

# Item no.

Report to: **Standards Committee**

Date: **22 January 2008**

Report of: **Monitoring Officer**

Subject: **CLG Consultation on Regulations to implement local decision making on complaints against Councillors**

Ward: **All**

## 1. **Purpose of the Report**

To give the Standards Committee an opportunity to comment on the CLG Consultation document.

## 2. **Consultation**

Once the Standards Committee has considered the document I would propose to circulate draft comments to all Councillors so that they are engaged in the process and have an opportunity to let me have their own views. In the event of any issues producing a significant difference of opinion I would be minded to take the consultation papers to Full Council, although at first sight I cannot see anything likely to generate that degree of controversy.

## 3. **Background**

Amendments to the Local Government Act 2000 by the Local Government and Public Involvement in Health Act 2007 have created the framework for complaints to be processed locally. The proposed Regulations will lay down the procedures under which decisions are to be taken. This consultation paper is very much in line with the Standards Boards' thinking which I reported back to Committee after the Annual Assembly in Birmingham in October.

## 4. **Summary of the Key Questions**

In Annex A of the Consultation Paper, Members will find a list of the 16 questions on which CLG are consulting. The consultation paper itself addresses the reasoning for CLG proposals and where matters are more finely balanced, the advantages and disadvantages of alternatives.

### **Question 1**

I am satisfied that the prohibition on a Member reviewing a decision not to investigate a complaint if they have been involved in the original decision is entirely appropriate. I am equally satisfied that there is no valid objection to Members who have been involved at the initial stage also being involved in the final determination of complaints which proceed to a full hearing. We are asked whether it would be workable to separate all three functions namely, the initial assessment, review in the event of appeal and final hearing. If we expand the Committee to 10 or 12 as discussed previously it would be

workable subject to the continuing good health and availability of the existing and additional proposed independent and parish members. It would however place an additional strain on the system and probably prompt recommendation by me to increase to four independents, four parish members and therefore not a requirement which I would wish to encourage. For the avoidance of doubt, the current recommendation is not suggesting the separation of all three functions.

### **Question 2**

In the event of a complaint against a Member who belongs to more than one authority I agree in the first place it is most appropriate for the two authorities to agree between themselves how the complaint is dealt with. It will however be necessary to have some form of decision maker in the unlikely event of two authorities being unable to agree on the process and the Standards Board would seem to be a natural arbiter in those circumstances.

### **Question 3**

The suggestion is that decisions on whether or not to investigate a complaint should be made within 20 working days. I consider that as a reasonable requirement. The Standards Board are currently turning these matters around within 10 working days but they have recognised that the requirement for report to Standards Committees will inevitably slow that process down. I do believe it is important that this should be a matter of guidance rather than a statutory time limit. The current statutory time limit of making a decision within three months of the Ethical Standards Officer's report can result in Councillors the subject of complaint being encouraged to cause delays and hope the complaint will be dismissed due to failure to arrange the hearing on time. It would be highly undesirable to generate a further technical defence. The Standards Board's ability to intervene in authorities who fail to work the system properly should provide a sufficient safeguard for complainants and Councillors.

### **Question 4**

Councillors have quite naturally been unhappy about the delay in informing them that a complaint had even been made. The suggestion is the obligation to provide that information to the Councillor should not arise if the Standards Committee forms the reasonable view that it would be in the public interest not to provide the written summary at the outset. The intention in the guidance would justify withholding those details from the Councillor if releasing them at an earlier stage may result in evidence being compromised or destroyed by the Councillor or where there is a real possibility of intimidation of the complainant or witnesses. The delay would apply until the investigating officer had had the opportunity to interview the complainant. Question 4 asks whether the Standards Committee considers that those circumstances would justify the withholding of information from the Councillor. It is my recommendation that in those fairly unusual circumstances, it would be reasonable for the Committee to have the discretion to withhold the information from the Councillor complained about. I would stress that this would not impair his ability to respond to the complaint because the delay would only apply whilst complainant's evidence was assembled.

### **Question 5**

It is proposed that the regulations permit the Monitoring Officer to refer allegations back to a Standards Committee if the investigation reveals evidence suggesting that the case is either more serious or less serious than it appeared when the Standards Committee made the decision on how the matter should be treated. This power will enable the Committee to review its decision on whether an investigation is merited if the case appears less serious. It is less clear what the implications would be at the investigation stage if the matter is more serious.

It also proposes that the Monitoring Officer should be able to refer the matter back if the Member subject to the allegation has resigned, is terminally ill or has died. Those circumstances would certainly warrant a review although I have some reservations about how it may work in the case of terminal illness unless it is public knowledge shared with the complainant who would need to be made aware of any decision why an allegation was no longer being investigated.

