

STANDARDS COMMITTEE – 4TH MARCH 2008

LOCAL GOVERNMENT & PUBLIC INVOLVEMENT IN HEALTH ACT 2007

Report of the: Monitoring Officer

Status: For consideration and recommendation

Executive Summary: The Committee is advised of the main provisions of Part 10 of the Local Government and Public Involvement in Health Act, 2007, insofar as they relate to the work of the Committee. It makes recommendations as to some preparatory work in advance of the legislation taking effect.

This report supports the Key Aim of effective management of Council resources.

Portfolio Holder Cllr. Loney

Head of Service Head of Legal and Committee Services – Christine Nuttall

Recommendation: It be RESOLVED

- (a) that the Committee note the contents of this report and the effect of the Local Government & Public Involvement in Health Act 2007; and

that subject to awaited Regulations:

- (b) The Committee agree to establish either a sub-committee, to carry out the initial filter on whether or not allegations are to be investigated, or a pool of members (a hearing panel) to deal with this new role;
- (c) The Committee agree to establish a further sub-committee, to review local assessment decisions, or a pool of members (a further hearing panel) to deal with this additional new role;
- (d) The Committee instruct the Monitoring Officer to develop procedures for the handling of complaints which will include standard documentation;
- (e) The Committee consider a schedule of meetings set in advance, in case of the receipt of complaints;
- (f) The Committee consider the need to increase the number of Members especially Independent and or Parish/Town Council Members;
- (g) The Committee consider authorising the Monitoring Officer to enter into discussions with neighbouring Councils on joint working and the establishment of one or more joint standards committees or sub-committee to deal with certain elements of the process; and

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- (h) The Committee consider authorising the Monitoring Officer to produce an information leaflet on the local assessment process and organise ways in which the public can be informed of the new arrangements.

That Council be recommended that the Committee widens its current terms of reference as set out in Part 3, paragraph 7 of the Constitution to enable the Standards Committee to have the additional role and functions under any relevant provision of, or regulation made under the Local Government and Public Involvement in Health Act 2007.

Background

- 1 The Local Government and Public Involvement in Health Act 2007 (the Act) received Royal Assent on the 30th October 2007 and it is expected that the provisions relating to the conduct of Members will come into force in April 2008. Regulations are due to be published by the Government which will set out the detailed arrangements, and these will be supplemented by detailed guidance from the Standards Board for England (the Board).

Introduction

- 2 Under the legislation and guidance, the Board's role will become strategic in nature. It will produce strategy and guidance for local authorities and seek to ensure that there are adequate arrangements in place at a local level for handling misconduct complaints. Only sensitive or complex individual complaints will be handled at a national level and the Board has estimated that these may be only ten percent of complaints.

The Main Provisions of the Act

- 3 Complaints will be made in the first instance to the Council's Standards Committee. It will decide:
- to refer the allegation to the Monitoring Officer for investigation or
 - to refer the allegation to the Standards Board or
 - to decide that no further action be taken.
- 4 A complainant disappointed by a decision to take no action has a right to a review of the decision. The Board is recommending a structure of sub-committees or the standards committee acting as a pool of members to deal with the different roles.
- 5 As a minimum there would need to be two separate sub-committees, or two separate hearing panels, one for taking initial assessment decisions and one for taking decisions on reviews. It is likely that these initial decisions will be taken by a small number of Members of say three. It is likely that they would be chaired by an Independent Member and Members making the initial decision would not be able to participate in any review of it. The current

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thinking from the Board is that Members involved at these initial stages would not necessarily be precluded from involvement at the separate final hearing stage. This is because an assessment decision only relates to whether a complaint discloses something that needs to be investigated. It does not require deliberation of whether the conduct did not take place and so no conflict of interest will arise in hearing and determining the complaint.

- 6 The initial receipt and dealing with complaints has become known as the “filter stage”. This will need to be carried out promptly, in fairness to complainants and Members. The Board has operated to a target-timescale of 10 days for making an initial decision upon a complaint. Once, established, the sub-committees or hearing panels will need to respond promptly. It may be that a schedule of meetings is set in advance, in case of the receipt of complaints.
- 7 The Standards Committee must have a minimum of:
 - Three Members (two elected members and one independent member).
 - 25% as Independent lay Members if the committee is more than three people.
 - One Parish or Town Council Member if the authority has responsibilities for those Councils.
- 8 For effective practice the Board recommends:
 - At least six people as a minimum (three elected Members and three Independent Members).
 - Two, or possibly three, Parish or Town Council Members if the authority has responsibility for those Councils;
 - Consideration of whether more Members are required to ensure cover in the event of conflicts of interest, holidays or sickness.
- 9 The Committee currently comprises six Members, four Independent Members and three Town/Parish Council Members. There may be potential strains in finding enough Members to deal with the initial decision, any review and then the full hearing of a complaint. One solution might be to seek to expand the Committee, and this may include appointing a further Independent Member and or a Town/Parish Council Member.
- 10 Alternatively, there may be discussions with neighbouring authorities upon possible establishment of joint committees to deal with certain elements of the process. National pilots that have been undertaken indicate that this may be particularly useful in respect of the initial and review decisions, freeing up the majority of the usual Members of the Committee to be available for the final hearing.

