

AGENDA ITEM 6

**REPORT TO CONSIDERATION
SUB- COMMITTEE**

25 JANUARY 2010

**GUIDANCE ON EXCLUDING THE
PRESS AND PUBLIC FROM
HEARINGS AND MEETINGS**



Stockton-on-Tees

BOROUGH COUNCIL

Stockton-on-Tees Borough Council Standards Committee Determinations

Guidance on excluding the public from Hearings or Meetings

Introduction

1. In line with the basic principles of freedom of, and access to information, the Standards Board for England has recommended that Standards Committee (Sub-Committee) hearings or meetings should be held in public wherever possible, in order to make sure that the hearing or meeting process is, and is seen to be open and fair. However, it is acknowledged that there may be some circumstances where some or, on rare occasions all of the hearing or meeting should be held in private.

Confidential or Exempt Information

2. At a hearing or meeting, the relevant Standards Committee Sub-Committee will consider whether or not the public should be excluded from any part of the hearing or meeting, in accordance with the Standards Committee (England) Regulations 2008 ("2008 Regulations") and Part VA of the Local Government Act 1972 (as modified in relation to local determinations by Standards Committees). If the Sub-Committee considers that "confidential information" is likely to be revealed during the hearing or meeting, the Sub-Committee **must** exclude the press and public by law. "Confidential information" is defined for these purposes to mean information that has been provided by a Government Department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
3. When a Sub-Committee is convened for a hearing under regulation 18 or for a meeting under regulation 17 of the 2008 Regulations, it is subject to regulation 8(6) of those Regulations, which allows the consideration of any information presented for that purpose to be regarded as exempt information under the Local Government Act 1972.
4. As with all exempt information decisions, the Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. When advising on this matter the Monitoring Officer should consider the effect of Regulation 20(2) of the 2008 Regulations. This regulation allows the subject member to prohibit the publication of a notice, stating that the Sub-Committee has found that there has been no failure to comply with the Code.

5. Despite the ability of the subject member to prohibit the publication of such a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a hearing or a meeting. Nor does it always have to result in excluding details of the complaint from any report sent out in advance of the hearing or meeting. In most cases, the public interest in transparent decision-making by the Sub-Committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has not yet been determined.
6. Whilst in most cases, all parties will agree that the hearing or meeting should take place in public, it is sensible to seek the views of the relevant parties as early as possible to allow for legal advice to be obtained where and when required.
7. The Sub-Committee has a discretion under the Local Government Act 1972 and the 2008 Regulations as to whether or not to exclude the press and public from access to any or all of the hearing or meeting and from the information to be considered at the same. The Sub-Committee must, therefore, resolve at the hearing or meeting to exclude the press and public if it considers that the public interest in maintaining an exemption outweighs the public interest in disclosing the information.
8. Where the Sub-Committee does not resolve to exclude the press and public from the meeting or hearing and from access to the information to be considered at it, the Proper Officer or his designated Officer at the meeting or hearing will then be required to provide copies of the agenda and reports to the press and public and other members of the Council, and to permit inspection of any background papers.

Human Rights

9. When considering whether or not to exercise the discretion to exclude the press and public, the Sub-Committee must also bear in mind the provisions of the European Convention on Human Rights ("the Convention") and the Human Rights Act 2000.
10. Article 6 of the Convention gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The Sub-Committee also has a duty to act fairly and in line with the rules of natural justice.
11. Article 6 provides that judgement shall be pronounced publicly, but that the press and public may be excluded from all or part of a hearing or meeting if it is in the interests of:-
 - a. morals;
 - b. public order;
 - c. justice;
 - d. national security in a democratic society; or
 - e. protecting young people under 18 and the private lives of anyone involved.
12. There should therefore be a public hearing of a matter unless the Sub-Committee decides that there is good reason, which falls within one of the five categories above (11 a to e), for the public to be excluded.
13. Conflicting convention rights will often have to be balanced against each other:-
 - (i) the Sub-Committee must act in line with Article 10 of the Convention, which sets out the right for people to "receive and impart information and ideas without interference by a public authority" eg a party to a Sub-Committee hearing or meeting may wish the whole of the proceedings to be open to the

public. Any restrictions on this right must be "prescribed by law and necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary". Restricting public access to part of a hearing or meeting on the basis that confidential or exempt information will or is likely to be disclosed would represent a restriction "prescribed by law".

- ii. the Sub-Committee must also, however, act in line with Article 8 of the Convention. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Sub-Committee) may interfere with this right unless it is:-
 - a. in line with the law (such as the requirements for publication of the agenda, reports and background papers as set out in Section 100A to 100K of the Local Government Act 1972); and
 - b. necessary in a democratic society in the interests of:-
 - i. national security;
 - ii. public safety;
 - iii. the economic wellbeing of the country;
 - iv. preventing crime or disorder;
 - v. protecting people's health and morals (which would include protecting standards of behaviour in public life); or
 - vi. protecting people's rights and freedoms.
 - iii. there is, however, a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. The exception in b.v. above would therefore apply.
14. For these reasons a hearing or meeting is likely to be held in public unless the Sub-Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing and that this should override the public interest.
 15. In relation to people's rights under both Articles 8 and 10 of the Convention, any interference with or restriction of those rights must be "necessary in a democratic society". A measure will only be "necessary" if it meets "a pressing social need", and any restriction on people's right must be "proportionate".
 16. The Standards Board for England has recommended that a Standards Committee (Sub-Committee) should move to a private room when considering its decisions. It is not considered that this will conflict with the rights under the Convention or the duty to act fairly.