

## City of Durham

At a Meeting of the **STANDARDS COMMITTEE** held in the Town Hall, Durham, on Tuesday, 14<sup>th</sup> November, 2006, at 5.30 p.m.

**Present:** Mr B.R.J. Ingleby (in the Chair)  
and Councillors McDonnell and Moderate (City Council Members)  
and Councillor C.W. Beswick (Parish Council Member)  
and Mrs T. Naples (Independent Member)

### **363. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Gibbon, Simpson and Mr Hollingworth.

### **364. MINUTES**

The Minutes of the Meeting held on 26<sup>th</sup> September, 2006, were confirmed as a correct record and signed by the Chairman.

#### **Report of Monitoring Officer**

### **365. PARISH REPRESENTATIVE VACANCY**

The expressions of interest which had been received in relation to the present vacancy on the Standards Committee for a parish representative were reported to Full Council on 7<sup>th</sup> November, 2006.

A small sub-committee, comprising Councillors Dickie, Lightley and Stoddart, together with the Chief Executive and Mr Ingleby, had been set up to interview the applicants on 7<sup>th</sup> December, 2006, and make the necessary appointment.

**Resolved:** That the report be noted.

### **366. ETHICAL GOVERNANCE AUDIT**

The questionnaire was distributed last month and to date, 36 replies had been received. Although the closing date for return of the questionnaires had now passed, forms which were submitted late would continue to be accepted.

When the responses had been collated, they would be forwarded to Alan Lawton, formerly Professor at Teesside University, and who was now at Birmingham University working for Inlogov. The responses received and Professor Lawton's comments would be reported to a future meeting.

**Resolved:** (i) That the report be noted.

(ii) That copies of the questionnaire be circulated to the Independent Members of the Committee for completion, prior to responses being forwarded to Professor Lawton.

### **367. STANDARDS BOARD FOR ENGLAND – ANNUAL CONFERENCE ICC BIRMINGHAM 15<sup>TH</sup> -16<sup>TH</sup> OCTOBER 2006**

The Conference was attended by the Vice-Chair, Mrs Naples. Her briefing note on the Conference was circulated, together with a copy of the Conference Newsletter.

**Resolved:** That the report be noted.

**368. COMPLAINT TO THE STANDARDS BOARD FOR ENGLAND –  
SBE 16378.06**

The Monitoring Officer had recently received from the Standards Board notification of an allegation and the Board's decision.

The complaint was made against a City Councillor who was a member of the Development Control Committee and was made by a member of the public.

The basis of the complaint was concerned with a planning application submitted by the complainant. The nature of the application was such that it would normally have been dealt with by the Chairman and Vice-Chairman under delegated authority. In accordance with the Planning Protocol, a Local Member had asked the Chairman to agree to the matter being made the matter of a full report for determination by the Development Control Committee.

The letter making that request was sent to the City Council's Planning Office. In it the Ward Councillor gave as a reason for the request that the complainant "has already caused too much trouble in the area".

The complainant considered that the comment had a measure of discrimination, disrespect and an element of bias.

The decision of the Standards Board was not to refer the complaint for investigation. In their decision letter, the Board said that it was recognised that Members were the elected advocates of the local community and therefore had a certain right to speak their minds on issues they perceived to be of local concern. However, there was an expectation that such comments would be made at appropriate times and also when making such comments, they would treat others with respect. The Board also considered that letters relating to the calling in of planning applications should solely address matters directly relating to the application.

The Board felt that the Councillor's alleged comments about the complainant in the letter to the Planning Officer could, if proven, potentially be considered disrespectful, although not in their view discriminatory. It was felt therefore that a potential breach of the Code of Conduct had been disclosed by the allegation, but on balance, this was not considered to be of a sufficiently serious nature to warrant referral for investigation.

In addition, the Board mentioned that as the complainant considered the alleged comments to be both biased and libellous, allegations of bias and libel did not generally fall within the Board's remit to consider. It was suggested, therefore, that the complainant might wish to seek independent legal advice.

At the request of a complainant, the Standards Board's Chief Executive could review a decision taken in relation to a complaint, and if the review mechanism was to be triggered, the complainant must make a written request within a period of 30 days from the notification.