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- 11 In preparing for the filter process, it will be necessary to:
- Prepare a summary of the complaint for the Committee.
 - For the Monitoring Officer to have a pre-meeting with the Independent Chair.
 - Cross reference the complaint against the Code of Conduct.
 - Obtain and prepare any additional information or paperwork which seems to be immediately relevant.
 - Convene the meeting and allow case reading time for the Monitoring Officer and the Committee and well as adequate time for the decision.
- 12 Upon undertaking the local filtering, the Committee would need to ask itself:
- Is there prima facie evidence of a breach of the Code?
 - Would an investigation serve a useful purpose?
 - Would an alternative route to investigation provide a more effective resolution to the matter?
 - Would mediation/conciliation/training or an apology be appropriate?
 - Is the case suitable for local investigation?
- There would be a formal record of the decision, including reasons.
- 13 The Board will request quarterly and annual reports from the Monitoring Officer who will need to give details of the number of complaints received and acted upon.
- 14 The Standards Committee will also be required to place an annual report of its activities before the Full Council. This already takes place in this authority with the Annual Monitoring Officer's Report.
- 15 If the Board is not satisfied with the arrangements for dealing with complaints, then the Board can recall to itself the local filtering function in respect of a particular Authority.
- 16 There will be emphasis upon the Council ensuring that the public are aware of the method of making a complaint concerning a Member's conduct and the procedure which then apply to deal with it.
- 17 In a serious case, the Standards Committee dealing with a hearing may refer it to the National Adjudication Panel for consideration of a more severe penalty.

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- 18 The Act provides that Standards Committees must now have an Independent Member Chairman. This Committee does have an Independent Chairman in addition to an Independent Vice Chairman.
- 19 The Board have stated that they will help Standards Committees by providing guidance in 2008 on all aspects of the local assessment process, subject to the passage of the relevant regulations, with a toolkit to include:
- Template notices for publicising the authority's Code of Conduct complaint process.
 - Complaint assessment flowcharts.
 - A standard complaint form.
 - Template letters for each stage in the process.
 - Template referral and non-referral decision notices.
 - Guidance to assist with drafting criteria and for the authority to define its threshold for referral.
 - Template terms of reference for assessment and review committees.

Options (and Reasons for the Recommendation)

- 20 The Committee is asked to consider the various options set out in the Recommendation in order to prepare adequately and in time for the legislation that will require Local Authorities to undertake the local filtering of Member complaints currently undertaken by the Board.

Key Implications

Financial

There are potential resource implications arising from the local filter and hearing procedures. It may be necessary on occasion to buy in external assistance for legal advice and investigations.

There is no dedicated budget for investigations or the filtering process. Actual costs will depend on the number of allegations received and referred for local investigation.

Legal, Human Rights etc.

The Act has received Royal Assent and there is no alternative but to implement it. The Regulations will provide the detail but are still awaited.

There are human rights implications arising from the effect of decisions made under these processes upon Members and complainants. There is an obligation to ensure a fair hearing process in accordance with the relevant articles of the European

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Convention. Fair procedures set out in advance and understood by all concerned will assist in achieving this.

Resource (non-financial)

It has to be recognised that the work of the Monitoring Officer and Deputy Monitoring Officer will increase following the introduction of the filtering process along with the work to be undertaken by the Committee Team. For this Authority there were fifteen allegations of Members Misconduct in 2006 compared to 10 allegations in 2007. A lot of time is being invested in training which may reduce the number of allegations received.

Value For Money

There is no dedicated budget for this new function. Attempts will be made to try and absorb this within existing budgets. Actual costs will depend on the number of allegations received and referred for local investigation.

Equality

Equality issues have been considered. Members and the public will have equal access to the new filtering processes that are envisaged. The Committee is asked to consider authorising the Monitoring Officer to produce an information leaflet on the local assessment process and organise ways in which the public can be informed of the new arrangements.

Conclusions

Clearly there is a lot of work to be done between now and the coming into force of the local assessment in April 2008. It is somewhat difficult to determine the detailed procedures until the Regulations have been published as these will themselves contain some of the detail that will have to be implemented. For example Regulations may prescribe details of how sub-committees or hearing panels will be comprised and how they shall operate.

Notwithstanding the finer detail not yet available Members may feel that certain matters should be addressed in anticipation of the Regulations as set out in the Recommendation.

Risk Assessment Statement

There are risks to the authority's reputation and standing if it fails to meet the requirements of the legislation.

If the introduction of local filtering is to take place by April 2008 this Committee needs to consider the matters set out in the Recommendation.

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Sources of Information: Information produced by the Board including
Bulletin 36
Checklist for local authorities in the run up to April 2008
The Act

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