



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 13th July 2010

Subject: Review of the procedure for Standards Committee hearings

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 consider amendments to Section 4 of the Standards Committee Procedure Rules and the general procedure for conducting hearings in the light of the two recent cases heard by the Hearings Sub-Committee.
2. The Standards Committee has set up a Hearings Sub-Committee to hold determination meetings. The Hearings Sub-Committee met on 11th May 2010 and again on 17th May 2010. Paragraph 1.3.1 of the Standards Committee Procedure Rules states that the Standards Committee will review Section 4 of the procedure (Hearings Sub-Committee Procedure) at the completion of each local hearing.
3. The investigators, the subject Members and their representatives, the complainants, and the Members of the Hearings Sub-Committees have all been invited to make comments and suggestions for amendment following the Hearings Sub-Committee meetings. Officers involved in the pre-hearing process and the hearings have also made suggestions for amendment.
4. The table attached as Appendix 1 lists each of the issues identified by the participants along with their suggestions for improvement. The last column of the table also contains proposals for amendment to the 'Procedure for external Code of Conduct investigations', the Standards Committee Procedure Rules, and the general procedure for Hearings Sub-Committee meetings.
5. Members of the Standards Committee are asked to note the issues raised by the hearing participants, comment on the proposals for amendment to the 'Procedure for external Code of Conduct investigations', and agree the proposed amendments to the Standards Committee Procedure Rules and general procedure for Hearings Sub-Committee meetings listed in paragraph 7 of this report.

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to consider amendments to Section 4 of the Standards Committee Procedure Rules and the general procedure for conducting hearings in the light of the two recent cases heard by the Hearings Sub-Committee.

2.0 Background Information

- 2.1 The Standards Committee has set up a Hearings Sub-Committee to hold determination meetings. The Hearings Sub-Committee met on 11th May 2010 and again on 17th May 2010. Paragraph 1.3.1 of the Standards Committee Procedure Rules state that the Standards Committee will review Section 4 of the procedure (Hearings Sub-Committee Procedure) at the completion of each local hearing.
- 2.2 As the two hearings were held within a short timescale, it is not considered necessary to conduct two separate reviews and therefore this report contains proposals for amendment arising from both meetings.

3.0 Main Issues

- 3.1 The investigators, the subject Members and their representatives, and the Members of the Hearings Sub-Committees have all been invited to make comments and suggestions for amendment following the Hearings Sub-Committee meetings. Officers involved in the pre-hearing process and the hearings have also made suggestions for amendment.
- 3.2 The proposals for amendment can be categorised into the following areas:
- The investigation;
 - The pre-hearing process; and
 - The Hearings Sub-Committee meeting.
- 3.3 The table attached as Appendix 1 lists each of the issues identified by the participants along with their suggestions for improvement. The last column of the table also contains proposals for amendment to the 'Procedure for external Code of Conduct investigations', the Standards Committee Procedure Rules, and the general procedure for Hearings Sub-Committee meetings. An amended extract of the Standards Committee Procedure Rules is also attached as Appendix 2.

The investigation

- 3.4 In summary, the proposals for amendment to the 'Procedure for external Code of Conduct investigations' are as follows:
- That the Procedure be amended to clarify that the Council's preference is for subject Members and complainants to be interviewed face to face, unless they request otherwise.
 - The Procedure currently states *"If there are significant changes to the report, the Investigator may wish to consider issuing a second draft. Any such draft should be sent to the Monitoring Officer, Head of Governance Services and Senior Corporate Governance Officer for comment prior to being sent to the parties. Once the Investigator has considered whether the responses add anything of substance to the investigation, they will be able to make their final conclusions and recommendations."* It is proposed that this is amended to say that the investigator **must** issue a second draft in such circumstances.

- To amend the Procedure to include the subject Members' representatives in the list of recipients of the draft and final reports.
- That the Procedure be amended to state that where the investigator has to travel a significant distance, appropriate arrangements should be made for their prompt attendance at the Hearings Sub-Committee e.g. an overnight stay in Leeds. Such issues should be discussed with the Head of Governance Services so that these costs can be prepared for.
- That the Procedure be amended to require the investigator to send the final report to the Monitoring Officer first, before issuing it to the parties. This will have two advantages: it will ensure the Monitoring Officer is happy with the final report as drafted; and will also help to speed up the process of arranging the Consideration Sub-Committee meeting. This amendment is in accordance with Section 2 of the Procedure which clearly states that the Monitoring Officer reserves the right to decide when the investigation is complete and when the report is of an acceptable quality to be put before the Standards Committee for consideration.

