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Welcome to the November issue of the *Bulletin*.

The Standards Board welcomes the emphasis placed in the White Paper *Strong and Prosperous Communities* on the links between high standards of conduct and strong, accountable, responsive leadership. With the introduction of legislation to implement a more locally based conduct regime with more powers for standards committees, our role will become one of a light touch regulator, ensuring the effectiveness of the new local framework. We fully support this devolutionary reform whilst recognising the challenges this provides for monitoring officers and standards committees. The Standards Board will work with all stakeholders as we develop and implement the legislation. We also look forward to the publication by the Department for Communities and Local Government (DCLG) of the revised Code of Conduct for consultation, and to a local government bill at the earliest opportunity.

There is much work to do in preparing for the introduction of the revised Code in time for the May 2007 elections, and we are committed to producing guidance and training materials to assist monitoring officers and standards committees in its implementation. We are also preparing for a series of eleven roadshows across the country in June 2007 to support you with the implementation of the revised Code, identify any early emerging issues, and prepare for the introduction of the local filter system for complaints in 2008. If you have ideas or suggestions for the content of these roadshow events, please email eilidh.murray@standardsboard.co.uk

Topics covered in this month's edition of the *Bulletin* include a monitoring officer's first hand perspective on preparing for a local investigation, a summary of key findings from the research project *A snapshot of standards committees*, how the eight monitoring officers of Suffolk share good practice, and a look into some specific issues such as prejudicial interests.

David Prince, Chief Executive

Case Review number four

A round-up of some of the most significant cases, decisions and trends so far. Available at www.standardsboard.co.uk or in hard copy for £15.00 by calling 0845 078 8181

Preparing for a local investigation — a monitoring officer's perspective

With well over half of investigations now being dealt with locally, we thought it would be useful to share the experience of a monitoring officer who has arranged for investigations to be conducted both in-house and by external providers. Michael Blamire-Brown, monitoring officer from Solihull Metropolitan Borough Council, explains his approach.

In undertaking local investigations the keyword is preparation! Don't wait until that letter arrives from the Standards Board asking you to undertake a local investigation.

Appointing an investigating officer

One issue which will hold up an investigation is the appointment of the investigating officer. I believe that as far as possible the monitoring officer should always use the power of delegation to appoint an investigator rather than take on an investigation personally. This keeps the monitoring officer free to keep an overview, and of course to advise the standards committee.

So where can you find an investigating officer? Here you have a choice. You can of course go to a professional firm specialising in investigations, particularly one which already has expertise in Code of Conduct issues. There are also experienced individuals offering their services in this area.

It is advisable to know about all the options, but thought should also be given to using an in-house investigator. From my experience to date, my recommended approach would be to build up in-house expertise, so that when an investigator is appointed, a sensible choice can be made between in-house talent and external providers. A look around your organisation may well reveal individuals with experience of investigations.

I have found that internal auditors will certainly have this experience and a good sense of ethical issues, as well as being seen as an independent investigator within the authority. Officers who have experience of disciplinary investigations should also be considered, and you may well find some officers with police experience. Trading standards officers and planning enforcement officers may be possibilities. So, surprising though this may be, by canvassing within your authority, you may very well find potential investigators who are both well qualified and also keen to practice their investigative skills.

Training your investigator

Having found your investigators the next task is to train them up for the job. You need to ensure your investigator can start within a reasonable timescale — the complainant and the member who is the subject of the complaint will expect something to happen quickly. Don't disappoint them. I have found that notifying the member of the local referral and the name of the investigator in the initial letter, followed by early contact by the investigator, is effective. If there is going to be a short delay before the investigation starts you must let them know and explain it.

If instructing an investigator externally, my approach (with benefit of hindsight) is to be very clear about fees. Get estimates, ask about fixed fees rather than hourly rates, and find out the time and cost of the various stages of investigation. I ask internal investigators to record the time taken so that we have some idea about costs.

