

Report of: The Head of Legal and Democratic Services

To: The Standards Committee

Date: 2 October 2009

Item No:

Title of Report : Local Determinations and the Pre-hearing process.

Summary and Recommendations

Purpose of report: To inform the Committee of the Standards for England Guidance on the pre-hearing process and to remind the Committee of its resolutions on how to improve the local determination process following the local determination conducted by the Committee in 2008.

Key decision: No

Portfolio Holder: N/A

Scrutiny Responsibility: N/A

Ward(s) affected: All

Report Approved by

Legal: Jeremy Thomas, Head of Legal and Democratic Services

Finance: Finance and Asset Management

Policy Framework: N/A

Recommendation(s): (1) That the Committee notes the report and guidance from Standards for England; and
(2) That the Committee resolves that whenever it conducts a local determination it will follow the Standards for England Guidance and conduct the pre-hearing process in writing except in exceptional circumstances.

Introduction

1. At its meeting on 5 December 2008, the Standards Committee considered a report which reviewed some procedural matters and other issues arising from the local determination hearing that took place on

19 September and 11 November 2008. The Committee made a number of resolutions, which aim to improve the process for dealing with local determinations in the future.

2. Subsequently, the Committee requested a report as to whether the Committee should hold a pre-hearing review meeting to determine matters of procedure before any future local determination hearing. This report summarises the guidance issued by Standards for England (formerly the Standards Board for England) on the pre-hearing process and reminds the Committee of the resolutions it made in December 2008 referred to in paragraph 1.

Standards for England Guidance

3. Attached to this report at Appendix A is a copy of the Standards for England Guidance on Local Determinations. The pre-hearing process is dealt with at pages 7 to 9. The Committee will note that Standards for England advises that the pre-hearing process should normally be carried out in writing. However, on occasion it may be necessary to hold a meeting between the Standards Committee, the relevant parties and their representatives.
4. The purpose of the pre-hearing process is to:
 - Set the date, time and place for the hearing;
 - Summarise the allegation;
 - Outline the main facts which are not agreed;
 - Note whether the subject member or investigating officer will go to the hearing or be represented at the hearing;
 - List those witnesses, if any, who will be asked to give evidence, subject to the power of the Standards Committee to make a ruling on this at the hearing.
5. In the majority of cases it should be possible to determine these issues by way of correspondence. Issues relating to which witnesses the Standards Committee want to hear from can be dealt with at the start of the main hearing. In order to facilitate this process, the parties should be requested to provide details of their witnesses and statements in advance of the hearing. The parties can address the Committee on the relevance of particular witnesses and the Committee can make a decision following an open debate.
6. It is in the interests of natural justice that all relevant parties are present any pre-hearing meeting so as to avoid any perception of bias or pre-determination. Issues such as whether the Committee would like to call additional witnesses or whether it has sufficient information are all matters which the parties may wish to address the Committee on. It would therefore not be appropriate for the Committee to meet in private to discuss a case prior to the full hearing.

7. Whilst it may be preferable to deal with procedural issues prior to the full hearing to save time on the day, there are a number of practical difficulties in arranging a pre-hearing meeting. For example, there is the administrative burden of finding an extra date when the Committee and all the parties are available to attend. This can be difficult as experience with the previous local determination shows. That hearing was initially listed for one day but it was necessary to reconvene. The earliest date that all parties could attend was approximately two months later.

Lessons Learned following the Local Determination in 2008.

8. It is acknowledged that the hearing in 2008 did not run as smoothly as it could have in terms of the procedure followed. As a result, at its meeting in December 2008, the made the following resolutions:
 - (a) The establishment of a cut-off point for circulation of papers – there should be a cut off point and this should generally be the point when the Committee agenda is finalised for printing;
 - (b) First names or greater familiarity? – first names should not be used; local determination should assume a degree of formality in recognition of the fact that if a breach of the Code was found to have occurred, a sanction upon the member could result;
 - (c) Control and containment of meetings – agreed that this was needed and the Committee is reminded that it is in charge of its own procedure in order to ensure a fair hearing;
 - (d) Members commenting publicly upon local determinations before or during the Committee's local determination hearing – if members felt a response, for example to press reportage, was needed they should speak to the Monitoring Officer and a factual response would be issued by the Council itself if that was considered necessary or appropriate.
 - (e) The availability of members for the duration of meetings – to record that it was unfortunate that members had not been available for the whole of the days on which the Committee had met to hear the local determination and that, for the future, a time limit for meetings and an adjourned date, to be used if necessary, should be decided upon in advance;
 - (f) Challenge of reports of investigation of alleged failure to comply with the Code of Conduct – to record that if at the start of or during the course of a local determination hearing meeting the Committee considered it had insufficient information, needed to call other witnesses or otherwise was unable to continue the

local determination hearing on that day, it should adjourn to another day but, in accordance with advice from the Standards Board for England, such issues should not be covered in advance through a pre-hearing process;

9. Resolutions (a), (c) and (e) in particular would assist the Committee in dealing with any preliminary procedural issues at the start of a full local determination hearing as swiftly as possible.

Conclusions

10. Whilst it may appear advantageous to hold a pre-hearing meeting for local determinations, to do so (other than in exceptional circumstances) would be contrary to the guidance issued by Standards for England. The majority of issues to be determined at the pre-hearing stage can be determined by way of correspondence.
11. It would be more efficient to deal with preliminary issues by way of correspondence wherever possible to avoid the practical difficulties associated with convening a pre-hearing meeting.

Recommendations

12. That the Committee notes the report and guidance from Standards for England; and

That the Committee resolves that whenever it conducts a local determination it will follow the Standards for England Guidance and conduct the pre-hearing process in writing except in exceptional circumstances.

Name and contact details of author: Helen Lynch, Legal and Democratic Services, ext. 2806.

Background papers: None