

STANDARDS COMMITTEE		
Report Title	Implications of the new Code of Conduct and the Local Government and Public Involvement in Health Act 2007	
Key Decision		Item No. 5
Ward		
Contributors	Head of Law	
Class	Part 1	Date: 22 NOVEMBER 2007

1 Summary

This report informs members of the Standards Committee of the implementation of the Local Government and Public Involvement in Health Act 2007 (LGPIHA), and its impact on the ethical framework for local authorities. It asks for the views of the Committee in relation to its membership and the establishment of sub committees to perform the changed roles which the Standards Committee will have.

2 Purpose

The purpose of this report is to ensure that the Council is compliant with the new legislation and in a position to fulfil its new roles from April 2008.

3 Recommendation

- 3.1 That the Standards Committee recommend to full Council that its membership be increased to 12 (6 independent and 6 councillors) as set out in this report
- 3.2 That responses to consultation on draft regulations and guidance in relation to the Act be delegated to the Head of Law, having first sought the views of the Chair of the Committee
- 3.3 To agree in principle that a sub committee of this Standards Committee be established to carry out an initial assessment of referrals, as set out at Paragraph 5.2.d below and to request officers to bring a further report back at the earliest opportunity on the terms of reference and other matters once regulations and guidance are issued under the LGPIHA

4 Timing

- 4.1 The LGPIHA was given Royal Assent at the end of October. A full briefing on the Bill was referred to the Standards Committee at its meeting in May this year. Its implementation in relation to the new ethical framework, is to be the subject of both regulation and guidance which is anticipated some time in the

New Year. We anticipate that the effective date for the new provisions will be 1st April 2008

5 **The main provisions of the LGPIHA affecting the conduct of members**

These are as follows: _

5.1 *Scope of Code*

(a) *Applicability*

The Act reverses the problem arising out of the Livingstone decision by indicating that the Code of Conduct, General Principles and Model Code of Conduct do not only apply to a member's official capacity. Instead the Act amends the LGA 2000 to give a statutory basis to certain provisions contained in the new model code which was adopted by the Council in July. The new model Code contains provisions that it will apply when a member acts other than in an official capacity if they are convicted of an offence in relation to any of the following:-

- Intimidation of a complainant, witness or administrator in relation to an investigation under the Code
- Bringing their office or the Council into disrepute
- Using the position of member improperly to secure advantage or disadvantage for him/herself or others

This provision could not be enforced without the change to the primary legislation made by the LGPIHA

(b) *A new undertaking to observe the Code*

The Act requires that within a prescribed period to be set out by Order of the Secretary of State, members must sign a new undertaking to observe the Code of Conduct omitting the reference to compliance "in performing his/her functions". The prescribed period is yet to be fixed

5.2 *Dealing with complaints*

(a) *Referrals go to the Standards Committee*

Whereas in the past all allegations in writing of alleged breach of the Code of Conduct had to be made to the Standards Board in the first instance, from April 2008, complainants may refer written allegations of breach to the local Standards Committee.

(a) *A first assessment*

Once an allegation is received, the Standards Committee will be bound by law to decide whether:-

- To refer the matter to the Monitoring Officer for investigation
- Refer the matter to the Standards Board for investigation
- That no further action is to be taken

(c) *Duty to notify and review*

The Act contains certain duties to inform the member concerned of the allegation and decisions made. If no further action is to be taken, the Standards Committee must take reasonable steps to inform the complainant with reasons. The complainant may within 30 days ask the Standards Committee to review its decision. There may be only one such review, and it must be completed within 3 months.

(d) *A referrals sub committee*

(i) In practice it is likely to be an officer who first receives an allegation, conducts an initial evaluation and makes a report to the Standards Committee at the first assessment stage. The focus of the first assessment by Standards Committee members will be limited to establishing whether, if true, the allegation would amount to a matter regulated by the Code, ought to be investigated at all, and if so whether that should be internally by the Monitoring Officer or by the independent Standards Board.

(ii) However, if this exercise were conducted by the whole Committee there would be a conflict of interest for all of the members of the Committee if the complainant were to appeal against a decision not to act. So that there can be a workable mechanism to conduct these reviews, it is proposed that there should be a small subcommittee which would deal only with referrals.

(iii) The number of members on the Standards Committee currently is 9 , 5 independent and 4 councillors. By law the Chair of the Committee is to be an independent member.

(iv) If a Referrals Subcommittee is set up, the Council will need to be satisfied that it has sufficient members on the Standards Committee from whom to draw the sub committee and leave other members of the Committee available for appeal if it materialises. It is suggested that the Standards Committee membership should be increased to 12 - 6 independent and 6 councillors. This would allow the sub committee to have a large enough membership to have a degree of flexibility in attendance and allow headroom for inability to attend and conflicts of interest .

(v) Officers believe that it would be precipitate to establish any sub committee now without sight of the anticipated regulations and guidance but that it would be sensible to increase the size of the committee in readiness to do so. The process for appointing independent members is determined by law. It requires public advert and referral to full Council for a decision. It is not a speedy process. If Council agrees to the new composition of the Committee, work could begin to do this as soon as possible.

(e) *Standards Board call in*

The Standards Board may remove the first sieve from the Standards Committee if it believes it is not being properly administered.

(f) *Referral to Standards Board*

When a Standards Committee should refer a matter to the Standards Board is to be the subject of further guidance from the Standards Board, likely to be for example where Standards Committee sanctions are deemed insufficient, where there is a conflict of interest for Standards Committee members, or where the allegation is controversial locally.

(g) *Referrals to Standard Board by Standards Committee*

Where the matter is referred to the Standards Board, they will decide whether an ESO should investigate, whether the matter should go back to the Standards Committee locally to be determined, or there should be no further action.

(h) *Chair of Standards Committee*

In future this must be an independent member, as is Lewisham practice

(i) *The Adjudication Panel*

The Panel can be accessed by the Monitoring Officer who believes a case too serious to be dealt with locally, or part way through a hearing if a Standards Committee decides its sanctions would be inadequate.

6 Financial implications

The cost of investigating and conducting hearings under the new procedures from April 2008 is unknown at present and depends on the number of referrals. Any received will clearly impact on the work of the Monitoring Officer. The increased cost arising from the expansion of the number of members on the Committee can be contained within existing budgets.

7 Legal Implications

The legal implications are set out generally in the report. The relevant part of the Act requires a commencement order which has not yet been laid, and further regulations will be required to give effect to many of its provisions – such as an amended declaration of interest. Any process for dealing with investigations will need to be fair and take account of the principles of natural justice and the right to a fair hearing.