

CARLISLE CITY COUNCIL

Report to:- **Carlisle City Council**

Date of Meeting:- 4 March 2008

Agenda Item No:-

Public

Title:- **The Future Role of the Standards Committee**
Report of:- **Director of Legal and Democratic Services**
Report reference:- **LDS.20/08**

Summary:-

The Standards Committee at its meeting on 12 February considered the Report of the Director of Legal and Democratic Services (LDS.8/08 attached) on changes to the role of the Standards Committee following the implementation of the Local Government and Public Involvement in Health Act 2007.

The Committee RESOLVED:

1. That the contents of the Report and the new duties and responsibilities to be undertaken by the Committee, following an enactment of the Local Government and Involvement in Public Health Act 2007, be noted and a further Report be presented to the Committee once the anticipated regulations had been enacted finalising details of the new regime.
2. That the City Council be recommended to adopt Option 3, as set out in paragraph 3.6 of Report LDS.8/08 regarding the revised size and composition of the Standards Committee in order to meet the new responsibilities, ie to increase the Membership of the Committee to provide for six Local Authority, 3 Independent and 3 Parish Council Representatives making a Committee of 12 in total.
3. That the Council be recommended to agree that the revised composition of the Committee should commence as from the Annual Council meeting in May 2008 or

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

at an earlier date if an earlier implementation date becomes necessary following the implementation of the Regulations.

4. The Council should also be recommended to agree that whilst there was no requirement for the Standards Committee to be politically balanced a general understanding should be adopted that the Local Authority Membership on the Committee be selected on the basis of political proportionality.
5. That the revised composition of the Committee should commence at an earlier date if an earlier implementation date becomes necessary following the implementation of the regulations.
6. That the Council be requested to authorise the Director of Legal and Democratic Services to make all relevant changes to the terms of reference of the Standards Committee, as set out in the Council's Constitution that are deemed necessary to ensure compliance with the Act and any relevant regulations and guidance, including making provision for the setting up of Sub Committees of the Standards Committee and other necessary operating arrangements, required to meet the obligations under the Act.

Recommendation:-

- (i) That the City Council adopt option 3 as set out in paragraph 3.6 of Report LDS.8/08 regarding the revised size and composition of the Standards Committee in order to meet the new responsibilities, ie to increase the Membership of the Committee to provide for 6 Local Authority, 3 Independent and 3 Parish Council Representatives, making a Committee of 12 in total.
- (ii) That the revised composition of the Committee should commence as from the Annual Council meeting in May 2008 or at an earlier date if an earlier implementation date becomes necessary following the implementation of the regulations.
- (iii) That whilst there was no requirement for the Standards Committee to be politically balanced a general understanding be adopted that the Local Authority Membership of the Committee be selected on the basis of political proportionality.
- (iv) That the Director of Legal and Democratic Services be authorised to make all relevant changes to the Terms of Reference of the Standards Committee, as set out in the Council's Constitution that are deemed necessary to ensure compliance with

the Act and any relevant regulations and guidance, including making provision for the setting up of Sub Committees of the Standards Committee and other necessary operating arrangements required to meet the obligations under the Act.

Contact Officer: John Egan

Ext: 7004

CARLISLE CITY COUNCIL

Report to:- **STANDARDS COMMITTEE**

Date of Meeting:- 12 February 2008

Agenda Item No:-

Public

Title:- **THE FUTURE ROLE OF THE STANDARDS COMMITTEE**

Report of:- **DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES**

Report reference:- **LDS.08/08**

Summary:-

The report informs Members of the changes to the role of the Standards Committee following the implementation of the Local Government and Public Involvement in Health Act 2007 and puts forward a number of options for changing the present composition of the Committee. This report needs to be considered in conjunction with report LDS 03/08, on the agenda dealing with the appointment of Independent Members of the Committee.

Recommendation:-

1. It is recommended that the Standards Committee
 - 1.1 Note the contents of this report and the new duties and responsibilities to be undertaken by the Committee following the enactment of the Local Government and involvement in Public Health Act 2007, and that further reports will need to be presented to the Committee once the anticipated Regulations have been enacted finalising details of the new regime.
 - 1.2 Make recommendations to the Council regarding the revised size and composition of the Standards Committee to meet the new responsibilities, and whether this should be option 1, 2 or 3 set out in paragraph 3.6 of this report (or any other option which the Committee may wish to put forward).
 - 1.3 Recommend to Council that the revised composition of the Committee should commence as from the Annual Council Meeting in May 2008, or at an earlier date if an earlier implementation date becomes necessary following the implementation of the regulations.

