

Southend-on-Sea Borough Council

Report of Deputy Town Clerk & Monitoring Officer
to

Standards Committee

on

25 April 2005

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Agenda
Item No.

3

Local Investigation of Complaints against Members and Revised Hearing Procedure Rules

A Part I Public Agenda Item

1. Purpose of Report

- 1.1 This report considers implementation of the new Regulations which enable the Standards Board for England to refer complaints of misconduct by Members to the Monitoring Officer for local investigation. This will necessitate amendments to the current Hearing Procedure Rules in Part 4(i) of the Constitution and the introduction of a Procedure for Local Investigations.

2. Recommendations

That the Council be recommended to:-

- 2.1 **Agree the minor amendments to the "Hearing Procedure Rules for Local Determinations by the Standards Committee" contained in Part 4(i) of the Constitution, as set out in Appendix 1.**
- 2.2 **Adopt the "Procedure for Local Investigations" in the form set out in Appendix 2 to be incorporated in Part 4(i) of the Constitution.**
- 2.3 **Adopt the amended Guidance in respect of the Hearing Procedure Rules and the Procedure for Local Investigations in the form set out in Appendix 3 to be incorporated in Part 4(i) of the Constitution.**
- 2.4 **Note that there may be a need to appoint external investigators and potentially legal advisors for individual case hearings given the potential for a conflict of interest.**

3. Introduction

- 3.1 In November 2004, the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004 amending the 2003 Regulations, were brought into force. The Regulations enable the Standards Board for England to refer complaints of misconduct by Members to the Monitoring Officer for local investigation and for determination by the Council's Standards Committee.
- 3.2 The Standards Board has recently issued guidance on the conduct of local investigations. A copy is enclosed at Appendix 4.
- 3.3 This report briefly explains the implications of the new Regulations and recommends a model Procedure for Local Investigations (Appendix 2).
- 3.4 The Council has previously approved a procedure for hearings referred to it by an Ethical Standards Officer (Part 4(i) of the Constitution). The amended Hearing Procedure Rules at Appendix 1 take due account of the fact that there may now have been a local investigation.

3.5 This represents a further step in giving local Standards Committees responsibility for dealing with complaints against Members and is intended to assist the Standards Board for England in ensuring that less serious complaints are dealt with promptly.

4. Pre-Investigation

4.1 The position whereby all complaints made against Members have first to be referred to the Standards Board for England continues. What will occur however is that the Standards Board will notify the Monitoring Officer of the complaint and seek background information in relation to it.

4.2 Once in receipt of the background information, the Standards Board will decide whether or not there should be an investigation. If there is, the matter will be passed to the Ethical Standards Officer who will decide whether to refer the matter to one of the Board's own investigators or pass it to the Monitoring Officer.

4.3 The Ethical Standards Officer will not refer matter for local investigation if the matter, if found proved, is likely to require a sanction in excess of 3 months suspension. (A Standards Committee has no legal authorisation to impose a higher sanction). Other criteria likely to lead to referral to the Monitoring Officer, highlighted by the Standards Board are:-

- the matter does not appear to need the heavier penalties available only to the Adjudication Panel for England;
- the allegation is of an entirely local nature and does not raise matters of principle;
- the initial investigation by an Ethical Standards Officer has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct.

4.4 Equally, an Ethical Standards Officer is less likely to refer a case if there is evidence that a local investigation would be perceived as unfair or biased or there are any relevant local political issues that may have a bearing on the investigation.

5. Investigation by the Monitoring Officer

5.1 On receipt of a complaint referred by an Ethical Standards Officer, the Monitoring Officer is under a legal obligation to inform the interested parties as well as each Member of the Standards Committee. Members should note the guidance from the Standards Board that the Monitoring Officer should not inform Standards Committee Members of the identity of the Member being investigated or the complainant.

5.2 It is anticipated that the Monitoring Officer would generally carry out the role of advisor to the Standards Committee and this preference is endorsed by the Guidance issued by the Standards Board.

5.3 The Monitoring Officer will therefore appoint another person to conduct the investigation. In the first instance, it is likely that this will be one of the two Deputy Monitoring Officers (James Baker and Jill Elek). However the Monitoring Officer has authority to appoint any person he/she considers appropriate and this person can be from outside the Authority. Clearly there may be cases where such a course would be appropriate.

5.4 If the Monitoring Officer is unable to deal with the matter due to conflict of interest (for example the Monitoring Officer provided legal advice to the Member against whom a complaint is now being made and to which the advice was relevant) then another legal adviser to the Committee will be appointed by the Monitoring Officer. Again, this is likely to be one of the two Deputy Monitoring Officers.

