

Hastings Borough Council Response to DCLG Consultation on Orders and Regulations Relating to the Conduct Of Local Authority Members In England

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?

Yes. There is a concern that Standards Committee would have to have too great a membership in order to service three separate sub-committees as well as to provide for the usual difficulties of conflict of interest and unexpected absence of a member of the sub-committee. There is an objection to members reviewing their own decision but no pressing reason why members should not be able to deal with the full hearing, should they have been involved at an earlier stage. There is always the possibility of a cry of predetermination but it is considered, on balance, that the nature of the decision at the earlier stage, i.e. that the facts, if proven, would be likely to amount to a breach of the Code and that the complaint is worthwhile investigating, is such that it would be regarded as an initial assessment only and strictly subject to a full investigation of the facts alleged. The answer to the second question is no, it is not workable as stated above.

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?

Yes, it is appropriate that there should be agreement between authorities that one authority is to deal with the matter. However, there may be occasions when both authorities will wish to deal with the matter themselves and, in those circumstances, both should be able to undertake the function.

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?

Yes. There may be factors prevailing which require that the matter should be dealt with outside the suggested 20 day period. For example, an allegation prompted by political motivation in the run up to a local election.

- 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?**

Generally, it is only fair that a member should be made aware of an allegation as soon as it is received by the monitoring officer. However, it is agreed that, exceptionally, there should be provision as set out in the consultation concerning interference with evidence or intimidation of witnesses. There will be other exceptional circumstances where it is not in the public interest to notify a member of an allegation e.g. where the member is experiencing personal difficulties e.g. his or her own serious ill-health or that of a close relative and early notification of the allegation is such that it is likely to aggravate the situation. It is agreed that the latest point at which the member should be notified is when the monitoring officer or ethical standards officer considers that sufficient investigation has been undertaken.

- 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?**

Yes.

- 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?**

Yes to both questions.

- 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?**

Previous experience of recruiting independent member has been that this is difficult. Whilst an independent chair might tend to encourage public confidence, provided there is an independent member on the sub-committee, this would be consistent with robust decision-making.

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?

Yes. It is suggested also that such information be an additional exemption under the Freedom of Information Act.

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?

Yes

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?

With the additional costs falling to local authorities under the new regime, it would be unlikely that a standards committee of another authority would undertake these functions on behalf of another without reimbursement of costs. It is suggested that this be on the basis of recovery of reasonable costs incurred.

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?

Yes, it is considered that joint working would be necessary at either the initial assessment or review stages. It is not considered

necessary to limit the geographical area by regulation since this is likely to be self-regulating by reason of practical arrangements. There are no parishes currently within this Council's area but the suggestion appears a practical solution.

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?

Yes, the Adjudication Panel should have the full range of sanctions available to it.

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?

It is agreed that the Ethical Standards Officer should be able to withdraw references to the Adjudication Panel in the circumstances described. It is suggested that the public interest may be wide and the two instances cited should be examples only of where the public interest would not be served by adjudication of a reference.

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?

No decisions have been made under the existing regulations. The suggested amendments are acceptable.

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?

It is not considered necessary to provide for this by regulation.

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

This should be the earliest date. However, in order for authorities to be in a position to implement the new regime, regulations will have to have been published in time to permit the necessary arrangements to have been completed through Council and Committee processes.