- 3.5 These amendments will need to be approved by the Assistant Chief Executive (Corporate Governance) who, as Monitoring Officer, has responsibility for Code of Conduct investigations. However, Members of the Standards Committee are invited to comment on these proposals in order to assist the Monitoring Officer in reaching a view as to how to improve the process.
- 3.6 The hearing participants raised more general issues with the investigations process, particularly that the subject Members and complainants did not understand the investigation process and were not kept up to date on the progress of the investigator. To address these issues it is proposed that a plain-English guide to the investigations process be created for Members incorporating useful information from both the 'Procedure for external Code of Conduct investigations' and the Standards Committee Procedure Rules. This document would be provided to the subject Member and the complainant at the same time as the Assessment or Review Sub-Committee Decision Notice. The Head of Governance Services also proposes to provide regular updates on progress to the subject Member and the complainant, as considered appropriate.
- 3.7 Finally, issues were also raised regarding the Consideration Sub-Committee meetings. Namely that these took place in private which means that the subject Member and their representative cannot attend and begin preparing for the hearing sooner, and that they took place too long after the final report had been issued. The Monitoring Officer does not accept that Consideration Sub-Committee meetings should generally be held in public, because if the matter was referred to a hearing, the Hearings Sub-Committee agenda would be public and could not be made exempt again, and attending the Consideration Sub-Committee meeting would not assist the subject Member and their representative in preparing for a hearing.
- 3.8 There are no proposals for amendment regarding the timescales for the Consideration Sub-Committee meeting, as following a previous decision of the Standards Committee, Sub-Committee meetings are now scheduled to take place every three weeks. It is anticipated that more regular Sub-Committee meetings will alleviate the concerns raised by the subject Members' representatives.

The pre-hearing process

- 3.9 It is not proposed to amend the Standards Committee Procedure Rules following the comments made about the pre-hearing process. Comments were raised about the timescales for the parties to return the forms to the Committee Clerk, but as these were recently amended by the Standards Committee and will be kept under review, it is not proposed that these are amended now.
- 3.10 However the forms which are sent to the parties to complete will be amended to ensure that the form clearly identifies the findings of fact in the investigator's report and to ensure that it only invites comments on those points. The subject Member will no longer be asked to provide alternative wording for the investigator's report, and will only be asked to state the reasons why they disagree with the investigator's findings. This should ensure that the information provided by the subject Member or their representatives is relevant and limited to the facts that are disputed, and will therefore assist the Committee Clerk, Monitoring Officer and the Chair in preparing the pre-hearing process summary and scheduling the hearing.
- 3.11 Both forms will also be amended to include space for the parties to provide contact details for their requested witnesses, and also details on what arrangements have been made for their attendance. This will ensure that the Committee Clerk is able to contact the witnesses regarding any changes in the arrangements, such as delays, as soon as possible.
- 3.12 Subject to comments from Members of the Standards Committee, amendments to the pre-hearing form will be made by the Monitoring Officer.

The Hearings Sub-Committee meeting

Witnesses

- 3.13 Particular concerns were raised by the participants regarding witnesses. Specifically that witnesses should not be allowed to remain in the room before they give evidence to the Sub-Committee, and should not be able to talk to other witnesses after they have done so, to avoid creating the appearance of collusion or bias. In order to remedy these concerns, it is proposed that wherever possible, officers will seek to reserve a room each for the parties and their witnesses (which the witnesses would be unable to return to after giving their evidence), and a room for the Sub-Committee to withdraw to in order to deliberate. It is proposed that these arrangements should be reflected in the Standards Committee Procedure Rules under "General points regarding the Hearings Sub-Committee meeting".
- 3.14 The hearing participants also raised a concern that the witnesses seemed unprepared for the hearing and unsure of the process. In order to address this it is proposed that a briefing note be sent out to the witnesses in advance of the Hearings Sub-Committee which explains the procedure for the hearing and the role of the Sub-Committee. This will also ask the witnesses not to speak to other after they have given evidence.

