

**Standards Committee : 17 August 2010**
**Title of report: Review of Complaint**

<b>Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>N/A</b>
<b>Is it in the Council's Forward Plan?</b>	<b>N/A</b>
<b>Is it eligible for "call in" by Scrutiny?</b>	<b>N/A</b>
<b>Cabinet member portfolio</b>	<b>Corporate</b>

**Electoral wards affected and ward councillors consulted: All**

**Public or private: Public**

## **1. Purpose of Report**

Since the introduction of the local assessment of complaints in May 2008 one complaint to the Standards Committee has been through the entire process to a determination hearing and the imposition of a sanction on one of the subject members. Following a meeting of members involved in the determination and assessment hearings, this report takes the opportunity to consider the procedural issues raised by the complaint and makes recommendations for improvement to current procedures.

## **2. Key Points**

### 2.1 Delay

The complaint was made against two members on 8 September 2008. The assessment hearing took place on 29 September 2008 and referred the complaint to the Monitoring Officer for investigation. The initial round of interviews of the complainant, his witness and the subject members were completed on 21 January 2009. At this point it was clear that the nature of the explanation offered by the subject members would require the complainant to be reinterviewed. This second interview took place on 26 February 2010 and the interview of a further witness identified by the

complainant took place on 9 March 2009. There was then some argument with this further witness about what the record of that interview should contain.

The Investigating Officer's final report was completed and approved by the Monitoring Officer on 15 June 2009, following consultation with the complainant and the subject members on a draft version of the report. The report found that there had been a breach of the Code of Conduct by one of the subject members and the report went to a Consideration Hearing on 13 July 2009. The Consideration Panel referred the complaint about both subject members to a Determination Hearing.

The Determination Hearing took place on 17 March 2010. In the interval between the Consideration and Determination Hearings there were issues to be resolved about disclosure of the notes from the Consideration Hearing, the membership of the Determination Panel, which in the end was different to that of the Consideration Panel and difficulties in arranging a date for the Determination Hearing which was convenient for all concerned.

#### 2.1.1 Comment on Delay

The whole process took just over 18 months to complete which was too long. The time taken put the complainant and the subject members under additional stress and strain and undermined confidence in the process.

In general it does not seem appropriate to place a time limit on the investigation process. The time taken will depend upon some factors which are beyond the investigating officer's control, such as the availability of complainants, witnesses and subject members for interview. In this case the nature of the explanation offered by the subject members meant that a further round of interviews had to be conducted, which extended the process by about 6 weeks and there was a dispute with one of the witnesses about what should be included in their record of interview which took several weeks to resolve. On balance the eight and a half months it took to get from the assessment decision to the final report was not unreasonable.

The main concern in relation to delay is the period between the Consideration Hearing and the Determination Hearing, a period of some 8 months. Notwithstanding the various issues to be dealt with during this period, which are referred to above, this lapse of time was too long. This was the first complaint to go through the entire process and novel issues were raised by the legal representative of the subject members and there were difficulties in arranging a convenient date for the Determination Hearing but in future the interval between

Consideration Hearing and Determination Hearing needs to be kept to a minimum.

### 2.1.2 Recommendations to Avoid Delay

- 2.1.2.1 The time between the date of the investigating officer's report and the Determination Hearing (where there is a finding of breach of the Code) should be kept to a minimum and wherever possible should be significantly less than the statutory three month time limit for this period.
- 2.1.2.2 If there are problems in listing a Determination hearing due to problems with the availability of complainants, witnesses or subject members which are likely to cause the target date for the Determination Hearing to be missed, then unless there are exceptional circumstances the Consideration Panel should be prepared to list the Determination Hearing for a date when parties or witnesses may not be able to attend provided that they have been given every opportunity to identify convenient dates within the three month period.
- 2.1.2.3 The Chair of the Consideration Panel and the Monitoring Officer should both be involved in the listing process for the Determination Hearing.
- 2.1.2.4 Decisions made in accordance with 2.1.2.2 above should be reported to Standards Committee.

