

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

- Q1. DCLG asks whether the proposal for circumstances in which Members may sit in more than one hearing relating to the same matter provides an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach, and whether a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by Sub-Committees would be workable.

Comment:

Assuming that DCLG are correct in interpreting the 2007 Act to allow the same Members to be involved in the initial assessment of the case and in its subsequent hearing, it is felt on balance that the proposal is acceptable.

- Q2. DCLG proposes that where someone is a Member of more than one authority, and an allegation is made to more than one standards committee, there should be consultation between Standards Committees, that decisions on which (one or more) should deal with it should be a matter for agreement between the Standards Committees, and that it is not necessary to provide any adjudication role for the Standards Board.

Comment:

The principle of co-operation between authorities is the correct one to adopt. However, it would be helpful if the Standards Board for England could be asked to facilitate joint treatment where authorities are unable to reach agreement between themselves.

- Q3. DCLG proposes that in the interests of a "light touch" regime, the timescale for Standards Committees to make initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit.

Comment:

Agreed.

- Q4. DCLG asks whether the sort of circumstances identified in the paper 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, and whether there any other circumstances which would also justify the withholding of information. It also asks whether 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.

Comment:

This is a difficult issue, but in general there should be a principle of disclosure of any allegation at the earliest practicable stage. With any investigative process, in certain circumstances, the knowledge that an investigation is under way may result in the destruction of evidence or other adverse consequences. Accordingly there should be a clearly understandable procedure to authorise disclosure at a later stage in exceptional circumstances. In these cases there is no reason to delay it beyond the point at which the responsible Officer is satisfied that the investigation is for practical purposes complete, except possibly where

the investigation suggests criminal activity and a further investigation (e.g. by the Police) is necessary.

It is quite difficult to envisage circumstances where the consultation paper suggests information can be withheld which are not also cases of criminal activity. It would be useful if the proposed guidance were to offer advice on how to proceed in these circumstances.

- Q5. DCLG asks about the circumstances in which the Monitoring Officer might be able to refer a case back to the Standards Committee.

Comment:

Reference back in the circumstances described in the paper would appear to be sensible, but Government needs to ensure that the legislation adequately covers what may be done when it seems that a further allegation is likely, before there has been a written complaint.

- Q6. DCLG proposes that Standards Committees should be able to refer the most serious cases to the Adjudication Panel for England, but proposes to provide that the Adjudication Panel may refuse to accept a referral from a Standards Committee, for example, where the Adjudication Panel does not consider that the matter would attract a sanction of greater than that currently available to Standards Committees. It is also proposed that the maximum sanction which a Standards Committee can impose be increased from a three months partial or total suspension, to six months. DCLG asks whether consultees are in favour of an increase in the maximum sanction, and if so, whether there is agreement that the maximum sanction should increase from three months to six months suspension or partial suspension.

Comment:

In view of the wider scope of duties an increase in available sanction is appropriate and indeed it could be nine months rather than six.

- Q7. DCLG suggests that Committees are likely to appoint Sub-Committees in order to undertake the three separate functions involved in the ethical regime for local authority Members. In order to maintain the robustness and independence of decision-making, DCLG considers that it is important for an independent Member to chair each of the Sub-Committees discharging each of the functions listed above, but does not propose to change the rules about the minimum number of independent Members on a Standards Committee. DCLG asks for views on the practicability of requiring that the chairs of 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. It further asks whether it would be consistent with robust decision-making if one or more of the Sub-Committee chairs were not independent.

Comment:

In terms of public perception, it makes sense for Chairmen of such Sub-Committees to be independent Members – indeed there is a greater case for this than for the Standards Committee as a whole to be chaired by an independent Member. If the Regulations take the line suggested earlier in the consultation paper – that Members can be involved both in the initial decision whether to investigate, and in the ultimate hearing – the minimum number of independent Members on a Standards Committee would have to be two not three.

- Q8. DCLG proposes 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 and therefore able to be conducted in private.
- Comment:**
- This seems appropriate.*
- Q9. DCLG asks if the criteria set out in the paper are appropriate to judge whether to suspend a Standards Committee's function of undertaking the initial assessment of misconduct allegations, and whether there are any other relevant criteria which the Board ought to take into account.
- Comment:**
- These are appropriate criteria. They might also include a disproportionate number of successful appeals by Members in which it is found that no breach of the Code of Conduct had occurred.*
- Q10. In circumstances where another local authority's Standards Committee, or the Standards Board, takes over an assessment from a Standards Committee which has had this function suspended (see above), DCLG asks if the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, would in principle be effective in supporting the operation of the new locally-based ethical regime. If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?
- Comment:**
- In principle this suggestion appears sound, so that the Standards Committee which has acted in such a way as to result in the suspension of its functions is not thereby enabled simply to pass the costs to others. If one is talking only about the costs of initial assessments, a prescribed fee is probably the most straightforward and fairest solution but it must realistically reflect the likely cost of an assessment hearing and related costs.*
- Q11. DCLG intends to allow two or more local authorities to establish joint Standards Committees to exercise some or all functions which would otherwise fall to one of them. The Department asks if authorities would be interested in pursuing joint arrangements with other authorities, and for examples of relevant experience and suggestions. They ask if there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how such a limitation should be expressed. They suggest that if a matter relating to a Parish Council is discussed by a joint Committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint Committee's area attends.
- Comment:**
- This is a potentially useful provision, but no further comment is offered.*
- Q12. The DCLG proposes to enlarge the range of sanctions available to case tribunals of the Adjudication Panel for England, so the sanctions they can impose include the lesser sanctions already available to Standards Committees.

Comment:

This appears sensible.

- Q13. DCLG proposes to allow an ethical Standards Officer (after due notice to parties) to withdraw a reference to the Adjudication Panel in certain circumstances, such as:
- further evidence emerges indicating that the case is not as serious as originally thought;
 - 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.

Comment:

This proposal seems sensible.

- Q14. DCLG asks standards committees if they have made dispensations in these circumstances or felt unable to do so. Authorities are asked if they are content with the proposal that dispensations may be granted in respect of a Committee, or the full Council, if the effect otherwise would be that a political party lost a majority which it had previously held, or gained a majority it did not previously hold?

Comment:

Runnymede's Standards Committee has never granted a dispensation because of the very restricted circumstances in which it would be appropriate under the Regulations. There is no objection to the clarification but the dispensation rules themselves are not totally fair and logical – for example they may allow a Member of a majority party to obtain a dispensation while a Member of a minority party in identical circumstances would not.

- Q15. DCLG proposes to implement the reformed conduct regime on 1 April 2008 at the earliest.

Comment:

This gives very little time for consideration by DCLG of the consultation feedback, promulgation of the new regulations, briefing and training of local authority Members and Monitoring Officers, and any additional preparation by local authorities particularly if they conclude that they need more independent Members. Now that the timescale has been allowed to slip this far, it is unlikely that it will be practicable to implement the changes before July at the earliest.