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...and more!

Contents

We were encouraged to see so many of you at the Third Annual Assembly of Standards Committees this September. The clear message from the conference was that the Code of Conduct has become an accepted part of life in local government and that ethical standards are linked to excellent public services. I am in no doubt that it was the participation of the record number of delegates that helped to make the event such a success.

Those of you who attended the conference will have heard that good progress is being made on speeding up our throughput of cases. We are also piloting a scheme to gather additional information on selected complaints, giving us a more rounded view of a situation before we decide whether to refer the allegation for investigation. In addition, the new regulations now in force will enable us to refer cases for local investigation and focus our investigations on the more serious cases that have the potential to harm local democracy.

Having listened to your views at the conference and elsewhere, we are continuing to support the establishment of regional forums for independent representatives of standards committees. Eight such forums already exist, meeting regularly to share experiences and develop best practice. The Standards Board for England held a meeting of the co-ordinators of the forums for the first time in July, and you can read more about this meeting in the story on page 5.

On a final note, regular feedback on issues that are raised in *Standards Committee News* will help us to make the newsletter as relevant as possible, so please keep your views and ideas coming. Any examples of good practice will be particularly welcome so that we can share them through this medium. You will find contact details on the last page.

David Prince, chief executive

Local investigations and enhanced sanctions

Standards committees will soon be considering reports and holding hearings following local investigations carried out by monitoring officers, thanks to new regulations which came into force on 4 November. The *Local Authority (Code of Conduct) (Local Determination) (Amendments) Regulations 2004* complement last year's standards committee determination regulations and together they enable ethical standards officers to refer cases to be investigated and heard exclusively at the local level. The regulations also provide greater flexibility to standards committees when imposing sanctions.

The Standards Board for England has published statutory guidance on the regulations for monitoring officers and standards committees, available now on our website. We aim to send out hard copies to all local authorities by the end of November. The guidance includes information on some of the factors ethical standards officers will consider when deciding whether to refer a matter back.

Standards committees are most likely to hear allegations of an entirely local nature, or which do not appear to need the heavier penalties available only to The Adjudication Panel for England.

At the end of the monitoring officer's investigation, the standards committee will still determine whether or not the Code of Conduct has been breached, and what action to take, but the regulations have expanded the sanctions available to standards committees. They also enable standards committees to combine different sanctions to fit the circumstances. For example, a standards committee can suspend a member for up to three months or until such time as the member undertakes training or conciliation specified by the standards committee.

Under the regulations, an ethical standards officer can decide that some form of action other than investigation or determination is required at a local level. This is most likely to happen in situations which have broad relevance for the ethical governance of an authority. The ethical standards officer may, for example, direct the monitoring officer to make recommendations to the relevant standards committee about wider issues for the authority raised by the case, or ensure that the parties concerned attempt some form of reconciliation through a formal dispute resolution process or otherwise.

The guidance is available at:

www.standardsboard.co.uk/code_of_conduct/local_authorities.php

More help with personal and prejudicial interests

New guidance produced by The Standards Board for England can help members who are involved in lobby and campaign groups or who are members of more than one relevant authority work out if they have a personal or prejudicial interest in a matter.

The new guidance covers a range of common but difficult areas of the Code of Conduct, involving interests arising from membership of lobby groups, and from membership of other public bodies or as council appointees to external groups — so-called dual-hatted members.

The first part of *Lobby groups, dual-hatted members and the Code of Conduct* provides practical advice and examples to help members understand when membership of lobby or campaign groups may give rise to personal and prejudicial interests, and explains what

members can and cannot do if they have a prejudicial interest. It also includes information on some other important principles and legal requirements to consider when making decisions, including the common-law concept of predetermination.

The second part of the guidance explains the interests that can arise from service on other authorities or public bodies and provides practical advice and examples to help members understand the circumstances where it is appropriate to rely on paragraph 10(2) of the Code of Conduct to participate in meetings (paragraph 9(2) for parish councils).

The guidance was prepared in consultation with a wide range of stakeholders, including the Local Government Association, the National Association of Local Councils, the Association of Police Authorities, the Association of Council Secretaries and Solicitors and the Society of Local Authority Chief Executives. It is available from our website, and has also been printed and distributed to monitoring officers and parish clerks.

