

LEGAL AND DEMOCRATIC SERVICES

Embedding Ethical Standards across the Council Members Bulletin No. 5

Standards Committee Update October 2007



Andrew Neville Chair of Rossendale
Borough Council Standards Committee

What is the purpose of the Standards Committee?

Help promote and maintain the present high standard of conduct by Councillors and Co-opted Members.

Advise, train and assist Members to observe the Council Code of Conduct.

Hear cases alleging breach of the Code which have been referred for local determination.

The purpose of this Bulletin is to bring any developments to all Members attention.

Please let the Chairman or Linda Fisher know if you have found this Bulletin useful or what you would like to see covered in the future.

Mr Andrew Neville - Chairman

Andrew Neville was appointed by the Council as an Independent Member, and he was elected Chair of the Committee in 2005. He was a Councillor until the mid '90's and served on most committees. Having spent over 45 years in business, including 35 as Managing Director of a local company, he retired from the 'rat race' and is assisting the Council and its Councillors to achieve the goals set by the Standards Board for England.

Membership of the Committee

Mr A Neville (Chairman)
Cllr J Pawson (Vice Chair)

Cllr A Cheetham
Cllr J Forshaw
Cllr D Hancock
Cllr D Smith
Cllr J Thorne

Parish/Independent

Cllr J Grogan
Bernard Devine
Anthony Nixon



Cllr J Pawson (Vice Chair)

1. Meeting of the Standards Committee on 9th October 2007

The meeting will deal with Reports on:

- 1. Review of complaints learning, and considering the Local Government Ombudsman's Annual Letter for the year ended 31st March 2007, and the Annual Complaints Review.**
- 2. Whitworth Town Council – Policy on the Use of Facilities by Members.**
- 3. Delivering Good Governance in Local Government.**
- 4. Office of Surveillance Commissioner's Annual Report.**
- 5. Governance Champions.**

2. Amendments to the Local Government Act 2000

The *Local Government and Public Involvement in Health Bill* is currently before the House of Lords, and is expected to receive Royal Assent in the autumn.

An important amendment to the *Local Government Act 2000* is to enable the Code of Conduct to cover some conduct in a private capacity. It will cover conduct which has led to a criminal conviction.

This amendment seeks to address the High Court's decision last year in *Livingstone v Adjudication Panel for England*. Prior to this decision, it was understood that a member could breach the Code through their conduct in a private capacity. The High Court decided that Section 52 of the Act required members to comply with the Code in their official capacity only, and that it could not govern the private conduct of members.

Until the amendment becomes law, private capacity conduct cannot be covered by the Code. Despite the wording in paragraph 2(3) of the Code, only if a member's alleged misconduct is linked to the functions of their office will any conduct in their private capacity currently be covered, even if it results in a conviction.

3. 'To Higher Standards' – Annual Review published

The continuing development of the Standards Board's new role as a strategic regulator, how the new arrangements for a locally based ethical system are

taking shape and the introduction of a new, less restrictive Code of Conduct are the main themes addressed in the Standard Board's *Annual Review 2006-07*.

The Review focuses on the progress that has been made in preparing for a shift in ownership of the ethical conduct regime to a local level. The majority of cases are now being dealt with locally and the introduction of a system of local assessment of complaints is on course to come into effect in April 2008.

In their new role the Standards Board are committed to defining what people can expect the standards regime to deliver. This includes the role of monitoring officers and standards committees, and providing support and guidance to local authorities to help them operate effectively.

The Review also details the Standard Board's achievements over the 2006-07 financial year, which included:

- The majority of their recommendations were implemented by government, leading to the introduction of an improved, less restrictive Code of Conduct
- The initial assessment time for complaints was nine working days
- The Fifth Annual Assembly of Standards Committees was sold out, with an overall satisfaction rate of 91%
- The Standards Board's move to Manchester was successfully completed.

Copies of the Annual Review are available on the website at **www.standardsboard.gov.uk/Publications**

The Standard Board's Annual Report 2006-07 will be laid in Parliament in Autumn 2007 and will be available in hard copy shortly afterwards.

4. Positive support for the Code of Conduct

An overwhelming majority of local authority members, clerks and monitoring officers support the need for a Code of Conduct, according to research undertaken on behalf of the Standards Board.

The research, carried out earlier this year, assessed attitudes towards the Code of Conduct and the ethical environment generally, as well as the degree to which local authorities are prepared for changes in the way the ethical framework will be managed.

The requirement for members to sign a Code of Conduct was supported by 93% of respondents – up from 84% in similar research in 2004.

Unsurprisingly, of those surveyed, monitoring officers and standards committee members showed the most support for the Code. However, 85% of elected members were also in favour.

In comparison to 2004's survey, more respondents also felt that members' standards of behaviour in their authority had improved in recent years, and almost three-quarters of those surveyed felt that members' behaviour was important to the general public.

5. Local filter for Code of Conduct complaints – impact for local authorities

What is happening?

The *Local Government and Public Involvement in Health Bill* proposes the introduction of two key changes to the management of compliance with the Code of Conduct:

- A locally managed framework. This will involve local standards committees making initial assessments of misconduct allegations, and most cases being handled locally.
- A revised strategic regulatory role for the Standards Board. This role is to provide supervision, support and guidance for local authorities and to ensure some degree of consistency in the application of the Code.

Some investigations and hearings are already carried out by authorities. Under the new arrangements, authorities' standards committees will receive all complaints relating to the Code.

Standards committees will decide whether to refer complaints for further action locally, whether to refer complaints to the Standards Board, or whether no further action should be taken. Aside from asking for an investigation, standards committees will also be able to resolve cases by alternative means such as mediation or training. In cases where the committee considers the sanctions

available to it are insufficiently serious, cases can be referred to the Adjudication Panel for England.

