

- District Councils
- Health Authority
- Police
- Other Bodies/Individuals

FINAL DECISION YES

SUGGESTED NEXT STEPS:

Details to be specified

- Further consideration by this Committee
- To Council
- To Cabinet
- To an O & S Committee
- To an Area Committee
- Further Consultation

Agenda No 3

Audit and Standards Committee - 21 September 2009.

The Standards Committees (Further Provisions) Regulations 2009

Report of the Strategic Director of Customers Workforce and Governance

Recommendation

1. That the Committee considers the new arrangements under the Standards Committees (Further Provisions) Regulations 2009.
2. Adopts the guidance of the Standards Board as the basic framework for making decisions on requests for dispensations and considers whether it wishes to add any other criteria.

Suspension of initial assessment functions

1. The circumstances in which the Standards Board may suspend assessment functions are set out in the Regulations which came into force on 15 June 2009. They are:
 - The standards committee has failed to have regard to Standards Board guidance in respect of the exercise of functions under Part 3 of the Act or associated regulations.
 - The standards committee has failed to comply with a direction issued by the Standards Board in respect of the exercise of functions under Part 3 of the Act or associated regulations.
 - The standards committee or the monitoring officer has failed to carry out one or more of the functions under Part 3 of the Act or associated regulations in a reasonable time or a reasonable manner.
 - The authority or the standards committee has invited the Standards Board to suspend the committee's assessment and review functions.
2. The Standards Board will base their decision on the information they receive and collect about how authorities are performing. This includes quarterly and annual returns.
3. When the Standards Board intends to suspend the authority's initial assessment functions, they will notify the authority, giving reasons and ask for any observations (except in cases where the authority has requested the Board

to suspend its function). The purpose of the notice is to inform the authority of the proposed suspension, and to give them an opportunity to avoid suspension.

4. Copies of the notice will be sent to the monitoring officer and the chair of the standards committee. The notice will give the authority no less than 28 days to respond. The monitoring officer, on behalf of the authority, can take this opportunity to tell the Board why the authority's assessment and review functions should not be suspended, and what actions will be taken to address the issues set out in the notice.
5. The Board will take account of any observations made by the authority, as well as any other relevant information, before deciding whether to proceed with a direction. At this point the Board may decide not to suspend the authority's assessment and review function, and to continue to work with and support the authority.
6. If the Board has not served a direction by the time specified in the notice (maximum of 6 months from date the notice is served), the Board must issue another notice before giving a direction (effectively starting the process again).

Direction to suspend functions

7. Where the Board decides to suspend an authority's assessment and review functions, they will serve a direction on the authority in writing. Copies of the notice will be sent to the chair of the standards committee and the monitoring officer of the authority.
8. They can decide that the assessment and review functions should be carried out by another authority rather than the Board. Where the Board are considering this course of action, they will consult with that authority, and will only proceed with its agreement. They will then notify the monitoring officer and the chair of the standards committee of the authority which will be taking over the assessment function referred to in the direction.
9. The direction will state the date the suspension is to begin, the reasons for the decision, and the name of the body which will be dealing with the assessment of complaints – either the Board, or another named authority.
10. The direction will also require the authority to publish details of the direction in at least one local newspaper, and, if the Board consider it appropriate, on the authority's website or any other publication. The Board may also publish this information.

Amendments to the direction

11. During the period in which an authority's assessment and review functions have been suspended, the Board may serve a further direction specifying a different body to deal with these functions. The notice will specify the date this comes into effect, and copies of it will be sent to the chair of the standards committee, the monitoring officer, and the chairs of any standards committees referred to in the notice.

Assessment and review during a suspension

12. The standards committee of an authority which has been served with a direction must refer all the complaints and review requests it receives on or after the date the suspension begins to the body specified in the direction. It must also refer all those complaints and review requests it received before that date, but which it has not yet assessed.
13. During the suspension period, the Board or the other specified authority will carry out all assessments and reviews in relation to the authority, and will produce the written summaries and decision notices. On receipt of a complaint from a suspended standards committee, the Board or the other specified authority can decide to:
 - take no action or
 - refer it to an ethical standards officer, or
 - refer it to the monitoring officer of the suspended authority, or
 - refer it to the monitoring officer of another authority if that is more appropriate, with a direction to investigate or take other action.
14. If the Board or the other specified authority decides to take no action, the complainant has the right to request that the decision is reviewed. The review must be carried out by someone other than the person or the sub-committee who made the original decision.

