

STANDARDS COMMITTEE

7 February 2005

LOCAL INVESTIGATIONS – STANDARDS BOARD GUIDANCE

REPORT OF CITY SECRETARY AND SOLICITOR

Contact Officer: Stephen Whetnall Tel No: 01962 848220 swhetnall@winchester.gov.uk

RECENT REFERENCES:

ST 33 – Local Authorities (Code of Conduct) Regulations 2003 – 22 September 2003

ST 35 – Local Investigation – Response to Consultation Papers - 17 May 2004

EXECUTIVE SUMMARY:

All formal complaints under the Code of Conduct have to be made to the Standards Board rather than to the Council. The Board then decides whether the complaint merits investigation and further action.

Regulations and Statutory Guidance have now been made to allow the Standards Board to refer some of the less serious complaints for local investigation by the Monitoring Officer and determination by the Standards Committee. The Guidance is attached as Appendix 1.

The proposals are complementary to regulations and guidance made in 2003 which enabled some complaints to be determined by local Standards Committees after investigation by one of the Board's Ethical Standards Officers (ESO). The ESOs have greater statutory powers than Monitoring Officers to require production of evidence – and will continue to deal with the serious cases.

The ESOs will continue to refer the most difficult cases to the Adjudication Panel for England for determination.

To-date no cases have been referred under either set of regulations and guidance for local investigation or determination.

RECOMMENDATIONS:

- 1 That subject to any comments that may be received from parishes, it be recommended to Council that the proposed changes to the Constitution, relating to hearings of individual cases by a Standards Sub-Committee, as set out in Appendix 3, be approved.
- 2 That regard be had to the Statutory Guidance, as up-dated from time to time, in cases referred for local investigation and determination under its provisions.
- 3 That such Guidance be also used, as far as relevant and practicable, in dealing with any complaints that relate to alleged breaches of local protocols, where reference to the Standards Board is not required.

STANDARDS COMMITTEE

7 February 2005

LOCAL INVESTIGATIONS – STANDARDS BOARD GUIDANCE

REPORT OF CITY SECRETARY AND SOLICITOR

DETAIL:

1 Introduction

- 1.1 The statutory guidance on local investigations is set out in Appendix 1.
- 1.2 Cases are likely to be referred under these procedures in the following situations:
 - (a) The matter is not likely to require the more serious penalties that the Adjudication Panel for England can impose.
 - (b) The allegation is of a local nature and does not raise matters of general principle.
 - (c) Any initial investigation has highlighted issues that are to do with the effective governance of the authority concerned.
 - (d) There is no evidence that a local investigation would be perceived as biased.
- 1.3 Issues for more detailed consideration are set out below.

2 Hearings by the Committee

- 2.1 When the Committee and Council considered the 2003 regulations and guidance it was recommended by the Board that a small body should be established to conduct hearings of individual cases. At that time it was not legally possible to establish a Sub-Committee of the Standards Committee, so a procedure was adopted whereby there was a local convention for the main Committee to deal with such cases with a smaller attendance. The Committee minute, which was approved by Council, is set out as Appendix 2.
- 2.2 Under the Local Determination Guidance the issue as to whether the main Committee or a Sub-Committee should deal with the matter is dealt with in page 8 of Appendix 1.
- 2.3 This says that the main Committee should deal with a report from the Monitoring Officer if he considers there is not a breach of the Code. If the Committee is not satisfied then it can ask that the matter should come back for a full hearing by either the main Committee or a Sub-Committee.
- 2.4 Given the size of the main Committee at Winchester, to involve all the groups on the Council and to provide for good Independent and parish involvement, it is suggested that the Sub-Committee option is the preferred route where a hearing is necessary.

2.5 Since the procedure in Appendix 2 was adopted the law has been changed to allow the Council for establish a Sub-Committee to deal with hearings. Suggested changes to the Constitution to deal with hearings through a Sub-Committee with the same selection process contained in Appendix 2, are contained in Appendix 3. Parishes have to be consulted on proposals to deal with any parish business at a Sub-Committee. Any comments will be reported direct to Council.

3 Other Issues

3.1 Sanctions – The sanctions available to the proposed Sub-Committee where it is satisfied that there has been a breach of the Code are set out on page 10 of the Guidance. The sanction for the most serious case that can be dealt with locally is suspension of the member for up to 3 months.

