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It was a pleasure to meet so many of you at the Third Annual Assembly of Standards Committees in Birmingham last month. It proved to be an extremely positive experience, and I am encouraged by the progress that continues to be made at the local level in embedding the ethical framework.

Those of you who attended the conference will be aware that we have announced the start of the consultation process on a review of the Code of Conduct. Since the conference, we have published guidance on lobby groups, dual-hatted members and prejudicial interests and, now that the regulations have been finalised, will shortly be able to refer allegations back to monitoring officers for local investigations. We also await the findings of the Committee on Standards in Public Life's Tenth Inquiry. You can read more about these developments in the following pages.

Our priority now is to continue to improve the throughput of cases, focusing on behaviour that has the greatest potential to damage the public's confidence in local democracy. We are also seeking to develop further the support we provide to standards committees and monitoring officers, ensuring that they are fully able to take ownership of ethical standards at a local level.

David Prince, chief executive

Local investigation regulations

Ethical standards officers will finally be able to refer matters back to monitoring officers for local investigation when the local investigation regulations come into force on 4 November 2004. *The Local Authority (Code of Conduct) (Local Determination) (Amendments) Regulations 2004* were laid in Parliament earlier this month. They complement last year's standards committee determination regulations and together they enable ethical standards officers to refer cases to be investigated and heard exclusively at the local level.

The Standards Board for England will shortly be publishing statutory guidance for monitoring officers on the regulations. The guidance will be available on our website in early November and we aim to send out hard copies to all local authorities near the end of November. The guidance sets out some of the factors an ethical standards officers will consider when deciding whether to refer a matter back for local investigation — for example, when an allegation is of an entirely local nature or the matter does not appear to need the heavier penalties available only to The Adjudication Panel for England. We also intend to publish a short guide in the near future on how to carry out an investigation.

The regulations also enable an ethical standards officer to direct a monitoring officer to deal with the matter in ways other than through an investigation. For example, a monitoring officer may be directed to set up a conciliation process between the disputing parties.

At the end of the monitoring officer's investigation, the standards committee will still determine whether or not the Code of Conduct has been breached, and what action to take. Standards committees can impose sanctions on members who are found to have breached their local authority's Code of Conduct, including suspension or partial suspension from office for up to three months.

The regulations have changed the sanctions available to standards committees. They will now be better able to link different types of sanctions to fit the circumstances. For example, a standards committee will be able to suspend a member for up to three months or until such time as the member undertakes training or conciliation specified by the standards committee.

More help with personal and prejudicial interests

New guidance produced by The Standards Board for England can help members who are involved in lobby and campaign groups or who are members of more than one relevant authority work out if they have a personal or prejudicial interest in a matter.

The new guidance covers a range of common but difficult areas of the Code of Conduct, involving interests arising from membership of lobby groups, and from membership of other public bodies or as council appointees to external groups — so-called dual-hatted members.

The first part of *Lobby groups, dual-hatted members and the Code of Conduct* provides practical advice and examples to help members understand when membership of lobby or campaign groups may give rise to personal and prejudicial interests, and explains what members can and cannot do if they have a prejudicial interest. It also includes information on some other important principles and legal requirements to consider when making decisions, including the common-law concept of predetermination.

The second part of the guidance explains the interests that can arise from service on other authorities or public bodies and provides practical advice and examples to help members understand the circumstances where it is appropriate to rely on paragraph 10(2) of the Code of Conduct to participate in meetings (paragraph 9(2) for parish councils).

The guidance was prepared in consultation with a wide range of stakeholders, including the Local Government Association, the National Association of Local Councils, the Association of Police Authorities, the Association of Council Secretaries and Solicitors and the Society of Local Authority Chief Executives.

It's available from our website now, and will be printed and distributed to monitoring officers and parish clerks over the next few weeks. To view it online, go to:

www.standardsboard.co.uk/code_of_conduct/guidance.php

Referral criteria reassessed

The Standards Board for England's commitment to focus on only the most serious allegations of misconduct will be underlined with the introduction of a more rigorous referral process. Proposals currently being developed will ensure that only allegations concerning the most serious behaviour, with the potential to damage the reputation of local government, will be considered for investigation.

