

Over the past two years, the Code of Conduct has become established within local authorities as an essential tool in promoting good standards of conduct. The Standards Board for England now needs to develop its role from helping with compliance to contributing to the building of stronger local cultures.

We want to work towards a situation where local issues are dealt with at a local level wherever possible. We will support standards committees and monitoring officers to carry out this work. In order for this to happen, we do, of course, need the much-delayed Section 66 regulations to be in place and working.

The consultation period for the local investigations regulations has now ended. We hope to have a clearer idea of the timetable for their implementation shortly, and will share it with you as soon as we know.

[David Prince, chief executive](#)

## [Speeding up case work](#)

The Standards Board for England has contacted local authority monitoring officers seeking applications for secondments to help speed up on throughput of cases. They will be involved with the processing of allegations when they are first received.

The Board is also looking to recruit a special team to strengthen the investigations function, to be employed for six months in the first instance. The Board is committed to speeding up our throughput of cases while maintaining the quality and probity of our investigations. The recruitment of a special team of investigators and experienced colleagues are part of measures that will be announced over the coming weeks.

## [Appealing against referral decisions](#)

A new appeals procedure gives complainants and other interested parties the power to ask The Standards Board for England to look again at allegations of misconduct that have been turned down for investigation. The procedure covers all decisions made by the head of The Standards Board for England's Referrals Unit.

We described the right to review these decisions in a letter to monitoring officers in March 2004. The letter explains that the Board is now able to delegate its referral function, under an amendment by the Government to the

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primary legislation (Section 112 of the *Local Government Act 2003*). Before this amendment, the Board could not delegate its referral powers, and because of this, its decisions could only be reviewed by judicial review.

The Board has now delegated its referral function to the head of the Referrals Unit and has introduced a right of review. Notified parties who are dissatisfied with a decision not to investigate an allegation should write to the chief executive of The Standards Board for England within four weeks of the referral decision, to request a review.

You can speak to your monitoring officer to find out more about the right of relevant parties to request a review.

### Speakers line up to Crack the Code

Sir Brian Briscoe, chief executive of the Local Government Association (LGA), will be among the speakers at the Third Annual Assembly of Standards Committees this September. Sir Brian will take part in the feature workshop, *Best friend or big brother?*, exploring the role of The Standards Board for England and the Code of Conduct in the local government improvement agenda.

Other key speakers confirmed for the event so far include:

- Nick Raynsford MP, minister for local government and the regions;
- Steve Bundred, chief executive of the Audit Commission;
- Ted Cante, associate director of the Improvement and Development Agency (IDeA);
- Paul Croft, president of the Society of Local Authority Chief Executives and Senior Managers (SOLACE);
- Mike Kendall, past president of the Association of Council Secretaries and Solicitors (ACSeS).

### Shaping the future

The theme of this year's conference is 'Crack the Code'. Tim Bogan, The Standards Board for England's communications manager, explains the conference's early popularity:

"This is an opportunity for people who work with the Code of Conduct to shape its future. Those who have booked so far have told us they are keen to talk about the new regulations, which enable local investigations and determinations, and discuss improvements they want to see to the Code of Conduct."

Delegates are also looking forward to considering ways in which problems that affect a whole authority — not just individuals — can be addressed, where the causes or effects of misconduct have become ingrained in an authority's culture, and are not merely isolated incidents.

### Filling up

Places at the conference are rapidly filling up, and delegates are being urged to book soon to avoid disappointment.

The Third Annual Assembly will take place on 13 and 14 September 2004 at the ICC, Birmingham. It is expected to attract over 700 delegates from the local government community, including monitoring officers and standards committee members.

The programme, conventional booking form, and a link to the online booking form are available from The Standard Board for England's website, at:

[www.standardsboard.co.uk/events/](http://www.standardsboard.co.uk/events/)

### Latest statistics from The Adjudication Panel for England

The Standards Board for England referred 89 cases for determination by The Adjudication Panel for England in the 2003–04 financial year. Of these, 17 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



## Procedural questions answered

### Pre-hearing procedural meetings

Our guidance, *Standards Committee determinations*, advises standards committees to follow a pre-hearing process prior to the hearing itself to resolve a range of procedural matters. The pre-hearing process should be carried out in writing, but if the committee needs to hold a face-to-face meeting with one or both of the parties, it should ensure that the subject member and the ethical standards officer are also invited to attend. If the committee only invited one party to attend a pre-hearing meeting, the other might wish to challenge any subsequent decision because the standards committee appeared to be biased.

