

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER: **G180**

TO: STANDARDS COMMITTEE

DATE OF MEETING: 25 January 2007

THE LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

1. PURPOSE OF REPORT

- 1.1 This report appraises members of the changes to the role of standards committees and monitoring officers to be implemented under the Local Government and Public Involvement in Health Act 2007 and seeks delegated authority for those additional functions, where necessary.

2. RECOMMENDATIONS TO COUNCIL

- 2.1 That the terms of reference for the Standards Committee be extended to include the functions set out in Part 10 of the Local Government and Public Involvement in Health Act 2007 and regulations thereunder, and that the Head of Corporate Services be authorised to make any ancillary amendments to the Constitution as necessitated thereby.
- 2.2 That the general delegation schedule contained in Part 3 of the Constitution be amended so that Monitoring Officer is authorised in Member Code of Conduct related matters.

The Committee is asked to make a recommendation to Council on the above matters.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications from implementation of the new Act, although some conduct investigations may need to be outsourced dependant upon numbers. There is existing budgetary provision to allow 3-4 investigations per year to be outsourced.

4. **RISK MANAGEMENT**

- 4.1 This report is most closely linked with the Council's Significant Business Risk No. 4. Key risks are set out below:

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
The Standards Committee is not authorised to undertake functions under the LGPIH Act 2007	Almost impossible – the Committee has existing authority to undertake standards functions under the Local Government Act 2000	Critical	Report to Council at earliest opportunity to secure delegated authority for functions not currently included within the Constitution
The Standards Committee has insufficient members to deal with all stages of complaint	Significant	Critical	Joint arrangements with another Standards Committee
Insufficient officer capacity to undertake investigations	Low/Significant	Critical	Joint arrangements between Suffolk Monitoring Officers Investigations out-sourced

5. **KEY INFORMATION**

Introduction

- 5.1 The Local Government and Public Involvement in Health Act 2007 ('the Act') received Royal Assent on 30 October 2007. It will be implemented from 2008 to give effect to the Government's proposals for reform of the regime relating to standards of conduct for local government. The provisions concerning the ethical framework are contained within Part 10 of the Act which is scheduled for implementation on 1st April 2008. It amends the existing provisions concerning standards of conduct that are contained within the Local Government Act 2000.
- 5.2 The Act aims to devolve most decision-making on the conduct regime for local authority councillors and co-opted members to local authorities. A revised regulatory role will be provided for the Standards Board for England.

- 5.3 Local Standards Committees will make initial assessments of misconduct allegations and also undertake reviews of those assessments which concluded that no action be taken. This is subject to the powers for the Standards Board to suspend a standards committee's role in making initial assessments of allegations. The Board will also have authority to issue guidance to standards committees and ethical standards officers.
- 5.4 The Act also makes provision for decisions in respect of local authority posts subject to political restrictions to be undertaken by standards committees rather than, as now, by the Independent Adjudicator. , and to enable the Secretary of State to issue an order to allow the maximum pay of political assistants to be linked to a point on a relevant pay scale specified by the order.

Code of Conduct

- 5.5 The Act will amend the Local Government Act 2000, to provide that the principles and provisions in the Code of Conduct for councillors and co-opted members will no longer apply to a councillor only when he or she is acting in an official capacity. However, the only principles and provisions of the Code which may apply to councillors and co-opted members acting outside their official capacity are those which prohibit conduct that would constitute a criminal offence. This amendment gives effect to paragraph 2 of the revised Code that was adopted by the Council on 17 May 2007.
- 5.6 Authorities that have not adopted a code of conduct will be under a duty to include a copy of the mandatory provisions of the model code in their constitution.

Conduct of Members of Authorities in England: Assessment of Allegations

- 5.7 Individual local standards committees will be tasked with undertaking the role currently exercised by the Standards Board for England, of receiving written allegations that a councillor (or co-opted member) has or may have failed to comply with the Code of Conduct and conducting an initial assessment. Where such an allegation is received, the Committee must either (i) refer the complaint to the Council's Monitoring Officer for formal investigation (ii) refer the complaint to the Standards Board, in the most serious of cases, or (iii) decide that no action should be taken in respect of the complaint.
- 5.8 The Act also provides that a standards committee has discretion, where the subject of the allegation is no longer a councillor or a co-opted member of the authority in question and has moved to another relevant authority, to refer the allegation to the monitoring officer of the individual's current local authority.
- 5.9 If no action is to be taken, the Committee must take reasonable steps to advise the complainant in writing of the decision and its reasons.
- 5.10 The Standards Board may issue guidance and give directions to a standards committee with respect to the exercise of these procedures.

Review of decisions that ‘no action be taken’

5.11 The complainant will have 30 days from the date of the notification that no action is to be taken over the allegations in which to make a written request for a review of that decision. The Committee must conduct the review within 3 months of receipt of the request.

Written summary to be given to person subject of an allegation

5.12 The Committee will need to provide a written summary of the allegations to the councillor who is the subject of the allegations, notify the councillor if no action is to be taken after the initial assessment and also if a review of that decision has been requested. Power is included for the Secretary of State to make regulations to prescribe the circumstances in which the duty to give a summary of the allegation to the subject of it should not arise at the time the standards committee receives the allegation but at another time.

Powers and role of Standards Board for England

5.13 The Act also enables the Standards Board to direct that a standards committee’s power to undertake initial assessments of misconduct allegations should be suspended, and to direct that any allegations a standards committee receives must be referred either to the Standards Board or to a specified standards committee of another authority.

