



ISLINGTON

Law and Public Services
Town Hall, Upper Street, London N1 2UD

Report of : Director of Law and Public Services

| Meeting of | Date | Agenda Item | Ward(s) |
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| Standards | 11 th January 2005 | 6 | |

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Subject: SECTION 66 REGULATIONS : PROCEDURE FOR LOCAL INVESTIGATIONS

1. Synopsis

- 1.1 The long awaited second part of the Section 66 Regulations have now been published which allow the Standards Board for England to refer complaints of Member misconduct to the Monitoring Officer of a local authority for local investigation, instead of investigation by the Standards Board's Ethical Standards Officers, before a complaint is determined by the Authority's Standards Committee. The Standards Board has published guidance as to how local authorities should arrange for the conduct of such local investigations, (which has already been circulated to Members of this Committee). The regulations also make important amendments to the powers of Standards Committees, even in cases which have been investigated by an Ethical Standards Officer.
- 1.2 This report sets out the implications of the regulations and recommends a model procedure for such local investigations and a procedure for local standards hearings for adoption by the Standards Committee.

2. Recommendation

That the Committee agree the procedure for local investigations set out in Appendix One in paragraph 3.3.1 of this report.

3. BACKGROUND

3.1 Pre-Investigation

- 3.1.1 When the Standards Board receives a complaint, it has first to decide whether the complaint appears to relate to a possible failure to comply with the Code of Conduct, and then whether it merits investigation. The Standards Board will now notify the Monitoring Officer of the complaint at this early stage and ask for background information, in order to ensure that it only refers for investigation those complaints which really merits such investigation. Whilst there is no duty on the Monitoring Officer to seek to resolve the complaint at this stage, and many complaints will not be capable of such local resolution, this may enable the Monitoring Officer in appropriate cases to explore whether there is anything which the Member and/or the authority could do to resolve the complaint and thereby avoid the time and cost of a formal investigation. Such local resolution would be effected by securing the agreement of the complainant, or otherwise persuading the Standards Board, that the complaint be not investigated or that no action is required on it.

3.2 Local Investigations

3.2.1 Receipt of the Complaint

Under the new regulations, where the case is referred by the Standards Board for investigation, it goes to an Ethical Standards Officer who decides whether to allocate it to one of the Standards Board's own investigators or, now, to refer it to the authority's Monitoring Officer. The ESO will not refer matters for local investigation where the serious nature of the matter means that it is likely to require a sanction in excess of the Standards Committee's maximum sanction of 3 months' suspension. Other criteria 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.

- 3.2.2 The ESO is less likely to refer cases 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.

- 3.2.3 In referring a complaint to the Monitoring Officer, the ESO will send a copy of the original complaint letter and of any other relevant information which they possesses. In exceptional cases, such as a single letter containing a number of different complaints, the ESO may edit the complaint letter and merely pass on those parts relevant to the particular complaint.

3.2.4 On receipt of the referred complaint, the Monitoring Officer will notify the Member and the complainant and will arrange for the investigation.

- (i) The Standards Board recommends that at this point the Monitoring Officer notify the members of the Standards Committee in a confidential memorandum that they are conducting an investigation, but should not inform them of the identity of the member or the complainant in order to avoid any risk of prejudicing any subsequent hearing.

3.2.5 **Appointment of the Investigating Officer**

The Monitoring Officer remains the legal adviser to the Standards Committee and the primary contact for Members who have enquiries on standards issues, such as whether they have a personal or prejudicial interest in a particular matter. That role is incompatible with personally undertaking the Investigating Officer role, which includes presenting the investigation report at any local standards hearing, so the Monitoring Officer will need to appoint another person to undertake the investigation. In appropriate cases, the Monitoring Officer may be able to appoint another officer of the authority to undertake the investigation, but in sensitive cases it may be appropriate to appoint an outside investigator, either borrowing from another authority for the purpose or appointing an experienced commercial investigator for the purpose.

3.2.6 The Investigating Officer will be required to produce a full report, setting out their conclusions as to the facts of the matter and whether the Member did or did not fail to comply with the Code of Conduct.

3.2.7 Note that the position of the Monitoring Officer as prime point of advice to individual members on standards issues could give rise to conflicts of interest which would rule the Monitoring Officer out from acting as the legal adviser to the Standards Committee for individual case hearings. Accordingly, the Monitoring Officer may need to arrange for another legal officer to act as the legal adviser to the Standards Committee for individual case hearings.

3.3 **Procedure for Local Investigations**

3.3.1 The Committee needs to approve a procedure for local investigations, which will form part of the instructions to the Investigating Officer and will inform both the Member and the complainant as to how the matter will be dealt with. Attached as **Appendix One** is a recommended procedure for local investigation which complies with the regulations and guidance from the Standards Board. Under this procedure, the investigation would run as follows:

- a. The Monitoring Officer advises the Member and the Complainant, of receipt of the complaint, of the identity of the Investigating Officer and of the Investigation Procedure. They will also provide the Member with a copy of the complaint and will also advise the Standards Committee

that an investigation is under way.

