

Contents

- 1 Consultation on the Code of Conduct
- 3 The Local Government and Public Involvement in Health Bill
- 3 Directions
- 4 The revised Code of Conduct — acceptance of office
- 5 Annual Assembly 2007
- 6 Guidance programme for 2007
- 7 On the road with the Standards Board
- 8 After Livingstone — bringing your office or authority into disrepute
- 8 Seeking volunteers

Welcome to the February issue of the *bulletin*.

This is a timely edition of the *bulletin* — as we go to print we are in the middle of the government's consultation period on the wording of the revised Code of Conduct, and the *Local Government and Public Involvement in Health Bill* is going through the committee stage in the House of Commons. You will find articles on both of these issues in the pages that follow.

If the revised Code is to be introduced in time for the local elections in May, there is much work to do. We know that monitoring officers and members are keen to receive new guidance at the earliest opportunity, and work is well underway to make sure that it is ready to be released as soon as the new Code is published.

The *Local Government and Public Involvement in Health Bill* includes all the necessary provisions for a more locally-based conduct regime, with more responsibilities for standards committees and the Standards Board acting as a light touch regulator. It is anticipated that these arrangements will be introduced in April 2008. If they are to operate effectively from the outset, it is important that we start to work with authorities as soon as possible to develop examples of good practice. These can then be shared across all standards committees.

You will find an invitation in this issue of the *bulletin* for authorities that are interested in being involved in pilot work on the operation of the local filter, joint working or performance monitoring. The Standards Board is looking forward to working with a range of standards committees to develop robust arrangements, and to help ensure that the new devolved system of dealing with allegations has the confidence of members, officers and the public.

David Prince, Chief Executive

Consultation on the Code of Conduct

The Department for Communities and Local Government (DCLG) has started its consultation process on amendments to the Model Code of Conduct. The consultation paper can be found in the consultation section of DCLG's website at www.communities.gov.uk/.

The closing date for responses is 9 March 2007, so authorities wishing to submit views will need to act quickly.

The Standards Board for England welcomes the proposed changes and the support they will give to members in their community advocacy role. We will

continue to work with government and stakeholders as the consultation process continues and will be encouraging early implementation of the revised Code.

“It is important that the opportunity to have a clear, workable Code of Conduct — one that helps maintain high standards of conduct and supports democratic debate — is not lost.”

The revised Code implements almost all of the headline recommendations the Standards Board made to ministers following an extensive consultation with local government.

These are summarised as follows:

- The definition of personal interest has been changed to provide a more locally-based focus, to ensure that interests shared with a substantial number of other residents do not need to be declared.
- A new category of 'public service interest' has been introduced. This will make requirements less onerous for dual-hatted members and those members appointed or nominated by the authority to outside bodies.
- The unlawful discrimination provision is to be replaced by a duty that members should not do anything that would seriously prejudice their authority's statutory duties in regard to equality. This will allow action to be taken on some discrimination issues that have previously been outside the scope of the Code.
- Bullying is specifically referred to in the Code and its definition will be clarified by our published guidance.
- The 'whistleblowing' duty to report breaches by other members has been removed.
- Members will be able to disclose confidential information in the public interest (with Standards Board guidance on a public interest test).
- Certain behaviour outside of official duties will be regulated but it will be limited to unlawful activities (although implementation of this part of the Code will have to wait until the *Local Government and Public Involvement in Health Bill* is enacted).

- Prohibiting the intimidation of any person involved in an investigation, including the complainant, witnesses and officers of the authority.

The consultation paper also proposes changes to the rules relating to participation in meetings by members who have a prejudicial interest. With the consent of a meeting, those members will be allowed to make representations and answer questions on the matter before withdrawing from the room. This will particularly benefit members that may, for example, wish to make representations to a planning committee on their own planning application.

It is proposed that the current four model Codes will be combined into one consolidated Code. Certain provisions, such as those relating to overview and scrutiny, will not apply to authorities that do not operate executive arrangements.

The consultation paper is silent on the timing and implementation of the revised Code of Conduct following consultation, although the Standards Board understands that the revised Code is intended to be tabled in Parliament later in March, and that authorities will then have six months from May 2007 to adopt it.

The Standards Board for England would hope that authorities are in a position to adopt the revised Code of Conduct at their annual meeting in May. In order to achieve this, monitoring officers will need to consider the timetable that will need to be followed within their authority both for the adoption of the Code of Conduct and for training for members.

