

NORTHAMPTON BOROUGH COUNCIL

STANDARDS COMMITTEE

Your attendance is requested at a meeting to be held at the Jeffery Room
on Thursday, 18 December 2008 at 5:00 pm.

D. Kennedy
Chief Executive

AGENDA

1. APOLOGIES
2. MINUTES
3. DEPUTATIONS / PUBLIC ADDRESSES
4. DECLARATIONS OF INTEREST
5. MATTERS OF URGENCY WHICH BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR IS OF THE OPINION SHOULD BE CONSIDERED
- . . . 6. ANNUAL STANDARDS BOARD CONFERENCE 2008 I Harley
Report of the Chair (copy herewith)
- 7. CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS F
AND EMPLOYEES- A CONSULTATION Fernandes
Report of Borough Solicitor (copy herewith) x 7334
- 8. STANDARDS BOARD- PUBLICATIONS UPDATE F.
Report of Borough Solicitor (copy herewith) Fernandes
x 7334
- 9. ADJUDICATION PANEL GUIDANCE ON REGULATION 17: F.
STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008 Fernandes
Report of Borough Solicitor (copy herewith) x 7334
10. EXCLUSION OF PUBLIC AND PRESS
THE CHAIR TO MOVE:
"THAT THE PUBLIC AND PRESS BE EXCLUDED FROM THE
REMAINDER OF THE MEETING ON THE GROUNDS THAT THERE
IS LIKELY TO BE DISCLOSURE TO THEM OF SUCH CATEGORIES
OF EXEMPT INFORMATION AS DEFINED BY SECTION 100(1) OF
THE LOCAL GOVERNMENT ACT 1972 AS LISTED AGAINST SUCH
ITEMS OF BUSINESS BY REFERENCE TO THE APPROPRIATE
PARAGRAPH OF SCHEDULE 12A TO SUCH ACT."

<TRAILER_SECTION>
A5828

STANDARDS BOARD CONFERENCE 2008

POINTS OF INTEREST

Sadiq Khan – Parliamentary Under Secretary (Community Cohesion)

Highlights of presentation

- Standards Board – Strategic Regulator.
- Local Committees – Promote & maintain high standards of conduct – Referee proportionally, fairly and responsibly.
- The public have the right to be able to trust their elected representatives to work on their behalf.
- When elected representative's conduct falls short it damages the local community and general trust in politicians both nationally and locally.
- All elected members should sign and agree the Code of Conduct. They should recognise that the Code protects them.
- Expectations of elected representatives in both their official and personal lives are currently being prepared and will be published shortly.
- A model code for Council employees is being prepared.
- An advice code is being prepared concerning Council dealings with Media and Publicity.

Dr Robert Chilton – Chairman Standards Board

Selected comments

- A good and effective Standards Committee is a key selling point of any Council.
- The Standards Board will give serious consideration to the prevention of bureaucracy within its development

STANDARDS

PURPOSE

All democratic and public governance relies upon high standards of probity. When conduct and behaviour are corrupt or improper, confidence is eroded in the democratic system.

The Code of Conduct provides:

- Consistency
- Clear expectations for the public
- Ethical building blocks of good governance.

LOCAL STANDARDS IN ACTION – First 6 months

- 1009 cases reported
- 54% - members of the public
- 36% members of authorities
- 10% others (Monitoring Officers, Authority Officers, Parish/Town Clerks and Members of Parliament)

ACADEMIC RESEARCH HIGHLIGHTS

1. Based upon 9 Council Case Studies. (Interviews, documents, public surveys, focus groups and local press analysis).
 - Simple effects – Hastened resignation of offenders and guided routine behaviour
 - **Established Virtuous Circles:**
 - a. Well respected Monitoring Officers
 - b. Ethical tone set by leadership
 - c. Everyone disposed to be proactive and pre-emptive toward possible misconduct and ethical risks
 - d. Culture of respectfulness in which being virtuous is embraced as part of the organisations identity
 - **Despair:**
 1. Ethical frameworks becomes a weapon of personal and political advantage
 2. Triggers enormous bureaucratic workload
 3. Spiral reinforced where punishments non existent, seen as feeble or ignored by transgressor
 4. **But even in dark corners, hope remained that ethical framework would provide some of the tools for a turnaround.**

2. Other research

- Our reputation as institutions are lower than that of many of the services we deliver.
- 55% of public knowledge of their local council is generally nothing or not much. 35% did not know which Political Party is in control of the Council and 34% of those who stated they did know were wrong. 80% did not know the name of the elected leader and 33% of those whom stated they did were wrong.
- Perceived motives of elected national politicians – 36% Country, 35% themselves, 22% Their Party. Perceived motives of local councillors – 25% local area interests, 32% their parties, 9% their family/friends, 27% their own.
- Conclusions:
 1. Despite the rise of managerialism, politicians matter as much as ever
 2. But huge efforts and new style is needed if change is required
 3. Style of politics – try fighting in private if possible
 4. Drawing attention to complaints and/or allegations does not help
 5. There are no signs that the public are happy with Local Government
 6. Examine visibility of services and branding
 7. Agree what you want to be famous for - and stick to it

AUDIT COMMISSION VIEW

The highest standards of behaviour are expected of elected representatives by the Public.

High Standards of behaviour should be demonstrated by Members and Officers

Result of Self Assessment Ethical Governance Survey

- 78% members and 73% officers consider Leaders and Chief Executives are positive role models
- 92% members and 72% officers understand their own roles under ethical framework
- 36% officers unsure of what to do if a member fails to comply with the Code of Conduct
- 85% members know Standards Committee exists within their Council
- 52% senior officers know Standards Committee exists within their Council

Expectation of Standards Committee

- Focused
- Resourceful
- Effective
- Recognised as a valuable resource to inspire trust and confidence in the Council within the wider community
- Helps to restore confidence after problems

The Cases for an Effective Standards Committee

- Business
- Efficiency
- Moral
- Morale

First Steps

- Tell Council Leadership your perceptions of the Council's ethical health and how it is perceived within the wider community
- Discuss changing negative perceptions through action – **not PR**
- Work with the Council on how to address issues
- If the Council cannot tell its desired story this year, help it do so next year
- Self access your Council against the Audit Commission's Use of Resources Key Lines of Enquiry

Audit Commission's Key Lines of Enquiry

- Does the Organisation promote and demonstrate the principals and values of good governance?
- Has the Organisation:
 - Adopted, promoted and demonstrated the principles of good governance?
 - Maintained focus on its purpose and vision?
 - Demonstrated a strong ethical framework and culture?
 - Applied the principles and values of good governance to its partnership workings?
- **Has the Organisation ensured that the work of the Standards Committee is included within the Council's Annual Governance Statement?**

AN EFFECTIVE STANDARD COMMITTEE

Performs a broad range of responsibilities:

- Member Training
- Whistleblowing arrangements and review
- Internal and External Audit
- Ombudsmen liaison
- Member/Officer protocol
- Constitution
- Anti Fraud
- Employment disciplinary

Is Proactive

- Is seen as friend not foe
- Is embedded within the Authority
- Takes a leadership role

An embedded Standards Committee

- Has Authority wide recognition
- Is appreciated among members and officers

Drives Change

- Of everyday behaviour and attitudes
- Is responsive to new challenges and needs
- Ensures standards are at the heart of the organisational culture

A recognised Standards Committee

- Develops close internal relationships
- Is part of the broader standards community

Develops trust within

- The Standards Committee
- The Authority
- The Public – Particularly through Standards Committee Website

Looks like

- Sustainable leadership
- Broad remit
- Acceptance within the Authority

TOPICS FOR DISCUSSION AND AGREED WAY FORWARD

1. An Effective Standards Committee

- Agree objective
 - SC range of responsibilities – based upon model committee
 - Publicised and/or real values of Council vs. SC
 - The responsibilities of each SC member
 - Elected
 - Parish
 - Independent
 - Measurements
 - Expectations of Leader, Political Leaders, Chief Executive
 - 6 monthly meetings
 - Regular attendance at SC meetings
 - Overt support for SC elected members from Party Leader
 - Overt support for MO from above.
 - Work of SC included within Council's Annual Governance Statement
 - Time Scales

2. Attendance at full council meetings by independent members

3. Publicity

- Meetings with relevant council officer(s) – Publicity; Press Liaison
 - Establish current policy
 - Links with Media
 - Schools programme policy
 - Redesign SC web page
- **SC relationship with Standards Board; Audit Commission; Ombudsman and Public**

AGENDA STATUS: PUBLIC

| | |
|-------------------------|-----------------------------------------------|
| Report Title | Annual Standards Board Conference 2008 |
| Date of Meeting: | 18 December 2008 |
| Directorate: | Chief Executive's |
| Ward(s) | All |

1. Summary

This report contains some of the key points and messages from this years Standards Conference.

2. Recommendations

That members:

1. Note the report.
2. Consider how the issues raised impact on the Council's Standards Committee and whether there are any items that members would wish to see in a Standards Committee work-plan.

3. Report Background

The Chair and the Borough Solicitor attended the recent Standards Board Conference. The Chair noted its key messages for the 'ethical governance' agenda and wants to stimulate discussion between members of this committee as to the work to be done by it over the coming year. Members comments could feed into a Work-Plan for the committee over the next municipal year (2009-2010).

4. Implications (including financial implications)**4.1 Resources and risk**

None specifically arising from this report.

4.2 Legal

None specifically

4.3 Other implications

None

5. Background papers)

None

Report Author and Title: Ian Harley, Chair of the Standards Committee.

AGENDA STATUS: PUBLIC

| | |
|---------------------|-------------------------------------------------------------------------------------|
| Report Title | 'Codes of conduct for local authority members and employees- a consultation' |
|---------------------|-------------------------------------------------------------------------------------|

| | |
|-------------------------|-------------------|
| Date of Meeting: | 18 December 2008 |
| Directorate: | Chief Executive's |
| Ward(s) | All |

1. Summary

The Borough Solicitor wishes members of the standards committee to consider the consultation document and his draft response to it with a view to discussing these at the forthcoming meeting.

2. Recommendations

That members so consider the appendices.

3. Report Background

On 1 October 2008 the Secretary of State for Communities and Local Government published the consultation paper (Appendix 1). It invites views on proposals to revise the model code of conduct for local authority members- in particular, to clarify how the code applies to conduct in a 'non-official' capacity. The paper also deals with possible changes to the Relevant Authorities (General Principles) Order 2001, which sets out the general principles governing member conduct. Finally the paper invites comment on proposals to require authorities to incorporate the employee code of conduct into employees' contracts of employment.

The draft response on behalf of the Association of Council Secretaries and Solicitors (ACSeS) which represents all Monitoring Officers of Local Authorities in England and Wales is attached as Appendix 2.

The consultation closes on 24 December 2008.

4. Implications (including financial implications)

4.1 Resources and risk

None worth mentioning until the changes mooted in the paper become law.

4.2 Legal

As above.

4.3 Other implications

As above.

5. Background papers)

None

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Communities in control: Real people, real power
Codes of conduct for local authority members and
employees

A consultation



Communities in control: Real people, real power
Codes of conduct for local authority members and
employees
A consultation

October 2008

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Chapter 1: The consultation and how to respond

Communities in control consultation papers

- 1.1 The White Paper, *Communities in control: Real people, real power*, is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
- 1.2 This paper is the next in a series consulting on a number of policy commitments. Future consultation papers include a consultation on proposals to revise the code of recommended practice on local authority publicity, which is due to be published at the end of October. This paper invites views on proposals for revising the model code of conduct for local authority members ("the members' code"), principally to clarify its application to members' conduct in their non-official capacity. This paper also invites views on proposals for associated changes to the Relevant Authorities (General Principles) Order 2001 which sets out the general principles which govern the conduct of local authority members. Finally, it seeks comments on proposals to introduce a requirement for authorities to incorporate a code of conduct for employees, based on a statutory model code of conduct, in to the terms and conditions of employment of their employees' ("the employees' code").

About this consultation

- 1.3 The proposals in this consultation paper relate to relevant authorities in England and police authorities in Wales.
- 1.4 Following the local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 established a more locally-based conduct regime for local authority members centred on local authority standards committees. Under the new devolved regime, the Standards Board for England has become a light-touch strategic regulator, responsible for monitoring the operation of the conduct regime and giving support and guidance to standards committees and monitoring officers in discharging their new functions.
- 1.5 As part of the changes to the conduct regime, a new model code of conduct for local authority members, the Local Authorities (Model Code of Conduct) Order 2007, was introduced with effect from May

2007, on the basis that the provisions of the members' code would be reviewed in light of early experience of its practical operation.

- 1.6 Chapter 2 of this paper seeks views on proposals to clarify the members' code in its application to members' conduct when acting in a non-official capacity. It also seeks views on the operation of, and proposed revisions to, the members' code, including reconfiguring the members' code into two distinct sections, the first dealing with members' conduct in their official capacity, the second dealing with members' conduct in their non-official capacity. Finally, it seeks views on associated amendments to the Relevant Authorities (General Principles) Order 2001 to clarify its application to members' conduct in their non-official capacity.
- 1.7 Chapter 3 of this paper seeks views on the proposed introduction of a model code of conduct for local government employees, which will become part of such employees' terms and conditions of employment.
- 1.8 Particular questions on which we would welcome comments are set out in each chapter and summarised in **Annex A**. In order to aid your consideration of the proposed amendments to the current members' code, the substance of the 2007 code is reproduced at **Annex B**.
- 1.9 We are minded, subject to responses to this consultation, to implement the proposals in this consultation paper, so that they come into effect in line with the local government elections 2009.

Who are we consulting?

- 1.10 This is a public consultation and it is open to anyone to respond to this consultation document. We would, however, particularly welcome responses from local authority members, local authority monitoring officers, local government employees, national representative bodies, local government partners and trade unions. **The consultation period runs for 12 weeks to 24 December 2008.**

How to respond

- 1.11 Your response must be received by 24 December 2008 and may be sent by e-mail or post to:

Karl Holden
Conduct and Council Constitutions Team
Communities and Local Government
Zone 5/B2, Eland House
Bressenden Place
London
SW1E 5DU

e-mail: conductcode@communities.gsi.gov.uk

If you are replying by e-mail please title your response 'Response to Model Code consultation'.

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses?

- 1.12 The Department will take account of the responses received to this consultation before taking decisions on the legislation that will form the revised members' code, the general principles order and the new employees' code.
- 1.13 Within three months of the close of the consultation period we will analyse the responses to the consultation and produce a summary of them. This summary will be published on the Department's website at www.communities.gov.uk

Publication of responses – confidentiality and data protection

- 1.14 Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.
- 1.15 If you want any of the information that you provide to be treated as confidential you should be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- 1.16 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.17 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

- 1.18 The UK Government has adopted a code of practice on consultations. Please see **Annex C** of this document for the criteria that apply under this code, and advice about who you should contact if you have any comments or complaints about the consultation process.

Additional copies

- 1.19 You may make copies of this document without seeking permission. If required, printed copies of the consultation paper can be obtained from Communities and Local Government Publications, whose contact details may be found at the front of this document. An electronic version can be found at the Consultation Section of the Department's website at: www.communities.gov.uk.