To view it online, go to:

www.standardsboard.co.uk/code_of_conduct/guidance.php

Shaping the future of the Code

All councils will be given a chance to help shape the future of the Code of Conduct when The Standards Board for England launches its review of the Code of Conduct early in the new year.

Delegates at the Third Annual Assembly of Standards Committees were invited to share their ideas on how the Code of Conduct could be improved in the *Developing the Code* workshops. We will be addressing many of the issues raised in those sessions, as well as questions that have been put to us in our discussions elsewhere with standards committees and members, as we explore possible changes to the Code of Conduct.

Among the questions we will be asking are:

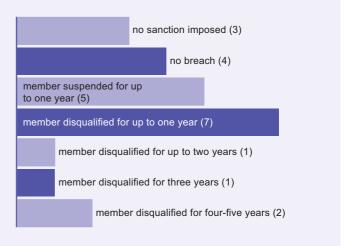
- To what extent should the Code of Conduct apply in a private capacity?
- Should the Code of Conduct continue to include a 'whistle-blowing' provision?
- How can the Code of Conduct strike a balance between members representing their communities and protecting the integrity of decision-making?
- Should members be allowed the same rights as the public when making representations on issues in which they have a prejudicial interest?
- Should there be a public interest defence to the disclosure of confidential information?

The consultation is expected to close in the spring, and the Board will make recommendations for changes to the Code of Conduct to the government soon after. We will bring you more news in future issues of *Standards Committee News*.

Latest statistics from The Adjudication Panel for England

The Standards Board for England has referred 70 cases for determination by The Adjudication Panel for England so far in the 2004–05 financial year. 47 cases have yet to be heard. The following chart shows the Adjudication Panel for England's decisions in the cases that have been heard.

The Adjudication Panel for England's decisions in cases that have been heard



Referral criteria reassessed

The Standards Board for England's commitment to focus on only the most serious allegations of misconduct is being underlined with the introduction of a more rigorous referral process. This will ensure that only allegations concerning the most serious behaviour, with the potential to damage the reputation of local government, are considered for investigation.

In order for an allegation to be considered for investigation, it must comply with four basic rules:

- · it must be made in writing;
- it must concern the conduct of an elected, co-opted or independent member of a relevant authority;
- be about something that happened after the Code of Conduct came into effect (between 30 November 2001 and 5 May 2002, depending on the authority);
- be about something covered by the Code of Conduct.

If an allegation meets all of these rules, it must then satisfy one of the following criteria to be referred for investigation:

- it is serious enough, if proven, to justify the range of sanctions available to The Adjudication Panel for England or local standards committee;
- it is part of a continuing pattern of less serious misconduct which is unreasonably disrupting the business of the authority and there is no other avenue left to deal with it short of investigation.

An allegation is unlikely to be referred for investigation if:

- it is believed to be malicious, relatively minor, or tit-for-tat:
- the same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to The Adjudication Panel for England or the local standards committee;

- the complaint concerns acts carried out in the member's private life which are unlikely to affect his or her fitness for public office;
- it appears that the grievance is really about dissatisfaction with a council decision;
- there is insufficient information currently available to justify a decision to refer the matter for investigation.

These criteria are also available from our website, alongside other information on making a complaint, including the complaints form at:

www.standardsboard.co.uk/complaints/

Case summaries

The cases summarised here are just a handful of the more interesting cases to have been completed since the last edition of *Standards Committee News* in May this year.

More detailed summaries of these cases are available from our website. You can click on the headings below to go straight to the summary, or use the search options on the website to find these cases and more.

Registration of interests (SBE3709.03)

A parish councillor was suspended for three months for failing to register his interests following re-election to the council. The standards committee attached the condition that the suspension would end if the member submitted a notification of his interests or a declaration that his interests were unchanged. The councillor appealed against the decision, but The Adjudication Panel for England upheld the finding and and dismissed the appeal.

Access to information (SBE2316.03)

A town councillor was suspended for two months for preventing a member of the public from accessing copies of interview panel notes on their job application to the council, which they were entitled to see. The standards

committee attached the condition that the suspension would end after one month (or immediately if a longer period had elapsed) if the councillor apologised to the member of the public and asked the council to release the information.

Prejudicial interests (SBE1247.02)

A parish councillor was suspended for three months for taking part in discussions of his landlord's planning applications at two council meetings. The standards committee decided that the councillor had a personal and prejudicial interest in the applications.

