

Standards Committee

To: Councillors Bainton (Independent Member, in the Chair), Kirk, Horton (Vice-Chair), Hudson, Leaman (Independent Member) and Crawford (Parish Council Member)

Date: Friday, 25 January 2008

Time: 3.00 pm

Venue: The Guildhall, York

AGENDA

1. Declarations of Interest

At this point, members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

2. Minutes (Pages 3 - 8)

To approve and sign the minutes of the meeting of the Standards Committee held on 9 November 2007.

3. Public Participation

At this point in the meeting, members of the public who have registered their wish to speak, regarding an item on the agenda or an issue within the remit of the Standards Committee, may do so. The deadline for registering is **5:00 pm on Thursday, 24 January 2008**.

4. Outcome of Complaint Regarding a Member of Nether Poppleton Parish Council (Pages 9 - 12)

This report advises the Standards Committee of the outcome of a complaint regarding Councillor John Craven of Nether Poppleton Parish Council. No evidence was found that the member had breached the Code of Conduct.

5. Ethical Governance Audit (Pages 13 - 38)

This report advises Members of further progress on the Ethical Governance Audit, including the outcome of Stage 2.

6. Consultation on Orders and Regulations Relating to the Conduct of Local Authority Members in England (Pages 39 - 76)

This report advises Members of the consultation by the Department of Communities and Local Government (DCLG) on arrangements to implement the provisions of the Local Government and Public Involvement in Health Act 2007 in relation to the ethical framework, and suggests a response to the consultation.

7. Local Government and Public Involvement in Health Act 2007 (Pages 77 - 82)

This report advises Members of the provisions of the Local Government and Public Involvement in Health Act 2007 in relation to the ethical framework and the implications for the Standards Committee.

8. Review of Work Plan

To review the work plan for the Standards Committee for the 2007/08 municipal year. The latest version of the work plan is annexed to the minutes of the previous meeting, at page 7 of this agenda.

9. Any other business which the Chair decides is urgent under the Local Government Act 1972.

Democracy Officer:

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For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
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Contact details are set out above.

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The majority of councillors are not appointed to the Executive (38 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Advisory Panel (EMAP)) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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City of York Council

Minutes

MEETING	STANDARDS COMMITTEE
DATE	9 NOVEMBER 2007
PRESENT	MRS BAINTON (INDEPENDENT MEMBER, IN THE CHAIR), KIRK, HORTON (VICE-CHAIR), HUDSON AND CRAWFORD (PARISH COUNCIL MEMBER)
APOLOGIES	MRS LEAMAN (INDEPENDENT MEMBER)

15. DECLARATIONS OF INTEREST

Members were invited to declare at this point in the meeting any personal or prejudicial interests they had in the business on the agenda. No interests were declared.

16. MINUTES

RESOLVED: That the minutes of the meeting held on 28 September 2007 be approved and signed by the Chair as a correct record.

17. PUBLIC PARTICIPATION

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

18. SIXTH ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

Members considered a report which informed them of the proceedings of the Sixth Annual Assembly of Standards Committees, held in Birmingham on the 15th to 16th October 2007 and attended by the Standards Committee Chair as representative of City of York Council.

The Assembly had focused upon meeting the challenge of the local filter for complaints. Given that the relevant legislation (the Local Government and Public Involvement in Health Bill) was currently going through Parliament, it was unlikely that the regulations would be received much before the start date of 1 April. The feedback from pilot studies on the operation of the local filter had been generally positive. The new Code of Conduct had also been well received. The number of complaints referred by the Standards Board had reduced, with the Board concentrating on complaints with the potential to damage public confidence in local government. This would become an issue for local Standards Committees when they began filtering complaints.

It was reported at the meeting that the Bill had recently received Royal Assent; however, printed copies of the Act were not yet available.

RESOLVED: That the contents of the report be noted.

REASON: So that the Standards Committee is kept advised of the current national picture in relation to the ethical agenda.

19. OUTCOME OF COMPLAINT REGARDING MEMBERS OF UPPER AND NETHER POPPLETON PARISH COUNCILS

Members considered a report which advised of the outcome of a complaint regarding Councillor David Tomlinson, of Nether Poppleton Parish Council, and Councillor Ted Kendall, of Upper Poppleton Parish Council.

The complaint had centred around the issue of whether the councillors had breached the Code of Conduct by failing to include their respective trusteeships of the Poppleton Community Trust (PCT) in the register of interests and failing to declare a prejudicial interest when their respective councils considered matters concerning the PCT.

It was reported that Councillors Tomlinson and Kendal had been nominated by their councils as observers only and were not officially members of the PCT. The ethical standards officer had found that they had no interest in the PCT which would have needed to be registered, nor any personal interest in the matter. The issue of a prejudicial interest therefore did not arise and there was no evidence that either member had failed to comply with the Code of Conduct.

RESOLVED: That the contents of the report be noted.

REASON: So that the Standards Committee is kept advised of the outcome of Code of Conduct cases in the City of York area.

20. ETHICAL GOVERNANCE AUDIT

Members considered a report which informed them of progress on the Ethical Governance Audit, including the outcome of Stage 1, and sought approval for action to be taken in response.

The audit was undertaken as a three-stage process. The first stage was a review of the documentation the Council had in place to support the governance framework. A copy of the final Stage 1 report, published in August, was attached as Annex 1. Its main conclusions were that overall the Council's arrangements to deliver high ethical standards were satisfactory.

Areas where arrangements could be strengthened or best practice adopted were detailed at paragraphs 8-23 of the report. An action plan setting out these issues and action taken, or being taken, to address them was attached as Annex 2. Some issues relating to the composition and role of the Standards Committee would involve amendments to the Council's Constitution. With regard to further progress, the Stage 2 report was still at the draft stage and a programme for the Stage 3 workshops had yet to be arranged. The Stage 2 report would be brought to Members once finalised.

RESOLVED: (i) That the outcome of Stage 1 of the Ethical Governance Audit, and the progress on Stages 2 and 3, be noted.

(ii) That the actions set out in Annex 2 in relation to the various recommendations contained in the Stage 1 report be agreed.

REASON: To ensure the maintenance of high standards of ethical conduct in the Council.

21. REVIEW OF WORKPLAN

Members reviewed the latest version of their work plan for the 2007/08 Municipal Year and agreed some amendments. The amended work plan is attached as Annex 1 to these minutes.

C BAINTON

Independent Member, In the Chair

The meeting started at 3.00 pm and finished at 3.50 pm.

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2007/2008 Workplan for Standards Committee

Ongoing Activities

- Cases referred for investigation or determination
- Database of Standards Committee topics
- Standards Board Guidance
- Parish Council Issues
- Member and Officer Training

Programme of New Work

<u>Programme of New Work</u>	<u>Meeting Date</u>	<u>Notes</u>
Preparation for Local Determination	25 January 2008	Work still ongoing. Progress report to be brought to January meeting.
Full Ethical Audit	25 January 2008	
Comprehensive Performance Assessment (CPA) – contribution of Standards Committee	25 January 2008	Inspection due late Jan. / early Feb 2008. Monitoring Officer has circulated a briefing note to stakeholders & partners.
Assessment of the impact of the White Paper on Standards Committee	25 January 2008	Work still ongoing. Progress report to be brought to January meeting.
Article in News and Jobs (to be done when Ethical Audit results are out)	N/a	Stage I results are now out – article to appear in next edition of News and Jobs (copy to be sent to the Chair).

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STANDARDS COMMITTEE**25th JANUARY 2008**

Report of the Interim Head of Civic, Democratic and Legal Services

OUTCOME OF COMPLAINT REGARDING A MEMBER OF NETHER POPPLETON PARISH COUNCIL**Summary**

1. The purpose of this report is to advise the Standards Committee of the outcome of a complaint regarding Councillor John Craven of Nether Poppleton Parish Council. No evidence was found that the member had breached the Code of Conduct.

Background

2. The complainant to the Standards Board for England alleged that Councillor John Craven of Nether Poppleton Parish Council failed to declare a prejudicial interest and leave meetings when the Council discussed matters concerning the Poppleton Community Trust (PCT).
3. The complainant alleged that Councillor Craven had an interest because before becoming a councillor, he had addressed the council to request funding for the PCT in January 2006.
4. The complainant further alleged that Councillor Craven failed to enter his interest in the PCT in the register of members' interests.
5. The Ethical Standards Officer concluded that Councillor Craven was not a trustee of the PCT and his only involvement with it was as a volunteer. Therefore he was not obliged to note his work for the PCT in the register.
6. The Ethical Standards Officer considered that Councillor Craven's financial position would not be affected by any decision made on applications by the PCT and that the PCT's sole purpose is to benefit residents of the area. Any funding obtained at the meetings would be for the benefit of all residents equally and would not affect Councillor Craven's own well-being more than that of other residents in the area.
7. The Ethical Standards Officer therefore concluded that Councillor Craven's well-being and finances would not be affected more than that of other residents by a decision on PCT funding and that he did not have a personal

interest in the matter. Without a personal interest, he could not have a prejudicial interest either.

8. The ethical standards officer, appointed by the Standards Board to investigate the matter, found no evidence of any breach of the Code of Conduct.
9. Members of the Committee will no doubt recall a report at the last meeting of the Committee on the outcome of a similar complaint against another member of Nether Poppleton Parish Council and a member of Upper Poppleton Parish Council. Again the Ethical Standards Officer found no evidence that either member had failed to comply with the Code of Conduct.

Consultation

- 10 This is a matter of report to the Standards Committee and further consultation is not required.

Options

4. Not applicable. The report is for the information of the Committee.

Analysis

Not applicable

Corporate Priorities

6. Compliance with the Local Government Act 2000 contributes to the corporate priority of improving leadership at all levels.

Implications

7. *There are no specific financial, HR equalities, legal, crime and disorder, IT, property or other implications arising out of this report.*

Risk Management

8. The Standards Committee needs to be aware of the outcome of complaints relating to alleged breaches of the Code of Conduct in order to fulfil its statutory role. There are no known risks arising from this report.

Recommendations

9. The committee is asked to note the contents of this report.

Contact Details

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Democratic and Legal Services.
Author's name Colin Langley
Title Interim Head of Civic Democratic and Legal
Dept Name Services
Tel No. Chief Executive's
551004

Report Approved *tick* **Date** 4th January 2008

Specialist Implications Officer(s)

None

Wards Affected: *List wards or tick box to indicate all*
Rural West York

All *tick*

For further information please contact the author of the report

Background Papers:

Letter from Standards Board for England dated 13th November 2007

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STANDARDS COMMITTEE**25 JANUARY 2008**

Report of the Interim Head of Civic, Democratic and Legal Services

ETHICAL GOVERNANCE AUDIT**Summary**

1. This report advises members of further progress on the Ethical Governance Audit including the outcome of Stage 2.

Background

2. The Audit Commission was commissioned to carry out an Ethical Governance Audit of the Council. The audit is undertaken as a three stage process:-
 - Stage 1 – this consists of an assessment of policies, procedures and practices against statutory requirements and best practice. Effectively, it is a review of the documentation in place to support the governance framework
 - Stage 2 – this is an assessment of the level of awareness of ethical governance issues by way of a questionnaire completed by Members and the first three tiers of officers
 - Stage 3 – this stage involves the delivery of workshops with members and officers to deal with issues arising out of the Stage 1 and 2 process.
3. The final Stage 1 report was published in August. A report on Stage 1 including an action plan to tackle the issues identified was submitted to the last meeting of the Standards Committee.
4. The final Stage 2 report was published by the Audit Commission in November 2007. A copy of that report is attached as an Annex to this report.
5. Questionnaires were sent out to all Council members and to a group of officers. 115 replies were received; 22 from councillors and 93 from officers, of whom 17 are part of the Corporate Leadership Group.
6. The main conclusions of the survey are generally very positive. They demonstrate a high level of understanding of the Council's ethical governance arrangements and a strong indication of compliance with the policies and procedures. In particular members were found to have a strong

level of awareness and understanding of the code of conduct and its impact on their behaviour and actions. There was strong support for the work and effectiveness of the Committee. Members were also found to be very clear on the issue of conflicts of interest and what the differences are between personal and prejudicial interest.

