

## 5. REPORT TO THE STANDARDS COMMITTEE ON THE 28<sup>TH</sup> JULY 2009 AT 7 P.M

### STANDARDS BOARD INTERVENTION, JOINT STANDARDS COMMITTEE AND DISPENSATION

REPORT OF: TOM CLARK  
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Wards Affected: All  
Key Decision No

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#### Purpose Of Report

1. To advise the Committee of new provisions on Standards Board Intervention, Joint Standards Committees and Dispersations.

#### Summary

2. The Standards Committee (Further Provisions) (England) Regulations 2009 Statutory Instrument 2009/1255 came into force on 15<sup>th</sup> June 2009 and makes provisions for the Standards Board for England to suspend the functions of a local Standards Committees where a Committee is failing to perform its functions in a satisfactory manner and either to discharge the functions itself or to arrange for another Standards Committee to discharge them. Regulations also give Authorities the power to establish a Joint Standards Committee and extend the power of the Standards Committee to give Members dispensations where there would otherwise be prohibited from participating on a matter because of a prejudicial interest.

#### Recommendations

3. **The Monitoring Officer advise all Members of the new grounds for application for a dispensation in respect of the prejudicial interest.**

#### 4.1 Suspension of Standard Committee Functions

The function of initial assessment of complaint of breach of conduct by Members was transferred from the Standards Board to the Standards Committees (or rather the Assessment and Review Sub-Committees) of Local Authorities from the 8<sup>th</sup> May 2008. Those Local Authorities have taken on this new responsibility and are discharging this function effectively, but the Regulations now give a power for the Standards Board to intervene in an individual Authority if that were necessary.

#### 4.2 An intervention can be triggered by the Standards Board where:

- a) it is the view that the Authority's Standards Committee has failed: to have regard to Standards Board for England Guidance, to comply with a direction from the Standards Board for England or to carry out its functions within a reasonable time or in a reasonable manner.
- b) It is the view that the Authority's Monitoring Officer failed to carry out his/her functions within a reasonable time or in a reasonable manner.

- c) The Authority or its Standards Committee has requested the Standards Board to intervene.
- 4.3 Where the Standards Board considers intervention, it must give the Authority notice of its intentions and reasons and give the Authority at least 28 days to respond before making a direction. The effect of a direction is to transfer the initial assessment function to either the Standards Board itself, or to the Standards Committee of another named Authority (the substitute Authority). In practice as the Standards Board is not staffed up to resume the initial assessment function, the preferred route is to transfer the function to a substitute Authority, but this is likely to be dependent on the two Authorities reaching agreement on costs.
- 4.4 During the period of the intervention, the Standards Board, or the Standards Committee of the other named Authority, would undertake the initial assessment and review in exactly the same manner as the original Authority, and can decide to refer the allegation for a local or a standards board investigation, alternative action or no action as appropriate. The intervention is strictly in respect of the initial assessment function, so the regulations give a discretion to the Standards Board to use their own investigators and the adjudication panel for Hearings, (or the substitute Authority to use its own Monitoring Officer and Hearing Sub-Committee), or to you use the Monitoring Officer and/or Hearing Sub Committee of the original Authority if that is appropriate.
- 4.5 An intervention can be terminated by the Standards Board at any time.

## **5. Joint Standards Committee**

- 5.1 The Regulations give a discretion for two or more Local Authorities to set up a Joint Standards Committee, and make it clear that such Joint Standards Committees can be established to discharge all of each participating Authority's functions, or can be established to discharge just some of the Authority's functions, such that each Authority retains its own Standards Committee to discharge those functions which have not been allocated to the Joint Committee. Accordingly, Authorities might agree to establish a Joint Sub-Committee which would establish a referral and a Review Sub-Committee, but each retain their own Standards Committees to discharge the functions of conducting Hearings, providing Member training and promoting high standards of conduct but where all Standards functions are allocated to the Joint Standards Committee, then participating Authorities would no longer maintain their own separate Standards Committees. Where a function is allocated to the Joint Standards Committee, it cannot be discharged by the Standards Committee of an individual participating Authority.
- 5.2 Where Authorities wish to establish a Joint Standards Committee, the Full Council of each participating Authority would need to resolve:

