

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

Standards Committee

Date: 21 January 2008

Author: Director of Law and Democratic Services

Wards Affected: All

Purpose

- To consider the DCLG Consultation Paper 'Orders and Regulations Relating to the Conduct of Local Authority Members in England' and to agree the formal response.

Recommendation

- That the Director of Law and Democratic Services (Monitoring Officer) be authorised to respond to the Consultation Paper as set out in this report, subject to any further comments or amendments which may be made by the Committee

1. Reasons

- 1.1 It is appropriate for the Standards Committee to consider and comments on the arrangements for it to exercise its new functions, including local filtering and assessments of misconduct allegations and issue of dispensations.

2. Detail

Background

- 2.1 Part 10 of the Local Government and Public Involvement in Health Act 2007 amended the Local Government Act 2000 to provide for a revised ethical conduct regime for local government based on the principle of proportionate decision-making on conduct issues by local authorities.
- 2.2 The Department for Communities and Local Government (DCLG) has issued a Consultation Paper entitled 'Consultation on Orders and Regulations Relating to the Conduct of Local Authority Members in England' on the detailed arrangements for putting into effect the orders and regulations to provide a revised more locally-based ethical regime. The consultation paper covers arrangements for:
 - ◆ 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.

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial on 01793 463012 or Email staylor@swindon.gov.uk.

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- ◆ The operation of the Standards Board's revised strategic role to provide supervision, support and guidance for the regime.
 - ◆ 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.
- 2.3 It is intended that these provisions would come into effect in Spring 2008, and comments are invited by 15th February 2008.
- 2.4 The Consultation Paper (attached at Appendix '1') poses sixteen questions on which the DCLG would welcome comments. Set out below is a view on each of these questions, which the Committee may wish to either adopt or take as the starting point for discussion.

Consultation Questions

Question 1

- 2.5 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?

Comment:

- 2.6 **This proposal is supported in principle. The Standards Committee considers there is no reason why a member who has been involved in the assessment should not take part in any subsequent hearing. The assessment merely decides whether something merits further investigation and makes no determination or finding as whether or not there has been a breach of the Code.**
- 2.7 **In Swindon, the Standards Committee has previously referred a matter for investigation and has had that matter sent back to it for local determination by the ESO, and so has had experience of this issue.**
- 2.8 **The Standards Committee does not consider that the Regulations should be prescriptive in requiring formal standing sub-committees to be formed, and the Committee should be free to allow all members**

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of the Committee to take part in any Hearing. The devil will be in the detail in relation to those Regulations which address this issue.

Question 2

- 2.9 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?

Comment:

- 2.10 **This proposal is supported. Although the Standards Board could usefully issue guidance, it should not have an adjudication role on this issue.**

Question 3

- 2.11 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?

Comment:

- 2.12 **There should be no imposition of a statutory time limit in making initial decisions. Bearing in mind that under the current statutory agenda dispatch rules the Agenda would have to be sent out 5 clear days before the meeting, this would leave only 13 days to prepare any necessary papers for members if the 20 days mooted in the consultation paper is put forward as the appropriate timescale. Although the statutory rules as to circulation of documents may be eased, it will still be important that members have sufficient time to read the papers, and many councils have their own standing order requirements as to the agenda dispatch timetable.**
- 2.13 **Any guidance issued by the Standards Board should have regard to the practicalities of convening member meetings and the availability of members, as well as to the potential workload issues if there is a sudden increase in the volume or complexity of complaints.**

Question 4

- 2.14 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

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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?

Comment:

- 2.15 It is considered that the Standards Committee should have discretion as to whether a written summary should be provided, and as to the level of detail to be put in a written summary.**
- 2.16 It is not considered helpful to be prescriptive as to the circumstances in which that discretion should be exercised, although Guidance from the Standards Board would be helpful so as to promote a level of consistency across the country.**

Question 5

- 2.17 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?**

Comment:

- 2.18 The circumstances should not be prescribed as set out in the consultation paper. It is suggested that it will be preferable to allow the Monitoring Officer greater flexibility and provide in the regulations that s/he may refer an allegation back to the Standards Committee where s/he considers that there has been a material change in circumstances since the start of the investigation sufficient to justify a further assessment of the allegation by the Standards Committee.**

Question 6

- 2.19 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?**

Comment:

- 2.20 This proposal is supported as it would give greater flexibility in the sanctions available to the Standards Committee.**

Question 7

- 2.21 Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing**
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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?

Comment:

2.22 The Standards Committee sees no reason why the chair of the assessment panel need necessarily be ‘an independent member’. In some circumstances, for example where it is a complaint relating to a parish councillor of a parish on which there are no political groups, the panel could be chaired by another member of the Standards Committee.

2.23 As the Standards Committee considers that the chair of the assessment panel could chair a subsequent hearings panel, there need not be 3 independent chairs, which eases the practicality issue raised in this question.

Question 8

2.24 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?

Comment:

2.25 This proposal is supported.

Question 9

2.26 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?

Comment:

2.27 The devil will be in the detail to be set out in the Regulations and, in particular, how Regulations will embody the suggestion in the consultation paper that the suspension of a standards committee’s powers will only be used as a last resort.

