



Standards Committee
30 January 2008

**Report from the Borough
Solicitor**

For Action

Wards Affected:
ALL

**New Requirements for Considering the Complaints against
Members**

1.0 Summary

- 1.1 The Local Government and Public Involvement in Health Act 2007 has introduced changes to the role of the Standards Committee in investigating and hearing complaints about members conduct. As a result of the changes it is likely that the composition of the Standards Committee will have to change.
- 1.2 This report explains the new procedure that must be followed where a complaint is made about a members conduct and discusses some options for the new makeup of the Committee.

2.0 Recommendations

- 2.1 Note that changes to the composition of the Standards Committee will be required as a result of the Local Government and Public Involvement in Health Act 2007.
- 2.2 Note the options for change that are discussed in this report.
- 2.3 Note that following this meeting the Borough Solicitor should consult on the options with the political groups and report back to the committee at its March meeting.
- 2.4 Note that the Monitoring Officer will develop guidance and procedures relating to initial assessments, review of initial assessments, investigations and

hearings, which will be brought to this committee for consideration when regulations are issued.

3.0 Detail

Background

3.1 Following the recent networking event members should by now be aware that following Royal Assent of the Local Government and Public Involvement in Health Act 2007 ('the Act') the Standards Committee and/or sub-committee will have three separate functions in relation to a complaint about a member's conduct.

- a) **Initial assessment of the complaint**
The Committee must decide whether to refer to the complaint to the Monitoring Officer for investigation or other action, refer the complaint to the Standards Board for England or not to investigate the complaint.
- b) **Review of any decision not to investigate**
Where the initial assessment is that the complaint should not be investigated then the person who submitted the complaint may ask for a review of the decision not to investigate. The Committee will then be required to make a fresh assessment of the complaint.
- c) **Substantive hearing into the complaint**
The Committee will be required to act as a quasi judicial body and decide whether there was a breach of the Code of Conduct and if so what the appropriate sanction is.

What the Committee has to decide at each stage

- 3.2 The initial assessment of whether to investigate an allegation and any review of that decision will be made purely on the basis of the evidence provided in support of the complaint. The Act does not require the committee to consider or seek any comment from the member complained of at the initial assessment stage.
- 3.3 The initial assessment only requires the committee to decide whether if the complaint were proven it could disclose a breach of the Code of Conduct. Such a decision does not include an in depth examination of the evidence or analysis of the Code because the decision is solely whether to investigate, not whether there has in fact been a breach of the Code.
- 3.4 The committee might reasonably decide not to investigate a complaint where the complaint clearly falls outside the Code. For example, where the complaint relates to a Council decision or process rather than an individual member or where the conduct complained about clearly occurs outside of a members official capacity and could not amount to a criminal conviction.

- 3.5 The Standards Board have indicated that a complainant may provide further information if they seek a review of a decision not to investigate a complaint.
- 3.6 If the matter is referred for investigation then the Committee hearing the matter will have to evaluate and weigh all the evidence and arguments presented by the investigating officer and others. The generally accepted view is that the Committee should reach and record three distinct findings relating to;
- The facts; and
 - Whether on those facts there is a breach of the Code of Conduct
 - If there was a breach then what, if any, sanction should be applied

Members performing all three functions

- 3.7 Natural justice and good administrative practice suggest that the members who take part in the initial assessment of whether to investigate should be prevented from taking part in a review of their original decision. Using the same members to review their own previous decision opens that decision to challenge on arguments of pre-determination and may attract criticism of the Councils ethical standards process as a whole. The Standards Board recommends that a member who takes part in the initial assessment should not then review that previous decision.
- 3.8 The Department for Communities and Local Government's consultation paper *Orders and regulations Relating to the Conduct of Local Authority Members in England* suggests that regulations will be made that prevent a member from being on the review committee if they took part in the initial assessment.
- 3.9 There is, however, no reason why a member who takes part in the initial assessment of whether to investigate a complaint, or a member who takes part in the review of a decision not to investigate, cannot then be a member of the Committee that hears the substantive complaint. This is because the decision to refer a complaint for investigation (and any review) is a very different decision to that taken at the hearing where the evidence presented will be different and the decision the Committee is required to reach is different. This approach is consistent with Standards Board guidance on the issue.

The makeup of the Committee

- 3.10 Committee membership is currently five members made up of two who are independent members and one from each of the political groups. There are no sub-committees.
- 3.11 The Local Government Act 2000 and attendant regulations set out the following requirements

- Where the committee has more than three members then 25% or more of the members of the Committee must be independent
- The Chair must be independent
- A Standards Committee (and sub-committee) has a quorum of three.
- Any sub-committee must be drawn from members of the Standards Committee and include one independent member.

