

Fire and Rescue Service  
Headquarters, Pirehill  
Please ask for Kay Ross  
DDI (01785) 898670

## **STANDARDS AND COMPLAINTS COMMITTEE**

Thursday 23 October 2009

**10.30 am**

Fire and Rescue Service Headquarters,  
Pirehill

A Chairman's Preview has been arranged, for Mr. Stemp and Mrs. Foulkes only, at  
10.00am

H. Norris  
Secretary to the Authority  
14 October 2009

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### **A G E N D A**

1. Apologies
2. Declaration of Interests
3. **Membership of the Committee**

<b>Independent Members</b>	<b>Authority Members</b>
Mr H Stemp, Chairman Mrs L Foulkes, Vice Chairman Mrs K Breen	Mr J Bernard Mrs K Lamb Mr R Reade Mr A Rigby Mr D Sutton

4. **Minutes of the meeting held on 12 May 2009**
5. **Terms of Reference of the Committee**

The Terms of Reference of the all Committees were reviewed by the Working Group whose findings and recommendations will be reported to the Fire and Rescue Authority at its meeting on 16 October 2009. There were no recommendations made to change the terms of reference of the Standards and Complaints Committee.

6. **Annual Standards Board Conference 12-13 October 2009**

The Annual Standards Board Conference "Bringing Standards in to Focus" was held on Monday 12 and Tuesday 13 October 2009 at the International Convention Centre, Birmingham. Mrs Breen attended the conference.

7. **Overview of the Standards Board, the Standards Committee and their obligations**

Presentation by the Secretary

8. **Code of Conduct and Register of Interests**

Verbal report of the Secretary

9. **Bulletins 44 and 45**

10. **Future Work Plan**

Members to discuss the future work of the Committee

11. **Date of next meeting of the Standards and Complaints Committee**

Thursday, 25 February 2009 at 10.30 am

**MINUTES OF THE STANDARDS AND COMPLAINTS COMMITTEE  
HELD ON 12 MAY 2009**

Present: Mr H. Stemp (Chairman)  
(Independent Member)

Dix, T.A.	Independent Member
Follows, T.	Breen, Mrs K.

Also in Attendance: Mr H. Norris, Secretary

**PART ONE**

Documents referred to in these minutes as schedules are not appended but will be attached to the signed copy of the minutes. Copies, or specific information in them, may be available on request.

**Minutes**

1. The Secretary confirmed that, as mentioned in the minutes, he had written to the Members of the Authority regarding the Purdah Period. Members held a discussion on the cancellation of some meetings at the County Council during the Purdah period.
2. **RESOLVED** - That the minutes of the meetings held on 23 February 2009 be confirmed and signed by the Chairman.

**Annual Standards Board Conference 12-13 October 2009**

3. The Annual Standards Board Conference "Bringing Standards in to Focus" would be held on Monday 12 and Tuesday 13 October 2009 at the International Convention Centre, Birmingham. Nominations to attend the Conference were requested. It was indicated that many of the items at the conference were more relevant to district and parish members. Mrs Breen indicated that she would be willing to attend the Conference for either both days or one. Following the election new Members of the Standards and Complaints Committee would be written to asking them if they would wish to attend the conference and a final decision on the attendance at the conference would be made at that time.
4. **RESOLVED** – That the decision on who was to attend the Annual Standards Board Conference be deferred until after the elections.

**Corporate Governance Framework  
(Schedule 1)**

5. In October 2003 the Authority introduced a Policy and Code of Practice on Corporate Governance. Since 2003 the Corporate Governance agenda had continued to develop with a greater emphasis and examination being placed upon whether organisations were fully embracing the objectives of ensuring ethical actions which include transparency and openness within their organisations. In this respect a joint CIPFA/SOLACE document was formulated entitled "Delivering Good Governance in Local Government: Framework" which set out a best practice framework approach to ensuring that the requirements of good governance policies

and procedures were fully met and that they were constantly monitored and updated. Although the present policy had provided a framework in which to examine our corporate governance approach the report suggested that the Authority should adopt the revised SOLACE model and align all its existing policies to the framework and, where necessary, implements additions to the present suite of complimentary and supporting policies.

The proposed new Code of Corporate governance was appended to the report and was based upon the CIPFA/SOLACE Framework document. The Authority at its meeting on 20 May 2009 would be asked to approve the draft Code.

If the new Code was approved then there would be certain additional tasks to ensure that the terms and obligations of the Code were properly addressed. These would include examining existing policies and updating them as necessary as well as the design and implementation of new elements tailored to meet the requirements of the new code. The Service would need to consider and confirm areas of responsibility for the various elements of the Code to ensure that there were no areas of uncertainty or overlap between the roles of specific officers and the Authority as a whole. This Code of Corporate Governance would be looked at as part of the CAA process.

Mr Norris drew a diagram showing how Corporate Governance was central to most aspects of the Service. The policy tried to compress that. Work would be undertaken to remove any areas of contradiction between policies. The role of the Standards Committee would be to ensure that the policy was followed. The policy outlined the six core principles. Members were informed that monitoring of the policy would take place.

Members were informed that the Service Management Board had approved the policy.

**5. RECOMMENDATION TO FIRE AND RESCUE AUTHORITY** - That the Authority be recommended to approve the revised Code of Practice on Corporate Governance.

