



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 22nd April 2010

Subject: Standards Committee Procedure Rules

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. The purpose of this report is to review the Standards Committee Procedure Rules and to make proposals for amendment in light of any issues which have arisen throughout the year.
2. The Procedure Rules were thoroughly reviewed by the Standards Committee in October 2009, in order to make them more accessible to subject Members and complainants, and more accurately reflect the distinct roles of the Standards Committee and its Sub-Committees throughout the complaints process. Given this recent review of the Procedure Rules it is not considered necessary to review them in detail, however a few amendments are suggested as a result of further experience of the consideration and pre-hearing process.
3. Members of the Standards Committee are asked to:
 - Approve the proposed amendment to Procedure Rule 3.2.5 (regarding the publication of the Consideration Sub-Committee's decision);
 - Approve the proposed amendment to Procedure Rule 4.15.3 (regarding the publication of the Hearings Sub-Committee's decision);
 - Decide what timescales should be set for the subject Member and the investigator to return the pre-hearing forms (from the options set out in paragraph 3.12), and approve the necessary amendments to Procedure Rules 4.2.3 to 4.2.6;
 - Approve the proposed deletion of footnote 64 from Procedure Rule 4.2.9 (regarding the parties being required to notify the Committee Clerk at least 10 days before the Hearing in order to make representations on the issue of witnesses);
 - Approve the proposed amendment to Procedure Rule 4.3.1 (regarding the contents of the pre-hearing process summary);
 - Approve the addition of a new paragraph under Procedure Rule 4.3 to clarify that both parties are responsible for arranging for the attendance of their requested witnesses on the day of the Hearing;

- Approve the addition of a new paragraph under Procedure Rule 4.3 to clarify the procedure for deciding requests for adjournment made after the date of the Hearing has been set and at least five clear days in advance of the Hearings Sub-Committee meeting; and
- Approve the other amendments and corrections made for the purposes of clarification (such as page numbering and changes in titles).

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to review the Standards Committee Procedure Rules and to make proposals for amendment in light of any issues which have arisen throughout the year.

2.0 Background Information

- 2.1 The Standards Committee Procedure Rules are set out in Part 4 of the Constitution. They set out the arrangements to be followed in respect of complaints received under the Members' Code of Conduct, or in relation to the other Codes and Protocols adopted by Leeds City Council (local complaints).
- 2.2 The Procedure Rules were thoroughly reviewed by the Standards Committee in October 2009, in order to make them more accessible to subject Members and complainants, and more accurately reflect the distinct roles of the Standards Committee and its Sub-Committees throughout the complaints process. Given this recent review of the Procedure Rules it is not considered necessary to review them in detail, however a few amendments are suggested as a result of further experience of the consideration and pre-hearing process.
- 2.3 Procedure Rule 1.3.2 requires the Monitoring Officer to report to the Standards Committee annually on whether the arrangements set out in the Procedure Rules have been complied with, and including any proposals for amendment in light of any issues which have arisen throughout the year. Members of the Standards Committee will note that Section 4 of the Procedure Rules will also be reviewed at the completion of each local Hearing.

3.0 Main Issues

Number of local complaints

- 3.1 The Monitoring Officer can confirm that there have been no complaints made about potential breaches of any local codes or protocols since the last report in April 2009. Members of the Standards Committee should note that the Member Management Committee Local Codes & Protocols Working Group continues to meet to consider the content and enforceability of the local codes and protocols.

Number of Code of Conduct complaints

- 3.2 There have been 13 complaints made under the Members' Code of Conduct to date during this municipal year. The Assessment and Consideration Sub-Committees have also considered six investigation reports and referred two of these to the Hearings Sub-Committee.
- 3.3 It is through this experience of the consideration and pre-hearing process that the Monitoring Officer has identified the following areas for amendment. An extract of

the relevant Procedure Rules showing these proposed amendments is attached as Appendix 1 to this report.