- b. The Investigating Officer will contact the Member and the complainant for their comments and to identify any persons who they should interview and any evidence which they should examine;
 - c. The Investigating Officer will conduct such interviews as appear to the to be necessary, including more detailed interviews with the Member if required;
 - d. The Interviewing Officer will send their full draft report to the Member and the complainant, and at least extracts to any person who has provided evidence which they have relied upon in writing the report, and give them 10 days for them to send him any comments or suggested corrections on the draft report;
 - e. The Interviewing Officer will produce a final report, taking account of any such comments and suggested corrections and send it to the Monitoring Officer;
 - f. Where the Interviewing Officer concludes that there has not been a failure to comply with the Code of Conduct, they will report to the Standards Committee. The Standards Committee will consider the report and any representations from the Member and will either:
 - i. accept the Investigating Officer's conclusions and take no further action, or
 - ii. resolve that the matter should be considered at a formal hearing. Note that this is not a finding of fault on the part of the Member but merely a conclusion that they are not prepared at that stage to accept the Investigating Officer's conclusions and that the matter merits examination at a formal hearing.
 - g. Where the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct, the matter must go to a formal hearing without such a preliminary step.
 - h. If the matter goes to a formal hearing, that hearing would be conducted in exactly the same manner as a formal hearing on an ESO's report except that the Investigating Officer takes the place of the Standards Board's representative in presenting the report and introducing any relevant evidence and witnesses.
- 3.3.2 Under this procedure, in order to prevent any prejudice to the Standards Committee's role in eventually determining the complaint, members of the Standards Committee will not be advised of the progress of that investigation, until they receive the agenda and papers, including the Investigating Officer's report, for the meeting which is to consider that report.

3.4 Additional Failures to Comply with the Code of Conduct

Where an Investigating Officer is conducting an investigation and identifies evidence of additional failures to comply with the Code of Conduct, either by the original Member or by other Members, they cannot add those matters into their investigation and report. The regulations provide that where a matter is referred for local investigation, the Investigating Officer's remit is limited to the conduct which comprises the subject matter of the original complaint. Accordingly, where they identify additional matters outside the scope of the original complaint, they will not be able to add them into their investigation but these matters would be referred separately to the Standards Board to investigate.

3.5 Reference back to the Standards Board

Matters will be referred for local investigation at an early stage. It is therefore possible that, during the course of the investigation, it becomes apparent that the conduct complained of is much more serious and that a Case Tribunal, with powers to impose sanctions of up to one year's suspension or up to five year's disqualification, would be the appropriate form for any hearing of the matter, rather than a Standards Committee with a limited power to suspend the Member for up to 3 months. The regulations (and the recommended investigation procedure) therefore provide that, at any time during the course of an investigation, the Investigating Officer can report to the Monitoring Officer who can request the ESO to resume responsibility for the investigation. The final decision to resume such responsibility rests with the ESO.

3.6 Local Hearings

The regulations also make certain changes in respect of the conduct of local hearings. The attached procedure for local hearings has therefore been amended to take account of these changes, as follows:

3.6.1 Timing

Where a matter is the subject of local investigation, the hearing must be held (i.e.: completed) within 3 months of the date on which the Investigating Officer presents their final report to the Monitoring Officer.

3.6.2 Additional Evidence

The regulations now state specifically that, if the Standards Committee in the course of a hearing feels that it needs additional evidence in order to come to a determination of the matter, it can adjourn and request the Monitoring Officer to provide such further information or undertake further investigation, but the Committee can only do so once on any one matter.

3.6.3 Sanctions

The regulations now make it clear that the Standards Committee has the flexibility to combine sanctions. Accordingly, the Committee can now set the sanctions in any particular case as any one, or combination, of the following:

- a. censure;
- b. restriction of access to Council premises or use of Council resources for up to 3 months;
- c. a requirement to give a written apology;
- d. a requirement to undergo training;
- e. a requirement to undertake conciliation;
- f. suspension or partial suspension for a period of up to 3 months, and
- g. suspension or partial suspension until the Member undertakes training or conciliation or provides a written apology.

3.6.4 Reference back to the Standards Board

The regulations also allow the Standards Committee to ask the Standards Board to resume responsibility for a matter at any stage. This would normally be where the Investigating Officer's report identifies conduct of such seriousness that the Committee believes that its maximum sanction would be inadequate, but it could be relevant if so many members of the Standards Committee were conflicted out of any hearing on a matter that it would not be possible to hold a hearing, or if the Committee felt that local circumstances made it impossible to hold a proper and impartial hearing on the matter. Such a request must be directed to the ESO, who has the final decision whether to resume responsibility for the case. Such a request cannot be made once the hearing has been concluded.

4. Implications

4.1 Financial Implications

It is unclear at this stage how much such investigations would cost, especially if outside resources needed to be used to provide legal advice. This will be contained within existing budgets for the time being and kept under review.

4.2 Legal Implications

These are sent out in the report.

5. Conclusion and reasons for recommendations

This procedural guidance has been recommended by the Standards Board and will help all Standards Committees hold investigations and hearings in a fair, open and consistent manner.

Background papers:
(Insert details here)

Final Report Clearance

Signed by

Director of Law and Public Services

Date

Received by

Head of Scrutiny and Democratic Services

Date

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