We would also encourage monitoring officers to work with their parish clerks to ensure adoption of the revised Code of Conduct by parish and town councils at an early opportunity. This should help to minimise any confusion that may arise by having two different Codes of Conduct applying within their area.

The Standards Board for England will be responding to the consultation paper and we would encourage other authorities to do so as well.

It is important that the opportunity to have a clear, workable Code of Conduct — one that helps maintain high standards of conduct and supports democratic debate — is not lost.

The Local Government and Public Involvement in Health Bill

The *Local Government and Public Involvement in Health Bill* fulfils the government's commitment to put a framework in place which allows local standards committees to deal with all aspects of the receipt and determination of allegations that a member has breached the Code of Conduct.

The Bill allows the Standards Board for England to undertake the strategic regulator role that we have always considered should be our primary function. It also responds to the Collins' judgement, making clear the government's view that some aspects of members' conduct that is undertaken in a private capacity should be capable of Code of Conduct regulation.

A brief summary of the main provisions in the Bill relating to standards is provided below.

- Standards committees will be responsible for the receipt of allegations and determining whether they should be investigated. If they are to be investigated, it needs to be decided whether it will be undertaken by the monitoring officer or the Standards Board.
- Standards committees must be chaired by an independent member.
- There will be a duty on standards committees to provide periodic information to the Standards Board about the allegations the standards committee has received and how it has dealt with them.
- The Code of Conduct will cover unlawful actions undertaken at any time.
- The Secretary of State will make regulations for the circumstances in which the Standards Board can suspend a standards committee from deciding whether allegations should be investigated.
- Standards committees will be allowed to undertake joint working for some or all of their responsibilities.
- There will be a general power to allow the creation of sub-committees to deal with any of the functions of a standards committee
- The provisions regarding confidentiality of reports are to be relaxed to allow information to be shared with standards committees.

- A standards committee will be able to refer a report to the Adjudication Panel for England if it considers that the sanctions available to it are insufficient. The sanctions available to the Adjudication Panel for England are also to be widened to include lower level sanctions. This will allow it to deal with any reports that are referred to it.

Once the Bill receives royal assent, the Secretary of State will need to make a range of regulations. This will include the use of the Standards Board's power to suspend standards committees, the operation of joint working arrangements, and the composition of sub-committees.

The Standards Board will produce statutory guidance on a range of issues such as how the assessment of investigations should be undertaken. This will include criteria for referring an allegation for investigation and guidance on joint working arrangements.

Directions

Ethical standards officers have been able to issue directions to help resolve local problems since November 2004, when the regulations for local determinations were amended. Since April 2006, 36 directions have been issued.

Directions can be a more useful way of tackling complaints in cases where problems within a council may be the cause of a councillor's alleged misconduct. In such cases, an ethical standards officer may decide that a direction may be more appropriate than an investigation. At the moment, only an ethical standards officer has power to issue a direction

Once a case has been referred for investigation, the ethical standards officer will try to identify any patterns of conduct or underlying issues that would be more appropriately dealt with by a direction rather than an investigation as soon as possible. If a monitoring officer has already dealt with previous complaints about the council, they will have an insight into whether an investigation will resolve the issues or make them worse.

Examples of where a direction may be more appropriate than an investigation include:

- Multiple allegations concerning members of a parish council (including those not referred for investigation). The concern here is that allegations would continue to be made unless some constructive steps were taken to deal with the cause of the problem.
- Past investigations were ineffective in addressing persistent problems.
- Personal conflict/communication problems between members — tit for tat behaviour.
- An allegation that appears to demonstrate a general lack of understanding of council procedures, or of the requirements of the Code.

The ethical standards officer can direct the monitoring officer to undertake a variety of actions depending on the particular circumstances facing the council, for example:

- Review procedures within the authority to make them more robust.
- Arrange mentoring, guidance or training.
- Arrange mediation between councillors using a facilitator.

Issuing a direction can present its own difficulties, especially at the time when the parties are informed of the proposals. Ethical standards officers often receive an initially negative response to a proposed direction, as the parties involved are often reluctant to consider a direction as a way of resolving disputes. The complainant may want the complaint investigated and the subject member may want to be vindicated.

We will give as much support as possible to a monitoring officer in carrying out a direction. Where it is a parish issue, it is often helpful to obtain the assistance of the local County Association of Local Councils, and to explore what assistance may be available from the standards committee.