Stages of the hearing

- 3.15 Specific issues were raised about the process for the hearing, which may require amendments to the “Stages of the Hearing” section of the Standards Committee Procedure Rules.
- 3.16 Firstly, there was a concern that the decision to exclude the press and public from the hearing was not made early enough in the proceedings. This is currently scheduled to take place during Stage 1 of the hearing (Setting the Scene), after the parties have been formally introduced, and the Chair has explained the role of the Sub-Committee. Stage 1 was the fifth item on the agenda following the standard items. It is proposed that the decision on whether to exclude the press and public from all or part of the meeting could be included as a separate item on the agenda. This could still take place after the Chair has introduced the parties and explained how the hearing will run, if Stage 1 takes place prior to the other items on the agenda i.e. appeals against refusal of inspection of documents, and declarations of interest.
- 3.17 In connection with the above point one of the Hearings Sub-Committee Members expressed a concern that if members of the press were allowed to observe the hearing they may take statements from witnesses when they are leaving the room which could then be published prior to the Sub-Committee’s findings being announced and be detrimental to the subject Member. There are no options for amendment to address this concern. The Chair of the Hearings Sub-Committee could verbally instruct the press not to publish anything about the hearing until the decision has been announced, but the press would not be bound by such an instruction.
- 3.18 It is also proposed that the information about Stages 2 and 3 of the Hearings Sub-Committee procedure are amended to clarify that the Monitoring Officer will explain the outstanding preliminary issues arising from the pre-hearing process for the Hearings Sub-Committee to take a view on these, before the parties raise any other issues, and that Stage 3 is amended to allow the parties to make final submissions to the Sub-Committee before they withdraw to deliberate.

Practical issues

- 3.19 Some of the participants raised issues about the lack of comfort breaks during the hearings, and the fact that the time allowed for a lunch break was insufficient. In addition, some Members commented that it would not be unreasonable for the Council to provide lunch for such meetings. The Chief Democratic Services Officer has been asked to consider the comments made by the hearing participants, but has confirmed that it would not be possible to provide lunch for the Hearings Sub-Committee.
- 3.20 Instead, to address these issues, it is proposed that the Chair’s guidance note is updated to remind the Chair that a lunch break of at least 25 minutes is required and to prompt him to suggest a comfort break every two hours or thereabouts.
- 3.21 Some of the Hearings Sub-Committee Members also suggested that both hearings were too long, one taking approximately 10 hours from start to finish. It is not possible to shorten the process in any way, but it is proposed that where a case is especially complex or is likely to involve several witnesses, the Committee Clerk could attempt to seek a second date where the parties and the Sub-Committee Members are available, to give the Sub-Committee the option to adjourn if

necessary. This second date will be as close to the original date as possible, and ideally on the following working day. However, Members of the Standards Committee should note that the Committee Clerk experienced significant difficulties in securing any suitable date for the hearings in the two recent cases due to the limited availability of the Sub-Committee Members.

3.22 Finally, all those who responded stated that the room used for the hearings was too small. This was Committee Room 2. It is proposed that, as a preference, Committee Rooms 6 and 7 will be sought for future Hearings Sub-Committee meetings, in view of the size of the room and the in-built recording equipment. If this is not possible, i.e. due to a Scrutiny Board, Plans Panel or Executive Board meeting, a room which is large enough for the relevant parties and public to be sufficiently separated will be sought. As previously stated officers will also seek to book an additional three rooms for each of the parties and their witnesses, and a room for the Hearings Sub-Committee to withdraw to.

4.0 Implications For Council Policy And Governance

4.1 Reviewing the Standards Committee Procedure Rules after every hearing ensures that the Procedures remain fit for purpose.

5.0 Legal And Resource Implications

5.1 There are no legal implications to the proposals in this report. There are cost implications to allowing the investigator to stay in Leeds the night before a Hearings Sub-Committee, although it is anticipated that these costs can be met from within existing budgets.

6.0 Conclusions

6.1 The Standards Committee has set up a Hearings Sub-Committee to hold determination meetings. The Hearings Sub-Committee met on 11th May 2010 and again on 17th May 2010. Paragraph 1.3.1 of the Standards Committee Procedure Rules state that the Standards Committee will review Section 4 of the procedure (Hearings Sub-Committee Procedure) at the completion of each local hearing.

6.2 The table attached as Appendix 1 lists each of the issues identified by the participants along with their suggestions for improvement. The last column of the table also contains proposals for amendment to the 'Procedure for external Code of Conduct investigations', the Standards Committee Procedure Rules, and the general procedure for Hearings Sub-Committee meetings.

6.3 An amended extract of the Standards Committee Procedure Rules is attached as Appendix 2 to this report for the Standards Committee's approval.