**Bulletins 42 and 43**  
(Schedules 2 and 3)

6. The Secretary expanded on issues raised within the Standards Board Bulletins.

Under the Standards Committee (Further Provisions) Regulations 2009 authorities had the ability to have joint standards committees between authorities. The Standards Board had the power of intervention in relation to any Standards Committee that was not carrying out its role correctly.

With regard to “dispensations” the guidance indicated that dispensations to vote should be given, where possible reflecting on the political balance of an authority. There was a lot of interest nationally about predetermination of a decision – Members should go into meetings with an open mind. A Member referred to a recent case at another authority where they had been asked to leave the room on consideration of an item. Mr Norris advised that Members could speak from the floor on such matters providing that the same right had been given to members of the public. Members nationally were frustrated by this issue especially in relation to planning matters.

This Authority had completed its quarterly return. In future the Standards Board would be naming and shaming those authorities that had not completed their annual return. Members were surprised to learn that for the first three quarters of the year 52% of the complaints required no further action.

In response to a question Members were informed that any complaint relating to the conduct of Members in their role for their “home authority” would be referred on to the “home authority” for consideration.

The Authority had also completed its Annual Return to the Standards Board.

The Secretary was to ensure that the levels of indemnities for Members of the Authority and Independent Members of the Authority Standards and Complaints Committee were adequate. Mr Norris would check this with the Authority’s insurers.

The winner of the Standards and Ethics Award category at the 2009 Local Government Chronicle (LGC) Awards was Rossendale District Council. The award was based on the work that that authority had undertaken in relation to organising a conference for standards committee members. Joint Training had previously been held with the Police Authority and County Council in Staffordshire and following the elections this would be discussed again. Members of the Authority would be given a certain amount of training at their home authority.

Members discussed bias and the code of conduct and issues relating to what could be determined as a “close friendship” and how this could be proved or disproved. The bulletin quoted a recent case where bias had been alleged.

Members were informed the BMG Research was setting up some focus groups on behalf of the Standards Board. A Focus Group was being held in Newcastle on 18 May 2009 and Mrs Breen volunteered to attend and details would be forwarded to her.

Guidance on other action was being issued to Monitoring Officers to clarify what “other action” was appropriate and what “other action” might constitute.

The bulletin outlined the Livingstone Case and it was deemed that the findings of the case were still relevant.

**7. RESOLVED** – That the content of Bulletins 42 and 43 be noted.

### **Training Exercise**

8. Members discussed the training exercise for Members and decided that it would be more appropriate to fix a training session for the new Members of the Standards and Complaints Committee who would be appointed following the elections. The training needs of the Members would be assessed in relation to “Standards” knowledge and experience and the training would be tailored to meet the needs of those Members, as some Members may not have had previous experience of public office. The training exercise would use real case studies for consideration and would highlight how things could go wrong when considering complaints. Other issues could be included in the training programme including issues relating to the Code of Conduct. Previously joint training had been undertaken with the Police and the County Council and this would be looked into again.

**9. RESOLVED** – That a comprehensive training session be arranged for the Members of the Standards and Complaints Committee following the elections

### **Future Work Plan**

10. This issue would also be discussed with the Members of the Standards and Complaints Committee after the elections. The plan would set out twelve months of principle issues to be

considered by the Committee. The profile of the Committee needed to be raised with members of the Community. It was suggested that, as well as the minutes going to the Fire and Rescue Authority Meeting, the Standards and Complaints Committee could do an annual report outlining the work undertaken by the Committee. A Member commented that a similar annual report to this had been considered by the County Council from their Standards Committee and this was presented by their Chairman and had been web cast.

11. **RESOLVED** – That a report on “The Future Work Plan” be put to the next meeting.

#### **Retirement of Members of the Standards Committee**

12. The Chairman thanked Mr Dix and Mrs Oatley for their contribution to the work of the Standards and Complaints Committee and for their friendship. He had been fortunate in having such experienced Member on the Committee. Mr Dix thanked Mr Stemp as the Independent Chairman of the Committee and commented that Mr Stemp delivered independency in his role.

#### **Date of next meeting of the Standards and Complaints Committee**

13. The next scheduled meeting of the Standards and Complaints Committee would be held on Friday 23 October 2009 at 10.30 am, although a training session would be arranged for all Standards and Complaints Committee Members following the elections.

**CHAIRMAN**

**Stoke-on-Trent and Staffordshire Fire and Rescue Authority**

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**Standards and Complaints Committee**

**Constitution**

- The Committee consists of five Authority Members and three “independent persons”. A quorum is three members (including at least one “independent person”) present for its duration.
- The “independent persons” shall not be members or officers of the Fire and Rescue Authority, nor have been so for the last five years. Nor may they be members or officers of a principal authority in Stoke-on-Trent or Staffordshire.
- If a person is a relative or close friend of a member or officer of the Authority, they cannot be appointed as an independent person.
- The “independent persons” will be entitled to vote at meetings of this committee.

