

## Appendix 1

# Suggested Responses by the Standards Committee to Consultation on Orders and Regulations Relating to the Conduct of Local Authority Members in England

(Please see consultation paper at Appendix 2 for Departmental commentary on the consultation topics)

The specific issues on which the Department are seeking views are as follows:

**Q1. Does our proposal to prohibit a member who has been involved in a decision on the assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?**

A 1. The 2007 Act anticipates that different members will be required to undertake the initial assessment and the review functions. This is clearly appropriate on the basis that members who, for example, had taken an initial decision to refer an allegation for investigation could not take part in any subsequent review of their earlier decision.

There may not be any serious legal objection to members who have previously taken a referral or review decision on the allegation being involved in a determination hearing of that same allegation. This is because the decision they will have taken at one of the previous sub-committee hearings would be to determine whether the allegation appeared to show a breach of the code as opposed to the decision they would be involved in making at a subsequent determination hearing which would be to decide whether the allegation was proved on the balance of probabilities; their earlier decision that the allegations appeared to show a breach of the code not being of the kind that would outlaw them from taking part in the final determination on grounds of pre-determination or bias.

However, we are of the view that a member of the Standards Committee should not be involved in more than one stage of the process, whether that be the initial assessment, the review or the hearing. The argument for this is based on the importance of proceedings being seen to be fair. A member against whom an allegation has been made is likely to feel unfairly prejudiced if members were to conduct a hearing on a matter where those same members had previously seen the original allegation, with no counter-evidence, and taken a decision that it appeared to show a breach of the Code of Conduct and merited investigation. Our proposal would require the Standards Committee to arrange for each separate stage of the local determination procedure – initial sieve, review and determination hearing – to be conducted by a separate sub-committee.

**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?**

A2. We agree that, 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

would be inappropriate to require that those authorities secure that these allegations are to be handled by a single authority, or by some other specified joint arrangement. Specifically, we agree that a single action by a member may have different implications in the different authorities, possibly because the two authorities have different Codes of Conduct, or because the action was more serious for one authority as 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 an individual matter would be appropriate for joint treatment in any respect. 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. 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?**

A3. We agree that it would be inappropriate to impose a statutory time limit for the initial assessment process, and that this is better dealt with by guidance, with the Standards Board for England having reserve powers to intervene were an authority regularly to fail to achieve the guideline time.

**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?**

A4. We recognise that this issue of prior notification has been one of considerable controversy, with members against whom allegations have been made being very concerned that the first they learn of an allegation should be after a decision has been taken to investigate, or not to investigate, that allegation. Prior notification does, however, raise the potential for a member to apply, or seek to apply, undue influence to members of the Committee to secure that no investigation is undertaken.

However, we consider that the ideal would be for the Act to be amended to enable the function of prior notification to be delegated to an officer, and for guidance to recommend that such prior notification be sent to the member at the same time as the report in respect of the initial assessment of the particular allegation is sent to the members of the appropriate Committee or Sub-Committee.

If no legislative amendment is available, we appreciate that prior notification to the member concerned is not necessary for justice, but that if Committees are to go against the apparent intention of Parliament by not giving prior notification to the member, it must be on the basis of clear guidance from the Standards Board for England.

We consider that it would be helpful if the Standards Board for England provided guidance on the information which should normally be contained in such a summary of the allegation for the purpose of notifying the member of the allegation.

At the other end of the spectrum, it is clear that a fair hearing cannot be conducted unless the member has previously been supplied with a copy of the investigating officer's report, and that it is standard practice for the member to have been asked to comment on a draft investigating officer's report. It is also hard to see how a comprehensive investigation can

be undertaken without making enquiry of the member, which will reveal the fact of the allegation. Accordingly, we can see no case for deferring such notification beyond at the latest the completion of any investigation.

However, we do accept that there may very occasionally be instances where there is a risk of intimidation, or attempted intimidation, of witnesses. For this reason, we understand the Department's suggestion that such notification might in exceptional cases be deferred, though it would be hard to justify such deferral once those witnesses had been interviewed and made written witness statements. We consider that, whilst such a deferral facility may be useful, it should only be used on the specific instruction of the Committee at the time of the initial assessment or review.

**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?**

A5. We agree with the principle that the Monitoring Officer should be able to refer a matter back to the Standards Committee where the circumstances have significantly altered since the Standards Committee took the decision that the matter merited investigation.

