

Meeting: STANDARDS COMMITTEE

Agenda Item:

Date: 15 July 2009

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**THE STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND)
REGULATIONS 2009 AND STANDARDS BOARD FOR ENGLAND GUIDANCE
ON OTHER ACTION**

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1 PURPOSE

- 1.1 To advise the Committee on new statutory provisions for Standards Board intervention, Joint Standards Committees and dispensation and of new Guidance from the Standards Board for England on Other Action.

2 RECOMMENDATIONS

- 2.1 To note and consider the report.
- 2.2 That the Committee adopts the assessment criteria for referring a matter which is the subject of a complaint set out in paragraph 23 of the Guidance on Other Action issued by the Standards Board for England.

3 DETAILS

- 3.1 The Standards Committee (Further Provisions) (England) Regulations 2009 ("the Regulations") came into force in June. These:
- 3.1.1 permit the Standards Board for England ('SBE') to suspend the functions of a local Standards Committee and either discharge the Standards Committee functions itself or arrange for another authority's Standards Committee to do so;
- 3.1.2 provide a power to establish joint Standards Committees;
- 3.1.3 Extend the powers of the Standards Committee to grant Members' dispensations to participate in a matter where they have a prejudicial interest.

4 SUSPENSION OF STANDARDS COMMITTEE FUNCTIONS

- 4.1 The function of initial assessment of complaints of breaches of Code of Conduct by members was transferred from the Standards Board to the Standards Committees

(or rather the Assessment/Referrals Sub-Committees) of local authorities from 8 May 2008. The Regulations now give a power for the Standards Board to intervene in an individual authority.

4.2 An intervention can be triggered by the Standards Board where:

4.2.1 It is the view that the authority's Standards Committee has failed:

- to have regard to SBE guidance;
- to comply with a direction from SBE;
- to carry out its functions within a reasonable time or in a reasonable manner;

4.2.2 it is of the view that the authority's Monitoring Officer has failed to carry out his/her functions within a reasonable time or in a reasonable manner;

4.2.3 the authority or its Standards Committee has requested the Standards Board to intervene.

4.3 Where the Standards Board considers intervention, it must give the authority notice of its intentions and reasons and give the authority at least 28 days to respond before making a direction. The effect of a direction is to transfer the initial assessment function to either the Standards Board itself, or to the Standards Committee of another named authority ("the substitute authority"). In practice, as the Standards Board is not staffed up to resume the assessment function, the preferred route will be to transfer the function to a substitute authority, but that is likely to be dependent on the two authorities reaching agreement on costs.

4.4 The intervention is strictly in respect of the initial assessment function, so the regulations give a discretion to the Standards Board to use their own investigators and the Adjudication Panel for hearings (or the substitute authority to use its own Monitoring Officer and Hearings Sub-Committee) or to use the Monitoring Officer and/or the Monitoring Officer and/or Hearings Sub-Committee of the original authority if that is appropriate.

4.5 An intervention can be terminated by the Standards Board at any time.

5 JOINT STANDARDS COMMITTEES

5.1 The regulations give a discretion for two or more local authorities to set up a Joint Standards Committee, and make it clear that such a Joint Standards Committee discharge all of each participating authority's standards functions, or just some of the standards functions. Where a function is allocated to the Joint Standards Committee, it cannot then be discharged by the Standards Committee of an individual participating authority.

5.2 Where authorities wish to establish a Joint Standards Committee, the full Council of each participating authority would need to resolve:

- to establish the Joint Standards Committee;
- which standards functions are to be allocated to the Joint Committee and which, if any, are to be retained by the authority's own Standards Committee;

- the administrative arrangements to support the Joint Standards Committee;
- whether standards complaints should be addressed directly to the Joint Standards Committee, or should continue to be addressed to the individual authority;
- the number of members, including Independent and Parish members, to be appointed to the Joint Standards Committee by each participating authority, and their terms of office;
- make provision for the Joint Standards Committee to appoint members to its Referrals, Review and/or Hearings Sub-Committees, as required;
- provide for the payment of allowances to members of the Joint Standards Committee;
- provide a procedure for an authority to withdraw from the Joint Standards Committee; and
- provide how the costs incurred by the Joint Standards Committee shall be shared between the participating authorities (or in default to be determined by an arbitrator).

