

# THE BULLETIN #35

**September 2007**

**Welcome to Issue 35 of the *Bulletin*.**

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With the expected move towards a locally based ethical framework from April 2008, this edition of the *Bulletin* looks at some of the likely effects for authorities, and provides an update on the recent local filter pilot projects. For the majority of authorities, the resource implications of the new system look likely to be relatively small.

The Standards Board for England welcomes the move to a locally based framework. We believe that this will reinforce the importance of high standards at a local level, with standards committees taking the lead in ensuring that the Code is upheld. Specifications of the role for independent members of standards committees are also explored in this issue of the *Bulletin*.

The next edition of the *Bulletin* will be in December 2007, as we will be producing a short series of newsletters in the autumn to coincide with our sixth Annual Assembly. These newsletters will be distributed to delegates or will be available from our dedicated website: [www.annualassembly.co.uk](http://www.annualassembly.co.uk).

The Annual Assembly is now fully booked. It will be a key event for standards committees and those who work with the Code of Conduct, and presentations from many of the sessions will be available on the conference website following the event.

**David Prince**  
**Chief Executive**



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## **Amendments to the Local Government Act 2000**

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The *Local Government and Public Involvement in Health Bill* is currently before the House of Lords, and is expected to receive Royal Assent in the autumn.

An important amendment to the *Local Government Act 2000* is to enable the Code of Conduct to cover some conduct in a private capacity. It will cover conduct which has led to a criminal conviction.

This amendment seeks to address the High Court's decision last year in *Livingstone v Adjudication Panel for England*. Prior to this decision, it was understood that a member could breach the Code through their conduct in a private capacity. The High Court decided that Section 52 of the Act required members to comply with the Code in their official capacity only, and that it could not govern the private conduct of members.

Until the amendment becomes law, private capacity conduct cannot be covered by the Code. Despite the wording in paragraph 2(3) of the Code, only if a member's alleged misconduct is linked to the functions of their office will any conduct in their private capacity currently be covered, even if it results in a conviction.

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### **Lobby groups and single-issue campaigns**

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The 2007 Code of Conduct is less restrictive than the Code of 2001 for members who are elected on a particular ticket, who participate in campaigns or are members of lobby groups. Some members who were prevented by the 2001 Code of Conduct from voting on a matter important to them or their lobby group will not have a prejudicial interest under the revised 2007 Code.

The Code of Conduct requires members to declare a personal interest in any matter that relates to an interest they must include in their register of interests - so they are required to declare a personal interest if they are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at their authority.

Members may not have a personal interest in the related discussion or decision of their authority if they merely campaigned on an issue as an individual, perhaps during their election campaign, and they are not a member of a relevant lobby group. As a result, they could not have a prejudicial interest in the matter. Members should still consider the general test for personal and prejudicial interests and whether there is any other reason outside of the Code why they should not participate in the decision, including bias.

Of particular relevance to members of lobby or campaign groups, the revised Code provides an exception to having a prejudicial interest in the following circumstances:

- where the decision does not affect the financial position of a member or their interests
- or
- does not relate to a licensing or regulatory matter brought by them or a person or body in which they have a personal interest

For example, a member will not have a prejudicial interest in a developer's planning proposal against which they and their lobby group campaigned if they or any other person or body in which they have a personal interest are not affected financially by the matter.

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It is not relevant for the purposes of the Code that the planning proposal will impact on the aims of the lobby or campaign group that the member belongs to. The Code is focused on the actions of individuals and as such is about preventing improper personal advantage. Under the 2001 Code, the indirect impact on campaign groups was a relevant factor in deciding whether or not a prejudicial interest arose, even if members were achieving no personal gain. Under the revised Code, however, the focus is now on financial impacts and improper personal gain. For further information on personal and prejudicial interests, please see our publication *The Code of Conduct – Guide for members*, available from our website at [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

### **‘To Higher Standards’ – Annual Review published**

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The continuing development of the Standards Board’s new role as a strategic regulator, how the new arrangements for a locally based ethical system are taking shape and the introduction of a new, less restrictive Code of Conduct are the main themes addressed in our *Annual Review 2006-07*.

The review focuses on the progress that has been made in preparing for a shift in ownership of the ethical conduct regime to a local level. The majority of cases are now being dealt with locally and the introduction of a system of local assessment of complaints is on course to come into effect in April 2008.