The agenda for a pre-hearing meeting should be clearly set out and sent to all parties, whether or not they are attending the meeting. That way, all parties will be clear about the content of the pre-hearing meeting, even if one party is unable to attend or decides not to. Similarly, minutes of the meeting should be taken and sent to all parties.

These steps will also help ensure that there is no substantive discussion of the allegation against the member prior to the hearing.

### Composition of hearing panels

Most standards committee hearing panels so far have had five or more members. In our view, panels with five members have proven the most effective in conducting hearings and assuring all parties that they are taking a fair and balanced view of the issues.

### Declaring interests

The normal rules on personal and prejudicial interests apply also to members of a standards committee hearing panel. Members of the panel must declare any relevant interests at each stage of the process and withdraw if they have a clear prejudicial interest. It is important to demonstrate the fairness of the hearing. The appearance of bias could lead to an appeal against the committee's finding.

Clearly, the same issues do not arise for the member who is the subject of the allegation. The subject member has a statutory right to participate in the hearing, and we do not consider that he or she needs to declare an interest.

In the case of a member called as a witness, even if he or she had a personal interest, it is unlikely to be prejudicial. Witnesses are invited to present evidence under the standards committee's statutory power and have no decision-making power.

### Openness during hearings

If the hearing panel chooses to withdraw into private session during a hearing — for example, to consider whether the member failed to follow the Code of Conduct — it should formally exclude the parties, the public and press from that part of the hearing, in accordance with Schedule 12A of the *Local Government Act 1972* as amended by the standards committee regulations. This will ensure everyone understands what is happening.

The committee should also explain to the parties, the public and press, the role of the committee's legal advisor in a private session. In addition, the legal advisor should report to the parties any significant legal advice given to the standards committee during private session, particularly where it may affect the decision of the committee.

### Partial or full suspension: what's the difference?

A full suspension means the member cannot take part in any formal business of the authority during the period of suspension; a partial suspension means the member is restricted only from certain activities or business.

The terms of a partial suspension must be set by the standards committee. It will often involve suspension from certain committees, or restricted access to certain areas or individuals.

A partial suspension enables the committee 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.

## LGA Annual Conference



Do **ethics** matter when you're emptying the bins?

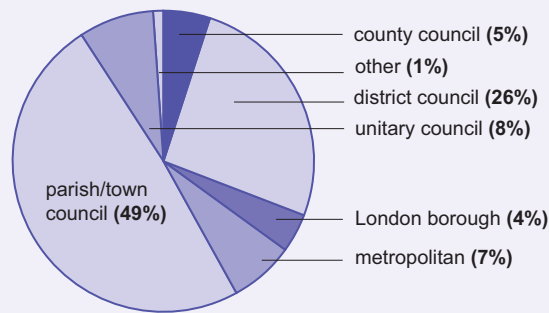
Thursday 8 July 1.00 - 1.50 pm

For further information click [here](#)

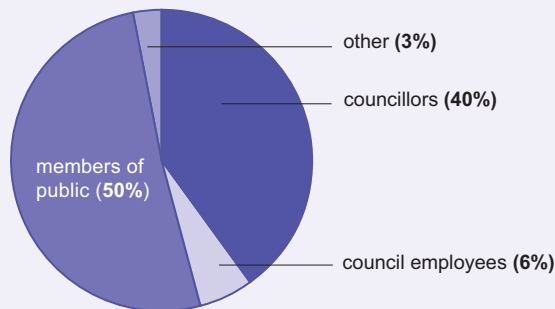
Latest referral statistics

The Standards Board for England received 753 allegations in February and March 2004, bringing the total number of allegations for the 2003–04 financial year to 3566. The following charts show The Standards Board for England's referral statistics for that period.

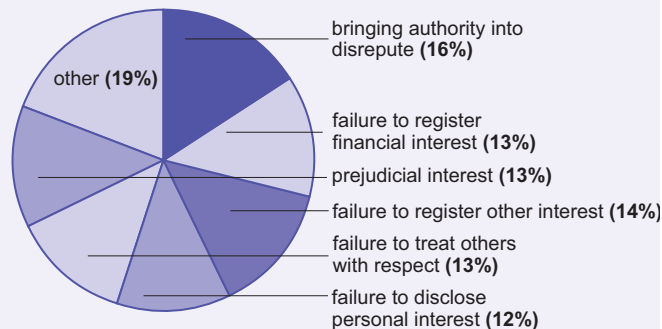
Authority of subject member in allegations referred for investigation



