

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER

G182

TO: STANDARDS COMMITTEE

DATE OF MEETING: 25 January 2008

THE STANDARDS BOARD FOR ENGLAND BULLETIN (ISSUE 36)

1. **PURPOSE OF REPORT**

To receive the latest bulletin published by the Standards Board for England.

2. **RECOMMENDATION TO COUNCIL**

That the content of this report be noted.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

3.1 None

4. **RISK MANAGEMENT**

Not applicable to this report.

5. **KEY INFORMATION**

5.1 The latest bulletin published by the Standards Board contains a broad overview of the pending changes to be implemented to the ethical framework and which are subject to detailed consideration under separate report on the agenda for today's meeting.

5.2 Members are however asked to note that the anticipated date for introduction of the locally managed framework remains as 1st April 2008. It is also anticipated that on or around this date Section 52 of the Local Government Act 2000 will be amended so that paragraph 2(3) of the Code of Conduct becomes effective. This stipulates that the Code will apply to a member in their private capacity when convicted of a criminal offence in relation to three obligations;

- (i) intimidation of a complainant, witness or investigator in an allegation under the Code
- (ii) not to bring the council or office into disrepute, and
- (iii) improperly conferring or securing an advantage or disadvantage on any person.

- 5.3 The bulletin does contain insight as to what is to be expected from the Standards Board by way of guidance under the new regime. It is to be noted that the Committee will need to develop its own criteria in conducting the initial assessment of allegations of a breach of the Code of Conduct. The criteria should be simple, clear, open, fair and also reflect local circumstances and priorities. The Standards Board will publish guidance to assist with this task. It will also produce template notices for publicising the Committee's new role, complaint assessment flowcharts, complaint form, template letters and decision notices.
- 5.4 The Standards Board further advise that Monitoring Officers are to be able to acquire additional factual information about an allegation before the initial assessment is undertaken. It is also recommended that the Monitoring Officer has a pre-meeting with the independent chair, prepares a summary of the allegation and highlights the potential breaches in the Code. Case reading time for the Monitoring Officer and the Committee is to be factored in. Members will be aware that these matters will need to be concluded to allow the initial assessment decision to be made within the recommended timescale and 20 working days has been suggested for this.
- 5.5 Authorities are recommended to conclude any outstanding investigations before the new framework is introduced. Babergh presently has no outstanding investigations.
- 5.6 The Standards Board has revised its guidance on the implications of a member being suspended from office. As the member continues to be a member of their authority, they may continue to refer to themselves as an elected member or councillor although they should make it clear that they are suspended. The member must not however exercise any functions or responsibilities of a councillor including participation in formal business, access to council facilities or receipt of council allowances. With a partial suspension, the Standards Committee should be explicit as to what functions and responsibilities the suspension relates.

6. **APPENDICES**

Appendix 1 – Standards Board for England Bulletin 36 (December 2007)

7. **BACKGROUND PAPERS REFERRED TO:**

None

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Welcome to Issue 36 of the *Bulletin*.

2007 has been an eventful year for the Standards Board for England, with all the elements of the local standards framework starting to come together. We all have a lot to do in 2008 to ensure its successful implementation.

The *Local Government and Public Involvement in Health Act 2007* is now law and firmly places responsibility for the standards agenda where it belongs, at the heart of local government. Standards committees will have a vital role in ensuring that the Code of Conduct is lived out locally and upheld. We believe that this approach will reinforce the importance of high standards at a local level, helping to demonstrate accountability and developing greater local trust.

The Standards Board continues to develop its functions as a strategic regulator and is working hard to prepare local authorities for their new responsibilities in the ethical framework. We are producing detailed guidance that will be made available to all relevant authorities in the new year, to reflect the regulations issued under the *Local Government and Public Involvement in Health Act 2007*.

In this issue of the *Bulletin* we focus on the findings from the local assessment pilots, and provide a checklist for local authorities in the run-up to April 2008. We also clarify the position of suspended members in relation to conduct outside their official capacity, and look at the Audit Commission's survey on ethical governance.

We have enjoyed a very positive year, with a successful relocation to Manchester and the opportunity to meet many of you at our roadshows and our well-received Annual Assembly.