In our new role we are committed to defining what people can expect the standards regime to deliver. This includes the role of monitoring officers and standards committees, and providing support and guidance to local authorities to help them operate effectively.

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The review also details our achievements over the 2006-07 financial year, which included:

- The majority of our recommendations were implemented by government, leading to the introduction of an improved, less restrictive Code of Conduct
- The initial assessment time for complaints was nine working days
- The Fifth Annual Assembly of Standards Committees was sold out, with an overall satisfaction rate of 91%
- The Standards Board’s move to Manchester was successfully completed

Copies of the Annual Review are now available on our website at [www.standardsboard.gov.uk/Publications](http://www.standardsboard.gov.uk/Publications)

Our Annual Report 2006-07 will be laid in Parliament in autumn 2007 and will be available in hard copy shortly afterwards.

### **Positive support for the Code of Conduct**

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An overwhelming majority of local authority members, clerks and monitoring officers support the need for a Code of Conduct, according to research undertaken on behalf of the Standards Board.

The research, carried out earlier this year, assessed attitudes towards the Code of Conduct and the ethical environment generally, as well as the degree to which local authorities are prepared for changes in the way the ethical framework will be managed.

The requirement for members to sign a Code of Conduct was supported by 93% of respondents – up from 84% in similar research in 2004.

Unsurprisingly, of those surveyed, monitoring officers and standards committee members

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showed the most support for the Code. However, 85% of elected members were also in favour.

In comparison to 2004's survey, more respondents also felt that members' standards of behaviour in their authority had improved in recent years, and almost three-quarters of those surveyed felt that members' behaviour was important to the general public.

### **Local filter for Code of Conduct complaints – impact for local authorities**

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#### **What is happening?**

The *Local Government and Public Involvement in Health Bill* proposes the introduction of two key changes to the management of compliance with the Code of Conduct:

- A locally managed framework. This will involve local standards committees making initial assessments of misconduct allegations, and most cases being handled locally.
- A revised strategic regulatory role for the Standards Board. This role is to provide supervision, support and guidance for local authorities and to ensure some degree of consistency in the application of the Code.

Some investigations and hearings are already carried out by authorities. Under the new arrangements, authorities' standards committees will receive all complaints relating to the Code.

Standards committees will decide whether to refer complaints for further action locally, whether to refer complaints to the Standards Board, or whether no further action should be taken. Aside from asking for an investigation, standards committees will also be able to

resolve cases by alternative means such as mediation or training. In cases where the committee considers the sanctions available to it are insufficiently serious, cases can be referred to the Adjudication Panel for England.

#### **How many complaints can authorities expect to receive?**

For the majority of authorities the impact of the local system is likely to be relatively minimal. For example, during the financial year 2006-2007, the Standards Board received about 3500 complaints under the Code, of which just under 700 (an average of approximately 18%) were referred for investigation.

On average, based on the number of complaints received by the Standards Board over the last five years, all authorities could expect to receive approximately six complaints a year. On top of this, a district council with 20 parishes may expect about three or four complaints a year about their parishes. A district council with 100 or more parishes may expect around 18 parish complaints each year.

Some authorities, however, may receive no allegations at all over a significant period. Of the approximately 8000 parish and town councils, 80% have not been the subject of a single complaint over five years. There has been at least one complaint about a member of each district council over five years. Of the authorities which are not districts, 25% have not had any complaints in five years.

A small number of authorities have received a significant number of complaints about their members or about members of one or more of their parishes. In the worst case, 125 complaints were made over five years about members of a principal authority.

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### **What will be the impact on authorities?**

The Standards Board estimates that individual complaints will take an average of two and a half hours to assess upon receipt. Our pilot work on the local filter has shown that standards committees take up to an hour to reach a decision on whether to refer a complaint for further action based on the information available.

We expect that authorities will refer only some of the complaints they receive for investigation, although the pilot work has indicated that standards committees may refer a greater proportion of the complaints they receive in the earlier stages of the local system, as it becomes established.

As authorities become increasingly proficient in determining complaints, we estimate that even authorities which receive a higher volume of complaints will refer about 25% per year for further action. In terms of the impact on workload, therefore, based on an average of six complaints per year and a referral rate of 25% across all authorities, an average authority can expect to conduct one or two investigations per year. Even for a district council with over 100 parishes, an average of only six investigations per year would be anticipated. These are of course average assumptions, but provide a guideline to the increase in workload that authorities should expect with the move to a locally based framework.

