

# CONSULTATION ON ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND BY THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

## RESPONSE BY THE STANDARDS BOARD FOR ENGLAND

1. In December 2007 the Department for Communities and Local Government (CLG) invited views from consultees on the detailed arrangements for putting into effect the orders and regulations to provide a revised ethical framework for the conduct of local authority members in England. The views of the Standards Board for England (the Standards Board) are set out below.

### General comments – implementation date

2. The Standards Board is pleased that the orders and regulations in the consultation paper issued by CLG have been produced quickly following the enactment of the *Local Government and Public Involvement in Health Act 2007* (the 2007 Act). We strongly support maintaining the proposed implementation date of 1 April 2008.
3. The Government first indicated its intention of introducing a locally based decision making framework for the initial assessment of allegations against local authority members in the discussion paper '*Standards of Conduct in English Local Government: The Future*' in December 2005. This built upon the recommendations of the Committee on Standards in Public Life following its enquiry into the framework, which concluded, with the support of local government, that the system should become locally based and that the earliest possible opportunity should be taken to implement the changes. The Government has now met the Committee's recommendations in the 2007 Act and is expected to act promptly in getting the framework into place. In the Standards Board's view, this has been the general consensus amongst local government and its representative bodies.
4. In the Standards Board's experience, local government is generally keen to have the reforms in place as soon as possible - a position which has been supported by both the Association of Council Secretaries and Solicitors (ACSeS) and the Local Government Association (LGA). There is a clear expectation in the local government world that the local assessment of Code of Conduct allegations will commence on 1 April 2008, and local authorities have been gearing up for this implementation date for the reforms for some time. This is evident from the Standards Board's pilot work and from the issues raised by delegates to our Sixth Annual Assembly of Standards Committees in October 2007.
5. In anticipation of the changes to the framework, the Standards Board has been actively working with standards committees and monitoring officers to prepare authorities for the changes, including conducting pilots with approximately 50 local authorities in 2007 to test key assumptions of the

reforms and develop best practice. Therefore, the Standards Board is committed to introducing the new system on 1 April 2008.

6. On specific issues we have the following comments.

**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**

*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?*

7. The Standards Board supports the proposal to prohibit members involved in an initial assessment of an allegation from participating in any subsequent review of a decision to take no action. We believe that this is important to avoid conflicts of interest and increase public confidence that any review of an initial assessment that no further action should be taken will be an independent and impartial one.

8. The Standards Board does not believe that a conflict of interest automatically arises between initial assessment of an allegation, or review of a decision to take no action, and any subsequent determination hearing relating to that allegation. The purpose of the initial assessment decision or review is simply to decide whether the matter should be investigated further, and it makes no findings of fact. Therefore, a member involved at the initial stage may participate in any subsequent hearing, as the purpose of the decision is clearly distinguishable. The Standards Board will assist members to understand this distinction in guidance.

9. The Standards Board believes that the requirement to perform by sub-committee the functions of initial assessment, review of decisions to take no further action, and determination hearings is workable, and we will address this matter in our guidance.

**b) Members of more than one authority – parallel complaint procedures**

*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?*

10. The Standards Board supports the proposal that standards committees reach their own agreements where parallel allegations have been received against a dual-hatted member.
11. The Standards Board believes that the risk of a dual-hatted member's behaviour causing separate complaints to be submitted to two or more standards committees is very low. There is usually a direct link between a member's behaviour and an authority, either because the breach occurred before, during or after a council meeting, or in relation to a particular authority's officers, staff or business. Therefore, a locally driven solution should be preferable to a regulated approach, and the Standards Board does not believe that it is necessary that we are provided with an adjudication role.
12. If this flexible local approach is adopted, the Standards Board will issue guidance on the considerations standards committees should undertake in order to ensure that allegations are handled appropriately.

**d) Guidance on timescale for making initial assessment decisions**

*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?*

13. The Standards Board agrees with the proposal that the timescale for making initial assessment decisions is not imposed statutorily and is left as a matter for guidance. We believe that the system will work effectively with our monitoring and audit procedures guiding the timeliness of decision making, and that this will help avoid unnecessary resource implications that could be incurred in dealing with the imposition of statutory deadlines.
14. The Standards Board does not wish to see standards committees being prevented from undertaking their own assessment function apart from in exceptional circumstances. We do not necessarily believe that standards committees should be prevented from reaching a decision on a matter if it is not reached within a prescribed timescale.
15. The Standards Board believes that the integrity and credibility of the allegations system can be upheld by proposing timescales for initial assessment in guidance, and we will monitor authorities closely to offer support where it is required.

