

**MANCHESTER CITY COUNCIL
REPORT FOR RESOLUTION**

COMMITTEE: Standards Committee
DATE: 10 March 2008
SUBJECT: Local Government and Public Involvement in Health Act 2007
REPORT OF: The City Solicitor

PURPOSE OF REPORT:

To update members of the Standards Committee on:

1. the Department of Communities and Local Government consultation paper on Orders and Regulations Relating to the Conduct of Local Authority Members in England; and
2. provisions concerning the ethical framework under the Local Government and Public Involvement in Health Act 2007.

RECOMMENDATIONS:

1. To note the content of this report.
2. To provide any comments on the issues raised in connection with the ethical standards provisions of the Local Government and Public Involvement in Health Act 2007.
3. To make recommendations in relation to the size of the Standards Committee.

FINANCIAL CONSEQUENCES FOR REVENUE BUDGET:

None at present

FINANCIAL CONSEQUENCES FOR CAPITAL BUDGET:

None

WARDS AFFECTED:

All

IMPLICATIONS FOR:

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

BACKGROUND DOCUMENTS:

1. Reports to the Standards Committee on 15 January, 25 June 2007 and 14 January 2008
2. The Local Government and Public Involvement in Health Act 2007
3. Communities and Local Government consultation paper on Orders and Regulations Relating to the Conduct of Local Authority Members in England published 3 January 2008

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Background

1. At its meeting on 14 January 2008 the Standards Committee considered a consultation paper on proposals for the new orders and regulations arising from the Local Government and Public Involvement in Health Act 2007 ("the Act") together with a draft response. The consultation included proposals for regulations on the local assessment of complaints, the size, composition and proceedings of standards committees and the sanctions available to standards committees. A copy of the consultation paper was circulated to all members of the Council on 7 January 2008 advising them of the opportunity to comment on the proposals and pass their comments to either their representative on the Standards Committee or the City Solicitor.
2. The consultation period is now closed, a copy of the Council's response to the paper is attached as the Appendix to this report.

Orders, Regulations and Guidance Relating to the Conduct of Local Authority Members in England

3. The Local Government and Public Involvement in Health Act 2007 (Commencement No.2 and Savings) Order 2008 was made on 30 January 2008 bringing provisions concerning the standards framework into force.
4. The main provisions brought into force on 31 January 2008 are:
 - (a) the partial commencement of section 185 allowing the Secretary of State to make regulations about allegations made to standards committees of failure to comply with their authority's code of conduct;
 - (b) sections 188 and 189 making provision about sub-committees of standards committees and allowing the Secretary of State to make regulations about two or more relevant authorities establishing a joint standards committee; and

- (c) sections 193 to 195 amending the powers and functions of monitoring officers and standards committees in anticipation of the local filter for the initial assessment of allegations of misconduct by members.
5. The main provisions it will bring into force on 1 April 2008 are:
- (a) section 187 amending Section 53(4) of the Local Government Act 2000 to require a standards committee to be chaired by an independent member; and
 - (b) section 202 amending section 3 of the Local Government and Housing Act 1989 to transfer the function of granting and supervising exemptions in respect of local authority politically restricted posts from an independent adjudicator appointed by the Secretary of State to standards committees.
6. Following the closure of the consultation period, regulations are now being prepared to implement the local filter procedures. It is anticipated that there will be five sets of regulations dealing with:
- (a) powers of standards committees and the Adjudication Panel;
 - (b) organisation of standards committees for filter, review and hearing;
 - (c) rules for use of the Standards Board's reserve intervention powers;
 - (d) notifying the member who is the subject of the allegation(s); and
 - (e) joint committees.
7. The Standards Board is working on guidance to assist authorities with their new responsibilities and support them in the implementation and function of the locally managed framework. The guidance will be published as soon as possible after the regulations are confirmed in five parts focusing on:
- (a) the role and make-up of standards committees;
 - (b) local assessment and how it will operate;
 - (c) local investigations;
 - (d) local determinations; and
 - (e) monitoring and audit arrangements.

Members of the Standards Committee will be advised once the regulations and guidance have been issued. The Standards Board understand that a considerable number of the responses to the consultation paper support a

1 May 2008 implementation date for the orders and regulations. The Standards Board themselves support an implementation date of 1 April 2008.