3.2 Conflicts of Interest – Pages 11 and 12 of the Guidance point out the potential for conflict of interest, given the different roles that have to be undertaken by the Monitoring Officer. In such circumstances the Monitoring Officer will have to arrange for one of the roles to be undertaken by another member of staff, by a consultant or by a monitoring Officer from another authority.

OTHER CONSIDERATIONS:

4 CORPORATE STRATEGY (RELEVANCE TO):

4.1 Relevant to the aim of “being a learning organisation, sharing best practice.”

5 RESOURCE IMPLICATIONS:

5.1 At this stage no additional resources have been made available to undertake local investigations. If a significant number of cases are referred then the situation will have to be reviewed – especially as parish cases, as well as those relating to District Councillors, can be referred under this procedure.

BACKGROUND DOCUMENTS:

None

APPENDICES:

Appendix 1 – Local Investigations – Statutory Guidance from the Standards Board

Appendix 2 – Minute Extract – Existing Procedure for Local Hearings

Appendix 3 – Suggested Amendments to the Constitution for Local Hearings

Minute Extract from Standards Committee held on 22 September 2003**418. THE LOCAL AUTHORITIES (CODE OF CONDUCT) REGULATIONS 2003 – GUIDANCE FROM THE STANDARDS BOARD**

(Report ST33 refers)

The Committee discussed the constitution of the Committee when a complaint about an individual Councillor was being considered (paragraph 4.5 of the report refers). It was agreed that in this situation, the Committee should be chaired by an Independent Member, as suggested by the Standards Board, and the Chairman should be selected in rotation on an alphabetically basis (subject to availability).

One Member considered that the Committee should contain representatives from all political parties in the interests of fairness and to indicate cross party co-operation. However, the majority of the Committee believed that the size of the Committee should be limited to three in most cases, with the two Members being selected from the Councillor representatives on the Standards Committee in alphabetical rotation, with the proviso that the two Councillors be from different political parties.

Members noted that when the Committee was considering a complaint against a Parish Councillor, it was a legal requirement that one Parish Member should be present. It was therefore decided in these instances that the Committee consist of five Members, namely an Independent Chairman (selected as before), one Parish Member and three Councillors (from more than one political party).

RECOMMENDED:

1. THAT THE STANDARDS BOARD GUIDANCE THAT AN INDEPENDENT MEMBER SHOULD CHAIR THE COMMITTEE WHEN A COMPLAINT ABOUT AN INDIVIDUAL COUNCILLOR IS BEING CONSIDERED BE SUPPORTED.

2. THAT GUIDELINES FOR THE SELECTION OF THE CHAIRMAN AND OTHER MEMBERS OF SUCH HEARINGS BE APPROVED AS FOLLOWS:

- A) THE CHAIRMAN SHOULD BE SELECTED IN ALPHABETICAL ROTATION FROM THE INDEPENDENT MEMBERS (SUBJECT TO AVAILABILITY);**
- B) WHEN THE HEARING IS CONSIDERING A COMPLAINT AGAINST A CITY COUNCILLOR, MEMBERSHIP SHOULD CONSIST OF THE CHAIRMAN AND TWO COUNCILLORS (FROM DIFFERENT POLITICAL PARTIES SELECTED IN ALPHABETICAL ROTATION FROM THE MEMBERSHIP OF THE COMMITTEE);**
- C) WHEN THE HEARING IS CONSIDERING A COMPLAINT AGAINST A PARISH COUNCILLOR, MEMBERSHIP SHOULD CONSIST OF THE CHAIRMAN, PARISH MEMBER (SELECTED IN ROTATION), AND THREE COUNCILLORS (FROM MORE THAN ONE POLITICAL PARTY SELECTED IN ALPHABETICAL ROTATION FROM THE MEMBERSHIP OF THE COMMITTEE).**

CONTINUED...