2.28 The suspension of an authority’s statutory powers is a grave matter. In relation to the process outlined in paragraph 43 of the consultation paper the notification should specify the particular areas of concern and set out what needed to be done to remedy the

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situation. The standards committee should then be allowed a period of time to comply and a formal inspection should then be carried out if the Standards Board still had concerns. These processes should be specifically included in the Regulations to be made.

- 2.29** The Standards Committee is concerned that a number of the criteria set out in the consultation paper would require the Standards Board to make subjective judgments as to the whether the number of successful requests to review an assessment is 'disproportionate'; whether 'reasonable' timescales have been breached; whether duties have not been carried out 'expeditiously'; and whether there has been 'repeated' failure to submit returns. Indeed the suspension of an authority's statutory powers due to a failure to submit periodic returns seems disproportionate in the extreme. The consultation paper makes no mention of any appeal mechanism which issue should also be addressed.

Question 10

- 2.30** 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?

Comment:

- 2.31** Swindon's Standards Committee does not agree that a nationally funded body such as the Standards Board should be able to levy such a charge. If this becomes a significant financial burden to the Standards Board, then the situation could be reviewed.
- 2.32** If authorities did agree between themselves for one of their standards committee to undertake such a role, then such authorities should be free to agree between themselves the terms of any financial compensation to be paid and the regulations should enable them to do this, rather than have a financial charging regime imposed on them by either the Secretary of State or the Standards Board.

Question 11

- 2.33** 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

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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?

Comment:

- 2.34 To date, Swindon's Standards Committee has not expressed any interest in pursuing joint working arrangements and has no experience of joint working. The Monitoring Officers of Wiltshire and Dorset, however, have experience of working together and arranging joint training for members of their standards committees.**
- 2.35 As the declared purpose of the new conduct regime is local determinations and local ownership, as well as local accountability, it is difficult to justify the principle of not having some geographical limit. This could, for example, be specified by reference to county boundaries.**
- 2.36 If local circumstances, however, favour joint working (for example, inability to recruit sufficient independent members) then Swindon's Standards Committee would favour the regulations enabling such matters to be agreed between authorities under arrangements analogous to those made under section 101 of the Local Government Act 1972. This would include authorities agreeing the precise requirements for a parish representative to be present.**

Question 12

- 2.37 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?**

Comment:

- 2.38 This proposal is supported. If the sanction imposed would require the Monitoring Officer's involvement, for example, in terms of any training requirement, it is suggested that the Monitoring Officer be consulted prior to the sanction being imposed.**

Question 13

- 2.39 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**

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for an ethical standards officer to withdraw a reference or an interim reference?

Comment:

2.40 This proposal is supported.

Question 14

- 2.41 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?

Comment:

2.42 Swindon Borough Council's Standards Committee has not been asked to grant any dispensations. The Standards Committee supports the proposals set in paragraph 62 of the consultation paper.

Question 15

- 2.43 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?

Comment:

2.44 The Standards Committee have no comments to make on this proposal.

Question 16

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

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Comment:

- 2.46 **No.** There is no obvious reason to set such an ambitious and challenging timescale. The recent experience of trying to rush through the introduction of the revised Members Code has shown that this is bad practice and does not allow for proper consideration of draft Rules and Regulations, or the issuing of accompanying Guidance.
- 2.47 It is suggested that 1st June 2008 would be more achievable, and it is considered more sensible to implement the new regime at the start of the Municipal Year rather than the end of one so that the proper appointments to Committees can be made by Annual Council and there is time to recruit additional independent members of Standards Committees, and increase the size of the Committees, if necessary.
- 2.48 Further, in order to enable local capacity to be built up, the new conduct regime could be put in place by 1st June 2008 with a duty on each authority to adopt its provisions within 6 months thereafter so that the regime was fully in place by 1st January 2009. This would be analogous to the provisions relating to the introduction of the code of conduct as set out in section 51 of the Local Government Act 2000.

Conclusion

- 2.49 Overall, the proposals are to be welcomed and it is suggested that the Director of Law and Democratic Services (Monitoring Officer) be authorised to respond to the Consultation Paper along the lines indicated, subject to any additional comments of Members.

Alternative Options

- It is open to the Committee not to respond to the consultation paper.

Risk Management

Financial and Procurement Implications

- There may be some increased costs to the authority associated with carrying out additional local filtering hearings, which would be met from the Committee Meetings budget or members allowances budgets as appropriate. There may also be additional costs if required to carry out hearings on behalf of a neighbouring authority, although the consultation paper also makes proposals on how some of these costs might be recharged to the appropriate Local Authority if it is a result of a suspension of their powers.

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- Currently the costs of using external investigators has been procured for a capped rate of £1,500, although this is likely to increase. These costs are normally met from the External Audit Fees budget. It is not known if a move to local filtering will affect the number of cases reaching investigation.

Legal / Human Rights Implications

- The Orders and Regulations proposed will give effect to the provisions of Part 10 of the Local Government and Public Involvement in Health Act 2007.

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

- Ensuring that appropriate structures are in place for effective monitoring of issues of probity in the Council underpins the Council's plans and policies and to the delivery of the 2010 objectives.

Consultees

- The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted on all reports.
- The Chief Executive
- The Group Director, Business Transformation
- The Conservative, Labour and Liberal Democrat Groups, and Councillor Glaholm.

Background Papers and Appendices

- Appendix 1 – DCLG Consultation Paper - 'Consultation on Orders and Regulations Relating to the Conduct of Local Authority Members in England', January 2008.