7. The responses from officers were less clear around the codes of conduct for members and officers. There was less awareness of the Members' code and of more concern a number of officers claimed either not to be aware of the officer code or not to have agreed to abide by it. Not surprisingly there was less awareness of the existence of the Standards Committee and understanding of its work amongst officers.
8. The audit concluded that the most significant issues for the Council to address are:
 - Equality legislation awareness: a large proportion of officers and members report that they have not had training, advice or a briefing on relevant equalities legislation.
 - Member/Officer culture: there is a significant minority of respondents who indicated that members interfered in operational issues, and that members involved officers inappropriately in party political issues. A significant proportion of officers consider that they cannot challenge member decisions without fear of reprisal.
 - Member/Officer relationships: a significant minority of officers report that only sometimes can they carry out their roles without the fear of bullying or harassment by members.
9. The issue around equality legislation awareness has been drawn to the attention of the Equalities Officer so that it can be taken into account in future training. Workshops of officers and members are being organised to further explore the issues raised in the replies to the survey particularly around Member/Officer relationships. The workshops will be conducted by the audit Commission. The officer workshop is being planned for March and a date is being sought for one for members.

Consultation

10. The outcome of the Ethical Governance Audit will also be reported to the Audit and Governance Committee.

Options

11. This report is for the information of the Committee. An action plan to implement the findings of the first part of the Ethical Governance Audit has already been agreed.

Analysis

12. The report is for information to keep the Standards Committee advised of progress on the Ethical Governance Audit..

Corporate Priorities

13. Implementation of the recommendations arising from the Ethical Governance Audit will contribute to the corporate priority of providing strong leadership for the city.

Implications

14. There are no specific financial, HR, equalities, crime and disorder, IT, property implications arising out of this report. The legal implications are dealt with in the report.

Risk Management

15. There is a risk to the standing and reputation of the Council if it does not ensure high ethical standards within the organisation.

Recommendations

16. The Standards Committee are recommended to note the outcome of stage 2 of the Ethical Governance Audit.

Reason: To ensure the maintenance of high standards of ethical conduct in the Council.

Contact Details

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Democratic Services
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Chief Officer Responsible for the report:

Colin Langley
Interim Head of Civic, Democratic and Legal
Services

Report Approved

Date 14th January 2008

Specialist Implications Officer(s) List information for all
None

Wards Affected: List wards or tick box to indicate all

All

For further information please contact the author of the report

Background Papers:

Ethical Governance Audit Report Stage 2

Annexes

Annex 1 – Ethical Governance Audit Report Stage 2

Ethical Governance Audit - Stage 2

City of York Council

Audit 2006/07

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Introduction

- 1 We have been requested by the Council to carry out an audit of their ethical governance arrangements. The audit is being carried out in three stages.
 - Stage 1 - A review of the council's overall arrangements.
 - Stage 2 - A survey of members and officers views on the Council's arrangements.
 - Stage 3 - Workshops for members and officers.
- 2 This report summarises the key messages from Stage 2.

Audit approach

- 3 The Stage 2 of the audit has involved carrying out an electronic survey of officers and members to ascertain their views of the Council's ethical governance arrangements. The results from this survey give the Council an impression of how successfully its policies and procedures are accepted and adhered to by officers and members.

Main conclusions

- 4 The results are generally very positive, indicating a high level of understanding of the Council's ethical governance arrangements, and a strong indication of compliance with the policies and procedures.
- 5 The most significant issues for the Council to address are:
 - Equality legislation awareness: A large proportion of officers and members report that they have not had training, advice or a briefing on relevant equalities legislation.
 - Member/officer culture: There is a significant minority of respondents who indicated that members interfered in operational issues, and that members involved officers inappropriately in party political issues. And a significant proportion of officers consider that they cannot challenge member decisions without fear of reprisal.
 - Member/officer relationships: A significant minority of officers report that only sometimes can they carry out their roles without the fear of bullying or harassment by members.
- 6 A number of the issues in the detailed report and appendices highlight a need for clear, regular and timely communication with both members and officers. Communication on ethical governance has mainly focused on members in the past, and the Council will need to consider how to improve communication with officers.

- 7 The three appendices to this report contain the detailed results of the survey:
 - Appendix 1 reports the responses from members.
 - Appendix 2 reports the responses from officers.
 - Appendix 3 reports combined responses from both officers and members.
- 8 We received 115 responses to the questionnaire: 22 from Council members and 93 from officers. Of the 93 officer respondents, 17 are part of the corporate leadership group.
- 9 The key headlines from the work are set out below against relevant headings.

Compliance with the codes of conduct

Members

- 10 Members generally have a strong level of awareness and understanding of the code of conduct and its impact on their behaviour and actions. There are some, albeit isolated cases that indicate that further awareness is needed.
- One member responded that they had not agreed to abide by the code of conduct.
 - The same member responded that they were very unclear about reporting a breach of the code of conduct, and very unclear about their responsibilities under the ethical framework.
 - Four members disagreed that the Council's approach to promoting high ethical standards was helping to build the public's confidence in local democracy.
- 11 There was also a divergence of views on the action that individuals should take when they reasonably believe another member has failed to comply with the code of conduct. While there was almost universal agreement to inform the monitoring officer, opinion was divided as to whether they would make a written allegation to the Standards Board for England, or speak to the member.

Officers

- 12 The picture is less clear from the officers' responses to questions around the compliance with the code of conduct.
- 13 There are a large number of 'Don't know' responses for whether there is a code of conduct for members and for officers. Curiously there are six officers who respond that the Council does not have a code of conduct for officers, and 19 who say that they have not agreed to abide by the officers code of conduct.
- 14 Although a majority of officers agree that the Council's approach to promoting high ethical standards encourages appropriate behaviour and builds the public's confidence in local democracy there is a significant minority who disagree with these statements.
- 15 Consistent with the responses from members, there is a wide divergence of views on the action that individuals should take when they reasonably believe another member has failed to comply with the code of conduct.

Standards committee

Members

- 16 The responses relating to the work of the Standards Committee are very positive. Although there are a small minority of 'don't knows' and three responses disagreeing with the positive statements about the Committee, the responses indicate a strong support for the work and effectiveness of the Committee.

Officers

- 17 As might be expected, the responses for officers contain a majority of 'don't knows'. However there are some responses that indicate further consideration is necessary.
- Three officers disagreed that there was a Standards committee in place and a further 35 did not know if one existed.
 - Only 35 of the respondents agreed that they understood the role of the Standards committee.
 - A minority of respondents were negative about the effectiveness of the standards committee (six responses), whether the committee makes a difference to the Council's ethical environment (eight responses) and that the work of the committee adds value to the council (seven responses).

Whistleblowing

Members

- 18 Only one member did not know that the Council has a whistleblowing policy.

Officers

- 19 Seven officers did not know that the Council has a whistleblowing policy.
- 20 Four officers thought the policy was unclear and 18 did not know if the policy was clear or not.

Integration of legislation

Members

- 21 Six members did not know if the Council had begun to integrate into the codes of conduct, the requirements of the human rights, freedom of information, data protection and equalities legislation. Council officers report that they consider that the national Code of Conduct for members includes sufficient coverage of the relevant legislation.

Officers

- 22 The responses from officers are less clear, with six of the responses indicating that the Council has not begun the integration of the relevant legislation into the codes of conduct. The majority of respondents did not know if this integration had begun. Council officers report that they have reviewed the code of conduct and are aware of the level of integration with the relevant legislation.

Training

Members

- 23 Only one member disagrees that appropriate training is given to members on issues of conduct. A further one member did not know if this was the case.
- 24 Although a majority of members have had training, advice or a briefing on relevant legislation such as the Freedom of Information Act and Data Protection Act, the results relating to other important Acts is less positive, in particular the Acts relating to 'equalities' issues have poorer results.
- Sex Discrimination Act - only 8 of the 22 members reported that they had been provided with training, advice or a briefing.
 - Race Relations Act - 12 of the 22 members reported that they had been provided with training, advice or a briefing.
 - Human Rights Act - 10 of the 22 members reported that they had been provided with training, advice or a briefing.

Officers

- 25 The responses from officers are less positive, with 14 respondents disagreeing that the training given to members is appropriate, with only 18 respondents agreeing that it is appropriate.
- 26 Similar to the results for members the number of officers who have had training, advice or briefings varies widely, and the Acts relating to equalities 'issues' again seem to be more of an issue.
- There is a good response relating to the Freedom of Information Act (84 Yes, 6 No) and the Data Protection Act (71 Yes, 19 No).
 - The response is more poorer for the Race Relations Act (55 Yes, 31 No), the Sex Discrimination Act (47 Yes, 37 No), the Disability Discrimination Act (59 Yes, 25 No), and the Human Rights Act (39 Yes, 41 No).

Conflicts of interest

Members

- 27 The responses indicate that members are very clear on the issue of conflicts of interest and what the differences between personal and prejudicial interests. However there is some uncertainty about whose code of conduct the member should comply with for appointments on external bodies, with four members responding don't know and one member responding that neither code.
- 28 Generally the responses indicate that members are aware of the register of interest, although there are a minority of responses that are concerning.
- One member does not know if there is a register of interests and consequently does not know that members are reminded of the needs to record such interests.
 - One member disagrees that members are reminded to record gifts and hospitality, and a further two members do not know that there are reminders.
- 29 There is a considerable divergence in members' opinions on when they would need to register an interest. These responses indicate that members would benefit from clarity on when interests need to be registered and the issues that they should take into consideration when making such judgements.

Officers

- 30 Responses from officers indicate that they are clear about what a conflict of interest is, although five respondents were 'fairly unclear'.
- 31 Officers' awareness of the members' register of interest and register of gifts and hospitality is, perhaps understandably, less certain than members' awareness is.

Leadership

- 32 All the member and officer respondents were generally positive in their views of members and senior officers. However there is a significant minority of responses that are more concerning:
- 14 respondents (all of them officers) said that members are rarely or never a focus for positive change in the Council.
 - 30 respondents (25 officers, 5 members) said that members interfere in operational issues.
 - 20 respondents (15 officers, 5 members) said that members involved officers inappropriately in party political issues.
 - 7 respondents (all of them officers) said that members rarely perform their duties with honesty, integrity, impartiality and objectivity.
 - 21 respondents (18 officers, 3 members) said that the leader of the Council is rarely or never proactive in promoting the importance of the ethical agenda.

Communications

- 33 The responses indicate that the communication of the importance of ethical standards through training, meetings etc, is more focused towards members than officers.
- 34 The responses indicated that the communication between members and officers was open and constructive, although a small minority of respondents said that this was rarely the case and a significant minority said that it was sometimes the case.

Relationships

- 35 The majority of respondents thought that appropriate confidences were usually kept by members and by senior officers.
- 36 A large number of respondents thought that members trusted each other always or usually, although seven respondents (all of them officers) thought this was rarely the case. The picture presented of trust between members and officers indicates that a small number think trust is always present, and most think the trust is usually present. A significant number (38 - of which 4 were members and 34 were officers) thought this was only sometimes the case. However 10 respondents (all of them officers) thought that trust between members and officers was rarely or never present.
- 37 Bullying and harassment between members is not considered a major issue by the respondents.
- 38 However the response for bullying and harassment of officers by members is a little concerning, with:
- 26 respondents (25 officers, 1 member) indicating that only sometimes do officers carry out their roles without fear of bullying and harassment by members, and
 - 5 respondents (all of them officers) indicating that this is rarely or never the case.

Management of standards

- 39 The responses generally indicate that members can challenge decisions without fear of reprisal.
- 40 However the responses indicate that officers do not have the same privilege, with 55 respondents (52 officers, 3 members) saying that officers could not challenge member decisions without fear of reprisal. This may indicate underlying cultural issues, or at least a perception of them, which the council needs to address.

