

Committee: STANDARDS COMMITTEE
Date: 23 July 2003
Agenda Item No: 6
Title: SUPPLEMENTARY REPORT ON LOCAL DETERMINATIONS
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Summary

- 1 This supplementary report is to inform Members of guidance now issued by the Standards Board regarding how Members should deal with hearings into allegations of breach of the Code of Conduct.

Background

- 2 Since the report on Local Determination of Allegations of Breach of the Code of Conduct was prepared the Standards Board have published a document entitled "Standards Committee determinations Guidance for monitoring officers and Standards Committees". The full text of this document is available on the Standards Board website. Members of the Standards Committee are required to have regard to (but are not bound by) this guidance when dealing with allegations of a breach of the code.
- 3 The guidance indicates that allegations which are likely to be referred are those of a purely local nature which do not affect broader national issues and where the matter does not appear to need the heavier penalties available to the Adjudications Panel for England. However cases will not be referred if the ESO considers that it would be difficult or inappropriate to try to resolve the matter locally.
- 4 Cases will only be referred where an ESO has completed an investigation. The Committee should not therefore re-open the investigation but may take account of evidence from the Member concerned and any further evidence which has come to light since the ESO's investigation.
- 5 The hearing must be held within 3 months. There is no referral back to the Standards Board if the hearing is not conducted within that period nor can the Committee decline to hear a case and refer it back. Where a Standards Committee do not hold a hearing within 3 months it may face proceedings for judicial review to compel it to fulfil its legal functions. Hearings should (except

in complicated cases) be scheduled to last no more than one day and late night sittings should be avoided.

- 6 The first 3 recommendations in the original report drew attention to certain pre-hearing matters. The guidance suggests that these could be dealt with at an early stage in writing and a form of questionnaire is proposed for that purpose. However based on the information given in response to such a form decisions will still need to be made to determine whether evidence on certain issues should be heard, whether all or part of the hearing should be in private (there is a strong presumption that the hearings should be in public and the Access to Information rules apply) and whether any parts of the ESO's report or other documents should be withheld from the public.
- 7 The pre-hearing process should seek to identify areas where the Member concerned disagrees with findings of fact made by the ESO. New disputes over findings of fact should not be raised at the hearing without good reason – i.e. new evidence becoming available.
- 8 The Member's response to the pre-hearing process should be sent to the ESO concerned for comment and in particular for the ESO to indicate whether he wants to attend the hearing, call witnesses, request that all or part of the hearing be in private or wants all or part of his report or other documents withheld from the public.
- 9 All parties involved should be given at least 14 days notice of the hearing date. The notice should give details of the date, time and place for the hearing. It should summarise the allegation and outline the facts which are agreed and those which are not agreed. Details of any representation (whether of the Member concerned or the ESO) should be given. There should also be a list of proposed witnesses and an outline of the proposed procedure for the hearing.
- 10 The guidance gives a model procedure for the conduct of hearings. It suggests that any legal advice given to the Committee at any stage in the process should be shared with the Member concerned and the ESO if present. Members will therefore need to consider if the legal adviser should withdraw with the other parties when considering their decision.
- 11 At the commencement of the hearing the Committee should deal with any outstanding procedural issues. If there are disputes as to factual issues the ESO if present may make representations and with the Committee's permission call supporting witnesses. The Member concerned will then have the opportunity to make his representations and call witnesses. The Committee will consider the factual issues before proceeding further and will then give their findings of fact.
- 12 If the facts are not disputed or once the Committee has announced its findings of fact it must consider whether upon the facts there has been a breach of the Code of Conduct. The Member concerned should be invited to submit reasons why upon the facts as agreed or found the Committee should find

that there has not been a breach. The Committee should then consider any representations (oral or written) from the ESO and then give the Member concerned an opportunity to make any relevant final submissions. The Committee will then consider whether on the facts there has been a breach of the Code. If no breach is found the Committee will determine whether it wishes to make any recommendations by way of guidance to the Council. If a breach is found then the Committee will consider any representations (oral or written) as to whether a penalty should be imposed and if so what form that penalty shall take. The Committee will then consider whether a penalty should be imposed and if so what that penalty should be. The Committee's deliberations on factual issues, whether there has been a breach of the code and whether to impose a penalty are taken in private. The Access to Meetings and Information provisions have been amended to allow for this. When the final decision is made the Chairman will announce it to the parties. After considering any further recommendations from the ESO the Committee shall decide whether it wishes to make any recommendations to the Council with a view to promoting high standards of conduct among Members.

- 13 As well as announcing its decision on the day of the hearing, the Committee should give a short written decision on the day and a full written decision as soon as possible after the end of the hearing. The guidance suggests the information which should be contained in the full written decision.
- 14 When considering whether to impose a penalty and if so what that penalty should be the Committee must ensure that any penalty is reasonable and proportionate to the Member's behaviour. The following questions are suggested for consideration:-
- What was the Member's intention? Did he know he was failing to follow the code?
 - Did he get advice from officers before the incident and if so did he act upon it in good faith?
 - Has there been a breach of trust?
 - Has there been any financial impropriety?
 - What was the result of the breach?
 - How serious was the incident?
 - Does the Member accept that 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 before?
 - Is the Member likely to do the same thing again?
- 15 Where a Member appeals to the Adjudication Board for England (with the permission of the Board) the guidance suggests that whilst the procedure to be adopted will be in the Board's absolute discretion it is likely that ESOs and Standards Committees will be given the opportunity of making representations to the Board and of being represented at any oral hearing.

- 16 The guidance recommends that the Monitoring Officer should be the main advisor to the Standards Committee. Where the Monitoring Officer has an interest in the matter which would prevent this another officer should advise the Committee. At present this situation is only likely to arise if the Member concerned had acted in accordance with the Monitoring Officer's advice when doing the act or failing to do something which gave rise to the allegation of a breach of the code. However when the additional regulations are made under s.66 to require the Monitoring Officer to investigate cases referred for local determination the current guidance suggests that the Monitoring Officer cannot act as investigator and legal advisor to the Committee. The Committee have considered this issue previously and determined that in such circumstances the Monitoring Officer should endeavour to delegate the investigation.

RECOMMENDED that Members determine

1. Their intended pre-hearing procedures
2. The procedures they will adopt for hearings
3. Whether their considerations will be with or without the legal advisor to the Committee present

Background Papers: Standards Committee determinations Guidance for monitoring officers and Standards Committees