

CITY OF DURHAM
STANDARDS COMMITTEE
2 January 2008

REPORT OF MONITORING OFFICER

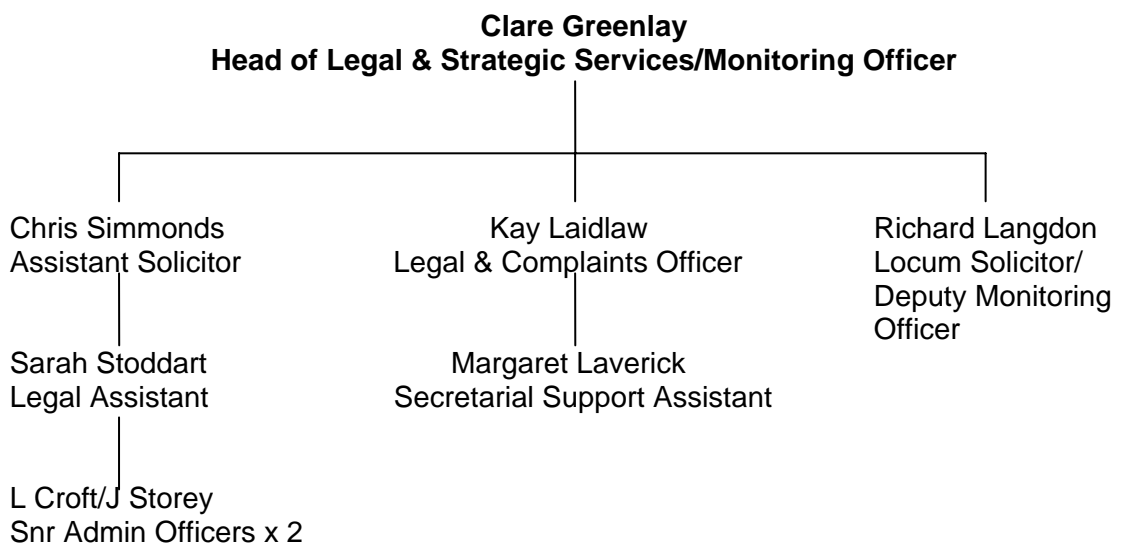
Please find attached for information :-

1. **Breakdown of complaints from Municipal Year 2007**
2. **Bulletin 36 – Standards Board for England**
3. **Speech by Patricia Hughes**
4. **Local Filter Pilot complaint Handling Chart for England**

Further to the last Standards Committee on the 29 November 2007, I have given further consideration to the issue of local assessment of complaints

In the first instance, the Standards Board now appears to be favouring calling this process The Local Assessment Procedure. I would therefore propose we adopt this as the name for the process in Durham and I will throughout this document refer to the procedure as The Local Assessment Procedure (LAP).

The Legal Services section from 1 April 2008 will be set up as follows:-



In view of the above structure, I believe that, subject to the current level of total complaints not changing significantly, it will be possible for the Legal Services section to absorb the additional work from the LAP. It will however, be necessary to keep the staffing of the section under constant review so that if there is insufficient capacity to support the LAP, appropriate arrangements are made.

I believe that any complaints about a Member (including parish members) should be made to the Monitoring Officer. Subject to the Standards Committee approval therefore, I would propose that any publicity in respect of the LAP provide for all complaints at first instance to be referred to the Monitoring Officer for initial consideration.

With regard to forming sub committees, I believe it may be beneficial to have two sub committees as there are two distinct processes to be undertaken prior to any final hearing, namely assessments and appeals. We can either have one committee dedicated to hearing appeals and one hearing assessments, which would ensure consistency of approach across all determinations, but may lead to one sub committee having substantially more business to conduct than the other, or there could be two committees with the responsibility for undertaking appeals and assessment rotating between them as appropriate.

The Standards Board for England has stated that Members carrying out an assessment should not be involved in a review of that decision. A conflict of interest will only arise where the matter has previously been deliberated by a panel upon which the Member sits.

Members will also be aware that I attended a meeting of the Monitoring Officers for County Durham on 12 December 2007 and at that meeting it was proposed that all councils in the Durham area should adopt a similar procedure to manage complaints. Accordingly, the Monitoring Officer for Easington District Council was to prepare an additional draft procedure for consideration once the regulations were published. It is not known when the regulations will be available though they are imminent.

Given the current uncertainty as to the precise format of the regulations, it maybe some time before the locally agreed procedure can be finalised. In view of this, I think it prudent that we do give some consideration to how the LAP may work in the City of Durham District.

I would also reiterate my belief that there should be a designated day of each month for the LAP and or final hearings which would enable certainty for both Members and complainants as to precisely when matters are likely to be considered. This would also hopefully assist members of the committee in managing their diaries and should minimise the need for additional meetings to be scheduled. The frequency of meetings would need to be kept under review but it would mean that a meeting could be cancelled should there not be sufficient business rather than attempting to arrange a meeting at relatively short notice.