Disrepute (SBE2252.03)

A town councillor was suspended for three months, or until she apologised, for calling a town clerk a "nasty bastard" after a council meeting. The standards committee decided that the councillor failed to treat the clerk with respect and brought her office or authority into disrepute.

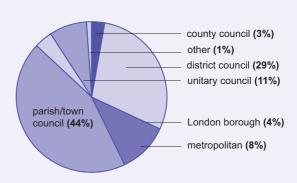
All of these summaries and details of other cases can be found in the case summary section of the website at:

www.standardsboard.co.uk/redirect.html

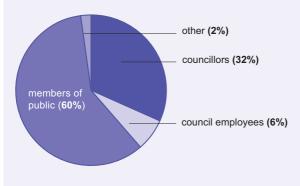
Latest referral statistics

The Standards Board for England has received 2146 allegations so far in the 2004–05 financial year. The following charts show The Standards Board for England's referral statistics for that period.

Authority of subject member in allegations referred for investigation



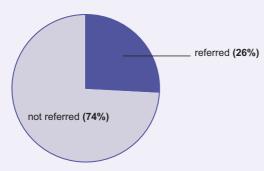
Source of allegations received



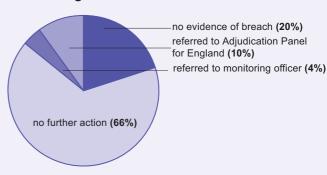
Nature of allegations referred for investigation



Allegations referred for investigation



Final findings



Standards committee determinations

There have been 41 standards committee hearings so far in the 2004–05 financial year. Of these:

- 13 resulted in suspensions of up to two months;
- eight resulted in suspensions of up to three months;
- 12 resulted in censure:
- in six cases, standards committees found that the members failed to follow the Code of Conduct but that no further action should be taken;
- in two cases, the standards committee found that the member had not breached the Code of Conduct.

Members lodged appeals against the decision in eight of these cases:

- in two cases, the appeals were refused;
- in four cases, The Adjudication Panel for England upheld the standards committee's original decision;
- two appeals have yet to be heard.

Witnesses to be handled with care

An enhanced witness care scheme has been introduced by The Standards Board for England to ensure that witnesses are kept better informed of the progress of a case. Although the scheme covers all referrals, it has particular implications for witnesses attending a tribunal of The Adjudication Panel for England or a standards committee hearing. The scheme will ensure that witnesses are kept better informed of events and have sufficient information should they be called to give evidence.

Key components of the scheme include:

- a letter will be sent to witnesses as soon as practicable, informing them of the average length of an investigation and when they are likely to hear from us;
- witnesses will be notified of the outcome of the investigation and informed if the case is referred to The Adjudication Panel for England or a standards committee for determination;
- those witnesses called to an Adjudication Panel for England tribunal or standards committee hearing will be sent a letter including a map of the venue and setting out details of the hearing, the likely manner in which their evidence will be heard, and contact details for a legal advisor;
- witnesses who attended a hearing will be sent a letter confirming the outcome and thanking them for their attendance;
- a case summary will be sent to all witnesses following completion of the case.

The witness care scheme is currently being evaluated to identify levels of satisfaction with the scheme and any improvements that can be made.

Letters

Standards Committee News is a forum for you to put forward your ideas, observations and experiences. If you want to share your practices, think we've got something wrong or have a bright idea you want to share, write in and tell us about it. Contact details are on the back page.

Longer terms for independent members

The first issue of Standards Committee News makes a number of interesting and generally useful points concerning independent members of local standards committees. However, as a member of two such standards committees, and as the past chair of one, I feel that I must take issue over the length of time that independent members can sit.

The issue is not simply the number of years of service, but how effective the member is. For a very small minority, one term is more than enough! But to fix a maximum limit is unfair. I feel that it can take 18 months to two years to get to grips with the system, to be effective in it and to make the very important personal contacts with elected members and council officers. There is no limit to the time that councillors may offer themselves for re-election!

