

STANDARDS COMMITTEE

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007 – CONSULTATION PAPER ON “ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND”

24th January 2008

Report of the Monitoring Officer

PURPOSE OF REPORT

To update Members on the provisions of the Local Government and Public Involvement in Health Act 2007 which relate to the Standards Committee, and the implementation of those provisions, and to enable the Committee to respond to the Government's Consultation Paper.

This report is public

RECOMMENDATIONS

- (1) That the Committee indicate its views on the questions set out in the Consultation Paper, and that the Monitoring Officer, in consultation with the Chairman, be authorised to finalise and submit the Committee's response to the government on behalf of the Council.

1.0 Introduction

- 1.1 As Members will be aware, the Local Government and Public Involvement in Health Act 2007 includes amendments to the Local Government Act 2000 which affect the work of the Standards Committee.
- 1.2 The Act will enable the Code of Conduct to apply to some conduct in a private capacity where this has led to a criminal conviction. However, this amendment does not take effect immediately, as the relevant sections of the Act are not yet in force, and in the meantime conduct carried out in a member's private capacity cannot be subject to the Code.
- 1.3 The Act will introduce a locally managed framework of compliance with the Code of Conduct, and a new regulatory role for the Standards Board for England. This will involve local standards committees making initial assessments of misconduct allegations, and most cases being handled locally. The Standards Board will provide supervision, support and guidance for local authorities and will aim to ensure some

degree of consistency in the application of the Code. It is anticipated that this part of the Act will be in force from the 1st April 2008. However, much of the detail will be set out in government Regulations and Standards Board Guidance, which have not yet been finalised.

- 1.4 On the 3rd January 2008, the Government published a Consultation Paper on "Orders and Regulations Relating to the Conduct of Local Authority Members in England", a copy of which is appended to this report.

2.0 Proposal Details

- 2.1 The Consultation Paper deals with the details of the arrangements that will be needed to implement the new regime of the local assessment of complaints. In addition it deals with proposed amendments to the regulations on the granting of dispensations, and the arrangements for granting exemptions of certain local authority posts from political restrictions.
- 2.2 Members will no doubt wish to consider all the questions set out in the Consultation Paper. However, a number of the issues which may be of most significance to this Committee are highlighted in this report.
- 2.3 Question 1 deals with the proposed requirement that a member who has been involved in a decision on the initial assessment of an allegation should not participate in a subsequent review of that decision. However, the Consultation Paper seems to put forward the view previously expressed by the Standards Board for England that a member who has been involved in the initial assessment or review may still participate in a subsequent determination hearing. The Monitoring Officer has doubts as to whether this would be appropriate on the grounds of bias and possible predetermination, and, as Members will be aware, the Council has already resolved to increase the size of the Standards Committee to fifteen, comprising seven elected members, four independent members and four parish representatives. The purpose of this increase is to ensure that different sub-committees can be established to deal with all the different stages of the complaints process.
- 2.4 Question 1 asks 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. Question 7 goes on to ask for views on the practicability of requiring that the chairs of all sub-committees discharging these functions should be independent. The Monitoring Officer had anticipated that all the functions would indeed be exercised by sub-committees, perhaps of three members each, and each being chaired by one of the independent members. The Council has experience of a similar situation under the Licensing Act 2003, where there is a Committee of fifteen members, but ad hoc sub-committees are established by the Head of Democratic Services to deal with individual hearings. Four members of the Committee are designated as chairmen, and each ad hoc sub-committee comprises one of the designated chairmen and two other members. This arrangement has worked well for Licensing, and the Monitoring Officer would suggest that the response to the Consultation Paper should refer to this example, and suggest that any Regulations should be flexible enough to allow ad hoc sub-committees to be established from the pool of Standards Committee members to deal with each stage of the process, with each sub-committee being chaired by one of the independent members. This would ensure that individual members gain a wide experience, share the workload, and do not always deal with the same stage of a complaint, and would provide flexibility in the event of holidays or sickness. It would also ensure that a parish council member could always be placed on a sub-committee which is dealing

with a parish complaint – this would not be necessary where the complaint relates to a City Councillor. The Monitoring Officer would support the proposal that the sub-committee chairs should be required to be independent. However, the Committee may wish to consider whether the principles of robust decision-making might perhaps be met, in the event of an independent member not being available, if a sub-committee were chaired by a parish representative if considering a complaint about a city councillor, and by a city councillor if the complaint related to a parish councillor.