**Terms of Reference**

- To promote and maintain a high standard of conduct by Members; to oversee the Registers of Members Interests; and to oversee the effectiveness of the Authority’s procedures for investigating and responding to complaints about Members.
- To advise the Authority on the adoption or revision of the Members’ Code of Conduct, and any protocols affecting members.
- To assist Members to observe the Code and any protocols.
- To advise, train, or arrange to train Members on matters relating to the Code.
- To monitor the operation of the Code and any protocols.
- To grant dispensations to Members from requirements relating to interests set out in the Code.
- To consider and as necessary convene and conduct a hearing in relation to any reports from a case tribunal or an interim case tribunal and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer to the Monitoring Officer, or by the Monitoring Officer direct following a local investigation *or complaint* into an alleged breach of the Code or any protocol.
- To act as the “final” stage in the Authority’s complaints procedure, for the general public should complainants wish to refer an officer’s decision at a prior stage to members.

**Delegated Powers**

Full delegated power to act within its scope.

**Reporting to:**

Minutes go to the Fire and Rescue Authority following each meeting.

**Frequency of Meetings**

The Committee will be calendared 3 times each year but will meet as and when necessary.

(Established by the Authority on 16 July 2004, amended in June 2005 and May 2008)

## New regulations come into force

In [Bulletin 42](#) we explained that regulations were being prepared to allow the Standards Board to suspend the initial assessment functions of an authority and to enable authorities to establish joint standards committees. The Standards Committee (Further Provisions) Regulations 2009 came into force on 15 June 2009. [Guidance about establishing joint standards committees](#) has been issued by the Standards Board to coincide with the regulations.

The regulations are much as expected and you may wish to refer to the [relevant article in Bulletin 42](#) for a summary of what they contain.

The regulations also amend the powers of standards committees to grant dispensations to members who would otherwise be unable to take part in authority business because of a prejudicial interest. There is a separate article about dispensations in this Bulletin and [guidance has also been issued](#) on our website.

## Changes to criteria for granting dispensations

The Standards Committee (Further Provisions) (England) Order 2009 makes changes to the criteria for granting dispensations for members to speak and vote when they have a prejudicial interest.

A standards committee can grant a dispensation to a member:

- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting **OR**
- where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

To decide whether these criteria apply, members must ignore any dispensations that have already been given to others at the meeting. The requirement to ignore any dispensations already granted means that any previously granted dispensations are disregarded for the purposes of working out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, a situation could arise where once two people had been granted

dispensations, the remaining four would be ineligible. This is because at that point there would be less than 50% of the committee who could not vote.

Even if the criteria apply, members cannot get a dispensation to:

- allow them to take part in voting at an overview and scrutiny committee about a decision made by any body of which they were a member at the time the decision was taken
- allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own

Ultimately it is for an authority's standards committee to decide what criteria they will apply when considering a request.

The criteria that will be applied and the process that will be followed should be made available to all members by the standards committee.

By law, a member must submit an application in writing for consideration by the standards committee. It is up to the standards committee whether or not they grant a dispensation and there is no right of appeal from their decision.

A standards committee can decide the nature of any dispensation it grants. For example, the dispensation may allow a member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

After four years has elapsed since a dispensation was granted, it can no longer be used.

The decision must be recorded in writing and must be kept with the register of interests maintained by the monitoring officer.

We have issued new guidance on dispensations to reflect the new regulations. The guidance can be found by clicking [here](#).

## **Standards Board responds to CSPL inquiry**

The Standards Board has responded to the inquiry into MPs' expenses held by the Committee on Standards in Public Life. You can view our response to the Committee on Standards in Public Life's inquiry by clicking [here](#).

## **Support for Code of Conduct 'remains high'**

Newly-published research suggests that member behaviour is improving and that support for the Code of Conduct remains high.

The Standards Board surveys the level of satisfaction in local government with our performance, and attitudes to the ethical environment, every two years. This year we commissioned BMG Research to carry out this survey on our behalf. As some of you may know, the survey was first undertaken in 2004 and was repeated in 2007.

The report's key findings are:

- 62% consider us successful in keeping local government, in general, informed about what we are doing (52% in 2007 and 46% in 2004). We are committed to making continuous improvements in this area.
- Support for the Code of Conduct remains high - 94% support the requirement for members to sign a Code of Conduct (93% in 2007 and 84% in 2004)
- 47% of respondents stated that they think members standards of behaviour have improved (44% in 2007, 27% in 2003).
- 75% of stakeholders have confidence in the way their local standards committee deals with complaints about members.
- This year we also asked respondents if they support the requirements for an officer's code - 88% of members expressed support for a requirement for an officer's code compared with 70% of monitoring officers and 78% of town/parish clerks. We will be feeding this information back to the department for Communities and Local Government.

Questions asked in the survey covered a number of areas including:

- attitudes to the Standards Board and ethical environment
- perceptions of the Standards Board
- views on our publication and website
- suggestions for ways in which we can improve our communication

In total, BMG received 1,973 completed questionnaires; this represents a response rate of 44% among town and parish councils, and 32% among principal and other authorities.

The research findings allow us to identify strengths and weaknesses, as well as demand for our services. In this way we can tailor our communications and advice and guidance to the needs of our stakeholders. Since the research also collects data on attitudes to the ethical environment, we can also use it to help us assess the impact of the standards framework.

Thank you to everyone who participated in this survey, it is only through your continued support with our research that we are able to track the progress we are making.

A copy of the full report can be downloaded by clicking [here](#).

For further information, please contact:

Cara Afzal (Deputy Research and Monitoring Manager) on 0161 817 5314 or email [cara.afzal@standardsboard.gov.uk](mailto:cara.afzal@standardsboard.gov.uk).

