

**BABERGH DISTRICT COUNCIL**

**FROM: The Monitoring Officer**

**REPORT NUMBER H139**

**TO: STANDARDS COMMITTEE**

**DATE OF MEETING: 17 November 2008**

**THE STANDARDS BOARD FOR ENGLAND BULLETIN (ISSUE 40)**

**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**

**STATISTICAL DATA**

- 5.1 The *Bulletin* provides analysis of the first data required to be filed with the Standards Board for England on complaints received by standards committees in the period 8<sup>th</sup> May 2008 to 30<sup>th</sup> June 2008. There are 473 authorities required to file data of which 9 failed to submit a return. Nationally, there were a total of 321 complaints against councillors, 183 of which were made by members of the public, 111 by another councillor, 9 by officers, 8 by town/parish clerks and 10 categorised as being made by 'other'. Of those 321 complaints, 211 were made to the standards committee of district councils making an average of 0.97 complaints per district council. Babergh District Council received 1 complaint within the first returns period.
- 5.2 No decision had been made by the standards committee in 153 (48%) of cases. Decisions had been taken in 168 cases with 70 being decided that no action was required, 65 were referred to the monitoring officer for investigation, 30 were referred to the monitoring officer for other action and 3 were referred to the Standards Board.
- 5.3 Returns for the next quarter (1<sup>st</sup> July to 30<sup>th</sup> September) were due by 14 October and the Monitoring Officer can confirm that the return for this authority has been filed.

## ADJOURNING LOCAL ASSESSMENT DECISIONS

- 5.4 Members will note that on pages 5-6 of the *Bulletin* views are sought on whether standards committees should be able to adjourn consideration of a complaint that may be suitable for other action and ask the monitoring officer to establish whether a member will co-operate if such direction were made. The closing date for submission of views was 22 September 2008, being before the next scheduled meeting of the Committee and a response was therefore despatched with agreement of the Chairman of the Committee. Details of the response are provided elsewhere on today's agenda.

## STANDARDS BOARD INVESTIGATIONS

- 5.5 Members will note that the Standards Board "would expect to accept complaints which involve allegations of both maladministration and a breach of the Code as an exceptional circumstance" in which standards committees may refer a complaint to them (*page 7*). In other words, those complaints which also concern matters which are (or are likely to be) considered by the Local Government Ombudsman or auditor.
- 5.6 On the same page the Standards Board also advises that it will in future send a report to the local standards committee where it has conducted an investigation which has not resulted in a hearing before the standards committee. This will, however, only occur if the ethical standards officer at the Standards Board "believes it will assist the committee in the discharge of its functions". This follows introduction of a duty on the monitoring officer within Regulation 15 of the Standards Committee (England) Regulations 2008 to send a copy of an ESO report to the member complained of and then refer the report to the standards committee. Amendments were also made to the Local Government Act 2000 in May 2008 to further enable the monitoring officer to inform any member, co-opted member or officer of the authority concerned of the outcome of an investigation an ethical standards officer where the monitoring officer believes that it will assist in promoting high standards of conduct by members. Previously, the monitoring officer would be provided with a summary of a complaint and decision by the ethical standards officer which could not be disclosed.

## 6. APPENDICES

Appendix 1 – Standards Board for England Bulletin 40 (August 2008)

## 7. BACKGROUND PAPERS REFERRED TO:

Quarterly statistics information at [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

**CONTACT:** KATHRYN SAWARD

**DIRECT LINE:** [kathryn.saward@babergh.gov.uk](mailto:kathryn.saward@babergh.gov.uk)

## Contents

### Page 2

Guidance on the local standards framework

Analysis of first quarterly monitoring returns

### Page 4

Forthcoming events

### Page 5

Seeking views on adjourning local assessment decisions

### Page 6

New Deputy Chair and Board members appointed

### Page 7

Standards Board investigations

### Page 8

Annual Review 2007-08 available online

Monitoring officer seminar

Ethical governance toolkit

### 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 40 of the *Bulletin*.

In this *Bulletin* we present an initial analysis of the first quarterly monitoring returns we have received from authorities on local case handling. A fantastic 98% of authorities have submitted their returns and provided us with a clear overview of the successful operation of the devolved ethical framework so far. Thank you all for helping us to ensure the quality of the data.