If an allegation is already being investigated locally and there are subsequent allegations which indicate a direction may be more appropriate, or if the monitoring officer raises concerns about the impact of an investigation on the council and considers a direction more appropriate, the monitoring officer may ask to refer the case back to the ethical standards officer. This is so that a direction may be considered. Monitoring officers must inform the ethical standards officer about the action they have taken in response to the direction.

The ethical standards officer may, if unhappy with the report, require the monitoring officer to publish a statement giving details of the direction and reasons for failing to implement it. For example, it may be necessary to publicise the fact that a member is reluctant to take part in a process that has been devised to improve the functioning of the council. If the monitoring officer indicates that the aims of the direction have been met, and the ethical standards officer is satisfied that the members have complied with the direction, the matter will be closed.

You can find examples of when directions have been used in the *Case Review* number four, available from our website at www.standardsboard.co.uk

The revised Code of Conduct — acceptance of office

The planned implementation of the revised Code of Conduct later this year has raised the issue of whether members who sign a declaration of acceptance of office when they are elected will have to sign another declaration of acceptance of office when the revised Code is adopted by their authority.

The Standards Board does not believe that this is necessary: Section 52(2) of the *Local Government Act 2000* says that the declaration may include an undertaking by the member to observe the authority's Code of Conduct "for the time being under section 51".

The *Local Elections (Declaration of Acceptance of Office) Order 2001* [SI2001/3941] provides the form of declaration that members must sign when they are elected. This says that:

"I undertake to observe the code as to the conduct which is expected of members of [insert name of authority]."

Both of these provisions appear to refer to being bound by whichever Code is in force at the authority.

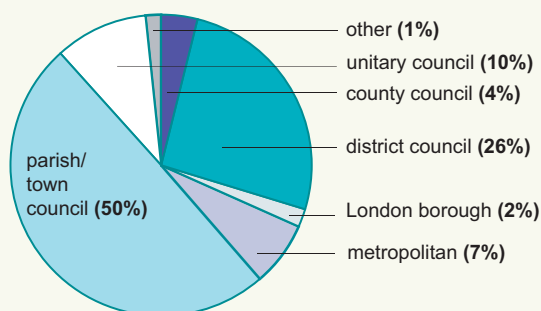
Taken together we consider these provisions to mean that the member is bound by whichever Code currently applies at the authority and, therefore, there is no need to sign another declaration when the revised Code is adopted.

Referral and investigation statistics

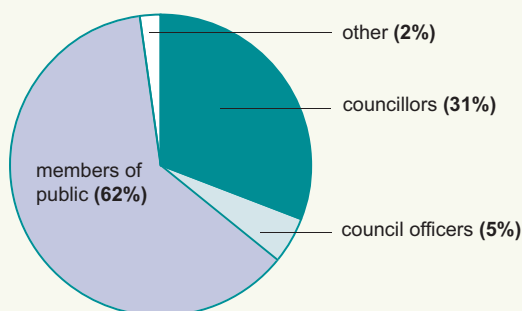
The Standards Board for England received 2,498 allegations between 1 April and 31 December 2006, compared to 2,949 during the same period in 2005.

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

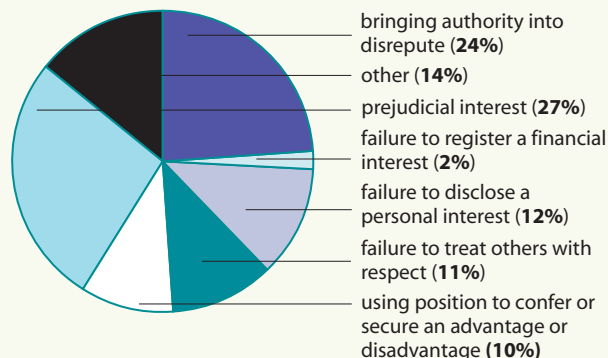
Authority of subject member in allegations referred for investigation



