



**Standards Committee
Wednesday, 26 March 2008**

Report from the Borough Solicitor

For Action

Wards Affected:
ALL

Composition of the Standards Committee

1. SUMMARY

- 1.1 This report discusses the need to change the structure of the Standards Committee as a result of the Local Government and Public Involvement in Health Act 2007 and recommends that the committee adopt a new structure that includes the creation of two sub-committees and the appointment of alternates to both the main Committee and the sub-committees.

2. RECOMMENDATIONS

- 2.1 That the committee recommend to the Council the creation of two sub-committees of the Standards Committee made up of one member from each political group and chaired by an Independent Member. The two sub-committees would be:
- i) The Initial Assessment sub-committee
 - ii) The Review sub-committee
- 2.2 That the Committee recommend to the Council to amend the Constitution so that one further independent member may be appointed to the Committee.
- 2.3 That the Committee recommend to the Council to amend the Constitution so that alternates can be appointed to the Standards Committee.

- 2.4 That the Committee recommend to the Council to appoint first and second alternates when it appoints members to the Standards Committee at the Councils annual meeting in May.
- 2.5 That the committee recommend to Council an increase in the allowance payable to an Independent Member from £207 per annum to £400 per annum and a per meeting allowance for Independent Members of £100 per sub-committee meeting.

3. DETAIL

Background

- 3.1 Members will be aware that under the Local Government and Public Involvement in Health Act 2007 ('the Act') the Committee is given 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.
- 3.2 The Government has previously announced that Standards Committees would take on these new functions in April 2008. Although no Statutory Instrument has been published specifying the actual date on which this will occur officers still expect the functions to be transferred to the Committee in April.
- 3.3 The Government in its consultation paper has indicated that regulations will be made that prevent a member who takes part in the initial assessment of a complaint from taking part in any review of that decision.
- 3.4 Officers view is that the current composition of the Committee (with only five members, no sub-committees and no alternates) must change in order to effectively carry out the Committee's new functions.

- 3.5 Following the Committee's meeting on 30 January 2008 the Borough Solicitor wrote to the three leaders of the political groups to consult them on the changes required to the Committee but there has not been any response to those letters.
- 3.6 Officers recommendations are discussed in more detail below.

Sub-committees

- 3.7 Standards Board guidance on the changes introduced by the Act recommend that Councils should as a minimum create two sub-committees to deal with the initial assessment of a complaint and any review of a decision not to investigate a complaint respectively.
- 3.8 Section 54A(1) of the Local Government Act 2000 states that a Local Authority may appoint a Standards Committee and one or more sub-committees to discharge any of the Standards Committee's functions.
- 3.9 Officers recommend following the Standards Board guidance and creating two sub-committees. The first would be called the "Initial Assessment sub-committee" and would as the name suggests carry out the initial assessment of any complaint about a members conduct. The second sub-committee would be called the "Review sub-committee" and would carry out any review of a decision not to investigate a complaint made by the Initial Assessment sub-committee. Full council would need to create both sub-committees and their terms of reference in an amendment to the Constitution. This would be done at the annual meeting in May along with the appointments to the Committee. Officers ask the Committee to recommend to Council the creation of the two sub-committees.
- 3.10 Each sub-committee must contain an independent member. Although it is not a statutory requirement that the Chair of a sub-committee be an Independent Member, Standards Board guidance recommends having independent chairs and officers agree with the recommendation that an Independent Member should chair each sub-committee.
- 3.11 Officers recommend that each sub-committee should be made up of four members, subject to the appointment of alternates which is discussed in more detail later in this report.
- 3.12 Officers recognise that ideally any committee or sub-committee should be an uneven number to assist voting and reduce any undue responsibility on the Chairs casting vote. However in order to have sub-committees of five, each would need to have two Independent Members and the Council would have to appoint four Independent Members in total. Officers consider that to be too many Independent Members on the Committee and it would place pressure on the recruitment process as four candidates would have to be chosen regardless of their ability.

- 3.13 Members are reminded that the sub-committees do not hear the allegation; the Committee does. The sub-committees only decide whether to investigate the complaint or to carry out any review of a decision not to investigate. In the circumstances therefore officers consider that having the casting vote in the sub-committees reside with the Independent chair is appropriate and not an undue responsibility.
- 3.14 If the Committee agree with these recommendations then officers will draft the terms of reference for each sub-committee for approval by the Council.