We also consider that a Standards Committee should have the ability to refer an allegation to the Monitoring Officer for action short of a formal investigation, for example for training or mediation.

We are concerned that the 2007 Act makes no express provision for local resolution of allegations, and we would encourage the Standards Board for England 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 and it would be very helpful if the Standards Board for England were to endorse such a role for Monitoring Officers.

**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?**

A6. We agree that an increase in the maximum local sanction is required if more cases are to be handled locally. We consider that the proposal for a maximum 6 months suspension at local level is an appropriate level to set in the first instance but that a further review should take place around increasing this to 9 months based on the light of experience of the operation of the local sieve arrangements.

**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?**

A7. We agree that the Chairs of all Sub-Committees should be Independent Co-opted Members.

**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?**

A8. We agree that the initial assessment and review functions should be conducted without press and public access. As the Department points out, publication of the agenda and reports 5 clear days in advance gives rise to prejudicial publicity on allegations which may have no substance. We would however suggest that the fact of the meeting should still be publicised in the normal way under Section 100B of the Local Government Act 1972 together with an agenda which does not disclose the name of either complainant or member.

An outstanding issue relating to the new arrangements is that there is no statutory confidentiality for Monitoring Officer reports, and particularly draft reports, unlike the position for Ethical Standards Officers' report. We request that the opportunity be taken to remedy this omission and bring local investigation reports into line with national reports.

**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?**

A9. We agree with the criteria as listed. We do not think that in all cases intervention would need to be total. We suggest that it would be helpful if it were made clear that intervention might be only in respect of parts of the process, such as failure to undertake prompt initial assessments, rather than in respect of the whole functions.

**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?**

A10. The handling and determination of conduct allegations is an expensive process, and we note that there is no proposal for additional funding to be provided by the Department to cover the extra costs to be met by individual authorities. We agree that a system of recharging for a Standards Committee performing another Standards Committee's function, would appear to be sensible and a scale of charges for the initial assessment, review and hearing would also seem to be appropriate. However, there are very substantial variations in the costs of investigations, from £5,000 to £50,000, and we consider that actual cost recharge for investigations would be appropriate.

**Q11. Would you be interested in pursuing joint arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends?**

A11.

We consider that the facility to form joint committees, and for those joint committees to form joint sub-committees to undertake particular functions, would be a useful optional arrangement to have.

**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?**

A12. We support this change. 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.

We would also support an amendment to 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. If we are going to trust Standards Committees with more cases and more powers, they cannot operate if their decisions are to be overturned too frequently because the Appeals Tribunal comes to a different value judgement.

**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?**

A13. We agree with this 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.

We also agree that the decision of a case tribunal to suspend a member should be effective upon the decision of the case tribunal, rather than having to be referred to and actioned by the authority's Standards Committee.

**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?**

A14. We agree that Regulation 3(1)(a)(i) of the Dispensations Regulations should be clarified to ensure that it relates to the position where half of the members of a decision-making body who would, apart from the prejudicial interest, have been entitled to vote on the particular matter, are required by such prejudicial interest to withdraw.

On Regulation 3(1)(a)(ii), providing for a dispensation where the authority is unable to comply with its duty to secure proportionality, we would ask the Department to address the issue that, as presently drafted, this only applies when the Council is appointing a Committee, or a Committee is appointing a Sub-Committee, as proportionality relates to the composition of the members of the Committee as appointed, rather than those who attend and vote on any particular occasion. Accordingly, if this provision is to be amended to give effect to the Department's intention as set out in the Consultation Paper, it must apply where "such members of the decision-making body would be precluded from voting on the particular matter by reason of prejudicial interest, such that the number of members of a party group which has a majority of the total membership of that decision-making body and who are not so precluded from voting on the matter do not comprise a majority of the total

number of members of that decision-making body who are not precluded from voting on that particular matter.”

We would ask that the same power of dispensation be applied to Sub-Committees as to Committees.

**Q15. Do you think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989 to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?**

A15. We have no particular views either way on this proposal.

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

A16. 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 half-considered changes into effect.

The Department’s intention to implement the changes from 1<sup>st</sup> April 2008 will leave little time for consideration of the results of this consultation before a statutory instrument has to be laid before Parliament and guidance issued. It will also leave little time for any necessary training/ briefing of Standards Committee members in the new arrangements.