In context – previous consultations and relevant legislation

- 1.20 The local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, set out the Government's proposals to put in place a clearer, simpler and more proportionate model code of conduct for members which would include changes to the rules on personal and prejudicial interests. This announcement followed a consultation by the Standards Board for England, *A Code for the future*, in February 2005 and the Discussion Paper *Conduct in English Local Government*, issued by the then Office for the Deputy Prime Minister in December 2005.
- 1.21 The policy proposals took form in the January 2007 consultation document, *Consultation on Amendments to the Model Code of Conduct for Local Authority Members*, which proposed the combination of the four different model codes of conduct that existed at the time (for local authorities, parish councils, national parks and police authorities) into a single consolidated model code.
- 1.22 The Local Authorities (Model Code of Conduct) Order 2007 came into force on 3 May 2007. With the members' code now in place for over a year, we believe this is an appropriate time to examine how well it has functioned in practice and consider any revisions that may be required. The proposed amendments to the members' code set out in this paper reflect discussions with the Standards Board and, in particular, their experience of the practical operation of the 2007 members' code over the last year.
- 1.23 Following the 2006 local government White Paper and the introduction of the 2007 members' code, the Local Government and Public Involvement in Health Act 2007 made provision clarifying the law in

relation to the application of the conduct regime to the conduct of members in their non- official capacity. This paper therefore also invites comments on proposals to revise the members' code and the general principles order to address the issue of the application of the conduct regime to the conduct of members in their non-official capacity.

Code of conduct for local government employees

- 1.24 In August 2004, the then Office of the Deputy Prime Minister issued the consultation paper, *A Model Code of Conduct for Local Government Employees*. The paper consulted on a draft code defining the minimum standards of conduct that employees of relevant authorities would be expected to observe on carrying out their duties. The 2004 consultation was followed by further inquiries and consultations on matters relating to the conduct regime for local government.
- 1.25 The Department restated its commitment to introduce a model employees' code, under Section 82 of the Local Government Act 2000, in the local government White Paper 2006. However, in light of the above inquiries and consultations, and the introduction of the 2007 members' code, it was decided that the implementation of an employees' code should be delayed until the Department had an opportunity to consider the employees' code in the context of the wider review of the conduct regime for local government and the lessons learned from the implementation of the new members' code.
- 1.26 With the implementation of the new devolved conduct regime and our proposals to amend the members' code, drawing on the experience of its first year of operation, we consider that the time is right to also consult on proposals to introduce a model employees' code.

Chapter 2: Code of conduct for local authority members

What is the code of conduct for?

- 2.1 The public has a right to expect high standards of conduct from their elected and co-opted members. The standards of conduct expected of local authority members are set out in the members' code, which is underpinned by the ten general principles. By signing up to the members' code, a member is actively taking on a formal obligation to abide by its requirements.
- 2.2 The members' code forms the bedrock of the conduct regime and aims to promote the public's trust and confidence in their members and faith in local democracy. It does this by providing a robust set of standards of behaviour for members to abide by and work within. In doing this, the code also protects members from unreasonable expectations of behaviour being put upon them. Since May 2008, allegations that a member has failed to comply with the provisions of the members' code are considered by local authority standards committees.
- 2.3 The current members' code is set out in the Local Authorities (Model Code of Conduct) Order 2007 which applies to members of relevant authorities in England and of police authorities in Wales. On its introduction, the Government gave an undertaking that the effectiveness of the code would be reviewed after it had been in operation for some time. We believe, drawing on the Standards Board's practical experience that the members' code is, broadly, operating very well. However, as it has been in force for over a year, we consider that it is now appropriate to review the code.
- 2.4 Most importantly, we propose that the members' code be restructured by revoking the existing Order and making a new one. We propose that the new members' code will be differently formatted to the existing code, making it easier to interpret and clearer in its application, for instance by dividing it into two sections: the first dealing with members' conduct when acting in an official capacity and reflecting what is in the current code, the second dealing with members' conduct in their non-official capacity.

Application of the code to members' conduct in their non-official capacity

- 2.5 Trust in our local authority members is one of the cornerstones of local democracy. Members should inspire trust and confidence from those who elected them, set an example of leadership for their communities and should be expected to act lawfully even when they are not acting in their role as members.
- 2.6 This view was supported by those who responded to the Standards Board for England's consultation on the members' code in 2005. Responses indicated a clear view that a member's conduct in a non-official capacity was an issue that they considered should be covered by the members' code, particularly where that conduct amounts to a criminal offence.
- 2.7 It has always been our intention for the members' code to apply to a limited extent to the conduct of members in a non-official capacity. We wish now to clarify which provisions of the members' code apply in a member's official capacity and to put beyond doubt which provisions apply to a member's conduct in a non-official capacity.
- 2.8 The need to clarify what conduct in a member's non-official capacity is covered by the members' code arose as a consequence of a court judgment in 2006. This cast doubt on the ability of the code to cover members' conduct not linked to the performance of their public duties. As was made clear by Ministers during the passage of the Local Government and Public Involvement in Health Act 2007, we consider that certain behaviour, even when there is no direct link to the member's official role, can have an adverse effect on the level of public trust in local authority members and local government as a whole.
- 2.9 We propose therefore that the new members' code should, in the section covering the conduct of members in their non-official capacity, contain the following provision prohibiting particular conduct where that conduct would constitute a criminal offence:

"Members must not bring their office or authority into disrepute by conduct which is a criminal offence".

Consultation Question 1:

Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

Definition of 'criminal offence' and 'official capacity'

- 2.10 The Local Government and Public Involvement in Health Act 2007 gave the Secretary of State the power to define, for the purposes of the members' code, what constitutes a 'criminal offence'. We propose for the purpose of the members' code, that 'criminal offence' be defined as any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.
- 2.11 Our intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the conduct regime. We consider that this approach will ensure that the most minor criminal offences, for example minor motoring offences, parking offences and dropping litter as well as cautions and orders falling short of a criminal conviction by a court, will not be included in the remit of the members' code. However, serious criminal offences which we consider should come under the remit of the members' code, such as assault, harassment, fraud and offences relating to child pornography will be included in the remit of the code.
- 2.12 We propose that the Standards Board for England will issue guidance for local authority standards committees on how a criminal offence should be treated in its application to the conduct regime.

Consultation Question 2:

Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

- 2.13 The Local Government and Public Involvement in Health Act 2007 also gave the Secretary of State power to define, for the purposes of the members' code, what constitutes 'official capacity'.
- 2.14 We propose that for the purposes of the members' code, 'official capacity' be defined as being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.

Consultation Question 3:

Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.

Offending abroad

- 2.15 We also propose that the members' code would engage with conduct committed in a foreign country, where that conduct constitutes a criminal offence in that country, but only where the conduct would also constitute a criminal offence if it was committed in the UK. However, the code would only apply if the individual was convicted in the country in which the offence was committed.

Consultation Question 4:

Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?

What does this mean?

- 2.16 Our proposals would have the effect of providing that the only conduct in a member's non-official capacity which is engaged by the code, is conduct which constitutes a criminal offence, as defined in paragraph 2.10 above. The code may only then be applied to that conduct when the evidence that the member's conduct constituted a criminal offence is provided by the criminal conviction of the member in the courts.
- 2.17 This would mean, for example, that a member who was convicted of a criminal offence of assault or harassment could be held to have breached the code, even if the conduct, which led to the conviction took place entirely outside the member's official capacity.

Criminal conviction of a member

- 2.18 It should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by section 80 of the Local Government Act 1972, with the member automatically disqualified from office for five years. We are not proposing any changes to this legislation.

The conduct regime

- 2.19 At present, investigations into alleged breaches of the members' code are triggered by a written allegation made to the standards committee of the local authority concerned. We propose that this continue to be the case when dealing with allegations of misconduct in relation to a member's conduct in their non-official capacity.
- 2.20 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the standards committee or the

Standards Board, as the case may be, would cease their investigation process until the criminal process had been completed. Any subsequent action under the conduct regime in respect of a member's private conduct would follow the conclusion of the criminal procedure. The member would not be suspended during the period of the criminal process.

- 2.21 For the purpose of the conduct regime, the criminal process will be considered to have been completed at the conclusion of any appeals process.

Consultation Question 5:

Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

Proposed revisions to the members' code

- 2.22 This consultation paper also seeks views on the following amendments which we propose to make to the provisions of the existing code. The proposed amendments reflect discussions with the Standards Board and, in particular, the Board's experience of the practical operation of the code over the last year.
- 2.23 In order to aid your consideration of our proposed amendments to the members' code, the substance of the present code is reproduced at **Annex B** to this paper. Guidance on the provisions of the members' code is available on the Standards Board for England's website at www.standardsboard.gov.uk

Parish councils

- 2.24 It has been suggested that article 2(5) of the Local Authorities (Model Code of Conduct) Order 2007 be amended to apply paragraph 12(2) to parish councils, to make it mandatory for parish councils that a member with a prejudicial interest may make representations at a meeting only if members of the public are able to attend that meeting for the same purpose. Currently, if a parish council wishes this provision to apply, it must make a conscious decision to adopt paragraph 12(2) into its code. This amendment would save unnecessary administration and ensure consistency across parish councils.

Membership of other bodies

- 2.25 It has been suggested that paragraphs 8(1)(a)(i) and (ii) of the current members' code be amended to clarify that the sections are referring to other bodies that you are a member of or which exercise functions of a public nature, putting it beyond doubt that this is not a reference to the authority itself.

Personal interests

- 2.26 It has been suggested that current wording of paragraph 8(1)(a) of the members' code could be amended to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25 in his or her register of members' interests.

Prejudicial interests

- 2.27 It has been suggested that paragraph 10(2) of the code be amended to remove the double negative in the current drafting, to make it clear that a prejudicial interest exists where the business of your authority affects your financial position or the financial position of a person listed in paragraph 8 of the code or it relates to the determining of any approval, consent, licence, permission or registration in relation to you or those persons listed in paragraph 8 of the code.
- 2.28 It has been suggested that the meaning of 'determining' in paragraph 10(2)(b) could be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.
- 2.29 It has also been suggested that paragraph 10(2)(c) could be amended to clarify that a member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a member of the authority had failed to comply with the code.

Registration of members' interests

- 2.30 We propose that any new members' code would take into account any existing registration of members' interests. This will ensure that members who have already registered their interests in line with the 2007 model code do not have to repeat the process when the revised members' code is introduced.

Consultation Question 6:

Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

Consultation Question 7:

Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

Consultation Question 8:

Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.

Legislative context

- 2.31 The current members' code is set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 made under powers conferred on the Secretary of State by section 50 of the Local Government Act 2000.
- 2.32 Section 183 of the Local Government and Public Involvement in Health Act 2007 inserted, into section 50 of the Local Government Act 2000, a requirement for the Secretary of State to specify which provisions of the members' code apply in relation to a member's conduct when acting in an official capacity and which provisions apply when not acting in an official capacity. A provision may only be specified to apply to members' conduct when not acting in an official capacity if the conduct it prohibits constitutes a criminal offence. The power in section 50 of the Local Government Act 2000 permits the Secretary of State to define for the purposes of the members' code what is meant by "criminal offence" and what is meant by "official capacity".
- 2.33 We propose that the existing Local Authorities (Model Code of Conduct) Order 2007 be revoked and a new, revised Order would be made to reflect our proposed amendments and that part of the code applies to a member's conduct in their official capacity and part of it would apply to a member's conduct in their non-official capacity.
- 2.34 Provision is also made in section 183 of the Local Government and Public Involvement in Health Act 2007 for members to give to their authority an undertaking to observe the new code within a period prescribed by the Secretary of State. We propose that members will have two months from the date their authority adopts the new code to give a written undertaking that they will observe their authority's code. Failure to do so will mean that they cease to be members of the authority.

Consultation Question 9:

Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?

Proposed amendments to the General Principles

What are the General Principles?

- 2.35 The ten General Principles, contained in the Relevant Authorities (General Principles) Order 2001, are based on the seven principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the members' code, which must be consistent with these principles.
- 2.36 The ten general principles are reproduced below. The principles govern the conduct of members, and a failure to act in accordance with them may lead to a failure to comply with the members' code.

The General Principles

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in a situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to uphold the law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Proposed revisions

2.37 We propose that the Relevant Authorities (General Principles) Order 2001 be amended to make clear which principles govern the conduct of members when acting in an official capacity and which principles will apply to the conduct of members when acting in a non-official capacity, where the member's conduct would constitute a criminal offence.

2.38 We propose that the General Principles Order be amended by providing that the 10 existing principles apply to a member when acting in an official capacity and by adding a new principle which would be specified as applying to a member acting in a non-official capacity, where the member's conduct would constitute a criminal offence. We propose that the following be added to the Schedule of the Relevant Authorities (General Principles) Order 2001:

Duty to abide by the law

Members should not engage in conduct which constitutes a criminal offence.

Consultation Question 10:

Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

Definition of 'criminal offence' and 'official capacity'

2.39 Section 49 of the Local Government Act 2000 enables the Secretary of State to define what constitutes a 'criminal offence' and what constitutes 'official capacity' in the context of the General Principles Order. For the purposes of the revised General Principles Order, we propose that 'criminal offence' be defined as any conduct that has resulted in a criminal conviction.

Consultation Question 11:

Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

2.40 We propose that for the purposes of the revised General Principles Order, 'official capacity' be defined as "being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority".

Consultation Question 12:

Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Legislative Context

2.41 The Relevant Authorities (General Principles) Order 2001 was made under powers conferred on the Secretary of State in section 49 and 105 of the Local Government Act 2000. Section 183 of the Local Government and Public Involvement in Health Act 2007 modified section 49 of the 2000 Act and it is this modification that requires the Secretary of State to specify which general principles apply to a person when acting in an official capacity and when acting in an non-official capacity.

Chapter 3: Model code of conduct for local government employees

Is an employees' code needed?

- 3.1 A code of conduct for local government employees ("employees' code") should provide the staff of an authority with an effective ethical framework within which to work and it should give that authority's citizens confidence that an authority's staff are working on their behalf in an appropriate manner.

Consultation Question 13:

Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

The employees' code in context

- 3.2 In August 2004, the (then) Office of the Deputy Prime Minister consulted on a model code of conduct for local government employees. Responses indicated that the model code of conduct consulted on was not adequate, but also that the universal application of a code to all staff would be needlessly bureaucratic as all employees would be subject to the same code regardless of their position. There was support for following the model of the Welsh code of conduct, which only applies to a certain category of defined senior officer. Alternatively, the code could be restricted to those who exercise executive, regulatory or overview and scrutiny powers under the authority's scheme of delegation to officers.
- 3.3 Another view in response to the consultation paper was that certain aspects of the code (eg registration of interests), could be limited to senior officers while other more universal aspects should be applicable to all - for instance, it is beyond question that all employees should behave with honesty and integrity.
- 3.4 Many local authorities already have a code of conduct for employees in addition to, or part of, their standard terms and conditions of employment. These codes range from simple statements agreeing to act with propriety to comprehensive documents covering everything

from political neutrality to intellectual property matters. These codes of conduct are also integrated into the authority's discipline procedures.

- 3.5 It is not intended that the employees' code be a burden on authorities or employees. The code should not constrain an authority's ability to develop its own code reflecting local needs and conditions. We consider that authorities should be free to adopt supplementary provisions beyond the employees' code in order to provide their staff with an effective ethical framework within which to work.

Application of the employees' code

- 3.6 We propose that the employees' code would apply to all relevant authorities and police authorities in Wales, as defined in Section 49 of the Local Government Act 2000. We are proposing that a model employees' code - a model code that authorities may augment if they wish - be introduced, which will be incorporated into local government employees' terms and conditions of employment.
- 3.7 However, we do not propose to apply the employees' code where it is not needed, for instance to employees in professions that are covered by their own code of conduct; firefighters, teachers, community support officers, solicitors etc.

