

**Title:** Local Investigations and Hearings -  
Issues for Clarification

**Reporting Officer:** Tim Darsley - Monitoring Officer

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**1. Purpose**

To review issues and questions arising from local hearings and to provide specialist advice in response.

**2. Background**

The District Council has undertaken two local hearings so far and in both, a number of issues and questions arose. The Standards Board guidance only goes so far and it was therefore felt that some further advice and clarification would be helpful.

Following the last hearing, the members of the Sub Committee and the officers who were involved were asked to identify questions or issues that they felt needed clarification. These were compiled into a composite list which formed the basis for seeking specialist legal advice from Peter Keith-Lucas, the Local Government Partner at Bevan Brittan. Peter is a nationally known and respected specialist on the Local Government Act 2000 and standards matters. He has conducted a number of high profile inquiries, including acting as Investigating Officer for the Greater London Authority into the complaint against Ken Livingstone, Mayor of London.

**3. Key Issues**

The issues identified and the advice relating to each are shown in Appendix 1. The advice is hopefully self explanatory but a number of key areas can be highlighted:

- The investigating officer has discretion to manage the investigation and identify and present relevant information.
- Investigators should seek to identify disputed and undisputed areas, concentrate on the disputed areas and forward findings of fact.
- The Council's local procedure rules contained in the Constitution should be followed for the pre-hearing and hearing stages.
- There should no Member involvement in the pre-hearing process.

- During an investigation, information collected should remain confidential. Following the issue of the final report, all evidence and background information should be available to the subject member and other parties to the process.
- The role of Members in the Hearing Sub-Committee is of lay people, bringing their judgement to bear on information put before them. Technical or legal expertise is not expected.
- Hearings should be managed fairly but, if necessary, robustly, concentrating on disputed areas.
- The forthcoming devolved arrangements suggest the need for a larger Standards Committee.

#### **4. Risk Management Implications**

Poor handling of local hearings may lead to legal challenges and additional costs to the Council. It is also likely to damage to the reputation of the Council.

Acting on the specialist advice that has been obtained will minimise these risks.

#### **5. Finance and Performance Implications**

There are no financial implications to this report. The advice will contribute to the performance of the Standards Committee.

#### **6. Legal and Human Rights Implications**

The legal advice obtained builds upon the underlying legislation and regulations.

#### **7. The Next Steps**

The advice will be taken into account in future local hearings.

#### **8. Recommendation**

It is recommended that the additional advice be accepted and acted upon in future local hearings.

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## Standards Committee : Investigations and Hearings

## Issues for Clarification

<b>1. Role of Investigating Officer in Managing Complaint</b>	
<ul style="list-style-type: none"> <li>• Ability to interpret complaint?</li> </ul>	Yes. Complaint and allegation should be clarified and confirmed with complainant. Scope of investigation is limited to what is referred from the Standards Board.
<ul style="list-style-type: none"> <li>• Ability to review and filter material?</li> </ul>	Yes - legitimate and necessary to identify the relevant evidence and information. Investigation and report should be balanced.
<ul style="list-style-type: none"> <li>• Ability to establish the facts?</li> </ul>	Yes. Investigation aims to establish facts and should include findings of fact.
<ul style="list-style-type: none"> <li>• Must all material be put before hearing regardless of its relevance?</li> </ul>	No. Relevant information to be presented in report. Other information and background papers should be listed and available for inspection if required.
<b>2. Conduct of Investigation</b>	
<ul style="list-style-type: none"> <li>• Ability to take some evidence as read (e.g. written material which is undisputed)?</li> </ul>	Yes.
<ul style="list-style-type: none"> <li>• Need to corroborate evidence?</li> </ul>	Yes, where disputed. Not required for undisputed evidence.
<ul style="list-style-type: none"> <li>• Need for witness statements?</li> </ul>	Yes for main participants. Not necessarily verbatim.
<ul style="list-style-type: none"> <li>• Responsibility to manage investigation within framework of regulations and guidance?</li> </ul>	Yes. Investigator's role is to undertake investigation on behalf of and within framework set by the Monitoring Officer.
<ul style="list-style-type: none"> <li>• Any involvement by Standards Committee members generally in management of investigation?</li> </ul>	No. Committee members play no part and should remain separate from investigation.
<ul style="list-style-type: none"> <li>• Any involvement by Panel specifically in management of investigation?</li> </ul>	No. Members of the hearing sub-committee play no part and should remain strictly separate from investigation.