**Resolved:** That the report be noted.

**369. LOCAL GOVERNMENT WHITE PAPER –  
STRONG & PROSPEROUS COMMUNITIES**

The long awaited white paper on local government was published at the end of October.

The introduction to the report talked of the Government giving local authorities and other local public services the freedom and powers to meet the needs of their communities and tackle complex cross cutting issues. A key theme was the idea of reshaping public services around citizens and communities who used them, that is to give them more individualised services and more choice. The white paper therefore talked about helping partnerships to

work better, promoting strong and visible leadership for local authorities, introducing a new performance framework and providing more specific support for local authorities and their partners to address community cohesion issues.

There was a second volume to the report which looked in detail at the way in which the proposals set out in the first volume were expected to change the way in which the Government tackles some of the biggest challenges for local services such as community safety, health and well being, vulnerable people, children, young people and families, economic development, housing and planning and climate change.

The section which was of interest to Standards Committee members was Section 3 which was entitled 'Effective, Accountable and Responsive Local Government'.

The white paper stated that the framework within which local authorities operate could be a barrier to effective governance. The paper therefore proposed to:-

- Introduce measures to encourage more people to put themselves forward for election.
- Support the role of non-executive councillors as democratic champions for their local areas.
- Extend the powers of councils to pass local laws. (This would end the Secretary of State's current role in confirming bye-laws.) There would also be additional powers for councils to enforce bye-laws through fixed penalty notices.
- Legislate for stronger and more accountable local leadership by offering local authorities a choice of three executive models. These were:-
  - (i) a directly elected Mayor
  - (ii) a directly elected Leadership
  - (iii) an indirectly elected Leader

All with a four year term. There were proposals to allow authorities to adopt the Mayoral model after consultation with their communities but without the need for a referendum. In each model, all executive powers would be vested in the mayor or leader who would have responsibility for deciding how the powers should be discharged.

- Strengthen Overview and Scrutiny Committees to improve accountability.
- Give all local authorities freedom to opt for whole council elections and to move to single member wards.
- Create opportunities for improved local governance by giving councils an opportunity to seek unitary status or adopt improved two tier models.
- Establish a new locally based conduct regime.

It was the last bullet point which would be of particular interest to the Standards Committee. The white paper picked up on recommendations both in the former ODPM papers which was entitled "Standards of Conduct in English Local Government; The Future", the report of the Committee on Standards in Public Life, "Getting the Balance Right – Implementing Standards in Public Life", the report of the ODPM select committee on the role and effectiveness of the Standards Board for England and finally the recommendations of the Standards Board itself following their review and consultation exercise of the Code of Conduct for Members.

The white paper indicated that the Government was proposing to give local Standards Committees the power to make initial assessments of misconduct allegations and promised that most investigations and decisions would be made at local level. The paper also indicated that the Members' Code of Conduct was to be amended and that these amendments would include changing the rules on personal and prejudicial interests with a view to removing barriers so that Councillors could speak up on behalf of their constituents.

The paper also suggested that there would shortly be a code of conduct for employees.

Further reports would be submitted to the Standards Committee as the changes were introduced.

**Resolved:** That the report be noted.

### **370. ASSOCIATION OF INDEPENDENT MEMBERS OF STANDARDS COMMITTEES**

The Vice-Chairman reported that the inaugural meeting of the Association had been held at the Annual Conference, but she had been unable to attend. She would however contact the organisation to obtain copies of the Constitution and application forms.

**Resolved:** That the report be noted.

The meeting terminated at 6.05 p.m.

Chairman

**CITY OF DURHAM**

**STANDARDS COMMITTEE**

**16 January 2007**

**REPORT OF MONITORING OFFICER**

**1. Ethical Governance Audit**

The responses to the Audit have now been collated and forwarded to Professor Lawton for his comments. These will be reported when they are received.

**2. Appointment of Parish Representative to the Standards Committee**

The appointment panel meeting fixed for December had to be rearranged when the date proved inconvenient for a number of the applicants. The meeting will now take place on the 26 January 2007 when it is hoped an appointment will be made.

**3. Extraordinary Meeting of the Standards Committee**

A meeting of the Standards Committee has been fixed for Monday 19 February 2007 at 10.00 am, for a local hearing into a complaint made to the Standards Board for England.