7.0 Recommendations

7.1 Members of the Standards Committee are asked to:

- note all the issues raised by the hearing participants and the suggestions for amendment (as listed in Appendix 1 to this report);
- comment on the proposals for amendment to the 'Procedure for external Code of Conduct investigations' outlined in this report (as follows);

- That the Procedure be amended to clarify that the Council's preference is for subject Members and complainants to be interviewed face to face, unless they request otherwise.
 - It is proposed that the Procedure is amended to say that the investigator **must** issue a second draft report for the parties to comment on if there have been significant changes since the first draft report.
 - To amend the Procedure to include the subject Members' representatives in the list of recipients of the draft and final reports.
 - That the Procedure be amended to state that where the investigator has to travel a significant distance, appropriate arrangements should be made for their prompt attendance at the Hearings Sub-Committee e.g. an overnight stay in Leeds. Such issues should be discussed with the Head of Governance Services so that these costs can be prepared for.
 - That the Procedure be amended to require the investigator to send the final report to the Monitoring Officer first, before issuing it to the parties.
- comment on the proposed amendments to the pre-hearing forms (as listed below):
 - The forms which are sent to the parties to complete will be amended to ensure that the form clearly identifies the findings of fact in the investigator's report and to ensure that it only invites comments on those points.
 - Both forms will also be amended to include space for the parties to provide contact details for their requested witnesses, and also details on what arrangements have been made for their attendance.
- agree the proposed amendments to the general procedure for the hearing, including scheduling and accommodation for the hearing, the order of the agenda, and amendments to the Chair's guidance note (as follows);
 - It is proposed that a plain-English guide to the investigations process be created for Members incorporating useful information from both the 'Procedure for external Code of Conduct investigations' and the Standards Committee Procedure Rules. This document would be provided to the subject Member and the complainant at the same time as the Assessment or Review Sub-Committee Decision Notice.
 - It is proposed that wherever possible, officers will seek to reserve a room each for the parties and their witnesses (which the witnesses would be unable to return to after giving their evidence), and a room for the Sub-Committee to withdraw to in order to deliberate.
 - It is proposed that a briefing note be sent out to the witnesses in advance of the Hearings Sub-Committee which explains the procedure for the hearing and the role of the Sub-Committee. This will also ask the witnesses not to speak to other after they have given evidence.

- It is proposed that the decision on whether to exclude the press and public from all or part of the meeting could be included as a separate item on the agenda. This could still take place after the Chair has introduced the parties and explained how the hearing will run, if Stage 1 takes place prior to the other items on the agenda i.e. appeals against refusal of inspection of documents, and declarations of interest.
 - The Chair of the Hearings Sub-Committee could verbally instruct the press not to publish anything about the hearing until the decision has been announced, but the press would not be bound by such an instruction.
 - It is also proposed that the information about Stages 2 and 3 of the Hearings Sub-Committee procedure are amended to clarify that the Monitoring Officer will explain the outstanding preliminary issues arising from the pre-hearing process for the Hearings Sub-Committee to take a view on these, before the parties raise any other issues, and that Stage 3 is amended to allow the parties to make final submissions to the Sub-Committee before they withdraw to deliberate.
 - It is proposed that the Chair's guidance note is updated to remind the Chair that a lunch break of at least 25 minutes is required and to prompt him to suggest a comfort break every two hours or thereabouts.
 - It is proposed that where a case is especially complex or is likely to involve several witnesses, the Committee Clerk could attempt to seek a second date where the parties and the Sub-Committee Members are available, to give the Sub-Committee the option to adjourn if necessary. This second date will be as close to the original date as possible, and ideally on the following working day.
 - It is proposed that, as a preference, Committee Rooms 6 and 7 will be sought for future Hearings Sub-Committee meetings, in view of the size of the room and the in-built recording equipment. If this is not possible, i.e. due to a Scrutiny Board, Plans Panel or Executive Board meeting, a room which is large enough for the relevant parties and public to be sufficiently separated will be sought.
- agree the proposed amendments to the Standards Committee Procedure Rules, as highlighted in Appendix 2, which reflect the recommendations listed above.

Background Documents

“Procedure for external Code of Conduct investigations”, available from <http://intranet.leeds.gov.uk/page.aspx?pageidentifier=8de826e1-b19c-4ca0-a100-3645cfef15cc>, last updated 6th May 2010

“Standards Committee Determinations”, by Standards for England, available from <http://www.standardsforengland.gov.uk/determinations/>, last updated 11th March 2010