

<b>Report of : Corporate Director of Resources</b>
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Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	2009		

Delete appropriate	as	Exempt	Non-exempt
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## **STANDARDS FOR ENGLAND INTERVENTION, JOINT STANDARDS COMMITTEES AND DISPENSATIONS**

### **1 Synopsis**

This report summarises the Standards Committee (Further Provisions) (England) Regulations 2009 which came into force in June and considers the implications for the Committee and the Council.

### **2 Recommendations**

- 2.1 That the Committee note this report.
- 2.2 That the committee approve the dispensation request procedure in Appendix 1.

### **3 Background**

- 3.1 The New Standards Committee (Further Provisions) (England) Regulations 2009, in force from 15 June 2009, make provision for the Standards Board for England (now know as Standards 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.

### **4 Suspension of Standards Committee Functions**

- 4.1 The function of initial assessment of complaints of breach of Code of Conduct by members was transferred from Standards for England to local Standards Committees and their Initial Assessment and Review Sub-Committees from 8 May 2008. The regulations give a power for Standards for England to intervene in an individual authority if that is necessary because functions were not being performed effectively.

4.2 An intervention can be triggered by Standards for England where:

(a) It is the view that the authority's Standards Committee has failed:

- to have regard to SBE guidance;
- to comply with a direction from SBE;
- to carry out its functions within a reasonable time or in a reasonable manner;

(b) 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;

(c) the authority or its Standards Committee has requested Standards for England to intervene.

4.3 Where Standards for England 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 Standards for England itself, or to the Standards Committee of another named authority. In practice, as Standards for England 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.

4.4 During the period of the intervention, Standards for England 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. The intervention is strictly in respect of the initial assessment function, so the regulations give a discretion to Standards for England 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.

4.5 An intervention can be terminated by Standards for England at any time.

4.6 Standards for England has issued a statement about this new power describing how it will be exercised and emphasising that it intends to use this power only as a last resort, usually only after a series of attempts to improve performance have failed.

## **5 Joint Standards Committees**

5.1 The regulations give discretion for two or more local authorities to set up a Joint Standards Committee, and make it clear that such 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. So, for example, it would be possible for just hearings or just initial assessment to be made subject to the joint arrangements.

- 5.2 Standards for England have issued detailed guidance about the setting up and operation of joint standards committees, which they consider are most likely to be useful where additional flexibility to deal with cases is needed (e.g. to avoid conflicts), or where resources are limited and sharing them would benefit the successful management of the standards framework in the area covered. It is recognised in the guidance that the potential benefits needs to be balanced with potential issues such as extra bureaucracy and loss of local ownership of standards and ethical issues.
- 5.3 When the changes to the responsibilities of Standards Committees were first made, this committee considered whether the volume of complaints was likely to require any formal joint working with other authorities and concluded that it was not. This judgement has so far proved to be accurate.

## **6 Dispensations**

- 6.1 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:
- (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 Executive) 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 interests of members, the business of the authority would be impeded because the authority was 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 Committees and Sub-Committees, and not to attendance at individual meetings, so this ground was ineffective.
- 6.2 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.
- 6.3 Where one or more members have made a written application for a dispensation, 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 to grant a dispensation. A dispensation can be granted for a particular meeting or for a period, not exceeding four years. All dispensations are then entered in the register of members' interests.
- 6.4 In view of the need for the Standards Committee to be of the opinion that it is appropriate to grant a dispensation, the grant of a dispensation rests upon the circumstances at a particular meeting, set against the prejudicial interests of any

members of that body. This suggests that a continuing rather than single meeting dispensation, would be unusual. It is also worth noting that in the case of scrutiny bodies and other committees which would not be expected to be whipped, lack of political balance may not be regarded as prejudicing the outcome of voting in any event.