In order for an allegation to be considered for investigation, it must comply with four basic rules:

- it must be made in writing;
- it must concern the conduct of an elected, co-opted or independent member of a relevant authority;
- be about something that happened after the Code of Conduct came into effect (between 30 November 2001 and 5 May 2002, depending on the authority);
- be about something covered by the Code of Conduct.

If an allegation meets all of these rules, it must then satisfy one of the following criteria to be referred for investigation:

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

An allegation is unlikely to be referred for investigation if:

- it is believed to be malicious, relatively minor, or tit-for-tat;
- the same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to The Adjudication Panel for England or the local standards committee;
- the complaint concerns acts carried out in the member's private life which are unlikely to affect his or her fitness for public office;
- it appears that the grievance is really about dissatisfaction with a council decision;
- there is insufficient information currently available to justify a decision to refer the matter for investigation.

These criteria are also available from our website at:

www.standardsboard.co.uk/complaints/

No need to declare interests when hearing reports

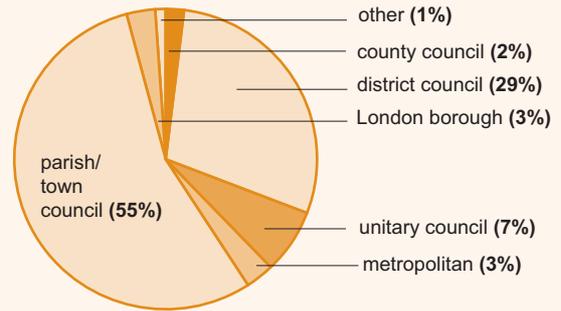
Members do not need to declare interests when they are simply receiving a formal report back from a committee on an issue on which they have previously declared an interest. However, if the report leads to a discussion, members should declare their interest at that stage.

Referral statistics

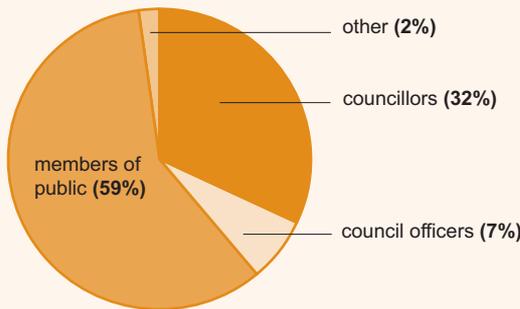
The Standards Board for England received 367 allegations in September 2004, bringing the total number of allegations between 1 April and 30 September 2004 to 1825.

The following charts show The Standards Board for England's referral statistics for that period.

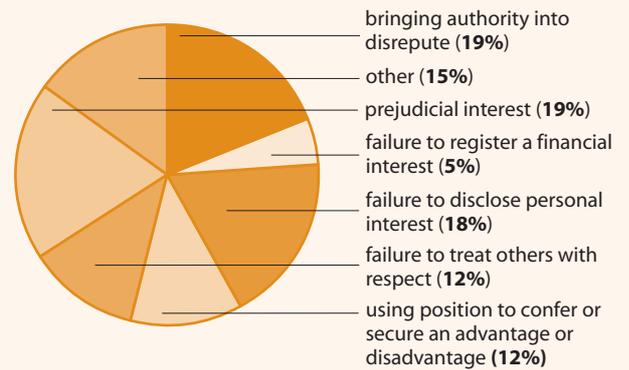
Authority of subject member in allegations referred for investigation



