

Item No 4 – Appendix 2

Orders and Regulations Relating to the Conduct of Local Authority Members in England

Consultation.

Response by Cllr Keith Loney (Sevenoaks District Council) (Member of the District Council's Standards Committee)

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?

Yes. Such a member should not be prohibited from taking part in any subsequent determination hearing. In my experience, members determine issues objectively and are not prejudiced by what has led to a requirement for a determination to be made.

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?

Yes.

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 be a matter for agreement between standards committees?

Yes, but only if all parties (complainant(s), subject member(s) and committees) are in agreement. Complex complaints may involve conduct over a lengthy period of time by multi-hatted subject members who may have been members of two or more authorities for part or all of the period. The subject member's defence will vary but be appropriate for the standards committee determining a complaint. Investigations may be designed to obtain information for one standards committee but may be inappropriate for other standards committees involved in determining the allegations. In the absence of agreement by all parties, there should be a procedure for the Standards Board to decide how the allegations are to be dealt with after hearing submissions from all parties involved. This is in the interest of natural justice.

Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?

No. It is both necessary and desirable in the interest of natural justice, for the Standards Board to have an adjudication role in the event of all parties (complainant(s), subject member(s) and standards committees) being unable to agree how allegations should be dealt with.

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?

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No. Once a complaint is made there is no reason why the complainant should not publicise the fact. The stress on a subject member once they know that they are the subject of a complaint is significant and impedes the member's ability to carry out their role. There is also stress on the complainant who has summoned up the courage to lodge a complaint and will be anxious that the standards committee will not find their claim to be ill-founded. To minimise the stress on these two parties it is essential that the standards committee makes initial decisions with the least amount of delay. Statutory time limits should be retained to ensure this. Guidance could be given on targets but the statutory time limits are essential as justice delayed is unfair on the parties.

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?

Yes.

Are there any other circumstances which you think would also justify the withholding of information?

None.

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?

Yes.

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?

Yes.

Q6. Are you in favour of an increase in the maximum sanction the standards committee can impose?

Yes.

If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?

Yes.

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?

So long as the chair of the standards committee is independent, there should be no requirement for the chairs of sub-committees to be independent. It would reduce flexibility to require the appointment of standing chairs of sub-committees. Chairs of sub-committees should be elected by fellow members when a meeting is convened to give maximum flexibility for availability, holidays and sickness absence. There should be no prohibition on

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an elected member chairing a sub-committee meeting unless the complaint relates to a fellow member of his/her authority.

Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?

Yes. Elected members are constantly making robust decisions and should be trusted to do so when chairing sub-committees. Unless no other member is available, elected members should avoid chairing sub-committees considering complaints against a fellow-member of his/her authority but should never be debarred from sitting as an ordinary member of a sub-committee when it is considering a complaint against a fellow member of his/her authority.

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?

Yes.

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?

Yes.

Are there any other relevant criteria which the Board ought to take into account?

No. The public interest criterion is sufficient to sweep up any relevant criteria that have not been specified.

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?

Yes. The requirement to pay fees would be an incentive to authorities not to get into a position that the Board suspends a standards committee's powers to make initial assessments.

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 level of fees should be set by the Board for the work that it undertakes and by the authorities for the work that they undertake. To provide an incentive to undertake the work there should be no requirement that the fees be set at a level that does no more than recover costs.

Q11. Would you be interested in pursuing joint working arrangements with other authorities?

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Yes, for having joint administrative staff, investigating officers and monitoring officers. No, for having joint standards committees. Members value the devolved decision making and local knowledge of a standards committee for their own authority.

Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice?

Not for the work of standards committees. Although mutual aid arrangements in place by authority to assist fellow authorities and receive assistance in return if staff conflicted out or lack of sufficient key staff. Yes for work of licensing committees with joint staffing but separate committees.

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?

No need to limit the geographical area. It should be for the parties to the joint working agreement to decide on the area.

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 of any parish in the joint committee's area attends?

Do not favour working with joint committees, so question not answered.

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?

Yes.

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?

Yes. In the case of a penalty imposed by another body which meant that the Adjudication Panel could do no more, the reference should only be withdrawn when the time limits for making appeals from the decision of the other body have expired and any appeals have been dismissed.

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 criterion that the pursuit of the case would not be in the public interest should sweep up any other situations that have not been specified.

Q14. Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so.

Yes. Not felt inhibited.

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?

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Yes.

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?

Yes.

