

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 – 28 May 2009. Standards Board For England - Bulletins No.42 and 43

Report of the Strategic Director Customers, Workforce and Governance

Recommendation

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

1. Introduction

This report attaches the latest Standards Board Bulletins No. 42 and 43.

2. Newsletter highlights.

2.1 Newsletter No 42 highlights include:

- The Standards Committee (Further Provisions) Regulations 2009
- Quarterly returns: The story so far - performance reports on complaints
- Getting indemnification arrangements right
- Bias and the Code of Conduct
- Bringing standards into focus - next annual conference

2.2 Newsletter No 43 highlights include:

- Guidance on Other Action Details on forthcoming guidance on other action produced in response to a number of enquiries on this matter.
- Application of the Code to private capacity A clarification and summary of our position on this complicated issue.
- Review of online monitoring system – an update Results from the third part of the Standards Board's online monitoring system review.
- Annual return arrives! Information on our new annual return questionnaire, which was launched on 20 April.
- Conservative local government conference Feedback about the local standards framework from delegates who attended the conference .
- Rossendale council wins Standards and Ethics award Rossendale Borough Council wins in the Standards and Ethics category at the LGC Awards 2009

DAVID CARTER

Strategic Director of Customers, Workforce and Governance

Shire Hall Warwick 10th May 2009



Welcome to Issue 42 of the Bulletin.

I am pleased to introduce this new-look electronic version of the Bulletin. You can now see at a glance which article you would like to read, choose to print individual articles or the whole issue, and search for any information contained in it on our website.

We have made these changes as part of our commitment to continually improving our communications with you, and as a result of feedback from some of you on the previous format. As always, we welcome your thoughts and ideas – you can contact us at bulletin@standardsboard.gov.uk.

At the start of 2009, we are building up a picture of your work through the online quarterly returns thanks to your continued help. In this Bulletin we summarise some of our findings from these returns and update you on our review of the returns system and our plans for the new annual return.

Many of you will be awaiting new regulations which will allow authorities to form joint standards committees. In this issue, we summarise these regulations, which will also provide the Standards Board with powers to suspend an authority's initial assessment functions and will add to rules governing member dispensations.

In addition, we use this issue to ask authorities to consider their indemnification policies, following concerns raised from members about their authority's current arrangements. We also comment on a recent case in the High Court involving bias in planning decisions and highlight the Adjudication Panel for England's merger with the Tribunal Service.

The Standards Committee (Further Provisions) Regulations 2009

Draft regulations are being prepared which will allow the Standards Board to suspend the initial assessment functions of an authority and will enable authorities to establish joint standards committees. They will also amend the powers of standards committees to grant dispensations to members who

would otherwise be unable to take part in authority business because of a prejudicial interest. We expect the regulations to come into force in May 2009.

Suspension of initial assessment functions

The circumstances in which the Standards Board will intervene are likely to include an authority's failure to have regard to our guidance or comply with our directions, or when the standard committee or monitoring officer fails to carry out their functions properly. The Standards Board might also be invited by the authority or the standards committee to intervene.

When the Standards Board intends to suspend the authority's initial assessment functions, we will notify the authority, give our reasons and ask for any observations. If a direction is made, the authority must publish details of it in a local newspaper and any other publication the Standards Board thinks is appropriate.

Once the reasons for the direction cease to exist, the Standards Board will revoke the direction.

Joint standards committees

Joint standards committees will be able to deal with all or any functions of a standards committee but there can be no concurrent functions. [The Local Government Act 2000](#) and supporting regulations have effect in that any reference to a standards committee is a reference to a joint standards committee for the purposes of the functions delegated to it.

The terms of reference of the joint committee must include the following:

- the functions they are to have
- the administrative arrangements
- where written allegations should be received for each authority involved in the arrangements
- the number of members and their terms of office
- any allowances they will get
- how to withdraw from the joint arrangement

The finances are to be shared as agreed by the authorities involved and in default of agreement will be decided by an arbitrator appointed by them.

The Standards Board will be producing guidance on joint standards committees which will include a draft constitution or terms of reference incorporating a template for the information required by the regulations.