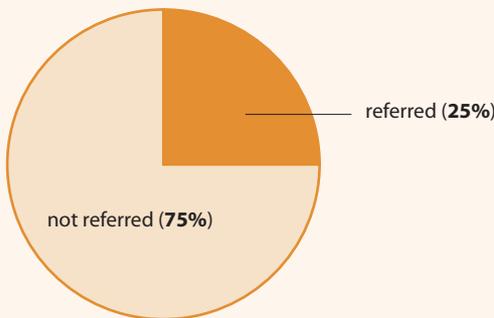
Source of allegations received



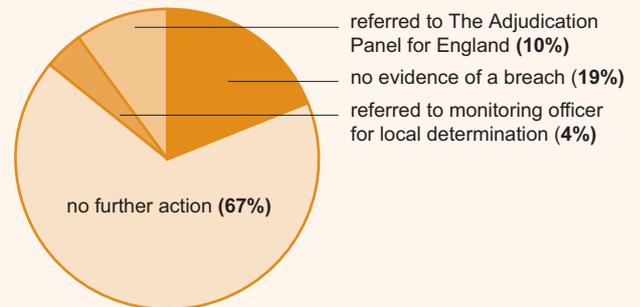
Nature of allegations referred for investigation



Allegations referred for investigation



Final findings



Consultation announced on Code review

All councils will be given a chance to help shape the future of the Code of Conduct when The Standards Board for England launches its review of the Code of Conduct early in the new year.

All councils will receive a consultation paper from the Standards Board for England setting out the key issues. We will be addressing many of the questions that have been put to us in our discussions with monitoring officers and members as we explore how the Code of Conduct can be improved. Among the questions we will be asking are:

- To what extent should the Code of Conduct apply in a private capacity?

- Should the Code of Conduct continue to include a whistle-blowing provision?
- How can the Code of Conduct strike a balance between members representing their communities and protecting the integrity of decision-making?
- Should members be allowed the same rights as the public when making representations on issues in which they have a prejudicial interest?
- Should there be a public interest defence to the disclosure of confidential information?

The consultation is expected to close in the spring, and the Board will make recommendations for changes to the Code of Conduct to the government soon after. We will bring you more news in future issues of the *Bulletin*.

Suspensions, and what they mean for members

The *Local Government Act 2000* enables The Adjudication Panel for England and standards committees to suspend and partially suspend members found to be in breach of the Code of Conduct, but it does not stipulate exactly what members can and cannot do in their official capacity during the term of suspension.

This has led to confusion in some authorities as to what, if any, representative roles a suspended member can perform, what council facilities they are allowed to use, and what entitlements they can continue to receive as a suspended member.

Full suspensions

Members under full suspension should not:

1. Take part in any formal business of the authority

A member suspended by a case tribunal or standards committee is not able to take part in the formal business of the authority during the period of the suspension. Section 83(9) of the *Local Government Act* further provides that a suspended member should not participate in any committee or sub-committee of the authority. Suspended members should therefore not perform any official duties that follow on from their position as a member, or attend council meetings in their capacity as a member. They also should not meet council officers to conduct council business.

2. Have access to council facilities

Suspended members should not use or have access to council facilities. Under paragraph 5(b)(ii) of the Code of Conduct, council facilities should be used only "to facilitate or be conducive to the discharge of the functions of the authority or of the office to which the member has been elected or appointed". As the member is under suspension and unable to conduct council business, it follows that any use of council facilities by a suspended member would not be conducive to the discharge of the functions of the authority as the member would not be performing council business while suspended.

3. Receive their council allowance

Under Regulation 4(3) of the *Local Authorities (Members Allowances) Regulations 2003*, councils may specify in their member allowance schemes that: "where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with part III of the *Local Government Act 2000* or regulations made under that Part, the part of basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority."

We recommend that members should not receive their allowance while under suspension because they are not performing their role as a member, but the decision to withhold a member's allowance is at the discretion of the individual authority.

However, members under suspension should:

1. Make their suspended status clear

Members should put 'suspended' after their name when referring to themselves in writing as members, and notify constituents when contacted by them on constituency business. This is to ensure that all concerned are aware that the member is under suspension and unable to perform council duties.