It is estimated that individual complaints will take an average of two and a half hours to assess upon receipt. Pilot work on the local filter has shown that standards committees take up to an hour to reach a decision on whether to refer a complaint for further action based on the information available.

It is expected that authorities will refer only some of the complaints they receive for investigation, although the pilot work has indicated that standards committees may refer a greater proportion of the complaints they receive in the earlier stages of the local system, as it becomes established.

Standards committees will have the opportunity to promote high ethical standards in their authority. They can do this through developing effective procedures for managing the local system in the following ways:

1. Responding to and deciding complaints in the right way and on time.
2. Becoming proficient in identifying what is appropriate for investigation/sanction and what is not.
3. Being proportionate in their decisions to the nature of the issue and the harm caused.
4. Aiming to resolve the harm caused by non-compliance, and aiming to deter future non-compliance.
5. Participating fully in the reporting protocols operated by the Standards Board and sharing good practice.

The Standards Board will monitor the operation of the local filter by:

1. Ensuring its reporting systems are as simple as possible whilst allowing them to do their job effectively.
2. Measuring outcomes as well as outputs.
3. Offering support and guidance where authorities may be experiencing difficulties.
4. Using its statutory powers to remove local powers only as a last resort and only after efforts to support the authority have been unsuccessful.
5. Ensuring its monitoring is complimentary to, and does not duplicate, the work of other regulators.

It will also share good practice and ensure that they are responsive, offering guidance and support for local authorities.

6. Future monitoring and audit

The Standards Board's monitoring and audit team is developing the way in which it will monitor, assess and demonstrate compliance with the new statutory regime at local level.

An online information return system, based on periodic returns and an annual report, will be tested with volunteer authorities in autumn 2007. The system will be proportionate to its monitoring needs and will not add undue burden to authorities.

The types of information collected will include:

- the timeliness of standards committee referral and review decisions
- the timeliness of carrying out investigations and hearings
- the outcomes at different stages of the process
- any failure by an authority to meet statutory requirements in respect of its standards committee

The approach is intended to support improvement, to enable authorities to be kept informed at regular intervals about their own performance, and to enable the Standards Board to analyse the information received in order to identify good practice.

7. Gifts and hospitality register

The obligation on monitoring officers to maintain a **separate** register of gifts and hospitality no longer exists following implementation of the revised Code of Conduct for members which does not incorporate paragraph 17 of the 2001 Code.

The absence of paragraph 17 does not mean that the details of gifts and hospitality could not be kept separately from other interests that have to be registered – as long as they form part of the register of interests that monitoring officers are obliged to keep under Section 81 of the Local Government Act 2000. The difference in treatment of gifts and hospitality between the new and old Code is that instead of monitoring officers keeping a separate register for them, they will now form part of the register of financial and other interests.

Section 81(1) of the *Local Government Act 2000* and paragraph 13(1) of the revised Code require elected and co-opted members to notify their monitoring officer of any personal interests that fall within a category mentioned in paragraph 8(1)(a) of the revised Code.

Gifts and hospitality are captured by subparagraph 8(1)(a)(viii) along with the person who gave them. The Standards Board's guidance *The Code of Conduct: Guide for members*, issued in May 2007, recommends that the existence and nature of the gift or hospitality are given, as well as the name of the person who gave it to them.

How this information is held is a matter for each monitoring officer who can decide what works best for them.

8. The Code Uncovered

The Code Uncovered, the Standards Board's new training DVD, has been distributed to all monitoring officers and County Association secretaries. The DVD uses a dramatised scenario to illustrate the lead up to a potentially explosive planning committee meeting, and highlights the key changes to the revised Code of Conduct.

The film examines the rules about declaring interests, disclosing confidential information and bullying. It also features learning points identifying key elements to consider when following the rules governing members' behaviour.

The DVD will be of particular value to councillors who want to increase their understanding of certain parts of the Code.

9. Independent members of standards committees

The Standards Board has been asked the following questions:

Q: "Can an independent (i.e. lay) member of a standards committee also be an independent member of a standards committee of another authority or does membership of the first standards committee mean that they are a 'member' of that authority, making them ineligible to be an independent member elsewhere?"

A: No, it does not make them ineligible

Under section 53(4)(b) of the *Local Government Act 2000*, a standards committee must include at least one person who is not a member, or an officer, of that **or any other** relevant authority.

Also, under regulations, a person cannot be appointed as an independent member of a standards committee unless they have not been a member or officer of **that** authority within the five years immediately preceding the date of appointment.

Section 54(8) of the *Local Government Act 2000* states:

“...a member of a standards committee of a relevant authority in England or a police authority in Wales who is not a member of **the authority** is entitled to vote at meetings of the committee.”

This seems to confirm that membership of the standards committee does not make the independent members into members of the authority. Therefore, an independent member of one standards committee can also be an independent member of another.

Q: “Is an independent member who subsequently becomes an officer with another relevant authority disqualified from being an independent member of the standards committee of their non-employing authority?”

A: No

When an independent member of a standards committee subsequently becomes an officer or member of another relevant authority, they no longer fall within the description of people in section 54(4)(b) of the *Local Government Act 2000*. Therefore, they could not be reappointed to the standards committee as an independent member.

However, an independent member in this situation would not be instantly disqualified from being a member of the standards committee, as there is nothing in the legislation which would require them to resign from the committee after the change has occurred. The committee would have to comply with Section 53(4) of the *Local Government Act 2000*, but it would do so if at least one member of the committee continued not to be a member, or an officer, of that **or any other**

relevant authority. However the qualifying member would then be needed for the duration of every meeting to constitute its quorum.

Therefore, the Standards Board would generally recommend that independent members should resign from membership of a standards committee once they can no longer be reappointed.