

THE SPECIFIC ISSUES ON WHICH THE DEPARTMENT ARE SEEKING ARE AS FOLLOWS:

Question 1

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?

Answer 1

It is clear that the 2007 Act anticipates that Members will be required to undertake the initial assessment and review functions. The less certain issue is whether different Members are required to undertake any hearing of the matter. The Consultation proposes that the only restriction on Membership is that a Member who has been involved in the initial assessment must not be involved in the review, which means that a Member of the initial assessment can take part in the determination hearing. The question is whether 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. Alternatively, a Member who has been involved in the initial assessment could be involved in the determination on the basis that the Member against whom the allegation is made, the Monitoring Officer or Chair does not believe that that Member is likely in any way to pre-determine the matter. It was also noted that the recommendations propose three Members as a quorum, but this may more appropriately be two? It is also to be considered whether the Membership of the three sub-committees should be "fixed" or "floating"?

Question 2

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?

Answer 2

Parallel complaints procedures may be appropriate where similar paragraphs of the Code of Conduct are involved and the matter arises from the same or similar facts. On this basis, it may be appropriate for two committees to establish a joint committee

arrangement. If a joint committee arrangement was not permissible or agreed then the relevant Standards Committees would each have to ensure that there was no duplication of issues and be mindful of any sanctions/actions of the other, so as to ensure consistency of treatment and to avoid any perception of double penalties in cases where such a double penalty was clearly not appropriate. In the event that the relevant Standards Committee are unable to agree on suitable arrangements, it should be permissible for them to refer the matters to the Standards Board to arbitrate, or otherwise determine the matter itself with a view to avoiding issues. Guidance may be necessary to assist authorities in knowing how much information should be shared with other authorities and to deal with the procedures for such matters.

Question 3

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?

Answer 3

It would be sensible to have a time scale for making the initial assessment decision but as a matter for guidance by the Standards Board rather than the imposition of a statutory time limit. This could be with a reserve power for the Standards Board to intervene were an authority regularly failed to achieve the guideline time. The Consultation sets out that 20 working days would be appropriate, but there will be no extra available resources to meet this and therefore there may be pressures on not only Council resources but Councillors own time (for example particularly during holidays and election time). It may therefore be best to suggest between 20 and 40 working days as a much more appropriate period within which to arrange the meeting (for example the cycle of meetings could be similar to planning meetings at a certain time at every 4 - 5 weeks and any matters received within the cycle be considered at a forthcoming meeting).

As regards publicity by Standards Committees, we recommend that this remains an obligation for the relevant Council as opposed to the Standards Committee. In addition, it is suggested that rather than utilising just the more formal process of advertising in local newspapers (which can prove costly), other resources such as the Councils websites and their own publications could be used.

Question 4

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?

Answer 4

It is appropriate for the Member who is the subject of the complaint to have relevant details of the complaint for information purposes but not so as to influence and inform the initial assessment. The Member concerned cannot reasonably have any input into the initial assessment because of the time available (a sub-committee could not reasonably conduct an investigation as to whether to investigate or not) also he/she will have a prejudicial interest in the matter. Prior notification also raises the potential for a Member to reply or seek to apply influence to Members of the Committee. However, it may be considered that there will not be many occasions (if at all) whereby the Standards Committee would form the judgement that it would not be in the public interest to provide a written summary to the relevant Member. Guidance on this from the Standards Board would be helpful to ensure fair and transparent local decision-making.

The Consultation also addresses the circumstances in which, after the initial assessment has been made, a written summary would not be given to the subject Member – are the circumstances right?

Question 5

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?

Answer 5

It is agreed that it is important that the Standards Committee should have the ability to refer an allegation to the Monitoring Officer for actions other than informal investigation (for example for training or mediation). It is essential for the Monitoring Officer to have the flexibility to liaise, mediate, conciliate etc with the complainant and the relevant elected Member, to see whether or not any steps can be taken to avoid a complaint to the Standards Committee. Guidance must therefore clearly state this as best practice so as to ensure that existing informal arrangements are not compromised by the current legislation, which requires that all written complaints against Members must be referred to the Standards Committee for consideration.

