



**Standards Committee**  
30 January 2008

**Report from the Borough  
Solicitor**

For Action

Wards Affected:  
ALL

**The Local Government and Public Involvement in Health  
Act 2007 – Changes to the Ethical Standards Framework**

**1.0 Summary**

- 1.1 The Local Government and Public Involvement in Health Act 2007 amongst other things, has introduced changes to the ethical standards framework, including changes to the role of the Standards Committee. This report explains what the new framework is and the new duties imposed on the committee. A separate report is being presented to this committee discussing changes to the committee that are required as a result of the new framework.

**2.0 Recommendations**

- 2.1 That members note the contents of this report.
- 2.2 That the committee requests the Monitoring Officer in due course to submit a report to Full Council amending the terms of reference of the committee to include consideration of any requests for exemptions from the rules governing politically restricted posts.

**3.0 Detail**

*Background*

- 3.1 The Local Government and Public Involvement in Health Act 2007 continues the governments programme of reforming the standards of conduct in local government which began with the discussion paper *Standards of Conduct in English Local Government: The Future* in 2005. This then lead to the white

paper *Strong and Prosperous Communities* in 2006 which set out proposals to introduce a more proportionate and locally based decision making regime for investigation and determination of all but the most serious allegations of misconduct against members of local authorities. A new Model Code of Conduct was also introduced in May 2007.

- 3.2 Part 10 of the Local Government and Public Involvement in Health Act 2007 ('the Act') continues the reform by making changes to the framework of the ethical standards regime by amending various parts of the Local Government Act 2000. The Standards Board have indicated that these changes will come into force in April 2008. At the date of writing no commencement order or regulations have been issued.
- 3.3 The Department for Communities and Local Government has recently issued a consultation paper *Orders and Regulations Relating to the Conduct of Local Authority Members in England* which sets out the likely scope of the guidance, regulations and orders which will underpin the Act and where appropriate this report refers to that consultation paper.

#### *Investigating allegations of misconduct*

- 3.4 One key change is that the Standards Committee will in the future make the initial assessment of whether to investigate a complaint about a member's conduct, not the Standards Board. There will also need to be a review process by which any decision by the committee not to investigate a complaint can be reviewed. The committee will, as now, also have a full hearing into the complaint following an investigation.
- 3.5 A separate report on this agenda sets out in more detail the changes to the committee's role.

#### *Private life to be covered by Code*

- 3.6 The majority of the new Code of Conduct still only applies to councillors when acting in an official capacity i.e. whenever a member conducts the business of the authority or the business of the office s/he holds or when s/he acts, claims or gives the impression that he is acting as a representative of the authority. However, certain parts of the Code will now apply to Councillors at all other times i.e. in their private life, namely the requirements:
- Not to intimidate people involved in an investigation; and
  - Not to bring the member's office or authority into disrepute; and
  - Not to use the member's position to improperly confer or secure for himself or another person an advantage or disadvantage

but only where that conduct constitutes a criminal offence for which the member has been convicted. Members will recall that a new model Code of Conduct was introduced last year and that members adopted the model Code as the Brent Members Code of Conduct at the Full Council meeting on 10

September 2007. It was made clear in the covering report to members that the ability to enforce the provisions in relation to members conduct when he or she is acting outside of their official capacity was dependant on the introduction of further legislation. The Act will provide the statutory basis for the Code to apply a member beyond when they are acting in an official capacity.

### *The Role of the Standards Board*

- 3.7 Following the changes to the ethical framework the Standards Board will largely take on a regulatory role; providing guidance and support to standards committee as well as ensuring that a consistent level of standards are maintained. The Act allows the Standards Board to issue guidance and give directions to Standards Committees as to how the assessment of allegations should be conducted.
- 3.8 The committee is required to provide to the Standards Board such information as it may request relating to allegations of misconduct received, requests to review its decisions to take no action and the exercise of any functions by the committee or the monitoring officer. The Standards Board will set time frames by which the requested information must be provided. In a pilot that has been running since November the Standards Board have required online quarterly returns from the participating authorities and the consultation paper indicates that this is likely to be the minimum requirement.
- 3.9 As a safety measure, the Act allows the Standards Board to withdraw the power of the committee to assess allegations of misconduct and direct that allegations should be referred to either the Standards Board or to the standards committee of another authority. Regulations setting out the circumstances in which this power can be exercised are currently being consulted on and it is expected that this power is considered to be a power of last resort, to be exercised only where a committee is completely failing to carry out its duties.
- 3.10 Although the Standards Board role has changed under the new regime a Committee may still refer an allegation to the Standards Board for consideration. The Standards Board must then, either:
- refer the allegation to an ethical standards officer,
  - decide that no action should be taken, or
  - refer the matter back to the committee to consider
- 3.11 Where it decides to take no action, the Standards Board is responsible for advising the complainant of their decision.
- 3.12 The Act provides for regulations to be made that enable a Monitoring Officer to refer cases back to the Committee. The Department's consultation paper indicates that this will be where the investigation discloses information that warrants the Committee looking at the matter again.