- 3.12 The current membership of only five means that it is not possible to create separate sub-committees of different members to take the initial assessment decision and to conduct any review of that decision.
- 3.13 The Standards Board recommend that as a minimum there should be two separate sub-committees, one for the initial assessment and the other for taking the review. It now appears likely that regulations will actually require different sub-committees to consider the initial assessment of a complaint and the review of any decision not to investigate a complaint.
- 3.14 Accordingly, the committee needs to consider what, if any, changes should be made to the composition of the committee to ensure that its statutory functions can properly be performed in the future. Any such change will need to be submitted to Full Council for approval

Options for the composition of the Committee

Maintain the status quo

- 3.15 For the reasons set out above it will not be possible to maintain the status quo.

Increase the size of the Committee

- 3.16 If the size of the Standards Committee was increased by at least one member then two sub-committees with separate memberships could be created with a different independent member as Chair of each sub-committee. The Standards Board recommend that the Committee should have a minimum of six members with three independent members and three elected members.
- 3.17 Some suggested options for increasing the size of the Committee include;
- Appointing one more member from each political group and one more independent member to make a committee of nine with three independent members
 - Appointing one more elected member to the committee based on the rules of political balance for committees to make a committee of six (2:1:1: with 2 independent members); or
 - Appointing one more independent member to make a committee of six with three councillors and three independent members

In each of these examples the committee would satisfy the rules relating to how many independent members are required to be on the committee

- 3.18 By way of comparison the other members of the West London Alliance have Committees of the following sizes;
- Ealing – 8 (3 Independent)
 - Hammersmith & Fulham – 6 (3 Independent)
 - Harrow – 9 (4 Independent)
 - Hillingdon – 7 (2 Independent)
 - Hounslow – 7 (3 Independent)
- 3.19 Members are asked for their views on the idea of increasing the size of the Committee and the options suggested above. The Borough Solicitor's view is that a committee of nine is unnecessarily large and will place an additional burden on members who already have a number of other commitments. Either of the other two options are considered acceptable, but increasing the number of independent members from two to three is probably the best option.

Use a joint committee (with another Borough) for reviews

- 3.20 The Act provides that the functions of a Standards Committee can be carried out by a joint committee made up of members of the Standards Committee of one or more authorities.
- 3.21 The Borough Solicitor has informally been approached by her counterpart at Ealing as to whether Brent would consider an arrangement with Ealing to provide a review function for one another.
- 3.22 It is hard to quantify how much time would be required of members if such an arrangement was entered into and further enquiries would have to be made. As an indication, Ealing have advised that they have had one local referral in the previous three years and three further investigations by Ethical Standards Officers which resulted in no sanctions being imposed.
- 3.23 Members are asked for their views on the option of joint committee arrangements in general as well as the possible arrangement with Ealing. This option is not recommended by the Borough Solicitor as there will be considerable time needed to establish the committee and to jointly agree its terms of reference and its procedures. Further it will not be possible to control the number of referrals received from other the other borough and this could lead to considerable additional work for members and officers of this authority.

Next Steps & Timetable

- 3.29 Following this meeting the Borough Solicitor will discuss the options more widely with the political groups and report back to the Standards Committee in March with options for the committee to recommend to Council. Any changes to the committee can then be submitted to Full Council at the May meeting when the appointments of the independent members will be confirmed by Council.

- 3.30 The provisions that extend the Standards Committee's functions will not come into force prior to 1 April 2008. Accordingly, even if a complaint was received in April, any changes to the composition of the Committee can be implemented in May and the review conducted by the new sub-committee well before the Committee would breach the statutory time limit of three months for considering a request for a review.

4.0 Financial Implications

Maintain the status quo

- 4.2 There is no cost to the Council in maintain the status quo, however the risk is that a decision of the Committee is challenged on the grounds of pre-determination and a deficient process. The costs associated with defending one action would far outweigh any of the costs of increasing the size of the Committee set out below.

Additional Independent member

- 4.1 There are some costs associated with the appointment of independent members to the Standards Committee. However the terms of the current independent members on the Committee end in May 2008. The Council will therefore be undergoing a recruitment process for these posts shortly and there would be no additional costs in seeking additional members.
- 4.2 The actual cost of a further independent member would be limited to the payment of another allowance for an independent member. This is currently set at £207 per annum.

Additional members

- 4.3 There would be no additional cost if the number of elected members on the Committee was increase as no SRA allowance is payable for members of the Standards Committee.

Joint Committee

- 4.4 There would be additional costs associated with establishing and running a new committee but these costs are difficult to estimate. There would also be ongoing costs in operating the committee.

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 Some of the proposals in this report require the appointment of further members of the Council to the Standards Committee.

7.2 An increase in the amount of local investigations will have implications for the Monitoring Officer and an increase in the amount of Committee meetings will impact staff in Legal and Democratic Services. However it is difficult at this stage to estimate what that impact will be and any changes to the composition of the Committee discussed in this report will not have an impact on staffing levels.

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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