We are using this opportunity to seek your views on the potential adjournment of assessment sub-committee decision making. This is in order for the monitoring officer to find out whether a subject member would co-operate with a referral for other action. We outline our concerns with this approach, and its possible advantages, and invite your feedback on the most appropriate practice.

Finally, I am pleased to introduce two new Board members, **Michael Kendall** and **Elizabeth Abderrahim**, and confirm that **Professor Judy Simons** has been appointed as the Standards Board for England's new Deputy Chair.

**Glenys Stacey**  
Chief Executive



## Seventh Annual Assembly of Standards Committees

13-14 October 2008, ICC Birmingham

See page 4 for more details

## Guidance on the local standards framework

The final section of our guidance on the local standards framework has now been completed and is available online in the Guidance section of our website [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).

The *Standards committee determinations* guidance has been designed to help members and officers in relevant authorities who are involved in the determination of complaints that a member may have breached the Code of Conduct.

It details each stage of the determination of complaints process and offers suggestions for effective practice. In addition, it provides a toolkit of useful document templates that may be used or adapted by authorities as required.

Folders containing all of the local standards framework guidance will be sent to monitoring officers in early September. Please note that we have updated *The role and make-up of standards committees* guidance and *The local assessment of complaints* guidance since they were first made available on our website. We therefore recommend that you use the guidance in the folder, or the guidance which is currently on our website, as opposed to any versions that you might have printed off previously.

## Analysis of first quarterly monitoring returns

### Data collection

The first quarter of local case handling has now ended. Following this, we sent an email to the monitoring officers of all principal authorities requesting that they submit their first quarterly return before the deadline of 14 July 2008. The return helps us to provide the national and independent oversight necessary for there to be confidence in a locally based system of complaint handling.

The first return covers the period of 8 May to 30 June 2008 and involved monitoring officers answering a series of questions about their authority's standards committee. They were also required to answer questions about any cases that had been handled locally.

As this was the first time that monitoring officers had to submit a return – and because our online system is brand new – we expected a few teething problems with the data collection. However, we received an overwhelming response rate, with a return from **98%** of authorities.

We are also pleased to report that **90%** of the returns do not have any issues needing further clarification.

Thank you to all monitoring officers, and other authority employees who submitted on their behalf, for ensuring that we have a good, solid data set. This will help us begin to formulate a national picture of local case handling. It will also serve as a starting point for identifying standards committees that we can work with to achieve the goal of ensuring consistently high ethical standards in local government.

**Feedback**

We are currently gathering feedback from a sample of monitoring officers about their experiences of completing and submitting their quarterly return. Thanks to all the monitoring officers who are participating in this. As a result, we are already looking at making some improvements to the system for future quarterly returns. These include:

- an automated acknowledgement page, so that you will know instantly that your return has been submitted successfully
- a smarter log off procedure, so that monitoring officers of more than one authority can switch between multiple accounts more easily
- improvements to the way that closed cases are managed by the system (over the long term we hope to include an archive of old case details)

**Analysis**

We are currently analysing the **90%** of returns that are complete, and contacting the other **8%** of authorities whose returns have issues that need clarifying. We have sent a further request to the **2%** of authorities who have not yet submitted their return.

However, our initial observations of the data are as follows:

**Standards committees**

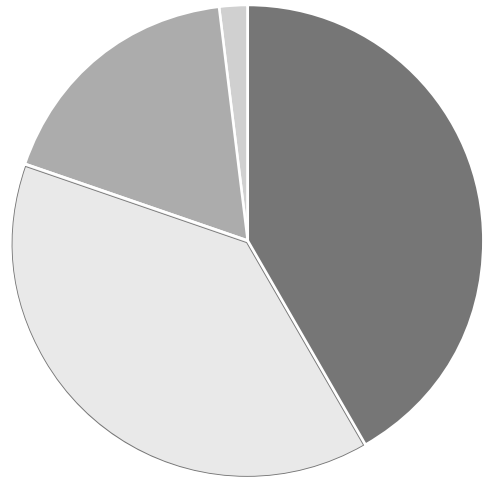
- On average, standards committees have nine members in total, which includes three independent members and, if the authority has parish or town councils, three parish representatives.

- **99%** of standards committees have an independent chair.

**Cases handled locally**

- **321** cases were received locally between 8 May and 30 June 2008.
- Because the reporting period was shorter than usual, **48%** of cases did not have a decision about how they should be handled by the time the quarter closed. The chart below shows the split of decisions for all cases where a decision was made.

