

SUMMARY OF THE CASE TRIBUNALS (ENGLAND) REGULATIONS 2008

Report of the City Solicitor

1. As members are aware, in May 2008, the new devolved regime for the assessment, referral, investigation and hearing of complaints relating to members' misconduct was introduced.
2. In most cases, it is envisaged that authorities will be able to deal with the investigation of complaints themselves. However, there are provisions to allow for cases to be referred to the Standards Board to be investigated by an ethical standards officer (ESO) where, for example, there are issues in the case, or public interest considerations, which make it difficult for an authority's standards committee to deal with it.
3. The Government has now introduced the Case Tribunals (England) Regulations 2008 which came into effect on 12 December 2008 and which introduce provisions relating to matters which have been referred to a case tribunal of the Adjudication Panel to deal with.
4. The regulations make provision regarding the sanctions available to a case tribunal where it has determined that a local authority member has failed to comply with the Code of Conduct. The sanctions available range from censuring a member or requiring them to participate in a process of conciliation, to disqualifying a member from office for 5 years. The availability to a case tribunal of a wider range of sanctions than those available to a standards committee reflects that it would deal with the more serious cases.
5. The regulations also specify the content and effect of decision notices served on a local authority standards committee by a case tribunal which, as one would expect, must contain such matters as the details of any failure to comply with the Code, any sanction imposed and the date from which it will take effect. The President or Deputy President of the Adjudication Panel may suspend the effect of a notice if requested to do so by the member who is the subject of the complaint, if they intend to seek leave to appeal to the High Court.
6. The regulations also set out the circumstances in which a reference to the Adjudication Panel may be withdrawn by an ESO which are
 - if either a sentence of imprisonment for a period of not less than 3 months has been passed on the member concerned or
 - the ESO is satisfied that the matter is materially less serious than appeared to be the case when it was referred to the President of the Adjudication Panel and that as a consequence is not sufficiently serious to be determined by a case tribunal or standards committee

or that the pursuit of the matter would not be in the public interest,
or

- the President or Deputy President of the Adjudication Panel has invited the ESO to withdraw the reference.

These provisions therefore give scope for a matter to be discontinued, rather than referred back to the relevant standards committee for determination.

7. Unless the President or Deputy President agrees otherwise, the ESO must give notice of a proposal to withdraw a referral to the person who made the complaint, the member who is the subject of the complaint, the relevant standards committee and the monitoring officer and he must consider any representations received.
8. The consent of the President or Deputy President is required to the withdrawal of the reference. The President or Deputy President must give reasons in writing for the giving of an invitation to an ESO to withdraw the reference or for giving consent to a withdrawal.

Recommendations

Members are requested to note this report.