Consultation Question 14:

Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

Consultation Question 15:

Are there any other categories of employee in respect of whom it is not necessary to apply the code?

- 3.8 We propose a two-tier model. The first tier, drawing on the Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, will apply equally to all authority employees and will enshrine the core values that it is reasonably expected every authority employee would abide by. The second tier, drawing on the members' code, will apply to 'qualifying employees', that is; either senior officials or those officials carrying out delegated functions.
- 3.9 With the members' code in place, and members having to abide by that code, there is a reasonable expectation that officials undertaking functions delegated to them by members would have to abide by the same conduct regime as members when performing those functions.

Proposed core values

The model employees' code: core values for all employees

General principles

The public is entitled to expect the highest standards of conduct from all local government employees. The role of such employees is to serve their employing authority in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

Employees are accountable, and owe a duty to, their employing authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political neutrality

Employees, excluding political assistants, must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

Relations with members, the public and other employees

Mutual respect between employees and members is essential to good local government and working relationships should be kept on a professional basis. Employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently and without bias.

Equality

Employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

Employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

Personal interests

An employee must not allow their private interests or beliefs to conflict with their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to

do business with the authority or which would benefit from a relationship with that authority. Employees should not accept benefits from a third party unless authorised to do so by their authority.

Whistleblowing

Where an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the model code of conduct for employees, the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the authority's confidential reporting procedure or any other procedure designed for this purpose.

Treatment of Information

Openness in the dissemination of information and decision making should be the norm in authorities. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of staff

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

Investigations by monitoring officers

Where a monitoring officer is undertaking an investigation in accordance with Part III of the Local Government Act 2000 and associated regulations, employees must comply with any requirement made by that monitoring officer in connection with such an investigation.

Consultation Question 16:

Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?

Beyond the core values

Who are the 'qualifying employees'?

- 3.10 There are two alternatives for selecting those 'qualifying employees' to which, in addition to the core values of the employees' code, some of the restrictions and expectations of the members' code should apply.
- 3.11 The first is based on the approach taken to determining which posts in an authority are 'politically restricted' under section 3 of the Local Government and Housing Act 1989, and assumes that certain posts are senior or influential enough to warrant controls placed on the activities of postholders. Certain posts would be designated as qualifying employees.
- 3.12 The second is the delegation model, which would see qualifying employees selected on the basis that they perform functions delegated to them by elected members under section 101 of the Local Government Act 1972.

Consultation Question 17:

Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?

The model employees' code: values for qualifying employees

Compromising the impartiality of officers of the authority

A qualifying employee must not compromise, or attempt to compromise, the impartiality of anyone who works for or on behalf of the authority, either directly or as a response to pressure from others. A qualifying employee should not attempt to force employees to take action or change advice if doing so would prejudice their professional integrity.

Using your position improperly

A qualifying employee must not use, or attempt to use, their position improperly either for their or anybody else's advantage or disadvantage.

Considering advice provided to you and giving reasons

If a qualifying employee seeks advice, or advice is offered to them, on aspects of how the employees' code applies, the qualifying employee must have regard to this advice.

Personal interest

Qualifying employees must register, within 28 days of taking up their appointment, any interests set out in the categories below. This record of interest must be in writing, to the authority's monitoring officer or, in the case of a parish council, through the parish clerk.

The registration of interests protects the qualifying employee by giving early warning of any possible areas of conflict of interest and provides assurance to the public that the qualifying employee is acting transparently. Only registration of personal interests in areas where there are clear grounds for concern that such an interest could give rise to accusations of partiality in decision making and working practice of the authority are required.

These are:

- Your membership, or position of control or management, in bodies exercising functions of a public nature (that is, carrying out a public service, taking the place of a local or central governmental body in providing a service, exercising a function delegated by a local authority or exercising a function under legislation or a statutory power).
- Any business you might own or have a share in, where that shareholding is greater than £25,000 or have a stake of more than 1/100th of the value or share capital of the company.
- Any contracts between the authority and any company you have an interest in, as above.
- Any land or property in the authority's area in which you have a beneficial interest.

A qualifying employee may seek to exempt their personal interests from the register of interests if they consider, for instance that having this information on record might put themselves or others at risk. In such cases, the qualifying employee should discuss the matter with their monitoring officer.

Consultation Question 18:

Should the code contain a requirement for qualifying employees to publicly register any interests?

Consultation Question 19:

Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

Prejudicial interest

A prejudicial interest is considered to be a matter which affects the qualifying employee's financial interest or relates to a licensing or regulatory matter in which he or she has an interest and where a member of the public, who knows the relevant facts, would reasonably think that his or her personal interest is so significant that it is likely to prejudice his or her judgement of the public interest.

A prejudicial interest in a licensing or regulatory matter may stem from a direct financial interest or from a more tangential interest, where for instance approval for a licence may affect a body with which the qualifying employee has a personal interest or will affect him or her personally.

Qualifying employees with a prejudicial interest should declare such an interest. Where possible, they should take steps to avoid influential involvement in the matter. Where this is not possible, their prejudicial interest should be made clear.

Consultation Question 20:

Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code. Have any been omitted?

Consultation Question 21:

Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Contractors, partners and part time staff

- 3.13 Local authorities have an increasingly complex relationship with the private sector in its work with contractors, partners and part time staff. We consider that rather than attempt to determine centrally when and when not to apply the employees' code not just to local government employees, but those working on behalf of local government, it will be for local authorities themselves to decide, in agreeing contracts, partnership agreements or terms and conditions of employment, if and how the employees' code, in whole or in part, should apply.

Parish councils

- 3.14 The members' code applies to parish councillors as well as members of larger authorities, and it seems reasonable therefore for the ethical framework of the employees' code to apply to parish council employees. We recognise that the environment that parish councillors operate within is different to that of larger authorities and are conscious that what is consider to be a reasonable expectation in the employees' code for larger councils, may prove to be difficult for parish councils.
- 3.15 That being the case, we would welcome responses from parish councils on any particular aspect of the employees' code that might present difficulties and how those difficulties could be overcome.

Consultation Question 22:

Should the employees' code extend to employees of parish councils?

Legislative context

3.16 Section 82(7) of the Local Government Act 2000, provides that the provisions of a code made under section 82(1) of that Act will be deemed to be incorporated in employees' terms and conditions of employment.

Annex A: List of consultation questions

Chapter 2: Code of conduct for local authority members

- | | |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Question 1 | Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity? |
| Question 2 | Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details. |
| Question 3 | Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details. |
| Question 4 | Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK? |
| Question 5 | Do you agree that an ethical investigation should not proceed until the criminal process has been completed? |
| Question 6 | Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments? |
| Question 7 | Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view? |
| Question 8 | Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details. |
| Question 9 | Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code? |
| Question 10 | Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity? |

- Question 11 Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?
- Question 12 Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Chapter 3 Model Code of Conduct for local authority employees

- Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?
- Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?
- Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?
- Question 16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?
- Question 17 Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?
- Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests?
- Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
- Question 20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?
- Question 21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?
- Question 22 Should the employees' code extend to employees of parish councils?

Annex B

SCHEDULE

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1.—(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

“meeting” means any meeting of—

(a)

the authority;

(b)

the executive of the authority;

(c)

any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.—(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7.—(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2 Interests

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a

firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests,

you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority’s executive or another of your authority’s committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members' Interests

Registration of members' interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Annex C: Consultation Code of Practice

- A.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- A.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies; unless Ministers conclude that exceptional circumstances require a departure.

The Consultation Criteria

- Consult widely throughout the process, allowing a minimum of
 - 12 weeks for written consultation at least once during the development of the policy
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - Ensure that your consultation is clear, concise and widely accessible.
 - Give feedback regarding the responses received and how the consultation process influenced the policy.
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
 - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- A.3 The full consultation code of practice may be viewed at: www.bre.berr.gov.uk/regulation/consultation/code/index.asp.

A.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Consultation Co-ordinator
Communities and Local Government
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk

ISBN: 978 14098 0549 6





ASSOCIATION OF COUNCIL SECRETARIES & SOLICITORS'
DRAFT/ RESPONSE ON:
Consultation Paper on Codes of Conduct for Members & Officers

Introductory remarks:

The Association of Council Secretaries & Solicitors represents all Monitoring Officers and Deputy Monitoring Officers of local authorities in England and Wales. This Response is the result of contributions from various members of ACSeS and has been led by Mirza Ahmad, our 1st Vice-President & Lead Officer on Ethical Governance Issues. If you require any clarification of this Response, please contact Mirza Ahmad directly (his details can be found at the end of this Response).

ACSeS has no objection to the Government publishing all or any part of this Response for the purpose of the next stage in the process.

Whilst the revised Code of Conduct for Members (2007) has not caused our members difficulty in interpretation or application, if clarifications are felt necessary for other local authorities we would have no objection to the repeal of the 2007 Code so long as it is replaced with one that is clearer and easier to understand by all. The proposed split into two parts – one that applies to all occasions relating to the official capacity of an elected / co-opted member and the other more narrowly constrained part relating to non-official capacity – is noted.

The opportunity to have common application and interpretation between the Member and the Officer Codes should also be pursued, so far as is possible. The Officer Code, in particular, has been long overdue and the Council hopes the Government will now act to implement the same, without any further delays. The previous consultation process in August 2004, followed by another consultation process in 2008, should not be followed by another consultation process in 2009/10. Equally, it would make sense for the Revised Code of Conduct for Members and Co-opted Members to be brought into effect from, say, the start of the Municipal Year to avoid 'in-year' changes.

The remainder of this response follows the questions raised in the consultation paper.

Chapter 2: Code of conduct for local authority members

Question 1 Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

For the reasons indicated in the consultation paper in respect of encouraging and living open, transparent, high standards of ethical governance, trust and confidence in local government and in order to address some of the practical implications of the *Livingstone Case*, ACSes supports the extension of the Code of Conduct for Members and Co-opted Members to non-official capacity, but such extension must be limited to criminal offences, as defined in our response to Question 2.

Question 2 Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

The proposed definition in paragraph 2.10 is too liberal in its application and we recommend it is limited as follows to cover bringing the Council or the member's office into disrepute:-

“Criminal offence” is defined to mean any criminal offence recognized under UK law for which
–

- (a) No fixed penalty charges, notices or local authority cautions are in place; and
- (b) The Member or Co-opted Member has pleaded guilty to (or been convicted of) any such criminal offence.

Whilst recognizing the difficulties that may arise in terms of conflicts of law between different jurisdictions and jurisprudences, the City Council takes the view that the criminal offence, as defined above, should be applicable to a member's activities wherever it might occur – i.e. world-wide – as what is important is the upholding of high ethical standards, at all time, for those covered by the Revised Code of Conduct for Members.

The reference to pleaded guilty is an important consideration in so far as it will allow the Standards Committee to commence the investigation into the matter before the conclusion of the criminal case. The alternative of waiting for the outcome of appeal processes may be quite a long time from the commission of the 'offence' to sanction under the ethical governance regime. Excluding fixed penalty charges, notices or local authority cautions is also appropriate, but there may still be some argument in relation to the application of this exemption in relation to Police cautions, which are likely to be considered more serious.

Question 3 Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.

Whilst the two limbs of the current provision are acceptable, ACSes believes that Members who are active on internet websites/blogs will be perceived as being elected members undertaking Council business or speaking about Council business or otherwise perceived to be acting for the City Council. Citizen perception is important and members need to be clear as to when they are or are not undertaking Council business. The position is, of course, likely to become more difficult to

determine and enforce if the Government's recent consultation in Members being able to participate and vote in Council Meetings, through remote means, are implemented.

Members should not, therefore, be allowed to avoid applicability (and thus liability) under the Revised Code of Conduct for Members by choosing when it suits them not to be act as a Councillor. Accordingly, we suggest the applicability of the Revised Code of Conduct for Members should be based on the reasonable and objective citizen test and not the subject member test.

The two limbs of the current Code of Conduct for Members should be extended, therefore, to include the activity of members and co-opted members with this third definition –

“Speaking or commenting – whether in print or otherwise – on or for the Council in relation to the business of the office to which s/he is elected or appointed to serve on the Council as, for example, Chairman or a member of a Committee.”

Question 4 Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?

As per our answer to Question 2, the Code of Conduct should be world-wide as Members do travel abroad on official business and they must continue to uphold the high ethical standards expected of them in the UK.

Question 5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

As indicated in our answer to Question 2, the Standards Committees should be able to commence investigations where the Member has pleaded guilty and is waiting for sentencing. To do so otherwise, will prolong the matter and make the ethical governance regime less effective.

Question 6 Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

All of the clarifications and amendments are acceptable and we are not aware of any other provisions that need to be incorporated. It must, however, be noted that voluntary provisions by local authorities must continue to be allowed as to do so otherwise would be a retrograde step. Many local authorities, for example, already have voluntary local provisions built into their Codes of Conduct for Members

Question 7 Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

No.

Question 8 Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.

No.

Question 9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?

Two months is consistent with existing statutory provisions and we do not see any difficulty in this; although there may be no need to 're-impose' this requirement if the existing declarations can be interpreted to include revisions to the Code of Conduct for Members. Accordingly, the Government should avoid a 'fresh' round of signatures when existing ones are sufficient for such purposes.

Question 10 Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

For the reasons explained in the answer to Question 2, the provision should be world-wide. In addition, and so as to ensure the perception of a right minded citizen takes precedence over a Member's / Co-opted Member's attempts to choose when to be on official duties and when not, the Code should be clarified to reflect this. The suggested "third limb" provision in our answer to Question 3 should go some way to help in this regard, as what matters is how Members / Co-opted Members are reasonably and objectively perceived and not, necessarily, how they choose to describe themselves on each occasion.

Question 11 Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

We believe the definition is far too broad and should be limited as indicated in our answer to Question 2.

Question 12 Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

For the reasons explained in the answer to Question 3, the provision should be extended to those circumstances envisaged by the "third limb."

Chapter 3 Model Code of Conduct for local authority employees

Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

Yes - this has been awaited for a long time and should be implemented without any further delay. Enforcement will, of course, be a matter under employment law and not a matter for the Standards Committee or the Standards Board for England; although it is recognized that the Standards Committees may wish to give - as now - guidance and encourage best practice thorough, for example, Member / Officer Relations Protocols.

Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

The professional Codes, of course, govern professional behaviour and not necessary all aspects of behaviour covered by local government activities. Accordingly, the Employee Code should apply to all relevant employees – see answers to Question 15 and 22 - and there should be no exclusions even for those employees subject to professional codes of conduct. The ‘higher and more onerous’ code should, of course, apply in ensuring high ethical standards of behavior and conduct for officers.

Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?

The general provisions should apply to all employees; whereas the more senior officers (i.e. those politically restricted and/or those exercising a scheme of delegation power) should be subject to the more onerous parts of the Code.

Question 16 Does the employees’ code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?

The core values / principles are fine; although the Government should also consider the other aspects of the General Principles which should also apply - such as : Selflessness, Honesty and Integrity, Objectivity, Respect for others, Duty to uphold the law, Stewardship, Leadership and Duty to abide by the criminal law.

In addition, the heading re ‘Treatment of Information’ should be re-labeled ‘Treatment of Confidential / Exempt Information’ and the text suitably updated to include references to exempt information, so as to be clear about these aspects.

