

**STANDARDS COMMITTEE
6 FEBRUARY 2008**

**REPORT OF THE MONITORING OFFICER
CONSULTATION ON ORDERS/REGULATIONS RELATING
TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS**

Introduction

1. In December 2007 I reported on the need for this Committee to review its membership in order to put it in a position to undertake its proposed new role of filtering all code of conduct complaints and determining those which are referred for investigation. The Committee recommended the appointment of a third parish representative in order to improve capacity and resilience in undertaking the various new functions. A third parish representative has now been appointed.
2. Part 10 of the Local Government and Public Involvement in Health Act 2007 has now amended the Local Government Act 2000 to provide the framework for the revised ethical conduct regime for local government based on the principle of proportionate locally-based decision-making through local standards committees as opposed to the Standards Board for England.
3. In order to implement the new regime, new statutory orders and regulations will need to be made to amend and re-enact existing provisions in the Local Determination Regulations and the Standards Committee Regulations. Communities and Local Government issued a consultation paper on 3 January 2008 (received on 21 January) seeking views on the detailed arrangements for putting into effect such orders and regulations. The consultation period ends on 15 February 2008.
4. The consultation paper seeks responses to 16 questions on the proposed new regime. I set out below (a) in ordinary type in quotation marks the relevant explanatory text in relation to each issue from the consultation paper together with (b) in bold type the 16 questions posed in the consultation document and (c) in italic type a Suggested Response (SR) in relation to each question.
5. A full day externally facilitated training session on the new local regime has been arranged for Tuesday 12 February (10 - 4pm) at Ashford. This is a joint event with Canterbury City Council and other neighbours. Further detailed course material will be distributed shortly.

Recommendation

IT IS RECOMMENDED that

- (i) the Council responds to the consultation by submitting the "Suggested Responses" to CLG by 15 February.**
- (ii) The Monitoring Officer submit a further report to this Committee, when further regulation and guidance is available, to finalise**

constitutional arrangements for undertaking the various functions through an appropriate panel or sub-committee structure.

The Consultation Issues

- (1) New Standards Committee powers to make initial assessments of misconduct allegations, composition of committees and access to information
- (a) Standards Committee members and initial assessment

"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.

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.

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?

Suggested Response

SR1. *The 2007 Act clearly anticipates different members will be required to undertake the initial assessment and the review functions. The less clear issue is whether different members again should also be required to undertake any hearing on a matter. In my report to this Committee in December 2007, I suggested that it should be possible to allow the same members to undertake an initial assessment (as to whether on the face of the allegation only there appeared to be a case to answer on an issue worthy of investigation) and then the hearing itself. This is the position now being proposed in the consultation paper. The counter-argument is that a member against whom an allegation has been made may feel unfairly prejudiced if the same members were to conduct a hearing on a matter who had already seen the allegation, with no counter-evidence and decided that an investigation was appropriate. On this view, no single member would be allowed to be involved in more than one stage of the process. On balance I consider the latter arrangement to be a disproportionate counsel of perfection. So long as members are properly trained, and initial assessment reports are written and decisions made strictly on the limited basis referred to above, it is not considered that these members should be regarded as unable in principle to fairly take part in any subsequent hearing. (It should be pointed out that the alternative position would certainly involve further increases in membership of Standards Committees beyond those agreed in December 2007 since it would be necessary to ensure three entirely separate panels of borough councillor, parish councillor and independent member could always be available within fairly short timescales for each case, taking account of issues such as sickness, holidays, personal interests etc).*

It is agreed that undertaking the different functions through panels or sub-committees probably consisting of 3 members (as recommended in the previous report) is the only practicable way of undertaking the various functions.

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

"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.

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.

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.

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?

Suggested Response

SR2. *Whilst a single act of a member may lead to allegations of misconduct being made to two or more authorities of which the individual is a member, it is not appropriate to require those authorities to secure their handling by a single authority. A single action may have different implications in different authorities eg: they may have different codes or the action may be more serious in one authority if it was a breach of a regulatory function for which that particular authority was responsible. It must therefore be for the separate authorities to decide whether a particular matter would be appropriate for joint treatment and the Standards Board could usefully be changed with facilitating joint treatment where authorities are unable to reach agreement.*

(c) Publicising the new initial assessment procedure

"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.

