

Item 7

REPORT TO STANDARDS COMMITTEE

5th April 2007

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

SBE CONFERENCE: CONDUCTING AND HOLDING AN EFFECTIVE HEARING

1. SUMMARY

- 1.1 This report addresses how to conduct and hold an effective Standards Committee hearing. The ethical agenda has taken step forward, investigations, hearings and, ultimately, the public's confidence in local democracy, are increasingly in the hands of Local Authorities and their Members.
- 1.2 The Annual Assembly of Standards Committees "Bridging the Gap" Conference concentrated on identifying and then closing the gaps between the resources, knowledge and experience needed for effective regulation of ethical standards at a local level. Standards Committees should work fairly and in a way that encourages the confidence of Members and the public.

2. RECOMMENDATIONS

- 2.1 That the Standards Committee be appraised of the report and future changes be noted.

3. DETAIL

- 3.1 Like all public bodies, each Standards Committee has an obligation to ensure that its proceedings are fair. The Member's right to present evidence and make representations at the hearing go some way to ensuring a fair hearing. Similarly, the important fact that all Members of the Standards Committee (including Independent Members) are themselves subjected to the Code of Conduct and in particular, the rules about personal and prejudicial interests will help to avoid any bias.
- 3.2 For the Standards Board to consider an allegation it must concern an elected, co-opted, or independent Member and the alleged misconduct must be covered by the Code of Conduct. The Standards Board will initially assess the allegation and when considering whether to refer it for local investigation will use their discretion and take into account a number of differing factors including:
 - The apparent degree of seriousness of the allegation;
 - Whether the allegation is of an entirely local nature and does not raise matters of principle;

- Whether an initial investigation by an Ethical Standards Officer highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct;
 - Any evidence that a local investigation would be perceived as unfair or biased;
 - Any relevant local political issues that may have a bearing on the investigation.
- 3.3 If the allegation has been referred for local investigation the Monitoring Officer will conduct an investigation into whether a breach of the Code of Conduct has occurred and produce a final report. The final report will outline the Monitoring Officer's findings and outline whether a breach of the Code occurred.
- 3.4 **The Pre-Hearing Process:** Before a hearing is conducted the Standards Committee will carry out a pre-hearing, which will be used to:
- a) identify whether the Member who the allegation has been made about disagrees with any of the findings of fact in the Monitoring Officer's report;
 - b) decide whether or not those disagreements are significant to the hearing;
 - c) decide whether or not to hear evidence about those disagreements during the hearing;
 - d) decide whether or not there are any parts of the hearing that should be held in private; and
 - e) decide whether or not any parts of the Monitoring Officer's report or other documents should be withheld from the public .
- 3.5 **The Hearing:** There is a three-month time limit for holding hearings and there must be three members for a Standards Committee or sub-committee to be quorate, at least one of whom must be an independent member. An exception applies where an independent member is prevented from participating because of a prejudicial interest. Where a hearing concerns a member of a Parish Council, the Local Government Act 2000 requires that a Parish Council Member be present.
- 3.6 The Standards Committee must come to clear conclusions as to:
- a) the disputed facts
 - b) whether there has been any breach of the Code of Conduct, and if so,
 - c) whether any sanction should be imposed.
- 3.7 **Witnesses:** Although the Member who the allegation has been made about is entitled to call any witnesses, the Standards Committee may choose not to hear from certain witnesses or if a witness will not be

providing evidence that will assist the Standards Committee to reach its decision. The Standards Committee has the right to govern its own procedures as long as it acts fairly.

3.8 **Evidence:** The Standards Committee controls the procedure and evidence presented at a hearing, including the way witnesses are questioned. The Member who the allegation has been made about must be allowed to make representations, either verbally or in writing. If the Member prefers, these representations can be made through his or her nominated representative. The Member who the allegation has been made about must also be given the opportunity to give evidence to the Standards Committee.

3.9 **Sanctions:** This stage is only reached if the Committee finds that there has been a failure to comply with the Code of Conduct. The Committee needs to consider the full range of sanctions available, tailoring any sanction to the facts of the case before them, however, there is no obligation to impose any sanction at all.

3.10 The Standards Committee has the power to impose a range of penalties. They can:

- a) suspend a Member for up to 3 months;
- b) partially suspend a Member for up to 3 months;
- c) restrict a Member's access to the premises and resources of their authority for up to 3 months;
- d) censure Members;

They are also able to require Members to:

- e) take training on the Code of Conduct;
- f) take part in conciliation;
- g) apologise for their behaviour

3.11 The Standards Committee can make these last three sanctions a condition of avoiding a partial or total suspension. Many Standards Committees have used these conditions to try to address the behaviour of Members or resolve the underlying problem that gave rise to the allegation. The use of conditional suspensions can help draw a line under an issue and encourage good conduct in future.

3.12 In 124 cases where Standards Committees found that there had been a breach of the Code of Conduct, almost a third of the decisions resulted in no action being taken against the Member. However, Members were also frequently censured, required to apologise for their behaviour, or required to take training.

- 3.13 Standards Committee's suspended Members in 24 instances, meaning that suspensions made up about a fifth of the sanctions imposed on Members following local investigations.
- 3.14 In a number of cases, the Member concerned was given a sanction of more than one description, for example, a Member was suspended for 2 months and required to undertake training.
- 3.15 **Conclusion:** It is essential that the Standards Committee should not allow itself to be a mere 'rubber stamp' for the final report and should not uncritically accept the findings of fact or the reasoning put forward by the Monitoring Officer. The Committee must consider carefully any evidence or representations put forward by the Member, this includes representations made prior to the hearing and representations made at the hearing. The Committee's reasons should demonstrate that the Member has been given a fair opportunity to put his or her case across.
- 3.16 However, this must be balanced against the need to prevent the Standards Committee's time being wasted on irrelevant matters or witnesses and the primary task is to decide whether or not the Member breached the Code of Conduct. It is unlikely to be a good use of the Committee's time to hear oral evidence that is either disputed or not relevant to the alleged breach of the Code.
- 3.17 The over-arching principle is that the Standards Committee has the right to govern its own procedures as long as it acts fairly and must strive to ensure that it does not lose control of the hearing.

4. RESOURCE IMPLICATIONS

- 4.1 No specific financial implications have been identified.

5. CONSULTATIONS

- 5.1 The Council's Management Team considered this report on 12th March 2007.

6. OTHER MATERIAL CONSIDERATIONS

- 6.1 All material considerations have been taken into account in the contents of this report. In particular, risks may arise unless Members of the Council are fully appraised on standards matters.

7. OVERVIEW AND SCRUTINY IMPLICATIONS

- 7.1 None apply.

8. LIST OF APPENDICES

- 8.1 None apply.

Contact Officer: Dennis A. Hall/Laura Starrs
Telephone Number: 01388 816166, Ext. 4268
E-mail address: dahall@sedgefield.gov.uk

Wards: N/A

Key Decision Validation: N/A

Background Papers

SBE Publication: Local Investigations
SBE Publication: Standards Committee Determinations
SBE Publication: The Case Review, Number 4, 2006

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Council’s Head of the Paid Service or his representative	<input type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Council’s S.151 Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council’s Monitoring Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input type="checkbox"/>	<input type="checkbox"/>

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