

REPORT OF THE BOROUGH SOLICITOR AND SECRETARY

SECTION 66 REGULATIONS - LOCAL DETERMINATION OF COMPLAINTS

1. Executive Summary

This report sets out the current position in relation to local investigation and determination of misconduct allegations, including advising committee of the Standards Board guidance around local determinations and recommends that the procedures contained within the Standards Board Guidance be adopted by this committee as a procedure for dealing with local determination of complaints.

2. Background

- 2.1 Members will recall my previous report around the legislative framework which provides for breaches of the members' code of conduct to be dealt with. Members are reminded that all complaints are initially submitted to the Standards Board for England for investigation. The Standards Board can choose either to investigate the matter by way of ESO (Ethical Standards Officer), take no further action or refer the matter back to the Authority for investigation by the Monitoring Officer and report to the Standards Committee. In addition, the Ethical Standards Officer on completion of his or her investigation may choose to send the matter back to the Authority, not for investigation but local sanction by the Standards Committee. In order to facilitate these arrangements, regulations are necessary under section 66 of the Local Government Act 2000. The Government published the first part of these Regulations at the Standards Board Conference. These relate to local sanctions being applied by the local Standards Committee and since then the Standards Board has produced guidance to compliment those regulations.
- 2.2 With regard to the local investigation of matters by the Monitoring Officer, this cannot be done until the Local Government Bill becomes law since the regulations will need to be made under that Act. The Government still anticipates that this will be around October. We cannot proceed any further in relation to local investigations at this moment. Discussions have taken place between the Monitoring Officers on Merseyside concerning potential conflicts of interests that arise where the Monitoring Officer may be both investigating a matter and advising the Standards Committee. The Monitoring Officers have agreed to put to their individual Standards Committees that in relation to local investigation of complaints, this is carried out by the Council's own Monitoring Officer, i.e. in Wirral's case, the Borough Solicitor, but then when it comes to advising Standards Committees that there be reciprocal arrangements between the Authorities on Merseyside, so that another Monitoring Officer may be able to advise the Standards Committee in the event of a conflict. Members are asked to approve this informal reciprocal arrangement.

3 Section 66 Regulations

Where a matter is referred back to the Standards Committee, after investigation by the Standards Officer, the purpose of the Standards Committee hearing is to decide whether or not a member has failed to follow the Authority's Code of Conduct and, if so, to decide whether or not any penalties should be applied and what form any penalty should take. Reviews must be conducted within three months of a referral back from the Ethical Standards Officer and the options open to the Standards are defined as follows:-

- member has not failed to follow the Authority's Code of Conduct;
- member has failed to follow the Authority's code of Conduct but no action needs to be taken; or
- the member has failed to follow the Authority's Code of Conduct and should be penalised.

3.1 If the Standards finds that a member should be penalised then it can do one or a combination of the following:-

- Censure the member. This is the only form of penalty available when dealing with a person who is no longer a member of the Authority.
- Restrict the members access to the resources of the Council for up to three months which could include limiting his or her access to the premises of the relevant Authority;
- Suspend or partly suspend the member for up to three months; or
- Suspend or partly suspend the member for up to three months on the condition that the suspension or partial suspension will end if the member apologises in writing, receives any training or takes part in any conciliation that the Standards Committee orders them to.

3.2 The guidance from the Standards Board was published on 14 July. It contains full guidance to the Standards Committee about the process they should follow and attaches as appendices model procedures for dealing with local determinations.

3.3 The guidance anticipates that prior to a formal hearing and determination of a matter, a pre-hearing process should be followed which will attempt to draw out all the points in dispute between the report of the Ethical Standards Officer and the member whose conduct is in question. Once that pre-hearing process is completed then a formal hearing will take place. These are contained at Appendix 2 to the Guidance and I would recommend that the Committee adopt these procedures.

3.4 There is a significant debate as to whether hearings should be in public or in private. The Guidance anticipates that by and large hearings will take place in the open unless exempt or confidential information is disclosed. I recommend that as part of the pre-hearing process and prior to the agenda being published I, in consultation with the Chair, discuss whether the meeting should be held in public or in private.

3.5 In any event, the findings of the Standards Committee must be made public. The Standards Committee will have to give its decision and the reasons for it. A member who is the subject of a Standards Committee determination may apply in writing to the President of the Adjudication Panel to appeal against a finding they disagree with.

4 Size of Committee for Purposes of Local Determination of Complaints

4.1 The Standards Board's Guidance recommends that local determination of complaints are decided by committees of a size of no more than three or five. Clearly our Standards Board is greater than that in number. There is no legal authority at the moment for Standards Committees to appoint sub-committees. It is anticipated that the Local Government Bill will give Standards Committees this power but it is not available at present. Once that power becomes available, I would recommend that the Standards Committee sets up a sub-committee of four members to deal with the complaints on a 1:1:1 basis with an independent chair. The Standards Board Guidance recommends that in relation to hearing complaints against members, the Chair of the Standards Committee for that particular hearing should be an independent member. I would recommend that the Committee adopts this approach.

4.2 I will at the meeting of the Standards Committee give a presentation on the Guidance attached to this report. I recommend that the members endorse the Guidance and adopt its model procedures for hearing, pre-hearing and protocols as set out in the Guidance.

5. Training

In my last report to committee, I mentioned the question of training. Members of the Standards Committee may find it useful to have some training in relation to how a local determination would work on an action learning type basis. I would suggest that we have a three hour session in early evening to run through the Guidance then give members a theoretical complaint to deal with which we could test under the procedures. I have discussed this with my monitoring officer colleagues in Merseyside and we are suggesting that we hold this on a Mersey-wide basis with members of all the Districts Standards Committees and the Fire and Police Authority Standards Committees coming together and dealing it in a training session at one time. I am suggesting this take place in September and I would ask that members agree to this approach.

6. Financial and Staffing Implications

There are no financial or staffing implications arising out of this report.

7. Other Implications

There are no implications arising directly out of this report in terms of equal opportunities, ethnic minorities, the elderly or the disabled; nor are there any direct community safety, human rights, Local Agenda 21, planning or other implications.

8. Background Papers

The only background papers used in the preparation of this report is the Standards Committee Determinations - Guidance for Monitoring Officers and Standards Committees (Appendix attached).

9. Local Member Support Implications

This report has no implications for specific wards.

10. Recommendation

- (1) That the Council adopts the procedures as contained in the Standards Board Guidance in relation to local determination of complaints.
- (2) That joint training be arranged with the Merseyside Districts in relation to the procedure for dealing with determinations.

JOHANNA MILLER

Borough Solicitor
and Secretary

JEM/LW.
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