Breakdown of Complaints Municipal Year 2007/8

Cases referred to the Standards Board for England

<i>District Matters</i>	3	<i>Parish Matters</i>	14
-------------------------	----------	-----------------------	-----------

Cases referred for Local Investigation

<i>District Matters</i>	1	<i>Parish Matters</i>	3
-------------------------	----------	-----------------------	----------

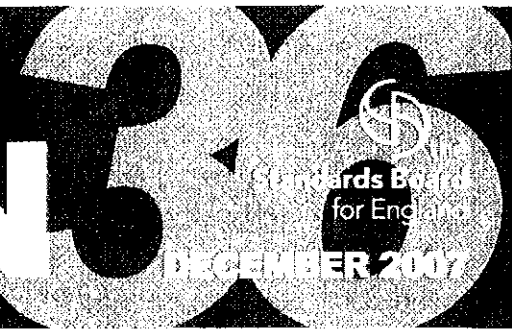
Cases referred for full hearing

<i>District Matters</i>	1	<i>Parish Matters</i>	0
-------------------------	----------	-----------------------	----------

Cases resulted in Finding of No Breach

<i>District Matters</i>	1	<i>Parish Matters</i>	0
-------------------------	----------	-----------------------	----------

THE BULLETIN



Contents

Page 2

Amendments to the *Local Government Act 2000*

New regulations – government consultation

Local assessment of complaints: pilot findings

Page 4

Checklist for local authorities in the run up to April 2008

Page 6

Local assessment information now available online

Case Review 2007

Satisfaction high for Annual Assembly

Page 7

Stronger action needed on ethical governance

New role for standards committees

Page 8

Updated advice on suspensions

Page 9

New Board members required

Page 10

Statistics

Contact

Enquiries line: 0845 078 8181

Minicom: 0161 817 5449

www.standardsboard.gov.uk

email: bulletin@standardsboard.gov.uk

Welcome to Issue 36 of the *Bulletin*.

2007 has been an eventful year for the Standards Board for England, with all the elements of the local standards framework starting to come together. We all have a lot to do in 2008 to ensure its successful implementation.

The *Local Government and Public Involvement in Health Act 2007* is now law and firmly places responsibility for the standards agenda where it belongs, at the heart of local government. Standards committees will have a vital role in ensuring that the Code of Conduct is lived out locally and upheld. We believe that this approach will reinforce the importance of high standards at a local level, helping to demonstrate accountability and developing greater local trust.

The Standards Board continues to develop its functions as a strategic regulator and is working hard to prepare local authorities for their new responsibilities in the ethical framework. We are producing detailed guidance that will be made available to all relevant authorities in the new year, to reflect the regulations issued under the *Local Government and Public Involvement in Health Act 2007*.

In this issue of the *Bulletin* we focus on the findings from the local assessment pilots, and provide a checklist for local authorities in the run-up to April 2008. We also clarify the position of suspended members in relation to conduct outside their official capacity, and look at the Audit Commission's survey on ethical governance.

We have enjoyed a very positive year, with a successful relocation to Manchester and the opportunity to meet many of you at our roadshows and our well-received Annual Assembly.

We look forward to continuing and developing our close relationships with local authorities in the context of the new standards framework from 2008.

David Prince
Chief Executive

Amendments to the Local Government Act 2000

The *Local Government and Public Involvement in Health Act 2007* was passed by Parliament on 30 October 2007 when it received royal assent.

The act includes important amendments to the *Local Government Act 2000*, including:

- 1) The introduction of a locally managed framework of compliance with the Code of Conduct and a new regulatory role for the Standards Board for England.

This will involve local standards committees making initial assessments of misconduct allegations, and most cases being handled locally. The Standards Board will provide supervision, support and guidance for local authorities. The Standards Board will also aim to ensure some degree of consistency in the application of the Code.

It is anticipated that the sections introducing the locally managed framework will commence on 1 April 2008.

- 2) The application of the Code to cover some conduct in a private capacity, where this has led to a criminal conviction.

This second amendment does not take effect immediately as the relevant parts of the act have not yet come into force and, in the meantime, conduct carried out in a member's private capacity cannot be subject to the Code.

Government consultation on new regulations and orders

Communities and Local Government (CLG) is expected to consult in December 2007 on proposals for the new regulations and orders that flow from the *Local Government and Public Involvement in Health Act 2007*.

The consultation is expected to include proposals for regulations on local assessment of complaints, joint standards committees and an increased range of sanctions for standards committees.

For a copy of the consultation document, or for more information, contact CLG on 020 7944 4400.

Local assessment of complaints: pilot findings

During the summer, the Standards Board for England piloted the local assessment of complaints with a broad geographical range of authorities of all types, across England. A total of 38 standards committees participated in the pilot, each of which considered 12 real but anonymised cases, including two appeal cases.

The Standards Board collected a range of data and feedback from the pilot, developing an overview of how the local system might work in practice. Detailed analysis of the results and feedback supplied by 30 committees was undertaken. The results are based on 360 allegations considered by standards committees.

Standards committees were asked to record whether they decided to:

- Refer allegations to the Standards Board.
- Refer allegations to the monitoring officer for investigation or alternative action such as mediation or training.
- Not refer them at all.

The average referral rate for standards committees was just over six out of the ten cases (excepting the two appeals) at 66.5%, compared with the Standards Board's referral rate on the same cases of three out of ten, or 30%. However, local standards committees had the further option to consider alternative action such as mediation, training or an apology, which is not available to

the Standards Board, and referrals for alternative action are included in their average.

The average rate of referral for alternative measures was 7.3%. The average non-referral rate for standards committees was low at 33.5% compared with the Standards Board's non-referral rate of 70%.

The Standards Board had originally referred three of the ten allegations given to participating standards committees in the pilot for investigation. Standards committees participating in the pilot largely correlated with the Standards Board in their decisions to refer these allegations.

The majority of referrals by standards committees were made to monitoring officers at an average rate of 40%, ranging between 23% and 66.6%. The rate of referral to the Standards Board for investigation was low, at less than 10%.

Standards committees made decisions which diverged significantly from those of the Standards Board in only 11 of the 360 allegations.

Therefore, participating standards committees took a different view from the Standards Board in less than 4% of cases.

Standards committees were asked to self-assess their collective decision-making for each complaint against the following categories:

- 1) Quick decisions.
- 2) Decisions requiring some deliberation.
- 3) Difficult decisions.
- 4) Not specified (where no decision was reached in the allocated time).