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

- 1.4 Request the Council to authorise the Director of Legal and Democratic Services to make all relevant changes to the terms of reference of the Standards Committee set out in the Council's Constitution as he deems to be necessary to ensure compliance with the Act and any relevant regulations and guidance, including making provision for the setting up of sub-committees of the Standards Committee and other necessary operating arrangements as required to meet the obligations under the Act.

Contact Officer: John Egan

Ext: 7004

J M Egan

Director of Legal and Democratic Services

08 January 2008

1. **Introduction**

- 1.1 The purpose of this report is to inform Members of the changes to the role of the Standards Committee following the implementation of the Local Government and Public Involvement in Health Act 2007 (the Act) and to point to changes in the size and composition of the Committee likely to be necessary as a result of the provisions of the Act.
- 1.2 Further Regulations are awaited, together with guidance from the Standards Board for England, on how the provisions of the Act are intended to operate in practice and these will be reported on to the Committee as soon as they are released.

2. **Local Assessments – Changes to the role of the Standards Committee**

- 2.1 The Act changes the current arrangements for dealing with complaints regarding the conduct of Members by devolving most decision making on the conduct regime to local authorities themselves rather than to the Standards Board for England as at present. In future, Standards Committees of each local authority (and not the Standards Board) will be responsible for making initial assessments of misconduct allegations and for review arrangements of those assessments which lead to a decision that no action be taken, as well as hearing and adjudicating on complaints themselves. Any allegations regarding breaches of the Code will therefore, in future, be submitted directly to the Standards Committee to make an assessment of whether or not they warrant further investigation. The role of the Standards Board for England will, in future, be that of a strategic regulator ensuring that the regime operates correctly and providing supervision, support and guidance to local authorities, but with the initial assessment of allegations and the hearing of most cases being handled locally by Standards Committees.
- 2.2 In practice, this will mean that all future conduct complaints will be referred to the Standards Committee and they will have the option (after carrying out an initial assessment of the complaint) of either :
- referring the matter to the authority's Monitoring Officer for investigation so that he/she can report formally to the Committee and the complaint can be heard and determined;
 - referring the allegation to the Standards Board for England for them to deal with. It is envisaged that the Board will retain the capacity to deal with certain cases and

guidance is to be issued as to what these are likely to involve, but they are likely to be limited in scope and number;

- deciding to take no further action on the complaint.

2.3 When deciding which of the above options to pursue, Standards Committees will need to make an initial assessment of the complaint received and guidance is to be available from the Standards Board on developing criteria and the types of issues to be considered when making this initial assessment of complaints. Standards Committees will be required to develop their own criteria which reflect local circumstances and priorities, and which are simple, clear, open and ensure fairness and Carlisle's Standards Committee will need to determine what its local assessment criteria is to be in the light of the guidance to be issued by the Board.

2.4 If the Committee, having carried out an initial assessment of the complaint, decides that no further action should be taken regarding an allegation, the Act provides for the person who made the allegation to be able to ask the Committee to review its decision. The request for review must be made in writing within 30 days of the date of the notice of the original decision. Following receipt of such a request, the Committee must undertake a new assessment of the allegation and reach a decision within three months of the date it received the request for a review of its original decision.

2.5 From the above, it can be seen that the Act has given the Standards Committee three distinct roles in future, these being making initial assessments of complaints, hearing what amounts to an appeal against a decision to take no action following an initial assessment (if one is submitted) and conducting formal hearings in respect of those complaints which it has decided should be formally investigated and reported on. This tri-partite functionality, particularly the requirement to hear an appeal against a decision to take no action following an initial assessment, will lead to changes having to be made to both the size and structure of the Standards Committee and these are rehearsed below.

3. **Changes to the size and structure of the Standards Committee**

3.1 The current legislative framework sets out certain ground rules for the composition of Standards Committees which means that Committees must have, as a minimum –

- Three Members (two elected Members and one independent member).
- 25% as independent lay Members if the Committee is more than three people (hence Carlisle's current Committee of eight requires at least two independent Members).
- An independent chair (mandatory from April 2008, though Carlisle's Committee already complies with this).
- One parish or town council member if the authority has responsibility for those councils. (Carlisle does and so has one parish member on its Committee).

