

Item No. 4	Classification: Open	Date: 2nd September 2003	MEETING NAME Standards Committee
Report title:		Arrangements for Local Determination of Complaints of Breaches of the Members' Code of Conduct	
Ward(s) or groups affected:		All	
From:		Chief Executive	

RECOMMENDATIONS

1. Note the main points of the detailed advice contained in the Guidance for Monitoring Officers and Standards Committees issued by the Standards Board for England on the implementation of the Local Authorities(Code of Conduct)(Local Determination) Regulations 2003
2. Consider the desirability of elected members participating in determinations.
3. Note the administrative arrangements to be put in place to ensure effective, fair and consistent determinations
4. Note the arrangements for training on determinations for Members of Standards Committee
5. Note the need to have a programme to maintain the profile of governance issues within the Council, commencing with Strategic Services management team and the Chief Officer team.

BACKGROUND INFORMATION

6. This committee previously received a report on the new frameworks for local determinations of penalties for breaches of the Members' Code of Conduct. This report takes into account the effect of Guidance provided by the Standards' Board in July and indicates Southwark's local arrangements.
7. The Local Government Act 2000 introduced an ethical framework to strengthen good governance in modernised political structures. Its key components are a written and binding national code of conduct for councillors, a Standards Board which has a primary role in investigating and adjudicating breaches of the Code, and a Council's own Standards Committee which has a mandate to uphold and advise on the Code of Conduct and on governance of the Council generally. To this has been added the power to consider reports from an Ethical Standards Officer ('ESO') of the Standards board, and decide to impose a penalty, including full or partial suspension for up to 3 months. .
8. Later in the year legislation will oblige the Council's monitoring officer to set up arrangements for local investigations of allegations of breaches referred

to her by the Standard's Board.

9. A Standard's committee must have at least one independent member: in Southwark's case four of the nine members are independent, including the Chair.

KEY ISSUES FOR CONSIDERATION

The Guidance clarifies a number of matters.

Matters suitable for local determination

10. The type of issues that the ESO is likely to refer are ones which are of an entirely local nature and do not appear to require the heavier penalties the Adjudication Panel of the Standards Board can impose. However, it can include such serious matters as bullying of officers, improperly seeking a personal advantage or disadvantage for themselves or others, and dishonesty or breaches of trust.

Constitution of the Committee and Sub-Committee

11. The Monitoring Officer will be responsible for arranging a hearing of the matter by the Standards Committee in not less than 14 days and no more than 3 months. The Guidance advises that the Committee should hear the matter in one sitting or in consecutive sittings and recommends daytime meetings.
12. Currently, all Members of the Committee can attend a determination hearing, and there is no provision to delegate the determination function to a sub-committee. The Guidance indicates that a power to delegate will be introduced, and that smaller meetings of 3 to 5 members are preferred 'as it is fairer and more efficient to hold a hearing before a small group.' It should be chaired by an independent member and there must be one on the panel. It envisages that elected members may be part of the panel.
13. However, some authorities are considering the possibility of panels formed only by non-elected members. The Guidance stresses that the Standards Committee must be 'truly fair and politically unbiased, so that members of the public and members of the authority have confidence in its procedures and findings.' Of course this does not preclude elected members taking part, but in finely balanced Councils such as Southwark it may be difficult to achieve this where the determination panel does not have to be proportionate, and should remain small.
14. This could place burdens on independent members in terms of time. Currently it could only be achieved on a voluntary basis (i.e. by elected members agreeing a protocol of non-participation) but in the future this could be achieved when constituting the panel.

Role of the Monitoring Officer

15. The 2000 Act always envisaged an enhanced role for the monitoring officer in modernized structures. As well as the duty to ensure legality in the Council's operations, the previous Guidance 'In touch with the people'

developed the wider role of improving standards of governance, developing a special relationship with the Standards Committee to do so, and benefiting from statutory protection from dismissal to do so.

16. In local determinations the Monitoring Officer takes on the role of primary adviser to the committee. However, somewhat belatedly, the Standards Board has appreciated that most Monitoring Officers (some 80% of whom are also the Council's chief legal officer) have a day to day role in advising members on the application of the Code of Conduct, and that this may give rise to an interest in a matter that the Committee is considering, particularly as whether or not the member took officer advice about the alleged breach is specifically stated to be a material consideration. In those cases, another 'suitably qualified officer' should advise the Standards Committee.
17. Given the legal and technical implications of most conduct issues referred by Southwark it is proposed that advice giving, both to individual members, and to the Committee remain with the Legal Service. The Deputy Monitoring officer is one of the Assistant Borough Solicitors (currently Glen Egan) who will be able to advise the committee on process where the Borough Solicitor may have an interest. To protect him, he should report directly to the Chief Executive on matters relating to this function. Alternatively the Head of Scrutiny could be trained to carry out this function occasionally.
18. Not all requests for advice are dealt with personally by the Borough Solicitor and she will not always be precluded from advice to the Committee. It is more beneficial to driving up standards generally that she continues to offer day to day advice on probity matters.

Publicity

19. The Guidance stresses that it is important that wherever possible hearings are in public, with public access to documents to ensure that the hearing process is 'open and fair'. It also requires publication of the findings of the Committee which will have the effect of publicising breaches of the Code, but also where no breach has been found, at the local level, in a local paper. It is also recommended that determinations be fully published on the Council's website..
20. There are however matters which are 'exempt from publication'. Elected members will be familiar with the existing list of exempt information which includes matters such as contract negotiations, information about individual service users, and legal advice. Four new categories are added for Standards Committees:
 - Information relating to the personal circumstances of any person
 - Information which must be kept confidential
 - Information relating to national security
 - Deliberations of the Standards committee when hearing referred matters
21. When deliberating it is recommended that the Committee retires to another room. This provision clarifies a point which was previously legally doubtful.