Proposed amendments to Section 3

- 3.4 Regulation 17(5) of the Standards Committee (England) Regulations 2008 state that as soon as reasonably practicable after making a finding of acceptance of no breach, the Standards Committee should publish a written notice of that finding in at least one newspaper circulating in the area of any authority concerned, and if considered appropriate by the Standards Committee, on the webpage of any authority concerned, and in any other publication.
- 3.5 These options are currently outlined in Procedure Rule 3.2.5. However the Procedure Rules do not specify **how** such decisions should be made. It is proposed that a small amendment is made to show that such decisions will be made on a case by case basis at the conclusion of the Consideration Sub-Committee meeting, subject to the consent of the subject Member that a notice should be published.

Proposed amendments to Section 4

- 3.6 The Hearing Sub-Committee also has the same options open to it at the conclusion of any Hearing in accordance with Regulation 20(1)(b). Again these options are reflected in Procedure Rule 4.15.3. However, again it is proposed that a small amendment is made to show that such decisions will be taken by the Hearings Sub-Committee on a case by case basis at the conclusion of the Hearing, subject to the consent of the subject Member that a notice should be published (if there is a decision that the subject Member has not breached the Code of Conduct).

Timescales for the pre-hearing process

- 3.7 Section 4.2 of the Procedure Rules deals with the conduct of the pre-hearing process. During the pre-hearing process, both the subject Member and the investigator must complete and return a series of forms which deal with procedural issues related to the Hearing, such as whether there are any disagreements over the findings of fact and whether any witnesses will be called. Once the pre-hearing process is complete, everyone involved in the Hearing is sent a copy of the pre-hearing process summary at least ten working days before the Hearing.
- 3.8 As Members of the Standards Committee will be aware, under the Regulations, a Hearing must be held within the period of three months beginning on the day the investigator's report is completed, and if it is not held within three months, as soon as practicable after that.
- 3.9 Procedure Rules 4.2.3 and 4.2.4 allow the subject Member a minimum of 10 working days to complete the form initially, and then a further 5 working days following a reminder. After this time has elapsed, certain assumptions are made about the subject Members' response. These are set out in Procedure Rule 4.2.5.
- 3.10 Procedure Rule 4.2.6 then allows the investigator a minimum of 10 working days to respond with their forms.
- 3.11 The Monitoring Officer has identified, from experience of the pre-hearing process to date, that officers have not had sufficient time during the pre-hearing process to comply with the timescales set out in the Procedure Rules for the parties to return

the pre-hearing forms. Instead the subject Member has only been given the minimum amount of time to respond, and the investigator has been given less than the minimum. The reasons for this lack of time are set out below.

- 3.12 There are certain statutory timescales within the pre-hearing process, which are shaded in Appendix 2 for clarity:
- The Hearing must be held within three calendar months of the Investigator completing the final report, rather than from the date it is considered by the Consideration Sub-Committee;
 - The agendas for both the Consideration and Hearings Sub-Committee meetings must be published and dispatched five clear working days beforehand; and
 - The pre-hearing process must be sent out to everyone involved in the Hearing at least 10 working days before the Hearings Sub-Committee meeting.
- 3.13 The Monitoring Officer has conducted a review of other authorities' Procedure Rules and has identified four options for amendment:
- **Option 1** - To give the parties 10 working days each to respond (with no potential extension for the subject Member);
 - **Option 2** - To give the parties 5 working days each to respond (with no potential extension for the subject Member);
 - **Option 3** - To give the parties 5 working days each to respond (with a potential extension of 5 working days for the subject Member following a reminder after which a series of assumptions will be made about their response); or
 - **Option 4** – To give the subject Member 10 working days to respond (with a potential extension of 5 working days following a reminder after which a series of assumptions will be made about their response), and to give the Investigator 5 working days to respond.
- 3.14 The Monitoring Officer favours Option 3 in the list above. This allows a reduction in the length of the pre-hearing process which would assist officers in complying with the statutory timescales, but also allows additional time if the subject Member is initially unable to respond for whatever reason. Appendix 2 shows two timetables for the pre-hearing process, the first based on the current timescales, and the second based on Option 3 from the list above, which should assist Members in understanding the actions required as part of the pre-hearing process.
- 3.15 Members of the Standards Committee will note that Standards for England, in their recent review of the local standards framework (March 2010), have recommended that the Consideration Sub-Committee should no longer be required to meet to consider investigation reports. Instead they propose that the Chair or Vice Chair of the Standards Committee should be able to take a decision on whether to refer the matter to the Hearings Sub-Committee for determination. Should this recommendation be accepted by the Government, this would clear another working week during the pre-hearing process. In addition, Standards for England have also recommended that the Chair be responsible for more of the pre-hearing decisions during the process. However, both these recommendations would require amendments to legislation.

