

STANDARDS COMMITTEE

4 February 2008

ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND - CONSULTATION

REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

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RECENT REFERENCES:

ST49 - Standards of Conduct in English Local Government – The Future (6/2/06)

EXECUTIVE SUMMARY:

Part 10 of the Local Government and Public Involvement in Health Act 2007 (see Report CAB 1591 elsewhere on this agenda) provides for a revised ethical conduct regime, based on the principle of proportionate decision making.

The Department of Communities and Local Government (DCLG) has issued a consultation paper (attached as Appendix A for Committee members only) which discusses possible approaches about how the local assessment of complaints could be handled. It also covers dispensations and politically restricted posts.

The consultation takes the form of 16 questions to which local authorities are invited to respond, with a deadline date of 15 February 2008. This report sets out a proposed response in each case.

RECOMMENDATION:

That the proposed responses to the consultation paper, as set out in this report, together with any amendments agreed by Members, be submitted to the Department of Communities and Local Government.

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DETAIL:

1 Introduction

- 1.1 The Department of Communities and Local Government (DCLG) has issued a consultation paper which discusses possible approaches about how the local assessment of complaints could be handled. It also covers dispensations and politically restricted posts.
- 1.2 The consultation paper prepared by the DCLG is attached as Appendix A.
- 1.3 Rather than repeat the detailed points on the options made in that paper, this report sets out a proposed response to the questions raised in the consultation. Therefore, it is necessary to read both papers together.

2 Proposed Responses

- 2.1 New Standards Committee powers to make initial assessments of misconduct allegations, composition of committees and access to information.

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?

Proposed Response:

This is a reasonable approach. The initial and review assessments should be undertaken by separate sub-committees as they will be considering substantially the same information. However, the fact that a member took part in an earlier filtering assessment should not be a bar to participating in the full hearing. This is because the filtering hearing does not determine that a breach of the Code has actually taken place and further information in the form of the investigator's report will be available to the full hearing.

Although in practice authorities may sometimes seek to keep the three functions separate, if possible, there should not be a legal requirement to do this. The availability of individuals, or the volume of cases, is likely to make this impracticable.

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?

Proposed Response:

It would, of course, be preferable for two standards committees to agree amongst themselves who should deal with the complaint and mutual agreement is likely to be the most common outcome. However, the occasional exceptional case could be envisaged where agreement is not reached and then the Standards Board is the obvious arbiter. Therefore, rather than any formal adjudication process, it would be sensible for the Standards Board to at least agree to provide some advice and a 'view from above', as alluded to in para. 7 of the consultation document.

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?

Proposed Response:

We strongly support the guidance approach. There can be particular local circumstances when even the most 'punctual' authority cannot complete the initial stages within a given timescale. An approach based on guidance which recognises exceptional situations and delays would be far more flexible and realistic than a rigid statutory timetable.

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?

Proposed Response:

The suggested approach, based upon guidance, is reasonable. Although it is desirable to provide a summary of the allegation to the councillor when the case is referred for investigation, in circumstances where releasing the full information may prevent an effective investigation or lead to potential intimidation, then it is sensible to provide more limited information. The councillor will still have the further opportunity to comment on the investigator's draft report before any final conclusions are reached.

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?

Proposed Response:

Yes and those set out are reasonable.

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?

Proposed Response:

As it is intended that more serious cases are to be determined locally, it is appropriate that the maximum local sanction should also increase and the proposal is proportionate in those terms.

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?

Proposed Response:

Whilst it has never been an issue with the City Council's Standards Committee, we understand that some authorities have had problems in securing independent members of the required calibre, who could assume such a role. However, with training this could be overcome and it is therefore not a sufficient reason to move away from the principle that all Standards meetings, whether at committee or sub-committee level, should be chaired by an independent member, which reinforces the impartiality of the process. Another option to provide flexibility, would be to also allow a parish representative to chair a case involving a district councillor, or a district councillor to chair a parish case eg. on filtering cases.

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?

Proposed Response:

Agreed for the reasons stated.

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?

Proposed Response:

The criteria are satisfactory.

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?

Proposed Response:

On the assumption that such suspensions would be relatively rare, a level of fees set to do no more than recover costs would seem appropriate. Neither the Board, nor another local standards committee should have to bear the costs of undertaking the work of another local standards committee which has been suspended from undertaking its own functions.

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?

Proposed Response:

Local authorities in Hampshire are already discussing joint working arrangements and these will be considered in the light of this consultation exercise. In practice the use of county boundaries would appear a logical and convenient maximum geographical limit for joint agreement areas. This would provide reasonable traveling distances and maximize the benefits of the Monitoring Officer networks which already exist on a county basis. However, provision would need to be made for unitary authorities, so the actual arrangements should be left to local discretion. A parish representative from anywhere covered by a joint arrangement would be acceptable.

2.2 Adjudications by case tribunals of the Adjudication Panel

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?

Proposed Response:

Yes.

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?

Proposed Response:

Yes, the proposals are agreed and we have no additional situations to add.

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?

Proposed Response:

We have not been required to consider such dispensations, but would have been prevented from doing so in the cases where political balance would have been affected because the wording of the current regulations, did not reflect the original intention. The proposed rewording is supported as clarifying the position. This would also revert to the position which applied before the current regulations came into effect.

2.3 The granting and supervision of exemptions of certain local authority posts from political restrictions

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?

Proposed Response:

Yes – but we have no information about any additional bodies which may be affected.

2.4 Other Issues

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

Proposed Response:

No, the consultation raises a number of issues which require more consideration and these will take further time to resolve, particularly if it is desired to establish local joint working arrangements or to change local constitutional arrangements, such as membership of standards committees . There seems no particular need to have a deadline of 1 April, when giving a few more months to, say, 1 October 2008, will allow proper local systems to be effectively put in place. The regulations and final guidance should be available before authorities have to put their new arrangements in place, with adequate time for implementation.

The Government should also be advised of the potential concerns about adequate funding being put in place – to avoid the problems that were experienced by the Standards Board itself when it was first established and not able to deal promptly with cases. The Government has not provided any specific funding to enable councils to undertake these additional functions.

3 OTHER CONSIDERATIONS:

4 CORPORATE STRATEGY (RELEVANCE TO):

4.1 An Efficient and Effective Council.

5 RESOURCE IMPLICATIONS:

Inevitably, there would be an increase in officer time and meeting costs should the Standards Committee (and/or its Sub Committee) need to meet regularly to give the preliminary consideration to cases which is currently undertaken by the Standards Board. Even if the past pattern of most initial complaints resulting in no further action were repeated in the future, the workload generated by this additional task would have some cost implications. However, at this stage, additional budget provision is not being sought, although the evolving situation will be closely monitored.

BACKGROUND DOCUMENTS:

Papers held on Democratic Services Division file.

APPENDICES: Appendix 1 – Consultation Paper.