



Report of: Director of Corporate Resources

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	14 January 2008	6	

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Subject: Local Government and Public Involvement in Health Act - Implications for Standards Committees

Supplementary papers – CLG Consultation Process

1. Synopsis

Communities and Local Government (CLG) have just issued a consultation paper entitled “Orders and Regulations relating to the Conduct of Local Authority Members in England” which is mainly concerned with implementation of the aspects of the Local Government and Public Involvement in Health Act directly affecting the Standards Committee. Responses to the consultation are required by February 15th. This report summarises the issues raised in the consultation paper and invites members comments on the specific questions to which responses are sought by CLG.

2. Recommendation

- 2.1 To agree, with such amendments as members consider appropriate, the responses to the consultation questions set out in the report for submission to Communities and Local Government.

3. Background

- 3.1 Communities and Local Government issued a consultation paper at the start of January concerning regulations and orders to implement the provisions of the Local Government and Public Involvement in health Act referred to in the main report. The consultation paper is in Appendix 1 and as the consultation closes on 15th February members are asked to consider the proposed responses to it at this meeting.

- 3.2 Then paper seeks responses to 16 specific questions, which are set out below. In addition members' attention is drawn to the indications in the report that:
- standard documentation for publicising the new arrangements will be produced by the Standards Board (paras. 9 and 10);
 - regulations will provide for the Standards Committee to be able to refer allegations to the Monitoring Officer for action other than investigation such as mediation (paras. 18 and 19)
- 3.3 Set out below are the questions raised by the consultation with officers' suggested responses in respect of them.

- 1. 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?**

Involvement of a member in deciding whether the complaint as presented concerns conduct sufficiently serious to require investigation as a possible breach of the Members' Code, does not involve them forming any view as to whether the conduct has in fact occurred or any particular sanction would be appropriate. The proposal in the consultation document not to automatically bar members who have been involved in the initial assessment of an allegation from being involved in a hearing to determine that allegation seems sensible.

On the other hand it is not appropriate for members to be involved in reviewing a decisions they have themselves made and as the involvement of the full committee in the initial assessment or review stage would make it difficult to achieve this separation requiring these functions to be carried out by sub-committee seems reasonable. There does not however, appear to be any reason why the determination hearing itself should have to be carried out by a sub-committee rather than the full committee as the consultation document proposes.

- 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?**

Currently as all complaints go the Standards Board they are able to identify if a similar complaint is made against a member to more than one standards committee. This may be more difficult in the future in the where complaints go direct to individual standards committees. In the consultation document it is

pointed out that having the same allegation considered by two Standards Committees may lead to inconsistencies and to a member being investigated for the same allegation twice. The paper also states that as part of moving to a more locally based regime standards committees are encouraged to take into account local factors and so might reasonably take different views and should be given an opportunity to do so. This is a difficult issue on which members views are sought.

If there is no adjudication role for the Standards Board difficulties will arise if the committees are unable to agree.

- 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?**

This seems a sensible and practical approach.

- 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?**

The consultation document proposes that a summary of an allegation received does not need to be provided to the member it concerns at the time it is received if the Standards Committee reasonably considers it is not in the public interest to do so. It is proposed that guidance be issued concerning this and the consultation document identifies situations where disclosing the allegations would inhibit investigation of it or might expose the complainant or witness to intimidation as situations where this might apply. This seems sensible.

- 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?**

The consultation document proposes that the Monitoring Officer may refer allegations back to the Standards Committee if in the course of investigation it becomes apparent that they are more or less serious than at first thought, if further potential misconduct comes to light or the member resigns, becomes terminally ill or dies. The Committee would then carry out a fresh assessment of whether the matter should be investigated, including potentially referring it to the Standards Board. This seems sensible.

- 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?**

Under the new more locally based regime it is expected that Standards Committees will deal with more some more serious cases than was previously the case and it is therefore sensible that the severity of sanction available to them is increased and the proposed increase from 3-6 months seem reasonable.

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 currently have 4 independent members on the Committee so this should not be a problem for us.

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?**

The consultation paper proposes that the normal rules about public notices and access to papers and meetings should not apply to information about initial assessment of allegations (or reviews of an assessment) because the allegations may be completely unfounded. This seems very sensible and would have the added benefit of making it easier to comply with the 20 days target time for dealing with assessments.

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?**

The consultation paper proposes that the Standards Board should be able to suspend a standards committee's initial assessments function where this is in the public interest having regard to the following factors:

- a breakdown of the process for holding hearings;
- a disproportionate number of successful requests to review a standards committee's decision to take no action;
- repeated failure to complete investigations within reasonable timescales;
- repeated failure to carry out other duties expeditiously, including
- repeated failures to comply with the proposed 20 working days deadline for making an initial assessment of an allegation;
- failure to implement standards committee's decisions; or
- repeated failure to submit periodic returns to the Standards Board under section 66B and information requests under section 66C.

These seem reasonable criteria to apply.

- 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?**

The consultation paper proposes that where a standards committee's role in initial assessment is suspended, another authority can undertake that role if it is willing and the Standards Board consents. It seems reasonable if such circumstances that the authority undertaking the work should be able to recover the cost of doing so. It also seems reasonable that the authority concerned should be able to determine what the fee would need to be to recover costs and to agree that with the authority whose initial assessment functions have been suspended.

- 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 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?**

There does not at the moment seem to be any need for us to enter into joint arrangements. There doesn't seem to be any particular reason why arrangements should be subject to any particular geographical limit, although in practice authorities are likely to enter into arrangements with other authorities who are reasonably close. We do not have parishes.

- 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?**

The consultation paper proposes that in addition to its existing sanctions the Adjudication Panel be able to impose lesser sanctions equivalent to those which are currently only available to standards committees. This seems sensible to ensure that the sanction can fit the seriousness of the findings made by the panel.

- 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?**

The consultation paper proposes that an ethical standards officer should be able to withdraw the reference of a matter to an adjudication panel if in the course of investigation it become apparent that the case is less serious than originally appeared, the Adjudication Panel could not in any event impose a sanction greater than one some other body has already imposed or pursuit of the case is not in the public interest (e.g. as the member as died). This seems sensible.

- 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 political party either lost a majority which it had previously held, or gained a majority it did not previously hold?**

No dispensation applications have been dealt with by the Standards Committee in Islington. The changes proposed are designed to correct an existing provision that does not fulfil its purpose. The current proposal in the consultation paper would make the position clearer but does not cover situations where the effect of not having a dispensation would be to enable two or more parties acting together to have a majority they did not previously have. The proposed changes do not deal with the difficulty that the need for a dispensation at a particular meeting may not be apparent until it is too late to call a standards committee meeting in accordance with the requirement for 5 clear days notice.

- 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?**

This provision does not affect us.

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

It would be difficult to implement the new regime any earlier in view of the delay in issuing the necessary regulations and orders which inhibits effective preparation.

- 3.4 Members are invited to consider and comment on the proposed responses to the consultation paper.

11/01/08