5.14 Where the Standards Board receives an allegation referred to it for investigation, the Board must either (i) refer the allegation for investigation to one of the Board’s ethical standards officers (ii) decide that no action should be taken, or (iii) refer the matter back to the relevant local standards committee. Where it decides to take no action, the Board should give notice of the decision and the reasons for it to the person who made the allegation and to the person who was the subject of the allegation.

Information to be provided to the Standards Board by Relevant Authorities

5.15 Periodically, information will be required to be furnished to the Standards Board in prescribed form by a date that it shall specify with details of:-

- (i) the allegations of misconduct received by the Standards Committee
- (ii) decisions to take no action in respect of allegations, and
- (iii) the exercise of functions by the Committee or the Monitoring Officer.

Miscellaneous Amendments

5.16 The Act provides that the Standards Committee must be chaired by a person who is neither a councillor nor an officer of a relevant authority.

- 5.17 Standards committees will be able to appoint sub-committees to undertake any of their functions, including any functions concerning parishes.

Joint Committees

- 5.18 The Act empowers the Secretary of State to make regulations under which two or more authorities can establish a joint committee and arrange for functions otherwise exercisable by their standards committees to be exercisable by a joint committee.

Ethical Standards Officers

- 5.19 The Act provides that the Standards Board may issue guidance to a ethical standards officer with respect to the exercise of their functions, and to enable the Board to be able to take action to facilitate the functions of standards committees or monitoring officers.
- 5.20 An ethical standards officer's access to documents will not be limited, as now, to documents relating to a relevant authority. Information obtained by an ethical standards officer in the course of an investigation may be disclosed where the disclosure is made to allow the monitoring officer to carry out his duties, or it is made to the Commissioner for Local Administration or Electoral Commission for the purpose of their functions. Regulations may allow for such disclosures to be made to other people.
- 5.21 An ethical standards officer's report on the outcome of his investigation, or an interim report on his investigation, can be passed to the relevant standards committee in order to assist it in carrying out its functions. It also provides a power for the Secretary of State to make regulations concerning the withdrawal of a reference by an ethical standards officer of matters which are subject to either his/her report or his/her interim report to the Adjudication Panel.

Role of the Monitoring Officer

- 5.22 The Monitoring Officer may inform any councillor or officer of an authority of the outcome of an ethical standards officer's investigation into an allegation, and also to furnish them with a copy of the report or any part of it, where this will help to promote high standards of conduct by councillors and co-opted members of the authority.
- 5.23 Regulations may be made to enable a monitoring officer to refer cases back to a standards committee and to identify the circumstances in which such a referral may be made. Regulations may also make provision with regard to access to and disclosure of information.

Available sanctions insufficient

- 5.24 Regulations may be made to enable the referral by standards committees of a case to the Adjudication Panel where it considers the sanction available to it would be insufficient.

Local Government Ombudsman – power to consult

- 5.25 The Act extends to standards committees the provisions in section 67 of the Local Government Act 2000 to provide that the Local Government Ombudsman may consult the standards committee (as well as the Standards Board) about a case if he/she believes that the complaint he/she is considering relates partly to a matter which may be of concern to the committee.

Case Tribunals

- 5.26 Where an interim case tribunal decides that a member should be suspended, the effect of the tribunal's notice is to suspend or partially suspend the member, rather than, as currently, requiring that the authority should take action to put the notice into effect. In addition, new provision is made for an appeal to the High Court against the decision by an interim case tribunal only to be possible where the permission of the High Court has been given.
- 5.27 The Secretary of State may make regulations concerning the sanctions that a case tribunal can impose. A case tribunal will have to give notice of its decision on a case to the Standards Board, a member who is the subject of the allegation, and the person who made the allegation. The case tribunal must also publish its decision in one or more local newspapers. Provision is also made for an appeal to the High Court against a decision by a case tribunal only to be possible where the permission of the High Court has been given.

Exemption from Data Protection Act 1998

- 5.28 The Act amends the Data Protection Act 1998 to provide that personal data, processed by a monitoring officer or an ethical standards officer for the purpose of discharging any function under Part 3 of the Local Government Act 2000, are exempt from the subject information provisions of the Act to the extent to which the application of those provisions to the data would be likely to prejudice the property discharge of that function.

Employees

Politically restricted posts

- 5.29 The Local Government and Housing Act 1989 specifies that a person is disqualified from becoming a member of a local authority if he/she holds a politically restricted post. The Act amends the 1989 Act so that the granting and supervision of exemptions from the political restriction will be the responsibility of the standards committee of each local authority in England, rather than that of the Independent Adjudicator. The section also provides that the Secretary of State may issue general advice with regard to the making of decisions on political restrictions. Before giving such general advice, the Secretary of State must consult those representatives of local government he/she considers appropriate.

Next Steps - Suffolk

- 5.30 The eight principal authorities in Suffolk are reviewing the extent to which certain functions under the Act might be exercised by a joint committee of Suffolk authorities. At its next meeting, the Standards Committee will receive a further report proposing any additional amendments to the Council's Constitution in the light of those discussions and guidance to be issued.
- 5.31 Part 3 of the Council's Constitution already specifies that the Standards Committee has authority for "functions relating to standards of conduct of Members under any relevant provision of, or regulation made under, the Local Government Act 2000". Since the new Act amends and supplements the 2000 legislation, this authorisation is sufficient to encompass the new complaints procedure. However, the Constitution will require amendment to address the new functions of Local Government Ombudsman consultations and the grant and supervision of exemptions for politically restricted posts together with any joint arrangements.

6. APPENDICES

None

7. BACKGROUND PAPERS REFERRED TO:

None

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