We look forward to continuing and developing our close relationships with local authorities in the context of the new standards framework from 2008.



David Prince
Chief Executive

Amendments to the *Local Government Act 2000*

The *Local Government and Public Involvement in Health Act 2007* was passed by Parliament on 30 October 2007 when it received royal assent.

The act includes important amendments to the *Local Government Act 2000*, including:

- 1) The introduction of a locally managed framework of compliance with the Code of Conduct and a new regulatory role for the Standards Board for England.

This will involve local standards committees making initial assessments of misconduct allegations, and most cases being handled locally. The Standards Board will provide supervision, support and guidance for local authorities. The Standards Board will also aim to ensure some degree of consistency in the application of the Code.

It is anticipated that the sections introducing the locally managed framework will commence on 1 April 2008.

- 2) The application of the Code to cover some conduct in a private capacity, where this has led to a criminal conviction.

This second amendment does not take effect immediately as the relevant parts of the act have not yet come into force and, in the meantime, conduct carried out in a member's private capacity cannot be subject to the Code.

Government consultation on new regulations and orders

Communities and Local Government (CLG) is expected to consult in December 2007 on proposals for the new regulations and orders that flow from the *Local Government and Public Involvement in Health Act 2007*.

The consultation is expected to include proposals for regulations on local assessment of complaints, joint standards committees and an increased range of sanctions for standards committees.

The consultation document will be available in the next couple of weeks from www.communities.gov.uk.

Local assessment of complaints: pilot findings

During the summer, the Standards Board for England piloted the local assessment of complaints with a broad geographical range of authorities of all types, across England. A total of 38 standards committees participated in the pilot, each of which considered 12 real but anonymised cases, including two appeal cases.

The Standards Board collected a range of data and feedback from the pilot, developing an overview of how the local system might work in practice. Detailed analysis of the results and feedback supplied by 30 committees was undertaken. The results are based on 360 allegations considered by standards committees.

Standards committees were asked to record whether they decided to:

- Refer allegations to the Standards Board.
- Refer allegations to the monitoring officer for investigation or alternative action such as mediation or training.
- Not refer them at all.

The average referral rate for standards committees was just over six out of the ten cases (excepting the two appeals) at 66.5%, compared with the Standards Board's referral rate on the same cases of three out of ten, or 30%. However, local standards committees had the further option to consider alternative action such as mediation, training or an apology, which is not available to

the Standards Board, and referrals for alternative action are included in their average.

The average rate of referral for alternative measures was 7.3%. The average non-referral rate for standards committees was low at 33.5% compared with the Standards Board's non-referral rate of 70%.

The Standards Board had originally referred three of the ten allegations given to participating standards committees in the pilot for investigation. Standards committees participating in the pilot largely correlated with the Standards Board in their decisions to refer these allegations.

The majority of referrals by standards committees were made to monitoring officers at an average rate of 40%, ranging between 23% and 66.6%. The rate of referral to the Standards Board for investigation was low, at less than 10%.

Standards committees made decisions which diverged significantly from those of the Standards Board in only 11 of the 360 allegations.

Therefore, participating standards committees took a different view from the Standards Board in less than 4% of cases.

Standards committees were asked to self-assess their collective decision-making for each complaint against the following categories:

- 1) Quick decisions.
- 2) Decisions requiring some deliberation.
- 3) Difficult decisions.
- 4) Not specified (where no decision was reached in the allocated time).

In nearly 40% of cases, standards committees considered that they were able to reach a quick decision, and only in 13% of cases were decisions considered slow and difficult with much deliberation.

Standards committees were also asked to record whether any of their decisions went to the vote. Nearly 14%, or 49 of the total of 360 allegations considered in the pilot, were voted on. A further 11% of the total complaints were undecided, in most cases because a decision was not reached in the time allocated. Therefore, 76% of the decisions taken in total by the participating standards committees were reached through consensus.

Finally, standards committees were also asked to consider a range of additional procedures and resources they considered necessary for managing the local system and making it work in their own authority.

The average number of members from participating authorities serving on their standards committees is nine, and ranges from five to 16. The average number of independent members is nearly four, ranging from two to seven. Some 93% of participating standards committees had an independent chair.

