

Over 100 cases have now been passed to be dealt with at a local level, either as investigations or standards committee hearings. We have always maintained that local ownership of the process is vital if the ethical framework is to have relevance and longevity and we will be focusing on the local agenda at this year's Annual Assembly of Standards Committees — *Ethical standards: in your hands*.

Our work promoting the ethical agenda continues, and the recent publication of guidance on both the local investigations regulations and the difficult area of prejudicial interests for members of lobby groups and dual-hatted members is just part of this work.

Last year saw The Standards Board for England make significant progress in improving the timeliness of investigations and focusing resources on only those allegations that we believe have the potential to damage the public's confidence in local democracy. I am confident that the improving trend will continue throughout 2005 and look forward to hearing your feedback at the roadshows we have organised for the first half of the year.

This year also sees the launch of our consultation on the review of the Code of Conduct. It is clear to me that the Code of Conduct itself is not as helpful in places as it could be, but I look forward to hearing your views on the subject. You can read more about our plans for consultation below.

David Prince, chief executive

New year kick-off for Code review

Consultation on the review of the Code of Conduct will begin in the coming month. We have delayed launch of the consultation slightly to give us time to consider recommendations concerning the Code that may arise from the Committee on Standards in Public Life's Tenth Inquiry. We expect the Committee to publish its final report and recommendations later this month. The consultation process on the review of the Code of Conduct will begin shortly after, and will last for around three months.

A short document setting out some of the key issues of principle will be sent to all relevant authorities. It will also explain where you can find a more detailed paper looking at the provisions in depth. This longer document will be available online, and as a printed document by request. Both documents will explain how you can respond to the consultation.

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On the road

The Standards Board for England has invited standards committee members and monitoring officers to a series of roadshow events across the country in the first half of the year. A choice of eleven venues has been offered to up to three representatives of each authority so that they can share their early experiences of local investigations and hearings, discuss the review of the Code of Conduct, and contribute to research on what makes an ethical authority.

A booking form has been sent to all monitoring officers and they have been asked to co-ordinate bookings. You can get more information on the roadshows, including a full programme, from the events section of our website at:

www.standardsboard.co.uk/events/

Board to appear at Select Committee hearing

The Standards Board for England will give evidence to the Committee on the Office of the Deputy Prime Minister on 17 January. The Minister for Local and Regional Government will also appear on the same day. The Committee is conducting an enquiry into the role and effectiveness of The Standards Board and has invited written submissions to complement its hearings. Copies of the evidence, including our own submission, are available on the Parliament website at:

www.publications.parliament.uk/pa/cm200304/cmselect/cmmodpm/1118/1118we01.htm

Conducting local investigations

The regulations governing local investigations came into force on 4 November 2004, and cases are now being referred to monitoring officers for investigation.

We are aware of the need to lend support and make our expertise available to monitoring officers and standards committees to help local authorities in this transitional period. To this end, we published statutory guidance on local investigations on our website on 4 November to coincide with the regulations coming into force. Printed copies have also now been distributed. Authorities must take this guidance into account when a case is referred to them for investigation by an ethical standards officer.

In your hands

While the Board and our ethical standards officers will do their utmost within the regulatory framework to provide guidance and share knowledge and experience, the responsibility for developing the local infrastructure needed to respond to referrals rests with each authority. The new regulations have been anticipated for some time and there is therefore an expectation by The Standards Board for England that authorities will have prepared in advance for their responsibilities under the regulations. The preparedness of each authority is vital to ensure confidence in the process.

As explained in the guidance, monitoring officers are permitted to delegate the functions of conducting investigations and supporting standards committees to either a person external to the authority or another employee. Authorities may also need to appoint external investigators or draw up a protocol for co-operation and secondments with neighbouring authorities to provide mutual assistance and help mitigate cost. Either way, the people involved should be of sufficient seniority and robustness to see an investigation through to completion.

Occasionally, referrals may require some kind of action other than investigation. The ethical standards officer may, for example, direct a monitoring officer to make recommendations to a standards committee about the wider issues for the authority raised by the case, or ensure that the parties concerned attempt some form of reconciliation. It may be necessary to consider the need for professional mediation services. Ethical standards officers will consult monitoring officers before issuing directions.

