



**FINAL DECISION YES**

**SUGGESTED NEXT STEPS:**

Details to be specified

- Further consideration by this Committee  .....
- To Council  .....
- To Cabinet  .....
- To an O & S Committee  .....
- To an Area Committee  .....
- Further Consultation  .....

## Agenda No 2

### Audit And Standards Committee – 24 February 2009.

#### Standards Board For England - Bulletin No.41

#### Report of the Strategic Director of Performance and Development

#### Recommendation

That the Committee notes the contents of the latest Standards Board Bulletins.

#### 1. Introduction

This report attaches the latest Standards Board Bulletin No. 41 published in December 2008.

#### 2. Newsletter highlights.

2. 1 Newsletter No 41 highlights include:

- Consultation on proposals for changes to the Code
- New regulations laid before Parliament
- Annual Assembly materials online
- Introducing the annual return
- Feedback on adjourning local assessment decisions
- References to the Adjudication Panel for England by a standards committee
- Review of online monitoring system
- Six councils achieve top standards
- Governance and partnerships – work with Manchester City Council
- Complaints about standards committees: Role of the Local Government Ombudsmen
- NALC 'Stepping Stones' regional conferences

DAVID CARTER  
Strategic Director of Performance and Development  
Shire Hall Warwick  
10<sup>th</sup> February 2009

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### Contact

Enquiries line: 0845 078 8181

Minicom: 0161 817 5449

[www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

email: [bulletin@standardsboard.gov.uk](mailto:bulletin@standardsboard.gov.uk)



### Welcome to Issue 41 of the *Bulletin*.

The local government ethical framework has changed a great deal this year.

The standards agenda is now successfully embedded at the local level, with standards committees taking responsibility for the initial assessment of Code of Conduct complaints. Local case handling is in place for all complaints except for those the Standards Board has taken back in the public interest. Your commitment and hard work has ensured that the transition to the locally-based system has been smooth and successful.

In this, our final *Bulletin* of the year, we look back – with a review of the Standards Board's online monitoring system, and feedback from the Seventh Annual Assembly of Standards Committees. And we reveal the high performing authorities shortlisted for the Standards and Ethics category at the Local Government Chronicle Awards 2009.

We also look forward – at the new authority annual return that forms part of the Standards Board's online monitoring system, and to the forthcoming amendments to the Code currently under consultation by Communities and Local Government. In addition, we examine the work on governance and partnerships that the Standards Board is undertaking to help us provide guidance to authorities on ensuring high standards of conduct in partnerships.

Other articles in this *Bulletin* address some key issues arising from the first few months of local case handling. These include a summary of the submissions received in response to *Bulletin 40's* request for views on adjourning local assessment decisions.

Finally, I wish you all the very best for 2009.



**Glenys Stacey**  
Chief Executive

## Consultation on proposals for changes to the Code

Communities and Local Government (CLG) launched a Code consultation in October 2008. The consultation is on CLG proposals for changes to the Code of Conduct for members and the introduction of a model code for local government employees.

In the 2006 ruling in *Livingstone v Adjudication Panel for England*, the High Court decided that Section 52 of the Local Government Act 2000 required members to comply with the Code in their official capacity only, and that it could not govern the private conduct of members.

In issuing his judgement in the *Livingstone* case, Collins J invited Parliament to be explicit about whether it wanted private conduct to be covered by the members' code. Parliament took this opportunity and passed the Local Government and Public Involvement in Health Act 2007. The 2007 Act amended the 2000 Act to allow for the application of the members' Code to cover some conduct in a private capacity, where this has led to a criminal conviction.

The Standards Board for England supports CLG proposals for the new Code for members to cover the conduct of members in their non-official capacity, where that conduct would be a criminal offence. It is proposed that a 'criminal offence' shall be defined as any criminal offence which has led to a conviction in a criminal court, but for which the member does not have the option of paying a fixed penalty notice.

We have also made a number of suggestions for changes to the drafting of the Code, which we believe will make it easier to interpret and apply.

The Standards Board has long advocated the introduction of a standardised national officers' code, and supports CLG's proposals to do so.

The proposed model code is likely to operate a 'two tier' approach. Broadly speaking, the first tier would apply to all local government officers, and would be similar to the general obligations that members have under part one of the current members' Code. The second tier, which would include obligations to register and declare interests, would either apply to officers who are delegated to discharge functions on behalf of the authority or those in politically restricted roles.

CLG proposes that any code for officers should extend to officers of parish councils. We strongly believe that the code should be extended to employees of parish councils.

We recognise that this may be seen as overly bureaucratic for small parishes. However, they are a key component of local democracy and some of the more difficult cases that the Standards Board has dealt with in the past have involved issues with the clerk's conduct.