Dispensations

The ability to get a dispensation remains for instances when more than 50% of the members who would be able to vote are prevented from doing so by the Code of Conduct. A new provision clarifies that members can seek a

dispensation where the political balance of the meeting would be upset sufficiently to prejudice the outcome of voting on the issue. This is similar to a provision that has been in existence in Wales for some time.

Quarterly returns: The story so far

The new standards framework has now been in place for ten months. As you may know, the Standards Board collects information, on a quarterly basis, on case activity and the profile of standards committees. Since we are now well into the fourth quarter, we thought it might be a good opportunity to take stock and reflect on the data we have.

Back in [Bulletin 40](#) we ran an article expressing our gratitude to the **98%** of authorities that completed returns for the first quarter. Since then, quarterly reporting has gone from strength to strength, and we are delighted to report that we received returns from all **473** principal authorities for the second quarter. This perfect return rate almost continued through to quarter three, but fell just short at **99%**.

In the future, we will be naming on our website all of the authorities that do not complete returns. This is partly to encourage authorities to carry out the task, as we are unable to oversee the case-handling process without relevant data. It is also for transparency, as anyone using our quarterly statistics needs to be able to identify which authorities are excluded from the analysis.

What can we tell from data from the first three quarters?

Standards committees

Quarterly returns tell us that:

- a typical standards committee in an authority without parishes has **nine** members, including **four** independent members
- a typical standards committee in an authority with parishes is slightly larger with **11** members, including **four** independent members and **three** parish representatives
- on average, district and metropolitan councils have the largest standards committees and police authorities have the smallest

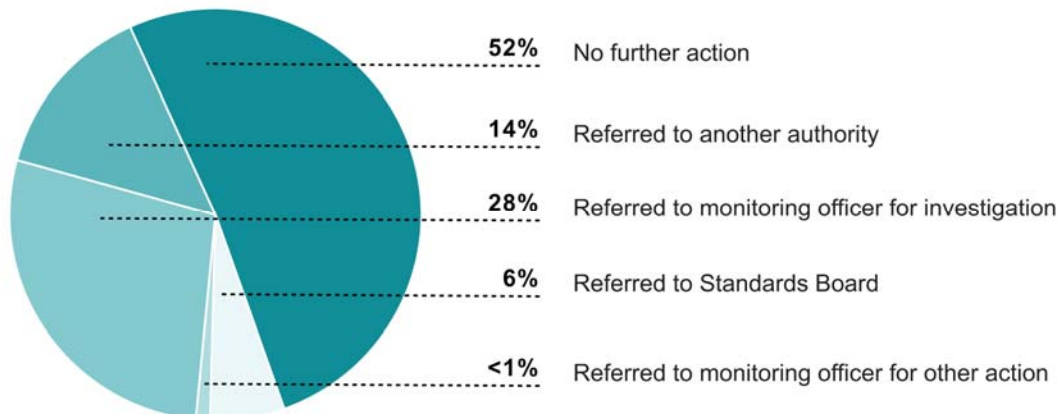
Case handling

A total of **2,030** cases have been recorded on quarterly returns so far. This covers the time period 8 May to 31 December 2008. Some **69%** of authorities have dealt with at least one case during the first three quarters. Of all the authorities with cases, the average recorded is **two** per quarter, a total of **six**. Generally there are fewer cases recorded now than under the old arrangements, but it is important to note that the first quarter started late due to the legislation not being introduced until 8 May 2008.

Of the complaints recorded, **56%** are from members of the public and **34%** are from council members. The remaining **10%** are from a combination of officers, parish or town clerks, MPs, monitoring officers, and those completing the form as 'other'.

Initial assessment

No further action is taken in **52%** of the cases recorded. The breakdown of initial assessment decisions is as follows:



A total of **344** requests for a review of 'no further action' decisions are recorded through quarterly returns. Of the **264** of these that are completed, **95%** of decisions remain at 'no further action'. The other **6%** are either referred for investigation or referred to us here at the Standards Board.

