

THE BULLETIN #34

July 2007

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Welcome to Issue 34 of the *Bulletin*.

The revised Code of Conduct was introduced two months ago and many councils across the country have now adopted it. Issues around adopting and advertising the revised Code are covered in this edition of the *Bulletin*, along with useful guidance on other provisions of the Code. The issues discussed fall into two broad groups, those relating to the adoption or transition from the old to the new Code, and those around its application.

In addition, we offer advice to authorities on having protocols in place for the release of confidential information by members. Robust authority protocols can assist in promoting and maintaining ethical standards and ensuring that confidential information remains protected where appropriate.

This issue of the *Bulletin* also examines those decisions by ethical standards officers to take no further action in a case, and how the referral of cases for investigation can be a stimulus to local action.

The Standards Board for England remains committed to providing guidance and support for authorities to implement and uphold the new Code. Hard copies of our guidance booklet for members have been distributed to all monitoring officers, and our training DVD is currently in the final stages of production.

We are also involved in a number of upcoming events, more details of which can be found later in this newsletter. We look forward to meeting as many of you as possible at these events and to hearing your feedback.

David Prince
Chief Executive



Standards Board
for England

Confidence in local democracy

Issues surrounding the revised Code of Conduct

In the short time since the revised Code of Conduct was introduced, our Policy and Guidance advisers have identified a number of frequently asked questions. Further information on these common queries is supplied below.

Adoption of the new Code

As soon as your authority has adopted the revised Code, it must send notification to the Standards Board for England. The easiest way to do this is by sending an email to enquiries@standardsboard.gov.uk

This notification should clearly state:

- whether the model Code was adopted unamended or any amendments that have been made
- on what date the adoption occurred
- on what date the adoption comes into effect

A simple notification will usually suffice and your authority does not need to provide us with a copy of the entire Code it has adopted, unless you amend the mandatory provisions, or add extra provisions to suit local circumstances. We recommend that you obtain legal advice before adopting such amendments. This is to ensure that the provisions can be enforced and do not break any law or regulation.

Advertising your new Code

Under Section 51(6)(b) of the Local Government Act 2000, you must publish a notice in the local newspaper as soon as possible after your council has adopted a Code of Conduct. The notice should state that a Code has been adopted and that it is available to be seen by members of the public at all reasonable hours.

When the previous Code was introduced, some unitary and district councils organised combined notices for councils in their area. This can save money, especially where there are a large number of parish councils.

To enable a combined notice to be arranged, parish clerks will need to ensure that their councils adopt the revised Code quickly. They will also need to confirm to the monitoring officer where copies of the Code can be inspected within the parish. This information must be included in the notice published in the newspaper.

While the newspaper notice may take some time to coordinate, your authority must notify the Standards Board immediately after the adoption of the new Code. This should not be subject to coordinating several notifications at once and should be undertaken by each council without delay.

Amending paragraph 7 of the revised Code

Paragraph 7 says that members must have regard to advice from their monitoring officer or chief finance officer where they give it under their statutory duties.

This paragraph is not mandatory for parish councils. Therefore, parish councils may choose to adopt paragraph 7 as it applies to other types of authorities, adopt an amended version of paragraph 7, or leave paragraph 7 silent.

The Standards Board believes the last approach – leaving paragraph 7 silent – is preferable, and this is the approach used in our *Model Code of Conduct for Parish and Town Councils* which is available from our website. Paragraph 7 is drafted narrowly, and is limited to the statutory duties of the monitoring officer and chief finance officer. In our opinion, the wording of paragraph 7 does not translate appropriately to the parish context and may cause confusion among members and officers.

It has been suggested that parish councils should adopt a version of paragraph 7

referring to the need to have regard to the advice of the parish clerk. We do not support this amendment. Unlike monitoring officers and chief financial officers, clerks do not have statutory duties unless they also happen to be the authority's chief finance officer and are suitably qualified. Only in that case would it be appropriate for members to be required to have regard to a parish clerk's advice.

It would not be advisable to remove the limitation in paragraph 7 to statutory duties and simply include an obligation to have regard to all advice of your authority's clerk. In the Standards Board's view, this amendment would impose an unnecessary burden on members of parish councils to have regard to the clerk's advice and lead to unwarranted breaches of local Codes.

Registration of members' interests

The requirements for the register of members' interests are slightly different under the old and the new Codes. This means that members may need to complete a new form once an authority adopts the revised Code. However, this depends on the manner in which the information is already collected. As with the practice under the old Code, it remains a matter for each individual authority to review their existing procedures for collecting and maintaining this information.

Registering gifts and hospitality

It has been suggested to the Standards Board that rather than registering gifts and hospitality in the register of interests, the revised Code requires members to register the interests of people that give them gifts or hospitality. We believe this interpretation of the revised Code is incorrect.

The Standards Board believes that the revised Code requires members to register any gifts or hospitality worth £25 or over that the member received in connection with their official duties, and the source of the gift or hospitality. This must be done within 28 days of receiving the gifts or hospitality.

