

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Standards Committee

8 November 2006

**AUTHOR/S:** Chief Executive / Deputy Monitoring Officer

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### PROCEDURE FOR LOCAL STANDARDS COMMITTEE HEARINGS

#### Purpose

1. To examine a model procedure for Standards Committee local hearings and decide whether to recommend to Council its adoption as the Council's procedure.

#### Background

2. Under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 Ethical Standards Officers (ESOs) can refer completed investigation reports to monitoring officers for Standards Committees to determine whether or not a member has failed to follow the Code of Conduct and, if so, what penalty should be applied, if any. Under Section 6(2) of these regulations, Standards Committees must have regard to any guidance issued by the Standards Board for England (SBE) as well as the legislation. This guidance is issued in the form of a publication "Standards Committee determinations – Guidance for Monitoring Officers and Standards Committees", which was issued in July 2003.
3. At the last meeting of Standards Committee the Chairman had introduced the draft Procedure for Local Standards Hearings and noted that representations had been made by two Committee members, copies of which were available on the Council's website and which would be circulated to all Committee members. Rather than attempt to re-draft the procedure at the current meeting, the Committee felt that this procedure be adjourned to an extra-ordinary meeting. The Deputy Monitoring Officer undertook to receive comments from Committee members before a set deadline of 25 August 2006 and to incorporate into a revised procedure all straightforward drafting issues. A report would be prepared on substantive issues of principle for discussion. Due to a difficulty in organising an extra-ordinary meeting the item has been returned to this agenda.
4. The Deputy Monitoring Officer explained that the original procedure had been drafted by Peter Keith-Lucas, a partner with the Bevan Brittan firm of solicitors in London, and had been included as part of a resource package at a training exercise. If the committee decides to adopt this procedure it would be forwarded to the Constitution Review Working Party and then to full Council for incorporation into the Constitution

#### Considerations

5. The council already has a Standards Committee Hearings Procedure Protocol contained in its Constitution, which was drafted to incorporate the legislation at the time the constitution was drafted.
6. The model procedure which is presented for discussion is an attempt to incorporate all the legislation and SBE guidance in one document. The primary legislation is the Local Government Act 2000 (Part III) which provides a broad framework. The specific details for conducting standards committee hearings are to be found in

secondary legislation – The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 and the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004. The Local Government Act 2003 also introduced two new sections, 54A and 82A, which have implications for standards committee hearings. Section 54A gives standards committees powers to appoint sub-committees to discharge their functions (including the function of conducting a hearing) and Section 82A gives monitoring officers powers to nominate another person to carry out their functions. All the legislation must also be read alongside the SBE guidance.

7. It is important to note that new Regulations governing local investigations and hearings are likely to be issued by the Government alongside the legislative change which will move the focus to a more locally-based framework. Many of the existing concerns about the processes may be met by these new Regulations.
8. The key differences between the new model procedure and the existing procedure are:
  - (a) it incorporates the pre-hearing procedure that must be followed
  - (b) it divides the procedure to be followed into those hearings which follow an ESO's report and those hearings which follow a local investigation
  - (c) it incorporates preliminary procedural issues such what to do if the subject member does not turn up at the hearing and the issue of whether the hearing should be in public
  - (d) it utilises the name of "Investigating Officer" to mean either the ESO who referred the report to the council or their nominated representative or, in the case of a local investigation, the Monitoring Officer or their nominated representative.
9. The model procedures have been amended to take into account any typographical or grammatical errors.
10. The Standards Committee has the right to govern its own procedures, subject to the legislation and guidance, but like all public bodies it has an obligation to ensure that its procedures are procedurally fair. This incorporates the right to a fair hearing and the absence of bias. Where members are taking procedural decisions they must be taken in the light of these over-arching obligations.
11. There are some outstanding issues that were raised as part of the consultation as questions and which can be answered by reference to the legislation or guidance as follows:
  - (a) In Paragraph 3 of the Procedure does the Councillor have to seek the permission of the Committee before being represented or accompanied by someone other than a solicitor or counsel?

Yes - the 2003 Regulations 6(7) state that the prior consent of the Committee is necessary in these circumstances and Page 8 of the SBE guidance refers to this as well.
  - (b) In Paragraph 5 (e) of the procedure on a finding of no breach what if the Councillors doesn't want publication of this decision?

The 2004 Regulations insert a new section 5(10) which states that such a notice shall not be published if a member so requests.

- (c) Paragraph 9 (b) – Should it be the Monitoring Officer presenting the pre-hearing process summary report?

The legislation and guidance do not cover this point.

- (d) Paragraph 9 (b) (ii) – Comments were received that this was unjust and surely would not happen in a criminal trial?

This procedure is not akin to a criminal trial. In civil litigation each party must make disclosure of exactly which evidence they intend to rely on and no other evidence is allowed without the consent of the judge. Otherwise the other party is not given the opportunity to produce evidence in rebuttal if they are surprised with new evidence on the day of the hearing.

- (e) In Paragraph 9(g) why can the Committee only adjourn to obtain additional evidence on “no more than one occasion”?

This is stated in the 2004 Regulation as the newly inserted section 6(9).

- (f) In Paragraph 9(h) (iii) why is “beyond reasonable doubt” not the standard of proof used?

It is the civil standard of proof (ie. the finding should be on a “balance of probabilities”) that is used as these proceedings are civil in nature, not criminal.

### Options

12. There are three options available to the Standards Committee:
- (a) to retain the existing Standards Committee Hearings Procedure Protocol;
  - (b) to amend the model procedure as necessary before recommending to Council its adoption; or
  - (c) to recommend to Council the adoption of the model procedure in its current form.

### Implications

13. Financial	None
Legal	Will need to change Constitution if new procedure adopted
Staffing	None
Risk Management	None
Equal Opportunities	None

### Consultations

14. All members of Standards Committee were asked to submit by 25 August 2006 their comments a set deadline on the model procedure to the Deputy Monitoring Officer. Parish Councillor M Farrar District and Councillor A Riley submitted comments.

### Effect on Annual Priorities and Corporate Objectives

15. Affordable Homes	None
Customer Service	None

Northstowe and other growth areas	None
Quality, Accessible Services	None
Village Life	None
Sustainability	None
Partnership	None

### **Conclusions/Summary**

16. The Committee should decide if it wants to have a procedure which incorporates all the information surrounding the process in one document or whether it wishes to retain the existing procedure to be read alongside SBE guidance.
17. If it wishes to adopt the model procedure then the Committee needs to decide if any amendments are necessary.
18. If the Committee chooses not to follow the guidance issued by the SBE in relation to hearings procedure then it needs to have good reasons for departing from it so that it can justify its decision if there is a subsequent challenge.

### **Recommendations**

19. That the Model Procedure be recommended to Council for adoption as it is useful to have all the information and up-to-date legislation in one document. It is recognised that some members of the committee may feel that the model procedure requires further amendment and on that basis Option (b) is recommended.

**Background Papers:** the following background papers were used in the preparation of this report:

Procedure for Local Standards Hearings  
Standards Committee Hearings Procedure Protocol  
SBE publication: "Standards Committee Determinations – Guidance for Monitoring Officers and Standards Committees"  
Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (SI 2003/1483)  
Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 (SI 2004/2617)  
Local Government Act 2000 (Part III)

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