3.2 The regulatory framework further provides that, to be quorate, at least one independent member must be present at any business of the Standards Committee, and a parish council representative must similarly be present at any meeting involving a parish matter.

3.3 The future role of the Committee will, as mentioned above, involve the three separate and distinct roles of receiving and assessing complaints, reviewing those local assessment decisions if a complainant appeals against a decision to take no action, and conducting formal hearings following investigations. To avoid any perceptions of bias or predetermination, the Standards Board advise that (consistent with accepted principles of natural justice) those Members who make an initial local assessment decision to take no action should not then be involved in a review of that decision if an appeal is submitted, because they would effectively be hearing an appeal against their own determination. A separate group of Members should, therefore, be selected to carry out these two distinct roles in respect of a complaint to avoid any conflict of interest. It is not thought that the same conflict issues will arise in respect of a member who is involved in making the initial assessment of whether a complaint should be investigated and who then hears and determines the actual complaint itself following investigation. This is because the initial 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 or did not take place, and so no pre-determination issues should arise. The same Members should therefore be able to be involved in making the initial assessment and actually hearing the formal complaint, but not in the initial assessment and any appeal against a decision to take no action following that assessment.

3.4 To accommodate these three distinct roles and allow for the separation of Members where required to avoid such conflicts, it will be necessary to re-examine the size of the Council's Standards Committee and its Membership to make sure that it has sufficient Members to

deal speedily with the new roles (especially the increased workload of undertaking initial assessments) and that it is quorate when it sits and properly constituted.

- 3.5 The Standards Board initial guidance on effective practice recommends that the new roles should be accommodated either by a minimum of two separate fixed sub-committees being set up (one for taking initial assessment decisions and one for taking decisions on any appeal from those assessments), or by the Standards Committee acting as a standing “pool” from which Members can be drawn on an ad hoc basis to deal with the various roles as required. Whichever route is chosen, any sub-committee so formed will (subject to regulations) need to have an independent chair and comply with the rules regarding the quota of independent Members and the need to have a parish member present when dealing with parish matters. In order to achieve this in Carlisle’s case, the Committee membership overall will need to ensure sufficient local authority, independent and parish Members to deal with each of these three roles and provide sufficient cover when some Members might be unavailable through holidays and the like.
- 3.6 The Committee’s current membership comprises 5 City Councillors (politically balanced, though this is not a requirement), 2 independent lay members and 1 parish member, making 8 Members in all. It will not be practical to stay with this number, because there is only one parish member at present and therefore only one parish representative to deal with both the initial assessment of a complaint and any appeal against a decision to take no action, and so the parish membership alone will need increasing to cater for this situation. This, in turn, has a knock on effect on the rest of the Committee membership and size, bearing in mind the need to ensure at least 25% of the Members are independent. (Parish Members are not of course “independent” for these purposes). The latest Standards Board guidance (which is still under review) recommends a minimum of 3 local authority Members, 3 independent Members and 2 or 3 parish councillors, making 9 Members in total. It is a matter for each authority to fix the size of its own Committee consistent with the overarching statutory framework and the need to avoid conflicts of interest in the various roles as mentioned above. Whilst the detailed regulations and guidance are still awaited which could proscribe the position more tightly, the following broad options for the size of the Committee appear to be possible :

Option 1

A committee comprising 3 local authority Members, 3 independents and 3 Parish Councillors, making 9 Members in total. This would effectively reduce the current number of local authority Members by 2 and increase the parish representatives by 2 and the independent representation by one. It would follow the recommendations in the Standards Board guidance for the minimum number of members required in order to service the new roles. Although not mandatorily required, if this option were pursued it may be sensible to make sure that each of the political groups were given one of the 3 local authority places to ensure a sense of ownership and impartiality.

Option 2

A further option would be to retain local authority membership at 5 and increase the Independent and Parish Members to 3, making a total of 11 Members. This again would allow any separation of roles to be covered, would satisfy the 25% independent membership requirement and allow for parish council coverage, supplemented additionally by substitute appointments for City and Parish Members as at present if required.

Option 3

A third option (a minor variation on Option 2) is to look to increase the membership of the Committee across the board to provide for 6 local authority, 3 independent and 3 parish representatives, making a committee of 12 in total. This should provide sufficient depth of cover for all the various roles and satisfy the statutory requirements on independent and parish council membership.