Q15. NOT RELEVANT AS NOT A MEMBER OF A WASTE DISPOSAL AUTHORITY

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

Yes

Keith Loney

14 February 2008

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From: Nuttall, Christine
Sent: 14 February 2008 17:42
To: 'william.tandoh@communities.gsi.gov.uk'
Subject: Consultation on "Orders and Regulations to the Conduct of Local Authority Members in England"
Importance: High

Dear Mr. Tandoh,

Re: Sevenoaks District Council Standards Committee

The Standards Committee at Sevenoaks District Council has conducted what amounts to a virtual meeting of its Standards Committee whereby the above mentioned Consultation document has been circulated along with the comments made by Peter Keith-Lucas from Bevan Brittan. The enclosed comments are from the Independent Chair of Sevenoaks District Council's Standards Committee which has been circulated to all Members of the Committee.

Another independent Member of that Committee has made the following comments again circulated to all Members of that Committee.

"I have read the response from Bevan Brittan and Alan's thoughts. I think they have summed up my thoughts very well and I have little to add except for the following.

Q3 & Q7. I think these two are linked in that it will only be possible to turn initial assessments round quickly if there are enough relevant people available AT THE TIME. This includes the Monitoring Officer as well as independent members and possibly parish/town councillors. We may have enough on paper but with other commitments, we need to be sure of potential availability.

Q6. I agree that potential sanctions need to be increased although, hopefully, we will not need to use them. For a Standards Committee to be effective it must have (potential) teeth!"

Some additional comments may come to you tomorrow from other Members of the Standards Committee. I believe that you have received some comments from Edenbridge Town Council which is a Council within the administrative area of Sevenoaks District Council.

Yours sincerely,

Christine Nuttall

Monitoring Officer

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Response for Mr. Tandoh

Q1. Sub-committees to be used to manage different stages of the process. Member of sub-committee which decides not to take a complaint forward to be excluded from reviewing that decision, but not to be excluded from any subsequent full hearing.

Using sub-committees is the only way to manage this effectively. The level of prohibition proposed to avoid conflict of interest is probably the very minimum that could be acceptable.

Q2. Where a case might fall to more than one standards committee, decision on which committee does it to be resolved locally.

Agree. Commonsense.

Q3. Timetable proposals for completing procedure to be guidance rather than requirement.

Agree. Commonsense.

Q4. In certain circumstances (to be specified) standards committee to be relieved of the obligation to provide the person complained about with a summary of the complaint.

Reluctantly agree, but there would have to be pretty compelling reasons to fear destruction of evidence or intimidation, and seems more appropriate for circumstances that might lead to a prosecution.

Q5. Circumstances where a monitoring officer may refer a case back to the standards committee.

This is technical stuff but good in that it arises from giving us the power to refer a case to the monitoring officer to do something other than investigate, eg to mediate, or provide training, where the issues relate to poor behaviour rather than conflict of interest.

Q6. Increase maximum sanction from 3 months suspension to 6 months?

Agree. Adjudication Panel can already impose much higher penalties and increased range of penalties is inevitable consequence of devolution. Committee will be able to refer matter up to Adjudication Panel where it thinks greater penalty is needed.

Q7. Proposal that all sub-committees hearing elements of cases should be chaired by an independent member.

I don't myself think that this is necessary (eg why shouldn't a District Councillor chair a case involving a Parish Councillor?), but we have now 4 independent members so it should not cause us any difficulty, and it could help to avoid councillors being put in awkward positions.

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Q8. Initial assessment of cases to be excluded from FOI requirements

Agree.

Q9. Criteria for Standards Board when it wants to suspend a standards committee

Look OK to me. Only operates where standards committee is clearly falling down on the job.

Q10. Where one LA does the work for another LA, power to charge for the service.

This is a bit odd. It arises where the SB suspends a standards committee, and asks another LA to do the work. Compulsory recharging in those circumstances seems fair enough. But there is an argument that it would help encourage high-performing standards committees, and there is already power for one LA to charge another where one handles work for the other one by agreement, so I don't quite see where this is going.

Q11. Do we agree to joint working with other LAs, by local agreement, and if there is a joint standards committee that parish reps can come from either district?

This is OK so long as it is left to local agreement. My own view is that while it's OK to merge support and investigation arrangements, and do anything else that might cut costs, each LA should have its own standards committee because it's as much about making the LA feel responsible for its own ethical standards as about case procedures, and joint committees start taking that away again into separate compartments of no interest except to the councillors on the joint committee.

Q12. Q13. About Adjudication Panel so haven't bothered commenting.

Q14. Proposal to clarify (but not change) rules on when we can grant dispensations to councils where more than 50% of members have an interest.

This has affected us as it comes up with parishes. The proposals look sensible to me, but Christine will have closer understanding of the practical impact.

Q15. Only affects waste disposal authorities.

Q16. New system to start 1 April 2008 at earliest.

This is what we were expecting.

ALAN RIDDELL

7 January 2008