Independent Members

- 3.15 The Committee currently has two Independent Members, the Chair and Vice Chair. Regulations require a meeting of the Committee or sub-committee to have an Independent Member present in order to make the meeting quorate, unless the Independent Member is required to leave the room due to a prejudicial interest.
- 3.16 Under the recommended new structure each sub-committee would be chaired by an Independent Member with the other Independent Member acting as an alternate. Alternates are discussed in more detail later in this report but an Independent Member who chairs the Initial Assessment sub-committee would not then be able to act as an alternate for the Review sub-committee that reviews any decision not to investigate a complaint.
- 3.17 However, given that a sub-committee is still quorate if the Independent Member has to withdraw from the meeting because of a prejudicial interest and the Committee has three months to carry out any review, officers consider that the risk of not being able to convene a quorate Review sub-committee in that time is very low.
- 3.18 If an additional Independent Member was appointed then the Committee would be made up of six members. If a committee is made up of an even number of members then the casting vote falls to the Chair. It is not considered appropriate for the Chair to have the casting vote where that decision may involve a finding that a member breached the Code of Conduct and/or involves imposing a sanction on a member.
- 3.19 The Council's constitution currently only allows for the appointment of two Independent Members to the Standards Committee. Officers consider that this should be amended to allow the appointment of more than two Independent Members so there is some flexibility if, following the changes, it is clear that a further Independent Member needs to be appointed to the Committee. Any appointment would still have to be made by Council.
- 3.20 Members should note that terms of the current Independent Members expire in May 2008 and the Council is currently undertaking the

recruitment exercise to appoint Independent Members from May 2008 – 2010.

- 3.21 As a result of the increased role and responsibility for Independent Members, officers consider that the allowance paid to Independent Members should be increased. The allowance is currently set at £207 per annum. The latest report from the Independent Remuneration Panel appointed by London Councils recommended payment for Independent Members of £117 per meeting. Officers consider that the Council should increase the annual payment to a more reasonable level to reflect the time and effort involvement in preparing for and attending meetings of say, £400, and also introduce an allowance of £100 per meeting for each sub-committee meeting that an Independent Member attends.
- 3.22 Allowances are set by the Council however officers ask that the Committee recommend to Council to increase the allowance payable to Independent Members as set out above.

Additional Elected Members

- 3.23 In a previous report to the Committee the Borough Solicitor raised the option of appointing additional elected members to the Committee.
- 3.24 The Committee does not follow the rules on political balance but has one member appointed from each of the political groups which in conjunction with the Independent Members gives the Committee a degree of political neutrality. If further members were appointed it is likely that this would be by the appointment of one more member per group. That would create a Committee of eight.
- 3.25 While a committee of this size may operate effectively for the general policy meetings of the Committee, officers consider that either eight or nine is too large a committee size to effectively hold a hearing into an allegation of misconduct. If the size of Committee was increased by the appointment of three additional elected members then officers would recommend the creation of another sub-committee of five members (two independent and three elected members) to conduct any hearings.

Appointment of Alternates

- 3.26 Section 54A(3) of the Local Government Act 2000 requires the members of a sub-committee of a Standards Committee to be appointed from the members of the main committee and the Council's Standing Orders provide that it is up to the main committee to appoint members of any sub-committees and also the alternates to any sub-committees.
- 3.27 Under the Council's Standing Orders alternates are appointed by Council however the Standing Orders currently prevent the appointment of either first or second alternates to the Committee. The

Council until now has not favoured having alternates on the Standards Committee as it was considered better to have the same group of trained members attending each meeting. Appointing alternates can in some circumstances reduce the incentive on members to attend every meeting.