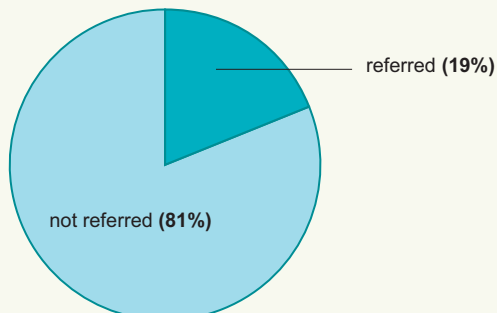
Source of allegations received



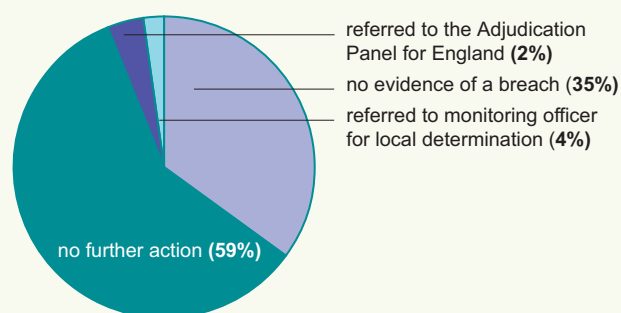
Nature of allegations referred for investigation



Allegations referred for investigation



Final findings



Annual Assembly 2007

Down to Detail — making local regulation work is the sixth Annual Assembly of Standards Committees, to be held on 15-16 October 2007 at the International Convention Centre in Birmingham.

With the move to a local filter system for complaints fast approaching, the conference will set out how to put this into action and achieve greater consistency and effectiveness in local regulation.

Down to Detail will also explore the vital issues raised by the revised Code of Conduct, and will feature practical workshops and plenaries focusing on understanding the key changes.

Conference topics include:

- a step-by-step guide to the local filter process, including new reporting requirements
- managing referrals, investigations, hearings and sanctions
- joint working
- mediation
- an introductory overview of the revised Code
- confident communications
- engaging leaders

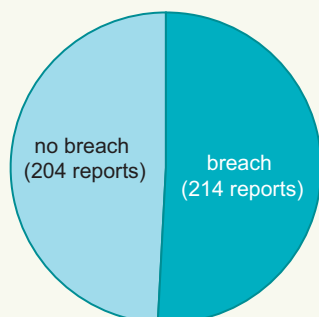
The Annual Assembly is the leading conference on issues concerning standards committees. Booking details will be sent to all authorities in March.

Local investigation statistics

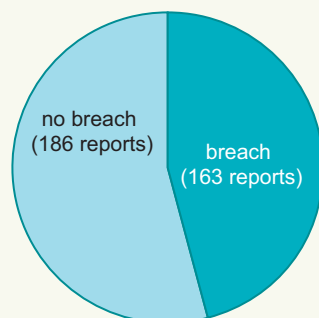
Of all cases referred since November 2004 for local investigation we have received a total of 418 reports — please see below for a statistical breakdown of these cases.

(NB: for the period 1 April — 31 December 2006, ethical standards officers referred 252 cases for local investigation - equivalent to 52% of all cases referred for investigation.)

Monitoring officers' recommendations following local investigations



Standards Committee hearings



Standards committee determinations



Guidance programme for 2007

In *bulletin* 31 we discussed the Standards Board's commitment to producing guidance and training materials to help monitoring officers and standards committees implement the revised Code of Conduct. We are now working on the specific details of our Code guidance programme for 2007.

This will include a new DVD to help local authorities train members. The DVD will explain the revisions to the Code using dramatised scenarios to illustrate particular paragraphs, and we expect to be able to release it soon after the revised Code comes into force.

We are also planning to publish guidance in written form similar to our current range. This will

include a general guide to the revised Code and a detailed guide to the declaration of interest paragraphs. We expect to publish these two publications, along with a simple guide, on our website as soon as the Code comes into force.

The guidance will be available in booklet form soon afterwards and every authority covered by the Code will receive copies.

This year we will also publish a fifth *Case Review*, which will be similar to our *Code Q&A Case Review Volume 1*. This is a paragraph-by-paragraph consideration of the code illustrated by past cases. As such, it will contain specific guidance on the new bullying paragraph expected to be included in the revised Code.

On the road with the Standards Board

We will be hosting a series of 11 roadshows across the country in June 2007. The focus will be on the revised Code of Conduct and preparing for the proposed introduction of the local filter system for complaints in 2008.

The roadshows will offer an opportunity to discuss any issues that have arisen since the implementation of the revised Code and any concerns about local preparation for dealing with complaints.

As in previous years, the roadshows will take the format of presentations and discussions, and delegates will be encouraged to participate in question and answer sessions. Board members and the chief executive will also be on hand to answer any queries.

Invitations have already been sent out to local authorities as well as the parks, police, transport and fire authorities that are also covered by the Code. The roadshows will be mainly aimed at monitoring officers and members from local standards committees.