to establish the Joint Standards Committee;  
which Standards functions are to be allocated to the joint Committee and which, if any, are to be retained by the Authority's own Standards Committee;  
the administrative arrangements to support the Joint Standards Committee;  
whether Standards complaints should be addressed directly to the Joint Standards Committee or should continue to be addressed to the individual Authority;  
the number of Members, including independent Parish Members, to be appointed to the Joint Standards Committee by each participating Authority, and their terms of office;

making provision for the joint Standards Committee to appoint Members to its Assessment, Review and or Hearing Sub Committees as required;  
provide for the payment of allowances to Members of the joint Standards Committee;

provide a procedure for an Authority to withdraw from the joint Standards Committee and;

provide how the costs incurred by the joint Standards Committee shall be shared between the participating Authorities (or in default to be determined by arbitrator).

- 5.3 A Joint Standards Committee may have the advantage of putting more distance between the member in receipt of the complaint and the members assessing or reviewing the merits of the complaint.

## **6. Dispensations**

- 6.1 The original 2002 Dispensation Regulations provided that the Member who had a prejudicial interest in the matter which was coming before the Authority could apply to the Standards Committee for a dispensation, and that the Standards Committee could give the dispensation to allow the Member to speak and to vote on the matter at meetings. The Regulations specified two grounds of dispensation:-

a) the first ground, repeated in the new Regulations, was that the business of the Authority would be impeded because more than 50% of the Members of the decision-making body (Council, Committee, Sub Committee or Cabinet) would otherwise be prohibited from voting on the matter;

b) the Regulations got the second ground wrong, by providing that it would apply where, because of the prejudicial interest of Members, the business of the Authority would be impeded because the Authority were unable to comply with the proportionality requirements for Committees or Sub Committees. In practice, the proportionality rules apply only to the process of appointment of the Committees and Sub Committees, and not to attendance at individual meetings, so this ground was ineffective.

- 6.2 The Regulations now state the second ground to apply where the business of the Authority would be impeded because the absence of Members as a consequence of prejudicial interest would upset the political balance of the meeting to such an extent as to prejudice the outcome of the votes in that meeting.

- 6.3.1 Where one or more Members have made a written application for dispensation, setting out why they consider the dispensation would be desirable, the Standards Committee may only grant a dispensation if it is of the opinion that it is appropriate to grant a dispensation. A dispensation can be granted for a particular meeting or for a period, not exceeding four years. The dispensation cannot be granted for a Member who is prohibited from participating at an Overview and Scrutiny Committee by virtue of having been involved in taking the original decision, or for a Cabinet Member for the exercise of delegated powers (on the basis that the appropriate course would be to refer the matter to the Leader or to the Full Cabinet for a decision). All dispensations are then entered in the register of Members interest.

- 6.3.2 In practice the grant of dispensations will continue to be problematic because Members are rarely aware of the numbers of Members who are going to be debarred from consideration of a particular matter by reason of prejudicial interest until it is too late to call a Standards Committee to consider their request for dispensation before

the meeting takes place. The re-drafted text of the second ground for dispensation would suggest that dispensation can now only be granted where the request is supported by clear evidence that voting at the meeting on this item would be conducted on strict party lines, and that the Standards Committee should only grant the minimum number of dispensations necessary to secure the same result is achieved as would have been achieved if no Members had prejudicial interest (i.e. that the majority party, if any, secures majority of votes, but not that it secures the same degree of majority as it would otherwise have secured).

- 6.4 Few dispensations have been made and none in recent times. Sometimes they have been given where Parish Councils wish to comment on Housing Allocation Proposals and many of their Members have prejudicial interest in particular allocations in their Parish area.

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### **Financial Implications of an Intervention/Joint Committee**

7. Intervention by the Standards Board is likely to be a substantial cost to the Authority. The use of a joint Standards Committee may involve savings but at the present time there is no desire from any West Sussex Authority to set up such a Joint Committee given that enough independent Members have come forward to make each of the Council's Standards Committees viable. The travel distance in West Sussex may well be prohibitive.

### **Financial Implications of this report**

8. There are no financial implications of this report

### **Background Papers**

The Standards Committee (Further Provisions) (England) Regulations 2009 No. 1255.