As the local framework is becoming more established, we are starting to see some of the outcomes of investigations reported in quarterly returns. We have [published statistics](#) about the timeliness of investigations, the outcomes, and the parts of the Code that they refer to on our website.

Review of online monitoring system – an update

In November 2008, we conducted the second part of the Standards Board's online monitoring system review. This forms part of a programme of work to assess how well the new system is working.

We conducted telephone interviews with a random sample of monitoring officers/those nominated to make the online submission. A total of **22** out of a potential **50** interviews were successfully completed. We would like to thank all those who participated.

As with the first phase of the review, we found that the majority of comments received were positive – with respondents encountering minimal or no difficulty in submitting their quarterly return. There were plenty of useful suggestions from respondents about improvements we could make, and work is already underway to make further enhancements to the form.

For the third phase of the review, we will be conducting our research by emailing out surveys to local authorities to complete themselves. The survey will be sent out to **50** randomly selected authorities (excluding those who participated in the telephone interviews), and we look forward to receiving your responses as we look to make further improvements to the form.

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.

Annual returns to start in April

The Standards Board will be collecting information from standards committees in the form of an annual return, from April 2009. This information will be on standards committees' activities and on their arrangements for supporting ethical conduct.

Since our last [Bulletin](#), we have made much progress in developing the return with findings now collated from our pilot trial with local authorities.

Consultation and piloting

Development of the annual return has been informed by sound research throughout. The first stage was a review of information, including research on ethics and ethical governance, which informed an initial draft. Discussion groups were then held with monitoring officers and with chairs of standards committees to refine our findings from the review. This led to a second draft-version of the annual return, which we piloted with local authorities.

Feedback we have received suggests that local authorities are generally supportive of the annual return and its aims. Those that took part in the pilots have reported that they have found completing the return a useful learning process.

Setting the questions

We are in the process of refining the questions following the feedback. Broadly though, we will be asking about:

- protocols for member/officer relations
- the existence of any mechanisms for dealing with member/member and member/officer disputes
- the chair of the standards committee's relationship with the chief executive, the monitoring officer and the leader
- what the standards committee is doing to promote its work both within the authority and externally
- the general activities of the standards committee, for example providing training

We are also keen for local authorities to use the return to inform us of their achievements in supporting standards.

Next steps

The annual return will take the form of an online questionnaire, similar to the quarterly return. It will be located in the same area of our website as the quarterly return and monitoring officers will be able to access it using the same log in details they use for the quarterly return.

We are testing the online system during March with a view to launching it in late April, after we have collected quarterly returns for the period January to March 2009.

An email announcement containing detailed instructions about how to access and complete the annual return will be sent out to monitoring officers in the near future.

We are now developing an online system for completing the annual return which will be similar to the quarterly return system. We will be testing the online form following final refinement of the questions.

For further information about the return, please contact Hannah Pearson at 0161 817 5417 or hannah.pearson@standardsboard.gov.uk.

Getting indemnification arrangements right

We have recently heard concerns from standards committee members who feel that their authority's current indemnification arrangements are not sufficient. We have also heard that independent members of standards committees have not been included in indemnification arrangements. You may be aware that under the [Local Authorities \(Indemnities for Members and Officers\) Order 2004](#), local authorities can choose whether to indemnify their members.

In our [Role and make-up of standards committees guidance](#), we recommend that independent members of standards committees should be included in an authority's indemnification arrangements.

There are a number of potential risks that authorities may be exposing their members and themselves to, by not providing adequate indemnification. We would therefore urge authorities to consider whether the level of indemnification they currently provide to their members, including independent members of standards committees, is sufficient.

Good practice from the standards and ethics award

Six local authorities have been shortlisted for the *Standards and Ethics* category at the 2009 Local Government Chronicle (LGC) Awards, supported by the Standards Board. The winner will be announced at the awards event held at the Grosvenor House Hotel, London on 25 March.

A new section will be launched on the Standards Board website in March, highlighting the good practice ideas that worked for the shortlisted authorities. We hope that some of these innovative examples will be useful in helping your authority to achieve or maintain high standards.

