

Agenda Item No: **Report No:**

Report Title: **New Regulations: Standards Board Intervention, Joint Standards Committees and Dispensations**

Report To: **Standards Committee** **Date:** **4 August 2009**

Ward(s) Affected: **All**

Report By: **District Solicitor and Monitoring Officer**

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Purpose of Report:

To inform the Committee of the implications of new regulations – “The Standards Committee (Further Provisions) (England) Regulations 2009 – which came into force on 15 June 2009.

Officer’s Recommendation(s):

- 1 That the Monitoring Officer advise all Lewes District councillors and town/parish clerks of the new grounds for application for dispensation in respect of prejudicial interests and refers them to the relevant Standards Board guidance.
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Reasons for Recommendations

To ensure councillors and town/parish clerks are made aware of a change in the law which affects the ability of councillors to obtain dispensations.

Information

- 1 In summary, the new Regulations:
 - 1.1 allow 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.
 - 1.2 give councils a power to establish Joint Standards Committees.
 - 1.3 extend the power of Standards Committees to give councillors dispensations where they would otherwise be prohibited from participating on a matter because of a prejudicial interest.

Suspension of Standards Committee functions

- 2 An intervention can be triggered by the Standards Board where:
 - 2.1 it is of the opinion that the council’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.
- 2.2** it is of the view that the council's Monitoring Officer has failed to carry out his/her functions within a reasonable time or in a reasonable manner.
- 2.3** the council or its Standards Committee has requested the Standards Board to intervene
- 2.4** 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 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.
- 2.5** During the period of 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 on 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.

An intervention can be terminated by the Standards Board at any time.

3 Joint Standards Committees

- 3.1** The regulations give a discretion for two or more local authorities to set up a Joint Standards Committee, and make it clear that such 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, such that each authority retains its own Standards Committee to discharge those standard functions which have not been allocated to the Joint Committee. Accordingly, authorities might agree to establish a Joint Standards Committee which would establish a Referrals 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 then be discharged by the Standards Committee of an individual participating authority.

3.2 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 Joint 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 Referrals, 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; 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).

4 **Dispensations**

4.1 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:

4.1.1 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;

4.1.2 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

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Committees and Sub-Committees, and not to attendance at individual meetings, so this ground was ineffective.

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. It should be noted that this second ground does not apply to town/parish councils because there is no obligation on them to achieve political balance.

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. 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 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 full Cabinet for decision). All dispensations are then entered in the register of members' interests.

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 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. The re-drafted text of the second ground for a dispensation would suggest that a dispensation can now only be granted where the request is supported by clear evidence that voting at the meeting on this item will be conducted on strict party lines, and 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 (ie that the majority party, if any, secures a majority of votes, but not that it secures the same degree of majority as it would otherwise have secured).

Since preparing this report the Standards Board has issued guidance on the issue of dispensations (26/09/09). A copy is attached at Appendix 1.

5 Financial Appraisal

There are no financial implications arising as a result of this report.

6 Environmental Implications

I have completed the Environmental Implications Questionnaire and there are no significant effects as a result of these recommendations.

7 Risk Management Implications

I have completed the Risk Management questionnaire and this Report does not require a risk assessment because the changes/issues covered by this Report are not significant in terms of risk.

8 Background Papers

None.

9 Appendices

- 1** Standards Board Guidance dated 26 June 2009 relating to the issue of dispensations.

DISPENSATIONS

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This guidance on dispensations is aimed at standards committees. It is not mandatory but has been written to help describe when standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest.

Granting dispensations under the new regulations

The legislation states standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations changed in June 2009

Concerns were raised by some authorities, as well as the Standards Board for England, about the provisions of previous dispensation regulations. Due to these concerns, the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations) revoke the previous regulations. They replace them with new provisions to clarify the grounds on which standards committees may grant dispensations to local authority members.

Under Section 54A(1) of the Local Government Act 2000 an authority's standards committee can set up a sub-committee to consider requests for dispensations. Any reference in this guidance to the standards committee includes any sub-committee which has this function.