Standards committees will have the opportunity to promote high ethical standards in their authority. They can do this through developing effective procedures for managing the local system in the following ways:

- 1) Responding to and deciding complaints in the right way and on time.
- 2) Becoming proficient in identifying what is

appropriate for investigation/sanction and what is not.

- 3) Being proportionate in their decisions to the nature of the issue and the harm caused.
- 4) Aiming to resolve the harm caused by non-compliance, and aiming to deter future non-compliance.
- 5) Participating fully in the reporting protocols operated by the Standards Board and sharing good practice.

The Standards Board will monitor the operation of the local filter by:

- 1) Ensuring our reporting systems are as simple as possible whilst allowing us to do our job effectively.
- 2) Measuring outcomes as well as outputs.
- 3) Offering support and guidance where authorities may be experiencing difficulties.
- 4) Using our statutory powers to remove local powers only as a last resort and only after efforts to support the authority have been unsuccessful.
- 5) Ensuring our monitoring is complimentary to, and does not duplicate, the work of other regulators.

We will also share good practice and ensure that we are responsive, offering guidance and support for local authorities.

### **Local filter pilot projects: update**

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Thank you for the positive response following Bulletin 32 in February 2007 from authorities keen to participate in three pilot projects. The aim of these projects is to help the Standards Board plan for its strategic role in support of local government taking on the local filter.

### **Operating the local filter**

An exercise in filtering ten real life allegations and reviewing two appeal cases has been

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completed by 38 standards committees. Several committees were facilitated or observed by officers from the Standards Board's monitoring and audit team, who were able to gain a valuable insight into how the local filter will operate at local level.

Standards committee members and monitoring officers benefited from training in undertaking the local filter and operating the appeal mechanism, as set out in the *Local Government and Public Involvement in Health Bill*. Constructive feedback has been received from each volunteer authority. This feedback will now be used to contribute to the shaping of national policy, sharing of good practice, and in helping the Standards Board develop its guidance to relevant authorities.

### Joint arrangements

Significant work is underway with seven groups of authorities with a keen interest in developing joint working for standards committees. The output of this second pilot is expected to be:

- 1) The establishment of a set of four to five model structure options for joint arrangements.
- 2) To provide direction and influence for the preparation of the regulations which will underpin joint working.

Full consultation is taking place with volunteer authorities in considering the scope that the legislation allows for joint standards committees. Participating monitoring officers have been invited to a consultation event in September, after which the Standards Board's proposals for joint working will be finalised.

### Future monitoring and audit

The Standards Board's monitoring and audit team is developing the way in which it will monitor, assess and demonstrate compliance with the new statutory regime at local level.

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An online information return system, based on periodic returns and an annual report, will be tested with volunteer authorities in autumn 2007. The system will be proportionate to our monitoring needs and will not add undue burden to authorities.

The types of information we will collect include:

- the timeliness of standards committee referral and review decisions
- the timeliness of carrying out investigations and hearings
- the outcomes at different stages of the process
- any failure by an authority to meet statutory requirements in respect of its standards committee

The approach is intended to support improvement, to enable authorities to be kept informed at regular intervals about their own performance, and to enable the Standards Board to analyse the information received in order to identify good practice.

### Gifts and hospitality register

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The obligation on monitoring officers to maintain a **separate** register of gifts and hospitality no longer exists following implementation of the revised Code of Conduct for members which does not incorporate paragraph 17 of the 2001 Code.

The absence of paragraph 17 does not mean that the details of gifts and hospitality could not be kept separately from other interests that have to be registered – as long as they form part of the register of interests that monitoring officers are obliged to keep under Section 81 of the *Local Government Act 2000*. The difference in treatment of gifts and hospitality between the new and old Code is that instead of monitoring officers keeping a

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separate register for them, they will now form part of the register of financial and other interests.

Section 81(1) of the *Local Government Act 2000* and paragraph 13(1) of the revised Code require elected and co-opted members to notify their monitoring officer of any personal interests that fall within a category mentioned in paragraph 8(1)(a) of the revised Code.