## **Studying the impact and effectiveness of the ethical framework in local government**

In 2006, we commissioned Cardiff University to carry out a five-year project to identify the impact of the standards framework within nine local authorities. Year one of this study is now complete.

This project also involved a survey of the public within the nine areas to identify any link between the activities of a local authority and public perceptions. This research is being led by Dr Richard Cowell from the Centre for Local and Regional Government Research.

The research aims to address three main questions:

- Has the ethical framework caused any changes in local government processes and systems, and culture and values?
- Has the ethical framework had any effect on the conduct of councillors?
- Has the ethical framework had any effect on public attitudes to local government either directly, or through any changes in council processes and/or councillor conduct?

### **What has the research found so far?**

**Changes in processes, systems, culture, and values:** The research identifies that, in most councils, the ethical framework and standards have become established and accepted as part of corporate life. The majority of respondents are positive about the move towards local regulation (apart from a concern about costs). The formal components of the ethical framework are being implemented successfully and there is some desire among those interviewed for committees to take a more pro-active role in promoting good conduct.

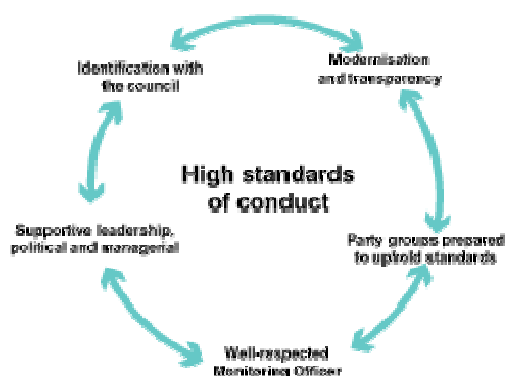
**The conduct of councillors:** The research reveals many feel that the conduct of councillors has improved in recent years, and that ethical issues are being treated seriously. There also seems to be widespread support for the view that the ethical framework has been beneficial. Councils with better conduct tend to make more effort to continually train and remind councillors of their responsibilities, and to make involvement in training mandatory. The ethical framework has helped improve conduct by acting as a regulatory mechanism, being used to support the sanctioning, demotion or resignation of councillors who have caused serious ethical problems.

**Effect on public attitudes:** The research found that more positive public survey responses for trust are achieved in councils displaying good standards of conduct. In addition, councils with high levels of trust tend to be well managed. Nearly half of the public survey respondents were confident that their local authority would uncover breaches in standards of behaviour by a councillor. Furthermore, a similar proportion believe that those breaching the Code would be dealt with effectively.

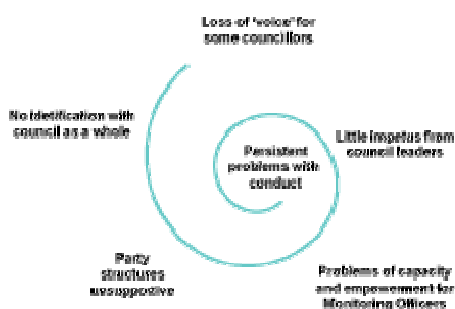
The research has also highlighted two very useful typologies, “Virtuous circles”, and ‘Spirals of despair’.

- **“Virtuous circles”** - refer to those organisational and cultural factors that lead to effective use of the ethical framework and good conduct
- **“Spirals of despair”** - are factors that result in poor conduct

### Virtuous Circles



### Spirals of despair



For more details on these factors, please click [here](#) to read the full report.

We are committed to making findings from our research accessible to our stakeholders and to this end we will continue to use various forums to disseminate the findings.

If you have any thoughts on this report, or the usefulness and accessibility of other Standards Board research please do not hesitate to contact Cara Afzal, Deputy Research and Monitoring Manager on 0161 817 5414, or email [cara.afzal@standardsboard.gov.uk](mailto:cara.afzal@standardsboard.gov.uk).

## Quarterly returns – one year on

We have been collecting quarterly returns for a year now and so take the opportunity to reflect on how the local framework has bedded in.

Firstly, we would like to thank all monitoring officers and their colleagues who made returns to the Standards Board. We are delighted with the consistent high level of completed returns. For quarter four – as with quarter two – we received a return from every authority. This was a particularly good achievement as we asked those authorities that were being abolished to send their returns earlier than the normal schedule.

Undoubtedly, these authorities were under extreme pressure preparing for the transition to unitary status.

We do not underestimate how difficult it must have been to find time to complete the quarterly returns. We are hopeful that the impressive return rate will continue into the next financial year.

The next collection period for the 1 April – 30 June quarter will be 1-14 July.

## What can we tell from the first year's worth of data?

### Standards committees

Quarterly returns tell us that a typical standards committee has **10** members. In an authority without parishes it has **9** members, including **4** independent members. In an authority with parishes it is slightly larger with **11** members, including **4** independent members and **3** parish representatives.

On average, district and metropolitan councils have the largest standards committees and police authorities have the smallest. Standards committee composition has remained constant through all quarters

### Case handling

A total of **2,863** cases have been recorded on quarterly returns so far. This covers the time period 8 May 2008 to 31 March 2008. **345** authorities have dealt with at least one case during the first year. Of all the authorities with cases, the average recorded is **2** per quarter, a total of **8**.

It is still perhaps too early to identify trends and make generalisations, but it is interesting to note that in quarter 4, the number of cases received under the new framework is very similar to the previous two quarters (see chart below). This may indicate that the case load is levelling out, now that potential complainants are aware of the new system.