<b>3. Report of Investigation</b>	
<ul style="list-style-type: none"> <li>• Ability of investigating officer to judge format and presentation of report according to the nature of the case?</li> <li>• Need for standard format?</li> <li>• Need to include all complaint material and evidence in report or discretion to edit and summarise?</li> </ul>	<p>Yes. Standards Board reports would indicate best practice.</p> <p>Desirable. Standards Board reports would indicate best practice.</p> <p>Discretion to present relevant material. Report should be thorough and balanced. Background material should be listed in report and be available.</p>
<b>4. Pre Hearing Process</b>	
<ul style="list-style-type: none"> <li>• Which guidance applies - July 2003 or November 2004 (e.g. who leads process - Chair or Monitoring Officer)?</li> </ul>	<p>Both are guidance and not mandatory. Local process should 'have regard to'. 2003 guidance is appropriate for ESO investigations, 2004 guidance is appropriate for local investigations. The Council has adopted procedure rules for local standards hearings which are consistent with the principles of SBE guidance (Constitution page 158). Our local hearings should be carried out in accordance with these.</p>
<ul style="list-style-type: none"> <li>• Member involvement?</li> </ul>	<p>There should be no member involvement in the pre-hearing process.</p>
<ul style="list-style-type: none"> <li>• Ability to manage process robustly and deal with delays?</li> </ul>	<p>Yes - by Monitoring Officer backed by Chair.</p>
<ul style="list-style-type: none"> <li>• Should subject member provide his defence in advance?</li> </ul>	<p>No requirement for member to give notice of case.</p>
<b>5. Allegations of Bias Against Monitoring Officer or other Officers</b>	
<ul style="list-style-type: none"> <li>• Who responds?</li> <li>• How to respond?</li> <li>• Any process to be followed?</li> <li>• Need for a local protocol?</li> </ul>	<p>Should be dealt with separately from investigation / hearing process. Complaint is about conduct of a Council officer - as such, it should be directed to the Chief Executive.</p> <p>Chief Executive to deal with matter in accordance with normal procedure.</p> <p>See above.</p> <p>No.</p>

<b>6. Disclosure</b>	
<ul style="list-style-type: none"> <li>• Disclosure of all documents relating to investigation prior to hearing?</li> </ul>	<p>Information obtained during an investigation should be treated as confidential until the investigation is completed.</p> <p>Draft report will provide member with information on evidence collected and on draft findings.</p> <p>Following issue of final report, evidence and background information should be available to subject member in lead up to hearing.</p>
<b>7. Status of Sub Committee</b>	
<ul style="list-style-type: none"> <li>• A 'court' or an administrative body?</li> <li>• Implications of this for procedure?</li> <li>• Implications of this for collection and standard of evidence?</li> </ul>	<p>Not a court. Status of an administrative tribunal.</p> <p>Statutory requirements are as set out in the 2003/2004 Regulations.</p> <p>Hearsay permitted, though first hand evidence preferred. Conclusions are on the balance of probability.</p>
<b>8. Role of Members of Sub Committee</b>	
<ul style="list-style-type: none"> <li>• Lay people, technical experts or legal experts?</li> <li>• Decision makers, arbitrators or conciliators?</li> <li>• Any conflicts with other roles as mentors, advisors of councillors or guardians of the constitution?</li> </ul>	<p>Lay people. Technical and legal expertise not expected. Council members will bring knowledge of local government and local context.</p> <p>Decision makers on whether there has been a breach. Underlying objective is to improve standards.</p> <p>No. Different roles in different places.</p>
<b>9. Scope of Sub Committee</b>	
<ul style="list-style-type: none"> <li>• Limited to what is in front of committee? or</li> <li>• Reviewing all evidence, reviewing conduct of investigation, reviewing format and contents of investigation report?</li> </ul>	<p>Yes - ie report of investigation, witnesses and member. Can adjourn once for more evidence to be obtained. Can go into background documents if necessary.</p> <p>No. Members do not carry out or re-run the investigation. Establish and decide upon facts. Then decide if breach has occurred.</p>

<b>10. Advice to Sub Committee</b>	
<ul style="list-style-type: none"> <li>Limited to one advisor (legal advisor)? or</li> <li>Able to have legal advisor plus support on other matters (e.g. background, context, lead up to hearing, SBE guidance) from non-lawyer monitoring officer?</li> <li>Should Sub Committee act or deliberate with no officers present?</li> </ul>	<p>One legal advisor.</p> <p>Monitoring officer can provide background, procedure followed and key issues in a covering report - legal advisor would present this at the hearing. Otherwise recommended that Monitoring Officer not involved in hearing.</p> <p>No. At least committee clerk should always be present. Legal advisor can advise sub committee during adjournments, and repeat advice in the hearing, or provide advice in the hearing.</p>
<b>11. Conduct of Hearing</b>	
<ul style="list-style-type: none"> <li>How to achieve effective management of hearing?</li> <li>Balance of time between investigating officer and subject member?</li> <li>Witnesses?</li> <li>Legalistic or 'common sense' approach?</li> </ul>	<p>Chair should structure hearing and manage time accordingly. Robust and fair chairing. Assume report has been read. Don't dwell on undisputed areas.</p> <p>Consider pre-hearing summary. Investigating Officer should summarise report and present evidence. No cross examination. Member responds. No cross examination. No requirement for parity of time - member will usually take more.</p> <p>May be called by investigating officer or member to address points of difference. Committee entitled to refuse to hear from witnesses if felt not necessary for their determination.</p> <p>Committee is of lay members drawing on their judgement.</p>
<b>12. Appointment of sub-committees</b>	
<ul style="list-style-type: none"> <li>Appoint for each hearing or standing sub-committee?</li> <li>Implications for size of Standards Committee?</li> </ul>	<p>Standing sub committee recommended, but subject to review in the light of new responsibilities.</p> <p>New devolved arrangements may need separation of referral, review and hearing roles. Suggests need for a larger Standards Committee</p>