Bias and the Code of Conduct

R (on the application of Gardner) v Harrogate Borough Council [2008] ALL ER (d) 310 (Nov)

A recent case in the High Court has brought attention to the common law test of bias and planning decisions. [The Local Government Ombudsman](#) (LGO) and the Standards Board for England both received complaints about a planning matter. An ethical standards officer from the Standards Board and the LGO both proceeded to investigate the case.

Each of the investigations were designed to draw out relevant evidence for the separate jurisdictions of maladministration (LGO) and of a breach of the Code of Conduct (the Standards Board). The case draws attention to matters which can cause concerns affecting both jurisdictions. However, it also highlights where they part company in practice and in the application of the relevant law. We recommend all monitoring officers and members refer to the concise court decision ([2008] ALL ER (D) 310) for an understanding of this area.

The ethical standards officer did not disagree with the findings of bias affecting maladministration which was the basis of the LGO decision, as he did not consider bias as part of his investigation. Rather the ethical standards officer's investigation was mainly concerned with personal and prejudicial interests and the evidence of close friendship. Conversely, the LGO's investigation was not designed to draw evidence of a breach of the Code.

In the [case](#), Councillor A was granted planning permission on the casting vote of Councillor S. The permission was granted against strong officer advice and major planning policy reasons which did not support granting permission. There was a connection between both councillors and it was the nature of this connection which drew the distinction between the two jurisdictions, the investigations and the relevant law to be applied in both.

For the purposes of the ethical standards officer's investigation, the evidence did not suggest a "close friendship" and therefore no breach of the Code was found. However, the Court said that "It does not follow that that there will be no apparent bias if the relationship is less close" (see paragraph 16 of the judgment). So there was apparent bias acknowledging that both councillors were friendly acquaintances.

For more information on the respective roles of the Standards Board and the LGO, their jurisdiction and investigations of common interest, please see the [memorandum of understanding with the LGO](#).

Bringing standards into focus

From 16 March, standards committee members, monitoring officers, council leaders and chief executives will receive their invitations to the **2009 Annual Assembly of Standards Committees - Bringing standards into focus**.

You'll also be able to book online through our website. The event takes place on 12 and 13 October at the ICC, Birmingham.

In response to delegate feedback, this year's Assembly programme is more practical than ever. We're working with a forum of monitoring officers, independent chairs and standards committee members to develop a range of workshops, plenary sessions and advice clinics that give you the opportunity to focus on how you are delivering local standards and share good practice, ideas and innovations.

If you would like to fast-track your booking and receive your invoice before the end of the financial year, please contact Benedict Business Resources on 01483 205432 or email benedictbr@btinternet.com.

'Contribution of standards committees' research project begins

The Standards Board has commissioned new research into the responsibilities and contributions of standards committees.

Standards committees are at the heart of the new local standards framework. They educate and support members in following the highest standards of conduct and ensure that those standards are fully owned locally.

Previous Standards Board research has shown that there is a demand from standards committees for additional guidance on how to undertake some of these responsibilities and what they could be doing.

As a result, we are pleased to have commissioned the Universities of Hull and Teesside, who have entered a joint bid for this research. They will collect effective practice examples from standards committees on activities they undertake to ensure high ethical standards.

The researchers will conduct case studies in nine local authorities. These will collect examples of effective practice in the statutory function of standards committees, in their non-statutory roles, and in the wider organisational practices that support standards. We will then collate the effective practice examples into a resource for local authorities and disseminate this nationally.

Work began on this project in January 2009 and we hope to have findings to share in July 2009.

For further information, please contact Hannah Pearson at hannah.pearson@standardsboard.gov.uk or 0161 817 5417.

Standards Board responds to CSPL inquiry

The Standards Board will be responding to the Committee on Standards in Public Life's (CSPL) issues and questions paper titled: *Local Leadership and Public Trust: Openness and Accountability in Local and London Government*.

Our response will focus on a number of key themes raised in the paper. These include:

- accountability in partnerships
- the role of standards committees in ensuring openness and accountability
- trust in accountability frameworks
- the role of regulators

The deadline for submission was 25 February 2009 and our response will be posted on our website shortly.