The Standards Board for England will increasingly focus its own investigations on the more serious cases that have the biggest potential to damage the public's confidence in local democracy. We believe that the combination of local and national framework working side-by-side is most likely to produce an effective way of dealing with misconduct and improving general standards.

Implementing tribunal recommendations

We would like to remind authorities of their statutory duty to implement recommendations made by The Adjudication Panel for England.

Under section 80(3) of the *Local Government Act 2000*, an authority has three months in which to consider recommendations made to it by The Adjudication Panel for England. An authority must also prepare a report for The Standards Board for England within this time, giving details of what action it has taken or proposes to take as a result of those recommendations.

If The Standards Board for England is dissatisfied with the authority's actions or proposals, section 80(5) of the Act enables it to require the authority to publish a statement outlining details of recommendations made by the case tribunal and the reasons why the authority has not implemented the recommendations.

Preliminary enquiry pilot scheme in full swing

Officers from the authority of a member named in an allegation may be contacted by The Standards Board for England to gather additional information, before a decision is made on whether to refer the allegation for investigation, under the terms of a pilot scheme which is now fully operational.

The preliminary enquiry scheme is designed to help officers at The Standards Board for England collect

certain facts from monitoring officers and clerks of the related authorities that were missing from the original allegation. It should enable The Standards Board for England to filter out those allegations that have little or no credible evidence to substantiate them.

The scheme is limited to enquiries relating to factual information. We are not seeking opinions on the merits of a particular allegation and will not take opinions into account when deciding whether to refer an allegation for investigation. The letter notifying interested parties of a decision will indicate if information from a preliminary enquiry informed the decision.

During November 2004, preliminary enquiries were made into 16 allegations. In the majority of these cases, the monitoring officer was contacted, and in all cases the information received helped the assessment of the allegation. In half of these cases, the information gained played a decisive role in determining whether the allegation should be referred for investigation.

2005 conference is 'in your hands'

Planning has already begun for the Fourth Annual Assembly of Standards Committees on 5–6 September 2005, which will focus on local investigations, local hearings and local responsibility for building public confidence in local democracy.

These are different dates to the ones advertised at the Third Annual Assembly of Standards Committees held earlier this year. We have changed the dates to avoid clashing with an event organised by SOLACE, which we understand will be announced soon. We apologise for any inconvenience this may cause.

The dates for the SOLACE event were not available when we confirmed our original conference booking and the change has only been possible thanks to the great flexibility and commitment of our partner organisations involved in organising the conference.

We recognise that many of our stakeholders are also a key audience for SOLACE, and in the spirit of our continued good work in partnership with other organisations such as SOLACE, we took the decision to move the date of our conference.

Local focus

The theme for the two-day conference is 'in your hands'. It will turn the spotlight on the work of standards committees, and others within local government enabling them to take ownership of the ethical agenda. Delegates will use the opportunity to:

- examine both good and bad practice;
- identify areas for improvement within their authorities;
- look beyond the scope of the standards committee's statutory remit;
- focus on the relationship between members and their communities;
- consider what further support and guidance is needed.

A programme and booking details will be available over the next few weeks.

In the meantime, to register your interest in attending the conference, please e-mail:

annualassembly2005@standardsboard.co.uk

Unfair procedures may give rise to appeal

Members who are dissatisfied with the outcome of a standards committee hearing into their conduct can appeal to The Adjudication Panel for England. The subject member must first request permission to appeal the decision from the president of The Adjudication Panel for England, setting out which aspects of the hearing the member wishes to appeal — the decision as to whether the subject member has breached the Code of Conduct, the sanction, or both. The president will consider whether permission to appeal should be granted.

In some of the appeals that have been permitted to date, it is noticeable that the subject member has alleged that members of the standards committee hearing the matter were biased or partial. And in some cases, the subject member has alleged that the standards committee's procedures were unfair, preventing that member from receiving a fair hearing.

It is therefore important that standards committee members hearing cases against councillors should consider not only whether they have a personal and prejudicial interest as set out in the Code of Conduct, but also whether their connection to, relationship with or knowledge of the subject member could be considered to be biased or give a reasonable member of the public the impression that the decision could be partial.

Standards committees should also ensure that, as far as possible, the procedures of the committee hearing a matter concerning the conduct of a councillor are fair. In this regard, the members should take advice from the monitoring officer or legal advisor to the committee.