The papers for this hearing will be forwarded to members of the Standards Committee nearer to the date of the extraordinary meeting.

**4. Complaints to the Standards Board for England**

**4.1 SBE16769.06 – SBE16772.06**

The Standards Board for England recently considered a number of complaints referred to the Board by a member of public and making allegations about various members of Pittington Parish Council.

The Standards Board has now issued its decision notices in relation to these complaints.

The first allegation referred to a meeting of the Parish Council on 19 September 2006 when it was alleged a Councillor had accused the complainant and another member of the council of collusion. The Board took the view that this allegation could potentially be considered as a failure to treat others with respect and noted that as the complainant was in attendance at the Parish Council meeting (as a member of the public) she would not have had access to the same public platform as the member complained about, from which to defend herself from the accusation. The Board therefore considered that the alleged conduct did disclose a potential breach of the Code of Conduct but determined not to refer the matter to an Ethical Standards Officer for investigation on the basis that it was not considered the alleged conduct was serious enough to justify an investigation.

The second complaint alleged a failure on the part of a Parish Councillor to display the minutes of the Parish Council meeting on the Parish Notice Board at Littletown. The Board took the view that this did not amount to an unlawful withholding of information from the public and considered that as the information could be accessed from another source in Low Pittington (which admittedly was less convenient) it satisfied the Council's requirement to give public notice of its meetings. There was a second allegation that the same Councillor had spoken to the complainant in an aggressive and disrespectful manner on two occasions,

the first at a Parish Council meeting in July 2004 and the second occasion at a meeting in September 2006.

The Board took the view that no specific detail of the comment in July 2004 had been given and a considerable period of time had elapsed since that alleged incident. The Board thought that the alleged comments in September 2006 did disclose a potential breach of the Code of Conduct and again noted that as the complainant was in attendance at the Council meeting as a member of the public, she would not have access to the same platform as the Councillor to defend herself. Nevertheless it was not considered that the alleged conduct was serious enough to justify an investigation and so the decision of the Board was not to refer the allegation to an Ethical Standards Officer for investigation.

The third complaint made a number of allegations alleging the failure of the Vice-Chairman of the Parish Council to conduct council meetings properly in the Chair's absence. There were a number of issues involved in this complaint including an allegation that the minutes of council meetings had not been signed correctly, allegations of alleged bullying and failing to intervene when unfounded accusations against the complainant were made and the premature closing of the meeting.

The Board took the view that some of the issues complained about were matters of council business rather than issues to be addressed under the Code of Conduct. It was felt that there was a potential failure to treat the complainant with respect but again, because the alleged conduct appeared to be of a relatively minor nature, and an isolated incident, it was decided that the allegation should not be referred to an Ethical Standards Officer for investigation.

The final complaint to the Standards Board was against the Chairman of the Parish Council and again made a number of allegations alleging breach of the Code of Conduct by bringing the Parish Council into disrepute. Some of these allegations involved failure to read out letters to the Council at Parish Council meetings and acting in an inappropriate and disrespectful manner towards members and the general public as well as failing to offer appropriate guidance to the Parish Council and addressing the Parish Council in an "aggressive, agitated, bullying and most disrespectful manner".

Again, the decision of the Board was that some of the matters complained of related to the business practices of the Parish Council rather than ethical conduct of an individual Member.

Failure to stop fellow members of the Council acting disrespectfully was not considered to constitute a breach of the Code of Conduct and the Board made the point that this allegation related more to the capability of the individual Councillor as a chairman rather than ethical conduct, pointing out that the Standards Board did not have the remit to regulate the quality of members work. The allegations of aggressive, disrespectful and bullying conduct were considered to disclose potential failures to comply with the Code of Conduct but the Board noted that a higher threshold must be crossed for disrespectful behaviour from one member to another and it was not considered that the threshold had been reached in the particular instance. The decision therefore, was not to refer the allegation to an Ethical Standards Officer for investigation.

At the request of the complainant the Standards Board's Chief Executive can review and change a decision not to refer an allegation for investigation if he is persuaded the decision was unreasonable in law. The complainant has a period of 30 days in which to make application for review.

At the time of preparation of this agenda no such review had been requested.

Recommended that the Report be noted.