Appendix 1 – Members' responses

1. Code of conduct – compliance

	Yes	No	Don't know
Has the Council adopted a code of conduct for members?	22	0	0
Has the Council adopted a code of conduct for officers?	20	1	0
Have you agreed to abide by the members' code of conduct?	21	1	0

	Very clear	Fairly clear	Fairly unclear	Very unclear
How clear are you about reporting a potential breach of the members' code of conduct?	15	6	0	1
How clear are the guidelines provided to members regarding their personal conduct?	15	5	0	0
How clear are you about your responsibilities under the ethical framework?	12	9	0	1

	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
Members are required to acknowledge that they understand the guidance.	15	5	0	0	2
Your Council's approach to promoting high ethical standards is encouraging appropriate behaviour across the Council.	12	8	0	0	2
Your Council's approach to promoting high ethical standards is helping to build the public's confidence in local democracy.	10	7	4	0	1

If you become aware of any conduct by a member which you reasonably believe involves a failure to comply with the council's member code of conduct what action as an individual must you take?

	Yes	No	Don't know
Inform the monitoring officer?	20	0	1
Make a written allegation to the Standards Board for England?	6	9	3
Speak to the member?	3	11	3
Do nothing?	0	18	0

2. Standards committee

	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
There is a Standards Committee in the Council.	19	2	0	0	1
I understand the role of the Standards Committee.	16	5	0	1	0
I believe the Standards Committee operates effectively.	15	6	0	0	1
The Standards Committee is making a positive difference to the ethical environment in the Council.	11	8	1	1	1
The Standards Committee has a forward plan to guide its work.	11	8	0	0	3
The work of the Standards Committee adds value to the Council.	14	5	0	0	3

3. Whistleblowing

	Yes	No	Don't know
Does your Council have a whistle blowing policy?	21	0	1

4. Human rights, freedom of information, data protection, equalities legislation

	Yes	No	Don't know
Has the Council begun to integrate the requirements of codes of conduct into other schemes, policies and procedures?	16	0	6

5. Training

	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
Appropriate training is given to members on issues of conduct.	11	6	1	0	1

Have you been provided with training, advice or a briefing/information on:			
	Yes	No	Don't know
The Human Rights Act 1998?	10	6	6
Freedom of Information Act 2001?	18	1	2
Data Protection Act 1998?	18	2	2
Race Relations (Amendment) Act 2000?	12	4	6
Sex Discrimination Act 1975?	8	8	6
Disability Discrimination Act 1995?	15	3	4

6. Conflicts of interest

	Very clear	Fairly clear	Fairly unclear	Very unclear
How clear are you about what a conflict of interest is?	18	4	0	0
How clear are you about the differences between a personal and prejudicial interest?	16	6	0	0

If you are appointed to represent the council on an external body whose internal rules conflicts with the Council's Code whose prevail?			
	Yes	No	Don't know
The Council's code?	17	0	4
Other organisation's code?	0	9	4
Neither?	1	9	4

	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
A register is kept in which members are required to record any relevant interests.	20	1	0	0	1
Members are reminded of the need to record such interests.	19	2	0	0	1
Members are reminded of the need to record any hospitality or gifts.	16	3	1	0	2
The hospitality or gifts register is reviewed regularly.	15	2	0	0	5

14 Ethical Governance Audit - Stage 2, Appendix 1 – Members' responses

Must you register an interest in the members' register if?			
	Yes	No	Don't know
You have been appointed by the Council as a representative to another body	14	6	0
You have been appointed as a manager to another organisation which provides a public service?	19	2	1
You are in a management position in a private company?	18	3	1
You are in a management position in a charity?	16	4	2
You are a member of a trade union or professional association?	20	2	0
A person has made a payment to you in respect of your election or any other expenses incurred in carrying out your duties?	20	1	1
You are a member of a church?	3	15	4
You are a member of a freemasons lodge which does not have charitable status?	11	4	7
You have an interest in a business or land in the council's area which exceeds the nominal value of £25,000?	19	1	2
You are a partner or paid director of a company which has entered into contracts for goods, services or works with the Council?	20	2	0
You have a beneficial interest in land which is in the area of the Council?	21	1	0

Appendix 2 – Officers' responses

1. Code of conduct – compliance

	Yes	No	Don't know
Has the Council adopted a code of conduct for members?	68	0	25
Has the Council adopted a code of conduct for officers?	60	6	27
Have you agreed to abide by the officers' code of conduct?	44	19	28

	Very clear	Fairly clear	Fairly unclear	Very unclear
How clear are you about reporting a potential breach of the members' code of conduct?	11	27	34	21
How clear are the guidelines provided to members regarding their personal conduct?	14	31	19	17
How clear are you about your responsibilities under the ethical framework?	11	36	27	19

	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
Members are required to acknowledge that they understand the guidance.	30	23	5	1	33
Your council's approach to promoting high ethical standards is encouraging appropriate behaviour across the Council.	13	44	12	1	23
Your Council's approach to promoting high ethical standards is helping to build the public's confidence in local democracy.	7	34	16	3	33

If you become aware of any conduct by a member which you reasonably believe involves a failure to comply with the Council's member code of conduct what action as an individual must you take?

	Yes	No	Don't know
Inform the monitoring officer?	66	0	26
Make a written allegation to the Standards Board for England?	7	28	45
Speak to the member?	10	42	27
Do nothing?	0	69	7

2. Standards committee

	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
There is a Standards Committee in the council.	31	24	3	0	35
I understand the role of the Standards Committee.	12	23	19	12	26
I believe the Standards Committee operates effectively.	5	17	5	1	63
The Standards Committee is making a positive difference to the ethical environment of the Council.	4	14	5	3	66
The Standards Committee has a forward plan to guide its work.	6	10	4	1	71
The work of the Standards Committee adds value to the Council.	5	17	4	3	63

3. Whistleblowing

	Yes	No	Don't know
Does the Council have a whistleblowing policy?	83	0	7

If yes,					
	Very clear	Fairly clear	Fairly unclear	Very unclear	Don't know
How clear is the policy?	27	43	4	0	18

4. Human rights, freedom of information, data protection, equalities legislation

	Yes	No	Don't know
Has the Council begun to integrate the codes of conduct into its schemes, policies and procedures resulting from the above legislation?	42	6	45

5. Training

	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
Appropriate training is given to members on conduct issues.	1	17	13	1	49

Have you been provided with training, advice or a briefing/ information on:			
	Yes	No	Don't know
The Human Rights Act 1998	39	41	11
Freedom of Information Act 2001	84	6	2
Data Protection Act 1998	71	19	2
Race Relations (Amendment) Act 2000	55	31	5
Sex Discrimination Act 1975	47	37	7
Disability Discrimination Act 1995?	59	25	7

6. Conflicts of interest

	Very clear	Fairly clear	Fairly unclear	Very unclear
How clear are you about what a conflict of interest is?	31	53	5	0

	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
A register is kept in which members are required to record any interests which may impair their impartiality.	58	23	1	0	11
Members are reminded of the need to record such interests.	46	23	1	0	23
The register is reviewed regularly.	22	19	3	2	47
A register is kept in which members record the receipt and offering of hospitality or gifts.	43	23	1	0	26
Members are reminded of the need to record any hospitality or gifts.	33	15	3	1	41
The hospitality or gifts register is reviewed regularly.	19	17	2	1	54

Appendix 3 – Combined member and officer responses

1. Leadership

Overall, members...						
	Always	Usually	Sometimes	Rarely	Never	Don't know
Are a focus for positive change	8	38	51	12	2	4
Do not interfere in operational issues	3	37	42	25	5	2
Listen to the advice of officers	10	64	34	4	0	3
Do not involve officers inappropriately in party political issues	24	37	14	13	7	19
Show respect to officers	16	65	27	4	1	1
Show respect to other members	8	61	31	3	1	11
Show respect to people who use council services	33	64	8	1	0	9
Treat fairly all users of Council services and do not discriminate unlawfully	41	49	8	1	1	15
Treat fairly all officers and do not discriminate unlawfully	29	55	10	4	0	16
Treat fairly all other members and do not discriminate unlawfully	29	53	6	3	0	23
Perform their duties with honesty, integrity, impartiality and objectivity	23	60	15	7	0	9
Use public funds and Council property and facilities responsibly	29	65	8	2	0	11

Overall, senior officers...						
	Always	Usually	Sometimes	Rarely	Never	Don't know
Show respect to members	57	52	3	0	0	3
Treat fairly all users of Council services and do not discriminate unlawfully	62	47	2	1	0	3
Treat fairly all members and do not discriminate against them unlawfully	69	40	1	1	0	4

Do you consider that...						
	Always	Usually	Sometimes	Rarely	Never	Don't know
The leader of the Council is a positive role model in terms of ethical behaviour	29	42	20	5	5	14
The leader of the Council is proactive in promoting the importance of the ethical agenda	22	22	21	16	5	29
The chief executive is a positive role model in terms of ethical behaviour	55	37	11	2	1	8
The chief executive is proactive in promoting the importance of the ethical agenda	34	33	21	8	1	17
Appropriate responsibilities are delegated to lead members and officers	30	52	16	5	0	12
The Council's monitoring officer is able to carry out her/his role appropriately	27	26	2	1	0	59
The Council seeks to meet the needs of its diverse communities (eg ethnic minorities, disabled people, disadvantaged people)	29	61	15	7	0	2
The Council ensures that officers come from diverse backgrounds	15	37	28	16	1	18
The Council ensures that staff are appropriately skilled to meet the needs of its diverse communities	10	55	28	10	2	10
The Council learns from other councils to ensure that its ethical arrangements are appropriate	8	32	19	6	4	46

2. Communications

The importance of high ethical standards is communicated via for example, training, meetings, newsletters, the local media and the Council website to						
	Always	Usually	Sometimes	Rarely	Never	Don't know
Members	16	28	16	7	3	45
Officers	15	37	31	13	5	13
Local communities	8	26	28	9	5	38

20 Ethical Governance Audit - Stage 2 - Appendix 3 – Combined member and officer responses

Communication between						
	Always	Usually	Sometimes	Rarely	Never	Don't know
Members is open	11	42	22	1	0	39
Members is constructive	5	46	27	3	0	33
Members and officers is open	8	75	23	5	0	4
Members and officers is constructive	5	67	31	5	0	5

Communication					
	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
The public can easily access the members' code of conduct.	23	20	8	3	61
The public can easily access the register of member interests.	23	14	7	3	66
The public can easily access documents relating to the standards committee (for example, agendas, minutes, background papers).	35	46	7	0	27

3. Relationships

	Always	Usually	Sometimes	Rarely	Never	Don't know
Appropriate confidences are kept by members	17	49	13	1	0	35
Appropriate confidences are kept by senior officers	39	51	6	1	0	18
Members trust each other	2	31	32	7	0	42
Members and officers trust each other	4	51	38	9	1	12
Members carryout their roles without fear of being bullied or harassed	21	38	8	1	0	47
Officers carryout their roles without fear of being bullied or harassed by members.	19	57	26	3	2	8

4. Accountability

	Always	Usually	Sometimes	Rarely	Never	Don't know
Decision making by members is transparent, objective and follows agreed procedures	29	59	15	4	1	6
Members are accountable for their decisions and actions	37	50	18	5	1	3
The public has easy access to information on whom has taken particular decisions.	40	46	12	1	0	15

5. Management of standards

	Agree strongly	Tend to agree	Tend to disagree	Disagree strongly	Don't know
There is a culture in the Council which allows members to challenge decisions without fear of reprisal	24	51	14	2	24
There is a culture in the Council which allows officers to challenge member decisions without fear of reprisal	12	37	39	16	11
There is a culture in the Council which allows partners to challenge decisions without fear of reprisal	13	50	19	3	28
There is a culture in the Council which allows the public to challenge decisions without fear of reprisal.	28	54	13	4	16
The Council's complaints system is clear and accessible	30	64	11	3	7

Overall, members...						
	Always	Usually	Sometimes	Rarely	Never	Don't know
Take complaints from the public seriously	46	51	10	1	1	6
Respond positively to constructive external criticism about the council	19	47	26	11	2	10
Use referrals to the Standards Board for England appropriately	9	22	0	1	1	81
Use referrals to the Standards Board for England without fear of reprisal.	19	11	0	0	0	85

22 Ethical Governance Audit - Stage 2 - Appendix 3 – Combined member and officer responses

Overall, senior officers						
	Always	Usually	Sometimes	Rarely	Never	Don't know
Use referrals to the Standards Board for England appropriately	21	8	2	1	1	82
Use referrals to the Standards Board for England without fear of reprisal.	19	8	3	1	2	82

6. Whistleblowing

	Always	Usually	Sometimes	Rarely	Never	Don't know
The Council's whistleblowing policy is used appropriately.	12	37	10	2	0	54
The Council's whistleblowing policy is used without fear of reprisal.	25	31	4	1	1	53

7. Team working and co-operation

	Always	Usually	Sometimes	Rarely	Never	Don't know
Members work well together to achieve the council's common goals.	9	42	38	11	0	13
Members and senior officers work well together to achieve the council's common goals	13	64	27	5	0	4

8. Partnership working

	Always	Usually	Sometimes	Rarely	Never	Don't know
The Council works well with voluntary and community groups to achieve the area's common goals.	12	58	28	6	0	11
The Council works well with statutory partners to achieve the area's common goals.	12	66	25	4	0	8
The Council has positive working relationships with these partners and the wider community.	11	58	34	3	0	9



STANDARDS COMMITTEE**25 JANUARY 2008**

Report of the Interim Head of Civic, Democratic and Legal Services

CONSULTATION ON ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND**Summary**

1. The purpose of this report is to advise the Standards Committee of the consultation by the Department of Communities and Local Government (DCLG) on the detailed arrangements for putting into effect orders and regulations designed to implement the provisions of the Local Government and Public Involvement in Health Act 2007 in relation to the ethical framework, and to suggest a response to the consultation.