The consultation document can be found at [www.communities.gov.uk](http://www.communities.gov.uk). Anyone wishing to respond to the consultation – and we would urge you to do so – must respond by 24 December 2008. A copy of our response will be available on our website once it has been submitted.

## New regulations laid before Parliament

On 18 November 2008, the Case Tribunals (England) Regulations 2008 were laid before Parliament. These complement the Standards Committee (England) Regulations 2008 and make provision about the sanctions available to a case tribunal of the Adjudication Panel for England. They will come into force on 12 December 2008.

In particular, these regulations ensure that from 12 December, case tribunals will have the power to censure a member, require them to apologise, attend training, or enter into a process of

conciliation. These sanctions are currently available only to councils' standards committees. Making these sanctions available to case tribunals will allow them to deal proportionately with cases that are referred to them, for example, because they are seen as very serious, but which the tribunals conclude are not so serious. It will also enable tribunals to deal appropriately with cases referred to them because a standards committee is conflicted out.

The regulations also make provision about certain administrative procedures to be followed in relation to cases before the Adjudication Panel and its case tribunals.

The regulations are available from the website of the Office of Public Sector Information, at: <http://www.opsi.gov.uk>.

The government intends to complete its reform of the standards framework in January 2009 by making further regulations following consultation, which will allow councils to establish joint standards committees. These regulations will also enable the Standards Board to suspend a standards committee's powers to assess Code of Conduct allegations, in certain circumstances where we consider this to be in the public interest. They will also revise the existing dispensation regulations.

## What's the alternative?

Delegates were given advice on how to use alternative action appropriately at this year's Annual Assembly of Standards Committees, held in Birmingham.

The **Alternative Action Masterclass** considered the advantages of using alternative action when appropriate and also discussed its potential challenges.

Referral to a monitoring officer for alternative action (or other action) is an option open to an

assessment sub-committee when considering a new complaint or complaints – though it must consult its monitoring officer before doing this. Alternative action is a useful tool in specific circumstances where the allegations being made may be symptomatic of systemic problems within the council, which are more significant than the allegations in themselves.

In such cases, the assessment sub-committee needs to be satisfied that even if the specific allegation had occurred as alleged, it would not be in the public interest to investigate with a view to sanctioning. The assessment sub-committee must also be satisfied that other action could assist the proper functioning of the council. If alternative action is used, there is no investigation, no findings of fact and consequently there should be no conclusions drawn about whether members have complied with the Code of Conduct.

Delegates at the Annual Assembly were given examples of situations where alternative action might be appropriate. These included where there is evidence of poor understanding of the Code. They also included situations where there has been a breakdown of relationships within a council to such an extent that it becomes difficult to conduct the business of the council.

Speakers mentioned that if the assessment sub-committee decides on alternative action, then all involved in the process will need to understand that the purpose of alternative action is not to find out whether the member breached the Code. It is not appropriate for the assessment sub-committee to suggest an apology as a satisfactory form of alternative action. This implies that there has been a breach of the Code without there having been an investigation. Rather, the decision is made as an alternative to investigation. In addition, the purpose of using alternative action should be made clear, as should the time when the action is concluded.

Standards committees were told that once alternative action is initiated, they cannot go back and ask the monitoring officer to conduct an investigation. Furthermore, it should be seen as a way of moving forward constructively, rather than reiterating issues that have caused conflicts in the past.

Speakers advised delegates of the potential limitations of using alternative action – especially that it should not be seen as a ‘quick fix’. It is not always a cheaper substitute for investigation and requires resources for training, mediation and other steps that could be carried out.

During a Q&A session, perceived disadvantages of alternative action were highlighted. These include the feeling among those involved that their issues may have been “swept under the carpet”.

For more information on alternative action, please refer to our *Local Assessment of Complaints* and *Local investigations and Other Action guidance*, which are available on our website.

## Annual Assembly materials online

More than 800 delegates attended the Standards Board’s Seventh Annual Assembly of Standards Committees. Delegate feedback has been extremely positive.

The presentations and handouts from the event are available from [www.annualassembly.co.uk](http://www.annualassembly.co.uk). We are also developing a web version of the materials from the popular **Planning Ahead** session, which will be available on our website from December.

The Eighth Annual Assembly will be held on 12 and 13 October 2009 and we are currently establishing the steering committee for the event. The committee will help us to develop ideas for session content and generate examples of best practice to share with delegates.

## Introducing the annual return

The Standards Board for England will be collecting information from standards committees on their activities and on their arrangements for supporting ethical conduct each year, starting in April 2009.

This information will enable us to drive up the performance of standards committees and of ethical conduct generally by identifying and then sharing notable practice. We will also be able to identify and offer support to those authorities experiencing problems.

The annual return will complement the quarterly return. Maintaining an ethical environment not only requires processes and protocols, such as codes of ethics, but also a culture that supports them. Therefore, while the quarterly return for the most part focuses on case handling, the annual return will collect information that will allow us to understand the culture and wider ethical governance arrangements in authorities.