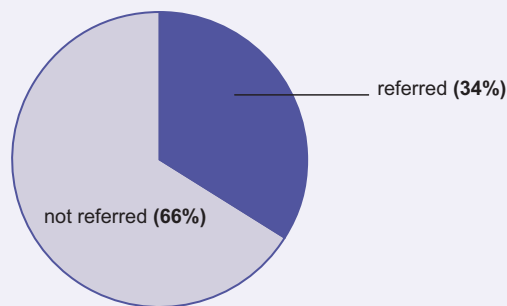
Source of allegations received



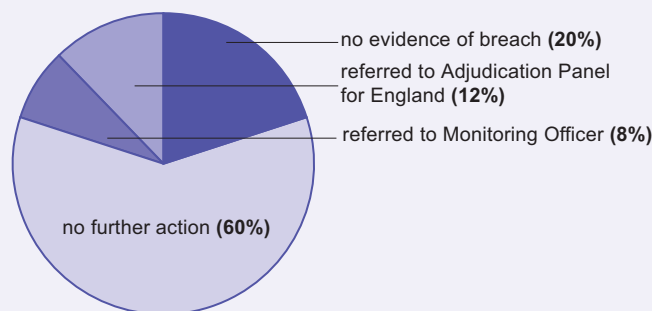
Nature of allegations referred for investigation



Allegations referred for investigation



Final Findings



Appeals against standards committee decisions

Members who have appeared before their standards committee for determination can appeal against the committee's decision within 21 days following notice of the decision.

How to appeal

Members should appeal in writing to the president of The Adjudication Panel for England. The member must outline the reasons for their appeal and state whether they would like it to be carried out in writing or in person. The president will consider whether there are reasonable grounds for an appeal. The member will receive notification of the president's decision within 21 days of receipt of the application. The president will also notify:

- the ethical standards officer concerned;
- the standards committee that made the original finding;
- the standards committees of any other authorities concerned;

- any parish councils concerned;
- the person who made the allegation.

The appeal hearing

If permission for appeal is granted, the president of The Adjudication Panel for England will arrange a tribunal to deal with the member's appeal. It will consist of at least three members of The Adjudication Panel for England, chosen by the president.

The member can be represented at the appeal hearing by counsel, a solicitor or any other person they choose. If they want to have a non-legal representative, the member must get permission from the tribunal beforehand. The tribunal may prevent that person acting as a representative if he or she is directly involved in the case.

The tribunal can choose its own procedures, but it is likely that the ethical standards officer, a member of the standards committee and the subject member, will be given the opportunity to make representations or be represented at the appeal hearing.

Depending on the timescale set by The Adjudication Panel for England, the standards committee may need to meet outside its normal schedule to discuss and approve any submissions to the appeal tribunal, and to decide whether or not to send a representative to observe or to make submissions if invited.

### The appeal findings

The appeal tribunal will consider whether or not to uphold or dismiss part or all of the finding made by the standards committee. If the tribunal upholds the standards committee's finding (full or in part) it may:

- agree with the penalty set by the standards committee;
- ask the standards committee to set a penalty if it has not already done so;
- ask the standards committee to set a different penalty to that already set.

If the tribunal dismisses the finding of the standards committee, the decision and any resulting penalty will no longer apply. The standards committee must act on any directions given by the appeals tribunal.

More information on the appeal hearing processes, and a form for appealing against standards committee determinations, can be found on The Adjudication Panel for England's website at:

[www.adjudicationtest.com/index.php?page=Procedures](http://www.adjudicationtest.com/index.php?page=Procedures)

## Q&A

### Do appeals affect the timing of sanctions?

No, sanctions applied against members by a standards committee come into force immediately and are not stayed pending the appeal. However, the standards committee does have the discretion to suspend or partially suspend the sanction while the subject member seeks an appeal.

### Do appeals affect the public notice of standards committee decisions?

No, the standards committee must follow the normal rules on publishing notice of its decision, even if there is an appeal.

### Dispensations and when to apply for one

In a number of recent cases, members with a prejudicial interest would not have broken the Code of Conduct if they had asked for, and received, a dispensation from their standards committee. Standards committees and monitoring officers may want to reinforce this message with members.

Consider the following scenario:

*A number of members of a single authority were also members of a local pressure group. A matter that affected the group directly was placed on the agenda in advance of a meeting, but the members failed to declare a prejudicial interest during the meeting and withdraw, concerned that if they did so, the meeting would become inquorate. Consequently, an allegation was made against the members for failing to declare an interest in the matter under discussion.*

In these circumstances, the members could have sought a dispensation in advance from their standards committee. *Under the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002*, a standards committee can grant a dispensation to a member if:

a. *the transaction of business of the authority would, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because:*

i. *the numbers of members of the authority that are prohibited from participating in the business of the authority exceeds 50 per cent of those members that are entitled or required to participate; or*

ii. *the authority is not able to comply with any duty which applies under section 15(4) of the Local Government and Housing Act 1989;*

b. *the member has submitted to the standards committee a written request for a dispensation explaining why it is desirable.*

Members should still declare a personal interest in matters in which they have been granted dispensation. As a matter of good practice, members should also state that they have been granted a dispensation.