In nearly 40% of cases, standards committees considered that they were able to reach a quick decision, and only in 13% of cases were decisions considered slow and difficult with much deliberation.

Standards committees were also asked to record whether any of their decisions went to the vote. Nearly 14%, or 49 of the total of 360 allegations considered in the pilot, were voted on. A further 11% of the total complaints were undecided, in most cases because a decision was not reached in the time allocated. Therefore, 76% of the decisions taken in total by the participating standards committees were reached through consensus.

Finally, standards committees were also asked to consider a range of additional procedures and resources they considered necessary for managing the local system and making it work in their own authority.

The average number of members from participating authorities serving on their standards committees is nine, and ranges from five to 16. The average number of independent members is nearly four, ranging from two to seven. Some 93% of participating standards committees had an independent chair.

Almost half of participating standards committees considered themselves to be politically balanced in the strict legal sense, that is, in accordance with the political balance requirements of Sections 15-17 of the *Local Government and Housing Act 1989*.

The establishment of a sub-committee was considered to be necessary by 23 of 30 committees, while only a third, ten of 30, considered adding more independent members as necessary.

Of the 13 authorities which stated they would not increase the number of independent members on their standards committee, seven said they would need to increase resources, five were unsure, and only one felt they would not need to increase resources.

Checklist for local authorities in the run up to April 2008

This article offers a 'checklist' for local authorities of things to consider in the run-up to the implementation of the locally managed framework. Please note that, in some cases, it is subject to Communities and Local Government making appropriate regulations.

1) Size of standards committee

Standards committees must have a minimum of:

- Three members (two elected members and one independent member).
- 25% as independent lay members if the committee is more than three people.
- An independent chair (from April 2008).
- One parish or town council member if the authority has responsibilities for those councils.

Effective practice - the Standards Board recommends:

- At least six people as a minimum (three elected members and three independent members).
- Two, or possibly three, parish or town council members if the authority has responsibilities for those councils.
- Consideration of whether more members are required to ensure cover in the event of conflicts of interest, holidays or sickness.

2) Structure of standards committees

In addition to their role as champion and guardian of the authority's ethical standards, standards committees will now have three separate but distinct roles in relation to complaints about member conduct:

- Receiving and assessing complaints.
- Reviewing local assessment decisions.
- Conducting hearings following investigation.

To avoid perceptions of bias or predetermination, members who carry out a local assessment decision should not be involved in a review of the same decision, should one be requested.

Effective practice – the Standards Board recommends:

- A structure of sub-committees or the standards committee acting as a pool of members to deal with the different roles.
- As a minimum, two separate sub-committees, one for taking initial assessment decisions and one for taking decisions on reviews.
- Subject to regulations, any sub-committee should also have an independent chair.
- A member who was involved in an initial assessment decision, or following referral of a complaint back to the standards committee from the monitoring officer or Standards Board for another assessment decision, can be a member of the committee that hears and determines the complaint. This is because an assessment decision only relates to whether a complaint discloses something that needs to be investigated. It does not require deliberation of whether the conduct did or did not take place and so no conflict of interest will arise in hearing and determining the complaint.

3) Training

Effective practice – the Standards Board recommends:

- Standards committees are fully trained on the Code of Conduct.

- Standards committees are offered other training to equip them with necessary skills, for example in conducting a hearing.
- Independent chairs and vice-chairs are trained in chairing meetings.
- Any newly-appointed standards committee members receive a comprehensive induction to the role and appropriate training.

4) Local assessment criteria

- Guidance will be available from the Standards Board on developing criteria and the types of issues to be considered when assessing complaints.
- Standards committees will need to develop their own criteria, that reflect local circumstances and priorities, and which are simple, clear, open and ensure fairness.
- Monitoring officers will be able to acquire additional factual information which is readily available about allegations before the assessment process begins. This could be from minutes or the register of interests, for example, if such information about a complaint would assist decision-making. It should not include interviews or investigation.
- A complainant has a right to appeal if a complaint is rejected, so standards committees will be able to invite complainants to submit further information in support of the complaint at the appeal stage in the process.

5) Role of the monitoring officer in the new framework

Effective practice – the Standards Board recommends:

- A pre-meeting with the independent chair.

- Preparing a summary of the allegation for the standards committee.
- Highlighting what the potential Code breaches are which underlie an allegation to the standards committee.
- Allowing case reading time for the monitoring officer and the standards committee.

6) Completing existing investigations

Many authorities will have outstanding investigations and the Standards Board encourages authorities to clear such investigations – particularly long-standing cases – before the new framework comes into effect.

Any authority experiencing difficulties in completing an investigation should seek advice and support from the Standards Board. Please contact Rebecca Strickson, Local Investigations Co-ordinator on 0161 817 5372, or email rebecca.strickson@standardsboard.gov.uk.

7) Local assessment and the corporate complaints process

Effective practice – consider:

- How will the public be informed of the new arrangements?
- Who will receive and log an allegation?
- The production of an individual information leaflet for the local assessment process, possibly combined with the corporate complaints process.

8) Future monitoring by the Standards Board

The Standards Board is consulting a sample of authorities involved in a pilot study on proposals for an online information return system, which will allow authorities to tell us about how local arrangements are working.

This system is being designed based on what standards committees need locally, and to enable authorities to provide information to the Standards Board as simply as possible. Authorities will be able to use the system locally for their own records, to keep standards committees informed of their authority's ethical activities.

Proposals for the system include quarterly online returns on cases, which will be simple and quick to use, and nil returns if there is no activity to report.

9) Local assessment guidance

We will help standards committees by providing guidance in 2008 on all aspects of the local assessment process, subject to the passage of the relevant regulations, with a toolkit to include:

- Template notices for publicising the authority's Code of Conduct complaint process.
- Complaint assessment flowcharts.
- A standard complaint form.
- Template letters for each stage in the process.
- Template referral and non-referral decision notices.
- Guidance to assist with drafting criteria and for the authority to define its threshold for referral.
- Template terms of reference for assessment and review committees.