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

*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 it is received? 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?*

16. The Standards Board supports the proposal that the regulations include the wide circumstances in which a standards committee may be relieved of the obligation to provide a summary of an allegation at the time it is received.
17. The Standards Board also urges flexibility in the regulations around the requirement that it is the standards committee that must provide a written summary of an allegation to the subject of the allegation at the time it is received. For practical reasons, we believe that the monitoring officer should be able to undertake to provide this notification to the member on the standards committee's behalf, to ensure that the member is provided with notification of the allegation in a timely fashion.

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

*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?*

18. The Standards Board supports this proposal, and opposed the view that the circumstances should be widened to allow monitoring officers to refer back cases where mediation is perceived to have failed, or the member has not cooperated with training.
19. We believe that regulations should permit referrals back to a standards committee only where further matters have come to light which make an allegation more or less serious than originally thought, or where there has been a change in the circumstances of the subject member (for example, serious illness or resignation), but not where mediation or training is perceived to have failed.
20. The Standards Board believes that mediation can become impossible if a complainant knows that, if he or she fails to participate, the case will go to investigation. Mediation can also take several months and if it moved onto an investigation afterwards this could mean a very slow procedure, and may also lead to evidential difficulties. There can also be a difficulty in defining the 'failure' of other action in the first place.
21. Mediation is likely to be appropriate where there is a pattern of inter-personal conflict. If mediation is perceived to have failed due to non-cooperation of the member concerned, the Standards Board believes that regulations must require the standards committee to publicise that failure

and take it into account if a subsequent case involving the same member comes before the committee.

22. The Standards Board will issue guidance to assist standards committees in deciding what the appropriate course of action in response to an allegation will be, such as conducting an effective risk assessment at the initial assessment phase around the likelihood and implications of the chosen course of action failing to work.

**j) Increase the maximum sanction available to standards committees**

*Q6. Are consultees 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?*

23. The Standards Board supports this proposal as implementing our recommendation to enable standards committees to impose greater sanctions than currently permitted.
24. We are content that the maximum sanction should increase from three months to six months suspension or partial suspension from office.

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

*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?*

25. The Standards Board supports these proposals as implementing our recommendations and giving practical application to the principles of openness and accountability. We believe that it is both desirable and achievable that each sub-committee is chaired by an independent member.
26. However, we do not see a conflict of interest between participation at initial assessment or review stages and participation in a subsequent determination hearing. For this reason, the same independent chair could participate at two stages, giving a minimum requirement of two independent members to chair committees. However, the Standards Board would still recommend that standards committees ensure they have a minimum of three independent members to allow cover for absence and unavailability of other independent members. Further independent members may be required by larger standards committees in order to meet the 25% composition requirement.

27. The Standards Board will provide advice to assist authorities in the recruitment of independent members in guidance.

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

*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?*

28. The Standards Board supports the proposal that confidentiality is achieved with the handling of initial assessments. Feedback received from authorities participating in the initial assessment pilots and from delegates at our Sixth Annual Assembly of Standards Committees revealed much concern for the potential misuse of information contained in complaints if it was freely available, and that the locally based system should be designed to avoid trial by media.

**2. The Standards Board's new monitoring function and the circumstances where it may suspend a standards committee's function of undertaking the initial assessment of misconduct allegations**

*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 Standards Board ought to take into account?*

29. The Standards Board would like to emphasise the importance of the inclusion of a general 'catch-all' criterion to allow flexibility in the circumstances in which we may consider suspending a standards committee's local assessment function. We do not believe that by confining such circumstances to a limited list that the Standards Board is best able to discharge its function to ensure the framework is operating efficiently and effectively and that there is a degree of consistency of standards applied nationally.

30. We believe it is critical that the Standards Board has the power to suspend local assessment in response to concerns about any part of the procedure if we believe that such action is necessary. For example, a standards committee may be working well but the monitoring officer may subsequently be conducting a poor investigation, or may be subject to inappropriate political pressure.

31. Whilst we support the proposed criteria, therefore, we stress the importance of regulations permitting broad circumstances that may be considered in taking a decision on suspension of a standards committee's local assessment function, not only consideration of performance in relation to this function, and of a general criterion affording the Standards

Board maximum flexibility to uphold standards effectively where we perceive a standards committee is failing.

32. The Standards Board would also like to highlight the criterion of 'repeated failure to comply with the proposed 20 working days deadline for making an initial assessment of an allegation'. Any criteria around deadlines must be consistent with the proposal to leave timescales to guidance and not as a matter for regulation.

**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**

*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 effective operation of the new locally-based ethical regime? If so, should the level of fees be left for the Standards Board or authorities to set; or should it be prescribed by the Secretary of State or be set at a level that does no more than recover costs?*

33. The Standards Board believes that this proposal has two benefits. First, in recent months, it has become apparent that some authorities may not be supportive of the new locally based system and have indicated that their standards committees may deliberately fail to carry out their functions effectively so that the Standards Board is forced to suspend their local assessment function. We believe that a power to charge an authority for undertaking the local assessment function on its behalf will be an effective deterrent for attempts to deliberately undermine the new framework. We understand that the Audit Commission's powers may be an effective model for replicating here.