### **Question 6**

It is proposed that the maximum sanction the Standards Committee can impose be increased from 3 months to 6 months suspension. We are asked whether we are content with that proposal which does appear a reasonable balance to me.

### **Question 7**

We are asked to comment on the practicality of requiring the Chairs of all Sub-Committees discharging assessment, review and hearing function should be independent. Would it be consistent with robust decision making if one or more of the Sub-Committees were not independent? My previous recommendations have been intended to make sure that it was practicable to work on the basis of requiring an independent Chair at each stage. I do believe it would be beneficial to have a measure of flexibility on this rule to prevent decision making being substantially delayed if a combination of previous involvement in the action conflicting out one independent and the unavailability of others became a problem in any specific case.

### **Question 8**

It is proposed that the initial assessment and review hearings take place in private with no entitlement for the public generally to access reports and decisions. I would invite Members to agree that this approach is entirely appropriate.

### **Question 9**

This relates to the circumstances when the Standards Board could consider suspending the powers of Council's Standards Committee because of their failure to undertake their duties appropriately. I will not repeat here the levels of compliance the Standards Board will be looking for which is set out in the text of the consultation. It is my view that they are looking at the correct criteria to justify intervention.

### **Question 10**

Question 10 asks whether the Standards Board or another local authority taking on the role of a defaulting Standards Committee should be permitted to recover the costs of doing so. I do believe it would be appropriate for a defaulting authority not to escape the financial burden of enforcing the ethical standards regime. Furthermore, any authority which is prepared to pick up its responsibilities ought not to be at a financial disadvantage. There would need to be a mechanism to set reasonable costs whether the final arbiter is the Secretary of State or the Standards Board.

### **Question 11**

Question 11 invites comments on joint working which we have discussed previously. Based on that discussion an appropriate response might be that in the particular circumstances of County Durham and LGR it is considered that the effort involved to set up a joint committee would not be merited due to the limited time it would operate.

### **Question 12**

Question 12 involves expanding the range of sanctions available to the Adjudication Panel to reflect the lower end of the scale of those available to Standards Committees. Members may consider that is a reasonable step to take.

### **Question 13**

Question 13 asks for agreement with the proposal that the Ethical Standards Officer can withdraw a reference to the Adjudication Panel in circumstances where it would be more appropriate for the Panel not to pursue the matter. I can see the logic in withdrawal where the Member is terminally ill, dead or disqualified by a sentence of imprisonment imposed after the investigation started. I trust that withdrawals on the basis of the case being less serious will not result in cases falling between two stalls. If a case was originally considered more suitable for the Adjudication Panel but then does not appear to be that serious should it be referred to the local Standards Committee on the basis that it is serious enough to be dealt with somewhere. If Members share my concern that is a query which might be incorporated in the response.

### **Question 14**

Question 14 relates to dispensations and the proposal to change the wording of the Dispensation Regulations to make them clearer. The suggestion appears to be that dispensation would be available if the number of Members able to vote decreased to the extent that a political party would lose its majority on a particular matter without dispensation. The applications we have received have not been of a politically contentious nature so we have no previous experience of how this would work. Whilst wishes of the electorate expressed through the ballot box should not be denied by the conflicts of personal interest, Members may agree that in finely balanced Councils this amendment could lead to an increase in applications in the making of some sensitive decisions which might not always be easy to justify.

I have no comments on question 15 which does not affect this Council.

## **Question 16**

We were asked to comment on whether the reformed conduct regime should be implemented on 1 April 2008 at the earliest. Consultation closes on 15 February. The likelihood is that regulations will not emerge until March and will become law at the very last minute before 1 April. I anticipate that these will be grounds for people inviting the postponement of introduction of these regulations until authorities have longer to digest the detailed content. My recommendation is that we respond along the lines that we welcome local decision making at the earliest opportunity when it can be introduced within a reasonable time, say no less than one month between the regulations becoming law and coming into force.

### **5 Implications**

#### *Policy*

None.

#### *Legal*

This is an opportunity to influence CLG thinking on regulations which will control us shortly.

#### *Financial*

None.

#### *Risk*

None.

#### *Communications*

The intention is to circulate this report and the Standards Committees views to Councillors.

#### *Corporate*

None.

#### *Equality and Diversity*

None

#### *E-Government and Procurement*

None

### **6 Recommendations**

The Committee is invited to consider the questions raised by CLG and to direct the Monitoring Officer as to the response to be given.