The source of the gift or hospitality affects whether you have a personal interest in any business of your authority where it relates to, or is likely to affect, the source's interests.

Where an obligation to declare your personal interest in any business arises solely from a gift or hospitality on the register, members are not required to declare the personal interest once three years have passed since the gift or hospitality was registered.

Any gifts or hospitality received more than 28 days before your authority's adoption of the revised Code do not need to be placed on the members' register of interests. However, we understand that some individual authorities require that members to do so. In the Standards Board's view, the revised Code does not apply retrospectively and so does not require earlier gifts and hospitality to be 'rolled over' onto the register of interests. These items should be retained on the register of gifts and hospitality maintained by monitoring officers under the old Code.

Cracking the Code: Event for parish councillors

The Standards Board for England is pleased to be supporting the National Association of Local Councils (NALC) with their major event for parish and town councillors. *Cracking the Code* will be held on 19 July 2007 at the Hilton Birmingham Metropole and will give councillors the chance to explore and discuss the new Code of Conduct. In a keynote address, David Prince, Chief Executive of the Standards Board, will talk about the implications of the new Code. He will also discuss the changes to the system which will result in all allegations about parish and town councillors being dealt with by the standards committee of their principal authority.

Other speakers from the Standards Board will talk about the new rules around personal and prejudicial interests, and the paragraphs in the Code that deal with bullying. Speakers from the Association of Council Secretaries and Solicitors (ACSeS) will be talking about the role of monitoring officers in advising and

supporting town and parish councillors, the changing role of standards committees, and confidentiality and the new Code of Conduct.

If you are a town or parish councillor and are interested in attending, you can find more information in the Conferences and Events section of the NALC website:
www.nalc.gov.uk

Disclosing confidential information: Authority protocols

Paragraph 4(a) of the revised Code of Conduct prohibits the disclosure by councillors of confidential information, or information believed to be of a confidential nature, except in a defined range of circumstances that includes disclosure in the public interest.

Disclosure in the public interest may be justified in the following limited circumstances, when **all** of the following four requirements are met:

- 1) the disclosure must be reasonable
- 2) the disclosure must be in the public interest
- 3) the disclosure must be made in good faith
- 4) the disclosure must be made in compliance with the reasonable requirements of the authority

The fourth requirement means that before making the disclosure a member must, in addition to considering the first three requirements above, comply with the authority's policies or protocols on matters such as whistle-blowing or member-officer relationships and confidential information.

The Standards Board recommends that authorities ensure they have such policies in place to cover the possibility of a member considering a release of information, and that they take steps to ensure that all councillors are familiar with the provisions.

Appropriate and robust authority protocols can assist in ensuring the protection of confidential information where appropriate, and in promoting and upholding high ethical standards more generally.

When no further action is required

Our ethical standards officers sometimes decide that no further action should be taken in a case. The Standards Board for England recently analysed these decisions, commonly known as "b findings".

A b finding may occur when an ethical standards officer is unable to conclude that a breach of the Code of Conduct has occurred, or in cases that are deemed insufficiently serious to justify a finding of further action.

The sample of cases analysed, from the 2006-07 financial year, showed that in a third of all cases attracting a b finding, evidence was not decisive enough to conclude a breach. A further 17% of cases with b findings were deemed insufficiently serious to pursue a course of disciplinary action.

In many other cases, however, the reason why no further action was initiated was because the necessary remedial steps had already been taken. This could mean that an apology had been made, training had been undertaken or interests had been registered.

The sample revealed that a remedy was already in place, or had been agreed, in 30% of cases attracting a b finding in the 2006-07 financial year. Such action and improvements often only come about after an allegation is referred for investigation by the Standards Board and would be unlikely to have occurred otherwise.

Rather than a b finding being a negative outcome, therefore, findings of no further action can often be seen as a tribute to the effectiveness of the Code of Conduct and its enforcement.

The Standards Board firmly believes that one of the measures of the Code's success is the improvement in the behaviour of councillors and remedies of past mistakes.

"That's a wrap!"

Filming for the Standards Board's new training DVD on the revised Code of Conduct has recently finished. The resulting film will show the exploits of Grant Austin and his fellow councillors and local authority officers as they prepare for a potentially explosive planning committee meeting.

The programme examines the rules about declaring interests, disclosing confidential information and bullying. Training sections are interspersed with the drama, and extras include scene selection and subtitles.

The DVD will be of particular value to new and continuing councillors who want to increase their understanding of certain parts of the Code.

Copies of the DVD will be sent to all monitoring officers in late July, and we look forward to hearing your feedback.

Predetermination or bias: An occasional paper

Predetermination and bias have proven to be both difficult and controversial issues for many members and monitoring officers. Although they are judge-made, common law issues, and not part of the Code of Conduct, the Standards Board has agreed to publish an occasional paper to help clarify the issues.

Based on advice from leading treasury counsel Philip Sales QC, the paper includes examples of where members are predisposed, and so can take part in a debate and vote, and where they are predetermined and their participation in a decision would risk it being ruled as invalid.

The paper will be available on our website, along with the full opinion from Philip Sales QC, at the end of July.