#### **4.2 SBE 16961.06**

The Standards Board for England has also been considering recently a complaint from the MP concerning the alleged conduct of the Leader of the City Council. The complaint arose from a news item published on the City Council's web site which the MP considered attacked her role. A separate complaint was also made about the City Council publication, Durham City News in which it was said that opposition councillors rarely featured.

The decision of the Standard Board was not to refer the matter for investigation. The Board has reiterated that general allegations relating to the tenor, content and style of the City Council's newsletter do not fall within its jurisdiction. Similarly the Standards Board do not consider a news item would generally fall within their remit. This was a matter for the authority itself and in relation to specific comments attributed to the Leader it was noted that these were made in response to comments made by the MP which were critical of the City Council. The Board took the view that a robust defence of the council was one of the functions of a Leader and as such did not constitute potential misuse of the resources of the City Council. There was a finding therefore of no breach of the Code of Conduct.

As with the above items the complainant may request a review within a period of 30 days of notification of the decision.

Recommended that the report be noted.

#### **5. Bulletin 31**

Attached for information.

#### **6. Viewing of "Going Local – Investigations and Hearings" DVD**

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## Welcome to the November issue of the *Bulletin*.

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

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

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

**David Prince, Chief Executive**

## Case Review number four

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



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

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

#### **Appointing an investigating officer**

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

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

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

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

#### **Training your investigator**

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

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

#### **Starting the investigation**

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

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

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

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

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

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

**Michael Blamire-Brown**

Monitoring Officer, Solihull Metropolitan Borough Council

### Standards committees: a national snapshot

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

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

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

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

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

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

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

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

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

[www.standardsboard.co.uk/research](http://www.standardsboard.co.uk/research)

### Change to referrals criteria

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

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

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

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

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

### Sharing good practice

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

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

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

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

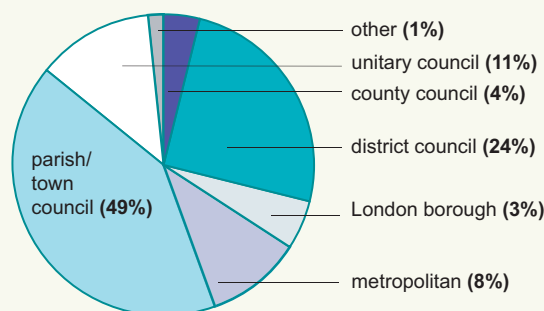
*Thank you to Paul Turner of Ipswich Borough Council for providing the information for this article. If you would like a sample issue of the update, please contact him at [paul.turner@ipswich.gov.uk](mailto:paul.turner@ipswich.gov.uk)*

## Referral and investigation statistics

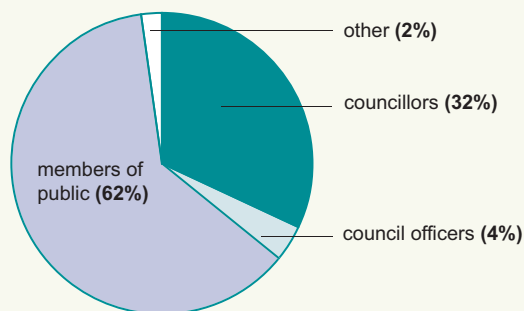
The Standards Board for England received 1996 allegations between 1 April and 31 October 2006, compared to 2427 during the same period in 2005.

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

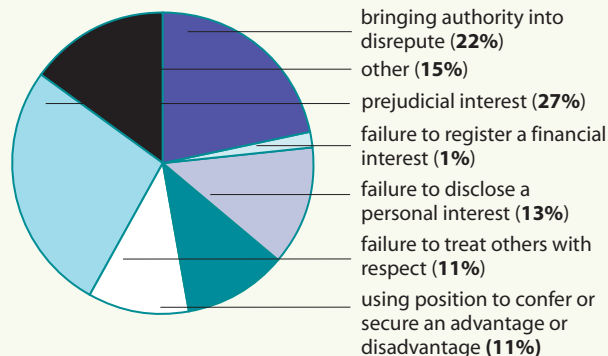
### Authority of subject member in allegations referred for investigation



