

**CONSULTATION ON ORDERS AND REGULATIONS RELATING TO THE
CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND****(Report by the Director of Central Services and Monitoring Officer)****1. INTRODUCTION**

- 1.1 Part 10 of the new Local Government and Public Involvement in Health Act 2007 has amended the Local Government Act 2000 to provide for a revised ethical conduct regime for local government. The changes will require the publication of detailed orders and regulations to guide the implementation of a more locally-based ethical regime involving new roles for both Standards Committees and the Standards Board.
- 1.2 The arrangements made will need to cover -
- ◆ the operation of standards committees' powers to make initial assessments of misconduct allegations;
 - ◆ the operation of other functions by standards committees and the Adjudication Panel in issuing penalties and sanctions;
 - ◆ the operation of the Standards Board's revised strategic role to provide supervision, support and guidance for the regime; and
 - ◆ other matters such as the rules on the granting of dispensations, the granting of exemptions of posts from political restrictions and the pay of local authority political assistants.
- 1.3 On 3rd January 2008, the Department of Communities and Local Government published a consultation paper entitled "Orders and Regulations Relating to the Conduct of Local Authority Members in England". A copy of the consultation paper is enclosed for Members of the Committee. The consultation focuses primarily on local authority standards committees becoming responsible for assessing allegations of misconduct against Councillors and makes suggestions as to how the regime could operate via appropriate regulations and orders under the Local Government Act 2000, as amended.
- 1.4 The Government is also using the opportunity to review the political restrictions imposed on certain local government posts, the maximum pay of political assistants and the Relevant Authorities (Standards Committees)(Dispensations) Regulations 2002 to resolve concerns raised by some authorities on the operation of the current provisions.

2. CONSULTATION

- 2.1 As the Government intend to make arrangements for these provisions to come into effect in the spring, it is seeking views via the consultation paper by 15th February 2008.
- 2.2 The Government have invited responses to the consultation paper by way of sixteen questions. The questions are set out in their entirety in Annex A to the consultation paper. For ease of presentation, suggested responses have been drafted sequentially for the Committee to consider. Other comments and suggestions are also welcome.

3. THE QUESTIONS

- 3.1 **Question 1 – Does our proposal to prohibit a Member who has been involved in a decision on the initial 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 proportional 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?**

Suggested response – The Standards Committee, as currently constituted in Huntingdonshire, theoretically would be sufficient in number to manage a regime requiring different Members to undertake the initial assessment, review and any hearing that might be necessary. However, and whilst the question of resources should perhaps not influence our response, the Committee might wish to take the view that – “a Member who is involved in an initial assessment decision, or following a referral of a complaint back to the Standards Committee from the Monitoring Officer, or Standards Board for another assessment decision, can be a Member of the Committee that may subsequently hear and determine the complaint”. 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 or did not take place and so no conflict of interest should arise in hearing and determining the complaint. Members might wish to suggest that this proposal is an appropriate approach and that any further sub division of functions, whilst workable, would not be necessary. It is clear that the support required for two or three sub committees of the Standards Committee would result in additional costs and resources. This could result in serious resource implications for smaller local authorities.

Question 2 – Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committees 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?

Suggested response – Whilst a single action by a Member may have different implications for different authorities and could be considered more seriously by one authority than another, Members may take the view that it would seem sensible for the Monitoring Officer of each separate authority to consider whether the complaint would be appropriate to be dealt with by joint arrangements. The advice of the Standards Board for England in reaching a conclusion in this respect would be essential. Case specific joint working would be preferable and the Standards Board should be encouraged to establish a model which would enable complaints to be dealt with on a case by case basis. The model would need to advise on the selection of the lead monitoring officer, the establishment and composition of the joint committee and the appointment of the investigator and procedures for a joint hearing.

Question 3 – Are you content with our proposal that the time scale for making an initial decision should be a matter of guidance by the Standards Board, rather than for the imposition of a statutory time limit?