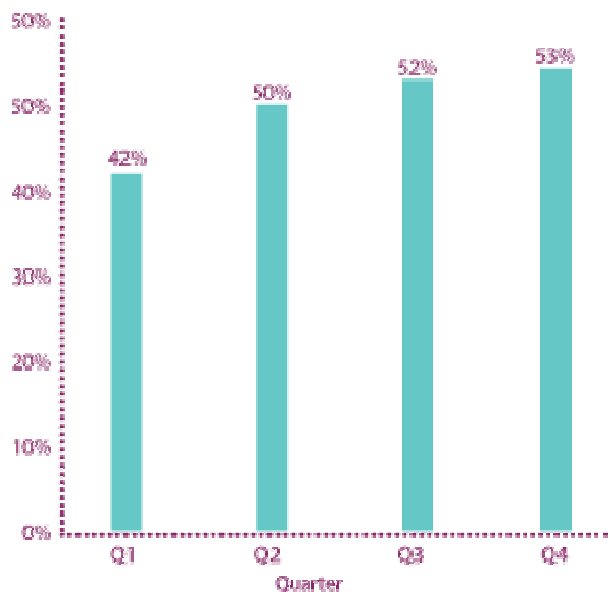


The majority of complaints, **54%**, are made by the public and **36%** are from council members. The remaining **10%** are from a combination of officers, parish or town clerks, MPs, monitoring officers, and those that fall into the category of 'other'. Again, these percentages have seen little change during the year.

### Initial assessment

The percentage of cases where no further action is taken is increasing each quarter.

#### Percentage of no further action decisions



There have been 526 review requests through the year and 384 of these have been assessed. **94%** have remained 'no further action' and the other 25 (**6%**) were either referred for investigation or referred to us.

There are 224 cases with investigation outcomes recorded on quarterly returns. In **71%** of cases, no breach of the Code was found. In **25%** of cases, a breach was found and a penalty was imposed, and in **4%** of cases a breach was found but no further action was taken.

More details about the quarterly returns, such as what breaches of the Code have been recorded, can be found on our website by clicking [here](#). You can also contact the monitoring team on 0161 817 5300 or email [authorityreturns@standardsboard.gov.uk](mailto:authorityreturns@standardsboard.gov.uk).

## Good response for annual returns

We are very pleased with the number of returns we have received for the annual return questionnaire, which was launched on 20 April 2009.

As of 29 May, 95% of authorities had completed a return. This figure includes the new unitary authorities, which completed a shortened version.

We are now entering the analysis phase and first impressions are that there is a good range of notable practice to share with standards committees. More information about our findings will follow in future *Bulletins* and on our website.

## Probity in Planning Guidance Issued

The Local Government Association has recently published a revised guidance note on good planning practice for councillors and officers dealing with planning matters.

This 2009 update provides refreshed advice on achieving the balance between the needs and interests of individual constituents and the community and the need to maintain an ethic of impartial decision-making with regards to planning decisions.

For more information please see the [LGA website](#).

## A new look

From July this year there's a new look and feel to our communications – and we're introducing an abbreviated version of our name: Standards for England.

We've made this switch to emphasise how our role has changed over the past 18 months. During that time we've moved from being an organisation focused mostly on handling complaints to the strategic regulator of standards among local politicians. We'll be telling you more about our new role in our corporate plan, which will be available shortly.

And in our new role we're all about Standards for England.

We believe in principled local politics. Working with local authorities, their monitoring officers and local standards committees, it's our job to champion and promote high standards of conduct among our local politicians. We want to make sure the public are in no doubt that standards and principles matter to local government.

We've made changes after sampling the views of key stakeholders, including those in local government. We asked: what leadership do you expect from us? Our communications will do more to highlight the positive aspects of conduct; making the point that ethical behaviour is both a good thing in itself and good for local democracy.

You can read more about our refreshed identity on our website from 1 July. We'll be introducing style changes to our publications and our website over the next few months. We hope you'll like them, and as always we'll welcome your feedback.

We believe in Standards for England. We hope you do too.

## Code revision

We reported on Communities and Local Government's consultation on proposals for a revised code for members and the introduction of a national code for officers in [issue 41](#) of the *Bulletin*.

Many of you have been in touch to find out when you can expect the new code for members. The department for Communities and Local Government is responsible for dealing with the revisions and current advice is that a revised code will be ready in late autumn 2009.

We do not anticipate many changes to the Code this time around. The main change will be to allow the Code to cover members in their non-official capacity, where that conduct would be a criminal offence.

We have been informed that further consultation on the introduction of a code for officers is likely to take place in 2010.

## Imposing sanctions: Written apologies

Regulation 19 of the [Standards Committee \(England\) Regulations 2008](#) lists the 11 sanctions available to a standards committee. Standards committees must be careful that any sanctions they choose are included in this list. For example, a verbal apology is not listed and would not therefore be a valid sanction. Asking a member to submit a written apology in a form specified by the committee is valid.

The written apology sanction is a difficult sanction to enforce if a member chooses not to comply with it. Standards committees should consider this when deciding on which sanction to impose.

If a standards committee decides that a written apology is appropriate it should:

- specify the form in which the apology should be written
- set a time-limit for the apology to be written.