Almost half of participating standards committees considered themselves to be politically balanced in the strict legal sense, that is, in accordance with the political balance requirements of Sections 15-17 of the *Local Government and Housing Act 1989*.

The establishment of a sub-committee was considered to be necessary by 23 of 30 committees, while only a third, ten of 30, considered adding more independent members as necessary.

Of the 13 authorities which stated they would not increase the number of independent members on their standards committee, seven said they would need to increase resources, five were unsure, and only one felt they would not need to increase resources.

Checklist for local authorities in the run up to April 2008

This article offers a 'checklist' for local authorities of things to consider in the run-up to the implementation of the locally managed framework. Please note that, in some cases, it is subject to Communities and Local Government making appropriate regulations.

1) Size of standards committee

Standards committees must have a minimum of:

- Three members (two elected members and one independent member).
- 25% as independent lay members if the committee is more than three people.
- An independent chair (from April 2008).
- One parish or town council member if the authority has responsibilities for those councils.

Effective practice - the Standards Board recommends:

- At least six people as a minimum (three elected members and three independent members).
- Two, or possibly three, parish or town council members if the authority has responsibilities for those councils.
- Consideration of whether more members are required to ensure cover in the event of conflicts of interest, holidays or sickness.

2) Structure of standards committees

In addition to their role as champion and guardian of the authority's ethical standards, standards committees will now have three separate but distinct roles in relation to complaints about member conduct:

- Receiving and assessing complaints.
- Reviewing local assessment decisions.
- Conducting hearings following investigation.

To avoid perceptions of bias or predetermination, members who carry out a local assessment decision should not be involved in a review of the same decision, should one be requested.

Effective practice – the Standards Board recommends:

- A structure of sub-committees or the standards committee acting as a pool of members to deal with the different roles.
- As a minimum, two separate sub-committees, one for taking initial assessment decisions and one for taking decisions on reviews.
- Subject to regulations, any sub-committee should also have an independent chair.
- A member who was involved in an initial assessment decision, or following referral of a complaint back to the standards committee from the monitoring officer or Standards Board for another assessment decision, can be a member of the committee that hears and determines the complaint. This is because an assessment decision only relates to whether a complaint discloses something that needs to be investigated. It does not require deliberation of whether the conduct did or did not take place and so no conflict of interest will arise in hearing and determining the complaint.

3) Training

Effective practice – the Standards Board recommends:

- Standards committees are fully trained on the Code of Conduct.

- Standards committees are offered other training to equip them with necessary skills, for example in conducting a hearing.
- Independent chairs and vice-chairs are trained in chairing meetings.
- Any newly-appointed standards committee members receive a comprehensive induction to the role and appropriate training.

4) Local assessment criteria

- Guidance will be available from the Standards Board on developing criteria and the types of issues to be considered when assessing complaints.
- Standards committees will need to develop their own criteria, that reflect local circumstances and priorities, and which are simple, clear, open and ensure fairness.
- Monitoring officers will be able to acquire additional factual information which is readily available about allegations before the assessment process begins. This could be from minutes or the register of interests, for example, if such information about a complaint would assist decision-making. It should not include interviews or investigation.
- A complainant has a right to appeal if a complaint is rejected, so standards committees will be able to invite complainants to submit further information in support of the complaint at the appeal stage in the process.

5) Role of the monitoring officer in the new framework

Effective practice – the Standards Board recommends:

- A pre-meeting with the independent chair.

- Preparing a summary of the allegation for the standards committee.
- Highlighting what the potential Code breaches are which underlie an allegation to the standards committee.
- Allowing case reading time for the monitoring officer and the standards committee.

6) Completing existing investigations

Many authorities will have outstanding investigations and the Standards Board encourages authorities to clear such investigations – particularly long-standing cases – before the new framework comes into effect.

Any authority experiencing difficulties in completing an investigation should seek advice and support from the Standards Board. Please contact Rebecca Strickson, Local Investigations Co-ordinator on **0161 817 5372**, or email rebecca.strickson@standardsboard.gov.uk.