Local assessment information now available online

The Standards Board for England's website has been updated to feature a new section on local assessment of complaints.

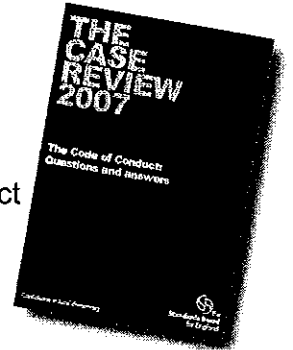
This section, accessible from the main menu, aims to keep you up to date on the new arrangements and what they will mean for local

authorities and the Standards Board's role. You can find out about any new developments in this area in the section's *Latest news* page.

If you have an enquiry about the proposed changes or anything else relating to local assessment, please phone 0845 078 8181 or email enquiries@standardsboard.gov.uk.

Case Review 2007

The *Case Review 2007* is a paragraph-by-paragraph analysis of the Code of Conduct and is available to download from our website.



We intend to reissue the *Case Review*, complete with its paragraph-by-paragraph analysis, on an annual basis to reflect the evolving interpretation and developing understanding of the Code.

Issues of the *Case Review 2007* were distributed to delegates at this year's Annual Assembly. Additional hard copies cost £20 and can be ordered by calling 0161 817 5300 or by emailing us at publications@standardsboard.gov.uk.

Satisfaction high for Annual Assembly

Almost 800 delegates attended the Standards Board's Sixth Annual Assembly of Standards Committees held at Birmingham ICC in October 2007. This year's conference was a sell-out event and our feedback suggests it was a resounding success, with a 97% satisfaction rate among delegates.

Called *Down to detail: Making local regulation work*, the conference provided a range of sessions to help build the skills, contacts and resources necessary to meet the challenges of local assessment. And, as the minister Parmjit Dhanda MP said on the opening day, it came at a

crucial time for standards committees, with the *Local Government and Public Involvement in Health Act 2007* having now been passed in Parliament, as discussed on page 2 of this *Bulletin*.

More information on the event is available from our conference website, www.annualassembly.co.uk, where you can also download materials such as newsletters, speeches, session slides and handouts.

Our next Annual Assembly will be held again at the ICC in Birmingham on 13 and 14 October 2008. For further information, please email: annualassembly2008@standardsboard.gov.uk

Stronger action needed on ethical governance

The latest Audit Commission self-assessment survey reveals that although councils are generally managing the ethical agenda well, there are a number of areas that require stronger action.

Survey background

The self-assessment survey was created by the Audit Commission in conjunction with the Standards Board for England and the Improvement and Development Agency (IDeA). It is one element of the four-part Ethical Governance Diagnostic Toolkit, which also includes a full diagnostic, a light-touch health check (provided by the IDeA) and workshops.

The survey helps councils assess and then, where necessary, improve their ethical governance procedures by helping them understand the key ethical governance issues they are now facing.

Key findings

- Members generally demonstrate high standards of behaviour.

- Leaders and chief executives are proving themselves as positive role models in many councils.
- Roles, responsibilities and relationships of members and officers relating to the ethical framework are not always clearly understood.
- Standards committees make a difference, but they don't always explain to other members, officers and the public what they do, the issues they are addressing, and the progress they are making.
- Communication, training, guidance and information are critical areas and often need more of a focus.

The survey has highlighted key areas that councils actively need to address to improve ethical behaviour and to fully meet the ethical agenda.

For further details on these findings or on the Ethical Governance Toolkit, please contact Hannah Pearson on 0161 817 5417 or email hannah.pearson@standardsboard.gov.uk.

Independent adjudicator abolished – new role for standards committees

Restrictions on political activities by certain local government staff were introduced under the *Local Government and Housing Act 1989*, which provided for the appointment of an independent adjudicator to grant dispensations for staff to engage in certain political activities.

Under the *Local Government and Public Involvement in Health Act 2007*, the role of independent adjudicator will be abolished and the duties transferred to local authority standards committees.

These duties are:

- To consider applications from local authority employees for exemption from political restriction in respect of their posts.

- Where appropriate, to issue directions requiring a local authority to include a post in the list of politically restricted posts it maintains.
- To give general advice, following consultation with appropriate parties, on the application of criteria for designation of a politically restricted post.

The timing of this transfer of functions from the independent adjudicator is a government matter, but the Standards Board urges authorities to ensure that their standards committees are made aware of the change.

We expect the relevant government department, Communities and Local Government, to issue guidance on this matter. The department may be contacted via www.communities.gov.uk or on 020 7944 4400.

Updated advice on suspensions

In Issue 21 of the *Bulletin*, the Standards Board outlined what a member should and should not do if they are suspended.

The decision by Collins J in *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin), has led us to review that guidance.

A member of an authority who is suspended continues to be a member of that authority. They can quite properly refer to themselves as a councillor or as an elected member, although they should also make it clear that they are currently suspended.

However, someone who is fully suspended may not, while they are suspended, exercise any of the functions or responsibilities of membership of the authority. This means that they should not take part in any formal business of the authority, they should not use or have access to council facilities, and they should not receive their council allowances.

A member who is subject to partial suspension may not, during the period of that suspension, exercise the particular functions or responsibilities from which they are suspended. What those functions or responsibilities are will depend on the exact terms of their suspension, and the standards committee needs to describe precisely what particular functions are proscribed.

Under the 2001 Code of Conduct, two paragraphs applied "in any other circumstance" outside the functions or responsibilities of membership of an authority. As such, these provisions still applied to members who were suspended. The Livingstone judgment restricted the effect of these provisions.