If a member fails to issue the written apology, the member may face a further complaint of potentially bringing their office or authority into disrepute by failing to comply with the sanction. However, it could be argued that it would be a better use of council resources to ensure the original sanction allows for the possibility that the apology is not given.

The regulations allow for the suspension of a member for a period not exceeding six months or until such time as the member submits a written apology in a form specified

by the standards committee. In this way a standards committee can ensure that if a member does not apologise, they will remain suspended for a period of up to six months or until they do.

Care should be taken when deciding on the period of suspension that would apply if no apology is given. It should properly reflect the seriousness of the breach of the code of conduct. Imposing a six month suspension period to encourage an apology to be given would be a misuse of the power.

Standards committees should carefully consider the appropriateness of imposing a written apology when a member has shown no remorse for their conduct and no evidence at the hearing to indicate they are able to acknowledge their behaviour and its impact on others. Any apology issued in such circumstances is unlikely to be seen as being genuine.

For more information on sanctions please see our [Standards Committee Determinations guidance](#).

## Intimidation and the Code

On July 23 2009, the President of the Adjudication Panel for England made a significant decision in the case of Councillor Buchanan, an ex-councillor of Somerset County Council.

This is an important judgment as it is the first occasion in which the Adjudication Panel had to deal with a potential breach of paragraph 3(2)(c) of the Code of Conduct. Paragraph 3(2)(c) concerns the intimidation of, or an attempt to intimidate, a complainant in a Code of Conduct investigation.

### The Facts

In April 2007, the Chief Executive of Somerset County Council made a number of complaints about Councillor Buchanan's behaviour to Standards for England. Later on that year, Councillor Buchanan made a formal complaint to the council about the Chief Executive's conduct which the council decided not to investigate.

Following a further complaint from the Chief Executive about Councillor Buchanan, the council's Liberal Democrat group asked Councillor Buchanan if he would suspend himself from the group pending the outcome of all ongoing investigations, but he declined. Councillor Buchanan was notified that his membership of the Liberal Democrat group had been formally revoked on 5 December 2007.

On that same day, Councillor Buchanan wrote a letter to the Association of Local Authority Chief Executives, (ALACE) stating formal complaints about the Chief Executive and listed five headings of inappropriate and unacceptable types of behaviour that the Chief Executive had allegedly committed. And five days later, he sent a letter in identical terms to the Society of Local Authority Chief Executives (SOLACE).

On 15 December 2007 Councillor Buchanan further wrote a formal complaint to the council's monitoring officer in almost identical terms.

The Chief Executive then complained about Councillor Buchanan's motivation and intent in making the serious allegations about him in the letters. This was because Councillor Buchanan knew that Chief Executive was the complainant in an ongoing investigation.

Against these facts the Tribunal had to decide whether:

- Councillor Buchanan had brought his office or authority into disrepute
- had used his position to improperly disadvantage the Chief Executive
- had intimidated or attempted to intimidate the Chief Executive.

The respondent's case was that he had either witnessed or been told about the Chief Executive's alleged behaviour and had previously raised his concerns about the behaviour with various senior officers of the council.

### **The Adjudication Panel's findings**

The Tribunal's findings were that Councillor Buchanan had not voiced the concerns he was now alleging and that:

- although he may have formed a belief about the seriousness of the alleged behaviour, there was no evidence to suggest that it was reasonable for him to have done so
- whatever he had seen, he did not at the time regard the alleged incidents as seriously as he was asserting at the time he wrote the letters
- he had knowingly exaggerated the facts about the Chief Executive's style and performance in order to strengthen his allegations of serious misconduct.

Counsel for the ethical standards officer (ESO) had helpfully referred the Adjudication Panel to the Shorter Oxford Dictionary definition of the word 'intimidate' as meaning terrify, overawe, cow. The dictionary suggested the word was now used especially in order to mean to force to or to deter from some act by threats of violence.

Counsel for the ESO also referred the Tribunal to R v Patresca [2004] EWCA Crim 2437, which concerned an offence under Section 51 of the Criminal Justice and Public Order Act 1994. This proves that a person commits an offence if he or she does an act:

- (a) which intimidates and is intended to intimidate another person (the victim)
- (b) knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness
- (c) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

The Court of Appeal noted that the Criminal Justice and Public Order Act provided that "an intimidatory act which consists of threats may threaten financial as well as physical harm".

In the course of the judgment, May LJ confirmed that 'intimidate' and 'intimidation' are ordinary English words and endorsed the dictionary definition referred to above and stated:

"In our judgement, a person does an act which intimidates another person within section 51 (1) (a) of the 1944 Act if he puts the victim in fear. He also does it if he seeks to deter the victim from some relevant action by threat or violence. A threat unaccompanied by violence may be sufficient and the threat need not necessarily be a threat of violence. The act must be intended to intimidate. The person doing the act has to know that the

victim is a ...witness or potential witness..., He has to do the act intending thereby for the cause of justice to be obstructed, perverted or interfered with. A person may intimidate another person without the victim being intimidated...An act may amount to intimidation even though the victim is sufficiently steadfast not to be intimidated.

"In our judgement pressure to change evidence alone is insufficient, Pressure alone might be unexceptional and entirely proper at least if applied in an honest belief, for instance that what was sought was evidence which would be truthful. Alternatively pressure might be improper but lack any element of intimidation, for example a bribe. For a person to intimidate another person the pressure must put the victim in some fear, or if not there must nevertheless be an element of threat or violence such that the pressure is improper pressure."