Question 17 Should the selection of ‘qualifying employees’ be made on the basis of a “political restriction” style model or should qualifying employees be selected using the delegation model?

The qualifying provisions should not be about ‘or’ but ‘both’ are relevant as those subject to Political Restriction should be subject to these provisions and those who might not be so restricted but exercise delegated powers must also be subject to the higher ethical governance standards. To do so otherwise, might be to ignore the reality of decision making in local government.

Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests?

Central registration with, for example, the Monitoring Officer is long overdue and should be implemented for Politically Restricted posts as well as those who exercise delegated authority. As to whether these registers should be open to the public should be a matter for local decision making, as the register will contain personal data which might be covered by the Data Protection Act of the employees.

Whilst there is a need for the public to know the contact details, including land and financial details of Members and Co-opted Members making decisions in the name of the public, there is not the same level of need for the public to know the contact details, including land and financial details, of all local government employees. For example, the home and telephone numbers, including the salary details, of all employees are not relevant for members of the public to know, so long as the public know that there is a register of personal and financial interests kept by the relevant Chief

Officer (or the relevant Monitoring Officer) to ensure probity and propriety of officer decision-making.

The provisions re 'using your position improperly' and 'considering advice provided to you and giving reasons' should, however, apply to all officers.

Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

The provisions for registration appear to be fine although there will, no doubt, be on-going debate as to whether membership of political parties by the most senior officers in local government should be registered in some central register kept by Monitoring Officers.

In keeping with open and transparent principles, it is felt important to require all Politically Restricted Post-holders and those who might exercise delegated authority must register their membership of any Freemason organization in the Department or Central Register, maintained by the Monitoring Officer.

Question 20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?

Registration of gifts and hospitality at the Departmental or Central Register with, for example, the Monitoring Officer, might also be worth considering as part of this review. In addition, as per the Code of Conduct for Members, local authorities should be able to add voluntary local provisions in the Officers Code.

Question 21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Subject to Data Protection Act considerations, these provisions appear workable.

Question 22 Should the employees' code extend to employees of parish councils?

There is a debate as to whether the Officer Code should apply to Parish Officers and the Government might wish to consider some de-minimus provisions for small authorities.

Response submitted by: Andrew Frosdick, President of ACSeS.

If you need any clarification, please do not hesitate to contact:

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Date: 7th December 2008



AGENDA STATUS: PUBLIC

| Report Title | Standards Board- publications update |
|-------------------------|--------------------------------------|
| Date of Meeting: | 18 December 2008 |
| Directorate: | Chief Executive's |
| Ward(s) | All |

1. Summary

Bulletins 38,39,40 and 41

2. Recommendations

That members note the report.

3. Report Background

Members dealt with the previous edition of the Bulletin (37) at the meeting on 10 March 2008. The Standards Board, and more recently the Adjudication Panel, have been particularly busy since the coming into force of the 'local filter' procedures in May offering guidance on it and dealing with other issues arising for authorities that are processing member-conduct complaints. The publications concerned are mostly self-explanatory, and members are asked to note the bulletins.

4. Implications (including financial implications)

4.1 Resources and risk

There are none- apart from, perhaps, the resources needed to arrange training for members on any points arising from the publications.

4.2 Legal

Some of the points in the publications are such that, if regard was not had to them by this authority and the subcommittee-members when dealing with complaints under the 'local filter' procedures, then the authority would be at much greater risk of legal challenge.

4.3 Other implications

If members do not keep reasonably up-to-date with these publications then they may find it difficult to perform their tasks on the various sub-committees which determine member-conduct complaints.

5. Background papers)

None

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reporting system

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Statistics

Welcome to Issue 38 of the *Bulletin*.

Local assessment has arrived. From 8 May 2008, the new, more locally-based standards framework gives standards committees responsibility for the initial assessment of all allegations that a member of their authority may have breached the Code of Conduct. It also gives them responsibility for any subsequent investigations, decisions and sanctions. This is except where cases cannot be handled locally because of their seriousness, conflicts of interest or other public interest reasons.

Detailed regulations prescribe how the revised standards framework will work in practice. We use this *Bulletin* to summarise, in detail, the content of the Standards Committee (England) Regulations 2008. I hope that you find this useful.

As we set out in the last *Bulletin*, the Standards Board has been working hard to produce comprehensive guidance on the new standards framework. Now that the government has confirmed the detail of the regulations, we are reviewing and completing this guidance to make the transition to the new system as smooth as possible for authorities. We have already published a toolkit of template documents on our website to assist you with the local assessment of complaints. We will publish our local assessment guidance on the website by 8 May 2008.

Finally, I am sad to say that this is my final *Bulletin*, as I retire as Chief Executive of the Standards Board in June. My successor, Glenys Stacey, started work in April and looks forward to meeting as many of you as possible. I leave at an exciting time, as the responsibility for upholding high standards of member conduct moves to the heart of local government. I know that you will rise to the challenge. I would like to thank all of you for your commitment and hard work during my time at the Standards Board. It has been a pleasure working with you and I wish you every success in the operation of the new arrangements.



David Prince
Chief Executive

Contact

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Standards Committee (England) Regulations 2008: A summary

The following article summarises in detail the content of the Standards Committee (England) Regulations 2008.

Composition of standards committees

At least 25% of a standards committee must be made up of independent members. No more than one member of an authority's standards committee can be a member of the executive.

Where an authority must have parish representatives it must now ensure that it has at least two who are not also members of the authority. Previously one was enough.

Appointments to standards committees

Normally, a person cannot be appointed as an independent member of a standards committee unless:

- the appointment is approved by a majority of the members of the authority
- the appointment is advertised in a local newspaper circulating in the area
- the person has submitted an application to the authority
- the person has not been a member or officer of the authority within the previous five years and is not a relative or close friend of a member or officer of the authority

The new regulations do not change this, but add that advertisements can be placed in any other publications or websites the authority considers appropriate.

However, they do provide that a person who is an independent member of one standards committee may be appointed as an independent

member of another. This is unless they have been a member or officer of it in the preceding five years or are a relative or close friend of a member or officer of that authority.

An independent member of another authority can be appointed for a specific period of time. Alternatively, they can be appointed to deal with a particular allegation or set of allegations against a member. The term of office of such an independent member can then be fixed accordingly.

An authority can adopt whatever procedures it thinks fit to appoint such independent members and members of parish councils. It must consider the Standards Board for England's standards committee guidance, to be published in May, when making these appointments.

Where a person who is appointed as an independent person becomes a member or officer of any authority, or becomes a relative of a member or officer of that authority, they can no longer be a member of the standards committee.

Sub-committees of standards committees

The standards committee of an authority must appoint a sub-committee chaired by an independent member to carry out initial assessments of allegations. This is under Section 57A of the Local Government Act 2000.

It must also appoint a sub-committee chaired by an independent member to carry out reviews under Section 57B of the Local Government Act 2000. If the standards committee appoints a sub-committee to hold hearings, that sub-committee must be chaired by an independent member. Nothing in the regulations requires a sub-committee of a standards committee to have fixed membership or chairmanship.

Validity of proceedings

For a meeting of the standards committee to be valid at least three members must be present, one of whom must be an independent member. The independent member must chair the meeting. For a meeting of a standards committee sub-committee to be valid at least three members of the standards committee must be present, including normally at least one elected member and one independent member. In either case, if parish issues are being discussed, one of the three members present must be a parish representative. An independent member must usually chair a sub-committee meeting.

No member who took part in the initial assessment of an allegation can attend a sub-committee meeting that is considering a review of a decision to take no further action on a matter.

At least one parish or town council representative must attend a standards committee meeting, or a standards committee sub-committee meeting, convened to consider a matter relating to a member of a parish or town council.

Application of the Local Government Act 1972

The existing rules about publicity and access to documents apply, except that initial assessment hearings and reviews are excluded from the scope of Part VA of the Local Government Act 1972. They are replaced with the following requirements:

- After the meeting, the sub-committee must produce a written summary. The written summary must record the main points considered, the conclusions reached and the reasons for them. It must be prepared having considered the Standards Board for England's standards committee guidance, which is to be published in May.

- The sub-committee may also give the name of any member subject to allegations unless such disclosure is not in the public interest or would prejudice any investigation. The record must be available for inspection by members of the public at the offices of the authority for six years after the meeting and must be given to any parish or town council involved.

Written allegations

Standards committees must publish details of the address or addresses that written allegations should be sent to. Standards committees themselves can choose how they do this. They must also take reasonable steps to ensure that the public are kept aware of address details and that any changes to them are published promptly.

In addition, standards committees must publish details of the procedures they will follow.

A standards committee must take account of relevant guidance issued by the Standards Board when complying with these obligations.

Modification of duty to provide written summaries to members subject to allegations

Under Section 57C(2) of the Local Government Act 2000, a standards committee must take reasonable steps to give a written summary of the complaint to the member subject to the allegation. The new regulations provide that this duty does not arise if the standards committee decides that giving a written summary would be contrary to the public interest. Standards committees also need not provide a written summary if it would prejudice any person's ability to investigate the allegation.

The standards committee must take account of any guidance issued by the Standards Board when reaching a decision. It may also consider any advice received from the monitoring officer or any ethical standards officer concerned.

Once the monitoring officer or ethical standards officer has advised the standards committee that it would no longer be against the public interest or prejudicial to any investigation, a written summary must be provided. In any event this must be done before any consideration by the standards committee or sub-committee of a report or recommendation from a monitoring officer or ethical standards officer about that allegation.

Modification of Section 63 of the Local Government Act 2000

Section 63 of the Local Government Act 2000 has been modified so that the confidentiality requirements in that section are applied to information gathered by the monitoring officer in the course of an investigation. The monitoring officer can disclose this information if it is for the purposes of carrying out their functions under the legislation, or for enabling a standards committee, a sub-committee or an appeals tribunal to do so.

Referral of matters to a monitoring officer for other action

There may be occasions where a matter is referred to a monitoring officer by a sub-committee of a standards committee or an ethical standards officer, with a direction to take steps other than carry out an investigation. The sub-committee can only make such a referral after consulting the monitoring officer. Other action can include arranging training, conciliation or anything else that appears appropriate.

The monitoring officer must submit a written report to the sub-committee or ethical standards officer within three months, giving details of what action has been taken or is proposed to be taken. If the standards committee is not satisfied with the action specified in the report, it must give a further direction to the monitoring officer.

If the ethical standards officer concerned is not satisfied with the action specified in the report, they may ask the monitoring officer to publicise a statement. This statement should be published in at least one newspaper circulating in the area of the authority concerned. This should give details of the direction given by the ethical standards officer, the reasons why the ethical standards officer is dissatisfied with the action taken, and the monitoring officer's response to those reasons.

Referral of matters to a monitoring officer for investigation

Where a matter is referred to the monitoring officer for investigation, the monitoring officer must inform the following parties that the matter has been referred for investigation:

- any member subject to an allegation
- the person who made the allegation
- the standards committee of any other authority concerned
- any parish or town council or other authority concerned

The monitoring officer must also consider any relevant guidance issued by the Standards Board, and must comply with any relevant direction given by it.

The monitoring officer can make enquiries of anyone and require them to provide information or explanations that the monitoring officer thinks necessary. In addition, they may require any of the authorities concerned to provide advice and assistance as reasonably needed, and, except for parish and town councils, to meet the reasonable costs of doing so.

If any of the authorities concerned is a parish council, the monitoring officer may require its responsible authority to meet any reasonable costs it incurs. The monitoring officer may also require any of the authorities concerned to allow reasonable access to documents they possess,

which the monitoring officer may find necessary to conduct the investigation.

Following an investigation, a monitoring officer must make one of the following findings:

- Finding of failure – there has been a failure to comply with the Code of Conduct of the authority concerned or, as the case may be, of any other authority concerned.
- Finding of no failure – there has not been a failure to comply with the Code of Conduct of the authority concerned or, as the case may be, of any other authority concerned.

The monitoring officer must prepare a written report concerning the investigation and findings. They must then send that report to the member subject to the allegation and refer the report to the standards committee. The report can also be sent to any other authority that the member belongs to, if they request it. The monitoring officer must refer the report to the standards committee in instances where an investigation report is sent to the monitoring officer by an ethical standards officer.

References back from the monitoring officer

In cases referred to a monitoring officer for investigation after an initial assessment, the monitoring officer can refer that matter back to the standards committee concerned if:

- 1) as a result of new evidence or information, the monitoring officer believes both of the following:
 - The matter is materially more or less serious than may have seemed apparent to the standards committee when it made its decision on the initial allegation.
 - The standards committee would have made a different decision had it been

aware of that new evidence or information.

- 2) the member subject to the allegation has died, is seriously ill or has resigned from the authority concerned, and the monitoring officer believes that it is consequently no longer appropriate to continue with an investigation

If a matter is referred back to a sub-committee under this regulation, the sub-committee must make a decision as if the matter had been referred to it for initial assessment. It can remove the ability of the monitoring officer to refer the matter back again.

Consideration of reports by standards committee

Where a monitoring officer refers a report to the standards committee of any authority, it must consider that report and make one of the following findings:

- Finding of acceptance – it accepts the monitoring officer's finding of no failure to comply with the Code of Conduct.
- The matter should be considered at a hearing of the standards committee.
- The matter should be referred to the Adjudication Panel for England for determination.

A standards committee can only refer a case to the Adjudication Panel if:

- 1) it decides that the action it could take against the member would be insufficient were a finding of failure to be made
- 2) the President or Deputy President of the Adjudication Panel has agreed to accept the referral

The standards committee must give written notice of a finding of acceptance to the parties involved, as soon as possible after making it. It must arrange for the decision to be published in at least one local newspaper and, if the committee deems it appropriate, on its website and any other publication. If the member subject to the allegation requests that the decision not be published, then the standards committee must not publish it anywhere.

Hearings by a standards committee

A standards committee can conduct a hearing using whatever procedures it considers appropriate in the circumstances. But the meeting must be conducted with regard to relevant guidance issued by the Standards Board.

The hearing must be held within three months of the date of which the monitoring officer has received a report referred by an ethical standards officer or the date that the report is completed, if it was prepared by the monitoring officer.

If it cannot be held within three months of the above, it must be held as soon as possible thereafter.

The hearing must not be held until at least 14 days after the date that the monitoring officer sent the report to the member subject to the allegation, unless the member concerned agrees to the hearing being held earlier.

Any member who is the subject of a report being considered by the standards committee must be given the opportunity to present evidence and make representations at the hearing orally. Alternatively, they can make representations in writing, personally or through a representative. The representative can be a barrister, solicitor or, with the consent of the standards committee, anyone else.

A standards committee may arrange for witnesses that it thinks appropriate to attend and a member subject to an allegation may arrange to call any number of witnesses. It may also place a limit on the number of witnesses a member calls if it believes that the number is unreasonable.

If the member subject to the allegation fails to attend a hearing, the standards committee may make a decision in their absence. This is unless it is satisfied that there is sufficient reason for the member subject to the allegation failing to attend. It may alternatively adjourn the hearing to another date.

A standards committee may, at any stage prior to the conclusion of the hearing, adjourn the hearing and require the monitoring officer to seek further information. Alternatively, it may require the monitoring officer to carry out further investigation on any point it specifies. However, the standards committee cannot adjourn the hearing more than once.

If a standards committee receives a report from an ethical standards officer, it may adjourn the hearing at any stage before it concludes, and refer it back to the ethical standards officer for further investigation. It must set out its reasons for doing this.