8. The Standards Board is producing a training syllabus to support authorities in developing core training for standards committees and monitoring officers. They have published a training exercise for standards committees, adapted from the local filter pilot exercise that the Standards Committee participated in, which is available on their website at <http://www.standardsboard.gov.uk/Localassessment/Assessmentexercise/>.

Issues in relation to the Ethical Standards Provisions of the Act

9. In connection with the implementation of the locally managed framework (subject to Communities and Local Government making appropriate regulations) some of the issues that the Standards Committee may wish to consider are set out below :
 - (a) **membership of the Standards Committee** - standards committees must have a minimum of:
 - (i) three members (none of whom may be the leader of any political group and no more than one of whom may be a member of the Executive);
 - (ii) where the committee has more than three members at least 25% independent membership; and
 - (iii) an independent chair from 1 April 2008.

The current membership of the Council's Standards Committee is eight consisting of five elected members including the Lord Mayor, two independent members and a parish councillor. Taking in account the possibility of conflicts of interest, and cover required in the event of holidays or sickness, members may consider that membership of the Standards Committee should be increased to ensure sufficient member availability for the operation of the local filter. It is recommended that there should be a minimum increase of two additional elected members and one additional independent member;

- (b) **structure of standards committees** - in addition to their role as overseer of the Council's ethical standards, the Standards Committee will now have three separate roles in relation to complaints about member conduct:
 - (i) receiving and assessing complaints (stage one);
 - (ii) reviewing local assessment decisions (stage two); and
 - (iii) conducting hearings following investigation (stage three).

The Standards Board has indicated that to avoid perceptions of bias or predetermination, members who carry out a local assessment decision (stage one) should not be involved in a review of the same decision (stage two) should one be requested. However, the Standards Board does not believe a member who is involved in stage one of the process, should necessarily be precluded from participating in stage three. This would need to be considered on a case-by-case basis in the light of views expressed at the initial consideration. If the Standards Committee adopts a process requiring that a member may only participate in one of the stages of a complaint, the Standards Committee would have to be of sufficient size to enable three separate sub-committees to be convened. If this were to be the case, each subcommittees would require a minimum of three members each consisting of one independent chair and two elected members (one majority group and one minority group). The Committee is asked to consider whether this should be the case;

- (c) **publicising the local assessment of complaints** - the public needs to be aware of the new role of the Standards Committee and where to direct their complaint if they suspect that a member has breached the Code of Conduct. A complaints process dealing with issues such as how the public will be informed of the new arrangements and who will receive and log an allegation will need to be devised. The Standards Board are producing a template complaint form, which the Standards Committee may wish to adapt in line with local requirements. The Standards Board have suggested some examples of good practice which it is recommended that the Council pursue:
 - (i) prominent and easy-to-navigate links on the Council's website;
 - (ii) leaflets and/or posters available in the Town Hall, libraries, planning, housing and social work departments and area offices; and
 - (iii) articles in the Council's press publications e.g. through Manchester People and Cascade;
- (d) **briefings/training** – the Standards Committee is asked to recommend what briefings/training members require to equip them with necessary skills for operating the local filter e.g. independent chairs and vice-chairs briefed in chairing meetings?; and
- (f) **local assessment criteria** - guidance will be available from the Standards Board on developing criteria and the types of issues to be considered when assessing complaints. The Standards Committee will need to develop its own criteria, reflecting local circumstances and priorities, which are simple, clear, open and ensure fairness. Officers will report back on this once guidance becomes available.

Members are asked to provide comments in respect of any of the above issues and to make recommendations in relation to the size of the Standards Committee.

Manchester City Council Response to the Department of Communities and Local Government on Orders and Regulations Relating to the Conduct of Local Authority Members in England Consultation 2008

Responses to consultation questions

- Q1. Does our proposal to prohibit a member who has been involved in a decision on the assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?**

Agreed, it would not be appropriate for a member who is involved in the initial assessment of an allegation that is rejected to participate in the review process of that decision. The Council agrees that a member who has participated in the initial filer process should not necessarily be debarred from taking part in any subsequent determination process. The issue of the risk of pre-determination would need to be considered on a case-by-case basis in the light of views expressed at the initial consideration or review stage.

- Q2. Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?**

The Council believes that the decision regarding which standards committee should deal with the allegation is a matter for the standards committees themselves to decide. However, where agreement cannot be reached between the standards committees they should be able to refer the matter to the Standards Board for guidance and, in the last resort, determination. The Council would welcome guidelines on matters to consider when determining how to deal with allegations made to/affecting more than one standards committee.