- D) NO COMMITTEE MEMBER SHOULD BE PRESENT IF THE COMPLAINT IS AGAINST A MEMBER OF THE SAME PARISH, OR DISTRICT WARD, AS THE COMMITTEE MEMBER.
- E) IT SHOULD BE NOTED THAT THE ATTENDANCE GUIDANCE DOES NOT HAVE STATUTORY EFFECT AND CANNOT PREVENT OTHER MEMBERS OF THE COMMITTEE FROM ATTENDING. HOWEVER, STANDARDS COMMITTEE GUIDANCE RECOMMENDS THAT GUIDELINES OF THIS NATURE BE ADOPTED AS IT IS FAIRER AND MORE EFFICIENT TO HOLD A HEARING BEFORE A SMALL GROUP. IT IS ANTICIPATED THAT WHEN ENACTED THE CURRENT LOCAL GOVERNMENT BILL WILL INCLUDE A CHANGE IN THE LAW ALLOWING SUB-COMMITTEES TO BE ESTABLISHED TO DEAL WITH DISTRICT COUNCILLOR CASES. AT THAT TIME, IT IS ENVISAGED THAT THESE GUIDELINES WILL BE AMENDED AND FORMALLY INCLUDED IN THE CONSTITUTION.

3. THAT COUNCIL PROCEDURE RULE 23(4) BE REVISED AS FOLLOWS:

“THE QUORUM FOR THE STANDARDS COMMITTEE SHALL NORMALLY BE THREE COUNCILLORS PLUS ONE INDEPENDENT MEMBER AND, WHERE PARISH ISSUES ARE DISCUSSED, ONE PARISH MEMBER MUST ALSO BE PRESENT.

WHEN THE COMMITTEE IS HEARING A COMPLAINT ABOUT AN INDIVIDUAL MEMBER THE QUORUM SHALL BE THREE MEMBERS OF THE COMMITTEE TO INCLUDE AN INDEPENDENT MEMBER, AND WHERE A PARISH MATTER IS BEING CONSIDERED, A PARISH MEMBER.”

4. THAT THE CATEGORIES OF EXEMPT INFORMATION SET OUT IN ACCESS TO INFORMATION PROCEDURE RULE 10.4 BE EXTENDED TO INCLUDE THE ADDITIONAL CATEGORIES 16 TO 19 CONTAINED IN THE NEW REGULATIONS (PARA 3.1.1 OF REPORT ST33 REFERS).

RESOLVED:

1. That the use of the Standards Board Guidance, as updated from time to time, be approved for use in any cases referred to the Committee by the Standards Board.

2. That such Guidance also be used by the Committee, as far as relevant and practicable, in dealing with any complaints that relate to alleged breaches of local protocols, where reference to the Standards Board is not required.

Appendix 3Proposed Amendments to the Constitution to Provide for Hearings of Individual Cases by a Standards Sub-CommitteePart 3 – Responsibility for Functions

Insert new paragraph 4.14, renumbering following paragraphs, as follows:-

“4.14 Standards Sub-Committee

- (a) To hear and determine any individual cases referred by either an Ethical Standards Officer from the Standards Board in relation to the Code of Conduct, or the Council’s Monitoring Officer in relation to the Code of Conduct or any Local Protocols.”
- (b) To make recommendations to the Standards Committee on any proposed changes to Local Protocols or practices arising from individual cases.

Part 4 – Council Procedure Rules

Insert new Rule 20(4) as follows:

“20.4 The selection of the Chairman and other Members of the Standards Sub-Committee for individual hearings shall be as follows:

- (a) the Chairman should be selected by the City Secretary and Solicitor in alphabetical rotation from the independent members (subject to availability);
- (b) when the hearing is considering a complaint against a City Councillor, membership should consist of the Chairman and two Councillors (from different political parties selected by the City Secretary and Solicitor in alphabetical rotation from the membership of the Committee);
- (c) when the hearing is considering a complaint against a Parish Councillor, membership should consist of the Chairman, Parish Member (selected by the City Secretary and Solicitor in rotation), and three Councillors (from more than one political party selected by the City Secretary and Solicitor in alphabetical rotation from the membership of the Committee).
- (d) no Committee Member should be included in the selection if the complaint is against a Member of the same parish, or district ward, as the Committee Member.

That Council Procedure Rule 23(4) be revised as shown in tracking as follows:

“The quorum for the Standards Committee shall be three Councillors plus one Independent Member and, where parish issues are discussed, one Parish Member must also be present.

When the Standards Sub-Committee is hearing a complaint about an individual Member the quorum shall be three Members of the Committee to include an Independent Member, and where a parish matter is being considered, a Parish Member.”

Articles of the Constitution

In Article 9.04 change references to quorum for the main Standards Committee to three councillors and one independent member, and a parish member when matters relating to parish councils or their members are being considered.