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."

NB: There is no specific question for this issue.

(d) Guidance on timescale for making initial assessment decisions

"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.

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?

Suggested Response

SR3. It is agreed that it would be inappropriate to impose a statutory time limit for the initial assessment process and it is better dealt with as a matter for guidance with a reserve power for the Board to intervene in cases of persistent failure. It is important, however, that the guidance allows for exceptions to the proposed 20

working days guideline eg: where the initial assessment should be held over pending determination of another allegation against the same member.

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

"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.

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.

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?

Suggested Response

SR4. *It is not entirely clear from the 2007 Act itself whether the intention of the Act is actually to normally provide a written summary of an allegation to the member before the initial assessment is undertaken. If it is, then the proposals in the consultation are inappropriate as they proceed on the basis that the normal requirement will be to provide the summary after an initial assessment decision. Furthermore, since the obligation to provide the summary is placed on the Standards Committee itself (which is not covered by S101 of the Local Government Act 1972 and therefore cannot delegate it to an officer) it would not strictly be possible in any event for the summary to be provided by an officer in advance of the report of the allegation to the Committee.*

Subject to these matters being resolved in the drafting of regulations, it is considered preferable that the function of prior notification should be delegated to an officer and for guidance to recommend prior notification is normally sent to the member at the same time as the report on the initial assessment is sent to the Committee or Sub-Committee.

Making provision for deferring notification in exceptional cases of the nature described in the consultation would indeed be sensible; although it is doubtful whether a data subject request by the member against whom the allegation has been made could be resisted.

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

"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.

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."

NB: There is no question directly related to this section.

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

"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.

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 behavior, which do not require a full investigation, but where a committee feels that some action should be taken."

NB: There is no question directly related to this section, although I and other Monitoring Officer colleagues are likely to welcome any provision which allows for more proportionate methods of disposal than full-blown investigations in appropriate cases. I have therefore included some unsolicited comment under Q.5 below.

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

"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.

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?

Suggested Response

SR5. It is agreed that a Standards Committee should have the ability to refer an allegation to the Monitoring Officer for action short of a formal investigation eg: training or mediation. However it is a matter of concern that the 2007 Act makes no express provision for local resolution of allegations and it would be helpful and appropriate for the Standards Board to issue guidance on how this may be achieved in appropriate cases. Not all cases are susceptible to local resolution, but given the cost of formal investigations and hearings, it clearly makes sense to seek amicable local resolution where possible. For example, it may be possible for a Monitoring Officer on receipt of an allegation to suggest to the member concerned that his/her conduct may not have been appropriate and that he/she may wish to consider making an apology to the complainant, and to see whether the complainant would be satisfied by such an apology. Where that was the case, the Monitoring Officer might be able to report to the Committee at initial assessment stage and advise that the member has apologised and that the complainant no longer wishes the complaint to proceed in which case the Committee may feel able to decide that the allegation no longer merits investigation. However, this would be a pragmatic solution which finds no support in the Act, and it would be very helpful if the Standards Board for England were to endorse such a role for Monitoring Officers.

It is also agreed that the Monitoring Officer should be able to refer a matter back to the Standards Committee where circumstances have significantly altered since the referral for investigation. However, the discovery of further potential misconduct would appear to be beyond the remit of the Committee, which is limited by the Act to the specific written allegation of misconduct. Therefore referral back to the Standards Board may be the proper course in such cases.

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

"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.

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.

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."

NB: There is no question directly related to this section of the consultation.

(j) Increase the maximum sanction available to standards committees

"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?

Suggested Response

SR6. *It is agreed that an increase in the maximum local sanction is required although the proposed maximum 6 months is actually a very modest increase and an increase to 9 or even 12 months may be more appropriate and consistent with the concept of a locally-based scheme.*

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

"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.

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.

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?

Suggested Response

SR7. *The reference to "at least 3 independent chairs" is confusing in the light of the proposals in the consultation paper that members sitting on initial assessments or*

reviews can then also sit on hearings. However the principle of all sub-committee chairs being independent is accepted.