7) Local assessment and the corporate complaints process

Effective practice – consider:

- How will the public be informed of the new arrangements?
- Who will receive and log an allegation?
- The production of an individual information leaflet for the local assessment process, possibly combined with the corporate complaints process.

8) Future monitoring by the Standards Board

The Standards Board is consulting a sample of authorities involved in a pilot study on proposals for an online information return system, which will allow authorities to tell us about how local arrangements are working.

This system is being designed based on what standards committees need locally, and to enable authorities to provide information to the Standards Board as simply as possible. Authorities will be able to use the system locally for their own records, to keep standards committees informed of their authority's ethical activities.

Proposals for the system include quarterly online returns on cases, which will be simple and quick to use, and nil returns if there is no activity to report.

9) Local assessment guidance

We will help standards committees by providing guidance in 2008 on all aspects of the local assessment process, subject to the passage of the relevant regulations, with a toolkit to include:

- Template notices for publicising the authority's Code of Conduct complaint process.
- Complaint assessment flowcharts.
- A standard complaint form.
- Template letters for each stage in the process.
- Template referral and non-referral decision notices.
- Guidance to assist with drafting criteria and for the authority to define its threshold for referral.
- Template terms of reference for assessment and review committees.

Local assessment information now available online

The Standards Board for England's website has been updated to feature a new section on local assessment of complaints.

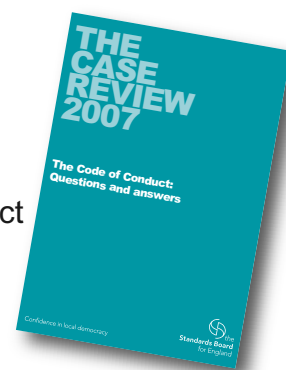
This section, accessible from the main menu, aims to keep you up to date on the new arrangements and what they will mean for local

authorities and the Standards Board's role. You can find out about any new developments in this area in the section's *Latest news* page.

If you have an enquiry about the proposed changes or anything else relating to local assessment, please phone **0845 078 8181** or email enquiries@standardsboard.gov.uk.

Case Review 2007

The *Case Review 2007* is a paragraph-by-paragraph analysis of the Code of Conduct and is available to download from our website.



We intend to reissue the *Case Review*, complete with its paragraph-by-paragraph analysis, on an annual basis to reflect the evolving interpretation and developing understanding of the Code.

Issues of the *Case Review 2007* were distributed to delegates at this year's Annual Assembly. Additional hard copies cost £20 and can be ordered by calling **0161 817 5300** or by emailing us at publications@standardsboard.gov.uk.

Satisfaction high for Annual Assembly

Almost 800 delegates attended the Standards Board's Sixth Annual Assembly of Standards Committees held at Birmingham ICC in October 2007. This year's conference was a sell-out event and our feedback suggests it was a resounding success, with a 97% satisfaction rate among delegates.

Called Down to detail: Making local regulation work, the conference provided a range of sessions to help build the skills, contacts and resources necessary to meet the challenges of local assessment. And, as the minister Parmjit Dhanda MP said on the opening day, it came at a

crucial time for standards committees, with the *Local Government and Public Involvement in Health Act 2007* having now been passed in Parliament, as discussed on page 2 of this *Bulletin*.

More information on the event is available from our conference website, www.annualassembly.co.uk, where you can also download materials such as newsletters, speeches, session slides and handouts.

Our next Annual Assembly will be held again at the ICC in Birmingham on 13 and 14 October 2008. For further information, please email: annualassembly2008@standardsboard.gov.uk

Stronger action needed on ethical governance

The latest Audit Commission self-assessment survey reveals that although councils are generally managing the ethical agenda well, there are a number of areas that require stronger action.

Survey background

The self-assessment survey was created by the Audit Commission in conjunction with the Standards Board for England and the Improvement and Development Agency (IDeA). It is one element of the four-part Ethical Governance Diagnostic Toolkit, which also includes a full diagnostic, a light-touch health check (provided by the IDeA) and workshops.

The survey helps councils assess and then, where necessary, improve their ethical governance procedures by helping them understand the key ethical governance issues they are now facing.

Key findings

- Members generally demonstrate high standards of behaviour.