Peter Rowland

Member, South Shropshire District Council standards committee

Past member and sometime chair, Stratford-on-Avon District Council standards and ethics committee

The Standards Board for England believes that local authorities should ensure the continuing effectiveness of their independent representatives on standards committees. The term of office should not be so long that the public perception of a member's independence may be compromised, or too short for the member to become effective in the role. Councils themselves must decide an appropriate term of office, though we recommend that this is similar to that of elected members, in most cases for 3-4 years. Local authorities should carefully consider all the relevant factors before re-appointing a member for a successive term after meeting the requirement for advertising, including the level of experience among other independent members.

First meeting of independent members' forums co-ordinators

The co-ordinators of independent members' forums met with The Standards Board for England in July 2004 to share their experiences of establishing the forums. The co-ordinators discussed the benefits of independent members' forums and considered how to encourage development of forums across the country.

The benefits of forums

The co-ordinators shared their experiences of best practice and talked about developing consistency of approach across authorities.

Training needs and developing personal networks among independent members were considered, as was the ability of forums to provide support for members facing difficulties at their authority. There was also a discussion on how forums can provide a collective voice for independent members in discussions with The Standards Board for England.

Encouraging new forums

It was agreed that it would be useful if more forums were set up. The Standards Board for England and the existing forums all have a role to play in encouraging other parts of the country to establish their own groups, and there are contact details opposite for questions and advice if you are considering setting up your own forum.

You may also want to consider the following points:

Size

Forums can be based on a county, a region or other basis, depending on enthusiasm, support of councils and travel distances. On average, 30-40 attendees at a meeting is manageable.

Membership

Many forums are restricted to independent members, but some are opened up to officers such as monitoring officers for support and advice or as full participants. Attendance by elected members has been generally considered inappropriate and not in keeping with the purpose of the forums.

Formality

Some formality is useful, such as terms of reference and arrangements for basic costs. Structure can be helpful, but informality is more appropriate for some areas.

Costs

It is useful for authorities to recognise these meetings as a formal part of the role of independent members and therefore cover travel costs. Some forums cover other administrative costs through a small subscription for members or contributions from authorities.

Publicity

Some forums conduct meetings under Chatham House rules, while others prefer to circulate minutes or verbal summaries to members or even to standards committees as a whole.

Support

Forums need secretarial and financial support for basic duties like arranging meetings and distributing agendas and minutes.

If you want to set up an independent members' forum in your area please get in touch with Anne Rehill who can put you in touch with other independent members in your area who are interested in joining a forum. Anne can be contacted on 020 7378 5030, e-mail: anne.rehill@standardsboard.co.uk

We recommend you also speak to a co-ordinator of an established forum to get an idea of how they can work and what sorts of issues you will need to consider. The contacts are:

- Ms Pamela Hudson-Bendersky (Gloucestershire)
 e-mail: pamanddavid@bendersky.fsnet.co.uk
- Mr Andrew May (South West)
 e-mail: andrewandsuemay@witterings.fsworld.co.uk
- Mr Mike Wilkinson (West Yorkshire And Humberside)
 e-mail: mike.wilkinson100@ntlworld.com
- Mr Graham Wood (Greater Manchester) telephone: 0161 295 3646, e-mail: <u>gwoodatno1@aol.com</u>
- Mr Bruce Claxton (South of England)
 e-mail: bandiclaxton@aol.com
- Ms Sarah Lawrence (Berkshire, Oxfordshire and Wiltshire)

telephone: 01793 463603,

e-mail: slawrence@swindon.gov.uk

Mr Ray Haines (Kent)

e-mail: ray@doverchamber.co.uk

 Roger Lovegrove (London) telephone: 020 8888 5609, e-mail: roger@lovegrove.org.uk

New dates announced for 2005 Annual Assembly

Planning has already begun for the Fourth Annual Assembly of Standards Committees on 5–6 September 2005.

These are different dates to the ones advertised at the Third Annual Assembly of Standards Committees held earlier this year. We have changed the dates to avoid clashing with an event organised by SOLACE, which we understand will be announced soon. We apologise for any inconvenience this may cause.

The dates for the SOLACE event were not available when we confirmed our original conference booking and the change has only been possible thanks to the great flexibility and commitment of our partner organisations involved in organising the conference.

We recognise that many of our stakeholders are also a key audience for SOLACE, and in the spirit of our continued good work in partnership with other organisations such as SOLACE, we took the decision to move the date of our conference.

