



**Haringey** Council

Agenda item:

**Special Standards Committee on 7 October 2010**

Report Title: Adoption of Procedures for Local Determination Hearings

Report of: The Monitoring Officer

Wards(s) affected: All

Report for: Non Key Decision

**1. Purpose**

1.1 To propose the formal adoption of pre-hearing procedure forms and Procedure Rules for conducting local determination hearings into allegations of breach of the Members' Code of Conduct by the Standards Committee or a Hearing Panel.

**2. Recommendations**

2.1 That Members of the Committee resolve to adopt for future use by the Committee and its Hearing Panels:

- (i) the pre-hearing procedure Forms A to E attached as the Appendices 1 to 5 to this report.
- (ii) the Procedure Rules for conducting Local Determination Hearings, set out in Appendix 6 to this report,

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**3. Local Government (Access to Information) Act 1985**

3.1 Standards for England Guidance and Toolkit for conducting local determination hearings.

**4. Financial Implications**

4.1 There are no specific financial implications.

## **5. Legal Implications**

5.1 The legal implications are stated in the body of this report.

## **6. Equalities and Community Cohesion Implications**

6.1 There are no specific equalities and community cohesion implications.

## **7. Background**

- 7.1 Standards for England have issued detailed guidance on the conduct of local determination hearings which includes a “model hearing procedure” for local determination hearings by Standards Committees and their Sub-Committees or Panels. Part of this guidance is a “toolkit” setting out model Forms A to E which are intended to assist the pre-hearing process by clarifying the matters in dispute and the evidence that will be relevant to the hearing.
- 7.2 Forms A to E and Procedure Rules for the conduct of hearings, based on the Standards for England models, were used late last year (October to December 2009) in relation to the three local determination hearings that took place in that period. There has been no formal resolution by the Standards Committee to adopt Forms A to E or the Procedure Rules and, consequently, in order to avoid any possible future dispute, this report is being made to the Committee now so as to ensure that there is a properly minuted resolution to adopt them for future use.

## **8. The Pre-Hearing Process**

- 8.1 The pre-hearing process starts after the meeting of the Standards Committee to consider the investigation report and findings from the Monitoring Officer or his/her nominee (referred to as the “investigator”). The Committee may refer a finding of breach of the Code of Conduct to a local determination hearing or the Committee may do so after “overturning” a finding of no breach. Only in the most serious cases would the breach(es) be referred to the national Adjudication Panel for hearing rather than to the local Hearing Panel.
- 8.2 The “parties” to the hearing are the subject Member, or Members, who are alleged to have breached the Code of Conduct on the one hand and the “investigator” who prepared the investigation report, and/or the investigator’s representative, on the other hand. If the Monitoring Officer, personally, is to advise the Hearing Panel on law and procedure during the hearing, then the Monitoring Officer will appoint another Council officer, or a suitable person outside the Council, to undertake the investigation notwithstanding that the investigation is officially conducted on behalf of the Monitoring Officer. In any event, the “investigator” will be a different officer/person from the legal advisor to the Members of the Hearing Panel.

- 8.3 The Monitoring Officer will also ensure that the legal advisor to the Hearing Panel, or an officer assisting that legal advisor, arranges the distribution, receipt and copying of the Forms used as part of the pre-hearing process. This is done in a “neutral” capacity independently on the “investigator”.
- 8.4 The subject Member (i.e. the Councillor accused of breaching the Code of Conduct in the original complaint) will have received a copy of the investigation report and its attachments. After the meeting of the Standards Committee to consider the investigation report, the Monitoring Officer, or his/her representative, acting in a neutral capacity rather than as “investigator”, will write to the subject Member enclosing Forms A to E, explaining their purpose and asking for the return of the completed Forms within a reasonable deadline. The letter may also propose a hearing date.
- 8.5 Form A (Appendix 1) invites the subject Member to state his/her disagreement with any findings of fact in the investigation report. It asks for the subject Member’s reasons and suggestions for an alternative version of events. Form B (Appendix 2) invites the subject Member to identify any evidence not already included in the investigation report which the subject Member feels is relevant to the complaint/hearing.
- 8.6 Form C (Appendix 3) asks for the subject Member’s representations if he/she is found to have breached the Code towards the end of the forthcoming hearing. This is a kind of “plea in mitigation” but only to be considered by the Hearing Panel if a breach is found and before a sanction is imposed.
- 8.7 Forms D and E (Appendices 4 and 5) cover arrangements for the hearing itself including the identity of the subject Member’s representative, any witnesses to be called, an outline of the witness evidence and any arguments the subject Member may put forward about hearing all or part of the hearing/evidence privately.
- 8.8 Once completed by the subject Member, the responses in Forms A to E will be copied to the investigator (i.e. the author of the investigation report or his/her representative) who will be invited to comment within a reasonable deadline. If the investigator wishes to call any witnesses or additional evidence or to have any evidence heard in private this must be communicated to the subject Member and to the Monitoring Officer/legal advisor acting neutrally.
- 8.9 As a result of this pre-hearing process, the issues still in dispute should have been clarified and it should be more apparent (subject to the final decision of the Hearing Panel) which witnesses are likely to be called by the parties and what evidence is relevant.
- 8.10 The Monitoring Officer/legal advisor acting neutrally will prepare a “Pre-Hearing Process Summary” for the benefit of the Hearing Panel and the parties (i.e. the subject Member and the investigator). This Summary will set out the key points in