Against this background, the Case Tribunal had no doubt that in writing the letters to ALACE and SOLACE and later to the council, Councillor Buchanan was motivated by a desire to cause harm to the Chief Executive whom he saw as responsible for the collapse of his political career.

The Case Tribunal was also in no doubt that in writing those letters, the respondent intended to cause the Chief Executive a disadvantage both in terms of his future employment with the council or more widely. Because those letters were submitted essentially as an act of revenge, the respondent did use his position improperly and had thus failed to follow the provisions of paragraph 6(a) of the council's Code of Conduct.

The Tribunal also found that even though there was no evidence that the Chief Executive was intimidated, that did not of itself mean that the allegation of a breach of paragraph 3 (c) failed. There would still be such a breach if the respondent had attempted such intimidation.

The Case Tribunal believed that for the claim to succeed it would have to accept that the letters were intended to intimidate the Chief Executive into:

- altering any evidence he was called upon to give against the Councillor; **or**
- not making further complaints about the Councillor.

On the facts of this particular case the Case Tribunal concluded that neither were Councillor Buchanan's intention. The evidence here was that the respondent was seeking revenge for the Chief Executive's past actions rather than seeking to intimidate him. Therefore there was no breach of paragraph 3(c) of the council's Code.

The Case Tribunal's view was that the respondent, in allowing his actions to be motivated by his desire for revenge, had shown himself to be unfit to be a councillor and local authorities should be protected from his membership.

Although the respondent had by then ceased to be a councillor, he was disqualified was two years.

You can read the Adjudication Panel's decision in this case on its [website](#).

# New organisational design for SfE

During the summer, Standards for England has been making progress with an internal restructure which coincides with three new senior officers taking up their posts.

Our three new directors are Director of Risk Vivienne Horton, Director of Regulation Tim Leslie, and Director of Standards Steve Barrow.

The restructuring allows us to align our resources more closely with our role as a strategic regulator and to deliver the tasks we have set ourselves in our corporate plan. Our day-to-day Regulation activities – investigations, guidance, liaison and monitoring – fall within our new Regulation directorate.

In the new Risk directorate, Vivienne leads on our approach to assessing and managing standards risks. Within the new Standards directorate we are developing our knowledge base, our approach to strategic regulation and, of course, our own standards.

## Corporate Plan and Annual Report published

Our Annual Report for 2008-09 was laid before Parliament in July. It contained a summary of our work and all of the required corporate reporting of financial arrangements.

We think you'll be more interested in our Annual Review of 2008-09 which we expect to publish in the autumn. That's a little later in the year than we've published our annual review in the past, but we wanted this year to be able to include a significant digest of the information supplied to us by authorities in our annual returns.

The document will be in two parts – a review of our work at Standards for England, and a review of the first year of the local framework based on the information you've supplied us. We'll be highlighting plenty of examples of what we consider to be notable practice, and setting out some of the issues we wish to tackle as regulator, based on what you've said.

Copies will be distributed to all authorities and we'll publish online too.

In the early part of this year, we've been operating to a draft corporate plan pending sign off by the responsible minister in our sponsor department, Communities and Local Government. The plan was signed off earlier in the summer and we have now published our corporate plan under the title of The Changing Role of the Standards Board for England.

Copies have been sent to monitoring officers and it is also available to download [here](#).

# Review of online monitoring system - an update

The majority of monitoring officers believe that our Quarterly Returns and Annual Returns are working effectively, according to our research.

During the summer, our research team conducted the final part of its review of Standards for England's online monitoring system. This forms part of a programme of work to assess how well the system is working, and was the final part of a review project that started in June 2008.

For this part of the research, the team distributed surveys to a random sample of monitoring officers and officers who are nominated to make an online submission. Some 50 surveys were sent to assess satisfaction levels with the quarterly return, and another 50 for the annual return (this was the first time this return had been used by stakeholders). We had a good response to our survey with about half the questionnaires being returned. We would like to thank all those who participated in the survey.

The survey's results show that the majority of monitoring officers/nominated staff surveyed continue to agree that the quarterly return is working effectively, with respondents encountering minimal or no difficulty in submitting their return. There were plenty of suggestions from respondents on how to further develop the form now that the quarterly return has been operational for over a year.

The annual return survey also showed that stakeholders are pleased with how the annual return form worked during its first run. There were lots of suggestions from respondents on how the form can be enhanced in the future, with certain sections of the form being considered more relevant than others. These suggestions have been passed on to our annual return development team, and will be incorporated into the design of next year's form.

If you have any questions about this review or future reviews of the system, please contact Tom Bandenburg, Research Assistant: 0161 817 5427 or email: [tom.bandenburg@standardsforengland.gov.uk](mailto:tom.bandenburg@standardsforengland.gov.uk).

## That's a wrap!

Editing is now underway for our new training DVD on Local Assessment following a successful shoot last month. Viewers will follow the work of Jack Ridley and his fellow assessment sub-committee members as they look at a variety of complaints about councillors covered by their standards committee.

The film is designed to help standards committees and officers who are involved in the assessment of complaints that a member may have breached the Code of Conduct. It will take viewers through the main stages of local assessment, exploring important or contentious issues along the way.