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

"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.

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.

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?

Suggested Response

SR8. *It is agreed that the initial assessment and review functions should be conducted without press and public access, since publication of agendas and reports could give rise to prejudicial publicity on allegations which may have no substance. However it should not be necessary to exempt the process from all access to information rules - the fact of the meeting could still be publicised as usual under S100 B of the 1972 Act together with an agenda which does not disclose the name of complainant or member.*

As a further point, the Regulations and Guidance should enable the Standards Committee to group allegations together for joint investigation. A number of allegations may be made against a particular member, each of which may not merit investigation, but which together indicate a serious course of conduct amounting, for example, to bullying. If each case has to be dealt with separately, then such cases may be missed. But if the Committee can instruct that they be taken together and be

subject of a single investigation, and if appropriate a single hearing, they can be dealt with much more appropriately. This goes back to the issue of admission of press and public, as a Committee undertaking initial assessment in public will be constrained to taking each item of business separately, taking a discreet decision on each item, whereas a Committee undertaking the same task in private can go back over its initial reaction in the light of later items on the same agenda.

It should be noted that there is still no statutory confidentiality for Monitoring Officer reports, and particularly draft reports, unlike the position for Ethical Standards Officers' report. The opportunity should be taken to remedy this omission and bring local investigation reports into line with reports undertaken on behalf of the Board.

(2) The Standards Board's new monitoring function and where and how it may suspend a Standards Committee's initial assessment function

"Purpose

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.

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.

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

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.

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.

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.

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?

Suggested Response

SR9. *The criteria appear to be sensible, although may be a disproportionate number of successful appeals against a Standards Committee's decisions might also be an appropriate criterion. Also partial intervention may be appropriate in some cases and so provision could usefully be made for this.*

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

"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."

NB: There is no question related directly to this section.

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**

"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.

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.

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?

Suggested Response

SR10. The handling and determination of conduct allegations is an expensive process and no meaningful additional funding has been made available by government. However it would be most unfortunate if an authority chose to fail to perform this function purely out of a consideration of costs and on that basis alone a simply administered system of recharging, based on actual costs, would be sensible.

In addition it would also encourage high standards of conduct if local accountability for investigation costs were introduced and the government is therefore strongly urged to introduce powers to ensure the costs of investigations fall on those authorities against whose members adverse findings have been made.

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

"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.

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.

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."

NB: There is no question related directly to this section.

(d) Joint working

"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

"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

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

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.

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?

Suggested Response

SR11. *The issue of joint working was addressed in some detail in my previous report. In short, a number of authorities have taken the view that they would prefer to retain the full benefit of a locally-based regime and manage the sensitive issue of local complaint handling within their own authorities if possible. The Committee agreed, however, to keep the matter under review especially if the arrangements ultimately introduced lent themselves to some form of joint working on the initial assessment or review functions. Had the detailed rules, procedure and guidance been published in a timely way, more productive discussions about possible joint working opportunities may have been possible.*

As a matter of law it is far from clear that the statutory powers within the 2007 Act to form joint Committees allow such committees to be formed for only part of the standards function eg: initial assessments only. Further clarification on this point is required from government before the scope of possible joint working opportunities can be properly assessed.

(3) Adjudications by case tribunals of the Adjudication Panel

NB: Since these matters do not impinge directly on the powers or functions of the Standards Committee, I have not reproduced in full the text of the consultation. I have set out the two questions and brief suggested answers. In short, the proposals are (a) to extend the range of sanctions available to case tribunals of the Adjudication Panel so that they have the full range of less onerous sanctions equivalent to those already available to local standards committees and (b) allow an Ethical Standards Officer of the Standards Board to withdraw a reference to the Adjudication Panel where there has been a material change of circumstances, after giving notice to the relevant parties.

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?

Suggested Response

SR12. *It is sensible that case tribunals should have available to them the full range of sanctions available to Standards Committees. The same should apply to Appeals Tribunals.*

In the same spirit of delegation it would also be sensible to clarify the remit of Appeals Tribunals under Regulation 13 of the Local Determination Regulations, to make it clear that an Appeals Tribunal should not re-conduct the hearing and substitute its discretion for that of the Standards Committee, but should only overturn the decision or part of the decision of a Standards Committee where it is of the

opinion that that decision was either outside the powers of the Standards Committee or was unreasonable and not simply on the basis of a different value judgment.