The position now is that three paragraphs under the revised 2007 Code of Conduct will apply, "at any other time, where that conduct constitutes a criminal offence".

The three paragraphs will be:

- Paragraph 3(2)(c) – intimidation of certain persons in relation to an allegation under the Code.
- Paragraph 5 – disrepute.
- Paragraph 6(a) – improperly conferring or securing an advantage or disadvantage.

However, this will only occur when amendments to Section 52 of the *Local Government Act 2000* come into effect. Until this time, the 2007 Code of Conduct does not apply to a person who has been suspended in respect of a relevant function of office for a relevant period of time, so long as the member makes it clear that they have been suspended and does not purport to act as a representative of their authority.

As an example, if a member is suspended from appointment to a planning committee for a period of two months, the relevant function is membership of the planning committee and the relevant time period is two months. The Code

does not currently apply to the member in respect of this function for this time period, so long as the member makes it clear they have been suspended. When the amendments to the *Local Government Act 2000* come into force, conduct that constitutes a criminal offence will also be covered in respect of this function during this time period, in relation to the three paragraphs of the Code listed above.

New Board members required

With the end of current members' terms approaching, Communities and Local Government is seeking to recruit a new chair, deputy chair and two new Board members for the Standards Board for England.

Communities and Local Government is particularly seeking applications for the Board member roles from candidates who have experience as an independent member of a local standards committee or as a local authority monitoring officer.

Full details of all the posts, including how to apply, can be found at www.clgstandards.org.

The closing date for applications for chair is 20 December 2007. For all other roles it is 14 January 2008.

The Standards Board at Christmas

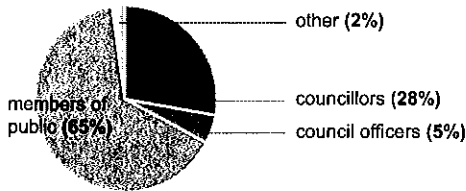
The Standards Board for England's offices will be open during the majority of the festive period, but will be closed on Christmas Day, Boxing Day and New Year's Day. We will endeavour to respond to your enquiries as soon as possible during this time.

Referral and investigation statistics

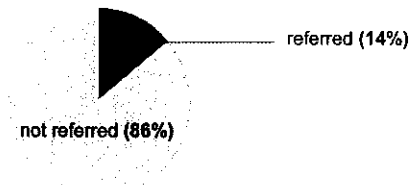
The Standards Board for England received 2,098 allegations between 1 April 2007 and 31 October 2007, compared to 1,996 during the same period in 2006.

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

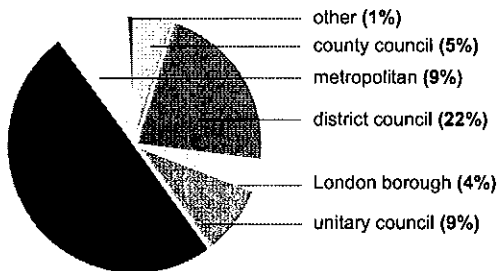
Source of allegations received



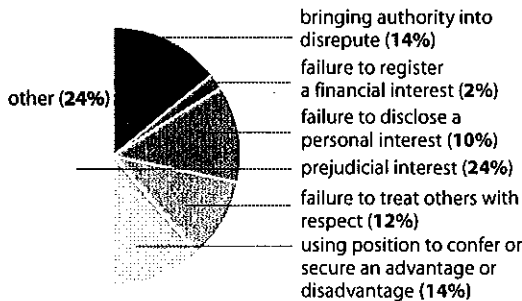
Allegations referred for investigation



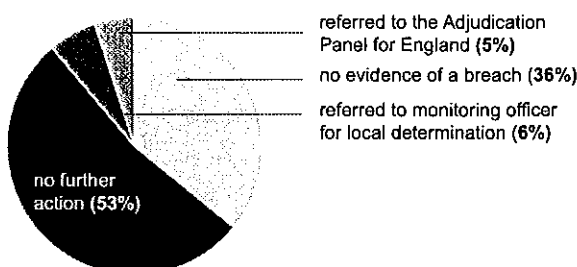
Authority of subject member in allegations referred for investigation



Nature of allegations referred for investigation



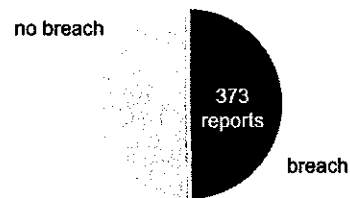
Final findings



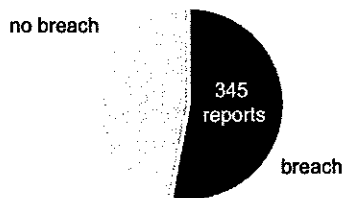
Local investigation statistics

For the period 1 April 2007 to 31 October 2007, ethical standards officers referred 171 cases for local investigation – equivalent to 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. Of all cases referred for local investigation since November 2004, we have received a total of 749 reports – please see below for a statistical breakdown of these cases.