Pre-hearing process summary

- 3.16 After both parties have returned their completed pre-hearing forms, the Monitoring Officer, in consultation with the Chair of the Hearings Sub-Committee, is required to make a series of decisions (as set out in Procedure Rule 4.2.8). The Monitoring

Officer, in consultation with the Chair of the Hearings Sub-Committee, is also able to make preliminary decisions on other issues (as set out in Procedure Rule 4.2.9) which will then be confirmed by the Hearings Sub-Committee at the start of the hearing.

- 3.17 Procedure Rule 4.2.10 requires the Monitoring Officer to notify the subject Member of any preliminary decisions made and the reasons for them prior to the hearing itself. It is proposed that for clarity these decisions are included in the pre-hearing process summary.
- 3.18 The contents of the pre-hearing process summary are set out in Procedure Rule 4.3.1. The list of contents has therefore been expanded to include those matters listed in Procedure Rules 4.2.8 and 4.2.9.
- 3.19 It is also proposed that footnote 64 is deleted from Procedure Rule 4.2.9 as it is unnecessary. This footnote requires the parties to notify the Committee Clerk at least 10 working days before the Hearing if they wish to make representations about the Hearings Sub-Committee refusing to hear evidence from any of the witnesses.
- 3.20 As this is a preliminary decision of the Monitoring Officer, this will be presented to the Hearings Sub-Committee as a recommendation for the Sub-Committee to make a formal decision under Stage 2 of the Hearing (Preliminary Procedural Issues), as outlined in Procedure Rule 4.9.1. Procedure Rule 4.9.1 already states that “the Hearings Sub-Committee will invite the Parties to make representations about any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process. This may include any preliminary decisions made by the Monitoring Officer in consultation with the Chair of the Hearings Sub-Committee.” Therefore there is no requirement for the parties to notify the Committee Clerk beforehand in order to be entitled to make such representations.

Attendance of witnesses

- 3.21 During the pre-hearing process the Monitoring Officer, in consultation with the Chair is able to take a preliminary decision on whether the Hearings Sub-Committee will wish to call any witnesses. This decision is then confirmed by the Hearings Sub-Committee at the start of the Hearing.
- 3.22 Guidance from Standards for England in “Standards Committee Determinations” states that “the subject Member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the Hearing”.
- 3.23 It is proposed that a new paragraph is added under Procedure Rule 4.3 “The Pre-Hearing Summary” in order to clarify that it is the responsibility of both parties to arrange for the attendance of their requested witnesses on the day of the Hearing.

Requests for adjournment prior to the Hearing

- 3.24 Procedure Rule 4.7 deals with the issue of adjourning the Hearings Sub-Committee meeting. However it is limited to adjournments which are made after the Hearing has commenced, and does not provide any guidance on how requests for adjournment should be decided when they are received after the date of the Hearing has been set, but before the Hearing has commenced.

