards Officers will now start to refer/report 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.
- (b) 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. The Standards Board has issued guidance on such procedures and a model procedure (see Appendix).
- (c) The Monitoring Officer has already started a programme of member training as part of the county-wide initiative on standards and ethics. Details of presentations covering the new roles of the Standards Committee have already been circulated to Borough and Parish and Town Council Members and their Clerks.

### **4. FURTHER GUIDANCE FROM THE STANDARDS BOARD REGARDING THE MEMBERS' ALLOWANCE SCHEME AND ALSO THE PUBLICITY FOR HEARINGS**

The Standards Board have expressed the view that where a penalty of suspension is imposed by the Standards Committee then this should normally lead to withdrawal of the Members' allowance. However, the Allowance Scheme will need to make express provision for this. They have also advised that there would need to be delegation within the Allowance Scheme to suspend allowance payments and for such decisions to be taken by the Standards Committee. At present it is uncertain, and the Board have not yet expressed a view, as to whether there is power to withdraw allowances in the case of partial suspension. Further advice on that point will be provided later.

The Board have also given guidance as to when it is appropriate to exclude the press and public from public hearings which the Standard Committee will now conduct when allegations are referred to them. The Board have advised that, theoretically, Standards Committees could hold a large number of hearings, in private, under the "personal circumstances" category of exempt information, as provided by Part V(A) of the Local Government Act 1972, as amended by the Standards Committee Regulations 2001. The Committee has discretion as to whether or not to exclude the press and public in these circumstances. However, the Standards Board has expressed the view that these hearings should be held in public unless there is a very strong argument otherwise. An example of where it would be appropriate to apply the personal circumstances exception would be where sensitive personal data might

otherwise be disclosed to which the Data Protection Act 1998 would apply. The Board has also pointed out that the Office of Deputy Prime Minister has issued advice encouraging public hearings for these determinations. Generally speaking, the personal circumstances exception is likely to apply where information might be disclosed which would not normally be in the public domain.

## **5. RECOMMENDATION**

That this report be noted and the recommendations are put to the Standards Committee and to Council for approval including approval for all consequential amendments to the Constitution, the Members' Allowance Scheme and the remit of the Standards Committee.

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**Ward(s)**

**Key Decision Validation**

**Background Papers**

Regulations under Section 66 of Local Government Act 2000

## **APPENDIX**

### **MODEL HEARING PROCEDURES FOR THE STANDARDS COMMITTEE : SEDFIELD BOROUGH COUNCIL**

#### ***Interpretation***

1. 'Member' means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.
2. 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator means the Monitoring Officer or other investigating officer, and his or her nominated representative.
3. 'Committee' also refers to 'a standards sub-committee'.
4. 'Legal adviser' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

#### ***Representation***

5. The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

#### ***Legal Advice***

6. The committee may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the member and the investigator if they are present.

#### ***Setting the scene***

7. After all the members and everyone involved have been formally introduced, the Chair should explain how the committee is going to run the hearing.

#### ***Preliminary procedural issues***

8. The committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

#### ***Making findings of fact***

9. After dealing with any preliminary issues, the committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

10. If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.
11. If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.
12. The member should then have the opportunity to make representations to support his or her version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.
13. At any time, the committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
14. If the member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
15. If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:
  - (a) continue with the hearing, relying on the information in the investigator's report;
  - (b) allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
  - (c) postpone the hearing to arrange for appropriate witnesses to be present or for the investigator to be present if he or she is not already.
16. The committee will usually move to another room to consider the representations and evidence in private.
17. On their return, the Chair will announce the committee's findings of fact.

***Did the member fail to follow the Code?***

18. The committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.
19. The member should be invited to give relevant reasons why the committee should not decide that he or she has failed to follow the Code.
20. The committee should then consider any verbal or written representations from the investigator.

21. The committee may, at any time, question anyone involved on any point they raise in their representations.
22. The member should be invited to make any final relevant points.
23. The committee will then move to another room to consider the representations.
24. On their return, the Chair will announce the committee's decision as to whether or not the member has failed to follow the Code of Conduct.

***If the member has not failed to follow the Code of Conduct***

25. If the committee decides that the member has not failed to follow the Code of Conduct, the committee can move on to consider whether it should make any recommendations to the authority.

***If the member has failed to follow the Code***

26. If the committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:-
  - (a) whether or not the committee should set a penalty; and
  - (b) what form any penalty should take.
27. The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
28. The committee will then move to another room to consider whether or not to impose a penalty on the member and if so, what the penalty should be.
29. On their return, the Chair will announce the committee's decision.

***Recommendations to the authority***

30. After considering any verbal or written representations from the investigator, the committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

***The written decision***

31. The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing before people's memories fade.

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