the complaint, the paragraphs of the Code that are relevant, the issues of fact that are agreed and the issues still in dispute together with the witnesses that each party seeks to call. Other facts such as the date, time and venue for the hearing and the identity of the Hearing Panel Members will be included.

## 9. The Procedure Rules for Local Determination Hearings

- 9.1 The proposed Procedure Rules for Local Determination Hearings are attached as Appendix 6 to this report. These Rules deal with the procedure on the day of the hearing on the assumption that the pre-hearing process outlined above has been followed and has clarified the issues still in dispute.
- 9.2 The Rules are similar to those that will apply in other types of case where “quasi-judicial” procedures are required, for example, hearings before Licensing Sub-Committees or staff disciplinary appeals. The common features are: (i) equal rights given to opposing parties, (ii) provision for each party to be represented, (iii) the right of each party to make representations at each stage in the proceedings, (iv) provision for each party to call witnesses or to rely on documentary evidence (v) provision for witnesses to be questioned by the opposing party, (vi) provision for Members of the Hearing Panel to question the parties and their witnesses, and (vii) rules to safeguard against “surprise” evidence being called by either party, and (viii) provision for the Panel to take legal advice, either privately or in open session, from the Monitoring Officer or his nominated legal advisor (acting “neutrally” between the parties).
- 9.3 The Procedure Rules being recommended have features peculiar to Local Determination Hearings under the Code of Conduct. These peculiar features are set out in the Standards for England model. They divide the hearing into a number of stages as follows:
- (i) There is an initial stage for resolving preliminary procedural issues, for example, whether any part of the evidence should be heard in private session, whether a particular witness can be called or a late document admitted. The Panel would hear representations from the parties on such issues.
  - (ii) The next stage is for the Panel to hear evidence from the parties and their witnesses and then to make formal findings of fact.
  - (iii) Then the Panel must reach a conclusion as to whether there has been a failure, or failures, to comply with the Code of Conduct, based on their previous findings of fact. The Panel may hear representations from the parties. Sometimes stages (ii) and (iii) can be combined.
  - (iv) If the subject Member has breached the Code, the Panel will hear further representations from the parties, including the contents of Form C from the subject Member. The Panel will then decide on the sanction to be imposed on

the subject Member (if any).

- (v) Whether or not there has been a breach of the Code of Conduct, the Panel can decide to make general recommendations to the Council in the light of the case they have just heard with a view to promoting high standards of conduct among Members.

9.4 The Procedure Rules recommended and attached at Appendix 6 are closely based on the model hearing procedure issued by Standards for England in 2008. The main differences suggested by Haringey's officers are as follows:

- (i) Making express reference to the power of the Panel, through its Chair, to amend the Procedure Rules where necessary or desirable.
- (ii) Express provision for fixing the date of the hearing.
- (iii) Express provision for the procedure in the event of the non-attendance of either party at the hearing.
- (iv) Express provision for modifying the Rules in the event that there are two or more subject Members involved in the same hearing.
- (v) Express reference to the role of the Committee Clerk.

## 10. Appendices

Appendix 1 - Form A – Subject Member's Response to Evidence in the Investigation Report.

Appendix 2 – Form B – Subject Member's Request to Introduce Additional Evidence

Appendix 3 – Form C – Subject Member's Representations if found to have breached the Code of Conduct.

Appendix 4 – Form D – Subject Member's Views/Information about Conduct of the Hearing.

Appendix 5 – Form E – Subject Member's Request to Call Witnesses.

Appendix 6 – Proposed Procedure Rules for Local Determination Hearings.