Starting the investigation

Using standard documentation as a base will help get the investigation underway. I have all my precedent documents in electronic format so that they can easily be printed, emailed or supplied on a CD-ROM, and I have a very detailed instructions letter containing all the information about the complaint and contact details. I then hold a meeting with the investigator to go through this. It is important to make sure the investigator is comfortable with his task and is committed to the investigation, giving it priority within his own workload. Always give a target date for completion and require the investigator to report progress on achieving the agreed date.

So, having commissioned the investigation, can the monitoring officer sit back and wait for the report? Unlikely! The monitoring officer now needs to be prepared to go into a communicating role. Any investigation is going to bring questions from both members, officers and maybe the public. It is important to ensure that everyone, including the standards committee, understands the process and

what is happening. However, at the same time you must be careful not to give out confidential information or to prejudice the standards committee's consideration. The monitoring officer should also check that the member under investigation is supported and understands what will probably be an unfamiliar and stressful process.

The investigator may need some support but the monitoring officer needs to be careful not to get too involved in case he compromises his role as adviser to the standards committee. As I develop in-house skills in investigations, I am going to try and implement some peer group mentoring so that the investigator does have somewhere to turn for support.

The monitoring officer at this stage is planning ahead and looking at when the standards committee can meet, and what further training it needs. Don't wait until the investigator has reported before starting to make arrangements for a hearing.

Part of the preparation process is thinking through to the end product, the investigators report. It is important to give some guidance to the investigator on its format, as its quality of presentation may speak volumes about how you have commissioned the investigation.

Michael Blamire-Brown

Monitoring Officer, Solihull Metropolitan Borough Council

Standards committees: a national snapshot

The shift towards local ownership of the ethical agenda has focused greater attention on standards committees and monitoring officers. In the light of this, the Standards Board, in partnership with the Association of Council Secretaries and Solicitors (ACSeS), commissioned BMG Research to investigate their roles and activities. This research, entitled "*A study into the implementation, operation and role of standards committees*" was originally reported in the July 2006 *Bulletin*, and has now been completed and will be published shortly. This article summarises some of the key findings from this report. When published it will be available on our website at www.standardsboard.co.uk

The primary aim of this research was to provide information on the needs and levels of activity of standards committees and monitoring officers. It incorporated several strands, focusing on a number of key areas which included profile, training, the roles of monitoring officers, and experiences of recruiting independent members.

The full research findings have been invaluable in enhancing our understanding of the changing role of standards committees and monitoring officers, and providing insights into the way they operate. This is important as we prepare for further devolution of powers to local standards committees. The research found that, on the whole, monitoring officers report a positive working relationship with their standards committee (97%), feel supported by their chief executive (89%) and perceive providing advice to members as one of the positive aspects of their role (89%). Other findings indicate that monitoring officers feel their future workload will be impacted upon by the anticipated legislative changes, with 90% of respondents anticipating an increase in workload and only 45% stating that they feel prepared for the increase.

When interpreting the findings, it was useful to draw on previous research. Professor Gerry Stoker and his team from the University of Manchester have previously identified three types of standards committee: the lapdog, the watchdog and the guide dog. A lapdog committee is ineffective due to resource problems; the watchdog focuses on member conduct, operation of the Code of Conduct, and preparing members for hearings. The guide dog committee fulfils the statutory role yet sees itself as supportive as well as regulatory.

From the BMG Research it seems that many standards committees undertake activities which could be regarded as watchdog activities: monitoring the effectiveness of the Code of Conduct (98%), training/arranging seminars on the code of Conduct (97%), hearings (87%) and providing advice to members on the Code/ethics (81%). Given that these functions are statutory requirements, this finding shows there may be some uncertainty and/or a lack of understanding over the exact nature of their role and their responsibilities.

Encouragingly, there are some standards committees taking on activities which might be

regarded as those of a guide dog: 29% of respondents indicated that their standards committees had been involved in an overview of the whistle blowing Code, and 11% had been involved in responding to Ombudsmen investigations. These standards committees are not just concerned with the mechanics of the Code but on embedding an ethical culture within the organisation.

