

Standards Committee

28 February 2008

Consultation on Orders and Regulations relating to the Conduct of Local Authority Members in England



Report of Lesley Davies, Acting Director (Corporate Services) and Monitoring Officer

Purpose of the Report

1. To advise Members about the publication of a Communities and Local Government (CLG) Consultation Paper relating to the introduction of a revised more locally-based ethical regime for the conduct of local councillors in England.

Background

2. Part 10 of the Local Government and Public Involvement in Health Act 2007 amends the Local Government Act 2000 to provide for a revised ethical conduct regime for local government based upon the principle of proportionate decision-making on conduct issues by local authorities.
3. In order to implement the revised regime CLG need to put in place detailed arrangements to allow Standards Committees and the Standards Board to undertake their new roles. These arrangements need to cover:
 - the operation of standards committees' power to make initial assessments of misconduct allegations;
 - the operation of other functions by standards committees and the Adjudication Panel in issuing sanctions;
 - the operation of the Standards Board's revised strategic role to provide guidance, support and monitor the regime; and
 - the rules on providing dispensations, the issue of exemptions of posts from political restrictions and the pay of local authority political assistants.
4. CLG published a consultation paper on 3 January 2008 addressing each of these issues and setting out the specific purpose of the provisions and the proposals for how the rules should operate via appropriate regulations and orders under the Local Government Act 2000. A copy of the paper has been placed in the Members Resource Centre and is also available on line at <http://www.communities.gov.uk/publications/localgovernment/laconduct>

5. CLG wish to make arrangements for the relevant provisions to come into effect if possible in Spring 2008 and with this timescale in mind the closing date for responses to the consultation paper was 15 February. In view of this I met with the Chairmen of the County Council, Fire and Rescue and Police Authorities' Standards Committees to discuss the provisions and proposals and determine our responses to the specific questions summarised in the Annex to the paper.
6. I have forwarded our joint response to the consultation to CLG to comply with the deadline and a copy is attached at Appendix 1 for information.
7. Members are asked to note the report.

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Questions

The specific questions which feature throughout the text of this paper are reproduced for ease of reference:

- Q1. Does our proposal to prohibit a member who has been involved in a decision on the assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?**

We agree the proposal provides a reasonable balance between the need to avoid conflicts of interests and ensure a proportionate approach.

Yes the requirement regarding performance of functions by sub committee appears workable.

- Q2. Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?**

The Standards Committees of the County Council, Fire & Rescue Authority and Police Authority already enjoy a close working relationship. Similarly the County Council Monitoring Officer also liaises with District Council colleagues via a Monitoring Officers' Group. We do not envisage any difficulties in reaching agreement between Standards Committees and hence do not see the necessity for the Standards Board to play an adjudication role.

- Q3. Are you content with our proposal that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?**

Yes we are content that this should be a matter of guidance rather than statutory prescription.

- Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?**

We agree that the sort of instances you have quoted would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made. We cannot think of any other circumstances where this would apply. On the last point we would welcome guidance on the meaning of a “sufficient investigation”.

- Q5. Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officer will refer a case back to the standards committee?**

We welcome the opportunities provided for informal resolution that a direction to the monitoring officer that a matter should be dealt with other than by investigation will afford. We also see the value of the Monitoring Officer involving a member/members of the Standards Committee to participate in the process of e.g. mediation and would welcome provisions which do not constrain the Monitoring Officer in this respect. We agree that circumstances should be prescribed as proposed for referral back to the Monitoring Officer.

- Q6. Are you in favour of an increase in the maximum sanction the standards committee can impose? If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?**

In view of the desire to deal with as many cases locally as possible and the fact Standards Committees will be dealing with more serious allegations than hitherto we are in favour of an increase and content that the maximum sanction should increase from three months to six months suspension or partial suspension from office.

- Q7. Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committee? Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?**

We are of the view that the chairs should be independent, firstly to promote and maintain public confidence in the conduct regime and secondly as an assurance to elected members who are the subject of an allegation. Technically it may be possible manage with 2 independent chairs. In addition the provisions for joint working may afford the opportunity to increase the pool of independent members available.

- Q8. Do you agree with our proposal that the initial assessment of misconduct allegations and any review of a standards committee’s decision to take no action should be exempt from the rules on access to information?**

We agree unreservedly with this proposal.

- Q9. Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee's powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?**

We have noted the range of circumstances specified in paragraph 35 and agree these are appropriate criteria, we have no suggestions to offer regarding any other relevant criteria.

- Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?**

In our limited experience of the number of allegations we have dealt with to date we would not envisage any difficulty in securing cooperation from another authority to carry out an initial assessment on our behalf without the levying of a charge. We don't agree therefore that the imposition of a charging regime will be effective in principle in supporting the operation of the new locally-based ethical regime.

- Q11. Would you be interested in pursuing joint arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends?**

Yes we would be interested in pursuing joint arrangements involving the Standards Committees of the County Council, Fire & Rescue Authority and Police Authority as an extension of the close working relationship we already enjoy. We would seek to base this on the geographical area of Durham County Council. It is likely that in April 2009 the County Council and coterminous District Councils will become a unitary authority - on the last point we agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends.

- Q12. Are you content that the range of sanctions available to case tribunals of the Adjudication Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?**

Yes we are content for this to happen.

Q13. Do you agree with our proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?

Yes we agree. We cannot foresee any other situations where this might be appropriate.

Q14. Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so? Do the concerns we have indicated on the current effect of these rules adequately reflect your views, or are there any further concerns you have on the way they operate? Are you content with our proposals to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold?

Whilst we have not encountered any dispensation issues locally we are content with your proposals to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold.

Q15. Do you think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989 to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?

We are of the view that affected authorities would choose to make arrangements under section 101 of the Local Government Act 1972 instead. We are not aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions.

Q16. Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

Yes we agree with the timescale.