- Leaders and chief executives are proving themselves as positive role models in many councils.
- Roles, responsibilities and relationships of members and officers relating to the ethical framework are not always clearly understood.
- Standards committees make a difference, but they don't always explain to other members, officers and the public what they do, the issues they are addressing, and the progress they are making.
- Communication, training, guidance and information are critical areas and often need more of a focus.

The survey has highlighted key areas that councils actively need to address to improve ethical behaviour and to fully meet the ethical agenda.

For further details on these findings or on the Ethical Governance Toolkit, please contact Hannah Pearson on 0161 817 5417 or email hannah.pearson@standardsboard.gov.uk.

Independent adjudicator abolished – new role for standards committees

Restrictions on political activities by certain local government staff were introduced under the *Local Government and Housing Act 1989*, which provided for the appointment of an independent adjudicator to grant dispensations for staff to engage in certain political activities.

Under the *Local Government and Public Involvement in Health Act 2007*, the role of independent adjudicator will be abolished and the duties transferred to local authority standards committees.

These duties are:

- To consider applications from local authority employees for exemption from political restriction in respect of their posts.

- Where appropriate, to issue directions requiring a local authority to include a post in the list of politically restricted posts it maintains.
- To give general advice, following consultation with appropriate parties, on the application of criteria for designation of a politically restricted post.

The timing of this transfer of functions from the independent adjudicator is a government matter, but the Standards Board urges authorities to ensure that their standards committees are made aware of the change.

We expect the relevant government department, Communities and Local Government, to issue guidance on this matter. The department may be contacted via www.communities.gov.uk or on 020 7944 4400.

Updated advice on suspensions

In Issue 21 of the *Bulletin*, the Standards Board outlined what a member should and should not do if they are suspended.

The decision by Collins J in *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin), has led us to review that guidance.

A member of an authority who is suspended continues to be a member of that authority. They can quite properly refer to themselves as a councillor or as an elected member, although they should also make it clear that they are currently suspended.

However, someone who is fully suspended may not, while they are suspended, exercise any of the functions or responsibilities of membership of the authority. This means that they should not take part in any formal business of the authority, they should not use or have access to council facilities, and they should not receive their council allowances.

A member who is subject to partial suspension may not, during the period of that suspension, exercise the particular functions or responsibilities from which they are suspended. What those functions or responsibilities are will depend on the exact terms of their suspension, and the standards committee needs to describe precisely what particular functions are proscribed.

Under the 2001 Code of Conduct, two paragraphs applied “in any other circumstance” outside the functions or responsibilities of membership of an authority. As such, these provisions still applied to members who were suspended. The *Livingstone* judgment restricted the effect of these provisions.

The position now is that three paragraphs under the revised 2007 Code of Conduct will apply, “at any other time, where that conduct constitutes a criminal offence”.

The three paragraphs will be:

- Paragraph 3(2)(c) – intimidation of certain persons in relation to an allegation under the Code.
- Paragraph 5 – disrepute.
- Paragraph 6(a) – improperly conferring or securing an advantage or disadvantage.

However, this will only occur when amendments to Section 52 of the *Local Government Act 2000* come into effect. Until this time, the 2007 Code of Conduct does not apply to a person who has been suspended in respect of a relevant function of office for a relevant period of time, so long as the member makes it clear that they have been suspended and does not purport to act as a representative of their authority.

As an example, if a member is suspended from appointment to a planning committee for a period of two months, the relevant function is membership of the planning committee and the relevant time period is two months. The Code

does not currently apply to the member in respect of this function for this time period, so long as the member makes it clear they have been suspended. When the amendments to the *Local Government Act 2000* come into force, conduct that constitutes a criminal offence will also be covered in respect of this function during this time period, in relation to the three paragraphs of the Code listed above.

New Board members required

With the end of current members' terms approaching, Communities and Local Government is seeking to recruit a new chair, deputy chair and two new Board members for the Standards Board for England.

Communities and Local Government is particularly seeking applications for the Board member roles from candidates who have experience as an independent member of a local standards committee or as a local authority monitoring officer.

Full details of all the posts, including how to apply, can be found at www.clgstandards.org.