Gifts and hospitality are captured by subparagraph 8(1)(a)(viii) along with the person who gave them. The Standards Board's guidance *The Code of Conduct: Guide for members*, issued in May 2007, recommends that the existence and nature of the gift or hospitality are given, as well as the name of the person who gave it to them.

How this information is held is a matter for each monitoring officer who can decide what works best for them.

### **The Code Uncovered**

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*The Code Uncovered*, the Standards Board's new training DVD, will be distributed to all monitoring officers and County Association secretaries next week. The DVD uses a dramatised scenario to illustrate the lead up to a potentially explosive planning committee meeting, and highlights the key changes to the revised Code of Conduct.

The film examines the rules about declaring interests, disclosing confidential information and bullying. It also features learning points identifying key elements to consider when following the rules governing members' behaviour.

The DVD will be of particular value to councillors who want to increase their understanding of certain parts of the Code

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We hope that you will find the DVD a useful addition to our existing guidance and look forward to hearing your feedback.

For information on how to obtain additional copies, contact us on 0161 817 5335 or email [ellie.holmes@standardsboard.gov.uk](mailto:ellie.holmes@standardsboard.gov.uk). There is a charge of £38 per extra copy requested.

### **Independent members of standards committees**

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The Standards Board has been asked the following questions:

**Q: "Can an independent (i.e. lay) member of a standards committee also be an independent member of a standards committee of another authority or does membership of the first standards committee mean that they are a 'member' of that authority, making them ineligible to be an independent member elsewhere?"**

**A: No, it does not make them ineligible.**

Under section 53(4)(b) of the *Local Government Act 2000*, a standards committee must include at least one person who is not a member, or an officer, of that **or any other** relevant authority.

Also, under regulations, a person cannot be appointed as an independent member of a standards committee unless they have not been a member or officer of **that** authority within the five years immediately preceding the date of appointment.

Section 54(8) of the *Local Government Act 2000* states:

"...a member of a standards committee of a relevant authority in England or a police authority in Wales **who is not a member of**

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**the authority** is entitled to vote at meetings of the committee.”

This seems to confirm that membership of the standards committee does not make the independent members into members of the authority. Therefore, an independent member of one standards committee can also be an independent member of another.

**Q: “Is an independent member who subsequently becomes an officer with another relevant authority disqualified from being an independent member of the standards committee of their non-employing authority?”**

**A: No.**

When an independent member of a standards committee subsequently becomes an officer or member of another relevant authority, they no longer fall within the description of people in section 54(4)(b) of the *Local Government Act 2000*. Therefore, they could not be re-appointed to the standards committee as an independent member.

However, an independent member in this situation would not be instantly disqualified from being a member of the standards committee, as there is nothing in the legislation which would require them to resign from the committee after the change has occurred. The committee would have to comply with Section 53(4) of the *Local Government Act 2000*, but it would do so if at least one member of the committee continued not to be a member, or an officer, of that **or any other** relevant authority. However the qualifying member would then be needed for the duration of every meeting to constitute its quorum.

Therefore, the Standards Board would generally recommend that independent

members should resign from membership of a standards committee once they can no longer be re-appointed.

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### **Sixth Annual Assembly sold out**

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The Sixth Annual Assembly of Standards Committees is now fully booked, with over 750 delegates set to attend the event in October.

The programme at this year’s conference – *Down to detail: Making local regulation work* – will tackle the issues facing standards committees in the changing ethical environment.

Sessions will take an in-depth look at the logistics of the forthcoming local filter for complaints, and will focus on the practical implications for standards committees.

Breakout sessions are filling up fast and those who have already secured a place at the conference are urged to choose their sessions and return their preference forms as soon as possible to avoid disappointment.

Presentations from many of the sessions will be available on our dedicated conference website following the Annual Assembly. Three issues of our conference newsletter will also be available, providing a round-up of information from the event.

For more information, visit the conference website, at: **[www.annualassembly.co.uk](http://www.annualassembly.co.uk)**, which offers a one-stop-shop of conference information including the latest news on speakers, sessions and fringe events.

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### **Code of Conduct guidance**

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Authorities have until 1 October 2007 to adopt the revised Code of Conduct. After this time, members of authorities that have not adopted



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it will be automatically covered by it. If your authority has not already done so, we urge you to do so now at the earliest possible opportunity.

