

WYRE FOREST DISTRICT COUNCIL

ETHICS AND STANDARDS COMMITTEE
6th FEBRUARY 2008

**Consultation Paper : Orders and Regulations Relating to Conduct of
Local Authority Members in England**

OPEN	
RESPONSIBLE OFFICER:	Monitoring Officer
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APPENDICES	Appendix 1 Consultation Questions and Suggested Response

1. PURPOSE OF REPORT

- 1.1. To consider a paper from the Department for Community and Local Government entitled 'Consultation Paper 'Orders and Regulations Relating to the Conduct of Local Authority Members in England,.
- 1.2. To seek the views of the Committee on the proposals and agree a formal response.

2. RECOMMENDATION

The Committee is asked to DECIDE:

- 2.1. **The Monitoring Officer be authorised to respond to the Consultation Paper from the Department for Community and Local Government incorporating the comments of members of the Ethics and Standards Committee.**

3. BACKGROUND

- 3.1. Part 10 of the Local Government and Public Involvement in Health Act 2007 amends the Local Government Act 2000 to provide for a revised ethical conduct regime for local government based on the principle of proportionate decision-making on conduct issues by local authorities.
- 3.2. A consultation has been launched regarding the detailed arrangements for putting into effect orders and regulations to provide a revised ethical regime for the conduct of local councillors. The full consultation paper is available on the internet at the following address:
<http://www.communities.gov.uk/publications/localgovernment/laconduct>

- 3.3. A response to the consultation is required by the Department for Communities and Local Government on specific proposals by 15th February 2008.
- 3.4. The consultation paper specifically seeks views on the following:
1. The operation of standards committees' powers to make initial assessments of misconduct allegations.
 2. The operation of other functions by standards committees and the Adjudication Panel in issuing penalties and sanctions.
 3. The operation of the Standards Board's revised strategic role to provide supervision, support and guidance for the regime.
 4. Other matters such as the rules on the granting of dispensations, the granting of exemptions of posts from political restrictions and the pay of local authority political assistants.
- 3.5. A separate consultation will be launched on amendments to the Instruments setting out the general principles which govern the conduct of local councillors and the Model Code of Conduct which Members are required to follow.

4. KEY ISSUES

- 4.1. It is intended that the changes will be implemented from 1st April 2008. However, a statutory instrument has to be laid before Parliament at least 6 weeks before it takes effect and thereby implementation on 1st April 2008 would leave only one week to draft into the statutory instrument any issues arising from the consultation.
- 4.2. It seems likely that the implementation of the new arrangements will require local authorities to undertake a considerable amount of additional work. They will need to receive and process more allegations as currently many are dealt with by the Standards Board for England or are found by investigation to be unjustified. Each of these cases would require to be reported to the Referrals Sub Committee by the Monitoring Officer.

5. FINANCIAL IMPLICATIONS

- 5.1. The proposed new arrangements will have member and office resource implications but as yet these are unknown. It is intended to closely monitor the effects during the first six months from the new arrangements coming into effect.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1. The new local assessment regime will be brought into effect under Part 10 of the Local Government and Public Involvement in Health Act 2007

and associated regulations but guidance will be forthcoming from the Standards Board for England.

7. RISK MANAGEMENT

- 7.1 Due to the increased workload it may be necessary to recruit additional independent members to the Ethics and Standards Committee and there may be difficulties in attracting members of the right calibre to serve on the committee. There may be a subsequent requirement for additional resources dependent on the number and complexity of investigations and/or referrals.

8. CONCLUSION

- 8.1. The Government is keen to ensure that a culture of good conduct persists in local government. The results of the consultation will inform how the rules should operate via appropriate regulations and orders under the Local Government Act 2000.

9. Consultees

- 9.1. Chairman/Vice-Chairman Ethics and Standards Committee

10. Background Papers

Orders and Regulations Relating to the conduct of Local Authority members in England Consultation
Local Government Act 2000
Local Government Public Involvement in Health Bill 2007

QUESTIONS POSED IN CONSULTATION PAPER - ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND

STANDARDS COMMITTEE MEMBERS AND INITIAL ASSESSMENT

Question 1

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 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?

Draft response

Yes to both questions. It may be necessary to increase the size of Standards Committees to meet these requirements.

MEMBERS OF MORE THAN ONE AUTHORITY - PARALLEL COMPLAINTS PROCEDURES

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 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?

Draft response

- (i) It would be an unusual situation for this to occur but yes, it should be a matter for agreement between standards committees.**
- (ii) We would agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board.**

GUIDANCE ON TIMESCALE FOR MAKING INITIAL DECISIONS

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?

Draft Response

Yes.