- 3.7 As mentioned, further guidance and regulations on the size and operating procedures of the Committee are expected to be put in place for the commencement of the new regime in April next although there may well be slippage if the target date for the legislation to be in place is not met. However, the general advice from the Standards Board is that Councils should start looking at their Standards Committees now to make sure that they are fit for purpose in terms of size and composition to accommodate the new duties once the regulations are enacted.

3.8 Discussions with other authorities in Cumbria and Lancaster have indicated that the size of their Standards Committees will be between 9 and 15 Members to pick up the changed role and that they are making the changes to come into effect immediately, or from the start of the new municipal year in May, in anticipation of the new regulations. It is therefore recommended that the City Council takes similar steps in respect of its own Standards Committee so that it is properly prepared.

4. **Other miscellaneous provisions in the Act**

4.1 There are a number of other miscellaneous provisions in the Act which are relevant to the ethical standards regime and the role of the Standards Committee which members should be aware of.

4.2 As from the commencement of certain sections of the Act anticipated to be in April 2008, the chairs of Standards Committees (and, subject to regulations, of any sub-committees set up) will require to be drawn from independent members of the Committee. The Committee already has an independent chair, but the provisions of the Act will need to be borne in mind in respect of any subsequent appointments of Chair or where any sub-committees might be appointed.

4.3 Members will recall from training given on the revised 2007 Code of Conduct that it will, in certain limited circumstances, apply to members at times other than when they are acting in their official capacity as members of the authority. These circumstances are where:-

- (a) the member's conduct constitutes a criminal offence which involves intimidation of persons in relation to an allegation under the Code, or
- (b) the criminal offence brings the authority into disrepute, or
- (c) where the criminal offence involves conferring or securing an advantage or disadvantage on any person.

These provisions were all written into the new mandatory Code which has been adopted by the Council but, following the judgement in the case involving Ken Livingstone, these particular provisions of the Code could not be brought into force until the main enabling legislation has been amended. The Act is now in force making these amendments and it is anticipated that the provisions referred to above will shortly be triggered. When they are,

then all the provisions in the adopted Code relating to its applicability in a private capacity following conviction for a criminal offence will apply fully.

4.4 Some changes were also made in the Act to the regime governing what are known as “politically restricted posts”. Under current legislation, a person is disqualified from becoming a member of a local authority if he or she holds a politically restricted post. Political restriction comes about through a combination of circumstances linked to post and salary level within an authority or where the postholder’s duties involve advising elected members or speaking to the press on behalf of the authority. It is possible for a postholder to apply for an exemption from the political restrictions in certain circumstances and, hitherto, dealing with such applications has been the responsibility of an independent adjudicator. Under the Act, the role of the independent adjudicator will be abolished and the duties transferred to local authority standards committees. These duties will involve :

- Considering applications from local authority employees for exemption from political restriction in respect of their posts;
- Where appropriate, issuing directions requiring a local authority to include a post in the list of politically restricted posts it maintains, and
- Giving general advice, following consultation with appropriate parties, on the application of criteria for designation of a politically restricted post.

The timing of the transfer of these responsibilities to local standards committees is dependent on the Government triggering the commencement date under the Act, but ministerial guidance is expected shortly, advising standards committees on how these new functions should be exercised.

5. **Recommendations**

It is recommended that the Standards Committee :

5.1 Note the contents of this report and the new duties and responsibilities to be undertaken by the Committee following the enactment of the Local Government and Involvement in Public Health Act 2007, and that further reports will need to be presented to the Committee once the anticipated Regulations have been enacted finalising details of the new regime.

- 5.2 Make recommendations to the Council regarding the revised size and composition of the Standards Committee to meet the new responsibilities, and whether this should be option 1, 2 or 3 set out in paragraph 3.6 of this report (or any other option which the Committee may wish to put forward).
- 5.3 Recommend to Council that the revised composition of the Committee should commence as from the Annual Council Meeting in May 2008, or at an earlier date if an earlier implementation date becomes necessary following the implementation of the regulations.
- 5.4 Request the Council to authorise the Director of Legal and Democratic Services to make all relevant changes to the terms of reference of the Standards Committee set out in the Council's Constitution as he deems to be necessary to ensure compliance with the Act and any relevant regulations and guidance, including making provision for the setting up of sub-committees of the Standards Committee and other necessary operating arrangements as required to meet the obligations under the Act.