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Consultation on the review of the Code of Conduct is now closed and the task of analysing the many responses is underway. Thank you to all who participated in this exercise. It has provided a key opportunity for us to work with local government to develop a stronger, better Code of Conduct, and the large number of responses we have received demonstrates that there is a healthy debate in progress.

The following months will be of particular interest, both to myself and The Standards Board for England as a whole, as the results of the consultation emerge. Some of our early findings are included here in an article on page 2, which should whet your appetite for the final report. We hope to bring you that in the next issue of the *Bulletin*.

Thanks also to everyone who attended our roadshows, which drew to a close last month. We spoke with approaching 1,000 monitoring officers and standards committee members and, in separate but related events, chief executives and leaders, across 11 regional venues. Your feedback and comments have been invaluable in supplementing the written submissions for the review of the Code of Conduct and in shaping our work in general.

David Prince, chief executive

## Code allows for public-interest defence

In certain circumstances, a full public-interest defence can and should be read into the provision in the Code of Conduct prohibiting the disclosure of confidential information, according to a recent decision by The Adjudication Panel for England.

The decision in the case of Paul Dimoldenberg, a Westminster City councillor, has provided the first fully argued and reasoned decision on the impact of the European human rights legislation on an alleged failure to comply with paragraph 3(a) of the Code of Conduct.

In a preliminary issue in the hearing of the case, The Adjudication Panel ruled that the paragraph failed to take proper account of the *European Convention on Human Rights*. It stated that the proper interpretation of that paragraph was to allow for the disclosure of information of a confidential nature where it is in the public interest to do so.

This means that, in the right circumstances, if publication were found to be justified in the public interest, the disclosure would not be a breach of paragraph 3(a) at all.

The decision made it clear that all public-interest issues need to be taken into account by an ethical standards officer and the case tribunal, when considering whether there has been a breach of paragraph 3(a). It was also made clear that these types of issues, and the sometimes-delicate balancing act they will entail, will often need to be decided by an independent tribunal.

On the particular facts of Councillor Dimoldenberg's case, there was no public-interest defence. There was clear evidence of unjustified disclosure of information which had previously been classified as highly confidential by a High Court judge. Therefore, it would not have been appropriate for the ethical standards officer to reach an 'a' or 'b' finding.

An 'a' finding — one of no evidence of a breach — was clearly not available to the ethical standards officer, and the nature of Councillor Dimoldenberg's defence and mitigation demanded the scrutiny afforded by an independent tribunal. In the circumstances of this particular case, and taking into account the mitigating factors, the case tribunal decided to impose no sanction.

The full decision of The Adjudication Panel for England in this case is available at:

[www.adjudicationtest.com/documents/ape\\_0241\\_final\\_decision\\_copy1.pdf](http://www.adjudicationtest.com/documents/ape_0241_final_decision_copy1.pdf)

### Annual Assembly gets Law Society accreditation

Solicitors attending this year's Annual Assembly of Standards Committees will earn credits towards their Continual Professional Development now that the conference is certified to count towards the Law Society scheme.

The addition of the conference to the list of recognised courses is acknowledgement of the level of expertise that the Board has developed concerning ethics in local government, and the considerable learning opportunities offered by the conference to local government solicitors - one of the key audiences, alongside standards committee members.

The conference will tackle issues of importance for monitoring officers such as the key components of conducting local investigations and standards committee hearings. The conference was assessed on a range of criteria, such as content, relevance, organisation and suitability.

### In good company

Phil Woolas MP, the new minister for local government, was recently confirmed as a key speaker at the event. Mr Woolas joins other familiar names from the world of local government, including Sir Alistair Graham, Chair of the Committee on Standards in Public Life, Gifty Edila, President of the Association of Council Secretaries and Solicitors, and Kate Priestley, Chair of the Local Government Leadership Centre. The conference will be

the first opportunity to hear the minister following our extensive consultation on the review of the Code of Conduct, as well as being a great opportunity for standards committee members and monitoring officers to meet each other and discuss issues of mutual interest.