We would like to thank those of you who took part in this research. The Standards Board is now in the process of carrying out a new project, which will examine satisfaction with the advice and guidance we provide, and identify future needs. You may receive a questionnaire asking for your help with this research — if you do, please fill it in and return it to us. Thank you.

Summary reports of past and future research are available on our website at:

www.standardsboard.co.uk/research

Change to referrals criteria

The Standards Board for England has recently added to the criteria which are used to decide what complaints are referred for investigation. We now take into account the time that has passed since the conduct allegedly occurred. This is in addition to our general criteria — that a matter should be investigated when we believe it is:

- serious enough, if proven, to justify the range of sanctions available to the Adjudication Panel for England or local standards committees
- part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority, and there is no other avenue left to deal with it, short of investigation

The Standards Board decided to make this change because many complaints about matters that occurred a long time ago were seemingly resulting from political considerations or personal disputes. We wished to address this situation, whilst still retaining the ability to investigate serious complaints. This approach is consistent with that of many other regulatory bodies, which take into account the time that has passed when considering new complaints.

This change does not prevent us from investigating serious matters that have only just come to light.

We recognise that serious misconduct can be uncovered through an audit, review or change in administration and we would not wish to limit our ability to look into these matters. As always, we continue to assess each case on its merits, with serious cases being referred for investigation regardless of the length of time that has passed.

Sharing good practice

The eight local authority monitoring officers in Suffolk meet regularly with their association of local councils, carry out investigations for each other, and arrange for their standards committees to meet each other.

This group believes it is important for standards committees to know the national picture, not least because any decisions they take may be subject to appeal to a case tribunal. Last year, having considered how they could work more effectively in keeping their committees up-to-date with the national standards picture, they agreed to take it in turns to produce a bi-monthly standards update. This was to cover issues such as changes to the Code, important case tribunal decisions and even high court cases on the law of bias.

A standard template, without any branding, was created so that it could be used by all monitoring officers. Producing an issue does not take long — it is about a morning's work (which can be claimed as CPD) — and the result is circulated around all authorities in Suffolk. Each monitoring officer only has to produce an update every one and a half years which means the task is manageable.

Different councils use the update in different ways. Some circulate it to their councillors, some just to the standards committee. Others use it as source material for training officers and councillors or report it to their committee so it can be used as a basis for an updating session. It also helps monitoring officers ensure that the advice they give to councillors reflects the latest thinking of the Adjudication Panel. Councils can also consider whether their own practice should be changed as a result of case tribunal decisions.

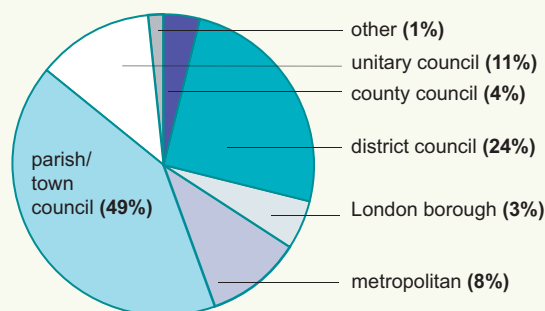
Thank you to Paul Turner of Ipswich Borough Council for providing the information for this article. If you would like a sample issue of the update, please contact him at paul.turner@ipswich.gov.uk

Referral and investigation statistics

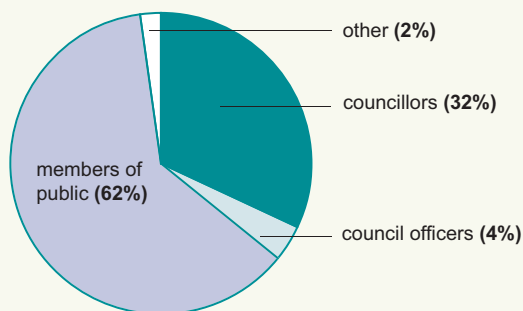
The Standards Board for England received 1996 allegations between 1 April and 31 October 2006, compared to 2427 during the same period in 2005.