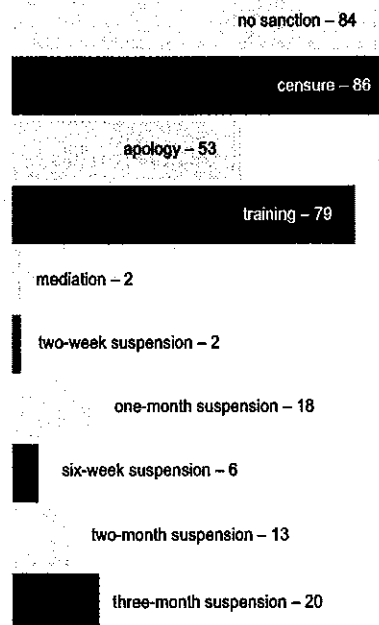
Monitoring officers' recommendations following local investigations



Standards committee hearings



Standards committee determinations



Sixth Annual Assembly of Standards Committees 15-16 October 2007, ICC, Birmingham

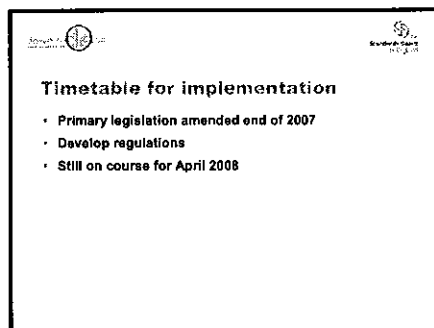
Local filter: Countdown to 2008

Patricia Hughes, Deputy Chair The Standards Board for England

Welcome to our Sixth Annual Assembly of Standards Committees. As I said last year, we really do appreciate your continuing support for these events. They give us a valued opportunity to hear your concerns, as well as to share with you views and ideas.

This Assembly, with the road shows, is probably the best way we can keep our finger on the pulse of how our work is affecting the bodies we regulate and their Standards Committees and Monitoring officers in particular. And there have been Assemblies where my pulse at least was racing – the one, for instance, where the local investigations and dispositions regulations were billed as the main theme, but they were published only in the nick of time for distribution on the first morning of the event.

Well, as we all know, all the authorities affected by that change took it in their stride, and as David has just told you, our evidence is that, taken as a whole, they are managing local investigations well. So now we all move on again, taking in a substantially amended Code as we go, to the completion of the local framework for handling complaints of breach of Code, - the local filter – and it's that that I'm going to talk about this morning.



We've called this session 'Countdown to 2008' because of the legislative timetable. As we have just heard from the minister, the Local Government & Public Involvement in Health Bill is completing its final Parliamentary stages and will be in place by April 2008. It will provide for a local standards framework in place of the centralised regime covered by the original Local Government Act 2000.

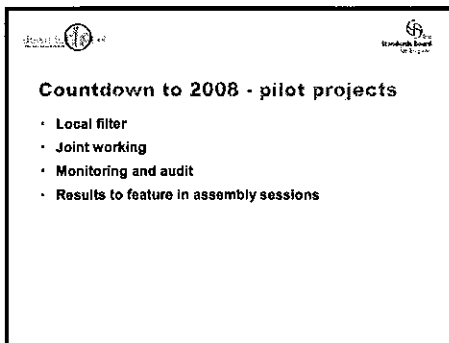
However, as you will of course know, there is a lot of planning and preparation to be done both by the Board and by authorities in advance of this date. As always, I know that we will learn this week that some of you are already well on the road, whilst others are awaiting guidance or seeking to overcome

concerns. We certainly want to hear from you wherever you are on the spectrum.

But, in planning and preparation, there is also the key role of the Department for Communities and Local Government, because the timely publication of the new Regulations is critical to our readiness to move to the new system. We are dependent on these Regulations for the important detail which we need to have ourselves, so that we can be in a position to offer you authoritative guidance.

Of course we have a pretty good idea of what they will contain, and we are preparing advice and guidance based on that, but, if the change is to be smooth and effective, it's vital to have certainty both for us in helping you, and for you in preparing your standards committees and your councillors for their new roles and responsibilities. We know Government is working hard to have the Regulations in place as soon as possible and we welcome the minister's comments earlier today. Until we have the Regulations, however, you will understand that what we say at this Assembly has to be to some extent, and in some areas, provisional.

With that proviso, and acknowledging that parts of the process are being managed locally already, I'm going to talk now about further preparation for a locally owned system. I'll consider the new roles and responsibilities, discuss issues arising when there is a complaint, and finally touch on how individual authorities will report performance and how the Board will monitor it.



In that context I'm first going to tell you about three pilot projects which the Board has undertaken with authorities this year. We have done this for a number of reasons. The first is that over the years as a matter of principle, we have always tried to work in partnership with authorities about issues which will affect them and we saw that as all the more important with a change as big as this.

Second - we wanted as our main focus this year to ensure that both local government and the Board itself are as well equipped as possible to make the new framework a success from the start and thirdly we believed that this could best be done by serious practical engagement with authorities on important issues.

The first pilot sought, among other things, to investigate the prospects for achieving consistency of local decision-making; we gave 38 authorities a range of real anonymised allegations and asked them all, as part of a training exercise, simply to consider what, if any, action they would take when facing that allegation.

We could then see across a range of authorities whether there was a level of consistency and also whether those involved felt equipped to be making judgements based on their current levels of understanding of the Code. 36 of the 38 authorities completed the exercise and, in briefest summary, the average referral rate for standards committees was just under six out of the ten cases, compared with the Standards Board's referral rate of three. So it may be that standards committees may adopt a lower referral threshold than we do.

However, I would like to qualify that by adding that on average one of the referred complaints was deemed to require alternative measures to an investigation, such as training. Moreover, the pilot exercise did not allow for those involved to seek clarification from the complainant on any matters relating to the complaint prior to making the referral decision. We have found that on certain occasions being able to contact the complainant or monitoring officer to clarify certain points in the complaint as part of the initial assessment stage has enabled us to make more proportionate decisions about whether a complaint merits investigation. Indeed, standards committees will be able to use this mechanism to help them determine whether informal action is a more appropriate course than a full-blown investigation. We think that both the ability to seek clarification and the power to order alternative dispositions will reduce the number of investigations to a figure nearer our own.