APE merger to take place

The Tribunals Service and Communities and Local Government have given the go-ahead for the Adjudication Panel's integration into the new unified tribunals' structure.

The move will see the office relocate from Harrogate into serviced premises in Leeds that currently provide administrative support to other tribunals, including Social Security and Child Support.

Staff from the Adjudication Panel will transfer from being employees of the Standards Board to becoming part of the civil service. The President, the Adjudication Panel and its members are scheduled to join the General Regulatory Chamber of the first tier tribunal in January 2010.

Please note that the restructuring will not have an impact upon the service levels provided by the Adjudication Panel – only the contact information should change. Updated contact details will be provided on the Adjudication Panel's website in due course.

Standards Board supports NALC's 'Stepping Stones' conferences

The Standards Board is supporting the National Association of Local Councils' (NALC) one-day conferences. The conferences aim to share good practice and provide regional networking opportunities for councillors and officers in all tiers of local government.

We will be exhibiting at the conferences below, where policy advisers will be on hand to answer questions and provide guidance. You can find us on stand number two.

The dates for these events are:

Tuesday 10 March

The Council Chamber, Congress Centre, London

Wednesday 22 April*

The Oak Tree Conference Centre, Coventry

*Please note: NALC have changed the date of the event in Coventry from 11 February to 22 April.

Shirley Flint, independent councillor at North Kesteven District Council, chair of Skellingthorpe Parish Council and independent Board Member of the Standards Board will be present. Anne Rehill, Advice and Guidance Manager at the Standards Board will also attend.

Both Anne and Shirley will present a workshop called 'Understanding local assessment and the Code of Conduct' at the Coventry event. Shirley Flint will deliver a speech at the London conference entitled 'Local standards - making a difference' that will take place at 16.05.

Guidance on Other Action

We have received a number of enquiries highlighting several issues about 'other action' since local assessment began in May 2008.

Consequently, we have produced further guidance on the topic in order to clarify our position on when other action is appropriate and what other action might constitute.

We know this is an issue many monitoring officers feel strongly about and we hope our guidance clarifies our position further. The guidance has been developed with help from monitoring officers. We are grateful to all the monitoring officers who attended our recent seminar on other action – held in Camden Town Hall on 16 March 2009 – for their valuable contribution.

The guidance discusses what other action is, what it can involve, when it is appropriate, and what to do if it isn't successful. It also addresses the role of the monitoring officer, adjournment of assessment committee meetings, and explains why other action closes the opportunity to investigate. We intend to publish this guidance on our website in May and we will notify all monitoring officers when it is available.

Application of the Code to private capacity

We have recently received a number of queries on whether or not the application of the 2007 Code of Conduct is still affected by the decision of Collins J. in *Ken Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin).

The 2006 ruling 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 did not extend to their private conduct.

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.

Section 183(4) of the 2007 Act, removes the words "in performing his functions" from Section 52(1)(a) of the 2000 Act, to enable the Code to cover some conduct in a private capacity.

At present, Section 183(4) of the 2007 Act is only in force in Wales; so in England, the Code still does not cover members at any time in their private capacity. We understand that the government's intention is that these amendments will become effective at the same time as the new Code becomes operative.

The Livingstone case is also still relevant to gaining an understanding of official capacity. When drafting the 2007 Code, Parliament incorporated some of the judge's reasoning in the Livingstone case. Official capacity in the Code is construed as

- conducting the business of your authority or office, or
- acting, claiming to act, or giving the impression that you are acting as a representative of your authority.

So, it is our view that the reasoning in Livingstone is still relevant to a proper interpretation and understanding of official capacity, because it helps to interpret what is meant by the two phrases above that define official capacity.

Review of online monitoring system – an update

In February 2009, we conducted the third part of the Standards Board's online monitoring system review, and we promised those that participated that we would let you know the results. The review forms part of a programme of work to assess how well the new system is working.

We conducted an online survey with a random sample of monitoring officers, or those nominated to make the online submission. Once again, comments from respondents were positive about the online form.