The ethical standards officer must respond to the request within 21 days and can accept or refuse it. If the request is refused, the standards committee must continue the hearing within three months or as soon as possible thereafter.

Standards committee findings

Following a hearing, a standards committee will make one of the following findings about the member subject to the allegation:

- The person had not failed to comply with the Code of Conduct.

- The person had failed to comply with the Code of Conduct but that no action needs to be taken.
- The person had failed to comply with the Code of Conduct and that a sanction should be imposed.

If the member subject to the allegation is no longer a member of any authority, the committee can only censure that person. Otherwise, it must impose any one or a combination of the following sanctions:

- Censure.
- Restriction for up to a maximum of six months of that member's access to the premises and/or resources of the authority. This is provided that any such restrictions are reasonable and proportionate to the nature of the breach, and do not unduly restrict the person's ability to perform their functions as a member.
- Partial suspension of that member for up to a maximum of six months.
- Suspension of that member for up to a maximum of six months.
- A requirement that the member submit a written apology in a form specified by the standards committee.
- A requirement that the member undertake training as specified by the standards committee.
- A requirement that the member undertake conciliation as specified by the standards committee.
- Partial suspension of the member for up to a maximum of six months or until such time as the member submits a written apology in a form specified by the standards committee.

- Partial suspension of the member for up to a maximum of six months or until such time as the member undertakes any training or conciliation specified by the standards committee.
- Suspension of the member for up to a maximum of six months or until such time as the member submits a written apology in a form specified by the standards committee.
- Suspension of the member for up to a maximum of six months or until such time as that member undertakes such training or conciliation as the standards committee specifies.

Normally any sanction imposed must start immediately following its imposition. However, the standards committee can decide that any sanction will start on any specified date up to six months after the imposition of that sanction.

Notification of standards committee findings

The notification provisions under the new regulations are similar to the ones under the previous regulations. All interested parties, including the Standards Board, should be notified of a decision along with the reasons for it. The standards committee must arrange for a notice to be published in a local newspaper and, if the committee thinks it appropriate, on its website and any other publication. If the member concerned is found not to have failed to comply with the Code of Conduct, a summary must not be published anywhere if the member so requests.

Where the standards committee finds that the member has failed to comply with the Code, the notice to the member concerned must include the right to appeal in writing against the decision to the President of the Adjudication Panel for England.

Appeals

The member who is the subject of a finding can

ask for permission to appeal within 21 days of receiving notification of the committee's decision. They can also apply for the suspension of any sanction imposed until such time as any appeal is decided.

Any appeal must specify whether the appeal is against the finding or the sanction or both. It must also specify:

- the grounds of the appeal
- whether any application for suspension of any sanction is made
- whether the person consents to the appeal being dealt with in writing only

The application for permission to appeal or to suspend a sanction will be decided by the President of the Adjudication Panel for England. In the absence of the President this will be decided by the Deputy President, unless they consider that special circumstances render a hearing desirable.

If permission is refused, or if a suspension of a sanction is not granted, the notice given to the member concerned will give the reasons.

The conduct of appeals, the composition of appeals tribunals and the procedures to be followed are essentially the same as under the previous regulations.

Outcome of appeals

Where an appeals tribunal dismisses a standards committee's finding, the committee's decision, including any sanction imposed, will cease to have effect from the date of the dismissal.

Where an appeals tribunal upholds the finding of a standards committee that there has been a breach of the Code of Conduct but that no sanction should be imposed, it may confirm the committee's decision to impose no sanction. Alternatively, it may impose any sanction which was available to that standards committee.

Where an appeals tribunal upholds a standards committee's finding, or part of a finding, that there has been a breach of the Code of Conduct, it may confirm any sanction imposed by that committee. Alternatively, it may substitute any other sanction which was available to that standards committee.

Normally any sanction imposed must start immediately following its imposition by the appeals tribunal. However, an appeals tribunal can decide that any sanction imposed should start on any specified date up to six months after the imposition of that sanction.

The appeals tribunal must arrange for a summary of its decision to be published in one or more newspapers circulating in the area of the authorities concerned.

Complaints from the public

As local authorities prepare to receive and assess complaints about member conduct, we are passing on our advice about dealing with complaints from members of the public. Although these formed the majority of the complaints we received, the fact that most members of the public are not specialists in local government, the Code of Conduct or in making a complaint means that they will need support.

Our experience suggests that if members of the public do not understand the process, including the possible or likely outcomes if their complaint is upheld, then they are more likely to be unhappy about the outcomes of cases. Feedback we have received also suggests that not all local authorities are making information readily available on how to make a complaint. This will be a statutory requirement from May this year.

In short, our key recommendations based on our experience of dealing with complaints from the public are:

- Complaint materials should be easily available and the complaint process should be made very clear from the start.
- Complaint materials and responses to complaints need to be clear and concise. They should explain exactly what can and cannot be done, including an outline of the powers available.
- Complaint materials should assume complainants are unfamiliar with how to make a complaint, the Code of Conduct and the authority's complaint process.

Update on the new local reporting system

In the last issue of the *Bulletin* we provided a brief overview of the new reporting mechanism that monitoring officers will use to notify us about local activity relating to the standards framework each quarter.

We aim to launch the system on 8 May 2008. To ensure that it works well, we have recently carried out some external testing. We advertised for volunteers in the ACSeS (Association of Council Secretaries and Solicitors) bulletin and were delighted by the number of monitoring officers who got in touch and expressed an interest.

Each volunteer was asked to submit a mock quarterly return using real, but anonymised, case information and to report back on their experience. The exercise has proven invaluable and the feedback has been encouraging. Aside from some issues with speed that are being attended to, monitoring officers have confirmed that the system is easy to use and that the questions being asked are clear and understandable.

The next stage for us is to implement some of the tweaks and improvements suggested by our external testers and to compile a user guide to accompany the system launch documentation.

All monitoring officers will be contacted via email ahead of the introduction of the new system, with information about how to log on and instructions about how and when to submit their return.

In addition to the user guide, we plan to provide telephone and email support to monitoring officers who are making information returns. This will ensure that the process is as uncomplicated and painless as possible.

Forthcoming event

The National Association of Local Councils Conference 2008

Winter Gardens, Eastbourne

Tuesday 20 to Thursday 22 May 2008

At this year's National Association of Local Councils (NALC) event, we will have policy staff on hand to answer your questions at exhibition stand four.

Our new Chief Executive Glenys Stacey, and independent Board Member Councillor Shirley Flint, will also be delivering a presentation and answering questions.

Press toolkit

The Standards Board's press office is preparing a toolkit to help local authority press offices deal with media interest in referrals, investigations and hearings once the local framework comes into effect.

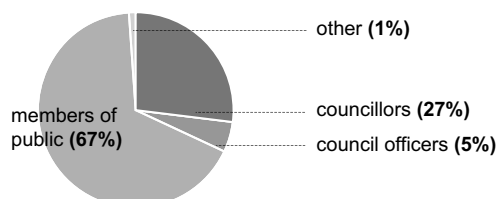
It will include advice on how to publicise the changes in the ethical framework, raise awareness of standards committees' work, and offer help on dealing with enquiries about complaints and investigations reactively. The toolkit will also include FAQs, guidelines, templates for press releases and best practice advice. The toolkit is currently being drafted in light of the regulations, and will be issued directly to local authority press offices.

Referral and investigation statistics

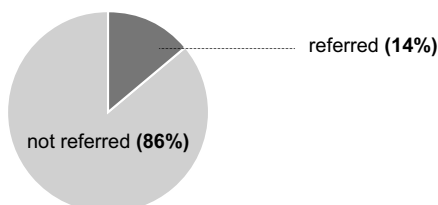
The Standards Board for England received 3,624 allegations between 1 April 2007 and 31 March 2008, compared to 3,549 during the same period in 2006-2007.

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

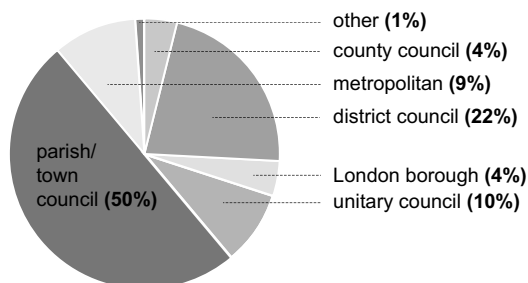
Source of allegations received



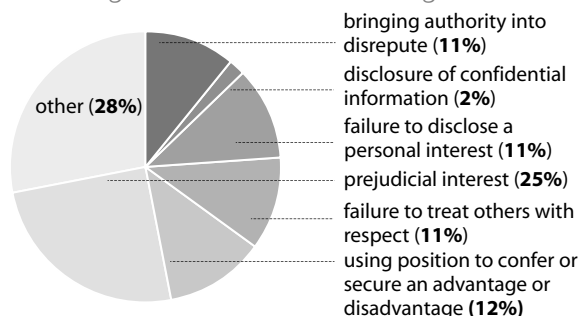
Allegations referred for investigation



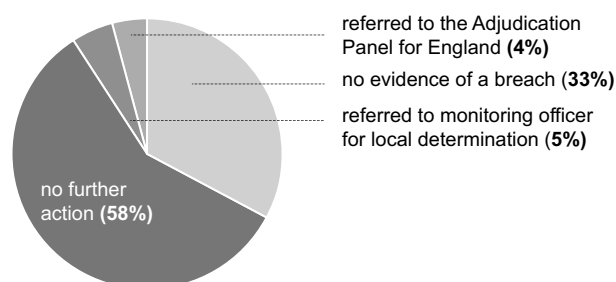
Authority of subject member in allegations referred for investigation



Nature of allegations referred for investigation



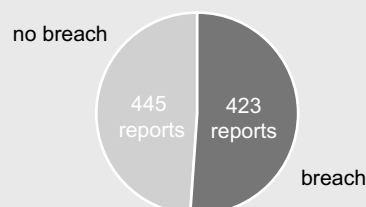
Final findings



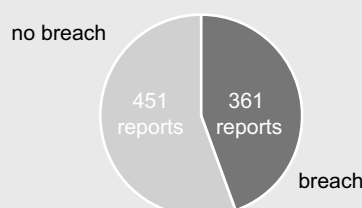
Local investigation statistics

For the period 1 April 2007 to 31 March 2008, ethical standards officers referred 291 cases for local investigation, which is 55% of all cases referred for investigation. Since 1 April 2007 there have been eight appeals to the Adjudication Panel for England following standards committee hearings. Since November 2004 we have referred 1,097 cases for local investigation – please see below for a statistical breakdown of the cases that have been determined.

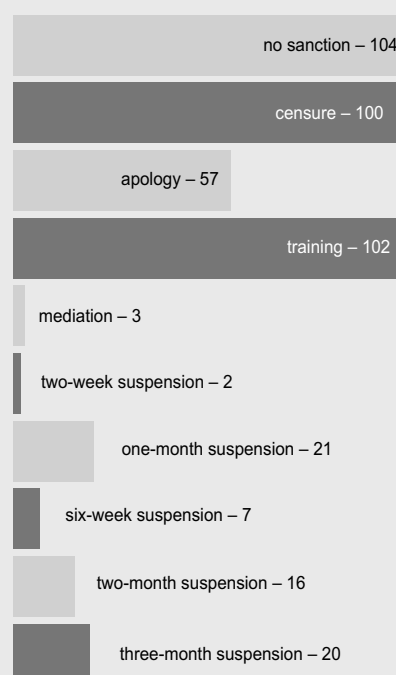
Monitoring officers' recommendations following local investigations



Standards committee hearings



Standards committee determinations



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Welcome to Issue 39 of the *Bulletin*.

I am pleased to introduce my first *Bulletin* since succeeding David Prince as Chief Executive of the Standards Board for England. I look forward to meeting many of you and working closely with you over the coming months.

Local assessment is now in place, and the last couple of months have been busy for local authorities preparing for the introduction of the devolved framework. Some standards committees have already risen to the challenge of assessing their first Code of Conduct complaints.

In this *Bulletin*, we present the personal reflections of the Strategic Director at Newark and Sherwood District Council on preparing for local assessment. I hope that you find this an interesting read. We also focus on the new online local reporting system. We are confident you will find this system easy to use.

You are probably aware of the Standards Board's next Annual Assembly of Standards Committees, due to be held in October 2008. *Delivering the Goods: Local Standards in Action* is proving to be our most popular Annual Assembly ever, with more than 90% of places already booked. If you have already secured your place, we would advise you to return your conference session preference form as soon as possible to make sure you get your first choice of sessions – they are filling up fast!

Finally, I am pleased to introduce the new Chair of the Standards Board, Dr Robert Chilton. Dr Chilton will succeed Sir Anthony Holland in July 2008 and we present a brief biography in this *Bulletin*.



Glenys Stacey
Chief Executive

Launch of the Standards Board's online local reporting system

Our new local reporting system went live on 8 May 2008 to coincide with the introduction of local case handling. It was launched by an email sent to all monitoring officers in our contact database. The reporting system consists of a short questionnaire about the authority and the standards committee, a section to enter some basic information about each case the standards committee has received, and some guidance materials.

You can access the reporting system by visiting the Resources section of our website, www.standardsboard.gov.uk, and clicking on the 'Monitoring returns' menu item. This will take you directly to the login page.

Alternatively, you can go directly to <https://authority.standardsboard.gov.uk>.

Support

We have tried our best to make the reporting system as easy to use as possible. Once you log in, click on the 'online help' link in the left-hand menu for an online guide to using the system. There is also an A-Z of questions document, which explains in more detail what is expected from each of the questions asked in the form.

Any queries about the quarterly return process can be sent to: authorityreturns@standardsboard.gov.uk or you can speak to the Monitoring Team by calling 0161 817 5300.

Who should complete and submit the quarterly return?

The monitoring officer is accountable for submitting accurate and timely returns at the end of each quarter. We know that some monitoring officers will delegate the task of filling out and

submitting the return to someone else in their authority. However, as the accountable person, we will continue to send all correspondence regarding quarterly returns only to the monitoring officer.

It is the monitoring officer's responsibility to ensure that the person they have delegated monitoring returns to is kept up-to-date of any email notifications from us.

How the quarterly return process works

We will be analysing and reporting on case handling activity within each quarter. The quarters are defined by the financial year as follows:

- **Quarter 1** is the beginning of **April** to the end of **June**.
- **Quarter 2** is the beginning of **July** to the end of **September**.
- **Quarter 3** is the beginning of **October** to the end of **December**.
- **Quarter 4** is the beginning of **January** to the end of **March**.

Due to the delayed start of local assessment, the very first period we are collecting information for is 8 May 2008 to the end of June 2008.

As a result of the need to collect returns as quickly and efficiently as possible at the end of each quarter, there will be a period of ten working days within which submissions must be made. This period, which we will refer to as the 'submission window', will start on the day after each quarter has ended. The dates for this for the current financial year are shown on **page 3**.

We will send an email reminder to all monitoring officers when their submission is due.

Submission window dates for the current financial year:

- **Quarter 1**
01 July 2008 to 14 July 2008*
- **Quarter 2**
01 October 2008 to 14 October 2008*
- **Quarter 3**
02 January 2009 to 15 January 2009*
- **Quarter 4**
01 April 2009 to 16 April 2009*

*Midnight on these closing dates.

What happens next?

As the framework beds in and quarterly returns are collected, we will begin to build up a national picture of how successful the implementation of case handling has been. We will be able to collect data on specific areas of the framework to allow us to pinpoint good practice and identify any areas of concern as trends emerge. We may contact monitoring officers to request further details about particular cases to help us do this.