The following charts show referral and investigation statistics during the above dates in 2006.

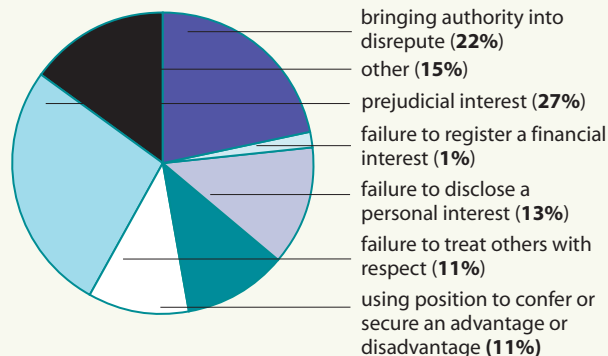
Authority of subject member in allegations referred for investigation



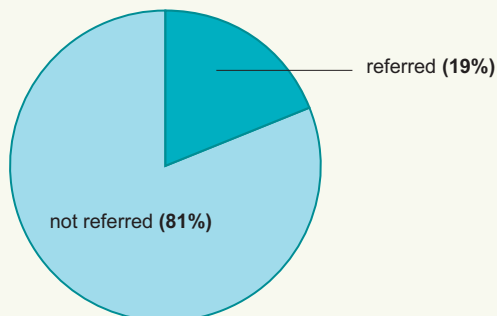
Source of allegations received



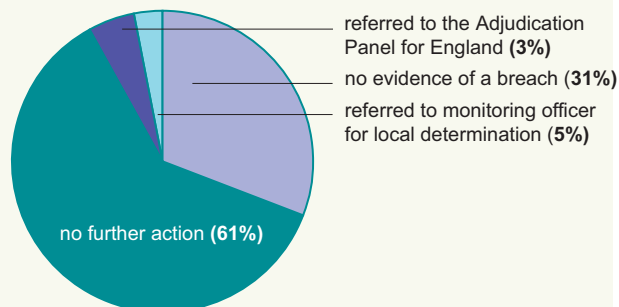
Nature of allegations referred for investigation



Allegations referred for investigation



Final findings



Registering land interests

Under the Code of Conduct, members have to register a range of financial and other interests including any land in the area of the authority in which they have a beneficial interest. The address or other description (sufficient to identify the location) of the land must be provided.

When the information to be recorded relates to a house or flat, this does not present any difficulty in providing an address. However, the registration of other land interests such as farm land, or other land with no address, is not as easy. In these circumstances members should be advised to include enough information with

the notice so that all landholdings can be identified. This could be done by providing map grid references or by attaching a copy of a map identifying the land holding(s), which can then be included with the member's register of interests.

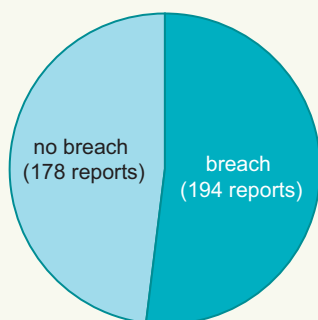
The requirements of the Code are precise. If a person wishes to inspect the register of interests to establish whether a member has a conflict of interest in a matter, they cannot do so if the information in the register is vague or general. Therefore, failure to record information in enough detail can be a breach of the Code.

Local investigation statistics

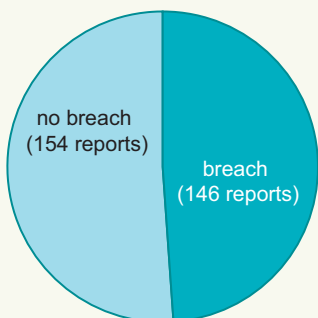
Of all cases referred since November 2004 for local investigation we have received a total of 372 reports — please see below for a statistical breakdown of these cases.