5.5 The investigating officer will have clear terms of reference and will be required to produce a full report setting out his/her conclusions as to the facts of the matter and whether or not the Member did or did not fail to comply with the Code of Conduct.

6. Procedure for Local Investigations

- 6.1 The Council has to adopt a Procedure for Local Investigations and a suggested procedure is attached at [Appendix 2](#) to this report. Guidance on this Procedure is set out in [Appendix 3](#).
- 6.2 Members will note that under the suggested procedure, the investigating officer is authorised to conduct such interviews as appear to him/her to be necessary and to call upon any information held by the Council which would assist in the investigation. As noted above, the investigating officer must then prepare a report, which must be shared with the Member against whom the complaint has been made to enable them to comment. The report, or relevant extracts of it, may also be shared with other witnesses.
- 6.3 The investigating officer will then complete a final report that he/she must refer to the Monitoring Officer. If the investigating officer concludes that there has been a failure by the Member to comply with the Code of Conduct, then the Monitoring officer will arrange a formal hearing of the Standards Committee to hear the allegations.
- 6.4 If the investigating officer concludes that there has not been a failure by the Member to comply with the Code of Conduct, then the Monitoring Officer will convene a meeting of the Standards Committee to consider the report and hear from the Member concerned. The Committee must then take one or two courses; either:
- (i) To accept the investigating officer's conclusion and take no further action; or
 - (ii) Decide that the matter should be considered at a formal hearing upon the basis that at a preliminary stage, the Committee is not prepared to accept the investigating officer's conclusions and that the matter merits examination by the Committee at a formal hearing.
- 6.5 The local investigation under the auspices of the Monitoring Officer is by law restricted to the remit set by the Ethical Standards Officer when referring the matter. If accordingly, upon investigation other facts come to light which suggest further breaches of the Code, or that the matter is far more serious than first envisaged, then the Monitoring Officer must refer the matter back to the Ethical Standards Officer.
- 6.6 The Monitoring Officer may also refer the investigation back to the Ethical Standards Officer if he/she considers that the local investigation is being obstructed and that the obstruction will significantly affect the investigation.

7. Local Hearings

- 7.1 The new Regulations make changes in respect of the conduct of local hearings. Additionally, as the process for the hearings by law is very similar, it would make no sense to have two sets of procedures covering referrals to the Committee by an Ethical Standards Officer and by the Monitoring Officer. Accordingly, the "Hearing Procedure Rules for Local Determinations by the Standards Committee" in Part 4(i) of the Constitution have been amended ([Appendix 1](#)). Furthermore revised Guidance has been produced on both the Hearing Procedure Rules and the Procedure for Local Investigations ([Appendix 3](#)). This revised Guidance will be incorporated in Part 4(i) of the Constitution.
- 7.2 Under the Regulations, the report of the Monitoring Officer is treated (in terms of procedure) as though it were a report by the Ethical Standards Officer. Accordingly, whilst the process for preparing the report is different as regards the investigation, the procedure following submission of the full report for hearing before the Committee remains substantially the same.
- 7.3 Some changes made by the new Regulations to the Hearing Procedures are as follows:
- (i) The hearing before the Committee must be held within three months of the date on which the investigating officer presents the final report to the Monitoring Officer.
 - (ii) If during the course of a hearing the Standards Committee decide that it needs additional evidence, it now has the power to adjourn and request the Monitoring Officer to provide such further information or undertake such further investigation as the Committee may require. However, the Committee have the power to do this only once.

- (iii) The new Regulations give the Standards Committee the ability to combine sanctions.
- (iv) The Regulations also allow the Committee to ask the Standards Board to resume responsibility for a matter at any stage. This duplicates powers available to the Monitoring Officer but would cover wider issues e.g. the Committee taking the view that due to local circumstances, it would be impossible to hold a proper and fair hearing on a matter.

8. Background Papers

- 8.1 The Standards Board Guidance on Standards Committee Determinations: July 2003.

9. Appendices

- 9.1 Appendix 1 – Amended “Hearing Procedure Rules for Local Determinations by the Standards Committee”
- 9.2 Appendix 2 – Proposed “Procedure for Local Investigations”
- 9.3 Appendix 3 – Amended Guidance on the Procedures referred to in Appendices 1 and 2.
- 9.4 Appendix 4 – Standards Board Guidance on Local investigations: November 2004.