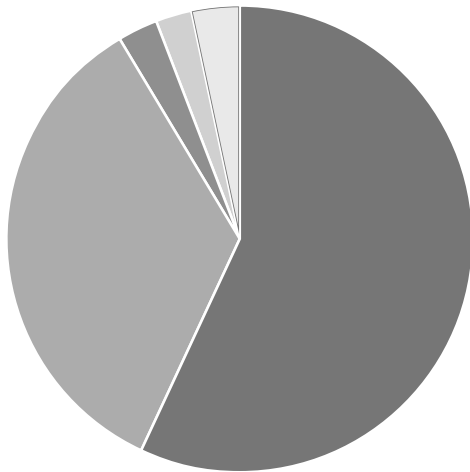
REFERRAL DECISIONS



- 3** Referred to the Standards Board for England
- 30** Referred to the monitoring officer for alternative action
- 65** Referred to the monitoring officer for investigation
- 70** Not referred for investigation

- Discounting the cases where a decision had not been reached, the breakdown shows that most cases were either referred to the monitoring officer for investigation or not referred at all.

SOURCE OF COMPLAINT



- 10 Other
- 8 Parish/Town clerk
- 9 Council officer
- 111 Member
- 183 Member of the public

■ As shown in the chart above, more than half of the cases came from complaints made by members of the public. A large proportion also came from members.

The next quarterly return covers case activity in the period 1 July to 30 September 2008. This includes new cases received in the period and previous cases that have progressed in the period. The submission window for returns will be open from 1 to 14 October 2008. A reminder email will be sent to all monitoring officers nearer the time.

A more detailed breakdown of quarterly returns is now available in the Quarterly statistics section of our website [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).

### Forthcoming events

More than 800 delegates will be attending the fully booked **Seventh Annual Assembly**, ‘Delivering the goods: Local standards in action’ at the ICC, Birmingham, this October.

Breakout sessions are filling up fast and if you have secured your place at the conference, you are urged to choose your sessions and return your preference form as soon as possible to avoid disappointment.

Many of the presentations and handouts from the Assembly will also be available on the conference website, [www.annualassembly.co.uk](http://www.annualassembly.co.uk) straight after the event.

We will also be exhibiting at the **Liberal Democrat party conference**, 13-18 September 2008, **Labour party conference**, 21-25 September 2008 and the **Conservative party conference**, 28 September – 1 October 2008.

The Standards Board is urging authorities to enter the Standards and Ethics award category at the **2009 LGC Awards**.

Entering the Standards and Ethics award is a great opportunity to raise the profile of your standards committee. The award will go to an authority which has a dynamic, innovative approach to improving and promoting standards of member conduct. Reaching the final shortlist will also mean that your authority’s ethical standards have been judged to be among the best in the country – a powerful message to send to your local community.

Entries are welcome from authorities of any size or status. You can submit yours online at [www.lgcawards.co.uk](http://www.lgcawards.co.uk), where you can also find further information on the criteria for the Standards and Ethics category and on the LGC Awards as a whole. The closing date for entries is 3 October 2008.

**Date for your diary: The Eighth Annual Assembly will be held on 12-13 October 2009 at the ICC.**

## Seeking views on adjourning local assessment decisions

Under Section 57A(2) of the Local Government Act 2000, as amended (the Act), when a standards committee receives a complaint it must either:

- (1) take no action on the complaint
- (2) refer the case to the Standards Board for England, or
- (3) refer the case to the monitoring officer of the authority concerned

If the third option is chosen, then under Section 66(6) of the Act, the standards committee can give directions to the monitoring officer about how to deal with the case. The case can either be dealt with by way of a direction to investigate it or to take other action. Once a case is referred for action other than investigation it cannot subsequently be investigated.

Understandably, some standards committees are reluctant to direct the monitoring officer to deal with a case by way of other action when they may not know enough about the circumstances of the case, and do not know whether the member complained about will cooperate with that other action. This is especially true when there does not appear to be any sanction against a member who fails to cooperate with other action, other than perhaps another complaint based on disrepute.

It has been suggested that one way around this difficulty is for the standards committee to adjourn consideration of a case they think might be suitable for other action, and ask the monitoring officer to find out whether the member will cooperate.

An adjournment to enable effective consultation with the monitoring officer would appear to be possible. It is something that does not appear to be prohibited by law. Also, paragraph 13(2) of the

Standards Committee (England) Regulations 2008 (the Regulations), requires the standards committee to consult with the monitoring officer before giving any direction to take other action.