Background

2. The DCLG published a consultation paper on 3rd January 2008 on the proposed orders and regulations designed to bring into effect Part 10 of the Local Government and Public Involvement in Health Act 2007. The provisions of Part 10 are dealt with in another report on this agenda. A copy of the consultation paper is attached as an annex to this report. The stated intention is to bring the provisions into effect in Spring 2008 and responses to the consultation are sought by 15th February.
3. The consultation paper raises a series of questions upon which it seeks views. It will be convenient to deal with these in turn.
4. **Standards Committee members and initial assessment**

The paper states that it is likely that there will be a need for sub-committees of standards committees to be created to discharge the separate functions of assessment of complaints, conducting a review and carrying out a hearing. The proposal is that members who have been involved in the initial assessment will be prohibited from being involved in any review of that assessment. However members involved in an assessment or review will not be prohibited from conducting any subsequent hearing of the case. This would be preferable to debarring members involved in the assessment process from being involved in the hearing because of the implications for the size of standards committees.

Response – Whilst it is recognised that fairness must be maintained in the process any requirement to have 3 sub-committees of different membership for each of these functions would have a significant impact on the size of standards committees. It is suggested therefore that this proposal be supported as a sensible and proportionate approach. It is also considered that a system of sub-committees is workable and indeed is essential to the successful working of the new legislation.

5. Members of more than one authority – parallel complaint procedures.

This issue concerns members who are members of more than one authority and therefore subject to more than one code of conduct. The consultation asks where an allegation is made to more than one standards committee, whether the decision on which standards committee should deal with it to be a matter for local agreement between the committees. It also asks whether there is agreement with the proposal that it is neither necessary or desirable to provide for any adjudication role for the Standards Board.

Response – the difficulty which arises here is that a member could be subjected to 2 investigations over the same incident and subjected to 2 hearings with different outcomes. It seems desirable therefore that wherever possible local agreement should be reached over which standards committee should deal with the matter in these circumstances. There may also be situations where agreement cannot be reached and in those circumstances it is suggested the Standards Board be given a role in deciding how the case be dealt with.

6. Guidance on timescale for making initial assessment decisions

It is proposed that the Standards Board issue guidance on the timescale for making an initial assessment of a complaint e.g. 20 working days rather than there be a prescribed statutory limit. Overall compliance with the timescale will be monitored by the Standards Board as part of its regulatory role. The consultation asks if that approach is acceptable.

Response – it is suggested that this approach be welcomed as being consistent with the promised light touch regulation. It will also allow flexibility in exceptional cases where there might be difficulties in meeting a statutory timescale.

7. Requirement for a standards committee to provide a written summary of an allegation to the subject of an allegation

There is to be a general requirement on standards committees to give a written summary of an allegation to the member who is the subject of it. However it is proposed to include in the regulations provision to entitle the standards committee to withhold giving the summary where it would not be in the public interest to do so. Guidance would be issued on the operation of the discretion but examples could be where it may result in evidence being compromised or destroyed or a witness being intimidated. The obligation to

provide the summary could be delayed until sufficient investigation had been carried out. The consultation paper asks for views on this proposal.

Response – As a matter of fairness a summary of the allegation should be provided to the subject member as soon as possible. It should only be delayed in the most extreme of cases where there is reason to believe the investigation will be prejudiced. In those case the summary should be provided as soon as the investigator is of the view that sufficient work has been done so as to no longer prejudice a fair and thorough investigation.

8. References to Monitoring Officers – procedure for referring allegations back to a standards committee

It is proposed to set out in regulations circumstances where a monitoring officer may refer an allegation back to the standards committee and the procedure for doing so. It is proposed such a referral would apply in the following circumstances:

- Where evidence emerges that a case is materially more or less serious than originally seemed which might affect the standards committee's decision on how the matter should be treated
- Where a monitoring officer becomes aware of a further potential misconduct allegation relating to a matter already being investigated
- Where the member subject to the allegation resigns, dies or becomes terminally ill.

Views are sought on this proposal.

Response – the suggestions appear sensible and should be supported.

9. Increase the maximum sanction available to standards committees

Views are sought on the proposal to increase the maximum sanction available to standards committees from suspension for 3 months to 6 months.

Response – the proposal is in line with devolving more responsibility to local standards committees and should be agreed.

10. Composition of a standards committee and sub-committees of standards committees

Views are sought on whether the requirement for an independent chair of the standards committee should be extended to sub-committees which would mean a minimum of 3 independent members on each standards committee. The question is asked whether it would be consistent with robust decision making if one or more sub-committee chairs were not independent.

Response – conducting assessments or reviewing them or conducting hearings are all equally important roles in the process and will be conducted under delegated powers. As it is been made a legal requirement for the chair

of the committee to be an independent member there is a logic in that being the case for the chairs of sub-committees conducting these important tasks. It is not a question of whether elected members could fulfil these roles but of the public confidence in the system.

11. **Public access to information on decisions on initial assessments of allegations and reviews**

Views are sought on a proposal to exempt initial assessments and any review from the access to information rules. It would mean such matters would be dealt with in closed meetings and would not be subject to public notice. Complaints may be unfounded and damaging to a member and there is a strong case that details should not be made public at this initial stage. This would mirror the current situation where the Standards Board do not publish information about cases it does not refer for investigation.

Response – the proposal should be supported in order to avoid members being damaged by unfounded complaints.

12. **Suspension of a standards committee's powers to make an initial assessment**

The legislation provides for regulations to prescribe circumstances in which the Standards Board can suspend the local standards committee's powers to carry out initial assessments. Views are sought on the circumstances suggested which are:

- A breakdown of the process for holding hearings
- A disproportionate number of successful requests to review a standards committee's decision to take no action
- Repeated failures to complete investigations within reasonable timescales
- Repeated failure to carry out other duties expeditiously
- Failure to implement standards committee's decisions
- Repeated failure to submit returns to the Standards Board

Response – the criteria seem appropriate. It is important that this power is used only as a last resort where there has been persistent failure at local level.

13. **Possibility of charging where a standards committee has its assessment functions suspended**

The consultation paper raises the possibility of charging an authority whose assessment functions are suspended. The Standards Board can arrange for the function to be discharged by another standards committee if it is willing.

The question is asked whether such fees should be prescribed or agreed locally or set at a level so no more than actual costs are recovered.

Response – if fees are to be charged in such circumstances it is suggested they be limited to actual costs incurred. The prospect of costs is not seen as relevant to the effective discharge of the functions.

14. Joint working

This section asks about joint working as there will be powers to have joint standards committees. It is proposed that the Standards Board will issue guidance on such joint arrangements. Whilst the same rules will apply to joint standards committees it is proposed that the Parish representative requirement will be met by having a representative of any Parish in the joint area.

Response – whilst guidance from the Standards Board will be welcomed it is considered that the size and scope of joint arrangements should be a matter for local negotiation. There is no objection in principle to the proposal in relation to Parish representation.

15 Sanctions available to case tribunals of the Adjudication Panel

It is proposed to extend to case tribunals of the Adjudication Panel, who hear the more serious cases, the same sanctions as are available to standards committees including censure, restriction of member's access to premises and the use of resources and a requirement to undertake training or conciliation.

Response – the extension of the full range of sanctions to case tribunals is supported. It does seem illogical that case tribunals are denied access to some sanctions which may be more appropriate in particular case than disqualification or suspension.

16 Withdrawing references to the Adjudication Panel

This is a proposal to allow an ethical standards officer to withdraw a case from the Adjudication Panel in certain circumstances;

- where further evidence emerges that the case is not as serious as originally thought
- a penalty imposed by another body meant the Adjudication Panel could do no more e.g. a member is sentenced to 3 or more months imprisonment means he or she is disqualified for 5 years
- the member dies or is diagnosed with a terminal illness

Response – the suggestion seems sensible and should be supported

17 Dispensations

The proposal is to amend the wording of the rules relating to dispensations to make them clearer. The rules will have the following effect;

- A standards committee should be able to grant dispensations if the effect otherwise would be that the number of members having the right to vote on a matter would decrease so that a political party lost a majority which it previously held, or if a party gained a majority which it otherwise did not hold
- It should be possible to grant a dispensation if the matter is under discussion at a committee or a meeting of the full council

Response – a simplification of the wording of the rules is to be welcomed and supported

18 Politically restricted posts: grant and supervision of exemptions

This part of the consultation relates to the granting of exemptions for politically restricted posts in authorities which do not have a standards committee e.g. waste disposal authorities and is not therefore relevant to York.

19 Effective date of implementation of the changes

The final aspect of the consultation is to seek views on whether 1st April 2008 is a suitable implementation date. Whilst the changes can be implemented from that date, given the need to recruit additional members to the Standards Committee and revise its terms of reference it would have been convenient to make the change shortly after the Annual Meeting – say 1st June.

Response – York like many other Standards Committees will need to enlarge its membership including the recruitment of additional independent members which takes time. Given the proximity to annual council meetings it would be convenient if the changes could be introduced at or shortly after the annual meeting say by 1st June at the latest.

Consultation

- 20 This report concerns a DCLG consultation relating to the work and role of the Standards Committee. The Standards Committee is the appropriate body to agree a response.

Options

- 21 The suggested responses set out in italics in this report are those of the Monitoring Officer. The committee has the option of agreeing them or not. It can also add to the responses.

Analysis

22. This report summarises those aspects of proposed regulations and guidance upon which the Government are consulting. Analysis of the proposals and suggested responses are given in the body of this report.

Corporate Priorities

23. Compliance with the ethical framework provisions of the Local Government Act 2000 as amended by the Local Government and Public Involvement in health Act 2007 contributes to the corporate priority of improving leadership at all levels.

Implications

24. There are no specific financial, HR equalities, crime and disorder, IT, property or other implications arising out of this report. Legal implications are dealt with in the report.

Risk Management

25. The Standards Committee needs to be aware of new regulations affecting its work so that it can be prepared for the changes.

Recommendations

26. The committee is asked to note the contents of this report and to agree that a response be sent to the DCLG as suggested in this report along with any other comments members of the committee may wish to make.

Reason; In order to provide a response from City of York Standards Committee on the proposed regulations relating to the conduct of members.