34. Second, the 2007 Act allows the Standards Board to direct that another relevant authority undertake this function, providing that it consents to do so. This provision will allow for peer-reviewing and gives practical application to the philosophy of 'going local'. However, unless there is an incentive for well-performing standards committees to agree to this, we do not anticipate another authority undertaking this function. This would mean that all suspended functions are likely to be undertaken by the Standards Board. We believe that a power to charge the suspended authority or to recover costs from it will provide an incentive for standards committees to take on this extra work. Of course there are also other issues arising from neighbouring authorities carrying out local assessment functions, but the Standards Board will only make a direction where it is appropriate in all circumstances.

35. In the Standards Board's view, the regulations should set the amount to be charged at a level that does no more than recover costs, and should be drafted in such a way to ensure that it is not open to abuse by an authority.

It may also be advisable to limit this power so that the Standards Board could recover costs incurred in relation to the local assessment of allegations only, and not in relation to investigations.

36. The Standards Board urges the Government to legislate to allow a charging regime to enable the Standards Board and local authorities to recover costs incurred in performing the local assessment function of a suspended standards committee as soon as possible.

**d) Joint working**

*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 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?*

37. The Standards Board supports the proposal to enable joint working arrangements to allow, for example, more efficient use of common resources or the sharing of information, expertise, advice and experience. In order to promote more effective ways of working, we believe that the regulations should enable a standards committee to work jointly with one or more other standards committees in exercising their new functions and should be able to utilise such joint committee arrangements with flexibility to suit individual circumstances. We believe that authorities should be required to draw up a formal agreement detailing how a joint committee will operate.
38. The Standards Board does not support geographical limitations to the creation of joint working arrangements and believes that limits will be viewed as unnecessarily bureaucratic. Further, on a practical level, we believe it would be difficult to regulate geographical limitations, as county boundaries are subject to change.
39. The Standards Board will produce protocols for the operation of joint working arrangements in guidance.

**3. Adjudications by case tribunals of the Adjudication Panel**

- a) To extend the range of the sanctions available to a case tribunal of the Adjudication Panel**

*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?*

40. The Standards Board supports the proposal to expand the range of sanctions available to case tribunals of the Adjudication Panel, to provide greater consistency with those available to standards committees.

**b) Withdrawing references to the Adjudication Panel**

*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?*

41. The Standards Board supports this proposal as implementing our recommendation to allow withdrawals of references to the Adjudication Panel in particular circumstances.

42. The Standards Board notes that the Deputy President of the Adjudication Panel has suggested that such a withdrawal should be with the consent of the President rather than being left to an ethical standards officer's discretion. This is so that a complainant who objects to the withdrawal of a reference has an opportunity to make representations to the Tribunal and to bring the procedure in line with court procedures, where the leave of a court is required to withdraw a proceeding.

43. The Standards Board disagrees with the Deputy President's proposal and believes it would merely add another bureaucratic hurdle, and that the Tribunal's procedures do not replicate procedures and principles that apply to courts. If an ethical standards officer did not wish to pursue a case, notwithstanding the complainant's wish and the Adjudication Panel's refusal to dismiss the case, the ethical standards officer could simply produce no evidence or fail to attend the Tribunal to achieve the same end. However, this approach would merely waste time and money for all others concerned.

**4. Issuing dispensations to allow councillors to participate in meetings so as to preserve political balance**

*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 proposal 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?*

44. The Standards Board supports the proposal to amend the dispensation regulations in order to clarify the rules relating to standards committees and to address concerns that exist about the operation of current regulations.

**5. The granting and supervision of exemptions of certain local authority posts from political restrictions**

*Q15. Do think it is necessary for the Secretary of State to make regulations under section 3A of the Local Government and Housing Act 1989, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any other 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?*

45. The Standards Board does not wish to comment on this proposal.

**7. Other issues**

**b) Effective date for the implementation of the reformed conduct regime**

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

46. The Standards Board strongly supports the proposal that the reformed conduct framework commences on 1 April 2008 for the reasons provided in our 'General comments' at paragraph 2 of this document.

47. A commencement date of 1 April 2008 is what local authorities have requested and what they are planning for. We therefore endorse this proposal and urge the Government to introduce the necessary regulations by this date.

**Additional comments**

48. Although not specifically raised as a question in the consultation paper, the Standards Board wishes to signal its support for the proposed procedures for the suspension of a standards committee's initial assessment functions and the re-instatement of those functions, as set out in the consultation paper.

**STANDARDS BOARD FOR ENGLAND  
7 February 2008**