The closing date for applications for chair is 20 December 2007. For all other roles it is 14 January 2008.

The Standards Board at Christmas

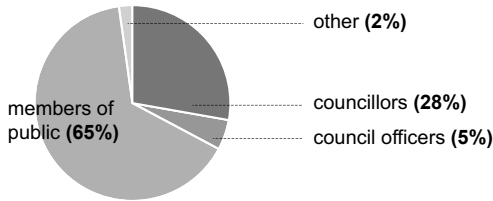
The Standards Board for England's offices will be open during the majority of the festive period, but will be closed on Christmas Day, Boxing Day and New Year's Day. We will endeavour to respond to your enquiries as soon as possible during this time.

Referral and investigation statistics

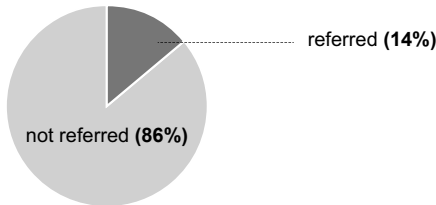
The Standards Board for England received 2,098 allegations between 1 April 2007 and 31 October 2007, compared to 1,996 during the same period in 2006.

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

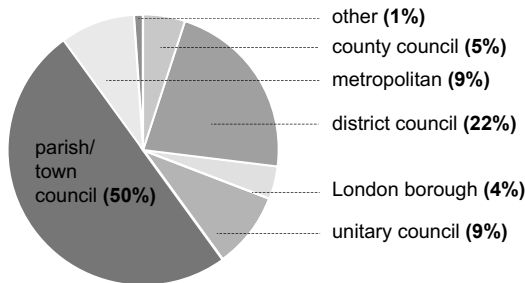
Source of allegations received



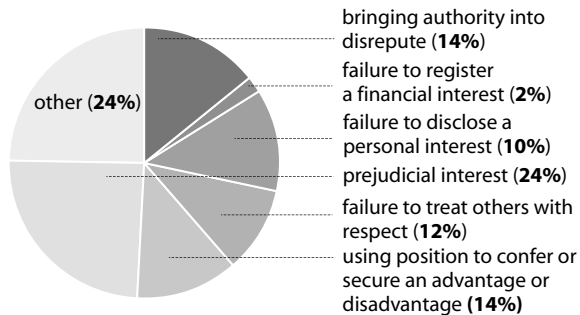
Allegations referred for investigation



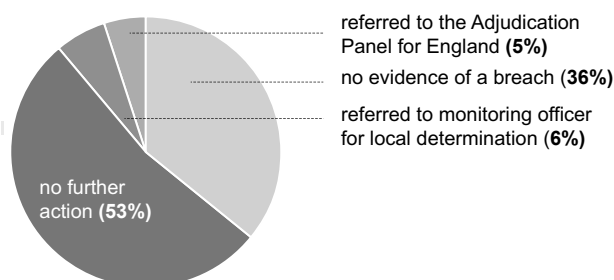
Authority of subject member in allegations referred for investigation



Nature of allegations referred for investigation



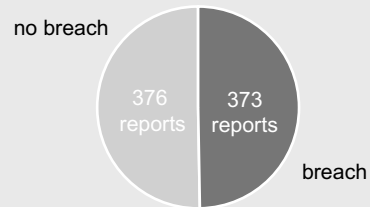
Final findings



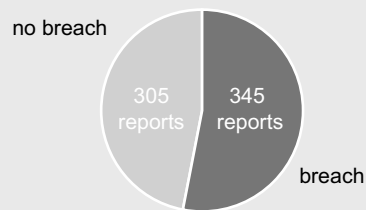
Local investigation statistics

For the period 1 April 2007 to 31 October 2007, ethical standards officers referred 171 cases for local investigation – equivalent to 55% of all cases referred for investigation. Since 1 April 2007 there have been eight appeals to the Adjudication Panel for England following standards committee hearings. Of all cases referred for local investigation since November 2004, we have received a total of 749 reports – please see below for a statistical breakdown of these cases.

Monitoring officers' recommendations following local investigations



Standards committee hearings



Standards committee determinations