- 3.25 During the pre-hearing process the Monitoring Officer, in consultation with the Chair of the Hearings Sub-Committee, has the authority to set the date, time and place of the Hearing (as set out in Procedure Rule 4.2.7). This decision is then reflected in the pre-hearing process summary which is sent out to everyone involved in the Hearing at least 10 working days before the Hearing. Once the pre-hearing summary has been issued the pre-hearing process is complete. Therefore it is unclear who has the authority to vary the date of the Hearing after the pre-hearing process has concluded but before the Hearings Sub-Committee meeting itself.
- 3.26 It is proposed that a new paragraph is added under Procedure Rule 4.3 “The Pre-Hearing Summary” to clarify this issue. It is proposed that the Monitoring Officer, in consultation with the Chair of the Hearings Sub-Committee, will have the authority to amend the date of the Hearing, as long as the request is made at least five working days before the date of the Hearings Sub-Committee meeting. After this time the agenda for the Hearings Sub-Committee meeting will have been dispatched and published, and so it is proposed that any requests for adjournment after this time are decided by the Hearings Sub-Committee at the beginning of the meeting itself.
- 3.27 In order to decide the issue the Monitoring Officer should obtain written representations from both parties which provides reasons why they wish to adjourn the Hearing, and comments in response to this request. The Monitoring Officer will then decide whether to set a new date for the Hearing based on these written representations.
- 3.28 Should the Monitoring Officer decide not to grant the request for an adjournment, this would not prevent the subject Member or the investigator from raising the issue again during Stage 2 of the Hearing, “Preliminary Procedural Issues”, nor the Hearings Sub-Committee from reaching a different view on the matter.
- 3.29 An alternative would be that the Hearings Sub-Committee could meet before the scheduled date of the Hearing to decide the request based upon the written representations of the parties, but this would require the consent of the Chair of the Hearings Sub-Committee, and may not always be possible given that there are only 10 working days between the issue of the pre-hearing summary (which sets the date of the Hearings Sub-Committee), and the Hearings Sub-Committee meeting itself.

4.0 Implications For Council Policy And Governance

- 4.1 Clear and transparent governance requires that the rules of procedure are set out fully and accurately within the Constitution. Making the recommended amendments will enable this to take place.

5.0 Legal And Resource Implications

- 5.1 The legal implications are set out within the main body of the report.
- 5.2 There are no resource implications to the proposals contained in this report.

6.0 Conclusions

- 6.1 This report confirms that the arrangements set out in the Standards Committee Procedure Rules have been complied with, and suggests a series of amendments to address issues encountered during the consideration and pre-hearing process set out in the Procedure Rules.

7.0 Recommendations

7.1 Members of the Standards Committee are asked to:

- 7.1.1 Approve the proposed amendment to Procedure Rule 3.2.5 (regarding the publication of the Consideration Sub-Committee's decision);
- 7.1.2 Approve the proposed amendment to Procedure Rule 4.15.3 (regarding the publication of the Hearings Sub-Committee's decision);
- 7.1.3 Decide what timescales should be set for the subject Member and the investigator to return the pre-hearing forms (from the options set out in paragraph 3.12), and approve the necessary amendments to Procedure Rules 4.2.3 to 4.2.6;
- 7.1.4 Approve the proposed deletion of footnote 64 from Procedure Rule 4.2.9 (regarding the parties being required to notify the Committee Clerk at least 10 days before the Hearing in order to make representations on the issue of witnesses);
- 7.1.5 Approve the proposed amendment to Procedure Rule 4.3.1 (regarding the contents of the pre-hearing process summary);
- 7.1.6 Approve the addition of a new paragraph under Procedure Rule 4.3 to clarify that both parties are responsible for arranging for the attendance of their requested witnesses on the day of the Hearing;
- 7.1.7 Approve the addition of a new paragraph under Procedure Rule 4.3 to clarify the procedure for deciding requests for adjournment made after the date of the Hearing has been set and at least five clear days in advance of the Hearings Sub-Committee meeting; and
- 7.1.8 Approve the other amendments and corrections made for the purposes of clarification (such as page numbering and changes in titles).

Background Documents

- Local Government and Public Involvement in Health Act 2007
- Local Government Act 2000
- Standards Committee (England) Regulations 2008
- "Standards Committee Determinations" by Standards for England, last updated March 2010, available at: <http://www.standardsforengland.gov.uk/determinations/>
- "Local Standards 2.0 – the proportionality upgrade? A review of the local standards framework", Standards for England, March 2010