

## Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 13 August 2009.

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### Subject:

The Standards Committee (Further Provisions) (England) Regulations 2009

### Summary statement:

Standards Committee is invited to consider the implications in relation to the introduction of the The Standards Committee (Further Provisions) (England) Regulations 2009.

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## 1. Summary

- 1.1 Standards Committee is invited to consider the implications in relation to the introduction of the Standards Committee (Further Provisions) (England) Regulations 2009.

## 2. Background

- 2.1 The Local Government Act 2000 sets out provisions in relation to the adoption of Standards committees and the functions which they should fulfil. Recent amendments to this Act introduce the regime for the local assessment of complaints. In addition the 2000 Act confers powers on the Secretary of State to make regulations which give more detail in relation to the appointment, procedure and functions of Standards Committee.
- 2.2 The Standards Committee (Further Provisions) (England) Regulations 2009 (“the 2009 regulations”) set out detailed provisions in relation to the power of the Standards Board for England to suspend the initial assessment functions of the Standards Committee, for the establishment by relevant authorities of joint Standards Committee and in relation to the powers of the Standards Committee to grant dispensations. This report sets out these provisions in summary for consideration by Standards Committee.

## 3. Main Issues

### 3.1 Suspension of Assessment functions

The Regulations set out the circumstances in which Standards for England can exercise its power under Section 57D of the Local Government Act 2000 to direct that the provisions in relation to local assessment no longer apply to the local Standards Committee and that complaints should be referred to another body.

- 3.2 The circumstances in which the Standards Board may exercise these powers are as follows:
- The Standards Committee has failed to have regard to guidance issued by the Standards Board.
  - The Standards Committee has failed to comply with a direction issued by the Standards Board.
  - The Standards Committee has failed to carry out its functions within a reasonable time period or in a reasonable manner.
  - The monitoring officer has failed to carry out thier functions within a reasonable time period or in a reasonable manner.
  - The authority has invited the Standards Board to exercise its power.
  - The Standards Committee has invited the Standards Board exercise its power.

3.2 These Regulations underpin the requirement to respond to complaints and review requests in a timely and reasonable manner. Members should note that the regulations also set out a procedure which must be followed by the Standards Board if it wishes to serve a direction. Notice must be served on the authority with copies to the Chair of Standards Committee and the Monitoring Officer. The Council can then submit observations to be taken into account by the Standards Board prior to deciding whether to proceed. If a decision is taken to issue a notice under these provisions another body specified in the direction will take over the appropriate role of the Standards Committee.

### 3.3 Joint Standards Committees

The Regulations set out details as to the establishment and functions of Joint Standards Committee together with the requirements in relation to adopting agreed Terms of Reference. Standards for England (formally the Standards Board for England) has issued guidance for Joint Standards Committees which is on their website at [www.standardsforengland.gov.uk](http://www.standardsforengland.gov.uk). This guidance indicates that joint arrangements are likely to be most useful where additional flexibility to deal with cases is needed or where resources are limited ensuring then would benefit the successful management of the Standards Framework in that area.

#### Advantages and Disadvantages of Joint Committees

The guidance identified the following potential advantages of Joint Committees which are:

- Avoidance of conflicts of interest through a wider pool of members
- Consistency of procedures
- Public confidence in complaints process enhanced through a greater “distance” between Standards Committees and complainants/subject members
- Greater capacity to meet the increased role and workload of Standards Committee under the Local Standards Framework.
- Efficient and effective use of resources through sharing of resources and pooling of expertise.
- Increased ability to promote high ethical standards through a raised profile of the Standards Committee.
- The ability to jointly commission and fund mediation, training and investigations.
- The opportunities to create stronger support and advisory functions.

It is noted that individual authorities may have their own reasons for forming a joint Standards Committee that are specific to their own circumstances. This might

occur, for example, where a local Standards Committee had responsibility for a significant number of Town and Parish Councils which could be shared with an adjoining authority with less Town/Parish Councils.

The Guidance has identified a number of potential difficulties with these proposals which are:

- the possibility that it could become an overly bureaucratic and more complex process, leading to a lack of clarity for the general public
- member resistance to joint standards committee
- differing resource implications for authorities within the same joint working arrangement
- loss of local ownership of standards and ethical issues

More specifically there is a general desire which is supported by Standards for England that Local standards Committee wish to be able to manage their own complaints and to ensure that the local standards framework recognises that a knowledge of the local area and local situations can have a positive impact on finding the right solutions to allegations of member misconduct.