Learning points are interspersed with the drama. Standard DVD extras including scene selection and subtitles will also be available.

Copies of the DVD will be sent to all monitoring officers in October, and we look forward to hearing your thoughts.

## **Annual Assembly 2009: Bringing standards into focus**

There are just a handful of places left for the 2009 Annual Assembly, 'Bringing standards into focus', at the ICC, Birmingham, on 12-13 October 2009.

This year, we've responded to your call for more sessions focused on good practice, and the programme is full of opportunities for you to share the lessons you've learnt about the local standards framework. A great range of speakers are now on board, including standards committee members and officers from authorities across the country, as well as all those shortlisted for the 2009 LGC Standards and Ethics award. Full details of the programme, including confirmed speakers, is available [here](#).

Solicitors attending the Assembly can earn 10.25 bonus credits towards their continuing professional development, as the event is certified to count towards SRA's CPD scheme.

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

## **Changes at the Adjudication Panel for England**

In Bulletin [issue 42](#) we wrote about the Adjudication Panel for England's integration into the new unified tribunals' structure.

The Adjudication Panel's work is due to transfer into the new General Regulatory Chamber (GRC) within the First-tier Tribunal in January 2010, subject to Parliamentary approval. The GRC is a new chamber that will bring together individual tribunals that hear appeals on regulatory issues.

From January 2010, proceedings which would previously have been before the Panel's tribunals, and decisions previously made by the President of the Adjudication Panel, will be undertaken in the GRC of the First-tier Tribunal. Appeals from the GRC will be to the Administrative Appeals Chamber of the Upper Tribunal.

These changes are part of a programme of tribunal reform that began with the establishment of the First-tier and Upper Tribunals in November last year. This put in place a new flexible structure where services can be built that are increasingly responsive to the needs of users.

The independent status of the judicial office holders who consider the references and appeals that come to the Adjudication Panel is not affected by the transfer into the unified structure. Tribunal users will continue to receive a specialist service following the changes, as members of the Adjudication Panel will move into the new First-tier Tribunal. They will continue to deal with the references and appeals on matters arising from the operation of the Code.

You can find out more about the merger [here](#).

All postal correspondence, including standards committee referrals and subject member appeals should now be sent to the Adjudication Panel's new address:

Adjudication Panel for England  
Tribunal Service  
York House  
31-36 York Place  
Leeds  
West Yorkshire  
LS1 2ED

## Forthcoming events

Standards for England has a packed event calendar for the next few months.

You can visit us on our stands at the following events:

### **NALC Annual Conference**

4-5 September  
Royal College of Physicians, London  
Stand 4 in the Dorchester Library

### **Liberal Democrat party conference**

19 -23 September 2009  
Bournemouth ICC  
Stand 36 in the Solent Hall

### **Labour party conference**

27 September - 1 October 2009  
Brighton Centre  
Stand 92 in the Hewison Hall

### **Conservative party conference**

5 -8 October 2009  
Manchester Central  
Stand 106

### **Solace Annual Conference**

20 - 22 October  
Brighton Centre

### **Society of Local Council Clerks National Conference**

23-25 October

De Vere Hotel, Daventry  
Stand 34

**AcSeS Annual Conference**  
18-19 November  
The Armouries, Leeds

## SfE continues to support LGC award

We are pleased to announce our continued support for the **Standards and Ethics** category at the **2010 LGC Awards**, following the success of last year's award.

The quality of last year's entries showed that many local authorities are strongly committed to promoting high standards of member conduct, and see the vital connection between standards, public trust and success. Good practice ideas from last year's winners are available on our [website](#).

This year, we want to know more about how authority standards committees, members and officers are working together to champion ethical standards and make a positive difference to public trust.

Entries should demonstrate how high standards of conduct are central to the authority's culture and governance. You can enter online at [www.lgcawards.co.uk](http://www.lgcawards.co.uk), where you can also find further information on the LGC Awards. The closing date for entries is **13 November 2009**.

If you would like further information on the award, you can also contact Clare Sydney, Standards for England Communications and Events Manager, on 0161 817 5332.

## NALC's Local Council Awards 2009

NALC's Local Council Awards 2009 NALC has re-launched its Local Council Awards. NALC is looking for good practice from councils regardless of size or location. This year's NALC Local Council Awards will be in the categories of:

- Council of the Year sponsored by AON
- Clerk of the Year sponsored by AON
- Councillor of the Year sponsored by the Commission for Rural Communities (CRC)
- Council Worker of the Year sponsored by The Co-operative Bank
- Much Improved Council of the Year sponsored by Standards for England

The closing date for applications is 30 November 2009.

For further information about the awards criteria and application details please visit the NALC website or the website of [NALC's](#) flagship publication, [LCR](#).

# Updating authority websites

If your authority's website contains contact information for us, please make sure that it is up-to-date.

You are welcome to use our logo as a link to our website. If you would like to do so, please contact Trish Ritchie on 0161 817 5406 or [trish.ritchie@standardsforengland.gov.uk](mailto:trish.ritchie@standardsforengland.gov.uk) who will send one to you.

Here are our current contact details

Address:

Standards for England

Fourth Floor

Griffin House

40 Lever Street

Manchester

M1 1BB

Website: [www.standardsforengland.gov.uk](http://www.standardsforengland.gov.uk)

Email: [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

Enquiries line: 0845 078 8181