Help us to keep in touch

Authorities are being urged to supply The Standards Board for England with an updated contact list for key figures within the authority. Many have already responded, but a significant number are still outstanding.

We wrote in October 2004 to all monitoring officers asking for contact details for chief executives, chairs of standards committees, and monitoring officers. The updated contacts will help us to ensure we continue to send material to relevant people within the authority and avoid papers being misdirected. Please send your list to:

enquiries@standardsboard.co.uk

Thank you to everyone for your help.

Late hearing was 'unlawful', court rules

The decision of a standards committee on a matter referred for local determination was overturned earlier this month in a judicial review claim, on the grounds that the standards committee had taken too long to hear the case.

Mr Justice Hughes gave judgment in *Dawkins v Bolsover District Council* on 10 December 2004. The court quashed the decision of the district council's standards committee because the delay of over seven months between receipt of the ethical standards officer's report by the monitoring officer and the standards committee hearing represented a substantial failure to comply with regulation 6(2)(b) of the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003*, which set a three-month deadline for hearings.

The court accepted submissions from Bolsover District Council and The Standards Board for England that there was no automatic loss of jurisdiction once the three-month period expired. Unforeseen circumstances might arise that would make it genuinely impractical to hold the hearing within three months (for example, one of the key players might unexpectedly fall ill). In such circumstances, there would be no loss of jurisdiction.

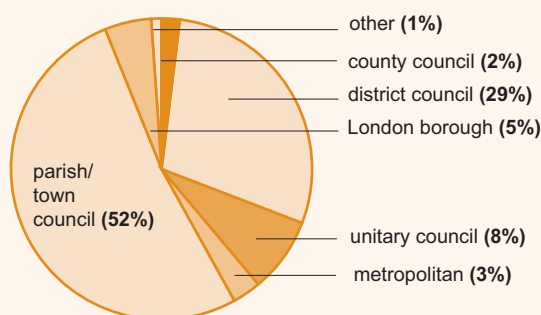
However, the standards committee was under a statutory obligation to meet the three-month deadline; it should not be regarded as a target to aim for. An authority has to plan on the basis that the three-month deadline must be met. In this case, the evidence showed that Bolsover District Council had failed to put the necessary arrangements in place. The standards committee hearing was therefore unlawful.

Referral statistics

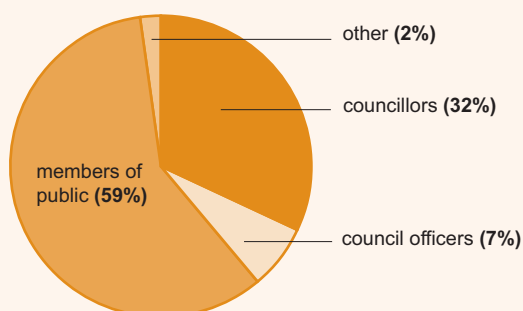
The Standards Board for England received 301 allegations in November 2004, bringing the total number of allegations between 1 April and 30 September 2004 to 2447.

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

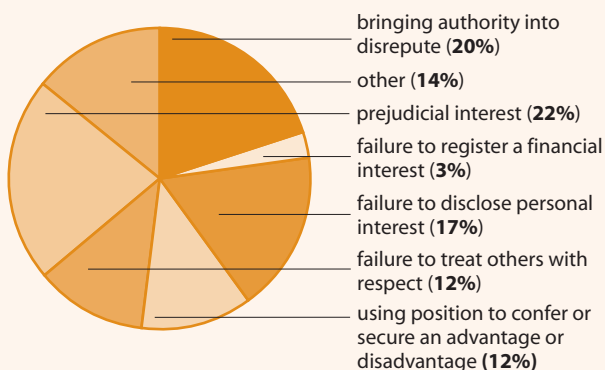
Authority of subject member in allegations referred for investigation