- 3.28 Officers now consider that appointing alternates to the Committee is the best way for the Committee to restructure itself to perform its new statutory functions because it maintains the smallest overall pool of members (including alternates) but also provides sufficient cover so that sub-committee meetings should always be quorate.
- 3.29 The key issue is ensuring that the sub-committee meetings are quorate. Because of the requirement for at least three members including an independent to be present, their small membership and the short notice with which they will be convened it is more likely that a sub-committee would be inquorate.
- 3.30 Officers recognise that increasing the size of the Committee to say eight with six elected members rather than appointing alternates to the Committee appears to have an advantage in that overall a smaller group of members is maintained. However, it would actually result in a larger group of members being used as you could not provide sufficient cover to both sub-committees with only six elected members and alternates would still have to be appointed to the Committee.
- 3.31 In 1990 the Council obtained the opinion of leading Counsel James Goudie QC on the lawfulness of appointing alternates to committees. His opinion (based on the Local Government Act 1972) was that 1972 Act did not preclude members of Committees and sub-committees including those duly appointed by way of alternates.
- 3.32 However Counsel's advice preceded the creation of the Committee under the Local Government Act 2000. Officers have now obtained an updated opinion from James Goudie QC. Counsel's view is that nothing in the 2000 Act precludes members of Committees and sub-committees including those duly appointed by way of alternates, further that an alternate to the Standards Committee may be appointed as an alternate to a sub-committee. Accordingly there is no legal barrier to the appointment of alternates to the Committee.
- 3.33 The Council would have to amend the Standing Orders to allow alternates to be appointed to the Committee, and appoint alternates to the Committee at the annual meeting in May. The Committee would then be responsible for appointing the members of, and the alternates to the two sub-committees.
- 3.34 Officers understand that the first scheduled meeting of the Standards Committee for the next municipal year is in July and appointments to the sub-committees can be made at this meeting. However, if a complaint is submitted to the Committee before then the Committee will

have to be convened to appoint members of the Initial Assessment sub-committee.

How it would work

- 3.35 Officers have set out how the new structure would look in the tables below. Any member who was unavailable to attend a Committee meeting or sub-committee meeting, or in regards to the Review sub-committee had taken part in the initial assessment of the complaint would be replaced at the meeting by the first alternate, and where the first alternate was not available then by the second alternate as set out in the Councils Standing Orders.
- 3.36 Officers are unsure how many applications for review of a decision not to investigate a complaint the Committee will receive, however it will be less than the amount of initial assessments that the Committee carries out. Therefore officers recommend that the full members of the Committee should be appointed to the Initial Assessment sub-committee and the alternates would take their place at the Review sub-committee as necessary with both sub-committees chaired by an Independent Member.

Main committee

Members	First Alternate	Second Alternate
Independent 1 (Chair)		
Independent 2		
Cons	Cons – 1A	Cons – 2A
Labour	Labour – 1A	Labour – 2A
Lib Dem	Lib Dem – 1A	Lib Dem – 2A

Initial Assessment sub-committee

Members	First Alternate	Second Alternate
Independent 1 (Chair)	Independent 2	
Cons	Cons – 1A	Cons – 2A
Labour	Labour – 1A	Labour – 2A
Lib Dem	Lib Dem – 1A	Lib Dem – 2A

Review sub-committee

Members	First Alternate	Second Alternate
Independent 2 (Chair)	Independent 1*	
Cons	Cons – 1A	Cons – 2A
Labour	Labour – 1A	Labour – 2A
Lib Dem	Lib Dem – 1A	Lib Dem – 2A

* An Independent Member can only take part in a review of a decision not to investigate a complaint where they took no part in the initial assessment of the complaint. i.e. where they were did not attend the Initial Assessment sub-committee meeting.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from the appointment of alternates to the Committee and sub-committees.
- 4.2 There is a minor cost of that is currently £207 per annum, although officers have recommended that this should be increased to £400 per annum, associated with the appointment of a further independent member to the Committee.

5. STAFFING IMPLICATIONS

- 5.1 There are no direct staffing implications arising from this report. However extra meetings and hearings of the Standards Committee will impact the Borough Solicitors Officer and on Democratic Services Officers who are the officers that provide support to the Standards Committee.

6. DIVERSITY IMPLICATIONS

- 6.1 Officers believe that there are no specific diversity implications arising from this report.

7. LEGAL IMPLICATIONS

- 7.1 The legal implications are dealt with as they arise in the report.

Background Information

Local Government Act 2000

Local Government and Public Involvement in Health Act

The Relevant Authorities (Code of Conduct) (Local Determination) Regulations 2003

The Relevant Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2003

Should any person require any further information about the issues addressed in this report, please contact Dan Bonifant on 0208 937 1368.

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