Contact Details

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Report Approved *tick* Date 14th January 2008

Specialist Implications Officer(s) *List information for all*
None

Wards Affected: *List wards or tick box to indicate all*

All *tick*

For further information please contact the author of the report

Background Papers:

Orders and Regulations Relating to the Conduct of Local Authority Members in England – Consultation Paper published by the Department of Communities and Local Government

Annex

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



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

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

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January 2008

Product Code: 07 LGSR 05005

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Chapter 1

Introduction

1. We are consulting on the detailed arrangements for putting into effect orders and regulations to provide a revised ethical regime for the conduct of local councillors in England.
2. Part 10 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act) provides for a revised ethical conduct regime for local government based on the principle of proportionate decision-making on conduct issues by local authorities. We wish to make arrangements for these provisions to come into effect in Spring 2008, and to seek views on how the detailed rules should work in practice.
3. The paper also consults on other undertakings relating to the operation of the regime in respect of the political restrictions imposed on certain local government posts and the maximum pay of political assistants. We are also taking the opportunity to consult on proposals to amend the Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002, with a view to resolving concerns which have been raised by some local authorities on the operation of some aspects of the current provisions.
4. This consultation follows extensive earlier consultation on the basic principles on which the revised conduct regime for local government should be based. The Discussion Paper '*Standards of Conduct in English Local Government: The Future*', of December 2005, set out the Government's responses, regarding the reform of the regime relating to standards of conduct of local government, to the recommendations of the Committee on Standards in Public Life, the report of the then Office of the Deputy Prime Minister Select Committee and the Standards Board. The Local Government White Paper, '*Strong and Prosperous Communities*', issued in October 2006, outlined the Government's proposals to introduce a more proportionate and locally based decision-making regime for the investigation and determination of all but the most serious of misconduct allegations against members of local authorities.
5. Our most recent consultation with regard to the conduct regime was a six week consultation between January and March this year on amendments to the model code of conduct for local authority members, which resulted in a revised model code being introduced with effect from 3 May 2007.
6. For the new, reformed ethical regime based on a devolutionary approach to become operational, we need to make regulations and orders under the Local Government Act 2000 (the 2000 Act) as amended by Part 10 of the 2007 Act to implement the proposals set out in the Local Government White Paper to deliver a more locally based conduct regime for local government members, with local standards committees making initial assessments of misconduct allegations and most investigations and determinations of cases taking place at local level.
7. We now need to put in place detailed arrangements to allow standards committees and the Standards Board to undertake their new roles under the new regime. These arrangements 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.
- Other matters, ie the rules on the issue of dispensations, the issue of exemptions of posts from political restrictions and the pay of local authority political assistants.

8. The paper sets out for each of these issues in turn the specific purpose of the provisions, the proposals for how the rules should operate via appropriate regulations and orders under the 2000 Act, and seeks views on the proposals, including highlighting particular questions on which consultees' comments would be welcome (summarised at Annex A).

9. We aim to undertake a separate consultation shortly on amendments to the instruments setting out the general principles which govern the conduct of local councillors and the model code of conduct, which members are required to follow.

Position of Welsh police authorities

10. The new ethical conduct regime providing for the initial assessment of misconduct allegations by standards committees will not apply to Welsh police authorities. The initial assessment of allegations in respect of members of Welsh police authorities will therefore continue to be a matter for the Public Services Ombudsman for Wales and not local standards committees. The proposals referred to in this paper in respect of joint standards committees will also not apply to Welsh police authorities. However, the rules on the size, composition and procedures of standards committees and the proposed amendment to the dispensation regulations will apply to these authorities.

11. We are asking for comments on this paper by 15 February 2008. This effectively gives consultees six weeks to respond. This reflects the period normally allowed for consultation with local government in the Framework for Partnership between the Government and the Local Government Association. As mentioned above, significant consultation has already been undertaken about the principles underpinning the new reformed regime and the approach to be adopted in the regulations and orders under the new regime.

12. Comments should be sent to: William Tandoh
Address: Department for Communities and Local Government
Local Democracy and Empowerment Directorate
5/G10 Eland House, Bressenden Place, London SW1E 5DU
e-mail: william.tandoh@communities.gsi.gov.uk by **15 February 2008**.

Chapter 2

New standards committee powers to make initial assessments of misconduct allegations, composition of committees and access to information

Purpose

1. Regulations will need to be made to amend and re-enact existing provisions in the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 and to amend and re-enact the provisions of the Relevant Authorities (Standards Committee) Regulations 2001, to make provision:

- with respect to the exercise of the new initial assessment functions by standards committees of relevant authorities in England;
- as to the powers and validity of proceedings of standards committees, including notification requirements;
- with regards to the publicity to be given to matters referred to monitoring officers of local authorities;
- in relation to the way in which any matters referred to the monitoring officer of a local authority by a standards committee should be dealt with;
- to enable a standards committee to refer a case to the Adjudication Panel (ie the independent body which decides whether in the more serious cases the code of conduct has been breached and what sanction, if any, should be applied to the member) where the standards committee considers that the sanctions available to it would be insufficient;
- with respect to the size and composition of standards committees and access to meetings and information.

Proposals

a) Standards committee members and initial assessment

2. In order to undertake their new functions for making initial assessments of misconduct allegations and considering requests to review decisions to take no action, under powers conferred by Part 10 of the 2007 Act, as well as existing powers for standards committees to make determinations of allegations, each standards committee will need to have a clear operational structure. It is likely that there will be a need for sub-committees of standards committees to be created, so that the separate functions involved in the ethical regime for local authority members can be appropriately discharged, namely:

- The initial assessment of a misconduct allegation received by a standards committee under section 57A of the 2000 Act.
- Any request a standards committee receives from a complainant to review its decision to take no action in relation to the misconduct allegation under section 57B of the 2000 Act.
- Any subsequent hearing of a standards committee to determine whether a member has breached the code, and where appropriate impose a sanction on a member.

3. Standards committees will need to minimise the potential risk of failing to conduct the above processes appropriately. In order to do this and ensure fairness for all parties in the operation of the ethical regime, we propose that the regulations should prohibit a member of a standards committee who has taken part in decision-making on the initial assessment of an allegation under section 57A of the 2000 Act, or considered an allegation which has been referred back to the standards committee by a monitoring officer or ethical standards officer, from being involved in the review of any subsequent request from the complainant under section 57B of the 2000 Act for a review of the committee's decision to take no action. The most obvious way of achieving this would be to require sub-committees of the standards committee to exercise the different functions.

4. However, we are aware of the resource implications of prohibiting members of standards committees from undertaking certain functions of the ethical regime and the problems this may cause for local authorities. Accordingly, we propose that members of a standards committee who have been involved in the initial assessment of a misconduct allegation, or a review of a standards committee's previous decision to take no action, should not be prohibited from taking part in any subsequent hearing by the standards committee to determine whether that matter constituted a breach of the code of conduct and, if so, whether any sanction is appropriate.

Question

Q1. 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 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?

b) Members of more than one authority - parallel complaint procedures

5. We are aware that the introduction of the regime for the initial assessment of misconduct allegations may raise an issue with regard to what should happen if a misconduct allegation is made against an individual who is a member of more than one authority (known as a dual-hatted member) and, as such, may have failed to comply with more than one relevant authority's code. For example, an individual who is a member of a district council and a police authority, may be the subject of allegations that he or she has breached the code of both authorities. As such, it would be possible for both the standards committee of the district council and the police authority to receive allegations against the member.

6. Such a situation could lead to inconsistencies in how allegations are dealt with, as one standards committee could decide that no action should be taken with regard to an allegation, whilst another standards committee could refer the allegation for investigation. In addition, to the inconsistencies that this situation may create, there is the issue of a member being subject to an investigation in relation to the same allegation more than once. One potential option for avoiding such a situation would be for the regulations to require that where an allegation of misconduct is

made to two separate standards committees, for those committees to decide which one of them should consider the matter, and in default of agreement for the allegation to be referred to the Standards Board who could then decide how it should be dealt with.

7. However, in the spirit of the new devolved conduct regime, we consider that decisions on whether to deal with a particular allegation should be taken by standards committees themselves, following discussion with each other and taking advice as necessary from the Standards Board. This would enable a cooperative approach to be adopted, including the sharing of knowledge and information about the local circumstances and cooperation in the carrying out of investigations to ensure effective use of resources.

8. Two standards committees might, for example, consider it would be appropriate for both of them to consider similar allegations or the same allegation against the same individual, and even to reach a different decision on the matter. Under the new locally based regime standards committees will be encouraged to take into account local factors which affect their authorities and communities. Allegations of misconduct constituting a particular criminal offence might, for example, be taken more seriously by a standards committee of a police authority, than of another type of authority. And this could lead to the two standards committees reaching a different decision on the matter.

Question

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?

c) Publicising the new initial assessment procedure

9. In order to ensure that people are aware of the existence of the new ethical regime and the local arrangements for how to make a misconduct allegation, we propose to include in the regulations a requirement that each standards committee should publish a notice detailing where misconduct allegations should be sent after the new regime has commenced. We also propose that the regulations should require a standards committee to use its best endeavours to continue to bring to the public's attention the address to which misconduct allegations should be sent, as well as any changes in those arrangements.

10. We propose that the Standards Board for England will then issue guidance on the content of the notice, and on how the requirement for the standards committee to provide appropriate information on the regime may be met, including, for example, advertising in one or more local newspapers, a local authority's own newspaper or circular and the authority's website.

d) Guidance on timescale for making initial assessment decisions

11. In order to achieve sensible consistency in the way allegations are dealt with across local authorities, we think it is appropriate for good practice guidance by the Standards Board to indicate the time scale in which a standards committee would be expected to reach a decision on how a misconduct allegation should be dealt with, for example 20 working days, as well as to provide other guidance to assist standards committees in complying with the timescale.

12. Since it is our intention that the new ethical regime should be implemented by light-touch regulation, we do not propose that such a deadline is prescribed by regulations accompanied by any statutory penalty for failure to meet the time scale. Our proposal is that the Standards Board, in considering the operation of the ethical regime by authorities would take into account the overall compliance each authority has demonstrated with the guidance, including guidance on the

timetable for action, so that lack of compliance with the timescale on its own would not of itself trigger intervention action by the Board. This kind of regime would suggest that it would be preferable if the timescale was retained as part of the guidance rather than imposed as a statutory requirement.

Question

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?

e) Requirement for a standards committee to provide a written summary of an allegation to the subject of the allegation

13. To ensure that the ethical regime is fair and transparent for all parties, new section 57C(2) of the 2000 Act requires a standards committee to take reasonable steps to give a written summary of an allegation it receives to the person who is the subject of it. This will make sure that he or she knows what the allegation is. However, we consider that there may be certain circumstances where it may not be appropriate for a standards committee to provide information to the subject of an allegation at the time it receives the allegation. We wish to provide by regulation that where the standards committee forms the reasonable view that it would be in the public interest not to provide the written summary, it would have the discretion to defer doing so. We propose to provide that standards committees would be required to take into account advice on the withholding of information provided by the monitoring officer and guidance from the Standards Board. The regulations can stipulate when the duty to provide the summary must be complied with. We propose that the obligation to provide the summary should normally arise after a decision is made on the initial assessment, but in cases where the concerns referred to above apply, it should instead arise after the monitoring officer or ethical standards officer has carried out sufficient investigation, but before any substantive hearing of a case against the subject of the allegation.

14. Guidance from the Standards Board would give advice on the circumstances in which a standards committee would be entitled to operate its discretion to defer giving the written summary of the allegation. This guidance might include taking such action in the following circumstances.

- Where the disclosure of the complainant's personal details or details of the allegation to the person who is the subject of the allegation, before the investigating officer has had the opportunity to interview the complainant, may result in evidence being compromised or destroyed by the subject of the allegation.
- Where there is the real possibility of intimidation of the complainant or witnesses by the subject of the allegation.

15. Where a standards committee is relieved of the duty to give a written summary of an allegation to a member, it might exercise its discretion to give some more limited information to the member for example by redacting certain information, if this would not prejudice any investigation.

Question

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?

f) Requirement for a standards committee to give notice of decisions under section 57A and 58 of the 2000 Act

16. In addition to the requirement outlined in the above section, the 2000 Act, as amended, requires a standards committee and the Standards Board to 'take reasonable steps' to give written notice of a decision to take no further action, including the reasons for its decision, to the complainant and the subject member. In addition, a standards committee is required to notify the subject of an allegation, if it receives a request from the complainant to review its decision to take no action regarding a misconduct allegation.