6 DISPENSATIONS

- 6.1** The original 2002 Dispensations Regulations provided that a member who had a prejudicial interest in a matter which was coming before the authority could apply to the Standards Committee for a dispensation, and that the Standards Committee could give a dispensation to allow the member to speak and to vote on the matter at meetings. The regulations specified two grounds for dispensation:
- 6.1.1** the first ground, repeated in the new regulations, was that the business of the authority would be impeded because more than 50% of the members of the decision-making body would otherwise be prohibited from voting on the matter;
- 6.1.2** the regulations got the second ground wrong, by providing that it would apply where, because of the prejudicial interests of members, the business of the authority would be impeded because the authority was unable to comply with the proportionality requirements for Committees or Sub-Committees. The proportionality rules apply only to the process of appointment of Committees and Sub-Committees, and not to attendance at individual meetings, so this ground was ineffective.
- 6.2** The regulations now re-state the second ground to apply where the business of the authority will be impeded because the absence of members as a consequence of prejudicial interests would upset the political balance of the meeting to such an extent as to prejudice the outcome of voting in that meeting.
- 6.3** Where one or more members have made a written application for a dispensation, setting out why they consider that a dispensation would be desirable, the Standards Committee may only grant a dispensation if it is of the opinion that it is appropriate to grant a dispensation. A dispensation can be granted for a particular meeting or for a period, not exceeding four years. A dispensation cannot be granted for a member who is prohibited from participating at an Overview and Scrutiny Committee by virtue of having been involved in taking the original decision, or for a Cabinet Member for the exercise of delegated powers (on the basis that the appropriate course would be to refer the matter to the Leader or to full Cabinet for

decision). All dispensations are then entered in the register of members' interests.

- 6.4** In practice, the grant of dispensations is likely to be problematic because members are rarely aware of the numbers of members who are going to be debarred from the consideration of a particular matter by reason of prejudicial interests until it is too late to call a Standards Committee to consider their requests for dispensation before the meeting takes place. The re-drafted text of the second ground for a dispensation would suggest that a dispensation can now only be granted where the request is supported by clear evidence that voting at the meeting on this item will be conducted on strict party lines, and that the Standards Committee should only grant the minimum number of dispensations necessary to secure that the same result is achieved as would have been achieved had no members had prejudicial interests (ie that the majority party, if any, secures a majority of votes, but not that it secures the same degree of majority as it would otherwise have secured).

7 OTHER ACTION GUIDANCE

- 7.1** The Assessment Sub-Committee may refer a complaint to the Monitoring Officer either:
- 7.1.1** To carry out an investigation or;
 - 7.1.2** to take other steps known as 'Other Action'.
- 7.2** This Committee has already considered the extensive guidance where an investigation is called for but the Standards Board has only very recently issued guidance on Other Action. This Guidance is not mandatory. The whole of this guidance is appended to this report. Some of the key points are set out below.
- 7.3** A referral for other action is an instruction to the Monitoring Officer. The Assessment Sub-Committee has no powers to give directions to any other person and cannot compel the member complained about to cooperate.
- 7.4** A referral for other action is not a finding of fact or to be taken as any indication that the Code of Conduct has been breached. Furthermore the intention should not be for the Monitoring Officer to carry out any form of investigation into the facts leading to the complaint.
- 7.5** The secondary legislation provides that other action might consist of member training, conciliation or other steps - some suggestions of what this might be are set out in paragraphs 9-12 of the Guidance.
- 7.6** The Monitoring Officer is required to report in writing within three months of the instruction on the actions taken or proposed.
- 7.7** Referring a matter for other action precludes the Standards Committee or its sub-committees from calling for the same complaint to be investigated.
- 7.8** The Guidance suggests (para 24, page 7) that the Standards Committee establishes criteria for referring a matter for other action. A list of possible criteria is set out at paragraph 23. It is suggested that the Committee adopts all of these criteria.

APPENDICES

- Other Action Guidance Standards Board for England 26 May 2009.