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?

Suggested Response

SR13. *The proposal to enable an Ethical Standards Officer to withdraw a case from the Adjudication Panel where there has been a material change in circumstance since the original decision was taken to refer the matter is agreed.*

(4) Issuing Dispensations to allow Councillors to participate in meetings so as to preserve political balance.

"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.

"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.

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.

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."

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?

Suggested Response

SR14. *The interpretation of the Dispensation Regulations has given rise to a number of difficulties. It is accepted that the position should be clarified to ensure that the 50% rule relates to the position where half of the members would have been entitled, apart from the prejudicial interest, to vote on a particular matter but would have to withdraw because of that interest. However the operation of this particular rule is also unsatisfactory in other respects. For example:-*

- *a request for dispensation is made by an individual member but in that request the member must evidence that more than half of the decision-making body are precluded from voting on the particular item.*
- *in order for the dispensation power to arise at all, the current Regulations require that the transaction of business "would otherwise be impeded...." and*

it is unclear whether this means "prevented" ie: there would not be a quorum, or merely "disadvantaged". It is also unclear whether there is one test or two ie: if there are more than 50% does the regulation immediately apply or does business also have to be impeded as a result? It would be sensible to remove these ambiguities in the redrafted Regulations.

So far as Regulation 3(1)(a)(ii) is concerned, clarification is to be welcomed. However certain issues remain unclear in the proposals and will need to be addressed in the redrafted Regulations. For example:-

- whether the dispensation should be limited to that number of members of the majority party necessary to re-establish a bare majority, or should it apply to all members of the majority party.*
- a relaxation which enables only members of the majority party to vote where they have a clear prejudicial interest is likely to give rise to considerable resentment among members of minority parties subject to similar or lesser prejudicial interests and a better solution may be that in such circumstances all members with prejudicial interests in the matter should be given a dispensation irrespective of party.*

It is also worth noting that in some cases a particular member's participation in a decision may give rise to allegations of bias/predetermination, even if the question of prejudicial interest is overcome by a dispensation. In addition, an alternative to dispensation in authorities operating "substitute" arrangements, is for a party group to withdraw a member with a prejudicial interest and substitute another member who is not subject to such a restriction.

Q15 [Not relevant to ABC]

(5) Timetable

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

Suggested Response

SR16. *The Department's intention is to implement the changes from 1st April 2008. However, whilst the issues which are the subject of this consultation are important, there remain a substantial number of other matters and much detail which will need to be resolved by the final Regulations and Guidance, and it is equally important that sufficient time is allowed for proper consultation on the draft statutory instruments and draft guidance. Given that a statutory instrument has to be laid before Parliament for at least 6 weeks before it takes effect, the proposed implementation date of 1st April 2008 leaves only one week for any issues raised in response to this consultation to be taken into account in the drafting of the statutory instruments, let alone consultation on the draft regulations and draft guidance. Further, as the proposed changes will require the recruitment of additional parish representatives and Independent Co-opted Members to Standards Committees in many authorities (the latter of which many authorities undertake through a public advertisement and appointment procedure) many authorities will not be in a position to undertake*

these new functions from 1st April. Experience of past changes to the system, and particularly changes to the Code of Conduct, underline how important it is to get these changes right first time, with the benefit of full consultation, rather than to rush changes into effect.

In this context it is worth noting that the current consultation allows only some 6 weeks for response, whereas the Code on Consultations which has been adopted by the Government prescribes that consultation shall allow a minimum of 12 weeks for written consultation at least once during the development of the policy. That commitment has clearly not been met by the Government in this case.

At the same time, there is a need for changes to the Code of Conduct itself, amongst other things to pick up infelicities in the present Code and to reconcile the Code and the new Act on the application of the Code to private life. No proposals for such changes have yet emerged for consultation. It would be sensible to introduce the changes to the Code at the same time as changes to the system for enforcing the Code. Accordingly, the proposed implementation date of 1st April 2008 now appears unrealistic.