Suggested response – It is suggested that it is not necessary to impose a statutory time limit for the initial assessment process and that this is better dealt with by guidance by the Standards Board in the same way as guidance was issued by the Board on timescales for the conduct of investigations. Given that the Standards Board aims to conduct their initial assessment in eight working days, the suggestion of twenty working days would seem to be an appropriate timescale for this process. However, in the same way that the Board allows for exemptions to the timescale for investigations in certain circumstances, it may help if the Board made similar provisions for exemptions to this rule. The measures proposed for publicising the new assessment procedures are reasonable and should be straight forward to implement.

Question 4 – 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 sufficient investigation has been undertaken?

Suggested response – To ensure the District Council's approach is equitable and transparent, the Committee may take the view that it is appropriate that the Monitoring Officer notifies a person that they are subject to an allegation under the Code of Conduct and that the substance of the allegation is to be assessed in accordance with a prescribed procedure. The involvement of the person against whom the allegation has been made is not necessary at this stage in any event. In the majority of cases, the Monitoring Officer would subsequently issue a written summary of the allegation to the person who is the subject of it. It is appropriate that the obligation to provide the summary should arise after a decision is made at the initial assessment. However, the Committee may acknowledge that there are certain circumstances where it is not appropriate for the subject to

receive such information. Should the Monitoring Officer take the view, based on advice from the Standards Board, that it would not be in the public interest to provide a written summary of an allegation and should the Standards Committee accept that there is a case to answer, the Committee should endorse this decision formally by resolution at the meeting at which the initial assessment is undertaken. Guidance from the Standards Board would be essential in determining when the Committee would be entitled to operate its discretion to defer giving the written summary of allegation. It would also be helpful if the Standards Board provided guidance on the information which should normally be contained in the summary of the allegation.

Members will be aware that it is standard practice for the Member who is the subject of the complaint to comment on the draft report of the investigation and to participate in the investigation. It would be difficult therefore to argue that the written summary of the allegation should be withheld beyond the completion of the investigation.

Question 5 – 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?

Suggested response – It is important that the complainant and the Member against whom the allegation has been made should be kept informed of how the allegation is being handled and at what stage the process has been reached. It is considered appropriate that the Standards Committee should have the ability to refer an allegation to the Monitoring Officer for action if they consider mediation or training would be more appropriate remedies. There may be occasions when cases can be dealt with by amicable local resolution on the intervention of the Monitoring Officer. It might be practical if the Board were to endorse such a role for Monitoring Officers. Similarly, the Committee may agree with the principle that the Monitoring Officer should be able to refer a matter back to the Standards Committee where the circumstances in the case had significantly altered since the Standards Committee initially took the decision that the case warranted further investigation. However, the scope of the investigation is limited to the circumstances outlined in the original complaint and that remit cannot be extended to further misconduct unless a further written allegation is received. A view would need to be taken on how and whether it would be appropriate to incorporate a further written allegation to an existing matter and whether the initial assessment would need to consider the additional allegation in isolation or the existing and new complaint as one allegation.

Question 6 – Are you in favour of an increase in the maximum sanctions standards committees 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?

Suggested response – It would give the Standards Committee increased flexibility and opportunity to deal with cases adequately if the maximum sanction which could be applied were increased to a maximum of six months suspension or partial suspension at local level. It is agreed that the Standards Committee should refer only the most serious cases to the Adjudication Panel.

Question 7 – 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?

Suggested response – The Committee may wish to endorse the suggestion that the chairman of all sub committees established under the new regime should be independent. Indeed, and informally, the Committee has previously expressed this view and in readiness, the independent members and parish council representatives were invited to participate in training on chairmanship skills on 18th January 2008. It is considered that the rules regarding the size and composition of standards committees and the validity of meetings also should be reaffirmed.

Question 8 – Do you agree with our proposal that the initial assessment of misconduct allegations and any review of the standards committees decision to take no action should be exempt from the rules on access to information?

Suggested response – For the reasons given in the consultation paper, it is agreed that the initial assessment and review function should be conducted in closed meetings and should be exempt from notice and publicity requirements under the Relevant Authorities (Standards Committee) Regulations 2001 and Part 5A of the Local Government Act 1972.