Booking has been very brisk for this year's conference. The two-day event, to be held on 5 and 6 September, will focus on local ownership of the Code of Conduct, local investigations and local hearings. With limited capacity, and workshop preferences being snapped up quickly, anyone who has not yet booked is being urged to do so now.

More details and an online booking form are available at:

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

### The ups and downs of case summaries

Summaries of cases where ethical standards officers consider there is no evidence of a breach of the Code of Conduct will be taken down off the website after only six months, following a recent review of the policy by the Board. Previously, these cases remained up for two years.

The policy for all other cases remains the same — the summary will remain on the site for two years, from either the closure of the case or, for cases referred to The Adjudication Panel or local standards committee, from the hearing date or completion of any sanction, such as a suspension or disqualification.

You may have noticed that some case summaries are taking a little longer to appear on our site than usual. We have been busy over the last few months clearing the backlog of 400 cases that built up while we were awaiting the local investigations regulations.

We are working hard to catch up with the workload and hope to be hitting or even beating our target for publishing case summaries by September, which is 90% within one month. In the meantime, please accept our apologies for any delays, which we know can be frustrating.

### Local investigations DVD makes the cut

Work has started on the production of a DVD to promote best practice in local investigations and hearings.

The DVD, intended to be of particular value to monitoring officers and standards committee members, will include filmed scenarios illustrating some of the common areas of difficulty and our recommended solutions. There will also be a section on the importance of local ownership of the Code of Conduct and The Standards Board for England's role in supporting its implementation.

The DVD should be available by the end of September.

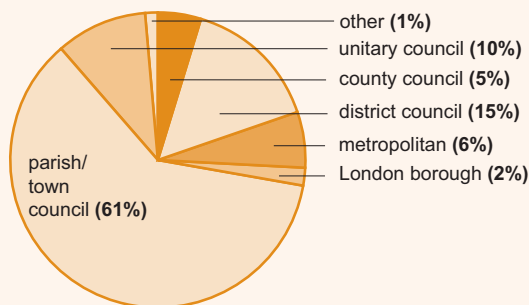
Thank you to everyone who responded to our request in the last Bulletin for feedback on the format. Respondents were unanimously in favour of DVD over video cassette.

Referral statistics

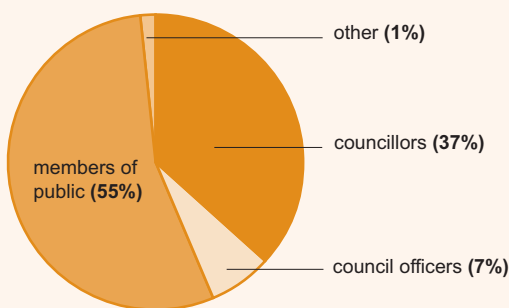
The Standards Board for England received 306 allegations in April and 328 allegations in May, giving a running total of 634 so far for the current financial year.

The following charts show The standards Board for England's referral statistics for that period.

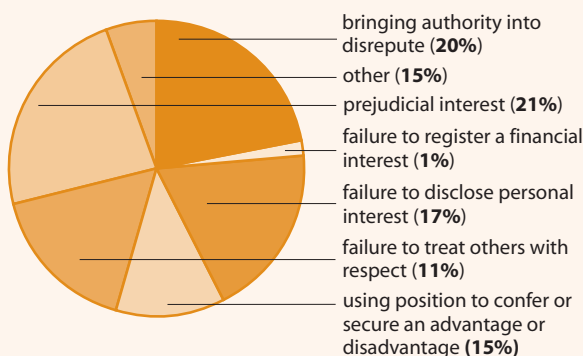
Authority of subject member in allegations referred for investigation