17. We propose that guidance issued by the Standards Board will set out best practice for committees including practice with respect to the notification of a complainant, a subject member or any other appropriate person of the progress of the handling of the allegation. We propose that such guidance would include advice that the Standards Board or the standards committee should take reasonable steps to notify the complainant and the subject member where:

- the Standards Board decides under section 58 of the 2000 Act, to refer a matter back to the relevant standards committee or refer the allegation to an ethical standards officer for investigation;
- a standards committee decides to refer a matter to another relevant authority under section 57A(3) of the 2000 Act, to the Standards Board under section 57A(2)(b) of the 2000 Act or the monitoring officer under section 57A(2)(c) of the 2000 Act; or
- a monitoring officer decides to refer a matter back to a standards committee under section 57A of the 2000 Act. Such a notice may include the reasons why a monitoring officer has decided to refer the case back.

g) References to monitoring officers under section 57A(2)(a) of the 2000 Act

18. Section 57A(2)(a) of the 2000 Act, provides that a standards committee may refer an allegation it receives to the monitoring officer of the authority. We propose to provide for the monitoring officer to be able to investigate and make a report or recommendations to the standards committee. However, in addition, we propose to provide in the regulations that when a standards committee refers a case to a monitoring officer it may also direct the monitoring officer that the matter should be dealt with otherwise than by investigation. Dealing with an allegation other than by investigation would allow the monitoring officer the discretion, assisted by guidance from the Standards Board, to tackle the problem identified in ways such as the provision of training or mediation to the particular member or making amendments to the authority's internal procedures, for example, arrangements for the provision of training to all members.

19. Enabling a standards committee to refer a case to the monitoring officer for action other than investigation is intended to address situations where the standards committee considers that a case has relevance for the ethical governance of the authority, eg where there are disagreements between members or cases of repeated poor behaviour, which do not require a full investigation, but where a committee feels that some action should be taken.

h) References to monitoring officers – procedure for referring allegations back to a standards committee

20. We propose to set out in the regulations the circumstances where a monitoring officer may refer an allegation back to the standards committee under section 66(2)(f) of the 2000 Act, and the procedure for doing so. We propose that such a referral would apply in the following circumstances:

- where, during an investigation or following a referral for action other than investigation, evidence emerges that, in the monitoring officer's reasonable view, a case is materially either more serious or less serious than originally seemed apparent, which might mean that, had the standards committee been aware of that evidence, it would have made a different decision on how the matter should be treated;
- where a monitoring officer becomes aware of a further potential misconduct allegation which relates to the matter he or she is already investigating. In such circumstances, the monitoring officer may refer the matter back to the standards committee to decide on how the new matter should be treated;
- where the member subject to the allegation has resigned, is terminally ill or has died.

21. With regard to the procedure which a monitoring officer must observe when referring an allegation back to a standards committee, we propose to set out in the regulations that where a monitoring officer refers back an allegation to a standards committee he or she must send written notification of his or her decision to refer a case back and the reasons for the decision to the relevant standards committee. In such circumstances, the standards committee will then be required to undertake a further assessment of the allegation and reach a decision under section 57A(2) to (4) of the 2000 Act.

Question

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?

i) Referral of matters from a standards committee to the Adjudication Panel for England for determination

22. With the introduction of the more locally based conduct regime, we consider that it is likely that standards committees will be required to make determinations in respect of more serious cases, which are currently dealt with by the Standards Board, its ethical standards officers and subsequently referred to the Adjudication Panel. We consider that providing a standards committee with the right to refer to the Adjudication Panel, where it considers that a breach of the code may merit a sanction higher than that available to the committee, will allow any sanction imposed to match the level of seriousness of the breach of the code.

23. We propose that it would be a matter for the standards committee to make a decision following the receipt of the monitoring officer's report that, if the member was found to have committed the breach, the appropriate sanction would be higher than that which the standards committee would be able to impose. Such a provision would ensure that the subject of the allegation would not be required to face both a standards committee hearing and then a separate hearing of the Adjudication Panel in respect of the same allegation.

24. In order to ensure that standards committees only refer the most serious cases to the Adjudication Panel, we propose to provide in the Regulations that the Adjudication Panel may refuse to accept a referral from a standards committee under certain circumstances, for example, where the Adjudication Panel does not consider, on the face of the evidence, that the matter would attract a sanction of greater than that currently available to standards committees.

j) Increase the maximum sanction available to standards committees

25. As stated above, with the introduction of the more locally based conduct regime, we consider that standards committees will be required to consider more serious cases. Accordingly, we propose to increase the maximum sanction which a standards committee can impose on a member who it has found to have breached the code from a three months partial suspension or

suspension to six months.

Question

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?

k) Composition of a standards committee and sub-committees of standards committees

26. Section 53(4) of the 2000 Act requires that a standards committee should be chaired by a person who is neither a member nor an officer of a relevant authority (“an independent member”). The existing rules relating to independent members will continue to apply so that the independent member must not have been a member or officer of the authority within the previous 5 years. As indicated earlier, committees are likely to appoint sub-committees in order to undertake the three separate functions involved in the ethical regime for local authority members:

- The initial assessment of a misconduct allegation (section 57A of the 2000 Act).
- Any review of a decision to take no action (section 57B of the 2000 Act).
- A hearing to determine whether a member has breached the code and whether to impose a sanction.

27. In order to maintain the robustness and independence of decision-making, we consider that it is important for an independent member to chair each of the sub-committees discharging each of the functions listed above.

28. We propose that the rules should remain as currently provided under the Relevant Authorities (Standards Committee) Regulations 2001 with regard to the size and composition of standards committees (including providing that where a committee has more than three members, at least 25% of them should be independent), and on the proceedings and the validity of the proceedings of committees and sub-committees (including that a meeting should not be quorate unless there are at least three members present).

Question

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?

l) Public access to information on decisions on initial assessments of allegations under section 57A and reviews under section 57B

29. We consider that it would not be appropriate for a meeting of a standards committee to undertake its role on making an initial assessment under section 57A to be subject to rules regarding notices of meetings, circulation of agendas and documents and public access to meetings, as set out in the Relevant Authorities (Standards Committees) Regulations 2001. We take the view that it would not be appropriate for the above rules to apply to meetings which make the initial assessment decisions, as they may be considering unfounded and potentially damaging allegations about members which it would not be appropriate to make available to the general public. Currently, the Standards Board does not publish any information about cases that it does not decide to refer for investigation, which may include, for example, cases which are malicious or

politically motivated. Consistent with this approach, we do not take the view that it would be appropriate to give such allegations of misconduct any publicity during the initial assessment phase.

30. For similar reasons, we also do not consider that a standards committee's function of reviewing a decision to take no action regarding a misconduct allegation should be subject to the access to information rules in respect of local government committees.

31. Accordingly, we propose that initial assessment decisions under section 57A of the 2000 Act, and any subsequent review of a decision to take no action under section 57B of the 2000 Act, should be conducted in closed meetings and should not be subject to notice and publicity requirements under Part 5A of the Local Government Act 1972. This approach was supported strongly by those authorities who participated in the Standards Board's recent initial assessment pilot schemes.

Question

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?

Chapter 3

The Standards Board's new monitoring function and the circumstances where it may suspend a standards committee's function of undertaking the initial assessment of misconduct allegations and for other committees or the Standards Board or joint committees to undertake this role

Purpose

32. Under the new locally based ethical regime, the Standards Board will provide guidance and support to standards committees and monitoring officers on undertaking their new roles and will monitor their performance to ensure consistency of standards across the country.

33. In order to support this role, the Standards Board will be putting in place monitoring arrangements to ensure that the local regime is operating efficiently and effectively. This will involve authorities completing periodic online returns in relation to the cases they handle and producing an annual report, which the Standards Board will monitor. The Board's monitoring will be undertaken against a series of criteria which they will set out in guidance.

34. The Board's approach has been developed in consultation with a range of local authorities and the aim is to provide support for authorities in ensuring the efficient operation of the local regime and to be easy for authorities to use. The information gathering system will enable the Standards Board to analyse the information received in order to identify and share good practice, which will assist authorities in assessing and improving their own performance. It will also allow the Standards Board to identify those standards committees and monitoring officers who are encountering difficulties in undertaking any aspect of their roles, as well as to identify how to assist them to improve their performance.

Proposals

35. Section 57D of the 2000 Act provides that the Standards Board may, in circumstances prescribed by regulations by the Secretary of State, direct that a standards committee's function of undertaking the initial assessment of misconduct allegations be suspended until the Board revokes such a suspension. The Standards Board's decision on whether to suspend a standards committee's initial assessment function will be made on a case-by-case basis and will be informed by information gathered by the Board about the performance of standards committees and monitoring officers. The Board's consideration of the suspension of a committee's powers may be triggered by one or a number of circumstances such as:

- a breakdown of the process for holding hearings;
- a disproportionate number of successful requests to review a standards committee's decision to take no action;
- repeated failure to complete investigations within reasonable timescales;
- repeated failure to carry out other duties expeditiously, including repeated failures to comply with the proposed 20 working days deadline for making an initial assessment of an allegation;
- failure to implement standards committee's decisions; or
- repeated failure to submit periodic returns to the Standards Board under section 66B and information requests under section 66C.

36. In circumstances where a standards committee's initial assessment functions have been suspended, the standards committee must refer any misconduct allegation it receives to the Standards Board or a standards committee of another relevant authority in England, with its consent, to undertake the initial assessment function.

37. Our aim is that the Standards Board should use its power to suspend a standards committee's initial assessment functions only as a last resort, and after strenuous attempts to improve the authority's performance have failed, resulting in the committee's failure to operate an effective initial assessment process. The Standards Board will endeavour to provide support, guidance and advice to local authorities throughout.

38. As there are numerous circumstances in relation to the performance of the ethical regime which may lead the Standards Board to direct that a standards committee's initial assessment function be suspended, we propose that the regulations should allow for any circumstances where the Standards Board is satisfied that a suspension of the standards committee's functions would be in the public interest. In operating this discretion, the Board would be required to have regard to the range of factors set out in paragraph 35, above.

Question

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?

Arrangements for undertaking initial assessments

a) Circumstances where the initial assessment functions may be undertaken by another standards committee

39. Section 57D(2) of the 2000 Act provides that where the initial assessment function of one authority has been suspended, that function may be undertaken by the standards committee of another authority. We propose to allow for such arrangements to be made where the Standards Board and the receiving standards committee agree that it would be appropriate. Provision would also be made to allow a committee to withdraw from such an agreement if it chose to. We will make regulations as necessary, to facilitate such arrangements.

b) Possibility of providing for the Standards Board or standards committees to charge those standards committees which have had their initial assessment functions suspended for undertaking those functions on their behalf

40. Because of the impact which a transfer of responsibility for initial assessment to another standards committee could have, one option might be to allow an authority or the Standards Board to levy a charge against the authority whose standards committee has had its initial assessment functions suspended, to meet the cost of carrying out its functions.

41. There is no express provision in the 2000 Act dealing with the imposition of charges and we do not intend at this stage to make any provision to provide for any.

42. However, we would be grateful for views from consultees about whether the ability to charge a fee to recover the costs of undertaking another committee's role would contribute to the effective operation of the new ethical regime. For example, allowing a charge for the recovery of costs for undertaking the initial assessment role may help to encourage high performing standards committees to agree to undertake another standards committee's functions during the period that its functions are suspended. Such an approach may also encourage standards committees to undertake their responsibilities under the 2000 Act efficiently and effectively, in order to avoid having to pay the costs of another authority taking over their role if their functions are suspended.

Question

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?

c) Proposed procedures for the suspension of a standards committee's initial assessment functions and the re-instatement of those functions

43. In relation to the procedure which the Standards Board should follow when using its power to direct that a standards committee's initial assessment function is suspended, we propose that the Regulations should set out the following requirements and procedures.

- Before a direction to suspend, the Standards Board should send the authority's chief executive a written notice of intention to suspend the functions of the standards committee. Copies of this would be sent to the person who chairs the standards committee and the monitoring officer. The notice may include any recommendations and directions aimed at improving the performance of a standards committee.
- The Standards Board will exercise the suspension power under section 57D of the 2000 Act by written direction, sent to the relevant authority's chief executive and copied to the person who chairs the standards committee and the monitoring officer. The standards committee's functions will be suspended from the date specified in the written notice of direction from the Standards Board. Under that section, the Standards Board may direct that the standards committee must refer any misconduct allegations for action either to the Board itself or to the standards committee of another authority if that committee has consented.
- A direction to suspend the local assessment function may be revoked where the Standards Board is satisfied that the suspension should cease based on evidence and undertakings given by the relevant standards committee. The revocation takes effect from the date specified in the notice of revocation.
- The standards committee should be required to publicise the fact that their power to make initial assessments has been suspended and what alternative arrangements will apply for the handling of misconduct allegations, including the fact that new allegations will be dealt with elsewhere, in one or more local newspapers. Where a committee's power to make initial assessments is reinstated, the committee should similarly be required to publicise the arrangements which will apply for handling allegations following the reinstatement.