Events update

The Standards Board is looking forward to meeting you, answering your questions and listening to your feedback at a number of forthcoming events.

In addition to NALC's *Cracking the Code* event for parish councillors mentioned previously, we will be attending the conference of the Local Government Association from 3-5 July 2007 in Birmingham.

Places are also booking up fast for our Annual Assembly on 15-16 October entitled *Down to Detail: Making local regulation work*. The assembly will provide an in-depth look at putting local regulation and the new Code of Conduct into action and is a vital event for all those who work with the Code. Visit www.annualassembly.co.uk to book one of the remaining places and to find out more about the programme.



**Sixth Annual Assembly of
Standards Committees**

15-16 October 2007

**International Convention Centre,
Birmingham**

www.annualassembly.co.uk

As we write, we are in the midst of our series of 11 roadshows, held around the country throughout June. They have been a great tool for sharing advice and experience on implementing the changes to the Code, and how they will affect you and your authority. They have also allowed us to listen first-hand to your feedback, concerns and queries.

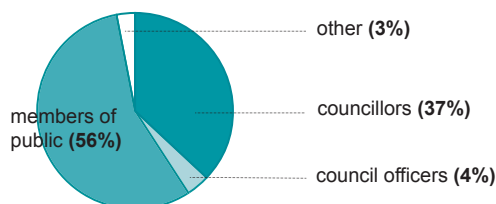
If you have a query about the Code of Conduct at any time, please contact our Policy and Guidance department at enquiries@standardsboard.gov.uk or on 0845 078 8181.

Referral and investigation statistics

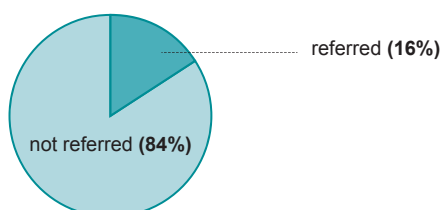
The Standards Board for England received 653 allegations between 1 April 2007 and 31 May 2007, compared to 605 during the same period in 2006.

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

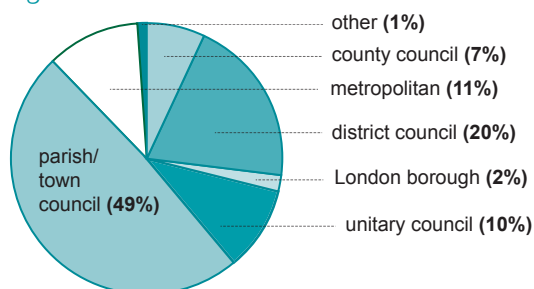
Source of allegations received



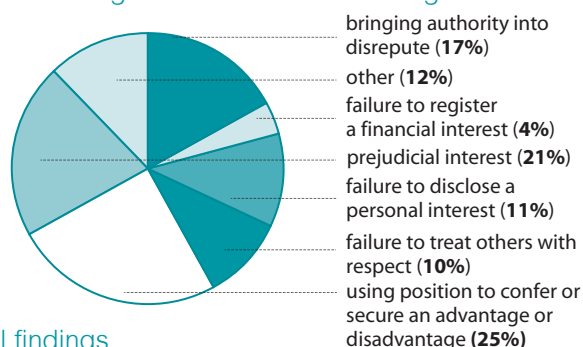
Allegations referred for investigation



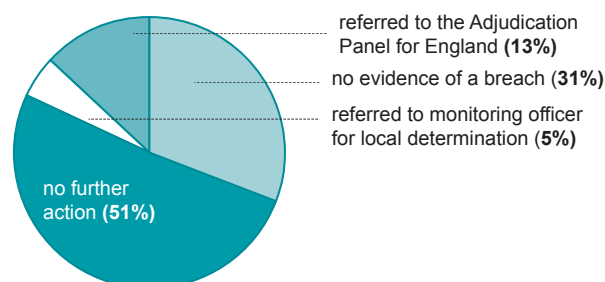
Authority of subject member in allegations referred for investigation



Nature of allegations referred for investigation



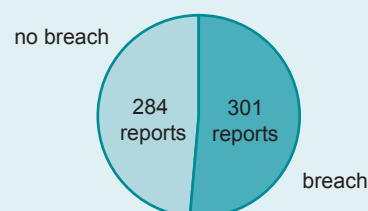
Final findings



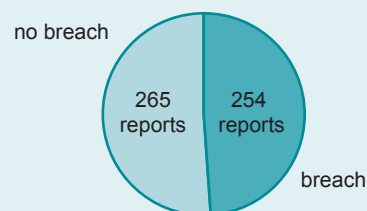
Local investigation statistics

For the period 1 April 2007 to 31 May 2007, ethical standards officers referred 66 cases for local investigation – equivalent to 65% of all cases referred for investigation. Since 1 April 2007 there has been one appeal to the Adjudication Panel for England following standards committee hearings. Of all cases referred since November 2004 for local investigation, we have received a total of 585 reports – please see below for a statistical breakdown of these cases.

Monitoring officers' recommendations following local investigations



Standards committee hearings



Standards committee determinations