- 2.5 The proposals outlined in questions 2, 3, 4, 5 and 6 seem uncontroversial. The Monitoring Officer would strongly support the proposal in question 8 that the initial assessment of misconduct allegations and any subsequent review of a decision to take no action should be exempt from the rules on access to information.
- 2.6 Questions 9 and 10 relate to the powers of the Standards Board to suspend a standard's committee's function of undertaking the initial assessment of misconduct allegations, and the Committee may wish to comment on these questions.
- 2.7 Question 11 relates to joint working arrangements with other authorities. Although the Committee has developed links with neighbouring authorities through independent member groups and Monitoring Officer groups, and through shared training, it does not have experience of formal joint working. In addition to considering the questions raised in Question 11, the Committee may wish to consider as a matter of principle whether it would be interested in pursuing joint working arrangements with any other authorities. This is an issue that may be raised at the Lancashire Standards Conference in March. There is of course a counter argument that the object of the new provisions is to enable complaints to be dealt with locally, and that joint working would detract from this object.
- 2.8 Questions 12 and 13 relate to adjudications by the Adjudication Panel.
- 2.9 Question 14 relates to the power of the Standards Committee to issue dispensations. Members will recall that the Committee has in the past, and indeed is being asked at this meeting to grant dispensations where more than half of the members of a parish council would be precluded from participating in a particular decision. However, the Monitoring Officer has always had concerns about the wording of the second part of the current regulations, and in particular the fact that the requirements for political balance refer to the appointment of members to committees and not the attendance of members at committees. Accordingly, the Monitoring Officer would welcome the proposed clarification and amendment.
- 2.10 Question 15 is not directly relevant to this Council. However, Members may wish to note that under the 2007 Act, the Standards Committee will be responsible for making decisions on the exemption of certain posts from political restriction. Such decisions were previously made centrally by an adjudicator appointed by the government. From past experience, it is anticipated that this workload will be minimal.
- 2.11 The final question relates to the implementation date for the new regime. Local authorities and the Standards Board have been working on the assumption that the new regime will be in place from the 1st April 2008. Indeed, the Council is seeking to increase the size of the Standards Committee from that date to meet the new requirements. Whilst an early implementation date is clearly desirable, it is essential that all the necessary Regulations and Guidance are in place in sufficient time for there to be adequate preparation for a smooth transition, and in particular to meet any requirements as set out in paragraph 9 of the Consultation Paper for publicising

the new arrangements. The fact that the closing date for this consultation is not until the 15th February does not appear to leave much time for consideration of the responses and the making of the Regulations.

- 2.12 Once the Regulations have been made, the Committee will be informed and will be requested to formalise arrangements for establishing sub-committees. It will also be necessary to inform the public of the new arrangements, following any requirements that may be contained in the Regulations. Some initial information is being included in the February issue of "Your District Council Matters", and the Council's website will be updated as soon as the implementation date is confirmed.
- 2.13 It is understood that, subject to the passage of the Regulations, the Standards Board will be providing guidance on all aspects of the local filter, and that this will include template notices for publicising the Code of Conduct complaint process, complaint assessment flowcharts, a standard complaint form, template letters for each stage of the process, template referral and non-referral decision notices, guidance to assist with drafting criteria to enable the Council to establish its threshold for referral, and template terms of reference for assessment and review committees. These will be referred to the Committee as soon as they are available.

3.0 Conclusion

- 3.1 The Committee is asked to consider its response to the questions set out in the Consultation Paper, and to authorise the Monitoring Officer, in consultation with the Chairman, to finalise the Committee's response to the government on behalf of the Council.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None

FINANCIAL IMPLICATIONS

There are no financial implications arising directly from this report. Subject to the requirements of the Regulations when finalised, any costs associated with implementation should be minimal and will be met from existing resources. Once the new regime has been implemented and there is some understanding of the workload, it may be necessary for the Independent Remuneration Panel to consider whether any special responsibility allowance should be paid to sub-committee chairmen. If this was the case, any budget implications would need to be fed into the relevant budget process.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments to add.

LEGAL IMPLICATIONS

There are no legal implications arising from this report.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her role as adviser to the Standards Committee.

BACKGROUND PAPERS

Government Consultation Paper

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