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From: Alex Riley [mailto:alex@alexrileywines.co.uk]

Sent: 25 August 2006 10:10

To: McMillan Fiona

Subject: FW: Local Investigations and Local Hearings

Dear Mrs McMillan

Herewith some further comments on Items 12 and 13. It contains many useful points.

Regards

Alex Riley

Local investigations procedure:

Page 48

Last paragraph of introduction: being inquisitorial rather than adversarial is all very trendy, but unless managed carefully, it presents a risk of creating conflicts of interest by merging the roles of "prosecutor" and "magistrate."

Footnote 9: this bans the monitoring officer from being both investigating officer and legal advisor, presumably because holding both roles would be a conflict of interest, but fails to ban some other person from holding both roles.

Page 49

Paragraph 2b: "The Monitoring Officer shall provide the Councillor with a copy of any report received from the Ethical Standards Officer;" promptly, I hope.

Paragraph 2c: This may make it difficult to form a panel that can come to the hearing with a fresh mind.

Footnote 10: Making the momentous decision to proceed with an investigation without informing the defendant seems a very heavy burden for one person alone; maybe it would benefit from the involvement of a second, independent person.

Page 50

Paragraph 2f(iv:) I think maybe this was supposed to read "Providing the Investigating Officer with details of..."

Paragraph 2f-g: The same person being in charge of gathering both "prosecution" and "defence" evidence may present a risk of conflict of interest (similar to your point h.)

Page 52

Paragraph 3e(ii:) What happens if the Investigating Officer "requires" a document, access to which is restricted under (e.g.) the Data Protection

Act?

Paragraph 3f(ii): Maybe "arranges" was supposed to read "may arrange."

Page 54

Paragraph 5a: This fails to allow for the possibility that no amendment is necessary.

Page 55

Paragraph 5e: This doesn't specify what happens if the Councillor does object to publication. Is the Monitoring Officer allowed to go ahead and publish anyway? (Incidentally, note that this paragraph refers to a situation where the Investigating Officer has concluded that the Councillor is innocent: it looks like your point m assumed otherwise.)

Paragraph 5f(iv): Both natural justice and paragraph 9d(i) of the draft local hearing procedure require that the Councillor is also allowed to call witnesses. I reckon this deserves a mention here (similar to your point q.)

Local hearings procedure

Page 57

Paragraph 3: If I remember correctly (which is not guaranteed,) the legislation gives the Councillor a right to be accompanied by someone other than a solicitor or counsel, without needing the Committee's permission.

Footnote 2: This potentially contradicts footnote 9 and paragraph 1b of the draft local investigation procedure, whereby someone other than the Monitoring Officer may be Investigating Officer.

Page 59

Paragraph 5a: According to paragraph 5d of the draft local investigation procedure, the Standards Committee's authorization is needed to arrange a hearing. Yet here we have the Monitoring Officer being told to do it unilaterally.

Page 61

Paragraph 9b: here we have the legal advisor or the Democratic Services Officer presenting a report, when I've seen no procedure for them to prepare any such report.

Page 62

Paragraph 9b(ii): This clause would be unable to cope with circumstances where the Councillor did identify points of difference during the pre-hearing process, but these were not highlighted during the presentation of the report.

Paragraph 9b(ii): Stopping the defendant from introducing evidence, just because the defendant had not notified the Investigating Officer of that evidence in advance, is seriously unjust, and would never be allowed in a

criminal trial.

Paragraph 9c(iii): Is the Standards Committee under any obligation to ask the prosecution witness any questions that the Councillor suggests?

Footnote 9: Items (i) and (iii) together contradict footnote 9 of the draft local investigation procedure.

Page 63

Paragraph 9d(ii): Is the Standards Committee under any obligation to ask the defence witness any questions that the investigating officer suggests?

Paragraph 9g: The ruling that the Standards Committee may adjourn to obtain additional evidence "on not more than one occasion" seems to put speed before thoroughness and justice.

Paragraph 9h(iii): In the courts, when punitive sanctions are available (i.e. in criminal cases,) a guilty verdict requires proof beyond reasonable doubt, not just "on balance of probabilities."

Page 64

Paragraph 10c: There is, again, no indication of whether the authority is bound by the exonerated Councillor's request for no publicity.

Page 65

Paragraph 11f: I think the clause in brackets may have been wrongly placed.

Footnote 10(iv): I think there's some sort of typo here.