Standard Board's work with a suspended authority

15. The purpose of a suspension is to improve performance and address the issues that gave rise to it. The Board will provide a range of tailored support to help the authority improve. They may also work with the standards committee and the monitoring officer to develop an action plan, which will be closely monitored. Support may also include advice and guidance, sharing best practice, training or facilitating peer reviews. Support may be provided by organisations other than the Board if they consider that is most appropriate.
16. The Board expect suspended authorities to cooperate fully with them or the standards committee which is carrying out its functions. This includes providing access to all relevant information required to carry out those functions. If only some of an authority's functions have been suspended, yet it fails to cooperate, they are likely to amend the direction so that all of their functions are carried out by another authority.
17. If an authority fails to respond to informal requests for information and assistance from us, they will use their powers to formally request information under Section 66C of the Act.

Revocation of a suspension

18. While an authority's assessment and review functions are suspended, the Board will monitor and review its performance. When they are satisfied that the circumstances which gave rise to the suspension notice no longer apply, they will revoke the direction to suspend.

19. When they have decided to revoke a suspension direction, they will serve written notice of this decision on the authority. Like the suspension notice, the revocation notice will specify the date on which the revocation will take effect. Copies will also be sent to the chair of the standards committee, the monitoring officer, and the chair of any standards committee to which the direction referred. It will also require the authority to publish details of the revocation in at least one local newspaper, and, if the authority considers it appropriate, on the authority's website or in any other publication.

Joint standards committees

20. Joint standards committees will be able to deal with all or any functions of a standards committee but there can be no concurrent functions. The terms of reference of the joint committee must include the following:
- the functions they are to have
 - the administrative arrangements
 - where written allegations should be received for each authority involved in the arrangements
 - the number of members and their terms of office
 - any allowances they will get
 - how to withdraw from the joint arrangement
21. The finances are to be shared as agreed by the authorities involved and in default of agreement will be decided by an arbitrator appointed by them.
22. The Standards Board has produced guidance on joint standards committees which include a draft constitution or terms of reference.

Dispensations

23. Standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The new provisions clarify the grounds on which standards committees may grant dispensations to local authority members. Dispensations may be granted for speaking only, or for speaking and voting.
24. 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.
25. 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.
26. Standards committees must ignore any dispensations that have already been given to others at the meeting to decide whether either of these criteria apply.
27. 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.

Considerations when dealing with requests

28. The Board advises that where one political party has a large majority on an authority and therefore on its committees the members of that party will not be eligible for a dispensation very often on the basis of skewed political balance. Clearly there is a distinction between being eligible to apply for an exemption and whether it is appropriate to grant one. The Committee will need to balance the prejudicial interest of the member concerned and the potential effect on the outcome of the vote if the member is unable to participate. The Board suggests that the Committee should adopt criteria to apply to requests. It puts forward the following questions
29. Is the nature of the members' interest such that allowing them to participate would not damage public confidence in the conduct of the local authority's business?

It is unlikely that it would be appropriate to grant a dispensation where the interest arises as a result of the personal financial interest of the member concerned or that of a relative. The adverse impact on public confidence would probably outweigh any public interest in maintaining the political balance, particularly where an authority has well established procedures for members on committees to be replaced by members from the same political party.

However if the interest arises from the financial impact on a public body of which they are a member, it is possible that the public interest in maintaining the political balance might be given greater prominence.

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

The example given is that of a member who is a pensioner and the item of business relates to reduced rates for pensioners at a public facility. If a

significant proportion of the population in the area are also likely to be pensioners then it may be appropriate to grant a dispensation.

31. Is the participation of the member in the business to which the dispensation relates justified by the member's particular role or expertise?

The example given is where a member might represent the authority on another public body such as fire or police authority. The member might have a particular expertise in the work of that body and it might be appropriate to allow a member to address the decision-making body even where the public have no right to do so. The body would have the benefit of the members' expertise before making a decision which may have a financial impact on the body.

32. 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 non-financial?

In these circumstances it might be appropriate in the interests of the inhabitants to remove the incapacity from speaking or voting.

The Process

33. A member must submit an application in writing explaining why the dispensation is desirable. The application should be sent to the monitoring officer. A standards committee meeting must be convened to consider the request, therefore it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.
34. The Committee must consider the legal tests, the exceptions and any local criteria they have adopted. They must also consider any other relevant circumstances. The Committee will need to consider whether the member should be allowed to make oral representations or only written representations.
35. Ultimately the standards committee has the discretion whether or not to grant the dispensation or to decide the nature of any dispensation e.g. to speak not vote, how long the dispensation will last (maximum is 4 years). The Standards Board takes the view that the regulations do not allow the committee to issue general dispensations for any situation where a prejudicial interest arises. Therefore they would expect most dispensations to cover a specific item of business at one meeting of the authority.
36. The decision must be recorded in writing and must be kept with the member's register of interests.

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20 August 2009