Previous roadshows have offered the Standards Board an excellent opportunity to engage with delegates, answer queries, and offer guidance and support. They also offer delegates the chance to network informally with colleagues from the local area.

Dates and venues of the roadshows are:

- **Manchester – 6 June**
- **York – 7 June**
- **Newcastle – 12 June**
- **Nottingham – 13 June**
- **Birmingham – 14 June**
- **Truro – 19 June**
- **Exeter – 20 June**
- **Winchester – 21 June**
- **Swindon – 26 June**
- **Norwich – 27 June**
- **London – 28 June**

For more information please contact our event managers, Benedict Business Resources, on 01483 205432.

After Livingstone — bringing your office or authority into disrepute

The only sections of the Code of Conduct which apply to a member when not acting in an official capacity are the requirement not to bring the office or authority into disrepute and the requirement not to misuse their position to confer an advantage or disadvantage on yourself or any other person. **These also apply "in any other circumstances".**

The recent High Court decision in the case of *Livingstone v Adjudication Panel for England* changes the interpretation of what these words mean, making them more restrictive.

The court said that the circumstances are limited to situations when a member is performing his or her functions or purporting to use their status as a councillor.

There appear to be three main principles that need to be present for the behaviour under consideration to amount to a breach of the Code.

- A member must have used or sought to use their status as a member of the council. This is a "using one's position" test.
- The use of the status must be of a type that is capable of amounting to a failure to comply with the Code (for example: behaviour that amounts to treating others with disrespect; bullying; use of confidential information; and so on). This is a breach of Code test.
- The disrepute must attach to the office or the authority and damage it, as opposed to simply damaging the member's reputation. This is a damage to reputation test.

A case tribunal or standards committee will need to be persuaded that the misconduct can damage the reputation of the member's office or authority, not just the reputation of the individual concerned.

Certain kinds of conduct (for example drink driving or petty theft) may damage the reputation of an individual but will rarely be capable of damaging the reputation of the office of councillor or the reputation of the authority.

Establishing when disrepute attaches to the office or council is not easy because the High Court gave no indication of what tests to apply.

Here are some of the possible factors:

- Prejudicing the public interest for private gain (for example a councillor uses their position to obtain confidential information which they then use to secure a personal profit).
- Using or trying to use position or status as a member of the council (for example a councillor is in dispute with a neighbour about their planning application and threatens to speak to contacts who control the planning committee).
- Defying important and well established rules of the authority for private gain.
- Engaging in conduct which directly and

significantly undermines the authority's reputation as a good employer or responsible service provider (for example sexual offences against children committed in a village hall run by the council of which the offender is a member).

What is clear is that each case will need to be dealt with on its merits. The government wants to extend the scope of these provisions and has made proposals to do so in the new *Local Government and Public Involvement in Health Bill*, which is discussed on page 3.

Seeking volunteers

The White Paper *Strong and Prosperous Communities* outlines a future ethical framework where local government takes greater responsibility for their ethical environments and the Standards Board has a role as a light touch, strategic regulator.

We are keen to work with local government to develop the various aspects of our respective new roles.

As such we are looking for volunteers to work with us as pilot sites on the following topics:

- Joint arrangements for standards committees.
- Operating the local filter.
- Developing the Standards Board's monitoring and auditing role (identifying what data to collect, how to collect it and types of intervention).

We are asking volunteers to test and comment on the instruments and approaches we have developed. It is likely to involve the monitoring officer, standards committee members, and possibly other officers such as the chief executive. We will endeavour to ensure that your involvement is not too resource intensive.

The work will initially take place between May and September 2007. If you would like to be involved, then please e-mail gary.hickey@standardsboard.co.uk. Please also state which of the pilots you would like to be involved in — you can choose more than one.

If we have a large number of volunteers it is possible that we will not be able to include all those authorities that wish to take part. However, we will respond to everyone that puts themselves forward. If you have any queries then please contact Gary on 0207 378 5087.

Contacts and more information

Please feel free to let us know any ideas and suggestions you may have for future issues of the *Bulletin*, along with any questions or feedback. Please send comments to:

- bulletin@standardsboard.co.uk
- The Standards Board for England
First floor, Cottons Centre
Cottons Lane
London SE1 2QG

More information

You can get more information on the Standards Board for England and the Code of Conduct, including case summaries, frequently asked questions and guidance for members from our website at www.standardsboard.co.uk