As we no longer have responsibility for investigating all cases on a national level, we will not be able to continue publishing summaries of completed investigations on our website. Instead, we will produce quarterly statistics about cases handled across the country. We also intend to compile a report highlighting notable practice in local case handling on an annual basis.

If you are a monitoring officer and you have not received the launch email with your username and password, please contact our monitoring team on **0161 817 5300** or email authorityreturns@standardsboard.gov.uk.

New guidance published

The latest guidance to support local authorities in the implementation and function of the local standards framework is now available to download from the Guidance section of our website www.standardsboard.gov.uk.

Four pieces of guidance and two toolkits have now been published:

- **Local assessment of complaints:** Details each stage of the process, as well as offering guidelines for best practice.
- **Local assessment toolkit:** Useful document templates for local assessment, which can be used or adapted by authorities as required.
- **The role and make-up of standards committees:** Advice on setting up and operating effective committees.
- **Local investigations and other action:** An overview of the issues involved in local investigations and other action.
- **How to conduct an investigation:** A comprehensive guide to conducting an investigation.
- **Investigations toolkit:** Useful document templates to help with conducting investigations locally, which can be used or adapted by authorities as required.

Guidance on standards committee determinations will be published on our website in early July 2008.

Reviews of local assessment decisions: Timeframe for review requests

If a standards committee decides not to take any action on a Code of Conduct complaint, then the complainant has a right of review over that decision. The complainant should be advised of their right to ask for a review of a decision to take no action. They should also be told that they can exercise this right by writing to the standards committee with their reasons for requesting a review.

The standards committee must receive the complainant's review request within 30 days from the date on the initial assessment decision notice.

We would like to clarify that this is 30 days in total and not 30 working days. Our *Local assessment of complaints* guidance, available from our website, has been updated to reflect this position.

Local assessment – A personal reflection

Kirsty Cole
Strategic Director (Corporate Services)
Newark and Sherwood District Council

I had thought that Newark and Sherwood District Council was reasonably well placed for meeting its new duties and responsibilities when the local assessment of complaints was introduced by the Standards Committee (England) Regulations 2008 on 8 May 2008.

We had decided in the autumn of last year to increase the size of the standards committee to 15, with four independent members, four parish representatives and seven elected members, in order to ensure that we had a sufficient pool from which to draw when setting up assessment and review sub-committees and hearing panels.

We had placed adverts for new members before Christmas last year and our standards committee chair was profiled in the November issue of our council newsletter, setting out the work undertaken by the standards committee, outlining its new role in the local assessment of complaints and encouraging people to come forward for positions on the standards committee.

Our marketing campaign was extremely successful and we were able to recruit three new independent members of an extremely high calibre to the standards committee, together with two additional parish representatives (our two existing parish representatives are continuing their term of office for a further year to provide some continuity in the changeover to the new arrangements).

The new appointments were confirmed at the February council meeting and all the new members were given induction training on the work of the standards committee – not just in the local assessment of complaints, but on the standards committee's wider role in embedding high standards of ethical conduct within the organisation and across the parish councils within our district.

We had already participated in the Standards Board's local filter pilot in July 2007, and Newark and Sherwood District Council had been instrumental in organising further county-wide training on the local assessment of complaints in early March 2008, in which our new standards committee members had participated.

However, what I had not anticipated in the first week of May 2008 was the sheer volume of paperwork which I would need to prepare in a very short timescale, and I certainly hadn't anticipated that we would receive our first complaint immediately after the Regulations came into effect and before our standards committee had even had the chance to meet to set up its assessment and review sub-committees.

Fortunately, I had built in an initial step within our complaints procedure that, unless a complainant indicated otherwise, we would endeavour to resolve any complaint informally through local resolution prior to its submission to the assessment sub-committee.

I consider that this step is permitted within the regulatory framework as there is no legal requirement to place the complaint before the assessment sub-committee until a written complaint has been sent to the standards committee (Section 57C of the Local Government and Public Involvement in Health Act 2007). Fortunately, this particular complaint had been expressly addressed to the Chief Executive.

We managed to get a copy of the complaint form and a notice about the new arrangements onto the council's website before 8 May 2008 – but only just! – and we are still working through the various forms and other documents for which the Standards Board has helpfully provided templates in its toolkit.

Our standards committee will meet on 11 June 2008 to formally establish the assessment sub-committee and review sub-committee, which we will draw from a panel of members of the standards committee rather than having a fixed membership. I believe that, as monitoring officers, we have to make pragmatic judgements of what will work in practice and where any risk or challenge might lie.

The Standards Board is to be commended in producing template documentation and guidance so promptly and efficiently. I know that because of the speed with which the Standards Board was required to turn things around, there have been some amendments to the guidance which was initially issued. As a word of caution, you need to double check the Standards Board's website to ensure that you are working to the most up-to-date guidance.

In summary, I am glad that we had increased the size of our standards committee well in advance of 8 May 2008 and that we had had the invaluable experience of participating in the local filter pilot. However, we still found ourselves in a position where we were not fully prepared when the new regulations came into effect and we are still working hard in putting all the documentation and procedures in place. It was a much bigger task than I had envisaged and would have been virtually impossible without the help and support offered by the Standards Board.



CLG appoints new Chair of the Standards Board

The Secretary of State for Communities and Local Government (CLG) has appointed Dr Robert Chilton as the new Chair of the Standards Board for England. He will take over from Sir Anthony Holland on 1 July 2008 for a three-year term.

Dr Chilton's association with local government goes back to 1965 when he began his career in regional planning. From the mid-1980s he has held positions as Chief Executive of Gillingham Borough Council, Director of Local Government Studies at the Audit Commission, Head of Transition and then interim Chief Executive of the Greater London Authority, and interim Commissioner for Transport at Transport for London.

He is also a non-Executive Director of the Waste and Resources Action Programme, a Board Member for the Office of the Information Commissioner, Chair of the major London housing association the East Thames Group, and Deputy Chair of ICSTIS, the premium rate phone regulator.

In announcing Dr Chilton's appointment on 13 May 2008, Minister for Local Government John

Healey expressed his confidence in Dr Chilton's "strategic vision" and "deep understanding and experience of local government". He also thanked Sir Anthony Holland for his hard work over the past seven years.

Bulletin statistics

Due to the introduction of local assessment and our changing role, we will be reporting different statistical information from now on. This information will be available following the analysis of information collected through our online local reporting system. To find out more about the operation of this system, please see **page 2** of this *Bulletin*.

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Monitoring officer seminar

Ethical governance toolkit

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Welcome to Issue 40 of the *Bulletin*.

In this *Bulletin* we present an initial analysis of the first quarterly monitoring returns we have received from authorities on local case handling. A fantastic 98% of authorities have submitted their returns and provided us with a clear overview of the successful operation of the devolved ethical framework so far. Thank you all for helping us to ensure the quality of the data.

We are using this opportunity to seek your views on the potential adjournment of assessment sub-committee decision making. This is in order for the monitoring officer to find out whether a subject member would co-operate with a referral for other action. We outline our concerns with this approach, and its possible advantages, and invite your feedback on the most appropriate practice.

Finally, I am pleased to introduce two new Board members, **Michael Kendall** and **Elizabeth Abderrahim**, and confirm that **Professor Judy Simons** has been appointed as the Standards Board for England's new Deputy Chair.

Glenys Stacey
Chief Executive



Seventh Annual Assembly of Standards Committees

13-14 October 2008, ICC Birmingham

See page 4 for more details

Guidance on the local standards framework

The final section of our guidance on the local standards framework has now been completed and is available online in the Guidance section of our website www.standardsboard.gov.uk.

The *Standards committee determinations* guidance has been designed to help members and officers in relevant authorities who are involved in the determination of complaints that a member may have breached the Code of Conduct.

It details each stage of the determination of complaints process and offers suggestions for effective practice. In addition, it provides a toolkit of useful document templates that may be used or adapted by authorities as required.

Folders containing all of the local standards framework guidance will be sent to monitoring officers in early September. Please note that we have updated *The role and make-up of standards committees* guidance and *The local assessment of complaints* guidance since they were first made available on our website. We therefore recommend that you use the guidance in the folder, or the guidance which is currently on our website, as opposed to any versions that you might have printed off previously.

Analysis of first quarterly monitoring returns

Data collection

The first quarter of local case handling has now ended. Following this, we sent an email to the monitoring officers of all principal authorities requesting that they submit their first quarterly return before the deadline of 14 July 2008. The return helps us to provide the national and independent oversight necessary for there to be confidence in a locally based system of complaint handling.

The first return covers the period of 8 May to 30 June 2008 and involved monitoring officers answering a series of questions about their authority's standards committee. They were also required to answer questions about any cases that had been handled locally.

As this was the first time that monitoring officers had to submit a return – and because our online system is brand new – we expected a few teething problems with the data collection. However, we received an overwhelming response rate, with a return from **98%** of authorities.

We are also pleased to report that **90%** of the returns do not have any issues needing further clarification.

Thank you to all monitoring officers, and other authority employees who submitted on their behalf, for ensuring that we have a good, solid data set. This will help us begin to formulate a national picture of local case handling. It will also serve as a starting point for identifying standards committees that we can work with to achieve the goal of ensuring consistently high ethical standards in local government.

Feedback

We are currently gathering feedback from a sample of monitoring officers about their experiences of completing and submitting their quarterly return. Thanks to all the monitoring officers who are participating in this. As a result, we are already looking at making some improvements to the system for future quarterly returns. These include:

- an automated acknowledgement page, so that you will know instantly that your return has been submitted successfully
- a smarter log off procedure, so that monitoring officers of more than one authority can switch between multiple accounts more easily
- improvements to the way that closed cases are managed by the system (over the long term we hope to include an archive of old case details)

Analysis

We are currently analysing the **90%** of returns that are complete, and contacting the other **8%** of authorities whose returns have issues that need clarifying. We have sent a further request to the **2%** of authorities who have not yet submitted their return.

However, our initial observations of the data are as follows:

Standards committees

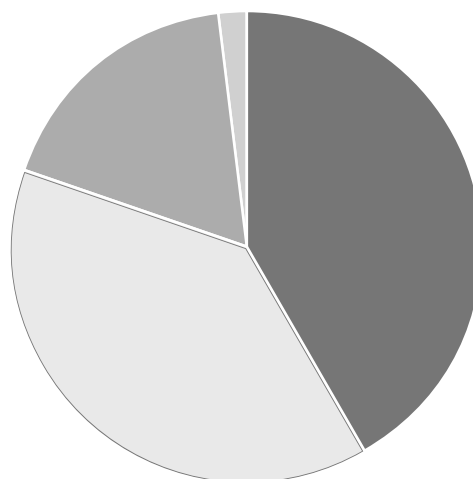
- On average, standards committees have nine members in total, which includes three independent members and, if the authority has parish or town councils, three parish representatives.

- **99%** of standards committees have an independent chair.

Cases handled locally

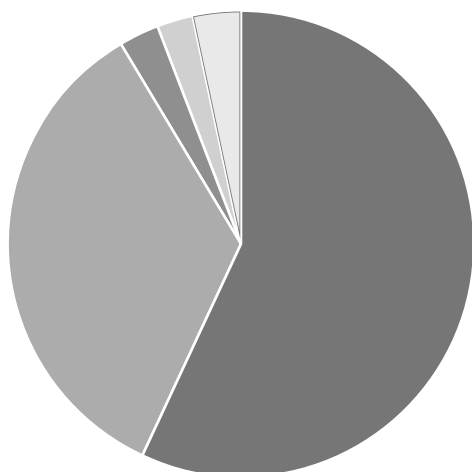
- **321** cases were received locally between 8 May and 30 June 2008.
- Because the reporting period was shorter than usual, **48%** of cases did not have a decision about how they should be handled by the time the quarter closed. The chart below shows the split of decisions for all cases where a decision was made.

REFERRAL DECISIONS



- Discounting the cases where a decision had not been reached, the breakdown shows that most cases were either referred to the monitoring officer for investigation or not referred at all.

SOURCE OF COMPLAINT



- As shown in the chart above, more than half of the cases came from complaints made by members of the public. A large proportion also came from members.

The next quarterly return covers case activity in the period 1 July to 30 September 2008. This includes new cases received in the period and previous cases that have progressed in the period. The submission window for returns will be open from 1 to 14 October 2008. A reminder email will be sent to all monitoring officers nearer the time.

A more detailed breakdown of quarterly returns is now available in the Quarterly statistics section of our website www.standardsboard.gov.uk.

Forthcoming events

More than 800 delegates will be attending the fully booked **Seventh Annual Assembly**, 'Delivering the goods: Local standards in action' at the ICC, Birmingham, this October.

Breakout sessions are filling up fast and if you have secured your place at the conference, you are urged to choose your sessions and return your preference form as soon as possible to avoid disappointment.

Many of the presentations and handouts from the Assembly will also be available on the conference website, www.annualassembly.co.uk straight after the event.

We will also be exhibiting at the **Liberal Democrat party conference**, 13-18 September 2008, **Labour party conference**, 21-25 September 2008 and the **Conservative party conference**, 28 September – 1 October 2008.

The Standards Board is urging authorities to enter the Standards and Ethics award category at the **2009 LGC Awards**.

Entering the Standards and Ethics award is a great opportunity to raise the profile of your standards committee. The award will go to an authority which has a dynamic, innovative approach to improving and promoting standards of member conduct. Reaching the final shortlist will also mean that your authority's ethical standards have been judged to be among the best in the country – a powerful message to send to your local community.

Entries are welcome from authorities of any size or status. You can submit yours online at www.lgcawards.co.uk, where you can also find further information on the criteria for the Standards and Ethics category and on the LGC Awards as a whole. The closing date for entries is 3 October 2008.

Date for your diary: The Eighth Annual Assembly will be held on 12-13 October 2009 at the ICC.

Seeking views on adjourning local assessment decisions

Under Section 57A(2) of the Local Government Act 2000, as amended (the Act), when a standards committee receives a complaint it must either:

- (1) take no action on the complaint
- (2) refer the case to the Standards Board for England, or
- (3) refer the case to the monitoring officer of the authority concerned

If the third option is chosen, then under Section 66(6) of the Act, the standards committee can give directions to the monitoring officer about how to deal with the case. The case can either be dealt with by way of a direction to investigate it or to take other action. Once a case is referred for action other than investigation it cannot subsequently be investigated.

Understandably, some standards committees are reluctant to direct the monitoring officer to deal with a case by way of other action when they may not know enough about the circumstances of the case, and do not know whether the member complained about will cooperate with that other action. This is especially true when there does not appear to be any sanction against a member who fails to cooperate with other action, other than perhaps another complaint based on disrepute.

It has been suggested that one way around this difficulty is for the standards committee to adjourn consideration of a case they think might be suitable for other action, and ask the monitoring officer to find out whether the member will cooperate.

An adjournment to enable effective consultation with the monitoring officer would appear to be possible. It is something that does not appear to be prohibited by law. Also, paragraph 13(2) of the

Standards Committee (England) Regulations 2008 (the Regulations), requires the standards committee to consult with the monitoring officer before giving any direction to take other action.

However, there are concerns. Much depends on how the decision is minuted. If the monitoring officer is asked to find out more about the case and the options available to take other action, rather than specifically asked to find out about the attitude of the member to other action, some of those concerns lessen.