Focus on standards committees

This two-day conference will turn the spotlight on the work of standards committees, and others within local government who play a significant role alongside them, enabling them to take ownership of the ethical agenda.

Delegates will use the opportunity to:

- examine both good and bad practice;
- identify areas for improvement within their authorities;
- look beyond the scope of the standards committee's statutory remit;
- focus on the relationship between members and their communities:
- consider what further support and guidance is needed.

A programme and booking details will be available in the new year.

In the meantime, to register your interest in attending the conference, please e-mail:

annualassembly2005@standardsboard.co.uk

Suspensions, and what they mean for members

The Local Government Act 2000 enables The Adjudication Panel for England and standards committees to suspend and partially suspend members found to be in breach of the Code of Conduct, but it does not stipulate exactly what members can and cannot do in their official capacity during the term of suspension.

This has led to confusion in some authorities as to what, if any, representative roles a suspended member can perform, what council facilities they are allowed to use, and what entitlements they can continue to receive as a suspended member.

Full suspensions

Members under full suspension should not:

1. Take part in any formal business of the authority

A member suspended by a case tribunal or standards committee is not able to take part in the formal business of the authority during the period of the suspension. Section 83(9) of the *Local Government Act* further provides that a suspended member should not participate in any committee or sub-committee of the authority. Suspended members should therefore not perform any official duties that follow on from their position as a member, or attend council meetings in their capacity as a member. They also should not meet council officers to conduct council business.

2. Have access to council facilities

Suspended members should not use or have access to council facilities. Under paragraph 5(b)(ii) of the Code of Conduct, council facilities should be used

only "to facilitate or be conducive to the discharge of the functions of the authority or of the office to which the member has been elected or appointed". As the member is under suspension and unable to conduct council business, it follows that any use of council facilities by a suspended member would not be conducive to the discharge of the functions of the authority as the member would not be performing council business while suspended.

3. Receive their council allowance

Under Regulation 4(3) of the *Local Authorities* (*Members Allowances*) Regulations 2003, councils may specify in their member allowance schemes that: "where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with part III of the *Local Government Act 2000* or regulations made under that Part, the part of basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority."

We recommend that members should not receive their allowance while under suspension because they are not performing their role as a member, but the decision to withhold a member's allowance is at the discretion of the individual authority.

However, members under suspension should:

1. Make their suspended status clear

Members should put 'suspended' after their name when referring to themselves in writing as members, and notify constituents when contacted by them on constituency business. This is to ensure that all concerned are aware that the member is under suspension and unable to perform council duties.

2. Make arrangements for another member to handle their constituency work

With help from their council officers, suspended members can make arrangements for other ward members — or, in the case of a single-member ward, neighbouring ward members — to take over their constituency work for the duration of the suspension, ensuring constituents continue to be democratically represented.

3. Abide by the appropriate provisions of the Code of Conduct

Suspended members are still covered by paragraphs 4 and 5(a) of the Code of Conduct, which apply in all circumstances.

Since suspended members will not be able to act in an official capacity, they will not usually be covered by the remaining provisions of the Code of Conduct. One exception to this rule would be attendance at council meetings. The Court of Appeal made it clear in the recent Richardson decision that members should always be regarded as attending council meetings in their official capacity. In our view, this principle should also apply to suspended members. Accordingly, we

consider that a suspended member with a prejudicial interest in a particular matter should not be permitted to attend a council meeting where that matter is discussed, even just as a member of the public in the public gallery.

However, we consider that suspended members without any prejudicial interests should be permitted to attend council meetings in the same way as ordinary members of the public.

Partial suspensions

Members can be partially suspended under sections 83(9) and (10) of the *Local Government Act 2000*. While members who are fully suspended cannot take part in any formal business of the authority during the period of suspension, members who are partially suspended are restricted only from certain activities or business.

The terms of a partial suspension must be set by the case tribunal of The Adjudication Panel for England or standards committee during sentencing. It will often involve suspension from certain committees, or restricted access to certain areas or individuals.

A partial suspension enables the tribunal to tailor a sanction to the particular breach, while still allowing the member to carry out other functions. For instance, a member who failed to uphold the Code of Conduct at a planning committee could be suspended from taking part in planning committee meetings for a certain period. Or a member who bullied licensing officers about an application might be barred from contact with officers of the licensing department for a certain period.