### *Ethical Standards Officers*

- 3.13 The Act makes some amendments to the powers of Ethical Standards Officers ('ESO') and the situations in which their confidential reports may be disclosed.
- 3.14 An ESO can now make a finding that although there was a breach of the Code no further action needs to be taken. The ESO may now consider any information that they think to be relevant rather than just information relating to the relevant authority. An ESO may now disclose information obtained in the course of an investigation to the monitoring officer, the Commissioner for Local Administration, or the Electoral Commission where it is for the purpose of allowing them to carry out their functions or duties.
- 3.15 An ESO's report on the outcome of his investigation can now be passed to the committee in order to assist the committee in carrying out their functions. The Monitoring Officer may now inform any member or officer of the outcome of an ESO's investigation and provide them with a copy of the report or any part of it where this will help to promote high standards of conduct by members.

### *Case Tribunals*

- 3.16 Where an ESO refers the matter to the Adjudication Panel then a case tribunal is convened to consider the case. An interim case tribunal's decision that a member should be suspended now suspends or partially suspends the member directly, rather than requiring the authority to put the notice into effect as is currently the case. Provision has now been made for an appeal to the High Court against a decision by an interim case tribunal with the leave of the High Court and provision has also been made for an appeal to the High Court against a decision by the case tribunal in England with the leave of the High Court.
- 3.17 There is a new power for the Secretary of State to make regulations concerning the sanctions which a case tribunal can impose.

### *Consultation with Ombudsmen*

- 3.18 The Local Government Ombudsman may now consult the Committee (as well as the Standards Board) about a case if he believes that the complaint he is considering relates partly to a matter which may be of concern to the committee.

### *Politically Restricted Posts: Grant and Supervision of Exemptions*

- 3.19 The Local Government and Housing Act 1989 provides that a person is disqualified from becoming a member of a local authority if he or she holds a politically restricted post. Posts are designated as politically restricted by

reference to certain factors including seniority and salary. Employees are able to apply for an exemption to the rules for their post in some situations. Granting and supervising any exemptions from political restriction will now be the responsibility of the committee and the terms of reference of the committee will need to be amended accordingly. It is recommended that an appropriate amendment be submitted to Full Council by the Monitoring Officer. If and when an application for an exemption is made more detailed advice will be given.

The Secretary of State will issue general advice with regard to making decisions on political restrictions but she must consult representatives of local government before doing so.

#### *Maximum pay of local authority political assistants*

- 3.20 In August 2004 the government began consulting on the pay arrangements for political assistants. Section 204 of the Act will allow an order to be made in relation to the pay of political assistants that specifies a point on a relevant scale rather than an amount. The Department proposes to increase the maximum pay for local authority political assistants to point 49 on the National Joint Council for Local Government Services pay scale (currently £39,132 pa).

#### *Dispensations to allow members to participate in meetings to preserve political balance*

- 3.21 The government has also included an amendment to the Relevant Authorities (Standards Committee) (Dispensation) Regulations 2002 in the Departments consultation paper. These Regulations prescribe the circumstances in which a standards committee may grant a dispensation to a member who would otherwise be prevented from participating in the business of the Council by the Code of Conduct i.e. where the member has a personal and prejudicial interest.
- 3.22 One part of one of the grounds for granting a dispensation is that the Council would not be able to comply with the rules on political balance unless a dispensation was granted. There is a drafting error so that the Regulations do not currently achieve this and it is proposed to amend the Regulations to correct the error.

## **4.0 Financial Implications**

- 4.1 The financial impact of the changes relating to the Committee itself has been addressed in the report that discusses the options for composition of the Committee.
- 4.2 It is inevitable that these changes will result in local investigations by the Monitoring Officer, or her nominee. The purpose of the changes is to devolve initial assessments to the committee and the Monitoring Officer or her

nominee as the committee's investigator. However, it is difficult to quantify what the costs of this are likely to be as no investigations have actually ever been carried out and it is impossible to estimate how many investigations there will be.

## **5.0 Legal Implications**

5.1 These are addressed in the body of the report.

## **6.0 Diversity Implications**

6.1 None.

## **7.0 Staffing Implications**

7.1 As highlighted above an increase in the amount of local investigations will have implications for the Legal and Democratic Services. However it is difficult at this stage to estimate what the impact will be.

### ***Background papers***

*The Department for Communities and Local Government consultation paper – Orders and Regulations Relating to the Conduct of Local Authority Members in England*  
*The Local Government and Public Involvement in Health Act 2007*  
*Brent Members Code of Conduct*

**Should any person require any further information about the issues addressed in this report, please contact Dan Bonifant, Local Government Lawyer on telephone number 020 8937 1368.**

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