Where the Standards Board has referred the matter to the relevant Standards Committee, it is only right and proper that the Standards Board also informs the relevant complainant of such. In respect of the Consultation - are the circumstances set out for referral back appropriate or do they appear to be bureaucratic and likely to be cumbersome in practice? Guidance should also set out for circumstances where a Member resigns or a complaint is withdrawn.

Question 6

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?

Answer 6

Members are asked to comment.

Question 7

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?

Answer 7

We currently have sufficient Independent Members to chair each of the Sub-Committees (depending on their availability). Is it appropriate to prescribe in Regulations this requirement or is it better left as a matter of best practice for a local authority to determine? Again, the quorum should be two Members which would obviate the need to cancel meetings.

Question 8

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?

Answer 8

Do you agree that it is appropriate for the initial assessments and reviews to be conducted in private without having the deal with any access to information requirements and the five clear days notice? This seems fair and appropriate for the complainant and the relevant Member, as the matter should be the subject of contemplation by the Sub-Committee and not be the subject of pressure brought to bear by frivolous complaints being considered in the public arena, thereby discrediting elected Members unnecessarily.

Do we therefore agree that it would not be appropriate to give such allegations of misconduct any publicity during the initial assessment phase or during the review process? Regulations should encapsulate this and may also need to amend or add another paragraph to the Access to Information requirements to permit this to happen (as the meetings of the initial assessment and the review Sub-Committees will be “meetings” covered by the Local Government Act 1972 provisions).

Question 9

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?

Answer 9

The Standards Board will have a new monitoring function and circumstances where it may suspend a Standards Committees functions or undertake the initial assessment of misconduct allegations. This should perhaps be seen as a position of last resort for the Standards Board and only to be used after appropriate notice and final notice procedures have been followed. It is also perhaps appropriate that the Standards Board ensure that this step is only taken after very strenuous attempts have been made to improve an authority’s performance.

The Standards Committee will know what is in the best interest of the Council locally and the Standards Board should carefully apply the requirements and interpretation of the public interest, otherwise it risks facing opposition from local authorities (elected to serve the public interest).

In terms of the criteria, these appear to be appropriate? Again a longer time period (instead of the proposed 20 working days) is advocated as a deadline for making an initial assessment of an allegation.

Question 10

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?

Answer 10

Any charging regime to allow the Standards Board and local authorities to recover the costs incurred by them must be very carefully thought through as there are no “additional costs” being given by central Government to local authorities for the functions being delegated from 1 April 2008.

Question 11

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 limit the geographical area to be covered by a particular joint arrangement and, if so, how should such a limitation be expressed?

Answer 11

Joint working is a possibility within the Association of Greater Manchester Authorities. This must be a decision for each Authority and joint working has previously taken effect in respect of reciprocal Monitoring Officer arrangements within a cohort of Greater Manchester Authorities (for example this Authority has had reciprocal arrangements with Rochdale and Oldham). It would be helpful if any successful models nationally could be publicised as best practice and models for local flexibility. (In respect of parish council representation, this Council does not have any parishes but again representation on any joint Committee must be a matter for the relevant joint authorities to determine in the light of what is most appropriate for their local circumstances).

Question 12

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 committee?

Answer 12

This would appear to be appropriate as it would enhance the Adjudication Panel's role in improving standards of conduct. It would also be helpful for the Adjudication Panel to be able to impose a combination of sanctions.

Question 13

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?

Answer 13

It is important to ensure that there is flexibility in any hearing processes and if it is inappropriate to pursue any case before the Adjudication Panel, then to be able to withdraw references to such.

Question 14

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 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?

Answer 14

This Council has not experienced any problems or issues with the dispensation regulations but has not made any under the regulations. Additional clarifications would assist and so as such this Council has no objections to these proposals.

Question 15

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 regards 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?

Answer 15

This is not relevant for this Authority, accordingly if there is a demand for this from other local authorities, we will not have objection to the same, which could improve flexibility and efficiency at the local level.

Question 16

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

Answer 16

This needs to be thought through in terms of the drafting of regulations and guidance. More importantly time needs to be built in for training and briefing of Members. Implementation would also perhaps be more appropriate if it was in a new Municipal Year.