We again recommend that, for the duration of the suspension, members should not receive allowances relating to areas in which they are suspended from acting.

What can a council do when a member is suspended?

Officers and members of the authority should be informed of a member's suspension and advised of the suspended member's rights and obligations, as detailed earlier. The council should also help the member make arrangements for another member, either from his or her ward or a neighbouring ward, to take over constituency work. It may also notify the public in the authority's area that the member is suspended and unable to perform official council duties until the end of the suspension.

Once the suspension has ended, the member is free to resume his or her duties in full as a member of the authority.

Do you have enough independent representatives?

A situation arose recently where an independent representative was precluded from sitting at a standards committee hearing due to a conflict of interests. It is worth remembering that there is no limit to the number of independent representatives you can have on your

standards committee. The Standards Board for England's guidance recommends that you have at least two independent representatives, even if the committee only has the minimum requirement of two councillors. The Board's guidance is intended to avoid situations where meetings may become inquorate (and therefore invalid), and to prevent the independent representative becoming isolated.

Case Review sheds light on legal issues

The role of the Code of Conduct in members' private lives is just one of the issues explored in the second volume of The Standards Board for England's *Case Review*, published in September. It's available to view and download from The Standards Board for England's website at:

www.standardsboard.co.uk/publications/case_review.php

Another section looks in detail at cases involving certain kinds of misconduct, including mistreatment of officers and release of confidential information. It reviews the underlying issues of the cases and comments on the tribunal decisions.

A copy of the publication has been sent to all monitoring officers. Additional copies are available at a cost of £15 each.

We also have a limited number of copies of the first edition, which includes a paragraph-by-paragraph analysis of the Code of Conduct, at a cost of £20 each.

To place an order, call 020 7378 5036 or 020 7378 5025 or write to:

publications@standardsboard.co.uk

Discussing referral letters

When the Standards Board for England decides to refer a complaint for investigation we issue a referral notification letter to the person who made the complaint, the person against whom the allegations were made, the relevant monitoring officer and, where appropriate, the parish clerk. A monitoring officer may decide to share the letter with the relevant authority's standards committee. Discussing referral notification letters can benefit standards committees in promoting and maintaining high standards of conduct by:

- providing a source of guidance that can aid standards committees in developing an internal framework of ethical governance;
- alerting standards committees to member conduct that could be addressed by training on the Code of Conduct, or by the monitoring officer;
- aiding standards committees in reviewing the authority's current procedures and protocols in terms of their ethical consistency;
- forming part of standards committees' audits of authorities' ethical performance.

If a monitoring officer decides to share a referral notification letter with a standards committee, we recommend they consider the letter confidentially.

Our referral notification letters are in the public domain. The information contained in these letters is of a different nature to that contained in a draft ethical standards officer's report, which is protected under statute. They do not relate to ongoing investigations and do not represent findings of fact. We mark these letters private and confidential to ensure that only the addressee opens them, much as a bank does with its statements. However, the Board cannot, and does not want to, control what the addressee chooses to do with them.

We do, of course, urge all parties to use their judgment and consider the possible consequences when discussing Board decisions.

Contacts and more information

If you received this edition of *Standard Committee News* from a colleague but would like your own copies in future, you can subscribe to our mailing in two ways:

- by sending an e-mail to: scnews@standardsboard.co.uk
- · by completing the short form at:

www.standardsboard.co.uk/publications/scnews.php

You can also remove yourself from our mailing list in the same ways.

Contacts

If you would like to comment on *Standards Committee News*, submit ideas for features, or have a question on something you have read, e-mail us at:

scnews@standardsboard.co.uk

For all other enquiries, telephone 0845 078 8181 or e-mail:

enquiries@standardsboard.co.uk

More information

You can get information on The Standards Board for England and the Code of Conduct from our website, www.standardsboard.co.uk, including:

- past issues of Standards Committee News:
 - www.standardsboard.co.uk/publications/scnews.php
- presentations and handouts from the Third Annual Assembly of Standards Committees:

www.standardsboard.co.uk/events/archive.php

- · guidance:
 - www.standardsboard.co.uk/code_of_conduct/guidance.php
- frequently asked questions:
 - www.standardsboard.co.uk/code_of_conduct/questions.php
- summaries of standards committee determinations, along with other cases:

www.standardsboard.co.uk/redirect.html