However, there are concerns. Much depends on how the decision is minuted. If the monitoring officer is asked to find out more about the case and the options available to take other action, rather than specifically asked to find out about the attitude of the member to other action, some of those concerns lessen.

Here are some concerns and advantages we have identified and an alternative approach.

### Concerns

- (1) Asking the monitoring officer to find out whether the member will cooperate runs the risk of putting the decision about investigation or other action in the hands of the subject member and not the assessment sub-committee.
- (2) The target of dealing with complaints within 20 working days is difficult to achieve.
- (3) What other action is to be discussed and who decides it? Will the standards committee or the monitoring officer effectively make the decision? Or, will it end up being a negotiation with the member if they say "Well, I am not having mediation but I will do training if it consists of X and is done by Y"? We believe this would undermine the authority of the standards committee.
- (4) There is a danger that the monitoring officer will end up effectively starting an investigation before being instructed to do so.
- (5) The member may take the opportunity to try and give the monitoring officer information to pass on to the standards committee to try and persuade it to take no action.

- (6) The more information the monitoring officer collects during the adjournment the more difficult it becomes for members of the standards committee to sit as part of a hearing panel later. The member will find it easier to argue that any standards committee member is biased by having received more information than was appropriate or necessary to carry out their functions under Section 57A of the Act.
- (7) There is an argument that taking into account information other than that provided by the complainant is unlawful. We say the monitoring officer can take steps to clarify the complaint or clarify basic facts. If the subject member is asked how they would react to a direction for other action, this would be finding out what the subject member thinks and feeding that into the decision-making process. Is that an irrelevant consideration?

**Advantages**

- (1) The members of the standards committee know what the member's attitude is said to be about the solution the standards committee is proposing to deal with the complaint.
- (2) The standards committee can send a case for investigation when the alternative might have been ineffective other action.
- (3) The case may be settled and the standards committee can decide to take no action.

**Alternative**

The standards committee sends the case for investigation and lets the monitoring officer know that it might not consider the case to be as serious, if the member were willing to comply with other action. Therefore, if the member so indicates then (subject to any other information the monitoring officer might have gathered which suggested otherwise) the monitoring officer

should feel free to ask that the case be returned to them.

Regulation 16(1)(a) of the Regulations might be capable of being read as supporting this approach. However, there can be a difference between the seriousness of a case and the appropriate way to resolve it.

We would like to receive views from you about what you think should constitute the most appropriate practice. Please contact [kymberlie.connell@standardsboard.gov.uk](mailto:kymberlie.connell@standardsboard.gov.uk) with your views by **22 September 2008**.

**New Deputy Chair and Board members appointed**

**Professor Judy Simons** has been appointed as the Standards Board for England's new Deputy Chair by the Secretary of State for Communities and Local Government. The Secretary of State also appointed **Michael Kendall** and **Elizabeth Abderrahim** as our new Board members.

These appointments to the Board began on 14 July 2008 for a three-year term. Professor Judy Simons takes over from Patricia Hughes CBE, who was Deputy Chair of the Standards Board since it was established in 2001. Patricia's term ended on 30 June 2008.

Michael Kendall was Monitoring Officer at West Sussex County Council and is former Lead Officer and former President of ACSes. Michael replaces Roger Taylor whose term ended on 30 October 2007.

Lizzie Abderrahim is a self-employed Freelance Trainer and Independent Chair of Gloucester City Council's standards committee. Lizzie replaces Professor Judy Simons who became Deputy Chair.

In announcing the new appointments on 17 July 2008, Minister for Local Government **John**

Healey said he was pleased with all the appointments. “All three bring extensive skills and experience to their new roles and will help the Board to develop its role in the maintenance of high standards of conduct in local government.” He also thanked Patricia Hughes for all she had done during her time as Deputy Chair.

## Standards Board investigations

We are now receiving the first cases referred to the Standards Board by standards committees. As you know, there are a number of factors we take into account in reaching our decision whether to accept them. This includes exceptional circumstances.

The recent amendments to the Local Government Act 2000 enhanced our powers to share information related to investigations with other regulators, particularly the Local Government Ombudsman and the Audit Commission. We are working with these two organisations to update our communications. The new memoranda of understanding will be publicly available when completed.