### 3.4 Dispensations

The Local Government Act 2000 made provision for Standards Committee to grant dispensations to members who would be prevented from taking part in a matter because of the existence of a prejudicial interest. These powers were subject to the relevant authorities (Standards Committee) (Dispensations) Regulations 2002 which set out the grounds upon which a dispensation could be granted, the process which should be followed and the matters which should be considered. These Regulations revoke the 2002 Regulations and make alternative provisions.

The new provisions state that the grounds set out in the regulations for granting a dispensation are that the business of the authority would be impeded by or as a result of the prejudicial interest because:

- more than 50% of the members entitled to vote at a meeting would be prevented from so doing because of their prejudicial interests, or
- the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to such an extent as to prejudice the outcome of voting of that meeting

3.5 These provisions indicate the intention that prejudicial interest should not disrupt the political balance of any meeting of the Council or any of its Committees even if such disruption would take place only as a one off event.

3.6 A dispensation can only be granted in respect of business conducted during the period of 4 years after the date on which the dispensation is granted. The effect of the 2009 Regulations it that Standards Committees can grant dispensations for members allowing them to speak and vote at a meeting when they have prejudicial interest.

3.7 Standards Committee will need to consider criteria to be used when considering requests for dispensation. Specifically the Standards Committee will need to balance the prejudicial interest of the Member seeking the dispensation to vote on an item of business against the potential effect on the outcome of the vote if the member is unable to do so. Standards for England have published guidance on the procedure and criteria which is available on their website [www.standardsforengland.gov.uk](http://www.standardsforengland.gov.uk) . Standards for England have set out the relevant considerations as follows:

- Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?
  - For instance, it is unlikely that it would be appropriate to grant a dispensation for a member who has a prejudicial interest as a result of an impact on their personal financial position or on that of a relative. However the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases it might be possible that any public interest in maintaining the political balance of the committee making the decision might be given greater emphasis.
- Is the interest common to the member and a significant proportion of the general public?
  - If the member is a pensioner who is considering an item of business about giving access to a local public facilities at a reduced rate for pensioners it is likely that a significant proportion of the population will be in a similar position and it might be appropriate to grant the dispensation in these circumstances.
- Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?
  - This will be of particular relevance where it arises from a members participation in an external body where they may have specific knowledge or expertise in the work of that body. It might be appropriate for the member to be allowed to address the body even where is no right for the public to do so. Standards Committee will still have to consider whether it is in the public interest for them to be allowed to vote.
- Is the business that the interest relates to a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member's interest is not a financial one.
  - In these cases it may be in the public interest is to allow the member to participate.

As regards the process this is set out in the Regulations and Guidance. Members should note that an application must be submitted in writing explaining why a dispensation is desirable. The Standards Committee meeting must be convened to consider the application for a dispensation. Members should therefore note that it will not be possible to grant a dispensation as a matter of urgency to deal with emergency business. The Committee must still comply with the legal limits on dispensation set out in the guidance and the legal requirement for calling public meetings. The decision must be recorded in writing and kept with the Register of Interests. Standards Committees can of course refuse to grant a dispensation.

The Regulations allow for Standards Committees to use their discretion rather than impose an obligation for them to grant dispensations.

4. Options

4.1 Not applicable.

5. **Financial and resource appraisal**

5.1 The issues raised in this report do not have any direct financial consequences.

6. **Legal appraisal**

6.1 It is important that Standards Committee Members are aware of the up to date position regarding the three areas covered by the 2009 Regulations to ensure they are fulfilling their responsibilities appropriately.

7. **Other Implications**

7.1 There are no Equal Rights, Sustainability, Community Safety, Human Rights Act, Trade Union Implications arising from this report.

8. **Not for Publication documents**

8.1 None.

9. **Recommendations**

9.1 That the Standards Committee consider the information provided in this report and note the changes imposed by the 2009 Regulations.

**Reason for Recommendation**

9.2 To ensure that Standards Committee Members are fully aware of the up to date legal position regarding the issues dealt with under these Regulations.