Dispensations may be granted for speaking only, or for speaking and voting. The 2007 Code of Conduct (the Code) relaxed the provisions for restricting members from speaking. Therefore, the need to request a dispensation in this respect is now limited to circumstances where the public do not have the right to speak, or to where a parish or police authority has not adopted paragraph 12(2) of the Code.

Part 4 of the regulations sets out the

circumstances in which a standards committee can grant dispensations to members of relevant authorities in England, and police authorities in Wales. If a member acts in accordance with the granting of a dispensation, taking part in business otherwise prohibited by an authority's code of conduct would not result in a failure to comply with that code.

A standards committee may grant a dispensation to a member or co-opted member of an authority in the following circumstances:

- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting OR
- where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

Note: Although the Regulations are not explicit, political balance is a legal formula, set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to relevant authorities and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to parish councils.

Standards committees must ignore any dispensations that have already been given to others at the meeting to decide whether either of these criteria apply.

There are two exceptions to this:

- Members cannot be given a dispensation allowing them to vote in

overview and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken.

- A dispensation cannot be given to allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. However, the dispensation cannot be used to allow participation in the business of the authority if it was granted more than four years ago.

Legal requirements for granting dispensations

- 1) Standards committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by their code of conduct. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). The list of meetings is set out in paragraph 1(4) of the Model Code of Conduct contained in the Local Authorities (Model Code of Conduct) Order 2007. These are meetings of:

- the authority
- its executive and its committees and sub-committees
- any other committees, sub-committees, joint committees, joint sub-committees or area committees

of the authority.

- 2) Standards committees can grant a dispensation for an item of business if the political balance of a meeting would be upset enough to prejudice the outcome of the vote. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). This means that due to the number of members who are prevented from voting the political balance of the committee is changed. This is similar to a provision that has been in existence in Wales for some time. As before, this does not apply to parish councils as they are not bound by the political balance rules.

[*]The requirement to ignore any members who have already been granted dispensations means that standards committees should disregard any previously granted dispensations in order to work out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, once two people had been granted dispensations, the remaining four would be ineligible because at that point 50% of the committee would be able to vote.

In addition it is necessary to consider if any of the exceptions set out above apply.

Issues and criteria to consider when granting dispensations

The number of members in each political group on an authority could affect the eligibility to apply for a dispensation.

In situations where one political party has a large majority on an authority, and therefore on its committees, members of that political party will not be eligible to apply for a dispensation frequently under the criterion for political balance (see page 3). Where an authority has two or more political parties, and the number of members that each party has is fairly evenly balanced, the eligibility to apply for a dispensation will rise.

Clearly there is a difference between being eligible to apply for a dispensation and it being appropriate for that dispensation to be granted. We recommend that the standards committee considers the need for criteria to be applied to requests for dispensations. The committee will need to 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.

Considerations for dealing with dispensation requests

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.

Practical guidance on the process for granting dispensations and recording them

The process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those

concerned. Therefore, standards committees should set all this out and make it available to members.

A member must submit an application in writing explaining why a dispensation is desirable. Only the member can do this – they can't ask somebody else to do it on their behalf. It is sensible to send that application to the monitoring officer so that they can arrange for it to be considered by their standards committee.

A standards committee meeting must be convened to consider the application for a dispensation. Therefore, it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.

The committee must consider the legal criteria set out on pages 3–4, including the exceptions. They must also consider any other relevant circumstances. These can include any local criteria they have adopted.

The committee will need to consider whether the member making the request will be allowed to make oral representations to the committee or whether the application will be dealt with only through written representations.

A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

It is our view that the regulations do not

allow standards committees to issue general dispensations to cover members for any situation where a prejudicial interest may arise. The regulations refer to circumstances that arise at "a meeting". Therefore, we would expect most dispensations to cover a specific item of business at one meeting of the authority.

The decision must be recorded in writing and must be kept with the register of interests established and maintained under Section 81 (1) of the Local Government Act 2000.

Standards committees can refuse to grant a dispensation. The regulations allow for standards committees to use their discretion rather than impose an obligation for them to grant dispensations.