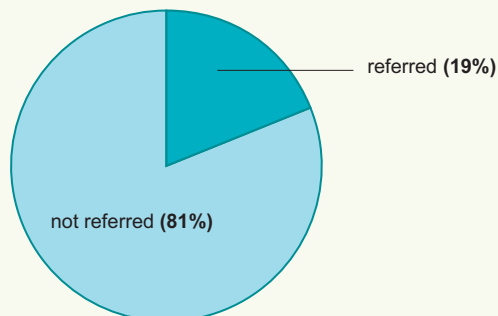
### Source of allegations received



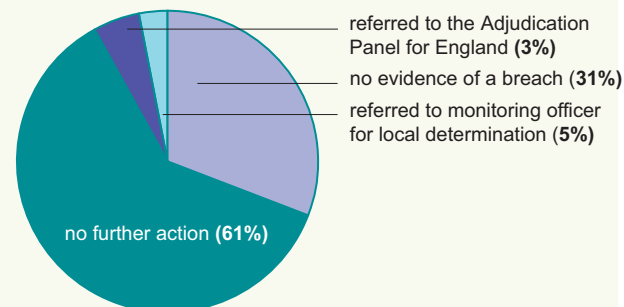
### Nature of allegations referred for investigation



### Allegations referred for investigation



### Final findings



## Registering land interests

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

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

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

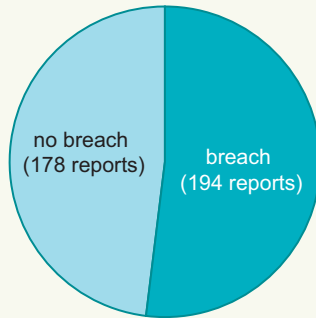
The requirements of the Code are precise. If a person wishes to inspect the register of interests to establish whether a member has a conflict of interest in a matter, they cannot do so if the information in the register is vague or general. Therefore, failure to record information in enough detail can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

## Local investigation statistics

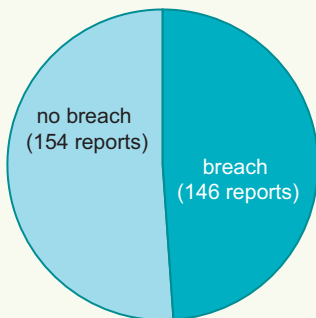
Of all cases referred since November 2004 for local investigation we have received a total of 372 reports — please see below for a statistical breakdown of these cases.

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

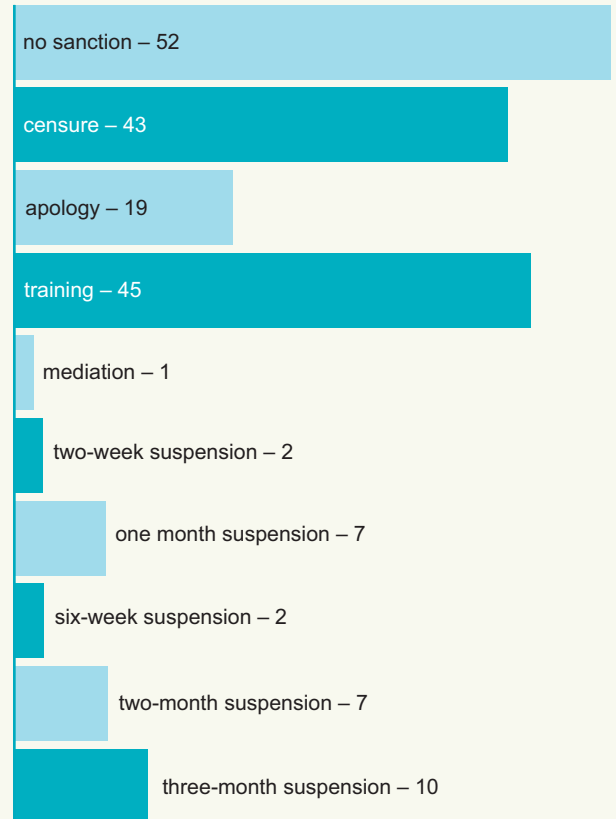
### Monitoring officers' recommendations following local investigations



### Standards Committee hearings



### Standards committee determinations



## Prejudicial interests — meetings of other authorities

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

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

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

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

## Prejudicial interests and discussions about unitary status

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

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

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

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

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

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

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

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

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

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

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

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

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

## The Collins judgement

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

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

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

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

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

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

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