

# Consultation on Orders and Regulations relating to the Conduct of Local Authority Members in England

## Report of the Clerk

For further information about this report please contact Sue Kembrey, Clerk and Monitoring Officer to the Fire Authority, on 01952 383200 or Matthew Cumberbatch, Group Solicitor, on 01952 383255.

### 1 Purpose of Report

The Department for Communities and Local Government is currently consulting in respect of the new regulations and orders, which will flow from the Local Government and Public Involvement in Health Act 2007. Many of the regulations and orders relate to new provisions, which will be dealt with by Standards Committee. This report sets out the Fire Authority's consultation response (attached as an appendix) for information.

### 2 Recommendations

The Standards Committee is asked to note the response to the consultation, attached as an appendix to this report.

### 3 Background

The Local Government and Public Involvement in Health Act 2007 (the Act) will make changes to the ethical framework and have a direct effect upon the work undertaken by Standards Committee. This relates predominantly to the move towards local referrals of allegations of breaches of the Members' Code of Conduct.



In order to set up the procedure for administering the new provisions contained in the Act a number of regulations and orders will need to be put in place. As a result the Department for Communities and Local Government has released a consultation paper, which can be found on the Communities and Local Government website at:

[www.communities.gov.uk/publications/localgovernment/laconduct](http://www.communities.gov.uk/publications/localgovernment/laconduct)

A draft response has been prepared (attached as an appendix to this report), which has previously been sent to all Members of the Standards Committee for comment. Unfortunately, because of the timing of the consultation and the closing date for responses, 15 February 2008, i.e. several days before the Committee is due to meet, it has been necessary to present the draft response to the Fire Authority for comment and agreement. Permission has also been sought for the Clerk and Monitoring Officer to submit the final response following comments made by the Authority. The final response will be circulated to all Members of the Committee for information.

#### **4 Financial Implications**

There are no direct financial implications arising from this report.

#### **5 Legal Comment**

There are no direct legal implications arising from this report.

#### **6 Equality Impact Assessment**

Officers have considered the Service's Brigade Order on Equality Impact Assessments (Personnel 5 Part 2) and have decided that there are no discriminatory practices or differential impacts upon specific groups arising from this report. An Initial Equality Impact Assessment has not, therefore, been completed.

#### **7 Appendix**

Orders and Regulations relating to the Code of Local Authority Members in England Consultation Draft Response from Shropshire and Wrekin Fire Authority

#### **8 Background Papers**

Department for Communities and Local Government  
Orders and Regulations relating to the Conduct of Local Authority Members in England Consultation January 2008



Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	
Capacity		Member Involvement	*
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial		Staff	
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*



## **Orders and Regulations relating to the Code of Local Authority Members in England Consultation**

### **Draft Response from Shropshire and Wrekin Fire Authority**

Set out below are the responses from Shropshire and Wrekin Fire Authority to the questions posed in the consultation document referred to above.

- 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 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?**

We do believe that it would be proportionate for a member, who has been involved in a decision on the initial assessment of an allegation, to be prohibited from taking part in the review of any subsequent decision. We also believe that, where possible, a member should only be involved in one of the three possible committees, which may consider an individual allegation. In other words, if a member has taken part in a matter at the initial assessment stage, the member should take no further part in the matter.

We appreciate, however, that in some cases, because of possible resource issues, a member, who has been involved in initial assessment of a matter (or a review of the matter), could subsequently be involved in the final determination of proceedings. We do not believe that members should be allowed to perform the functions of initial assessment, review of a decision and the subsequent hearing, as we believe it would be prejudicial to the hearing process and potentially unfair for the parties, who have either made, or are subject to, the complaint.

- 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?**

Whilst we would hope that there would never be a disagreement between this Authority and another in respect of where an allegation should be determined, we appreciate that the issues brought about by the new scheme for investigating and determining complaints (such as resource implications) may



cause difficulties in this regard. Options could be made available for one (joint) investigation determined by a joint committee or a dual investigation in circumstances where each Committee requires its own investigation.

If, however, those options are not to be available under the new procedures, we would suggest that the Standards Board for England retains an adjudication role in respect of the determination of an allegation, where the respective Standards Committees have met but have failed to reach an agreement.

**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?**

We agree that the timescales for making initial decisions should be a matter for guidance by the Standards Board for England rather than a matter for statutory time limits.

**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?**

We agree that, in certain circumstances, the Standards Committee should be relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made. We also believe consideration should be given as to whether or not such a provision should also be allowed in other circumstances, such as where there is an ongoing criminal investigation or other litigation (for example employment tribunal proceedings), where it may prejudice such other actions.

We 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, subject to the aforementioned comments.

**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?**

We agree that circumstances should be prescribed, as you have proposed, in which the monitoring officer will refer a case back to the Standards



Committee. Such circumstances should be as clear and unambiguous as possible and be supported by guidance from the Standards Board.

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?**

We are in favour of an increase in the maximum sanction the Standards Committee can impose, and this should be from three months' to six months' suspension or partial suspension from office. Again, however, we would ask that guidance over sanctions should be provided by the Standards Board for England.

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?**

We believe it is the matter of best practice, in order to maintain the integrity of the sub-committees, that the chair is an independent member. Given, however, the practicality of having to ensure that there are at least three independent chairs for each complaint that is received, we would suggest that the requirement for an independent chair of the sub-committee is required only in recommended practice rather than stipulated by statute.

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?**

We agree that the initial assessment of misconduct allegations and any other view of the Standards Committee's decision to take no action should be exempt from the rules on access to information.

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?**

We having nothing to add to the criteria set out.



- 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?**

In principle we would support the provision to allow the Standards Board and local authorities to recover the costs incurred by them, if undertaking the initial assessment functions. We consider it appropriate, however, that it be possible to recover only those costs incurred rather than make any profit.

- 11. 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 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?**

We would be interested in pursuing joint working arrangements with other authorities. Whilst we have not yet undertaken joint working arrangements, this authority and its Standards Committee have close working relationships with Telford & Wrekin Council and its Standards and Audit Committee. Both Committees share the same monitoring officer, attend the same training and have worked together on the Standard Board for England's recent Pilot Scheme. We believe that joint working may assist in respect of the greater demand placed upon resources under the new system for considering complaints. It would also lead to increased experience in dealing with cases and the sharing of knowledge and best practice between authorities.

There should not be any need to limit the geographical area to be covered by a particular joint agreement. We 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.

- 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?**

We are 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 the Standards Committee. This appears to be consistent and within the spirit of the intention of the new provisions.



- 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?**

We agree with your proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described.

We do not propose any further situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference.

- 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 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?**

The Fire Authority's Standards Committee has not made any decisions under the existing dispensation regulations.

The rules relating to dispensation should be clearer and accordingly the Relevant Authority (Standards Committee) (Dispensations) Regulations 2002 should either be amended or replaced with detailed regulations, setting out the circumstances in which a dispensation can be applied for, the information that should be supplied as part of an application for a dispensation, the possibility for those applying for a dispensation to appear before the Standards Committee when they make their determination, and also what issues should be considered when considering a dispensation request.

- 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?**

No comments.





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

Whilst we have no objection in principal to the commencement of the new conduct regime from 1 April 2008 at the earliest, we are concerned that we are fast approaching that date and we still do not have the regulations or guidance that we need to administer the new system. We suggest that no less than three months separate the release of the Regulations from the commencement of the new regime. This is needed to allow sufficient time to incorporate the regulation and guidance into our procedures and ensure adequate training for officers and members.