- 6.4 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, or for an Executive Member for the exercise of delegated powers (on the basis that the appropriate course then would be to refer the matter to the Executive for decision). Executive members do not currently exercise individual delegated powers in Islington in any event, other than in the case of the Executive Member whose portfolio responsibilities include joint working arrangements with health.
- 6.5 In practice, the grant of dispensations will continue to be problematic. Members will often not be aware of the numbers of members who are going to be debarred from the consideration of a particular matter by reason of prejudicial interests until it is too late to call a Standards Committee to consider their requests for dispensation before the meeting takes place. In practice members may not realise they themselves have a prejudicial interest in a report until they see the agenda, and it will by that stage be too late to call a Standards Committee meeting with the required notice of 5 clear days. In some circumstances it may be possible to deal with a request for a dispensation as an urgent item (with the agreement of the chair) at a meeting already scheduled to take place less than 5 clear days after the request has been received.
- 6.6 Detailed guidance has also been issued by Standards for England in respect of this aspect of the new regulations. In particular the guidance suggests some criteria by which the committee might balance the prejudicial interest of the member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the member is unable to do so. The considerations identified in the guidance are:
- Might participation damage public confidence?
  - Is the interest common to the member and a number of the general public?
  - Is participation justified by the member's particular role or expertise?
  - Is the business to which the interest relates about a voluntary organisation or public body and is the interest a non-financial one?

The last of these seem likely to very rarely arise in practice.

- 6.7 It is also suggested in the guidance that the committee agree and make available a process for making requests and the criteria by which they will be assessed. A proposed draft procedure is in the appendix for the committee to consider.

#### **4.1 *Legal Implications***

These are set out in the body of the report.

## **4.2 Financial Implications**

There are no financial implications arising directly from the report.

## **4.3 Equality Implications**

There are no equalities implications arising directly from the report.

### **Background papers:**

None.

Final Report Clearance

Signed by ..... Date .....  
Corporate Director of Resources

Received by ..... Date .....  
Head of Scrutiny and Democratic Services

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## Appendix 1



### **DRAFT PROCEDURE FOR DEALING WITH REQUESTS FOR DISPENSATIONS FROM COUNCILLORS**

In limited circumstances the Standards Committee can grant a dispensation to a member to allow them to speak and vote in respect of an item of business at a meeting where they have a prejudicial interest in that business under the Members' Code of Conduct. The procedure for the consideration of dispensation applications is as follows:

1. Any Member wishing to be granted a dispensation must submit a written request to the Standards Committee in the form attached.
2. A dispensation can only be granted where the statutory grounds apply. The statutory grounds are that, but for the grant of any other dispensation in relation to that business;
  - (i) more than 50% of the members who would otherwise be entitled to vote at a meeting are prohibited from voting; or
  - (ii) the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting.
3. A Member is not entitled to seek dispensation from participating in the consideration of a matter at a meeting of an Overview and Scrutiny Committee of a decision of a body they were a member of when the decision was taken.
4. No dispensation will be granted to a member of the Executive, where the dispensation would allow the executive take the decision on their own.
5. The request must be submitted to the Council's monitoring officer, who will ensure it is included as an item on the agenda for next available scheduled meeting of the Standards Committee.
6. In exceptional circumstances where it is not possible to include the request on the agenda with 5 clear days notice, a request may be considered as an urgent item by the Committee at the discretion of the Chair of the Committee.
7. Where the next available scheduled meeting of the Standards Committee is due to take place after the date of the meeting for which the dispensation is required, the Monitoring Officer will seek to arrange a special meeting of the Standards Committee to consider the matter in advance of the meeting for which the dispensation is required.

8. The Standards Committee will consider each request for dispensation on its individual merits having considered the following matters and any other relevant information:
  - a. The potential affect of the Member's participation on public confidence
  - b. Whether the interest is common to the member and a number of members the general public
  - c. Whether participation is justified by the Member's particular role or expertise?
9. The Standards Committee must specifically agree and record in writing the duration and nature of any dispensation granted. A record of dispensations granted will be kept with the Register of Interests maintained for all Members.
10. For the avoidance of doubt, it is specifically noted that no dispensation granted can last more than 4 years.

# **STANDARDS COMMITTEE**

## **Request for a Dispensation**

Please complete the following details and give as much information as possible (you can attach additional sheets of paper, if required).

**1. Please summarise the matter to which your interest relates**

**2. What is the nature of your interest?**

**3. For which meeting(s) or period are you seeking a dispensation?**

**4. Please set out in detail the reason(s) why you consider you should be granted a dispensation.**



Signed:

Councillor [                      ]

Dated:

**When completed, this form should be sent as Louise Round, Corporate Director of Resources**