All requests for dispensations are granted at the standards committee's discretion. Each application should be judged on its merits taking into account the specific nature of each member's interest and the issue in which the interest arises. In some cases, it may be appropriate to grant a dispensation for certain interests but not others.

The Standards Board for England cannot grant dispensations.

### Standards committee determinations update

To date, ethical standards officers have referred 58 cases to monitoring officers for local determination by standards committees. There have been 37 hearings so far:

- 15 resulted in suspensions ranging from one month to three months;
- 17 resulted in censure;



- in four cases, standards committees found that the members failed to follow the Code of Conduct but that no further action should be taken;
- in one case, the standards committee found that the member had not failed to follow the Code of Conduct.

### Appeals

The Adjudication Panel for England has heard one appeal against a standards committee's decision. The standards committee of North Kesteven District Council found that a member had failed to declare a personal and prejudicial interest in a planning application. The committee's original decision was upheld. A summary of the case is available at:

[www.standardsboard.co.uk/cases/authorities\\_n/N\\_SBE2158\\_03.php](http://www.standardsboard.co.uk/cases/authorities_n/N_SBE2158_03.php)

Three findings are still subject to appeal.

### Case summaries

The following case summaries have been published on our website since February 2004:

- Councillor Cotton, Ilfracombe Town Council:

[www.standardsboard.co.uk/cases/authorities\\_i/I\\_SBE2653\\_02.php](http://www.standardsboard.co.uk/cases/authorities_i/I_SBE2653_02.php)

- Councillor Odze, London Borough of Hackney:

[http://www.standardsboard.co.uk/cases/authorities\\_h/H\\_SBE1731\\_02.php](http://www.standardsboard.co.uk/cases/authorities_h/H_SBE1731_02.php)

- Councillor Les, North Yorkshire County Council:

[http://www.standardsboard.co.uk/cases/authorities\\_n/N\\_SBE1839\\_02.php](http://www.standardsboard.co.uk/cases/authorities_n/N_SBE1839_02.php)

- Councillor Doherty, Blackpool Borough Council:

[http://www.standardsboard.co.uk/cases/authorities\\_b/B\\_SBE1640\\_02.php](http://www.standardsboard.co.uk/cases/authorities_b/B_SBE1640_02.php)

- Councillor Kersh, Blackpool Borough Council:

[www.standardsboard.co.uk/cases/authorities\\_b/B\\_SBE1641\\_02.php](http://www.standardsboard.co.uk/cases/authorities_b/B_SBE1641_02.php)

- Councillor Simister, Harrogate Borough Council:

[www.standardsboard.co.uk/cases/authorities\\_h/H\\_SBE1426\\_02.php](http://www.standardsboard.co.uk/cases/authorities_h/H_SBE1426_02.php)

- Councillor Wilson, Nailsea Town Council and Flax Bourton Parish Council:

[www.standardsboard.co.uk/cases/authorities\\_n/N\\_SBE1028\\_02\\_2.php](http://www.standardsboard.co.uk/cases/authorities_n/N_SBE1028_02_2.php)

- Councillor Robinson, Congleton Borough Council:

[www.standardsboard.co.uk/cases/authorities\\_c/C\\_SBE2487\\_03.php](http://www.standardsboard.co.uk/cases/authorities_c/C_SBE2487_03.php)

- Councillor Lingard, Billingborough Parish Council:

[www.standardsboard.co.uk/cases/authorities\\_b/B\\_SBE1297\\_02.php](http://www.standardsboard.co.uk/cases/authorities_b/B_SBE1297_02.php)

### The view from the chair

#### Inside a standards committee hearing, North Kesteven District Council

*Many standards committee members have asked us what it is like to hold a hearing into a case of alleged misconduct. To find out, we asked Elizabeth Bowers, independent chair of a recent hearing into possible misconduct by a councillor at North Kesteven District Council.*

*We avoided any discussion of the details of the case, which was subject at the time to an appeal to The Adjudication Panel for England.*

#### Who was on your panel?

The standards committee decided to follow the route of a five-member sub-panel to hear the matter, consisting of an independent member, three district councillors and a parish councillor.

#### Did you undertake any training before the hearing?

Yes, we did two training courses covering the process of local hearings and especially the powers of the committee. One session was organised by the council and one run by an external group. We found one session extremely useful — a role-play exercise in which we each took the part of one of the people involved in a standards committee hearing. Our second training session took place only a few weeks before the hearing so it was still fresh in our minds.