44. During a suspension, we envisage that the Standards Board should maintain communication with the monitoring officer and the standards committee chair, as well as other relevant people within the authority, in order to develop an action plan for improving the authority's performance. The aim of the action plan will be to set out the action which the standards committee and the monitoring officer need to take which would then justify the reinstatement of the standards committee's functions in the shortest possible time. We consider that the authority should be required to demonstrate improvement, through evidence, in its ability to discharge its functions under the Act. We propose that the Standards Board will provide various types of support throughout the process including, but not limited to, giving advice and guidance, sharing best-practice or participating in peer reviews, advising that training be undertaken or that a relevant authority enter into joint working arrangements with other local authorities.

45. In order for a standards committee's functions to be re-instated as soon as practically possible, the Standards Board will require cooperation from the suspended authority to ensure the Section 57A, 57B and 57C functions can be carried out. We propose to include within regulations governing the functions of standards committees an obligation to co-operate with the Standards Board during any period of suspension of its initial assessment functions, and to have regard to guidance issued by the Standards Board regarding the re-instatement of those functions, as a means to promote and maintain high standards of conduct, including the publication by the standards committee of a notice of any decision by the Standards Board to suspend the committee's functions or to revoke such a decision.

d) Joint working

46. In order to promote more effective ways of working, we propose to enable a standards committee to work jointly with one or more other standards committees in exercising their new functions under the local decision-making regime for allegations of misconduct, which might allow,

for example, for more efficient use of common resources and aid the sharing of information, expertise, advice and experience.

i) Functions applicable for joint working

47. In common with the wishes expressed by many standards committees in recent pilot exercises on joint working run by the Standards Board, we wish all standards committees' functions to be available for joint working, but for each standards committee to decide which of the ethical regime functions it would like to operate jointly with other standards committees. For instance, the majority of those authorities involved in the pilots intended only to operate jointly the initial assessment functions under section 57A of the 2000 Act, whilst other authorities expressed an interest in extending joint arrangements to cover the holding of hearings and determinations of whether a member has breached the code.

ii) Structure and procedural rules of joint standards committees

48. Following the results from the joint working pilot, we believe relevant authorities may best establish joint standards committees within schemes which reflect the regulatory requirements, and which are agreed by each participating local authority. The regulations will specify the functions in relation to which joint working arrangements may be made. Guidance from the Standards Board will give advice on the content of these arrangements, including:

- size of joint committee, number of independent members and independent chair (ie to follow the rules on the size and composition of individual standards committees)
- residual functions retained by standards committees (if any)
- process for dissolution
- process for appointment of members of a joint standards committee, including independent members and parish representatives
- process for individual relevant authorities to withdraw from the joint standards committee
- the appointment of a lead monitoring officer for the joint standards committee or outline division of monitoring officers duties between the relevant authority monitoring officers
- payment of allowances
- arrangements for where the Standards Board suspends the functions of the joint standards committee

49. Guidance issued by the Standards Board will help local authorities decide what joint arrangements might be suitable for them. The options available would include the creation of a joint committee which would undertake all the functions of the individual committees, which could be particularly appropriate and represent a sensible use of resources for single purpose authorities, who are the source of fewer complaints than other authorities. Alternatively, agreements would be possible to allow one or more of committees' functions, ie the initial assessment of allegations, the review of a decision to take no action or the determination hearing, to be undertaken by the joint committee. In either model, it would be possible for the joint committee to establish sub-committees to deal with particular functions.

50. Regulations will make clear that joint standards committees are bound by the same rules and

procedures that apply to standards committees. However, we believe an exception should be made in relation to the requirement that a parish representative be present when a matter relating to a parish council in the relevant authority's area is discussed. For joint standards committees, this requirement should be satisfied if a parish representative from any parish in the area covered by the joint standards committee is in attendance. That is, it is not necessary for the parish representative to come from the area of the particular parish a member of which is the subject of the matter being considered.

Question

Q11. Would you be interested in pursuing joint working 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?

Chapter 4

Adjudications by case tribunals of the Adjudication Panel

Purpose

51. To extend the range of sanctions available to case tribunals of the Adjudication Panel, to prescribe the circumstances in which a reference to the Adjudication Panel following an investigation or an interim report by an ethical standards officer may be withdrawn, and to make provision for a case tribunal to give notice of its decision that a member has breached the code to a standards committee and to prescribe the purpose and effect of such a notice.

Proposals

a) To extend the range of the sanctions available to a case tribunal of the Adjudication Panel

52. To ensure that a tribunal has a full range of sanctions available to it in cases where it has found that a member has breached the code, we intend to make available to a tribunal a wider range of less onerous sanctions equivalent to those already available to standards committees (which are contained in regulation 7 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, as amended by regulation 8 of the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004)). We consider that they should be available to a tribunal of the Adjudication Panel when reaching a decision on which sanction it should impose, so that the seriousness of the breach of the code can be matched by the level of the sanction imposed. We intend to make regulations which will enable a case tribunal to impose sanctions including the censure of the member, the restriction of the member's access to the premises of the authority and the use of the authority's resources, and a requirement for the member to undertake training or conciliation.

53. The full range of sanctions which we propose to make available to the Adjudication Panel is as follows:

- No sanction should be imposed.
- Censure of the member.
- Restriction for a period of up to 12 months of the member's access to the premises of the authority and the member's use of the resources of the authority, provided that any such restrictions imposed on the member –
 - (a) are reasonable and proportionate to the breach; and
 - (b) do not unduly restrict the member's ability to perform his functions as a member.
- Requirement that the member submits a written apology in a form specified by the case tribunal.
- Requirement that the member undertake training as specified by the case tribunal.
- Requirement that the member undertake conciliation as specified by the case tribunal.
- Suspend or partially suspend the member for a period of up to 12 months or until such time as he or she submits a written apology in a form specified by the case tribunal.

- Suspend or partially suspend the member for a period of up to 12 months or until such time as he or she undertakes such training or conciliation as the case tribunal may specify.
- Suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned or any other relevant authority for up to 12 months or, if shorter, the remainder of the member's term in office.
- Disqualify the member from being or becoming a member of that or any other authority for a maximum of 5 years.

Question

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?

b) Withdrawing references to the Adjudication Panel

54. We propose to prescribe in the regulations that an ethical standards officer may withdraw a reference to the Adjudication Panel in certain circumstances. These would include circumstances where:

- after the ethical standards officer has determined that the case should be referred to the Adjudication Panel for adjudication, further evidence emerges that indicates that the case is not as serious as thought originally so that, in the ethical standards officer's view, there is no longer any justification for presenting the case to the Panel;
- a penalty imposed by another body meant the Adjudication Panel could do no more (for example, a sentence of imprisonment of three months or above for a related or non-related offence which would disqualify the member from office for 5 years); or
- the pursuit of the case would not be in the public interest, such as where the member accused has been diagnosed with a terminal illness or has died.

55. Before an ethical standards officer withdraws a reference to the Adjudication Panel, we propose that the regulations should require the ethical standards officer to notify the complainant, the subject of the allegation and the monitoring officer of the relevant authority of the proposed withdrawal. These people would therefore have the opportunity to make representations to the ethical standards officer in advance of the final decision of the withdrawal of the case being taken. We would also provide that the consent of the President of the Adjudication Panel would need to be obtained before a case could be withdrawn. We propose equivalent provision as regards the referral of interim reports from ethical standards officers to the Adjudication Panel.

Question

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?

c) Decision notices of case tribunals of the Adjudication Panel

56. We propose to ensure, through regulations, that the rules relating to the suspension of a member who has been found to have breached the code by the Adjudication Panel are consistent with those which already apply in respect of disqualification.

57. Where a case tribunal of the Adjudication Panel decides that a member has breached his or

her authority's code and that the breach warrants the suspension of that member, there is a requirement for the case tribunal to issue a notice to the relevant local authority. Currently, the effect of the suspension notice, unlike an Adjudication Panel's notice to disqualify a member, is not to put into effect the suspension of the member but instead merely to give notice to the standards committee that the person has failed to comply with the code of conduct. Accordingly, the local authority which receives a suspension notice from the Adjudication Panel must currently take action actually to suspend the relevant member. Section 198 of the 2007 Act amends the 2000 Act in respect of the decisions of case tribunals in England. This allows the Secretary of State to make regulations which provide for the effect that any notice issued by the case tribunal is to have. We propose to prescribe that in the case of the issue by the case tribunal of any notice, the effect of the notice will in future have the effect set out in the notice so that no further action is needed by the relevant authority before the notice can come into effect.

58. We also propose that a notice from the Adjudication Panel should have immediate effect, unless otherwise stated, and that the notice should give information on what breach of the code has been found and the sanction imposed. We propose that the notice should be sent to the chairman of the standards committee and copied to the monitoring officer and the member who is the subject of the notice. We propose that, consistent with current practice, the fully reasoned decision of the tribunal is provided to the above people within two weeks of the decision being taken.

Chapter 5

Issuing dispensations to allow councillors to participate in meetings so as to preserve political balance

Purpose

59. It is proposed to amend the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 (“the Dispensations Regulations”), to clarify the rules relating to standards committees granting dispensations to members of local authorities.

Proposal

60. Some local authorities have from time to time expressed concern about the current drafting of the Dispensations Regulations, the effect of which is to allow standards committees to grant dispensations from the prohibition of a member to participate in any business where: more than 50% of the members participating would otherwise be prevented from doing so, and where the political balance of the committee would otherwise be upset.

61. Some authorities have identified the following concerns in the operation of these regulations:

- Regulation 3(1)(a)(i) provides that a dispensation may be issued where the number of members of the authority prohibited from ‘participating in the business of the authority’ exceeds 50% of those entitled or required to participate. It is claimed that this reference to an entitlement to participate is ambiguous, since in some authorities all members are entitled to attend all committee meetings. The reference to the entitlement to participate in meetings could be replaced with reference to the number of members able to vote on a particular matter.
- Regulation 3(1)(a)(ii) refers to the inability of the authority to comply with section 15(4) of the Local Government and Housing Act 1989. Since that section relates to the appointment of members to committees, and not to the attendance of members at committees it is suggested that what is meant by the term “not able to comply with any duty” under that section of the 1989 Act is ambiguous and might be clarified. Additionally, it could be clarified that the regulations are intended to deal with situations where a majority on a committee would be lost; the intention is not that they should aim to retain the precise political balance on each committee.
- The reference to section 15(4) could be interpreted as allowing dispensations to be granted in relation to committees but not in relation to full council meetings, where issues of political balance can be of concern particularly where there are hung councils or councils with small majorities.

62. To address these concerns, we propose to amend the regulations to make it more clear that they have the following effect:

- A standards committee should be able to grant dispensations if the effect otherwise would be that the numbers of members having the right to vote on a matter would decrease so that a political party lost a majority which it previously held, or if a party gained a majority which it otherwise did not hold
- It should be possible to grant a dispensation if the matter is under discussion at a committee or at a meeting of the full council.

Question

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 proposal 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?

Chapter 6

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

Purpose

63. The purpose of the regulations is to prescribe that a local authority which is not required to establish a standards committee, should establish a committee to exercise functions in respect of the granting and supervision of exemptions from political restrictions.

Proposals

64. Section 202 of the 2007 Act inserts a new section 3A into the Local Government and Housing Act 1989 to provide that the granting and supervision of exemptions of posts from political restrictions should be a matter for relevant local authorities' standards committees. There are, however, some authorities subject to requirements with regard to politically restricted posts which are not required to establish standards committees. The only such authorities of which we are aware are waste disposal authorities.

65. In order to ensure that such authorities are able to make decisions on the exemption of certain posts from political restrictions, in accordance with section 3A of the Local Government and Housing Act 1989, we propose that those relevant authorities which are not required to have standards committees should establish committees to undertake this function. We propose to provide in the regulations that the rules regarding the minimum number of members the committee should have, the proportion of members who should be independent and the requirement to have an independent chair, which apply to standards committees, as set out in the 2000 Act, as amended, and the regulations discussed above regarding standards committees should also apply to the committees of these authorities.