- Q3. Are you content with our proposal that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?**

The Council agrees that this should be a matter for guidance rather than statutory regulation. Consideration as to whether 20 days is adequate is dependent upon acceptance of the proposals that the initial assessment of misconduct allegations and any review are exempt from the rules on access

to information and notice provisions. The guidance should also address the issue of timescale where an allegation is made to more than one standards committee to allow for agreement to be reached as to which standards committee should deal with it.

- Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?**

The Council believes that in the interest of natural justice notice of the allegation should be given at the time the initial assessment is made, however it is recognised that there should be provision exempting the standards committee from this obligation in very rare circumstances. The Council recommends that it should be made explicit in the Standards Board's guidance that this will only apply to exceptional cases.

- Q5. Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officer will refer a case back to the standards committee?**

The Council agrees that circumstances should be prescribed and agrees with those proposed. In addition, the Council welcomes clarification of the role of the Monitoring Officer in the initial filter process. The current legislation requires all written complaints against members to be referred to the Standards Committee. The Council would welcome guidance from the Standards Board on what is considered appropriate action following the receipt of a written complaint. Should the Monitoring Officer (i) refer all written complaints; or (ii) refer only those complaints which meet a minimum criteria e.g. the complaint is about the conduct of a member and discloses a potential breach of the Code, and where the minimum criteria isn't met, the Monitoring Officer should engage with the complainant to seek clarification and or further information.

- Q6. Are you in favour of an increase in the maximum sanction the standards committee can impose? If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?**

The Council agrees with the proposed increase in the maximum sanction which a standards committee can impose from a three to a six month partial suspension/full suspension.

- Q7. Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing**

functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committee? Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?

The Council agrees that there should be a requirement for all sub-committee chairs discharging the assessment, review and determination functions to be independent members. Any other approach would be inconsistent with the provisions regarding full standards committees.

Q8. Do you agree with our proposal that the initial assessment of misconduct allegations and any review of a standards committee's decision to take no action should be exempt from the rules on access to information?

The Council agrees, it would not be appropriate for the rules regarding access to information and public attendance to apply to the initial filter process. Initial assessment decisions and reviews should be conducted in closed meetings consistent with the current process operated by the Standards Board.

Q9. Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee's powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?

The Council agrees with the criteria described and has not identified any additional appropriate criteria.

Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

The Council considers that there should be a charging regime levied against an authority whose initial assessment functions have been suspended in order to recover the actual costs incurred in carrying out those functions. The level of fees should be prescribed by the Secretary of State.

Q11. Would you be interested in pursuing joint arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be

satisfied if a representative from any parish in the joint committee's area attends?

The Council does not have any current proposals to pursue joint working arrangements with other local authorities. The Council would agree that where a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends. The Council has no particular views on limitation of the geographical area to be covered.

Q12. Are you content that the range of sanctions available to case tribunals of the Adjudication Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?

The Council agrees that the Adjudication Panel's range of sanctions should be expanded to reflect those available to standards committees.

Q13. Do you agree with our proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?

The Council agrees that in the circumstances described an ethical standards officer should be able to withdraw references to the Adjudication Panel.

Q14. Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so? Do the concerns we have indicated on the current effect of these rules adequately reflect your views, or are there any further concerns you have on the way they operate? Are you content with our proposals to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold?

The Council's Standards Committee has considered requests under the dispensation regulations on two occasions, the first was in relation to ward boundary changes and the second was in relation to the granting of member indemnities (which has now been addressed by the revised code of conduct). The Council agrees with the concerns you have indicated as to the current effect of the drafting of the Dispensation Regulations and in particular that the current wording of Regulation 3(1)(a)(ii) effectively makes it meaningless. In general terms, the Council is content with your proposal to provide that dispensations may be granted in respect of full Council or committees if the effect otherwise would be a political party either lost or gained a majority. However, in respect of certain quasi-judicial committees we have some reservations with this proposal. The mischief caused by

allowing the participation of potentially biased members which could leave the Council exposed to judicial review might be thought to outweigh any mischief resulting from the temporary loss of a political majority on a one-off issue especially where one would not expect voting to be on strictly party lines.

Q15. Do you think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989 to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?

The Council agrees that regulations are required to prescribe that those authorities who are not required to establish a standards committee should establish a committee to exercise functions in respect of the granting and supervision of exemptions from political restrictions and is not aware of any authorities other than waste authorities who are affected by this.

Q16. Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

The Council agrees.