

EAST HERTS COUNCIL

STANDARDS COMMITTEE – 6 FEBRUARY 2008

5. REPORT BY THE MONITORING OFFICER

ORDERS AND REGULATIONS RELATING TO CONDUCT OF LOCAL
AUTHORITY MEMBERS IN ENGLAND – CONSULTATION

WARD(S) AFFECTED: ALL

'D' RECOMMENDATION - that

1.0 Purpose/Summary of Report

1.1 The purpose of the report is to obtain Members' views on the consultation paper on the Orders and Regulations Relating to the Conduct of Local Authority Members in England.

2.0 Contribution to the Council's Corporate Priorities/Objectives

2.1 **Fit for purpose, services fit for you**

Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.

Leading the way, working together

Deliver responsible community leadership that engages with our partners and the public.

3.0 Background

3.1 The Department for Communities and Local Government is consulting on the detailed arrangements for putting into effect orders and regulations to provide a revised ethical regime for the conduct of local councillors in England. Part 10 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act) provides for a revised ethical conduct regime for local government based on the principle of proportionate decision-making on conduct issues by local authorities. The Department intends making arrangements for

these provisions to come into effect in Spring 2008, and to seek views on how the detailed rules should work in practice.

3.2 The paper also consults on other undertakings relating to the operation of the regime in respect of the political restrictions imposed on certain local government posts and the maximum pay of political assistants. They are also taking the opportunity to consult on proposals to amend the Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002, with a view to resolving concerns which have been raised by some local authorities on the operation of some aspects of the current provisions.

4.0 Report

4.1 For the new, reformed ethical regime based on a devolutionary approach to become operational, the Department needs to make regulations and orders under the Local Government Act 2000 (the 2000 Act), as amended by Part 10 of the 2007 Act, to implement the proposals set out in the Local Government White Paper to deliver a more locally based conduct regime for local government Members. Local standards committees will make initial assessments of misconduct allegations and most investigations and determinations of cases taking place at local level.

4.2 The Department now needs to put in place detailed arrangements to allow standards committees and the Standards Board to undertake their new roles under the new regime. These arrangements need to cover:

- The operation of standards committees' powers to make initial assessments of misconduct allegations.
- The operation of other functions by standards committees and the Adjudication Panel in issuing penalties and sanctions.
- The operation of the Standards Board's revised strategic role to provide supervision, support and guidance for the regime.
- Other matters, i.e. the rules on the issue of dispensations, the issue of exemptions of posts from political restrictions and the pay of local authority political assistants.

4.3 The paper sets out for each of these issues in turn the specific purpose of the provisions, the proposals for how the rules should operate via appropriate regulations and orders under the 2000 Act,

and seeks views on the proposals, including highlighting particular questions on which consultees' comments would be welcome.

- 4.4 The Department aims to undertake a separate consultation shortly on amendments to the regulations setting out the general principles which govern the conduct of local Councillors and the model code of conduct, which Members are required to follow.
- 4.5 A summary of the questions is set out below:

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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

5.0 Consultation

5.1 There has been no consultation.

6.0 Legal Implications

6.1 The 2007 Act provides for different arrangements for dealing with complaints relating to the Code of Conduct for Members. The changes are likely to apply from May 2008.

7.0 Financial Implications

7.1 There are no immediate financial implications. However, if there is a significant increase in the number of complaints, additional resources may be required.

8.0 Human Resource Implications

8.1 None.

9.0 Risk Management Implications

9.1 The Council will need to implement the regulations and apply the guidance in dealing with complaints relating to alleged breaches of the Code of Conduct for Members.

10.0 Conclusion

10.1 The Committee is invited to determine Council's response, if any, to the questions now detailed.

Background Papers

Consultation document as detailed in the report.

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