## 2.2 Procedural Issues including Recommendations

- 2.2.1 There is a need for good communication between the Monitoring Officer, the Chair of Standards Committee and the Chairs of Consideration Panels to ensure that members of committee are aware of any significant procedural issues, especially those which might lead to delay in processing complaints
- 2.2.2 The training provided for members of the Determination Panel by the Monitoring Officer and at an external training session run by Leeds City Council was found to be invaluable. The role of the Chair of the Determination Panel is an important one and in particular the Chair must be able to confidently manage the process on the day. To fulfil the role properly requires training and support from the Monitoring Officer. In some cases professional advocates may be presenting the complainant and subject member's cases and identifying relevant issues but in other cases there may be a wider role for the Determination Panel in ensuring it gets to the bottom of all relevant

issues. It is recommended that any members who will be on Determination Panels should be offered training prior to any hearing.

- 2.2.3 The Investigating Officer's report is central to both the Consideration Panel and Determination Panel's role. In both cases the Panel should make certain that the report has been effectively scrutinised, either by the parties, their advocates, the Panel or some combination of all three.
- 2.2.4 It is recommended that Decision Notices for assessment and review hearings should be published unless the sub-committees have ruled that they should remain confidential for public interest reasons or because of the risk of prejudice to an investigation. This could also be done via the Council's website as part of the improvements currently being made to the standards part of the website.
- 2.2.5 It is recommended that all Decision Notices, Decision Summaries and statutory advertisements arising from assessment and review sub-committees and Consideration and Determination Panels be presented to Standards Committee for information.
- 2.2.6 Meetings of Consideration Panels and Determination Panels, unlike the meetings of Assessment and Review Panels, are covered by the standard access to information regime for local government and minutes of Consideration Panels and Determination Panels are published as they would be for any other Council committee or sub-committee. Consideration hearings may be held in private and a subject member who is cleared of any breach of the Code of Conduct can prevent the publication of the decision in the local press which is a requirement of the standards regime. It is recommended that where Consideration Panels make decisions which do not involve exempt information and where a cleared member does not object to publication these decisions should also be published on the website. Determination Hearings will usually be held in public and again a subject member who is cleared of alleged breaches of the Code of Conduct has the right to prevent a summary of the decision being published in the local press, a requirement of the regime. Provided there is no objection from a cleared member it is recommended that a summary of the decision be published on the Council's website.
- 2.2.7 In the particular case the Consideration Panel had referred matters for determination which the investigating officer's report had found to not be breaches of the Code of Conduct. Following representations on behalf of the subject members and informal advice from Standards for England it was decided to have different membership on the Determination Panel rather than following the normal procedure of the same panel dealing with both Consideration and Determination. This

placed the Determination Panel in the awkward position of not knowing what the concerns of the Consideration Panel about the investigating officer's report were. It is recommended that in future the current guidance from Standards for England should be adopted and the membership of both the Consideration Panel and Determination Panel should be the same where the Panels are dealing with the same complaint.

2.2.8 It is recommended that decision notices, summaries and letters which are to be signed by the Monitoring Officer or the Chair of a sub-committee or panel should be circulated to all members of that sub-committee or panel for comment before they are signed. Similarly the statutory minutes for sub-committees should be sent to all members of the relevant sub-committee before being published.

2.2.9 It is recommended that where the Monitoring Officer is minded to vary the directions made by a Consideration Panel in respect of a Determination Hearing she should consult the Chair of the Panel before doing so.

### **3. Implications for the Council**

It is good practice for the Standards Committee to review the operation of its own procedures and to improve them wherever possible. The Council's reputation will be enhanced if standards complaints can be dealt with in a timely and fair manner.

### **4. Consultees and their opinions**

N/a

### **5. Officer recommendations and reasons**

That the Committee adopt the recommendations set out above.

### **6. Cabinet portfolio holder recommendation**

N/a

### **7. Next steps**

Further reports will be presented to Standards Committee as other complaints complete the determination hearing process.

### **8. Contact officer and relevant papers**

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Background Papers:

None