

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **J54**

TO: STANDARDS COMMITTEE

DATE OF MEETING: 10 July 2009

**THE STANDARDS COMMITTEE (FURTHER PROVISIONS)(ENGLAND)
REGULATIONS 2009**

1. **PURPOSE OF REPORT**

To inform members of the new Standards Committee (Further Provisions) (England) Regulations 2009 relating to (i) suspension of standards committee functions (ii) establishment of joint standards committees and (iii) dispensations.

2. **RECOMMENDATION**

- 2.1 That the Committee determine whether to instruct the Monitoring Officer to advise all members of the new grounds for application for dispensation in respect of prejudicial interests.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

- 3.1 None

4. **RISK MANAGEMENT**

Not applicable to this report.

5. **KEY INFORMATION**

- 5.1 The Standards Committee (Further Provisions) (England) Regulations 2009 came into force on 15 June 2009. They make provision for the Standards Board for England to suspend the functions of a local Standards Committee where the Committee is failing to perform its functions satisfactorily, and either to discharge the functions itself or to arrange for another authority's Standards Committee to discharge them. The regulations also give authorities a power to establish Joint Standards Committees, and extend the power of Standards Committees to give members dispensations where they would otherwise be prohibited from participating on a matter because of a prejudicial interest.

SUSPENSION OF STANDARDS COMMITTEE ASSESSMENT FUNCTIONS

- 5.2 The function of initial assessment of complaints of breach of Code of Conduct by members was transferred from the Standards Board to the Standards Committees of local authorities from 8 May 2008. Most 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.

- 5.3 An intervention can be triggered by the Standards Board where:
- 5.3.1 It is the view that the authority's Standards Committee has failed:
- to have regard to Standards Board guidance;
 - to comply with a direction from the Standards Board;
 - to carry out its functions within a reasonable time or in a reasonable manner;
- 5.3.2 it is of the view that the authority's Monitoring Officer has failed to carry out his/her functions within a reasonable time or in a reasonable manner;
- 5.3.3 the authority or its Standards Committee has requested the Standards Board to intervene.
- 5.4 Unless the authority or its standards committee has invited the Standards Board to make a direction, where the Standards Board considers intervention, it must give the authority written notice of its intentions and reasons. The authority must then be allowed at least 28 days to respond and the Standards Board must take account of any observations or other relevant evidence submitted before making a direction. A copy of the notice of intention must be sent to the chair of the standards committee and the monitoring officer. The notice must specify a date within 6 months of the notice being served by which time the direction will be made. If no direction is made within that timescale, a fresh notice must be issued before a direction can be made.
- 5.5 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 that is likely to be dependent on the two authorities reaching agreement on costs.
- 5.6 During the period of the intervention, the Standards Board, or the Standards Committee of the substitute authority, would undertake the initial assessment and review in exactly the same manner as the original authority. It 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 Hearings Sub-Committee) or to use the Monitoring Officer and/or the Monitoring Officer and/or Hearings Sub-Committee of the original authority if that is appropriate.
- 5.7 An intervention can be terminated by the Standards Board at any time.

JOINT STANDARDS COMMITTEES

- 5.8 The regulations give a discretion for two or more local authorities to set up a Joint Standards Committee. It can be established to discharge all of each participating authority's standards functions, or just some of those functions with each authority retaining its own Standards Committee to discharge those standards functions which have not been allocated to the Joint Committee. Accordingly, authorities might agree to establish a Joint Standards Committee which would establish an Assessment 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. However, 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 then be discharged by the Standards Committee of an individual participating authority.
- 5.9 Where authorities wish to establish a Joint Standards Committee, the full Council of each participating authority must 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 and Parish members, to be appointed to the Joint Standards Committee by each participating authority, and their terms of office;
 - make provision for the Joint Standards Committee to appoint members to its Assessment, Review and/or Hearings 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 upon service of a notice; 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 an arbitrator).

DISPENSATIONS

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

- where the business of the authority would be impeded because more than 50% of the members of the decision-making body (Council, Committee or Sub-Committee) would otherwise be prohibited from voting on the matter;
 - where, because of the prejudicial interests of members, the business of the authority would be impeded because the authority was unable to comply with the political proportionality requirements for Committees or Sub-Committees.
- 5.11 The first ground has been repeated in the new regulations. The second ground, however, was defective because in practice, the proportionality rules apply only to the process of appointment of Committees and Sub-Committees, and not to attendance at individual meetings.
- 5.12 The regulations now re-state the second ground to apply where the business of the authority will be impeded because the absence of members as a consequence of prejudicial interests would upset the political balance of the meeting to such an extent as to prejudice the outcome of voting in that meeting.
- 5.13 One or more members may apply for a dispensation by written request to the standards committee setting out why they consider that a dispensation would be desirable. The Standards Committee may only grant a dispensation if it is of the opinion that it is appropriate having regard to whichever of the two grounds the application is made and any other relevant circumstances to the case. A dispensation can be granted for a particular meeting or for a period, not exceeding four years. A 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.
- 5.14 The existence, duration and nature of all dispensations must be recorded in writing and kept with the register of members' interests.
- 5.15 The grant of dispensations may continue to be problematic because members are rarely aware of the numbers of members who are going to have a prejudicial interest until it is too late to call a Standards Committee to consider their requests for dispensation before the meeting takes place. In practice, however, Babergh receives very few enquiries about dispensations.
- 5.16 Commentators suggest that the re-drafted text of the second ground for a dispensation may only allow for a dispensation where the request is supported by clear evidence that voting at the meeting on this item will be conducted on strict party lines. Further, that the Standards Committee should only grant the minimum number of dispensations necessary to secure that the same result is achieved as would have been achieved had no members had prejudicial interests. These interpretations would make the consideration of dispensations by standards committees on the second ground extremely onerous and the Monitoring Officer would suggest that such approach would be an over complication of the actual wording and intention of Parliament.

6. **APPENDICES**

None.

7. **BACKGROUND PAPERS REFERRED TO:**

None.

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