I think it is absolutely essential for members to undergo training to ensure that the hearings are dealt with in a proper manner.

In my opinion, independent members would also benefit from having training in chairing committee meetings, if they lack any previous experience. As an independent member, I found that my previous experience of chairing board meetings, representing clients before a court, and my general legal background, were most helpful.

#### Did you do anything else to prepare for the hearing?

One of the most important things I found was gaining the support of others involved in the process. The support of my fellow panel members — all experienced councillors — enabled me to carry out my functions and to deal with the proceedings as I thought appropriate. In addition, I met with the monitoring officer prior to the hearing and his advice and guidance were of great value.

#### How useful was The Standards Board for England's written guidance?

I thought the guidance was very useful, particularly when setting out the procedures to be followed. However, we would have also liked more guidance on the penalties. For example, what is the difference between suspension and partial suspension? This may seem obvious, but in fact, it is not.

#### How did the pre-hearing process work?

Although the case we heard was not complex, in that no

facts were disputed and the respondent called no witnesses, the pre-hearing process enabled the sub-panel to discuss the procedure and to consider whether there were any particular questions we might wish to ask either the respondent or the legal representative of the ethical standards officer.

We arranged to meet half an hour before the start of the hearing so that I could make a note of any questions that panel members wished to ask. This helped me plan the overall course of the hearing. Members were free to ask further questions through me if any arose during the hearing, which they did.

#### Did you explain the process at the hearing?

As this was our first hearing, I asked the monitoring officer to explain the procedure to all parties. However, I imagine that at any future hearings this will be my function as chair. We had to clarify a few points for the parties during the hearing to ensure they understood specific issues.

We followed the written procedure approved last year by the full standards committee and it worked very well.

I was careful throughout the hearing to ensure that it was fair and that the respondent had every opportunity to challenge the allegations made against him.

#### What was the role of the monitoring officer during the hearing?

The monitoring officer was present and available at all stages of the hearing to offer advice if required. In accordance with our procedure, he outlined for members the facts that had been agreed and not agreed, as stated in the pre-hearing summary. This had been produced in advance of the hearing by the monitoring officer and given to the respondent, the sub-panel and the ethical standards officer's representative.

When the sub-panel retired to consider in private whether or not the respondent had failed to comply with the Code of Conduct, we asked the monitoring officer to remind us of the relevant sections of the Code of Conduct and the principles that had allegedly been breached, to ensure that we did not omit any of these from our deliberations. We also asked the monitoring officer to advise us when we later considered the penalty to be imposed and the recommendations made. I believe the monitoring officer's advice was crucial in ensuring that our deliberations were conducted in a proper manner.

#### What did you take into account when deciding on a penalty?

The sub-panel took into account the nature of the breaches of the Code of Conduct and the likely consequences of the penalty on the electorate.

#### Did you publicise the hearing?

Yes, we publicised it in the same manner as all council meetings, by sending the agenda and accompanying papers to the local press and radio stations. Reporters from three local newspapers and BBC Radio Lincolnshire attended the hearing. The local county

newspaper published the meeting in the list of local council meetings. Several local newspapers and local radio stations published reports of the hearing and of the appeal made by the respondent.

#### How did you find the appeal process?

The respondent informed the monitoring officer after the hearing that he wished to make an immediate appeal. He was then supplied with the application form and given assistance by the member services officer.

Some members of the sub-panel were concerned that by the time the member's appeal had been heard the penalty would almost certainly have been served, because the penalty is not automatically suspended while an appeal is carried out.

*The Adjudication Panel for England recently heard an appeal into the standards committee's finding. The appeal tribunal upheld the committee's finding and the sanction it imposed.*

#### Where to get more information

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

- Third Annual Assembly of Standards Committees:

[www.standardsboard.co.uk/events/](http://www.standardsboard.co.uk/events/)

- guidance:

[www.standardsboard.co.uk/code\\_of\\_conduct/](http://www.standardsboard.co.uk/code_of_conduct/)

- frequently asked questions:

[www.standardsboard.co.uk/code\\_of\\_conduct/questions.php](http://www.standardsboard.co.uk/code_of_conduct/questions.php)

- summaries of standards committee determinations:

[www.standardsboard.co.uk/cases/index.php](http://www.standardsboard.co.uk/cases/index.php)

#### Subscriptions

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[www.standardsboard.co.uk/publications/scnews.php](http://www.standardsboard.co.uk/publications/scnews.php)

You can remove yourself from the list at the same place.

#### 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:

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