REQUIREMENT FOR A STANDARDS COMMITTEE TO PROVIDE A WRITTEN SUMMARY OF AN ALLEGATION TO THE SUBJECT OF THE ALLEGATION

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?

Note : 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. The Board considers that there may be circumstances where it may not be appropriate to provide information to the subject of an allegation when it receives the allegation. It is suggested that the legislation contains a regulation that where the Standards Committee agrees that it would be in the public interest not to provide a written summary it would have discretion to defer doing so. The Committee, in such circumstances would take into account the advice of the Monitoring Officer and guidance from the Standards Board. The regulations may stipulate when the duty to provide the summary must be complied with. It is proposed that the summary should normally arise after a decision is made on the initial assessment but in cases such as described above it should happen after the Monitoring officer has carried out sufficient investigation but BEFORE any substantive hearing of a case against the subject of the allegation.

Draft Response

- (i) Yes
- (ii) No
- (iii) Yes

REFERENCES TO MONITORING OFFICERS - PROCEDURE FOR REFERRING ALLEGATIONS BACK TO A STANDARDS COMMITTEE

Question 5

Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officers will refer a case back to the standards committee?

Draft Response

We agree that they should be suggested but not definitive.

INCREASE THE MAXIMUM SANCTION AVAILABLE TO STANDARDS COMMITTEES

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?

Draft Response

- (i) **Yes as a result of more cases being handled locally we would favour an increase in the maximum sanction the standards committee can impose.**
- (ii) **Yes the maximum sanction should be increased. Committee to deliberate how long.**

COMPOSITION OF STANDARDS COMMITTEES AND SUB-COMMITTEES OF STANDARDS COMMITTEES

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 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?

Draft Response

We consider that the Chairs of all Sub-Committees should be Independent members.

PUBLIC ACCESS TO INFORMATION ON DECISIONS ON INITIAL ASSESSMENTS OF ALLEGATIONS UNDER SECTION 57A AND REVIEWS UNDER SECTION 57B

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?

Draft Response

We agree that during the initial assessment and review, these matters should be considered without the press and public being in attendance.

We would welcome local investigation reports receiving the same status as other Council reports and being subject to access to information rules.

SUSPENSION OF STANDARDS COMMITTEE'S FUNCTION OF UNDERTAKING INITIAL ASSESSMENT

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 relevant criteria which the Board out to take into account?

Draft response

The criteria appears to be appropriate.

POSSIBILITY OF PROVIDING FOR THE STANDARDS BOARD OR STANDARDS COMMITTEES TO CHARGE

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 not more than recover costs?

Draft response

We would strongly support the recovery of costs.

Note : the costs are those relating to administrative costs and staff time incurred in undertaking the new locally-based ethical regime.

JOINT WORKING

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 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 much 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?

Draft response

- (i) Joint working arrangements seem a possible way forward.**
- (ii) This authority has experience of joint working but have no suggestions as to how it could be made to work effectively for the ethical framework as this would be uncharted territory.**
- (iii) Agree.**

EXTENDING THE RANGE OF SANCTION AVILABLE TO A CASE TRIBUNAL OF THE ADJUDICATION PANEL

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 committees?

Draft response

Yes we support this suggestion. It seems sensible that case tribunals should have available to them the full range of sanctions available to Standards Committees.

WITHDRAWING REFERENCES TO THE ADJUDICATION PANEL

Question 13

Do you agree with our proposals for an ethical standards officer to be able to withdraw reference 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?

Background : The circumstances described in the notes are:

- **After the ethical standards officer has determined that the case should be referred to the Adjudication Panel for adjudication, further evidence emerges that indicates that the case is not as serious as original thought so that in the ethical standards officer's view, there is no longer any justification for presenting the case to the Panel.**
- **A penalty imposed by another body meant the Adjudication panel could do no more e.g. a sentence of imprisonment of three months or above for a related or non-related offence which would disqualify a member from office for 5 years.**
- **The pursuit of the case would not be in the public interest, such as where the member accused has been diagnosed with terminal illness or has died.**

Draft response

- (i) **Yes**
- (ii) **None suggested.**

ISSUING DISPENSATIONS TO PARTICIPATE IN MEETINGS TO PRESERVE POLITICAL BALANCE

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 the full council if the effect otherwise would be that a party political party either lost a majority which it had previously held or gained a majority it did not previously hold.

Draft response

- (i) Wyre Forest District Council has not needed to invoke the dispensation regulations but have no inhibitions about the operation of the regulations.**
- (ii) Further clarification is required**
- (iii) Further clarification is required**

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 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?

Draft Response

No comment

**EFFECTIVE DATE FOR THE IMPLEMENTATION OF THE REFORMED
CONDUCT REGIME**

Question 16

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

Draft response

It would be better to implement the reformed conduct regime later as 1 April would give insufficient time