2. Make arrangements for another member to handle their constituency work

With help from their council officers, suspended members can make arrangements for other ward members — or, in the case of a single-member ward, neighbouring ward members — to take over their constituency work for the duration of the suspension, ensuring constituents continue to be democratically represented.

3. Abide by the appropriate provisions of the Code of Conduct

Suspended members are still covered by paragraphs 4 and 5(a) of the Code of Conduct, which apply in all circumstances.

Since suspended members will not be able to act in an official capacity, they will not usually be covered by the remaining provisions of the Code of Conduct. One exception to this rule would be attendance at council meetings. The Court of Appeal made it clear in the recent Richardson decision that members should always be regarded as attending council meetings in their official capacity. In our view, this principle should also apply to suspended members. Accordingly, we consider that a suspended member with a prejudicial interest in a particular matter should not be permitted to attend a council meeting where that matter is discussed, even just as a member of the public in the public gallery.

However, we consider that suspended members without any prejudicial interests should be permitted to attend council meetings in the same way as ordinary members of the public.

Partial suspensions

Members can be partially suspended under sections 83(9) and (10) of the *Local Government Act 2000*. While members who are fully suspended cannot take part in any formal business of the authority during the period of suspension, members who are partially suspended are restricted only from certain activities or business.

The terms of a partial suspension must be set by the case tribunal of The Adjudication Panel for England or standards committee during sentencing. It will often involve suspension from certain committees, or restricted access to certain areas or individuals.

A partial suspension enables the tribunal to tailor a sanction to the particular breach, while still allowing the member to carry out other functions. For instance, a member who failed to uphold the Code of Conduct at a

planning committee could be suspended from taking part in planning committee meetings for a certain period. Or a member who bullied licensing officers about an application might be barred from contact with officers of the licensing department for a certain period.

We again recommend that, for the duration of the suspension, members should not receive allowances relating to areas in which they are suspended from acting.

What can a council do when a member is suspended?

Officers and members of the authority should be informed of a member's suspension and advised of the suspended member's rights and obligations, as detailed earlier. The council should also help the member make arrangements for another member, either from his or her ward or a neighbouring ward, to take over constituency work. It may also notify the public in the authority's area that the member is suspended and unable to perform official council duties until the end of the suspension. Once the suspension has ended, the member is free to resume his or her duties in full as a member of the authority.

Advice on Freemasons clarified

We would like to take this opportunity to clarify the issue of members registering and declaring membership of the Freemasons. We wrote to all local authorities advising them on this matter at the end of September.

Freemasons who are members of the Grand Charity must, under paragraph 15(c) of the Code of Conduct, register membership of the Grand Charity in their register of members' interests and, where appropriate, declare their membership of the Grand Charity as a personal or prejudicial interest before or during council meetings. And if an individual lodge is one which has charitable status or could be described as a body directed towards charitable purposes, then membership of that lodge would also need to be registered.

Membership of charities or bodies directed to charitable purposes must be included in members' registers of interests in accordance with paragraph 15(c) of the Code of Conduct.

In addition, if a matter under discussion would affect a member more than other people in the council's area because the member is a Freemason, the member will need to declare the existence and nature of that interest and consider whether the interest is also prejudicial.

Case Review sheds light on legal issues

The role of the Code of Conduct in members' private lives is just one of the issues explored in the second volume of The Standards Board for England's Case Review, published in September. Other chapters look at conduct during political debate, prejudicial interests, and sanctions imposed on members by The Adjudication Panel for England and local standards committees.

Another section looks in detail at cases involving certain kinds of misconduct, including mistreatment of officers and release of confidential information. It reviews the underlying issues of the cases and comments on the tribunal decisions.

A copy of the publication has been sent to all monitoring officers. Additional copies are available at a cost of £15 each. We also have a limited number of copies of the first edition, which includes a paragraph-by-paragraph analysis of the Code of Conduct, at a cost of £20 each.

To place an order, call 020 7378 5036 or 020 7378 5025 or write to:

publications@standardsboard.co.uk