Here are some concerns and advantages we have identified and an alternative approach.

Concerns

- (1) Asking the monitoring officer to find out whether the member will cooperate runs the risk of putting the decision about investigation or other action in the hands of the subject member and not the assessment sub-committee.
- (2) The target of dealing with complaints within 20 working days is difficult to achieve.
- (3) What other action is to be discussed and who decides it? Will the standards committee or the monitoring officer effectively make the decision? Or, will it end up being a negotiation with the member if they say "Well, I am not having mediation but I will do training if it consists of X and is done by Y"? We believe this would undermine the authority of the standards committee.
- (4) There is a danger that the monitoring officer will end up effectively starting an investigation before being instructed to do so.
- (5) The member may take the opportunity to try and give the monitoring officer information to pass on to the standards committee to try and persuade it to take no action.

- (6) The more information the monitoring officer collects during the adjournment the more difficult it becomes for members of the standards committee to sit as part of a hearing panel later. The member will find it easier to argue that any standards committee member is biased by having received more information than was appropriate or necessary to carry out their functions under Section 57A of the Act.
- (7) There is an argument that taking into account information other than that provided by the complainant is unlawful. We say the monitoring officer can take steps to clarify the complaint or clarify basic facts. If the subject member is asked how they would react to a direction for other action, this would be finding out what the subject member thinks and feeding that into the decision-making process. Is that an irrelevant consideration?

Advantages

- (1) The members of the standards committee know what the member's attitude is said to be about the solution the standards committee is proposing to deal with the complaint.
- (2) The standards committee can send a case for investigation when the alternative might have been ineffective other action.
- (3) The case may be settled and the standards committee can decide to take no action.

Alternative

The standards committee sends the case for investigation and lets the monitoring officer know that it might not consider the case to be as serious, if the member were willing to comply with other action. Therefore, if the member so indicates then (subject to any other information the monitoring officer might have gathered which suggested otherwise) the monitoring officer

should feel free to ask that the case be returned to them.

Regulation 16(1)(a) of the Regulations might be capable of being read as supporting this approach. However, there can be a difference between the seriousness of a case and the appropriate way to resolve it.

We would like to receive views from you about what you think should constitute the most appropriate practice. Please contact kymberlie.connell@standardsboard.gov.uk with your views by **22 September 2008**.

New Deputy Chair and Board members appointed

Professor Judy Simons has been appointed as the Standards Board for England's new Deputy Chair by the Secretary of State for Communities and Local Government. The Secretary of State also appointed **Michael Kendall** and **Elizabeth Abderrahim** as our new Board members.

These appointments to the Board began on 14 July 2008 for a three-year term. Professor Judy Simons takes over from Patricia Hughes CBE, who was Deputy Chair of the Standards Board since it was established in 2001. Patricia's term ended on 30 June 2008.

Michael Kendall was Monitoring Officer at West Sussex County Council and is former Lead Officer and former President of ACSeS. Michael replaces Roger Taylor whose term ended on 30 October 2007.

Lizzie Abderrahim is a self-employed Freelance Trainer and Independent Chair of Gloucester City Council's standards committee. Lizzie replaces Professor Judy Simons who became Deputy Chair.

In announcing the new appointments on 17 July 2008, Minister for Local Government **John**

Healey said he was pleased with all the appointments. “All three bring extensive skills and experience to their new roles and will help the Board to develop its role in the maintenance of high standards of conduct in local government.” He also thanked Patricia Hughes for all she had done during her time as Deputy Chair.

Standards Board investigations

We are now receiving the first cases referred to the Standards Board by standards committees. As you know, there are a number of factors we take into account in reaching our decision whether to accept them. This includes exceptional circumstances.

The recent amendments to the Local Government Act 2000 enhanced our powers to share information related to investigations with other regulators, particularly the Local Government Ombudsman and the Audit Commission. We are working with these two organisations to update our communications. The new memoranda of understanding will be publicly available when completed.

One of the matters to come out of our discussions with the Ombudsman was that we would expect to accept complaints which involve allegations of both maladministration and a breach of the Code as an exceptional circumstance. This means that the two investigations could be organised in the most effective and timely way. So, if you are dealing with a complaint arising from incidents that have also resulted, or are likely to result, in an Ombudsman case or an audit enquiry, you will find the Standards Board sympathetic to a request to investigate.

Another amendment to the Local Government Act 2000 gives ethical standards officers the power to send final reports of investigations which do not result in a standards committee hearing to standards committees. This can

happen if the ethical standards officer “believes that it will assist that committee in the discharge of its functions”, as quoted from Section 64(3A) of the Local Government Act 2000.

The functions of a standards committee are:

- to promote and maintain high standards of conduct by members
- to advise on the adoption and revision of a code of conduct
- to monitor its operation
- to arrange training on matters related to the authority’s code of conduct

They also, of course, now have functions relating to complaints of breaches of the Code of Conduct.

We are now sending copies of reports to standards committees when most investigations are completed. We think that it is important for standards committees to understand the background to ethical problems that may have arisen in their area. Sometimes investigations suggest problems with particular policies, procedures or culture locally, which are not part of our remit to investigate, but which seem likely to cause further problems in the future. Where this is the case, we will draw the committee’s attention to those things which we think they might want to look into.

The reports are not sent to enable the committee to reconsider the complaint. Not only would it be unfair to the member concerned to do that, but the committee would not be able to do it fairly without being able to satisfy itself that it could look at and question the primary evidence.

We would be very interested to know how useful standards committees find these reports and any suggestions of ways we could help them use this learning opportunity. Please feel free to contact the Standards Board’s Investigations team on **0161 817 5300** with your thoughts.

Annual Review 2007-08 available online

The Standards Board's Annual Review 2007-08 is now available from the Publications section of our website www.standardsboard.gov.uk. In it, we look back at our performance over the past 12 months and look ahead to future challenges and opportunities.

The theme of this year's review is 'Local delivery. National support.'. It looks at how we prepared for 8 May 2008, when local authorities' standards committees became responsible for receiving complaints and deciding what to do with them. The review also looks at our new, more strategic role, and how it will enable us to offer greater support and advice on the ground.

This year, we have also provided a text only version on our website, which means that you can read and print the text from each chapter, as well as downloading the publication as a pdf. If you require a hard copy, please email publications@standardsboard.gov.uk.

Monitoring officer seminar

On 16 June, the Standards Board hosted a seminar for monitoring officers who have carried out ethical standards officers' directions. A direction is where an allegation of a breach of the Code of Conduct is sent back to a monitoring officer for alternative action. This may include the use of mediation, conciliation, conflict resolution, mentoring, training, and review of policies and protocols.

As we develop the use of directions, we will encourage the constructive use of party group discipline and leveraging in peer support from neighbouring authorities that have overcome their problems.

The event was run by Jennifer Rogers, Ethical Standards Officer, and John Williams, Senior

Policy Adviser. Fifteen monitoring officers attended, and each shared their successes and failures, including their experience of difficulties at parish level.

Key messages were that disputes are often very deep seated and originate in events that occurred long ago; and that disputes that might be inflamed by investigation are better approached by alternative action. There is a specific provision for alternative action in regulations made under the recent Local Government and Public Involvement in Health Act 2007.

We are having another seminar in January so we can share and develop our ideas further in the light of experience. Please call Kymberlie Connell on **0161 817 5300** or email kymberlie.connell@standardsboard.gov.uk if you would like to become involved in this initiative.

Ethical governance toolkit

The Standards Board, the Improvement and Development Agency and the Audit Commission have been working in partnership to update the ethical governance toolkit. The toolkit reflects the changes brought about by the Local Government and Public Involvement in Health Act 2007 and is now available to use.

Many authorities have already benefitted from using the toolkit, which is designed to help local authorities identify how well they are meeting the ethical agenda and to improve their arrangements.

For further information on the ethical governance toolkit and for contact details, please visit the Ethical Governance section of the IDeA website, which you can find at www.idea.gov.uk/knowledge or contact the Audit Commission by email at infogovcounterfraud@audit-commission.gov.uk.

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Welcome to Issue 41 of the *Bulletin*.

The local government ethical framework has changed a great deal this year.

The standards agenda is now successfully embedded at the local level, with standards committees taking responsibility for the initial assessment of Code of Conduct complaints. Local case handling is in place for all complaints except for those the Standards Board has taken back in the public interest. Your commitment and hard work has ensured that the transition to the locally-based system has been smooth and successful.

In this, our final Bulletin of the year, we look back – with a review of the Standards Board's online monitoring system, and feedback from the Seventh Annual Assembly of Standards Committees. And we reveal the high performing authorities shortlisted for the Standards and Ethics category at the Local Government Chronicle Awards 2009.

We also look forward – at the new authority annual return that forms part of the Standards Board's online monitoring system, and to the forthcoming amendments to the Code currently under consultation by Communities and Local Government. In addition, we examine the work on governance and partnerships that the Standards Board is undertaking to help us provide guidance to authorities on ensuring high standards of conduct in partnerships.

Other articles in this *Bulletin* address some key issues arising from the first few months of local case handling. These include a summary of the submissions received in response to *Bulletin 40's* request for views on adjourning local assessment decisions.

Finally, I wish you all the very best for 2009.

Glenys Stacey
Chief Executive

Consultation on proposals for changes to the Code

Communities and Local Government (CLG) launched a Code consultation in October 2008. The consultation is on CLG proposals for changes to the Code of Conduct for members and the introduction of a model code for local government employees.

In the 2006 ruling in *Livingstone v Adjudication Panel for England*, the High Court decided that Section 52 of the Local Government Act 2000 required members to comply with the Code in their official capacity only, and that it could not govern the private conduct of members.

In issuing his judgement in the *Livingstone* case, Collins J invited Parliament to be explicit about whether it wanted private conduct to be covered by the members' code. Parliament took this opportunity and passed the Local Government and Public Involvement in Health Act 2007. The 2007 Act amended the 2000 Act to allow for the application of the members' Code to cover some conduct in a private capacity, where this has led to a criminal conviction.

The Standards Board for England supports CLG proposals for the new Code for members to cover the conduct of members in their non-official capacity, where that conduct would be a criminal offence. It is proposed that a 'criminal offence' shall be defined as any criminal offence which has led to a conviction in a criminal court, but for which the member does not have the option of paying a fixed penalty notice.

We have also made a number of suggestions for changes to the drafting of the Code, which we believe will make it easier to interpret and apply.

The Standards Board has long advocated the introduction of a standardised national officers' code, and supports CLG's proposals to do so.

The proposed model code is likely to operate a 'two tier' approach. Broadly speaking, the first tier would apply to all local government officers, and would be similar to the general obligations that members have under part one of the current members' Code. The second tier, which would include obligations to register and declare interests, would either apply to officers who are delegated to discharge functions on behalf of the authority or those in politically restricted roles.

CLG proposes that any code for officers should extend to officers of parish councils. We strongly believe that the code should be extended to employees of parish councils.

We recognise that this may be seen as overly bureaucratic for small parishes. However, they are a key component of local democracy and some of the more difficult cases that the Standards Board has dealt with in the past have involved issues with the clerk's conduct.

The consultation document can be found at www.communities.gov.uk. Anyone wishing to respond to the consultation – and we would urge you to do so – must respond by 24 December 2008. A copy of our response will be available on our website once it has been submitted.

New regulations laid before Parliament

On 18 November 2008, the Case Tribunals (England) Regulations 2008 were laid before Parliament. These complement the Standards Committee (England) Regulations 2008 and make provision about the sanctions available to a case tribunal of the Adjudication Panel for England. They will come into force on 12 December 2008.

In particular, these regulations ensure that from 12 December, case tribunals will have the power to censure a member, require them to apologise, attend training, or enter into a process of

conciliation. These sanctions are currently available only to councils' standards committees. Making these sanctions available to case tribunals will allow them to deal proportionately with cases that are referred to them, for example, because they are seen as very serious, but which the tribunals conclude are not so serious. It will also enable tribunals to deal appropriately with cases referred to them because a standards committee is conflicted out.

The regulations also make provision about certain administrative procedures to be followed in relation to cases before the Adjudication Panel and its case tribunals.

The regulations are available from the website of the Office of Public Sector Information, at: <http://www.opsi.gov.uk>.

The government intends to complete its reform of the standards framework in January 2009 by making further regulations following consultation, which will allow councils to establish joint standards committees. These regulations will also enable the Standards Board to suspend a standards committee's powers to assess Code of Conduct allegations, in certain circumstances where we consider this to be in the public interest. They will also revise the existing dispensation regulations.

What's the alternative?

Delegates were given advice on how to use alternative action appropriately at this year's Annual Assembly of Standards Committees, held in Birmingham.

The **Alternative Action Masterclass** considered the advantages of using alternative action when appropriate and also discussed its potential challenges.

Referral to a monitoring officer for alternative action (or other action) is an option open to an

assessment sub-committee when considering a new complaint or complaints – though it must consult its monitoring officer before doing this. Alternative action is a useful tool in specific circumstances where the allegations being made may be symptomatic of systemic problems within the council, which are more significant than the allegations in themselves.

In such cases, the assessment sub-committee needs to be satisfied that even if the specific allegation had occurred as alleged, it would not be in the public interest to investigate with a view to sanctioning. The assessment sub-committee must also be satisfied that other action could assist the proper functioning of the council. If alternative action is used, there is no investigation, no findings of fact and consequently there should be no conclusions drawn about whether members have complied with the Code of Conduct.

Delegates at the Annual Assembly were given examples of situations where alternative action might be appropriate. These included where there is evidence of poor understanding of the Code. They also included situations where there has been a breakdown of relationships within a council to such an extent that it becomes difficult to conduct the business of the council.

Speakers mentioned that if the assessment sub-committee decides on alternative action, then all involved in the process will need to understand that the purpose of alternative action is not to find out whether the member breached the Code. It is not appropriate for the assessment sub-committee to suggest an apology as a satisfactory form of alternative action. This implies that there has been a breach of the Code without there having been an investigation. Rather, the decision is made as an alternative to investigation. In addition, the purpose of using alternative action should be made clear, as should the time when the action is concluded.

Standards committees were told that once alternative action is initiated, they cannot go back and ask the monitoring officer to conduct an investigation. Furthermore, it should be seen as a way of moving forward constructively, rather than reiterating issues that have caused conflicts in the past.

Speakers advised delegates of the potential limitations of using alternative action – especially that it should not be seen as a ‘quick fix’. It is not always a cheaper substitute for investigation and requires resources for training, mediation and other steps that could be carried out.

During a Q&A session, perceived disadvantages of alternative action were highlighted. These include the feeling among those involved that their issues may have been “swept under the carpet”.

For more information on alternative action, please refer to our *Local Assessment of Complaints* and *Local investigations and Other Action guidance*, which are available on our website.

Annual Assembly materials online

More than 800 delegates attended the Standards Board’s Seventh Annual Assembly of Standards Committees. Delegate feedback has been extremely positive.

The presentations and handouts from the event are available from www.annualassembly.co.uk. We are also developing a web version of the materials from the popular **Planning Ahead** session, which will be available on our website from December.

The Eighth Annual Assembly will be held on 12 and 13 October 2009 and we are currently establishing the steering committee for the event. The committee will help us to develop ideas for session content and generate examples of best practice to share with delegates.

Introducing the annual return

The Standards Board for England will be collecting information from standards committees on their activities and on their arrangements for supporting ethical conduct each year, starting in April 2009.

