



**Standards Committee  
25 August 2009**

**Report from the Borough Solicitor**

Wards Affected:  
None

**Standards for England Intervention, Joint Standards Committees and Dispensations**

**1. SUMMARY**

- 1.1 This report provides a summary of the new Standards Committee (Further Provisions) (England) Regulations 2009 (the Regulations) which came into force on 15 June 2009.
- 1.2 The Regulations set out the circumstances in which Standards for England (the new name for the Standards Board for England) can suspend a Standards Committee from carrying out certain functions, provide a power to establish Joint Standards Committees and amend the grounds on which the Committee can grant a dispensation to a member that would otherwise be prohibited from participating on a matter because of a prejudicial interest.

**2. RECOMMENDATIONS**

- 2.1 That members note this report.

**3. DETAIL**

*Suspension of Standards Committee Functions*

- 3.1 Members will recall that the Local Government and Public Involvement in Health Act 2007 introduced the new system of the local determination of complaints about members' conduct. The new system provides for the Standards Committee of each Council to be the body that considers whether allegations of misconduct should be investigated and there is now a presumption that allegations are investigated and resolved locally rather than centrally through Standards for England. One of the safeguards built into the new system was a power for Standards for England to intervene if a Council's Standards Committee was not carrying out its duties properly.

- 3.2 The Regulations now implement this power and so provide that the Standards for England can intervene and direct that the initial assessment and review functions of a Council's Standards Committee are to be transferred to either Standards for England or to the Standards Committee of another authority where:
- (a) the Council's Standards Committee has failed:
    - to have regard to Standards for England guidance;
    - to comply with a direction from Standards for England;
    - to carry out its functions within a reasonable time or in a reasonable manner;
  - (b) the Council's Monitoring Officer has failed to carry out his/her functions within a reasonable time or in a reasonable manner;
  - (c) the Council or its Standards Committee has requested the Standards for England to intervene.
- 3.3 Although a direction technically applies to the initial assessment and review functions of the Standards Committee, as part of this, the Regulations in fact provide a much wider power for;
- A substitute Standards Committee to;
    - Refer the matter to their Monitoring Officer or the Monitoring Officer of the suspended Standards Committee; and
    - Use their Standards Committee for any hearing or the suspended Standards Committee
  - Standards for England to;
    - Refer the matter to their investigators or the Monitoring Officer of the suspended Standards Committee; and
    - Use the Adjudication Panel for any hearing or the suspended Standards Committee
- 3.4 No other functions of a Standards Committee are affected by the direction and these therefore remain the responsibility of the Standards Committee who is the subject of the direction.
- 3.5 Standards for England are required to give a Council 28 days notice of its intention to intervene and the proposed reasons for that and take into account any response before making a decision.
- 3.6 Any subsequent decision to suspend a Standards Committee from carrying out its functions must be sent to the Chair of the Standards Committee and the Monitoring Officer stating the date from which the suspension shall take effect, the reasons for the suspension and details of which body shall take over the suspended functions. The Monitoring Officer must publish the direction in a local newspaper and where appropriate on the Council's website.
- 3.7 Standards for England have not yet issued any guidance on the exercise of the power of intervention but guidance is expected to be issued soon. As Standards for England is not staffed to perform the initial assessment and review function it is expected that in the majority of cases the function will be transferred to a substitute authority. The guidance will therefore need to address issues such as how the substitute authority would be selected and how the issue of the costs incurred by the substitute authority are dealt with.

- 3.8 During the period of the suspension Standards for England or the Standards Committee of the other authority undertake the initial assessment and review function in exactly the same manner as the Council's Standards Committee. i.e. they can decide to refer the allegation for a local or a Standards for England investigation, other action or no action, as appropriate.
- 3.9 Standards for England can terminate the suspension at any time Standards Board at any time having taken into account the original reasons for the suspension.

