

**Agenda Item No:**

**Report to:** Standards Committee

**Date of Meeting:** 10 September 2009

**Report Title:** STANDARDS COMMITTEE (FURTHER PROVISIONS)  
(ENGLAND) REGULATIONS 2009 - JOINT COMMITTEES AND DISPENSATIONS

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### **Purpose of Report**

To advise Committee of the effect of the Standards Committee (Further Provisions) (England) Regulations 2009 and guidance received from the Standards Board for England in relation to the establishment of joint committees and dispensations.

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### **Recommendation(s)**

- 1. To note the effect of the Regulations and the Guidance issued by the Standards Board for England.**
- 2. To consider the principle of and need for the establishment of a joint committee and to instruct the Monitoring Officer accordingly.**
- 3. To establish a sub-committee to consider applications for a dispensation from members with a prejudicial interest and to agree the criteria for granting dispensations as set out in paragraph 21 of the report.**

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### **Reasons for Recommendations**

The provision for joint committees is seen as a means of assisting authorities in the performance of their functions under Part 3 Local Government Act 2009 and other legislation. Members have to give due consideration to the benefits this might have not only in relation to costs but also the promotion of high standards in public life.

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## Background

### Joint Committees

1. The Standards Committee (Further Provisions) (England) Regulations 2009 make provision for the establishment of joint committees by two or more authorities but does not impose any obligation to do so.
2. The joint committee may exercise any function under Part 3 of the Local Government Act 2000 (ethical framework) and functions in relation to politically restricted posts.
3. It is to be noted that the Regulations provide that any function exercisable by the joint committee can only be exercised by the joint committee and not by the standards committee of the individual authority. There can be no co-existing jurisdiction to deal with functions delegated to the joint committee.
4. Each authority must provide at least one member on the joint committee and a member from each authority must attend meetings of the joint committee. The Regulations make detailed provision on the constitution and operation of joint committees and their terms of reference.

### Standards Board Guidance

5. The Standards Board has issued Guidance on the 2009 Regulations and provides considerable advice in relation to the establishment of joint committees.
6. The Board comments that joint arrangements are most likely to be useful where additional flexibility is needed or resources are limited. The Guidance sets out some of the advantages as follows:-
  - avoidance of conflicts of interest through a wider pool of members
  - consistency of procedures
  - public confidence in the complaints process enhanced through a greater 'distance' between standards committees and complainants/subject members
  - greater capacity to meet the increased role and workload of standards committees under the local standards framework
  - efficient and effective use of resources through sharing of resources and pooling expertise
  - increased ability to promote high ethical standards through a raised profile of the standards committee
  - the ability to jointly commission and fund mediation, training and investigations
  - the opportunity to create stronger support and advisory functions

7. Potential problems are identified as:-

- the possibility that it could become an overly bureaucratic and more complex process, leading to a lack of clarity for the general public
- member resistance to joint standards committees
- differing resource implications for authorities within the same joint working arrangement
- loss of local ownership of standards and ethical issues

8. The Guidance goes on to comment:- "The standards framework became fully localised on 8 May 2008. This reflected a general desire – which was supported by the Standards Board – among those in the field to be able to manage their own complaints. The local standards framework also recognised that a knowledge of the local area and local situation can have a positive impact on finding the right solutions."

9. The Guidance suggests three possible models as follows:-

"Model A

A joint standards committee to receive written allegations and requests for a review, and to decide what action to take in relation to them.

The defining feature of this model is that authorities will be able to retain their own standards committee. Furthermore, aside from receiving and assessing allegations and reviews, the authority's own standards committee will perform all other functions independently.

An advantage of this model structure is that it will help reduce the likelihood of standards committee members being conflicted out of a stage of the complaints process. The regulations state that standards committee members who have been involved in decision making on the initial assessment of a complaint must not take part in the review of that decision. Forming a joint standards committee will increase the number of standards committee members, and so reduce the chance of conflicts of interests occurring. This model also allows standards committees to share resources when assessing allegations, yet at the same time allows them to retain ownership of all other functions, including the hearing and determination processes. This will ensure that individual standards committees are applying sanctions based on their own local knowledge and are taking responsibility for implementing standards in their own local authorities.

Model B

A joint standards committee to carry out the functions in Model A along with receiving and considering final investigation reports and conducting hearings, making findings and imposing sanctions.

This model is an extension of Model A and will therefore also help to reduce the likelihood of standards committee members being conflicted out of a stage of the complaints process for the same reason. In addition, Model B offers an increased

opportunity to reduce costs through holding joint hearings. However, when considering whether to adopt such a structure, authorities should bear in mind that the ability to draw on local knowledge when applying sanctions may be diminished. This potential lack of local knowledge becomes more important at this stage, given that much more information is available to the standards committee once an investigation has been conducted.

### Model C

A joint standards committee to carry out all of the functions of a standards committee granted by or under Part III of the Local Government Act 2000 and Part 1 of the Local Government and Housing Act 1989.

Model C is most appropriate for single purpose authorities such as police or fire authorities. These authorities usually have less contact with the public than local authorities and are the source of fewer complaints, so they tend to need to meet less frequently to exercise their specific complaint-handling functions. A joint working arrangement could therefore be a more sensible use of resources. Establishing a joint standards committee in such situations should not lead to a weakening of the local standards framework in individual authorities. The same high levels of input expected of a single standards committee should also be applied to ensure that a culture of high standards is still developed within each participating authority.