As October approaches, we have taken the decision that, to avoid confusion with the previous Code, we will no longer be issuing guidance on the 2001 Code. This guidance will automatically be superseded when the new Code applies in October.

The Standards Board has distributed its *Guide for members* on the revised Code to all relevant authorities, along with a pocket guide to the Code, and this guidance offers a comprehensive overview of the requirements of the new Code. All guidance relating to the old Code, including the booklets on lobby groups and registering gifts and hospitality, along with guidance on standards committees, will no longer be available for distribution in hard copy format. It will, however, still be available from our website, **[www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)**

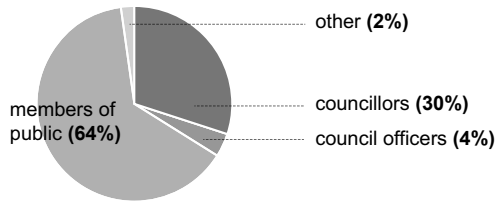
We hope that this move will improve clarity for authorities on the new Code in the final few weeks of the transition period.

## Referral and investigation statistics

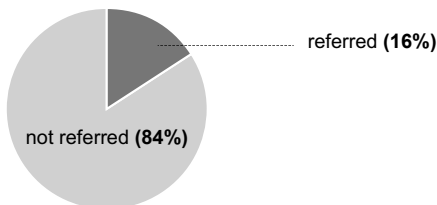
The Standards Board for England received 653 allegations between 1 April 2007 and 31 May 2007, compared to 605 during the same period in 2006.

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

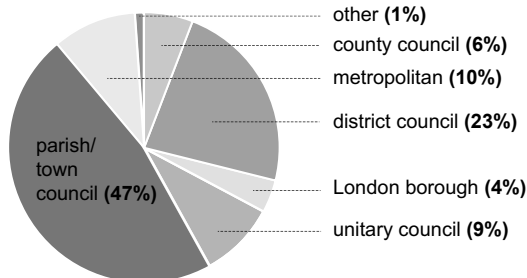
Source of allegations received



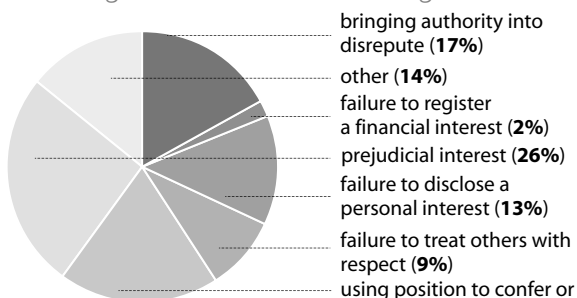
Allegations referred for investigation



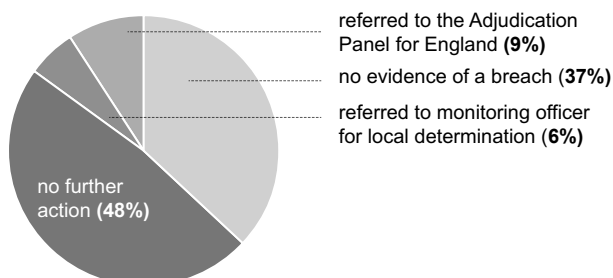
Authority of subject member in allegations referred for investigation



Nature of allegations referred for investigation



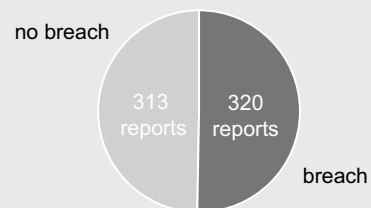
Final findings



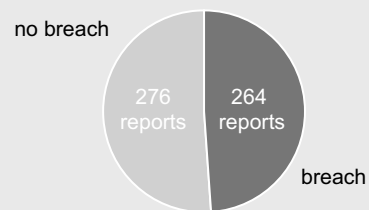
## Local investigation statistics

For the period 1 April 2007 to 31 May 2007, ethical standards officers referred 66 cases for local investigation – equivalent to 65% of all cases referred for investigation. Since 1 April 2007 there has been one appeal to the Adjudication Panel for England following standards committee hearings. Of all cases referred since November 2004 for local investigation, we have received a total of 585 reports – please see below for a statistical breakdown of these cases.

Monitoring officers' recommendations following local investigations



Standards committee hearings



Standards committee determinations