#### *Joint Standards Committees*

- 3.10 The Regulations also allow two or more local authorities to set up a Joint Standards Committee. A Joint Standards Committee can be established to discharge all of each participating authority's standards functions, or can be established to discharge just some of the authorities' standards functions. For example the Council could establish a Joint Standards Committee with one or more of the neighbouring Boroughs to carry out the initial assessment and review functions or just the review functions of the Committee.
- 3.11 Members may also recall that it was the Local Government and Public Involvement in Health Act 2007 that originally provided the power for the Secretary of State to make regulations providing for the creation of joint Standards Committees. As part of the preparations for this Act coming into force the committee considered the issue of a joint committee to carry out local determination functions at its meeting in January 2008 but at the time the Committee was not in favour of this option. There are currently no proposals to establish a joint committee.
- 3.12 The Regulations provide the detail of how joint committees must operate in order to comply with the strict requirements of Standards Committee such as how the minimum number of independent and elected members relates to each authority on the joint committee, the process for appointing independent members and the resolution of any disagreement about the costs of running a joint committee. Standards for England have recently issued guidance to supplement the Regulations which provides further detail on how a joint committee should operate.

#### *Dispensations*

- 3.13 Members who have a prejudicial interest in a matter coming before the authority can, in limited circumstances, apply to the Standards Committee for a dispensation which would allow them to take part in the discussion and vote on a matter that they otherwise could not. The previous dispensation regulations were always considered to contain an error that meant that the ground relating to political balance was ineffective and the Regulations seek to amend that error.
- 3.14 The Standards Committee can now grant a dispensation:

*“where the transaction of business of the authority would, but for the grant of any other dispensation in relation to that business, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because—*

- i. the number of members of the authority prohibited from voting on the business of the authority at a meeting exceeds 50% of those members that, but for the granting of any dispensations relating to that business, would otherwise be entitled to vote on that business; or*
- ii. the number of members prohibited from voting on the business of the authority at a meeting would, but for the granting of any dispensations relating to that business, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting”*

3.15 Additionally the Standards Committee can only grant a dispensation if it is of the opinion that in all the circumstances it is appropriate to grant a dispensation. This enables the Committee to consider the wider public interest in granting an exemption. For example the recently issued Standards for England guidance on dispensations states that it is not likely to be appropriate to grant a dispensation where an established substitute system exists (like we have in Brent). The guidance also refers to the Committee considering the public perception of granting a dispensation and states that while it may be appropriate to grant a dispensation where the financial interest that gives rise to the prejudicial interest relates to a public body to which a member has been appointed to by the Council, in comparison, it may not be appropriate to grant the exemption if the financial interest relates the member personally.

3.16 A dispensation can be granted for a particular meeting or for a period of time but not longer than four years. A dispensation cannot be granted for a member who is prohibited from participating at an Overview and Scrutiny Committee because they were involved in taking the original decision, nor for an Executive Member exercising individual decision making powers. Members are reminded that this last part of the exemption does not apply to Brent as no individual Executive members have delegated authority to take decisions individually.

3.17 A record of any dispensation should be kept with the register of members' interests and the Borough Solicitor will ensure that any dispensations granted are kept with the relevant members register on interests.

3.18 In practice, the grant of dispensations is always problematic because members rarely seek advice on potential conflicts in sufficient time prior to the meeting at which the business is to be transacted to apply for an exemption. Members usually seek advice on the night or a couple of days before. This does not leave adequate time to convene a meeting of the Standards Committee in order to consider the application. To date no dispensations have ever been granted at Brent.

#### **4 FINANCIAL IMPLICATIONS**

4.1 There are no direct financial implications arising from this report.

#### **5 STAFFING IMPLICATIONS**

5.1 There are no direct staffing implications arising from this report.

## **6 DIVERSITY IMPLICATIONS**

6.1 Officers believe that there are no specific diversity implications in this report.

## **7 LEGAL IMPLICATIONS**

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

### ***Background Information***

*Joint Committees – Standards for England Guidance issued 3 July 2009*

*Dispensations – Standards for England Guidance issued 3 July 2009*

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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