There were several helpful suggestions made about how the form could be improved further. There were also suggestions offered on how we could improve the form user guide. All suggestions have been fed back to our internal development team. We would like to thank all those who participated.

For the fourth phase of the review, we will again be emailing out surveys to 50 randomly selected authorities (excluding those that have already participated in previous questionnaires) to hear about their experiences of the Quarter 4 submission. In addition to this, we will be surveying another sample about their experiences in completing the Standards Board's annual return form.

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

Annual return arrives!

On 20 April we launched our online [annual return questionnaire](#).

While the focus of the quarterly return is to collect case related data, the annual return provides standards committees with the opportunity to tell us about their activities and arrangements for promoting and supporting high standards of ethical conduct.

Introduced via email to monitoring officers of principal authorities, it works in a similar way to the quarterly return. Monitoring officers log onto the form using a secure password and are then guided through a series of questions about the following topics:

- activities of standards committees
- the role of leaders in promoting high standards training
- communicating the complaints process and outcomes
- member-officer relations
- communicating the register of member interests
- officer conduct

The sections can be completed in any order and answers can be saved for editing at a later stage. We have built in this function as we appreciate that monitoring officers may not have all the required information to hand when they begin completing the return.

The information we collect from annual returns will be used to improve performance, champion the work of standards committees, and to ensure that we have an effective overview of local standards frameworks. In particular we will:

- Collect notable practice examples of standards committee activities which we can then disseminate. These activities and the local authorities that provide them will be showcased in our Annual Review document in a section about the local standards framework.
- Identify gaps in the local standards framework. An overview of the local standards framework will enable us to identify strengths and weaknesses of local arrangements. In turn, this will allow us to mitigate some risks by prompting where we should be producing guidance or seeking policy changes in response to emerging national trends. It will also help us to identify those authorities who could be experiencing difficulties and may require support and advice.

The annual return is a larger questionnaire than the quarterly, so we have allocated a four-week submission window during which standards committees can submit their return. Feedback from our pilot of the return indicates that it should take around two hours to complete in full. The deadline for submitting completed returns is Friday 15 May.

Conservative local government conference

On 27 and 28 February, the Standards Board exhibited at the Conservative Councillors' Association Local Government Conference in Leeds. The conference was attended by council leaders, executive members, councillors and members of the shadow cabinet, as well as key stakeholders in local government, candidates and party activists.

The Conservative representative on our Board, Councillor Sir Ron Watson CBE, and policy advisers from the Standards Board were on hand to answer questions, and get feedback on our work and the work of local standards committees. Over 40 delegates visited our exhibition stand to ask questions, raise concerns, and to share information about how the assessment of complaints is working locally.

The Conservative Party published their Green Paper Control Shift shortly before the conference, so we were interested to hear delegates' views about the local standards framework. The vast majority of delegates who visited our exhibition stand supported the need for the Code of Conduct and for the Standards Board to continue to provide the national and independent oversight. We spoke to councillors and standards committee members from authorities across the country who told us that local arrangements were working well. Another popular comment made to us at the conference was support for an officers' code.

We will also be exhibiting at the Local Government Association (LGA) Annual Conference and Exhibition, 30 June – 2 July 2009, Liberal Democrats Annual Conference, 19 - 23 September 2009, Labour Annual Conference, 27 September – 1 October 2009 and the Conservative Annual Conference, 5 – 8 October 2009.

Rossendale council wins Standards and Ethics award

We are pleased to announce that Rossendale Borough Council won in the Standards and Ethics category at the LGC Awards 2009.

The Standards Board supports the award and we were impressed by the way Rossendale's standards agenda has made a real difference. A strong, visible standards campaign, with the strapline 'Serious About Standards', helped Rossendale to achieve a substantially improved rating in its corporate assessment. It has also seen resident satisfaction improve by 8% and an increased turn out at local elections.

Dr Robert Chilton, Chairman of the Standards Board, said: "We were very impressed with Rossendale Council's commitment to high ethical standards. The award gives credit to their hard work and innovation and for tackling some difficult challenges to strengthen public confidence in local democracy."

For examples of good practice and interviews from all six authorities, please click [here](#).