(NB: for the period 1 April — 31 October 2006, ethical standards officers referred 217 cases for local investigation — equivalent to 57% of all cases referred for investigation. Since 1 April 2006 there have been 11 appeals to the Adjudication Panel for England following standards committee hearings)

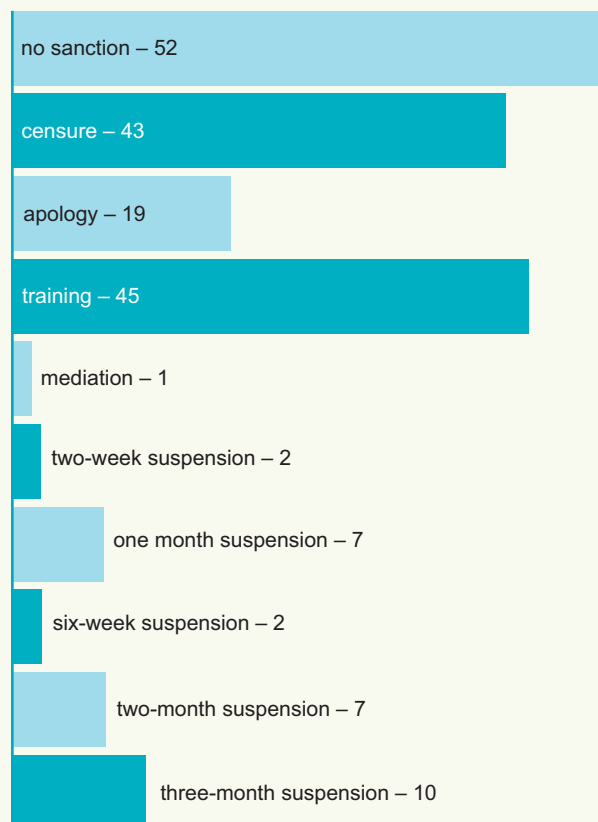
Monitoring officers' recommendations following local investigations



Standards Committee hearings



Standards committee determinations



Prejudicial interests — meetings of other authorities

There have recently been a number of enquiries submitted to the Standards Board about whether members with a prejudicial interest can attend a meeting of another authority of which they are not a member.

The Richardson judgement (which can be found in *Case Review number two*) makes it clear that attending a meeting of another authority is allowed under the Code of Conduct as long as it is in a purely private capacity. The member would not be able to attend a meeting of another authority in an official capacity, for example, to represent the

views of their own council, as they would be required to declare the interest and withdraw from the room.

So, for example, a parish councillor with a prejudicial interest in a planning application would be required to declare an interest and withdraw from the room during consideration of the matter by the parish council. However, they would be able to attend the district council planning committee, as long as this was in a purely private capacity, but would not be able to act as spokesperson for the parish council's views.

Prejudicial interests and discussions about unitary status

Some councils are thinking about local government structures for their areas in the light of the government's recent White Paper, and debates will take place in two-tier areas about unitary status. Members who belong to both a district council and a county council (dual-hatted members) will need to think about whether they have a prejudicial interest in such debates.

Dual-hatted members will have a personal interest in discussions about the future of each of their authorities. This is because they need to register their membership of other public bodies. But will this interest be prejudicial? The Code of Conduct says, "a member may regard himself as not having a prejudicial interest in a matter if that matter relates to ... another relevant authority of which he is a member."

Ultimately it will be a matter for the courts to decide if members have a prejudicial interest in such debates. The Standards Board takes the view that a member would not have a prejudicial interest. We do not believe that a member of the public, with knowledge of the relevant facts, would think a member's judgement of the public interest in such a debate would be prejudiced because they belonged to another authority. Members will therefore not need to declare a prejudicial interest in debates about unitary status.