This information will enable us to drive up the performance of standards committees and of ethical conduct generally by identifying and then sharing notable practice. We will also be able to identify and offer support to those authorities experiencing problems.

The annual return will complement the quarterly return. Maintaining an ethical environment not only requires processes and protocols, such as codes of ethics, but also a culture that supports them. Therefore, while the quarterly return for the most part focuses on case handling, the annual return will collect information that will allow us to understand the culture and wider ethical governance arrangements in authorities.

As well as drawing on existing research, we have also been consulting with several groups of monitoring officers and chairs of standards committees for their thoughts on what information we should request.

We are now developing the specific questions that will make up the annual return. In the meantime, we will be undertaking further consultation and piloting to ensure that we get these questions right.

For further information about the annual return, please contact Hannah Pearson, Research and Policy Adviser: **0161 817 5417** or email hannah.pearson@standardsboard.gov.uk.

Feedback on adjourning local assessment decisions

In *Bulletin 40* we produced an article about adjourning local assessment decisions to seek cooperation with other action from the subject member. We invited your views on what you think should constitute the most appropriate practice. A total of 29 authorities responded to this article. We would like to thank those who participated.

Of the responses received, 14 were strongly against adjournment and eight were in favour. In addition, three authorities felt that the alternative suggested in the article would be preferable. The alternative suggested was that when the standards committee sends the case for investigation, it lets the monitoring officer know that it might not consider the case to be as serious, if the member is willing to comply with other action. This would mean that if the member indicated they would comply with other action, then the monitoring officer should feel free to ask that the case be returned to the standards committee.

The remaining four responses expressed the view that either adjournment of the assessment decision or this alternative approach would be acceptable.

Feedback from the responses received indicated that the concerns stated in the article about adjourning a local assessment decision far outweighed the advantages. For those against adjournment, the main concerns were:

- There is a danger that contacting the subject member before a decision has been made could ultimately suggest that the member has breached the Code, without there being a finding of fact.
- A member who refuses to engage with proposed alternative action could undermine confidence in the standards committee and public perceptions of justice.

- Adjournment would risk not meeting the 20 working day target for decision.
- Significant costs could be involved even if the matter was relatively trivial.

Those in favour of adjourning before making a decision gave the following reasons:

- The member may be more likely to cooperate if they were made aware of the options available.
- The standards committee would be more confident when making a decision in the knowledge that the member would/would not engage in other action.
- Other action allows the monitoring officer to seek resolution locally without a formal investigation or public hearing and may therefore prove more cost effective. Adjourning an assessment decision to seek cooperation from the subject member may increase the chances of other action succeeding.

The Standards Board is very grateful to everyone who responded. We intend to issue further guidance on other action in 2009, incorporating the issue of adjournment.

References to the Adjudication Panel for England by a standards committee

The President of the Adjudication Panel for England has recently issued guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from a standards committee.

This guidance is now available on the Adjudication Panel's website and can be downloaded from the 'Guidance and Procedures' section at www.adjudicationpanel.co.uk.

Review of online monitoring system

In August 2008, we conducted a review of the Standards Board's online monitoring system. This formed part of a programme of work to assess how well our new systems are working.

We conducted telephone interviews with a random sample of monitoring officers or those nominated by the monitoring officers to make the online submission. A total of 24 out of a potential 50 interviews were successfully completed. Thank you to all who participated.

As this was the first time that monitoring officers or nominated staff were asked to submit an online return, we were expecting some 'teething problems'. What we actually found was that the majority of comments received were positive. The simplicity of the form was valued, with the majority experiencing minimal or no difficulty in making their online submission. This was confirmed with 98% of authorities submitting their return on time.

A large majority (83%) of monitoring officers or nominated staff interviewed expressed the view that the system is working effectively. We asked interviewees if they had contacted the Standards Board for assistance with the completion of the online form. A proportion of those interviewed (25%) had contacted the Standards Board for assistance. We invited those that had made contact to rate the response received in terms of speed, politeness, helpfulness and clarity of advice provided. All respondents rated the response for all categories as very good.

Respondents were also asked how the Standards Board can improve the support we provide. We received some useful suggestions – such as having a confirmation receipt upon completion of the submission and receiving a reminder when the submission is due. We were also interested in finding out about any technical issues that you may have experienced and were

glad to hear that there were only minor technical problems.

We are now working to make improvements. The review does not end here and we will continue to carry out a review following the end of each quarter. We hope that this will ensure that we quickly pick up any problems you may be experiencing. We also look forward to speaking to some of you as part of the review of the second quarter of online monitoring.

If you have any questions about this review or future reviews of the system please contact Cara Afzal, Deputy Research and Monitoring Manager: **0161 817 5414** or email cara.afzal@standardsboard.gov.uk.

Six councils achieve top standards

The following local authorities are all in with a chance of winning the Standards Board-sponsored Standards and Ethics category at the Local Government Chronicle (LGC) Awards 2009:

- Ceredigion County Council
- Leeds City Council
- Lincolnshire County Council
- Newark & Sherwood District Council
- Newcastle City Council
- Rossendale Borough Council

The authorities were shortlisted, from a total of 22 entries, for their dynamic approach to improving and promoting ethical standards among members while boosting public confidence in local democracy. The judges were Glenys Stacey, Chief Executive of the Standards Board, Nick Raynsford MP, and John Tizard, Director of the Centre for Public Service Partnerships at the University of Birmingham.

Dr Robert Chilton, Chair of the Standards Board, said:

“All the authorities shortlisted have been committed and innovative in achieving or maintaining high standards of member conduct. They’ve done this with methods like training, member support and partnership work, and promotional initiatives among councillors, officers and the public.

“The Standards Board is pleased to lend its support to this award and it was great to see such an encouraging response to the call for entrants. Following the changes in the standards system back in May, it’s clear that plenty of authorities have embraced the chance to take ownership of ethical standards, and have begun to work proactively to endorse and promote the standards framework as well as managing their own complaints and investigations.

“We hope that many other authorities will follow suit.”

The winner will be selected from the shortlist and announced at the LGC Awards at the Grosvenor House Hotel in London on 25 March 2009.

Governance and partnerships – work with Manchester City Council

The Standards Board for England is currently undertaking research on how to ensure that authority partners are working to high standards of behaviour. This will enable us to provide guidance to local authorities and their standards committees.

Partnership-working is a growing and important way of operating. It could present a risk to public confidence if individuals and bodies involved in decision-making are not operating to a consistent and agreed standard of conduct.

Previous research undertaken for the Standards Board by the University of Manchester (Greasley et al, *The Components of an ethical environment*,

Institute for Political and Economic Governance, University of Manchester, May 2006) highlighted the problems of organisations when they come to work together. The research found differences in organisational culture, openness and transparency, inconsistencies in the codes of conduct that partners work to and differences in how codes of conduct are enforced.

We firmly believe that citizens should both expect and experience high standards of behaviour and probity wherever decisions are taken, or resources allocated, that affect lives and communities. Working in partnership should not compromise this.

As a minimum, local authorities should agree some shared values and standards of conduct with their partners at the outset of any joint working. These may be different for each and every partnership.

Our partnerships project aims to encourage high standards in partnership working. This will be done by creating a level playing field based on commitment to a set of agreed values and a description of appropriate behaviour.

It will achieve this through producing a description of appropriate behaviour in partnership with Manchester City Council and in consultation with the council’s partner organisations in the region. The description will illustrate appropriate behaviour in day-to-day partnership working based on the Nolan Principles of Standards in Public Life, and the experiences and needs of Manchester City Council and its partner organisations.

We intend that the work and learning from this project will be used as a basis for providing guidance nationally.

For further information on the governance and partnerships project, please contact Hannah Pearson, Research and Policy Adviser: **0161 817 5417** or email hannah.pearson@standardsboard.gov.uk.

Complaints about standards committees: Role of the Local Government Ombudsmen

Standards committees are within the jurisdiction of the Local Government Ombudsmen (LGO). Therefore it is possible to make a complaint to the LGO of maladministration causing injustice, as a result of some action or inaction by a standards committee or authority monitoring officer around the handling of a Code of Conduct complaint.

Parish councils are outside the LGO's jurisdiction. However, there is no jurisdictional bar to the LGO investigating the actions of a standards committee of a responsible authority regarding the committee's actions, which relate to a complaint about a parish council.

The LGO recognise that the Standards Board for England is the body established by statute to oversee member conduct. However, in some circumstances the LGO may wish to consider allegations of administrative fault where the complainant can claim to have suffered an injustice as a result of that fault.

A complaint to the LGO may only be made by, or on behalf of, a member of the public or a body other than a local authority or other public service body. A complainant must be able to claim a personal injustice. An elected member may only complain to the LGO about something which affects them personally as a member of the public. This can include actions of the authority's standards committee and officers carrying out functions in relation to the standards committee.

The Standards Board and the LGO have just signed a revised Memorandum of Understanding setting out our relevant jurisdictions and how we will work together effectively.

Further information about the work of the LGO is available at: www.lgo.org.uk.

NALC 'Stepping Stones' regional conferences

The Standards Board will be exhibiting at the National Association of Local Councils (NALC)'s Stepping Stones regional conferences which take place in spring 2009. The conferences aim to share good practice and provide a regional networking opportunity for councillors and officers in all tiers of local government. More information on our activity at these events will be available from our website soon.

The dates for the events are:

Wednesday 11 February

The Oak Tree Conference Centre, Coventry

Saturday 21 February

The Hospitium, York

Tuesday 10 March

The Council Chamber, Congress Centre, London



AGENDA STATUS: PUBLIC

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|---------------------|------------------------------------------------------------------------------------------------------|
| Report Title | Adjudication Panel – Guidance on Regulation 17 Standards Committee (England) Regulations 2008 |
|---------------------|------------------------------------------------------------------------------------------------------|

| | |
|-------------------------|-------------------|
| Date of Meeting: | 18 December 2008 |
| Directorate: | Chief Executive's |
| Ward(s) | All |

1. Summary

This report contains guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from a Standards Committee under Regulation 17 of the Standards Committee (England) Regulations 2008'.

2. Recommendations

That members note the report.

3. Report Background

The Council's Standards Committee has limited powers in terms of the sanctions it can apply to Councillors who breach the Model Code of Conduct. There may be circumstances where the Standards Committee sub-panels may consider that a breach is so serious that the matter should be referred to the adjudication panel to determine and to use its more extensive sanction powers. The Adjudication Panel have very helpfully provided guidance to Standards committees on the circumstances on which they will accept a reference. That guidance is attached.

Helpfully, members will note that the Adjudication Panel will provide informal advice to Monitoring Officers prior to the formal engagement of processes, so that the Council's panel can be advised accordingly.

The guidance is mostly self-explanatory, and members are asked to note it.

4. Implications (including financial implications)

4.1 Resources and risk

There are none- apart from, perhaps, the resources needed to include training for members on any points arising.

4.1 Legal

None specifically.

4.2 Other implications

None specifically

5. Background papers)

None

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Guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from a Standards Committee under Regulation 17 of the Standards Committee (England) Regulations 2008.

1. The Standards Committee (England) Regulations 2008 include provision (Regulation 17 (1) (c)) for a Standards Committee to make a finding that a matter should be referred for determination by the Adjudication Panel. Before such a referral can be made the Standards Committee need themselves to have determined that the action which the Standards Committee could itself take (if there were a finding that there had been a failure to follow the provisions of the Code) would be insufficient. The reference itself can be made only if the President or Deputy President has agreed to accept it.
2. The possibility of such a reference arises only after a monitoring officer has produced a report for the Standards Committee. The President of the Adjudication Panel is willing to indicate, prior to the consideration of that report by the Standards Committee, whether he would agree to accept such a referral. Such agreement would not commit the Standards Committee to making such a referral but would avoid the Standards Committee seeking to refer matters which were not suitable.
3. The maximum sanction which a Standards Committee can impose is a suspension for a period of six months. Thus the primary question to determine as to whether a reference can be accepted is whether, if a breach of the Code had occurred, a more severe sanction than six months suspension would be appropriate.
4. It would be rare for the Adjudication Panel's Case Tribunals to impose a suspension for longer than six months, not least because the effect of such a lengthy suspension might be seen as leading to constituents being left without effective representation at a time when the suspended elected member is not able to fulfil his responsibilities.
5. Less rarely, however, a Case Tribunal will **disqualify** an elected member. Whereas a suspension will apply only to the particular council whose Code of Conduct has not been followed, a disqualification will preclude the member concerned from being appointed to **any** relevant authority. Thus it would be an appropriate sanction for a member whose conduct leads to the view that the member concerned is unfit to hold such public office.
6. The Adjudication Panel has already published guidance ([Guidance on decisions available to a Case Tribunal](#)) as to when disqualification is likely to be an appropriate sanction. The following is an extract from that guidance:
 - 14.1 *The Respondent has deliberately sought personal gain (for either him or herself or some other person) at the public expense by exploiting his or her membership of the body subject to the Code of Conduct.*
 - 14.2 *The Respondent has deliberately sought to misuse his or her position in order to disadvantage some other person.*

- 14.3 *The Respondent has deliberately failed to abide by the Code of Conduct, for example as a protest against the legislative scheme of which the Code forms part. Members of local authorities are expected to uphold the law. Where the Code has been deliberately breached to reflect the Respondent's opposition to the principles underlying the legislation, the Case Tribunal is likely to think of a disqualification of one year.*
- 14.4 *There have been repeated breaches of the Code of Conduct by the Respondent.*
- 14.5 *The Respondent has misused power or public assets for political gain.*
- 14.6 *The Respondent has misused council property.*
- 14.7 *The Respondent has committed a criminal offence punishable by a sentence of three months or more imprisonment.*
15. *There may be other factors not listed above which also merit disqualification. Nor will disqualification always be appropriate even if the listed factors are present.*
17. *Disqualification may be imposed as an alternative to suspension in order to avoid an authority being inquorate or the electorate left without adequate representation. Disqualification would allow by-elections to take place whereas this would not be possible if the member concerned were suspended.*
7. The President or Deputy President is likely to agree to accept references for matters which are of a kind which would merit disqualification.
8. It is important to bear in mind that the decisions on whether to refer, and whether to accept such a referral, are being made on the hypothetical basis of a finding that there has been a breach of the Code of Conduct. In taking a decision as to whether to accept a proposed reference, the President or Deputy President would not usually seek to form a view as to how likely it is that such a finding would be made. Nor would they usually seek to form a view on whether there are particular mitigating circumstances which would cause a Case Tribunal not to disqualify a member even though such disqualification might usually be seen as appropriate for a breach of the kind concerned. Those are decisions which should properly be left to the Case Tribunal hearing the case.
9. A reference to the Adjudication Panel should include:
- a brief description of the conduct which has given rise to the complaint
 - details of:
 - when the member was elected.
 - when the member made a declaration to abide by the Code.
 - relevant training the member has received.
 - the member's committee membership or Executive responsibilities; and
 - a note of any appointments to other bodies on behalf of the council and of any membership of other relevant authorities.
 - a copy of the relevant Code of Conduct should be appended.
 - the reference should indicate what paragraphs of the Code have been under consideration.
 - the investigating officer's report to the Standards Committee should be appended. The Standards Board for England has provided a template for such a report in its publication '[Local Standards Framework - Guide for Authorities.](#)'
 - A list giving the names, addresses and contact details of:
 - the respondent.
 - complainant.
 - monitoring officer.
 - investigating officer.
 - Standards Committee correspondent.
 - any legal representatives.