The second pilot related to how to make joint arrangements work. This pilot involved working with a small number of authorities to see what would be the advantages and disadvantages of working jointly, including resource issues, conflict management and consideration of the composition of a joint committee. The pilot identified four different types of joint-working structures for authorities to choose from if they want to follow this path; one structure for informal joint working, one for the local filter only, one for the local filter and hearings and finally, one structure for full powers. From feedback we received from the authorities, and from a consultation event we held with monitoring officers of those authorities involved, the preference was for the joint working structure to handle the local filter function only.

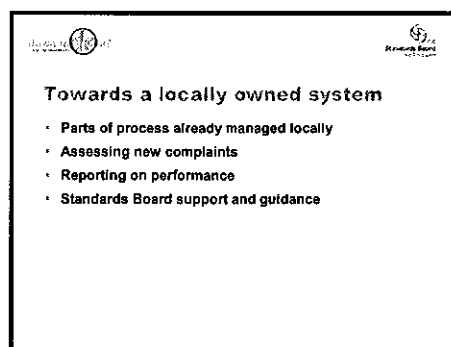
The third pilot is still going on since it relies on the information gleaned from the other pilots. It is concerned with the type of information the Board will be requiring in order to monitor performance and the means of collecting it. For example, we will be testing with pilot authorities a web based system that will allow them to file their quarterly returns using our website. Once we have finalised a system we will publish guidance setting out the requirements that authorities will need to meet and how they meet them.

Finally, in the course of all the pilots we asked monitoring officers for recommendations on 'making the local filter work' in their own authority. The

results demonstrate that almost half of the monitoring officers would increase the frequency of standards committee meetings and 40% would consider increasing the size of their standards committee, with 33% identifying a need to have more independent members.

60% felt there would be a need to increase resources in order to carry out the new responsibilities.

We have found this a stimulating way of working and some of the results have been fascinating. You will be able to check out that claim at the sessions on the pilots during the next two days. We have also greatly appreciated the contributions of the participants and will be using the findings to inform our guidance.



So now let's look at some key issues on the filtering process which you need to be thinking about at the moment, some of which have come to light during the pilots.

As you all know by now, from implementation, the Board will no longer receive complaints centrally nor take the decision whether to refer them for investigation either to its ESOs or to the authority concerned. Local standards committees will receive and assess new allegations, decide whether they appear to reveal a breach of the Code and if so, whether they merit investigation, informal procedure or no action. This is of course the 'local filter'.

First you will need to consider the ways in which you will let members of the public and others know how to make allegations and what the process entails. We detected a certain ambivalence among some local authorities about publicising the Standards Board's role. How widely will you publicise the new local service when it becomes your role? Will you use, for example, a full page spread in your council newspaper or maybe a discreet notice in your reception? How will you present the necessary information on your website? I guess to some extent this may depend on your views about potential increase in take up with a wholly local system and more particularly your readiness for it. However you really do need to ensure that people know about the service. It's important and that's likely to be reflected, I understand,

in the Audit Commission's CAA lines of enquiry. But there's more about that in a later session.

I'm sure you'll be considering what your point of reception for complaints will be and how to ensure that it is well known throughout the council. This is relevant in the context of the time taken to decide whether or not to refer a complaint for investigation. Also relevant is the fact that the decision itself will need to be made by the standards committee, or a sub-committee of the standards committee, and you will need to plan for that. Long experience tells me that it can be very hard to get the right committee members in place at short notice. I'm sure that I've said before that the Board's staff has a target of 10 days for reaching and notifying the referral decision and that they consistently meet or better it. You will need to decide on a target which is reasonable and achievable. What limits are placed on your discretion to do that will, we believe, be clarified in the Regulations.

Also relevant on this point is the fact that you will have different notification duties from those currently within the Board's discretion. It is expected – and the regulations should clarify this - that you will be required to notify the person who made the allegation and the councillor it was about, both at the time you receive the allegation and at the time you have decided what to do about it. This requirement arises from strong views by members complained against that others knew of the complaint before they did which could be regarded as contrary to natural justice. The Board has taken the view to date that for practical reasons it is acceptable to contact the complained against member for the first time when the referral decision has been made because of the volume of complaints, the short turn around time and the risk that anxious members would submit defence material at referral stage. This has always been a finally balanced issue but it certainly looks as though in future members will need to be informed of the complaint from the outset and so you'll need to be giving consideration as to how best to handle that in terms of confidentiality, sensitivity and avoiding delay.

As to the decision itself, the Board regards there as being four matters to consider:

First: Is the complaint within the jurisdiction of the Code? For example, is the person complained against a member? Jurisdiction points are rare these days and easy to decide.

Second: Does the complaint disclose a prima facie breach of the Code?

This is often, though by no means, always, easy to decide. It is becoming increasingly important, for example, to take account of the small but significant body of law which has grown up since the standards regime started. It may be that a standards committee might be inclined to regard a complaint as disclosing a breach by applying their own ethical standards to the matter, while application of precedent would indicate otherwise. Some of the cases that the members of the board have found most difficult are those where deeply offensive comments have been made by councillors but were made in a private capacity so the Code cannot be applied because of a recent

judgement that, under primary legislation, the Code only covers conduct that can be linked to a member's functions or office. Moreover, there are quite often fine judgments to be made in deciding whether a breach has taken place which in effect entail the balancing of rights: the right to freedom of speech as against the right to respect, being a classic instance.

Third: Is there insufficient evidence on which to reach a decision?

If there is insufficient evidence, we do not refer, but we do make clear in our notification letter the reason for that and leave it open to the complainant to give us more information if any is available.

Fourth: If there is a prima facie breach, does the allegation merit investigation or not?

