

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Standards Committee

10 December 2008

AUTHOR/S: Monitoring Officer

CONSIDERATION MEETINGS OF HEARINGS PANEL – PUBLIC OR PRIVATE?

Purpose

1. To inform Standards Committee of a decision of Hearings Panel on 12 November 2008 to hold that 'consideration' meeting in private and exclude all public and the press from those proceedings and to ask Standards Committee to confirm that this is the correct approach for future 'consideration' meetings.

Background

2. Where an Investigating Officer's report concludes in a finding of 'No Breach', a 'consideration' meeting of Hearings Panel must be convened to accept that finding or otherwise.

The following advice was circulated to members of Hearings Panel prior to the recent meeting and to two Members of SCDC who had expressed interest in attending:

Advice on Exempt Information

Assessment and Review Panel meetings under the 'new regime' must be held in private and are not subject to S.(5) of LGA 1972 governing publication of agendas and minutes.

Hearings Panel meetings are subject to S.(5) of LGA 1972, hence the publication of the agenda to the world at large, with the necessary 5 clear days notice. Hence the world at large has been invited to those proceedings.

As officers we have decided that there is sufficient justification to exempt the reports from publication, but it is for the Panel to decide whether to confirm that decision and to hold the 'consideration' part of the forthcoming meeting in private or public, hence item 3 of the agenda.

The 'Guidance' is ambiguous to say the least,

"Despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a meeting. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the meeting. In most cases, the public interest in transparent decision-making by the standards committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has not yet been determined."

In full at page 5 of: [Hearings Guidance](#).

Agenda Item 3

Therefore (following discussion), on a resolution of the Panel, carried by a majority of those voting (the chairman has an additional vote should there be equality in votes), the public (including the press) will be excluded from the meeting and the meeting shall go into private session, or the public (including the press) shall be allowed to stay and the meeting shall stay in public session.

Who are the public?

The general public and press are easily identified, but we must consider the position of SCDC Members and Members of Standards Committee.

*SCDC Members are not normally considered to be members of the public in this sense, but are accustomed to being excluded with the public when meetings of the authority (especially those fulfilling a quasi-judicial function) go into private session. The basis of the common law is the relatively simple 'need to know' principle, and relates to documents as well as attendance. Can the/a councillor demonstrate that he/she needs the information before the committee to enable him/them to carry out his/their duties as a councillor properly. The decision of the House of Lords in *City of Birmingham District Council v. O and another* (1983) would support the exclusion of SCDC members from Hearings Panel 'consideration' meetings.*

*The decision in the case of *R v. Hackney London Borough Council, ex parte Gamper* (1985) draws a distinction between a member of the authority and a member of a parent committee, and would not support the exclusion of members of Standards Committee, as the parent committee, from these proceedings.*

In Conclusion

A decision by Hearings Panel to exclude press and public should also exclude members of SCDC unless they are members of Standards Committee. Non Council members of Standards Committee would similarly be able to stay as the meeting passes into private session.

3. Draft Decision of Hearings Panel 12/11/08

Members considered the public interest and possible benefits of transparent decision making in public, carefully weighing these against the interests of the subject member.

*On a motion from Mr M Farrar seconded by Councillor Mrs CAED Murfitt and unanimously carried, Hearings Panel **RESOLVED** that*

- i) in accordance with Section 100A(4) of the Local Government Act 1972 members of the public (including the press) be excluded from this meeting of Hearings Panel during discussion of the following item on the grounds that such discussion would involve the likely disclosure of exempt information as defined in paragraph 7(c) of Part 1 of Schedule 12A of that Act, and that*
- ii in future all such meetings of the Hearings Panel to consider the report of an Investigating Officer should be held in private on the same grounds, subject to confirmation of this approach by the full Standards Committee at its next meeting.*

Considerations

- 4.** The possible benefits of transparent decision making, with that public interest, as against the interests of the subject member at 'consideration' meetings of Hearings

Panel convened to accept or otherwise an Investigating Officer's report of a finding of 'No Breach'.

Options

5. To decide that: all future 'consideration' meetings of Hearings Panel be held:
 - i) in private,
 - ii) in public, or
 - iii) the decision to exclude press and public be considered at each and every meeting

Recommendation

6. It is recommended that Standards Committee resolve to hold all future 'consideration' meetings of Hearings Panel in private.

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

Minutes of meeting of Standards Committee Hearings Panel, 12 November 2008
SBE Guidance on Hearings
Knowles on Local Authority Meetings (Third Edition)

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