22. When considering how much information may be exempted on the first ground, the Guidance sets out the two relevant articles of the European Convention of Human Rights – Article 10 – the right of people to ‘receive and impart information and ideas without interference by public authority’ and Article 8, the right to respect for their private and family life, home and correspondence.
23. Article 8 would seem to protect information relating to the personal dealings of members. However, the right may be overridden where it is necessary to protect peoples’ health and morals. In the opinion of the Guidance this would include protecting standards of behaviour in public life. Probity and public confidence are defined by the Guidance as public interests and so the where the personal dealings impact on them, there will be a strong presumption that they are placed in the public domain.

Penalties

24. Members do not have to impose a penalty, but where they do decide to do so they are required to have regard to 11 matters when deciding whether to choose censure, restriction of use of resources, or full or partial suspension! These matters include the nature and seriousness of the breach, the degree of intentionality and the consequences of the breach and any mitigating action the member has taken.

Other matters

Managing the proceedings

25. It was promised that the Guidance would set out detailed recommendations for the conduct of the determination with model forms suggested to help manage the process. They are not compulsory, but it is proposed to use all these forms and form them into a ‘Determinations Procedure Pack for Southwark’. They will require some modification and simplification: they are quite cumbersome.
26. The intention is to try to identify the issues in dispute as early as possible in the proceedings so that at a preliminary hearing or ‘pre-hearing process’ the Committee or Panel can decide whether or not to hear evidence regarding them, whether they will touch on issues which should be heard in private or whether any documents should be withheld from the public.
27. The forms comprise:
- A form for the member concerned to use to respond to the evidence set out in the ESO’s report.
 - A form to disclose other evidence which the Member thinks is relevant
 - A form giving details of proposed witnesses to be called by the member
28. These documents should be copied to the ESO who may also request to call witnesses or adduce additional evidence at this stage. The Committee itself may call for other witnesses, although there are no powers to compel them to come.
- A form for the member to indicate if they wish to attend, or to be

represented by another.

29. They may be legally represented but at present the Guidance assumes that costs of representation and the hearing generally will be met by the member, although it refers to a specific power to be given to Councils at a later date to reimburse these costs. Some councils have taken a view that there is already a power in the Local Government Act 1972 to make such payments, but the Government view is that this is not the case. It is therefore proposed to take no action on this until the power is introduced. The ESO may also be represented, legally or otherwise
- A form to set out representations to be taken into account if the member is found to be in breach
30. This sets out potential 'mitigation'. Such matters will include the member's previous history, their future intentions, whether they were in genuine error, whether or not they took officer advice, whether they have apologised.
- A 'prehearing process summary' form to describe the main aspects of the case that will be heard
 - A model hearing procedure attached as Appendix 1 of this report
 - A copy of the amended Schedule 12A of the Local Government Act 1972 categories of exempt information
 - A Guidance note on excluding the public from meetings
31. The Guidance emphasizes the role of written disclosure of information and the pre-hearing to try to streamline the process and reduce the scope of the arguments as much as possible.
32. There is also a **checklist** of information to be publicised in the local press following the determination.

Training

33. Training is recommended for all members of the Standards Committee on the exercise of these powers, and for support officers. Competitive bids for training provision have been requested from three consultancies. A date in October is envisaged.

Policy implications

34. The main impact on the Council's policy framework relates to the requirement to produce robust and publicly accessible governance frameworks to enhance the Council's reputation and secure an improved CPA assessment.
35. Following the Code of Conduct correctly will assist members to drive up performance by discouraging behaviours which are essentially inefficient as well as against publicly received notions of good conduct.
36. The role of the Monitoring Officer and the Standards committee is to promote good working practices which bring about good outcomes for Southwark, as well as discouraging collusive or bullying relationships, or inappropriate uses of resources, which do not.

Resource implications

37. The resourcing implications are difficult to assess in the absence of any clear indication as to the number of local determinations (followed by local investigations) there will be.
38. It is unlikely that even the most simple determination can be concluded in under half a day. Depending on the number of referrals and the other work of the Committee, finding suitable dates may be difficult, especially if daytime meetings are preferred. At least one independent member and several elected members will find daytime meetings difficult.
39. In terms of officer support there are sufficient legal officers to support this function. Following reorganization of Constitutional Support, there is a smaller service which may find it difficult to cope. When the impact is clearer, the necessity for an additional growth bid will be considered. The Council must provide the Monitoring Officer with the resources she considers necessary to carry out this function.

Consultation

40. Public consultation is not required: however the public, including the Council itself, should be kept informed of the provisions and applications of the Standards regime.

Legal/Financial Implications

41. These are included in the report

Reasons for Lateness and Urgency

42. Due to the technical problems experienced last week it was not possible to circulate the agenda within the stated guidelines. However, this report has to be considered by this meeting due to the fact that we may have a local determination. The report also needs to go to the next Council Assembly.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
<i>Title of document(s)</i>	<i>Title of department / unit</i>	<i>Name</i>
	<i>Address</i>	<i>Phone number</i>
<i>File of papers on Standards procedures</i>	<i>Borough Solicitor's office</i>	<i>020 7525 7630</i>
	<i>Town Hall</i>	
	<i>Peckham Road</i>	
	<i>London SE5</i>	

APPENDIX A

Audit Trail

This section must be included in all reports.

Lead Officer	<i>Deborah Holmes</i>	
Report Author	<i>Deborah Holmes</i>	
Version		
Dated	<i>21/08/03</i>	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	No	No
<i>List other Officers here</i>		
Executive Member	No	No
Date final report sent to Constitutional Support Services		

Note: Consultation with other officers