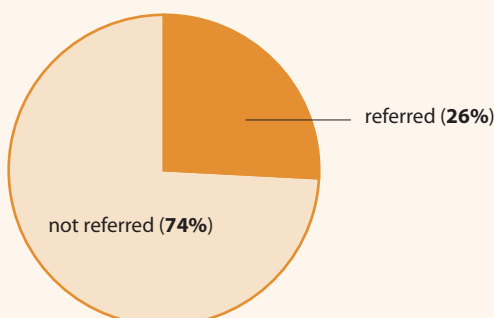
Source of allegations received



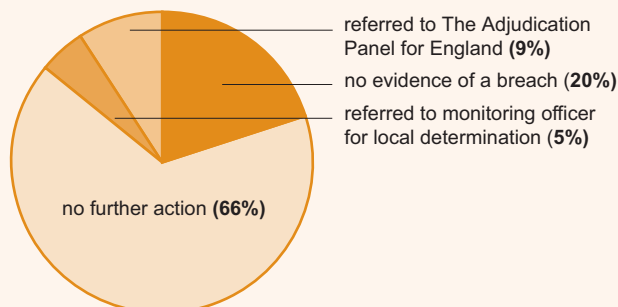
Nature of allegations referred for investigation



Allegations referred for investigation



Final findings



Tribunal applies Richardson decision in recent case

The Adjudication Panel for England recently considered the conduct of a member who acted in his professional capacity as solicitor by representing an applicant at a licensing committee hearing.

The member represented one of his clients at a meeting of the council's licensing committee, where his client had applied for a taxi licence. The member stated to the licensing committee that he was appearing in his professional capacity, and made submissions on behalf of his client.

After hearing submissions as to whether there was a failure to comply with the Code of Conduct, the case tribunal decided that the member had a personal interest which was also prejudicial.

Professional capacity

In relation to the personal interest, the tribunal decided that the application made by the client related to the member's business because the member was a solicitor and was representing his client at the licensing committee in a professional capacity. The tribunal considered that a decision on the client's application might reasonably be regarded as affecting the well-being or financial position of the member's firm to a greater extent than other council taxpayers, ratepayers and inhabitants of the area. The tribunal commented that members must make a clear and detailed disclosure to the committee concerning the existence and nature of an interest. Only when such a declaration is made can the public interest be properly protected. It is not enough that members of the licensing committee may have been aware that the member was a solicitor appearing for his client.

Richardson decision

In relation to the prejudicial interest, the tribunal applied the decision of the Court of Appeal in *Richardson v North Yorkshire County Council*. It considered that although the member was not a member of the licensing committee, and therefore not involved in the decision on the licensing application, he was still a 'member' of the authority. The word member in paragraph 12(1) bears its natural and ordinary meaning — that is, member of the authority, rather than member of the committee. The tribunal decided that the member could not divest himself of his status as a member of the authority simply by claiming to appear in another capacity.

The tribunal also decided that the member's actions had brought his office or authority into disrepute. It considered that public confidence in local authority decision-making in matters of this kind requires the authority to act impartially and without undue pressure and influence, and to be seen to be doing so. The

tribunal thought it inconsistent with this view for members of an authority to appear before a committee representing the private, commercial interests of an applicant for financial gain. In the view of the tribunal, a reasonable and objective observer would conclude that influence was being exerted, even though the member may be scrupulous in seeking to avoid that perception, and even though the member may not intentionally seek to exert an influence.

The member was suspended for six months.

You can read more about the Richardson decision and its implications for members in the second volume of the *Case Review*, available at:

www.standardsboard.co.uk/publications/case_review.php

Website FAQs revised

The Frequently Asked Questions (FAQs) section on our website has been updated to weed out questions that are no longer relevant and concentrate on current key issues, including referrals and investigations procedures. Some questions have been revised in the light of ongoing developments.

The updated questions include:

2. Can my authority amend the Model Code of Conduct?
8. What is a 'friend' and how would I distinguish between a friend and an acquaintance?
11. Why is there a requirement to whistle-blow on other members?
15. Do I need to register all gifts and hospitality I receive?
17. When do I need to register my interests by?
22. Does membership of the Freemasons need to be declared?
42. What happens if I am a member of a lobbying group which has a publicly expressed support for or against a planning application?
44. How does The Standards Board for England evaluate complaints?
45. Will The Standards Board for England consider anonymous allegations?
46. Who will be informed if an allegation is made against me?
49. Why does The Standards board for England publish summaries of investigations?
50. Does my authority's standards committee need to be chaired by an independent member?

The FAQs can be viewed at:

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