Question 9 – 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?

Suggested response – The criteria listed in paragraph 35 is considered to be appropriate but it is unclear whether the Board's intervention would apply to the complete process or just part of it.

Question 10 – 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?

Suggested response – Whilst the undertaking of investigations and the determination of conduct allegations is a demanding and time consuming process, it is the District Council's experience that the availability of staff resources rather than the cost of the investigation is the major hurdle to overcome. The Committee might wish to support, in principle, the introduction of a scale of charges for the initial assessment, review and hearing of an allegation to be determined by the Board that would recover the cost involved in undertaking the process. However, issues may arise over the

complexity of some cases in comparison with others and a recharging system might not be sufficiently flexible to adjust to such circumstances. The Committee would wish to avoid disagreements between Monitoring Officers over the value of reimbursement for services rendered.

Question 11 – 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 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 the 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?

Suggested response – Members may consider that the opportunity to form a joint committee should be made available so each authority can decide whether it is appropriate to consider participating in such a facility. Locally, it might be appropriate for joint committees to consider operating within the county boundaries. If a matter relating to a parish council is discussed by a joint committee, a parish representative from the principal area within which the complaint has arisen should be required to be present.

Question 12 – 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?

Suggested response – It is suggested that the Committee support this change. It appears sensible that the Adjudication Panel should have available to them the range of sanctions available to standards committees.

Question 13 – Do you agree with our proposals for an Ethical Standards Officer to be able to withdraw reference 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?

Suggested response – It is proposed that the Committee support the proposal which would enable an Ethical Standards Officer to withdraw a case from the Adjudication Panel where there has been a material change in circumstances since the original decision was taken to refer the matter. The procedure proposed for such action also is endorsed. It would also appear reasonable that the decision of a case tribunal to suspend a Member should be effective from the decision of the case tribunal without the need for it to be submitted subsequently to the standards committee before the notice can come into effect.

Question 14 – 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 on the way they operate? Are you content with our proposal to provide that the 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?

Suggested response – The Standards Committee has made a number of decisions under the dispensation regulations without any of the concerns highlighted. However, the Committee would support any redrafting of the regulations to simplify understanding of the rule relating to the position in which half of the Members of a decision making body would be required to withdraw from a meeting of the Council were it not for the granting of a dispensation.

Question 15 – 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?

Suggested response – It is noted that the granting and supervision of exemptions of posts from political restrictions will, under Section 202 of the 2007 Act be a matter for the District Council's standards committee. The Committee might assume that those authorities not required to have standards committees would make suitable arrangements under Section 101 of the Local Government Act 1972 to undertake the functions with regard to the exemption of certain posts from political restrictions. (Currently this function is delegated to the Chief Executive by the Cabinet).

Question 16 – Do you agree with our proposal to implement the reformed conduct regime on 1st April 2008 at the earliest?

Suggested response – The Committee has no comment to make. The District Council does not employ political assistants and its staff are remunerated in accordance with a locally determined pay scale and not that negotiated by the National Joint Council for Local Government Staff. See also paragraph 4.1 below.

4. GENERAL COMMENTS

- 4.1 The Committee is invited to make any other observations and may wish to express its concern at the suggestion that there is to be a "separate consultation on amendments to the instruments setting out the general principles which govern the conduct of local councillors and the model code of conduct." If there are to be changes to the code at the same time as changes to the system for enforcing the code, and allowing for consultation on revisions to the code itself, and the arrangements that local authorities will be required to put in place,

it might appear that the proposed implementation date of 1st April 2008 is a little ambitious and impractical.

5. RECOMMENDATION

- 5.1 The Committee is recommended to approve the suggested responses to the consultation paper on behalf of the District Council adding any additional observations they may consider to be appropriate.

BACKGROUND PAPERS:

Consultation paper – Orders and Regulations Relating to the Conduct of Local Authority Members in England published by the Department of Communities and Local Government on 3rd January 2008.

CONTACT OFFICER:

Christine Deller, Democratic Services Manager
Tel: (01480) 388007.