As well as drawing on existing research, we have also been consulting with several groups of monitoring officers and chairs of standards committees for their thoughts on what information we should request.

We are now developing the specific questions that will make up the annual return. In the meantime, we will be undertaking further consultation and piloting to ensure that we get these questions right.

For further information about the annual return, please contact Hannah Pearson, Research and Policy Adviser: **0161 817 5417** or email [hannah.pearson@standardsboard.gov.uk](mailto:hannah.pearson@standardsboard.gov.uk).

## Feedback on adjourning local assessment decisions

In *Bulletin 40* we produced an article about adjourning local assessment decisions to seek cooperation with other action from the subject member. We invited your views on what you think should constitute the most appropriate practice. A total of 29 authorities responded to this article. We would like to thank those who participated.

Of the responses received, 14 were strongly against adjournment and eight were in favour. In addition, three authorities felt that the alternative suggested in the article would be preferable. The alternative suggested was that when the standards committee sends the case for investigation, it lets the monitoring officer know that it might not consider the case to be as serious, if the member is willing to comply with other action. This would mean that if the member indicated they would comply with other action, then the monitoring officer should feel free to ask that the case be returned to the standards committee.

The remaining four responses expressed the view that either adjournment of the assessment decision or this alternative approach would be acceptable.

Feedback from the responses received indicated that the concerns stated in the article about adjourning a local assessment decision far outweighed the advantages. For those against adjournment, the main concerns were:

- There is a danger that contacting the subject member before a decision has been made could ultimately suggest that the member has breached the Code, without there being a finding of fact.
- A member who refuses to engage with proposed alternative action could undermine confidence in the standards committee and public perceptions of justice.

- Adjournment would risk not meeting the 20 working day target for decision.
- Significant costs could be involved even if the matter was relatively trivial.

Those in favour of adjourning before making a decision gave the following reasons:

- The member may be more likely to cooperate if they were made aware of the options available.
- The standards committee would be more confident when making a decision in the knowledge that the member would/would not engage in other action.
- Other action allows the monitoring officer to seek resolution locally without a formal investigation or public hearing and may therefore prove more cost effective. Adjourning an assessment decision to seek cooperation from the subject member may increase the chances of other action succeeding.

The Standards Board is very grateful to everyone who responded. We intend to issue further guidance on other action in 2009, incorporating the issue of adjournment.

## References to the Adjudication Panel for England by a standards committee

The President of the Adjudication Panel for England has recently issued guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from a standards committee.

This guidance is now available on the Adjudication Panel's website and can be downloaded from the 'Guidance and Procedures' section at [www.adjudicationpanel.co.uk](http://www.adjudicationpanel.co.uk).



## Review of online monitoring system

In August 2008, we conducted a review of the Standards Board's online monitoring system. This formed part of a programme of work to assess how well our new systems are working.

We conducted telephone interviews with a random sample of monitoring officers or those nominated by the monitoring officers to make the online submission. A total of 24 out of a potential 50 interviews were successfully completed. Thank you to all who participated.

As this was the first time that monitoring officers or nominated staff were asked to submit an online return, we were expecting some 'teething problems'. What we actually found was that the majority of comments received were positive. The simplicity of the form was valued, with the majority experiencing minimal or no difficulty in making their online submission. This was confirmed with 98% of authorities submitting their return on time.

A large majority (83%) of monitoring officers or nominated staff interviewed expressed the view that the system is working effectively. We asked interviewees if they had contacted the Standards Board for assistance with the completion of the online form. A proportion of those interviewed (25%) had contacted the Standards Board for assistance. We invited those that had made contact to rate the response received in terms of speed, politeness, helpfulness and clarity of advice provided. All respondents rated the response for all categories as very good.

Respondents were also asked how the Standards Board can improve the support we provide. We received some useful suggestions – such as having a confirmation receipt upon completion of the submission and receiving a reminder when the submission is due. We were also interested in finding out about any technical issues that you may have experienced and were

glad to hear that there were only minor technical problems.

We are now working to make improvements. The review does not end here and we will continue to carry out a review following the end of each quarter. We hope that this will ensure that we quickly pick up any problems you may be experiencing. We also look forward to speaking to some of you as part of the review of the second quarter of online monitoring.

If you have any questions about this review or future reviews of the system please contact Cara Afzal, Deputy Research and Monitoring Manager: **0161 817 5414** or email [cara.afzal@standardsboard.gov.uk](mailto:cara.afzal@standardsboard.gov.uk).