For example, a councillor who has voted in favour of unitary status for their district council will also be able to take part in their county council's debates about unitary status. The member would, however, still need to declare a personal interest. Similarly a county councillor who has voted for unitary status for the county will be able to take part and vote about the same issue at the district level.

What about councillors who may be affected by the loss of significant allowances as a result of unitary proposals? The Standards Board takes the view that this issue can be covered by the exemption in paragraph 10(2) that relates to "any functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989" so that affected individuals can declare an interest and then take part in any debate.

The relationship between the Code of Conduct and the Licensing Act 2003

The Standards Board has received a number of enquiries about how the provisions of the Code of Conduct impact on members who may be involved in licensing committee activities. The following guidance is given to address the most frequently asked questions.

Are councillors who want to attend local authority licensing hearings/meetings exempt from the effects of the Code because of provisions in the Licensing Act 2003 (Hearings) Regulations 2005?

Paragraph 14 of the hearing regulations says that a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified. However, this provision does not override the provisions of your local Code. The Code of Conduct prevents a member with a prejudicial interest from attending any meeting of a committee, sub-committee etc of the council. The meaning of committee is not defined further. There is no reason to believe that it excludes a licensing committee established under the Licensing Act 2003.

Therefore, a member with a prejudicial interest in a licensing application cannot attend the meeting where that application is being discussed. It follows that they cannot act as an effective representative of an applicant or any other interested party. They should ask another councillor to take on this role.

If a member has a prejudicial interest, is he or she nevertheless entitled to attend such a hearing/meeting in a personal capacity as opposed to a representative capacity?

No. The Court of Appeal decision in *R (on the application of Richardson and another) v North Yorkshire County Council and others* [2004] 2 All ER 31 is binding. All members with prejudicial interests are excluded from hearings or meetings of a licensing committee in whatever capacity they purport to be attending.

There is no breach of an excluded member's right to a fair trial under Article 6 of the European Convention on Human Rights. This is because they can still submit written representations, and the committee has a wide discretion to conduct hearings to ensure that no unfairness arises on the facts of a given case.

The Collins judgement

The Standards Board for England has asked the government to clarify rules about the behaviour of 'off-duty' local authority councillors. A recent interpretation of the Code of Conduct means that councillors will generally not be bound by the Code when they are acting in an unofficial capacity.

This follows the decision of Mr Justice Collins during the High Court appeal by Ken Livingstone against a decision of the Adjudication Panel for England. The Panel suspended Mr Livingstone for a month for bringing his office into disrepute during an altercation with an Evening Standard journalist, but this was overturned by Mr Justice Collins.

He said in his judgement "If it is thought appropriate to subject a member of a local authority to a code which extends to his private life, Parliament should spell out what is to be covered". The judge commented on section 52 of the Local Government Act 2000, which imposes a duty on councillors to give an undertaking to observe the Code of Conduct 'in performing his functions'. He took the view that this duty limits the scope of the Code, so that conduct in a member's private capacity can only come within the scope of the Code where it is established that there was a direct link with the member's office. An example of when it could apply would be if a member uses his office for personal gain.

Examples of cases where he did not think that the Code was able to apply included where a member shoplifts, or is guilty of drunken driving. If the offending conduct had nothing specifically to do with the member's position as councillor, such actions will no longer be caught by the Code

This is a narrower interpretation than has previously been applied to the Code of Conduct. For the time being, the Code will need to be interpreted under the terms indicated by this High Court judgement, so that a member's conduct in their private capacity will only fall within the terms of the Code where there is a direct link between the conduct and the member's office.

A member who is convicted of a criminal offence and sentenced to more than three months imprisonment (whether suspended or not) is automatically disqualified from public office for five years. However, after the Collins judgement, it is possible for an individual to be imprisoned for two months for offences such as defrauding the council of housing benefit, or downloading child porn, and to remain as a councillor until removed by the electorate.

The Standards Board has considered the implications of the judgement and is preparing guidance on its interpretation.