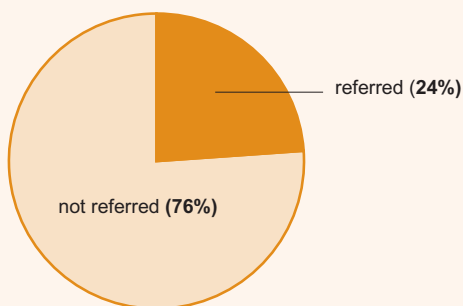
Source of allegations received



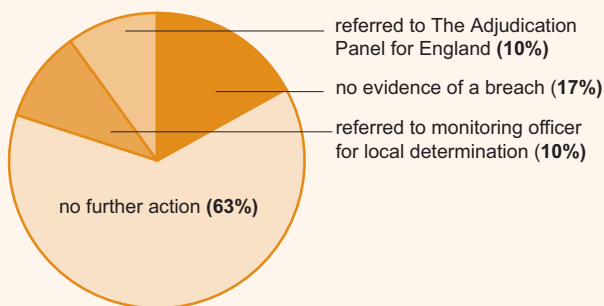
Nature of allegations referred for investigation



Allegations referred for investigation



Final findings



Local investigations statistics

- Ethical standards officers referred 142 cases to monitoring officers for local investigation between November 2004, when referrals began, and the end of May 2005 — equivalent to 30% of cases referred for investigation over that time.
- 25 reports have already been received from monitoring officers, and there have been six standards committee decisions on cases investigated locally.
- The average time taken to complete a case is three months, although the sample for this figure is currently quite small.

Three-month limit on hearings explained

The recent case of *Dawkins v Bolsover* established the principle that authorities need to make every effort to hold a hearing within three months of receiving the case from an ethical standards officer (see *Bulletin 22*, page 4). But just how rigid is this limit, and are there any exceptions to the rule?

Paragraph 6(2)(b) of the *Local Authorities (Code of Conduct)(Local Determination) Regulations 2003* states that a hearing must be held within three months of the reference from the ethical standards officer. Authorities are encouraged to ensure that hearings are held as soon as possible and within this time limit imposed by legislation. The standards committee does have jurisdiction to delay the hearing if something unexpected or unforeseen occurs which

prevents it from meeting the time limit, but it is not sufficient that a subject member may not have any objections to the hearing being held outside of the three-month period.

The following list illustrates the type of events that may be considered unexpected or unforeseen, although it is by no means exhaustive:

- illness of the subject member or any of the standards committee members;
- bereavement suffered by the subject member or any of the standards committee members;
- other important engagements which cannot be altered, such as hospital appointments and jury service;
- the subject member being called to work out of the country for a long period of time.

### Key issues emerge as Code consultation closes

Over 1,000 individuals, authorities and other organisations responded to our consultation on the review of the Code of Conduct, which formally closed on 17 June. We have been very pleased with the warm welcome the review has received. We believe it is important that any revisions to the Code reflect real experiences, and the constructive comments received will help us make recommendations for change that reflect the views of local government as a whole.

#### Early findings

Responses analysed so far indicate a general agreement with the principles behind many areas of the Code of Conduct, but respondents have highlighted a number of provisions that could be added, amended or dropped altogether. The majority of respondents, for example, believe the ten general principles of public life should be added as a preamble to the Code and the majority of respondents would also welcome a specific provision on bullying.

Although our analysis is ongoing, the following areas have emerged as leading issues. We hope to make our recommendations on the Code of Conduct to the Government in the Autumn, and will include a final report in a future issue of the *Bulletin*.

#### Private lives and public conduct

The contentious question of whether aspects of a member's private life should continue to be subject to the Code of Conduct has attracted a varied response. Those in favour of the status quo argue that public figures have a position of trust and responsibility that should be met with high standards of behaviour at all times. Those in favour of relaxing the provisions covering a member's private behaviour contend that private lives should not be brought into the political arena. A number of respondents took the view that private conduct should only be regulated where it has an impact on a member's ability to perform their official duties.

#### Whistleblowing

The majority of respondents are in favour of retaining the 'whistleblowing' clause requiring members to report suspected breaches of the Code of Conduct by fellow members. But a significant minority believe that the provision should be removed as it simply prompts petty and malicious complaints and that we should rely on the integrity of members to report any serious abuses they become aware of.