This is by common consent the hardest decision to make and the one where there is the greatest likelihood of differing opinions. It is also an issue on which we have received consistent feedback from you, both in this year's road show and in course of the first pilot study. The feedback was to the effect that guidance on establishing criteria to help in reaching the decision would be very welcome. The Board itself already has criteria it uses at the national level to make this judgement. To use an example I've given before, the Board is more likely to investigate disrespect shown by a member to a member of the public or to a junior officer than to another member. This is because of the relative powerlessness of the former two to find redress by other means. We have needed to set a high threshold for referral, and indeed unhappy complainants have berated us because of that, but then we are still receiving hundreds of cases a month. Your situations will of course be different, as you've heard from David, but then so will be your resources. The real tests for you will be whether the matter complained of merits the resources of time and money that will be incurred and whether there are other appropriate means by which the complaint may be remedied. We will be issuing specific guidance on establishing criteria. It will be for each authority to take account of the guidance and, having done so, to adopt it or to set its own criteria in accordance with local circumstances.

With regard to the other appropriate remedies, as already mentioned, we expect that standards committees will have the power at the referral stage to direct the monitoring officer to take action other than an investigation, such as mediation or training. In the event that mediation failed to deal with the matter or the member did not participate or co-operate with training, the monitoring officer would be able to refer the complaint back to the standards committee for reconsideration and a possible referral for investigation.

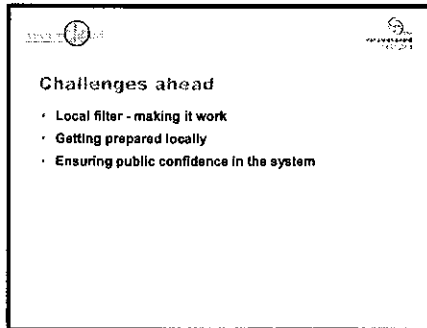
There is one other decision that will need to be made on complaints referred for investigation. This is whether the investigation should be done locally or referred to the Board for investigation by an ESO. We will issue guidance on all the local filter issues I have touched on today, including this one. In summary I can say that ESOs would expect to accept very serious cases which, if made out, would attract disqualification, very complex cases involving many members and/or many documents, cases where there was

substantial local conflict of interest and cases which, if investigated locally, would lead to severe disruption of business. As things stand at present we have no way of being certain about the number of cases that will come our way but evidence from the pilots suggests around 10% of cases referred for investigation by standards committees may reach us. Of course this has to be an estimate at the moment but it does mean that we will need to retain a core of experienced investigators.

Finally on the local filter, you will also need to have a review mechanism for complainants to use if they wish to appeal against a decision not to investigate.

The other significant change that I said I'd mention is the reporting requirements. As part of our new role, the Standards Board will oversee the performance of the new framework in order to assess its effectiveness and present to local government a record of its progress. The basic information we will require will relate to case handling and will be generally quantitative. For example, we will want to know how many allegations you have handled and how many were referred for investigation. We anticipate that this will be based on a quarterly reporting process which will be supported by an annual return that will also include qualitative information about your standards committee, such as what training was undertaken or mediation carried out. This will enable us in effect to carry out an ethical health check. We will, through monitoring and possibly through referrals from other regulators, become aware of those authorities which are having problems or failing in their obligations so that we can offer help. Ultimately there is the sanction of suspension of the local filter power but we expect that to happen extremely rarely. The annual report will need to be approved by the full council and will be made available on the Standards Board and the council's websites for public inspection. We are conscious though that we don't want to overburden authorities with reporting requirements so we will be working with the Audit Commission and other bodies to reduce the level of reporting required from each authority and hence not adding significantly to the burden of regulation on authorities.

On the contrary, we see our key strategic role as one of guidance on, and support for, the locally based system. We intend to make guidance on all aspects of the framework available to principal local authorities in the New Year but some areas will of course be dependent on the regulations being available. This guidance will include supporting materials such as flow charts to help authorities navigate the system and model templates of letters, notices, forms and so on for use by standards committees. Guidance will also include that on joint committees and their working arrangements – focusing on developing the four structures I touched on earlier, local filter procedures, standards committee and sub-committee powers and the suspension of filtering powers. We will also re-issue our popular guidance publications on local investigations and hearings taking account of the changes.



We hope very much that the sessions over the next two days help crystallise your thinking on the new system and address your concerns. There are a few final practical pointers to make. I'm sure you're all considering resource implications based in part on David's analysis of the impact of the change on your authority. You may well be considering the implications of joint working – not just joint committees – in order to keep costs down.

You should also consider potential conflicts of interest that may arise within the system. For example, will a conflict arise if those taking the decision to refer a case, later hear the case? We believe that this can be avoided if the decisions on referrals and investigations are taken by small sub-committees, rather than the whole standards committee as was the conclusion from the pilots.

This will in turn impact on the number of independent members the standards committee will need in order to operate the system effectively. If the government legislates as expected, standards committees will also need to have independent chairs from 2008, and the balance of independent members of calibre and substance with experienced elected members acting in a non-partisan way will be essential for public confidence. With this in mind, part of the guidance we will be issuing on the framework will focus on helping authorities recruit independent members.

Overall, there is developing a wide consensus that standards of conduct have improved since the standards regime was introduced. Most encouragingly, we see strong evidence that local authorities – from chief executives and political leaders to standards committees and monitoring officers – are gaining confidence in their role as champions of high standards. We believe that the change to the local filter will hasten and strengthen that trend.

As far as the board is concerned as we evolve into a strategic regulator, we will be better able to provide the independent advice and guidance, monitoring and oversight that are essential if the public and local government are to feel confident about the quality and effectiveness of the framework. We are looking forward to our new role.

Patricia Hughes
Deputy Chair
The Standards Board for England

Local Filter Pilot Complaint Handling Chart

Sixth Annual Assembly of Standards Committees 15-16 October 2007, ICC, Birmingham