66. This provision should not prevent these types of authorities from instead discharging their responsibilities with regard to the granting and supervision of exemptions from political restrictions by entering into agreements with other authorities to carry out this role on their behalf, under section 101 of the Local Government Act 1972. We propose therefore that authorities should have the option of which of the above approaches to take, so that it would only be in circumstances where the authority has not made arrangements for the discharge of this function by another authority that it would be required to set up its own committee to undertake the function itself.

Question

Q15. Do 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?

Chapter 7

Other Issues

(a) Maximum pay of local authority political assistants – results of earlier consultation

Purpose

67. The purpose of the proposed order is to specify the point on the local authority pay scale which will serve as the maximum pay for local authority political assistants.

Proposals

68. In August 2004, the then Office of the Deputy Prime Minister published the *Review of the Regulatory Framework Governing the Political Activities of Local Government Employees – A Consultation Paper*. In the paper we invited views on the pay arrangements for political assistants. There was a consensus among consultees in favour of linking the maximum pay for political assistants to local government pay scales. Various spine points on the local government scale were suggested as the maximum which should apply, and many suggested spine point 49. Authorities did not suggest that further payments such as London weighting should be added on top of the proposed maximum rate.

69. Accordingly, we propose that the order should set the maximum pay for local authority political assistants at point 49 on the National Joint Council for Local Government Services pay scale (currently £39,132 pa). Local authorities will be able to pay remuneration including any allowances to their political assistants provided remuneration to any individual does not exceed the overall rate represented by spine point 49 from time to time in force.

(b) Effective date for the implementation of the reformed conduct regime

70. We propose that those arrangements referred to in this consultation paper which will implement the reformed conduct regime for local councillors will be implemented no earlier than 1 April 2008. We are aware that this is the date which many authorities have been working to, and that there is an expectation by many in the local government world that the amendments will commence on this date. Feedback from authorities to the Standards Board has suggested that many authorities wish the revised framework to be put in place as soon as practically possible.

Question

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

Annex A

Your views

We would welcome your views on the issues covered by this consultation paper and any other comments and suggestions you may have.

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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

Comments should be sent by e-mail or post by **15 February 2008** to: William Tandoh
Department for Communities and Local Government
Local Democracy and Empowerment Directorate
5/G10 Eland House
Bressenden Place London SW1E 5DU
e-mail: william.tandoh@communities.gsi.gov.uk

Annex B: The Consultation Criteria

1. The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form.
2. Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (for example, under European Union law), they should otherwise be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

3. The criteria are:
 - a. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
 - b. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - c. Ensure that your consultation is clear, concise and widely accessible.
 - d. Give feedback regarding the responses received and how the consultation process influenced the policy.
 - e. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
 - f. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

4. The full consultation code may be viewed at http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/the_code_and_consultation/index.asp#codeofpractice

5. Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process, please contact:

David Plant, Head of Better Regulation Unit, Department for Communities and Local Government, Zone 6/H10, Eland House, Bressenden Place, London SW1E 5DU

e-mail: David.Plant@communities.gsi.gov.uk

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.



STANDARDS COMMITTEE**25 JANUARY 2008**

Report of the Interim Head of Civic, Democratic and Legal Services

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007**Summary**

1. The purpose of this report is to advise the Standards Committee of the provisions of the Local Government and Public Involvement in Health Act 2007 in relation to the ethical framework and the implications for the Standards Committee.

Background

2. The Local Government White Paper "Stronger and Prosperous Communities" proposed changes to the ethical standards regime. These proposals were enacted as Part 10 of the Local Government and Public Involvement in Health Act 2007 which received Royal Assent on 30th October 2007. It is anticipated that the changes will be brought in to effect on 1st April 2008.
3. The 2007 Act will lead to changed roles for the Standards Board for England (SBE), Standards Committees and Monitoring Officers. In future the SBE's role will become strategic in nature. It will continue to produce guidance for local Standards Committees as well as acting as a regulator to ensure there are adequate arrangements in place at local level for handling cases. Only the most sensitive or complex individual complaints will be investigated at national level.
4. Standards Committees and Monitoring Officers will become the hub of the ethical framework. The new local arrangements will include:
 - Receipt of allegations of a breach of the Code of Conduct
 - The initial assessment of allegations (known as the local filter) to determine the appropriate course of action
 - Investigation of allegations
 - Referral to Standards Board where appropriate

- Mediation and other arrangements
- Local determination of the vast majority of complaints and
- Referring serious matters to the SBE for consideration by the Adjudication Panel for England
- Performance monitoring of the ethical framework.

5. **The Provisions of the Act**

Section 183 – Conduct that may be covered by the Code

This section amends the Local Government Act 2000 to provide that the principles which govern the conduct of members and the provisions of the Code of Conduct which they are required to follow are not limited only to members' conduct in their official capacity. It is understood that the Government's intention is that the Code would only apply to criminal activity committed in a private capacity and not other conduct that solely concerns a member's private life. This would reverse the impact of the *Livingstone* judgement .

It is understood that during the passage of the Bill through Parliament, the Minister gave an undertaking that regulations would be made to list "serious criminal offences" which would trigger the application of parts of the Members Code of Conduct to conduct in a private capacity. Less serious offences such as many traffic offences would probably not be covered. Details of the proposed regulations are still awaited.

6. **Section 185 – Assessment of allegations**

This section provides for local Standards Committees of authorities to undertake the role currently exercised by the SBE of conducting the initial assessment of allegations of misconduct which relate to one of their members or a member of a Parish Council within their area. The courses of action open to a Standards Committee when it receives an allegation are;

- Refer the allegation to the Monitoring Officer for investigation or report
- Refer the allegation to the SBE
- Take no action in respect of the complaint

Where a Standards Committee of an authority makes a decision that no action should be taken regarding an allegation, the person who made the allegation will be able to ask the committee to review its decision. This request must be made within 30 days of the date of the notice of the original decision. Following receipt of such a request, the standards Committee must undertake a new assessment of the allegation. In practice the initial assessment and any review will need to be carried out by sub-committees of the Standards Committee consisting of different members.

Where the subject of the allegation is no longer a member of the authority in question but is a member of another authority there is a discretion for the Standards Committee to refer the allegation to the Monitoring Officer of the member's current authority.

Finally the section also makes provision for the SBE to issue guidance and directions to Standards Committees with respect to the exercise of these procedures, including the ability to suspend the committee's powers to carry out initial assessments.

7. **Section 186 – Information to be provided to the Standards Board**

This section requires Standards Committees to provide the SBE with periodic information on the allegations of misconduct it has received, any requests to review its decisions to take no action in respect of allegations, and the exercise of any functions by the Standards Committee or Monitoring Officer.

8. **Section 187 – Standards Committee Chairs**

This section provides that Standards Committees must have an independent member as chairman. This of course already the case under York's Constitution. As the Committee will see from another report on the agenda the government are consulting on whether sub committees of Standards Committees should also have independent members as chairmen.

9. **Section 188 – Sub-Committees of Standards Committees**

This section enables a Standards Committee to appoint one or more sub-committees to undertake any of its functions. In practice there will have to be a sub-committee to carry out assessments, another to undertake reviews and another to carry out hearings as members who have been involved at one stage may not be permitted to be involved in the same case at another stage.

10. **Section 189 – Joint Committees of Relevant Authorities**

This section empowers the Secretary of State to make regulations under which two or more authorities may establish a joint committee and arrange for functions of their Standards Committees to be exercised by a joint committee. This issue is included in the consultation on draft regulations.

11. **Section 190 – Standards Board for England: functions**

This section provides that the Standards Board may issue guidance to ethical standards officers with respect to the exercise of their functions and enables the SBE to take action to facilitate the functions of Standards Committees or Monitoring Officers.

12. **Section 191 – Ethical Standards Officers: investigations and findings**

This section amends the description of two of the findings an ethical standards officer can make in particular he can make a finding that "there has been no failure to comply with the code of conduct" rather than "there is no

evidence of any failure...” It also extends section 63 of the Local Government Act to provide for information obtained by an ethical standards officer in the course of an investigation to be disclosed to the monitoring officer to allow him to carry out his duties or to be made to the local Ombudsman or Electoral Commission.

13. Section 192 – Ethical Standards Officers: reports etc

This section provides that a report by an ethical standards officer on the outcome of an investigation can be passed to the relevant standards Committee in order to assist it in carrying out its functions.

14. Section 193 – Disclosure by Monitoring Officers of Ethical Standards Officers’ reports

This section provides for a monitoring officer to inform any member or officer of an authority of the outcome of an ethical standards officer’s investigation into an allegation , and to provide them with a copy of the report or any part of it where this will help to promote high standards of conduct by members and co-opted members of the authority.

15. Section 194 – Matters referred to Monitoring Officers

This section enables regulations to be made to enable a monitoring officer to refer back cases referred to him by a Standards Committee and set out the circumstances in which such a referral back may be made. Regulations may make provision with regard to access to disclosure of information.

16. Section 195 - References to the Adjudication Panel

This section provides for regulations to be issued to deal with situations where a Standards Committee considers the sanctions available to it would be insufficient and refers the case to the Adjudication Panel.

17. Consultation with the Local Government Ombudsman

The Local Government Ombudsman may consult the Standards Committee (as well as the Standards Board) about a case if he believes that the complaint he is considering relates partly to a matter that may be of concern to the committee.

18. Section 202 – Politically restricted posts: grant and supervision of exemptions

The Local Government and Housing Act 1989 provides that a person is disqualified from becoming a member of a local authority if he holds a politically restricted post. This section amends the 1989 Act so that the granting and supervision of exemptions from the political restriction will be the responsibility of the Standards Committee of each local authority rather than that of the Independent Adjudicator as at present.

19. Implications of the Changes for the Standards Committee

The changes contained in the Act will mean changes to the composition and terms of reference of the Standards Committee. York has a small Standards Committee of 6. Given the need to have sub committees of different members conducting the initial assessment and any review of that assessment and allowing for any member who may be conflicted out it will not be possible to operate the arrangements without enlarging the Committee. The sub-committees will need to comprise a minimum of 3 members and may have to be chaired by an Independent member.

The Standards Board are recommending a Standards Committee of between 9 and 12 depending on the number of parishes. As part of the current review of the Constitution a paper is being put to the Group Leaders suggesting that the Committee be increased to 10, with one additional elected member, 2 additional Independent members and an additional Parish representative. It is hoped to report further on this at the meeting.

The Act also gives additional responsibilities to the Committee both in terms of assessing complaints and reviewing those assessments when requested but also in the new area of dealing with exemptions from political restriction under section 202. In future the majority of investigations into complaints will be local ones followed, where necessary by a local hearing.

Consultation

20. Consultation is being carried out with the political group leaders over possible changes to the size of the Standards Committee.

Options

21. The Council must comply with the requirements of the Local Government and Involvement in Health Act 2007. It has a discretion on the size of the Standards Committee as long as it is of sufficient size to discharge its responsibilities. There will also be a discretion as to whether it seeks joint arrangements with another Standards Committee.

Analysis

22. This report summarises the new provisions relating to Standards Committees. A further report on the agenda deals with the consultation on the proposed regulations. The implications for the Standards Committee are also set out in this report together with proposals for increasing the size of the Committee to enable it to discharge its new roles.

Corporate Priorities

23. Compliance with the Local Government Act 2000 contributes to the corporate priority of improving leadership at all levels.

Implications

24. There are no specific financial, HR equalities, crime and disorder, IT, property or other implications arising out of this report. Legal implications are dealt with in the report.

Risk Management

25. The Standards Committee needs to be aware of new legislation affecting its work so that it can be prepared for the changes.

Recommendations

26. The committee is asked to note the contents of this report. Further recommendations may be tabled relating to the future composition of the Committee in order to meet the requirements of the legislation.

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Report Approved *tick* Date 14th January 2008

Specialist Implications Officer(s) *List information for all*
None

Wards Affected: *List wards or tick box to indicate all*

All *tick*

For further information please contact the author of the report

Background Papers:

Local Government and Public Involvement in Health Act 2007