
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.

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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