#### Confidentiality

The thorny issue of releasing confidential information has provoked a wide range of views. The majority of respondents agree with our view that disclosing information which is not legally classified as confidential should not be a breach of the Code of Conduct. There has also been broad support for considering the public-interest aspect of any disclosure.

#### Personal and prejudicial interests

Unsurprisingly, the issue of declaring interests has prompted a lot of comment. The majority of respondents believe that the personal interest test should be narrowed, so that members need not declare interests shared by a substantial number of other inhabitants in an authority's area. A majority of respondents also think that less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups.

### First direction issued over parish with problem

A parish council with evidence of longstanding personal conflict and communication problems is to get mediation and training support from its principal authority as a result of directions issued by an ethical standards officer. This is the first time a direction has been issued, using powers which came into force as part of the local investigations regulations.

The powers derive from regulation 5 of the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003* as amended by the *Local Authorities (Code of Conduct) (Local determination) (Amendment) Regulations 2004*. The regulation enables ethical standards officers to direct monitoring officers to take action other than investigation to resolve local problems, such as reviewing procedures to make them more robust or, as in this case, getting councillors to sit down and work out their problems together.

#### Tackling problems at the root

Some allegations reveal longstanding problems or more deeply ingrained issues within an authority which investigations alone are not able to address. The directions power is an important tool because it allows us to tackle these problems at the root and make a lasting difference to the way an authority is run.

In this instance, 76 allegations had been received about council members since April 2002, suggesting a history

of conflict and communication problems. A number of these allegations were investigated, but it became apparent that the investigations were unable to resolve the underlying problems. Therefore, due to the overriding need to improve the functioning of the council, both in the public interest and in the interest of members themselves, the direction was issued.

The ethical standards officer directed the monitoring officer of Mendip District Council to arrange mediation between the members and organise training and guidance on conflict resolution and parish council procedure. The monitoring officer has to report back to The Standards Board for England within three months, setting out progress on both aspects of the direction. The ethical standards officer may then decide to issue a statement on the matter in a local newspaper.

Vivienne Pay, the monitoring officer of Mendip District Council, is happy to be contacted with any questions or for further information on this matter. Please telephone 01749 341538 or e-mail:

[payv@mendip.gov.uk](mailto:payv@mendip.gov.uk)

### Correction to Bulletin 24

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The story *High Court considers prejudicial interests test*, featured on page 2 of *Bulletin 24*, contained a number of factual errors.

The first sentence of the article may have been misleading. It should have read: "Ignorance is not bliss, according to the High Court, which last month confirmed that councillors who wrongly believe that their interest in a matter is not prejudicial will still be subject to the rules of the Code of Conduct."

The point being made by the court was that the prejudicial interest test is objective. If a standards committee or case tribunal concludes that an interest is,

viewed objectively, prejudicial, then the member has a prejudicial interest. The member cannot argue that because he or she genuinely tried to apply the test but came to a 'wrong but reasonable' conclusion, he or she had no prejudicial interest.

The High Court ruling does not concern situations where members are genuinely unaware of any personal or prejudicial interest, and we have always taken the view that members cannot be expected to declare interests of which they have no knowledge.

In addition to this, the first sentence of the final paragraph should have stated "The High Court disagreed...", rather than the Court of Appeal. And the judge was Mr Justice Stanley Burnton, not Mr Justice Stanley.

We apologise for the errors contained in the story. The copy of the newsletter available on our website has been corrected and is available at:

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

### Changes to the Bulletin schedule

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The Bulletin will take a break from its normal schedule this September to make way for a special conference newsletter to coincide with the Fourth Annual Assembly of Standards Committees.

The special newsletter will focus on all the important issues arising from the conference, including developments in the review of the Code of Conduct. Even if you are unable to attend the event, we think you will find it interesting and informative. Anyone subscribed to receive the Bulletin will get a copy of the conference newsletter automatically. It will also be available from the events area on our website.

Normal service on the Bulletin will resume in November.