## Six councils achieve top standards

The following local authorities are all in with a chance of winning the Standards Board-sponsored Standards and Ethics category at the Local Government Chronicle (LGC) Awards 2009:

- Ceredigion County Council
- Leeds City Council
- Lincolnshire County Council
- Newark & Sherwood District Council
- Newcastle City Council
- Rossendale Borough Council

The authorities were shortlisted, from a total of 22 entries, for their dynamic approach to improving and promoting ethical standards among members while boosting public confidence in local democracy. The judges were Glenys Stacey, Chief Executive of the Standards Board, Nick Raynsford MP, and John Tizard, Director of the Centre for Public Service Partnerships at the University of Birmingham.

Dr Robert Chilton, Chair of the Standards Board, said:

“All the authorities shortlisted have been committed and innovative in achieving or maintaining high standards of member conduct. They’ve done this with methods like training, member support and partnership work, and promotional initiatives among councillors, officers and the public.

“The Standards Board is pleased to lend its support to this award and it was great to see such an encouraging response to the call for entrants. Following the changes in the standards system back in May, it’s clear that plenty of authorities have embraced the chance to take ownership of ethical standards, and have begun to work proactively to endorse and promote the standards framework as well as managing their own complaints and investigations.

“We hope that many other authorities will follow suit.”

The winner will be selected from the shortlist and announced at the LGC Awards at the Grosvenor House Hotel in London on 25 March 2009.

## **Governance and partnerships – work with Manchester City Council**

The Standards Board for England is currently undertaking research on how to ensure that authority partners are working to high standards of behaviour. This will enable us to provide guidance to local authorities and their standards committees.

Partnership-working is a growing and important way of operating. It could present a risk to public confidence if individuals and bodies involved in decision-making are not operating to a consistent and agreed standard of conduct.

Previous research undertaken for the Standards Board by the University of Manchester (Greasley et al, *The Components of an ethical environment*,

*Institute for Political and Economic Governance, University of Manchester, May 2006*) highlighted the problems of organisations when they come to work together. The research found differences in organisational culture, openness and transparency, inconsistencies in the codes of conduct that partners work to and differences in how codes of conduct are enforced.

We firmly believe that citizens should both expect and experience high standards of behaviour and probity wherever decisions are taken, or resources allocated, that affect lives and communities. Working in partnership should not compromise this.

As a minimum, local authorities should agree some shared values and standards of conduct with their partners at the outset of any joint working. These may be different for each and every partnership.

Our partnerships project aims to encourage high standards in partnership working. This will be done by creating a level playing field based on commitment to a set of agreed values and a description of appropriate behaviour.

It will achieve this through producing a description of appropriate behaviour in partnership with Manchester City Council and in consultation with the council’s partner organisations in the region. The description will illustrate appropriate behaviour in day-to-day partnership working based on the Nolan Principles of Standards in Public Life, and the experiences and needs of Manchester City Council and its partner organisations.

We intend that the work and learning from this project will be used as a basis for providing guidance nationally.

For further information on the governance and partnerships project, please contact Hannah Pearson, Research and Policy Adviser: **0161 817 5417** or email [hannah.pearson@standardsboard.gov.uk](mailto:hannah.pearson@standardsboard.gov.uk).

## **Complaints about standards committees: Role of the Local Government Ombudsmen**

Standards committees are within the jurisdiction of the Local Government Ombudsmen (LGO). Therefore it is possible to make a complaint to the LGO of maladministration causing injustice, as a result of some action or inaction by a standards committee or authority monitoring officer around the handling of a Code of Conduct complaint.

Parish councils are outside the LGO's jurisdiction. However, there is no jurisdictional bar to the LGO investigating the actions of a standards committee of a responsible authority regarding the committee's actions, which relate to a complaint about a parish council.

The LGO recognise that the Standards Board for England is the body established by statute to oversee member conduct. However, in some circumstances the LGO may wish to consider allegations of administrative fault where the complainant can claim to have suffered an injustice as a result of that fault.

A complaint to the LGO may only be made by, or on behalf of, a member of the public or a body other than a local authority or other public service body. A complainant must be able to claim a personal injustice. An elected member may only complain to the LGO about something which affects them personally as a member of the public. This can include actions of the authority's standards committee and officers carrying out functions in relation to the standards committee.

The Standards Board and the LGO have just signed a revised Memorandum of Understanding setting out our relevant jurisdictions and how we will work together effectively.

Further information about the work of the LGO is available at: [www.lgo.org.uk](http://www.lgo.org.uk).

## **NALC 'Stepping Stones' regional conferences**

The Standards Board will be exhibiting at the National Association of Local Councils (NALC)'s Stepping Stones regional conferences which take place in spring 2009. The conferences aim to share good practice and provide a regional networking opportunity for councillors and officers in all tiers of local government. More information on our activity at these events will be available from our website soon.

The dates for the events are:

### **Wednesday 11 February**

The Oak Tree Conference Centre, Coventry

### **Saturday 21 February**

The Hospitium, York

### **Tuesday 10 March**

The Council Chamber, Congress Centre, London