We do not generally recommend that local authorities adopt Model C because it remains an important role of an authority's standards committee to promote and maintain high standards within its own authority."

10. Members will have their own views on the relative advantages and disadvantages of operating a joint committee. There are clear advantages of meeting difficulties of conflicts of interest and lack of resources. However, the importance of local knowledge cannot be underestimated and this comes into play at all stages of handling a complaint. One can envisage a situation where a joint committee operating under Model A might refer a complaint for investigation in circumstances where the local Assessment and Review Sub-Committees with local knowledge of the parties involved or the incident in question would decide that the appropriate action was no action. The converse might also be true. Certainly, in the former situation, under Model A there would be an cost for the authority which might have been properly avoided if the assessment and review were kept local.
11. It is understood from discussion with colleagues in other East Sussex authorities, that there is no desire at this time for establishing a joint committee. However, if members were inclined to pursue this further, it could be taken up on a more formal basis.

### Financial Implications

12. It is difficult to assess the financial implications of establishing and operating a joint standards committee. There might be efficiencies arising out of the operation of one joint committee, in terms of staffing required. It is unlikely, however, that this would result in any particular savings since there is no single member of staff within this authority who is engaged solely on standards issues and it is simply one part of

the officer's duties. The level of complaint is also unpredictable, though to date this has been low and entirely manageable within existing resources.

## **Dispensations**

13. The Regulations have revised the provision on application for and the grant of dispensation to participate in business where the member has a prejudicial interest.
14. The circumstance in which dispensation may be granted is that the transaction of business of the authority would be impeded because the number of members prohibited from voting on account of a prejudicial interest either
  - a. exceeds 50% of those members that, but for the granting of any dispensations relating to the business, would otherwise be entitled to vote; or
  - b. would, but for the granting of dispensations, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting.
15. The member has to make a request in writing to the Standards Committee requesting a dispensation and explaining "why it is desirable" and the Committee has to consider the either or both of the situations above and any other relevant circumstances in reaching a decision as to whether it is appropriate to grant the dispensation.
16. The dispensation cannot be used
  - a. more than 4 years after the date on which it was granted;
  - b. at a meeting of an overview and scrutiny committee of an authority relating to a decision made by a body of which that person was a member at the time the decision was taken
  - c. where an individual executive member is making a decision.
17. A written record of the dispensation is to be kept with the member's register of interests.

## **Standards Board Guidance**

18. The Standards Board have issued Guidance on the grant of dispensations.
19. The Guidance notes that in relation to the issue of political balance, the force of the application for dispensation will depend to a great extent on the political balance on the authority in question. Where there is a strong overall majority, the absence of one or more members of that political group due to a prejudicial interest is unlikely to be crucial and to result in the grant of a dispensation. Where the Council is hung and "numbers are tight" then it is likely to be a situation where a dispensation should be granted. This would still be subject to consideration of other relevant information. There would have to be a weighing of the prejudicial interest against the potential effect of the member being excluded from taking part.

20. The Guidance rightly points out that there is a difference between being eligible for apply for a dispensation and it being appropriate for that dispensation to be granted. It recommends adoption of criteria to be applied to applications for dispensations received.

21. The Guidance provides as follows:-

Q. Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?

For instance, it is unlikely that it would be appropriate to grant a dispensation to a member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for members on committees to be substituted by members from the same political party. However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

Q. Is the interest common to the member and a significant proportion of the general public?

For example, the member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

Q. Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?

For instance, a member might represent the authority on another public body – such as a fire or police authority – and have particular expertise in the work of that body. Therefore it may be appropriate for that member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the member's expertise before making a decision which would benefit it financially.

Q. Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member's interest not a financial one?

In circumstances such as these, the standards committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting."

## Process for dealing with applications for dispensation

22. It is suggested that the Committee establishes a sub-committee to deal with applications, chaired by an independent member with two other members one of whom must be an elected member. The membership will be drawn from the member pool of the Committee in the same way as for the Assessment and Review Sub-Committees.

23. It is suggested that the procedure be advised to members as follows:-

a. The individual member, not the group whip nor any other person, has to make the application to the sub-committee through the Monitoring Officer.

b. A meeting of the sub-committee then has to be convened in order to consider the application. It is not possible to consider an application for a dispensation to participate to deal with urgent business. Members need to consider matters coming up on the Forward Plan and to make the application in time for a meeting to be convened.

c. The application will be considered on the written application only.

d. The sub-committee will consider whether the member is eligible to apply for a dispensation under the Regulations (paragraph 14 above) and will apply the criteria set out in paragraph 21 above in coming to a conclusion as to whether in all the circumstances it is appropriate to grant a dispensation.

e. The Sub-Committee will further decide whether the extent of the dispensation is to permit the member to speak only and then to leave, or to fully participate and vote. The Committee will also consider how long the dispensation should apply, although it can be no longer than 4 years.

e. The Sub-Committee will reach a decision on the application and give reasons for that decision.

f. The Monitoring Officer will advise the member of the outcome of the application.

g. A written record of the decision shall be kept with the member's register of interests.

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### Wards Affected

None

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### Area(s) Affected

None

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### Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	No
Risk Management	No

Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	No
Organisational Consequences	Yes

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### **Supporting Documents**

Standards Committee (Further Provisions) (England) Regulations 2009  
Standards Board for England Joint Standards Committees Guidance

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