One of the matters to come out of our discussions with the Ombudsman was that we would expect to accept complaints which involve allegations of both maladministration and a breach of the Code as an exceptional circumstance. This means that the two investigations could be organised in the most effective and timely way. So, if you are dealing with a complaint arising from incidents that have also resulted, or are likely to result, in an Ombudsman case or an audit enquiry, you will find the Standards Board sympathetic to a request to investigate.

Another amendment to the Local Government Act 2000 gives ethical standards officers the power to send final reports of investigations which do not result in a standards committee hearing to standards committees. This can

happen if the ethical standards officer “believes that it will assist that committee in the discharge of its functions”, as quoted from Section 64(3A) of the Local Government Act 2000.

The functions of a standards committee are:

- to promote and maintain high standards of conduct by members
- to advise on the adoption and revision of a code of conduct
- to monitor its operation
- to arrange training on matters related to the authority’s code of conduct

They also, of course, now have functions relating to complaints of breaches of the Code of Conduct.

We are now sending copies of reports to standards committees when most investigations are completed. We think that it is important for standards committees to understand the background to ethical problems that may have arisen in their area. Sometimes investigations suggest problems with particular policies, procedures or culture locally, which are not part of our remit to investigate, but which seem likely to cause further problems in the future. Where this is the case, we will draw the committee’s attention to those things which we think they might want to look into.

The reports are not sent to enable the committee to reconsider the complaint. Not only would it be unfair to the member concerned to do that, but the committee would not be able to do it fairly without being able to satisfy itself that it could look at and question the primary evidence.

We would be very interested to know how useful standards committees find these reports and any suggestions of ways we could help them use this learning opportunity. Please feel free to contact the Standards Board’s Investigations team on **0161 817 5300** with your thoughts.

## **Annual Review 2007-08 available online**

The Standards Board's Annual Review 2007-08 is now available from the Publications section of our website [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk). In it, we look back at our performance over the past 12 months and look ahead to future challenges and opportunities.

The theme of this year's review is 'Local delivery. National support.'. It looks at how we prepared for 8 May 2008, when local authorities' standards committees became responsible for receiving complaints and deciding what to do with them. The review also looks at our new, more strategic role, and how it will enable us to offer greater support and advice on the ground.

This year, we have also provided a text only version on our website, which means that you can read and print the text from each chapter, as well as downloading the publication as a pdf. If you require a hard copy, please email [publications@standardsboard.gov.uk](mailto:publications@standardsboard.gov.uk).

## **Monitoring officer seminar**

On 16 June, the Standards Board hosted a seminar for monitoring officers who have carried out ethical standards officers' directions. A direction is where an allegation of a breach of the Code of Conduct is sent back to a monitoring officer for alternative action. This may include the use of mediation, conciliation, conflict resolution, mentoring, training, and review of policies and protocols.

As we develop the use of directions, we will encourage the constructive use of party group discipline and leveraging in peer support from neighbouring authorities that have overcome their problems.

The event was run by Jennifer Rogers, Ethical Standards Officer, and John Williams, Senior

Policy Adviser. Fifteen monitoring officers attended, and each shared their successes and failures, including their experience of difficulties at parish level.

Key messages were that disputes are often very deep seated and originate in events that occurred long ago; and that disputes that might be inflamed by investigation are better approached by alternative action. There is a specific provision for alternative action in regulations made under the recent Local Government and Public Involvement in Health Act 2007.

We are having another seminar in January so we can share and develop our ideas further in the light of experience. Please call Kimberlie Connell on **0161 817 5300** or email [kymberlie.connell@standardsboard.gov.uk](mailto:kymberlie.connell@standardsboard.gov.uk) if you would like to become involved in this initiative.

## **Ethical governance toolkit**

The Standards Board, the Improvement and Development Agency and the Audit Commission have been working in partnership to update the ethical governance toolkit. The toolkit reflects the changes brought about by the Local Government and Public Involvement in Health Act 2007 and is now available to use.

Many authorities have already benefitted from using the toolkit, which is designed to help local authorities identify how well they are meeting the ethical agenda and to improve their arrangements.

For further information on the ethical governance toolkit and for contact details, please visit the Ethical Governance section of the IDeA website, which you can find at [www.idea.gov.uk/knowledge](http://www.idea.gov.uk/knowledge) or contact the Audit Commission by email at [infogovcounterfraud@audit-commission.gov.uk](mailto:infogovcounterfraud@audit-commission.gov.uk).