

## STANDARDS COMMITTEE – 1<sup>ST</sup> MARCH 2007

### THE CASE REVIEW NUMBER FOUR

Report of the: Monitoring Officer

Status: For Consideration

---

#### **Executive Summary:**

The Case Review shares with its readers the Standards Board for England's (the Board's) experience of conducting investigations, giving advice and developing policy in relation to the Code of Conduct.

---

**This report supports the Key Aim of** promoting and maintaining high standards of conduct in local government through training and development

---

**Portfolio Holder** Cllr. Loney

**Head of Service** Head of Legal and Committee Services – Christine Nuttall

---

**Recommendation:** Members are requested to note this report.

---

#### **Introduction**

- 1 Delegates to the Board's Fifth Annual Assembly that took place on the 16<sup>th</sup> and 17<sup>th</sup> October 2006 were presented with a copy of the Case Review number four. This Case Review aims to reflect on, and inform about, new developments in the interpretation and working of the Code of Conduct and reflects the current transition in the standards framework whereby the Board is evolving into a strategic regulator. The Case Review can be downloaded from the Boards website [www.standardsboard.co.uk](http://www.standardsboard.co.uk) under publications.

#### **Local Investigations**

- 2 Chapter 1 of the Case Review analyses a sample of local investigations and found that there had been a positive start to local investigations with most of the complaints being dealt with effectively.
- 3 The Board have now developed a process to monitor the progress of local investigations and are in touch with monitoring officers about the anticipated length of their investigations and are proactive in pursuing those monitoring officers whose cases have not been completed within six months.

**Item No. 6**

- 4 The decision to refer more cases for local investigation and determination is based on the principle that local people should take local decisions on local issues and this means that most allegations are referred for local investigation.
- 5 The Board has decided only to retain cases where the complaint is so serious that, if proven, it would warrant the penalties only available to the Adjudication Panel for England (the Panel). The Board has also retained cases where there was a possibility of a conflict of interest at the local level. Some cases have been retained because the subject member was part of the executive. They have in some cases taken into account the problems of authorities with large numbers of parish and town councils who have thought that they have not had the capacity to deal with several investigations at the same time. Other cases have been retained because of sensitive local circumstances.
- 6 The largest number of cases emanates from parish and town councils with 394 allegations for local investigation compared to 109 such cases from district councils within the period 4<sup>th</sup> November 2004 to 31<sup>st</sup> August 2006.
- 7 When discussing sanctions the Board has suggested that Standards Committees could make the following sanctions a condition of avoiding a partial or total suspension:
  - take training on the Code of Conduct
  - take part in conciliation
  - apologise for their behaviour
- 8 In 124 cases where standards committees found that there had been a breach of the Code of Conduct, almost a third of the decisions resulted in no action being taken against the member. However, members were also frequently censured, required to apologise for their behaviour, or required to take training.
- 9 A variety of cases were looked at and it was found that 55% of the allegations referred for local investigation concerned the failure to declare personal or prejudicial interests in meetings.
- 10 The regulations allow a monitoring officer investigating a complaint to refer the matter back to the ethical standards officer. This can be done at any point before the investigation is completed. However, the monitoring officer can only ask for the case to be taken back once. Ethical standards officers have granted 22 of these requests,

**Appeals from local decisions**

- 11 Chapter 2 sets out the appeals process. Members are entitled to request permission to appeal by lodging the request within 21 days of receiving the standards committee's notification of finding.

**Item No. 6**

- 12 It is up to the president or the deputy president of the Panel to grant permission to appeal against the decision. In reaching the decision consideration will be given to whether the application contains any reasonable ground of appeal. Regard will also be had to whether there is a reasonable prospect of the appeal being successful. Permission cannot be given for an appeal that is made after the 21 day time limit has expired.
- 13 If permission is granted, an appeals tribunal is convened to determine the matter. The member can agree to the appeal being conducted by way of written representations.
- 14 Appeals can cover three possible areas. Some appeals dispute the facts of the case, some question the finding on whether or not there has been a breach of the Code of Conduct and others challenge the sanctions imposed by the standards committee.
15. The Chapter sets out a number of appeal decisions. In one case the appeals process decided that members have to be allowed leeway to debate political issues, and the requirement to treat others with respect should not be interpreted too strictly, so that every insensitive comment is seen as disrespectful.
- 16 In another case the tribunal disagreed with the standards committee's view that the councillor had a personal and prejudicial interest because some of her properties were within 150 metres of the proposed skateboard park. This did not, in the view of the tribunal, "plainly give rise to an interest", as the standards committee had concluded. Nor did the possibility that the skateboard park might have resulted in greater use of a footpath adjacent to one of the properties necessarily give rise to a personal and prejudicial interest. The tribunal explained: "There must be an objective assessment of the impact on the appellant which would demonstrate the possibility of personal motives affecting the appellant's judgement....The footpath is of limited use and would in all likelihood only be used by a small number of local residents".
- 17 When permission to appeal has been granted, the appeals tribunals have generally upheld the standards committee's decision, and dismissed the appeal. However, concern has been expressed that some standards committees "seem to be having difficulty in coming to grips with both procedural issues and how to produce a reasoned decision".

**Directions**

- 18 Chapter 3 highlights the fact that not all complaints need to be fully investigated by an ethical standards officer or a monitoring officer. In some instances, ethical standards officers have issued directions to monitoring officer to take action to solve local problems. This has been a useful way of tackling more systemic problems in authorities that sometimes lie behind alleged misconduct by particular members.

**Item No. 6**

- 19 Examples are given of the kind of directions that an ethical standards officer might give to a monitoring officer such as:
- make recommendations to their standards committee about the wider issues for the authority raised by the case
  - review procedures within the authority to make them more robust
  - arrange training, guidance or mentoring
  - arrange for councillors to try to work out problems together, through a process of mediation.
- 20 Ethical standards officers only issue directions after they have discussed the appropriate course of action with the monitoring officer and when they believe there is a good chance that the directions will result in the right outcome.
- 21 Other parties involved in a complaint can be reluctant to consider a direction as a way of resolving disputes. The complainant may want the complaint investigated, and the subject member may want to be vindicated by an investigation. As a result, it can take a considerable amount of work and persuasion to change their mindset.
- 22 It is noted by the Board that not all monitoring officers have mediation training and experience.
- 23 A number of directions that have been issued are set out in the Chapter which concludes that directions are a valuable tool for dealing with systematic or longstanding problems, or training needs that have disrupted the work of some authorities. However, ethical standards officers and monitoring officers have to work closely together to ensure directions are the appropriate way of resolving local problems.

**Bullying**

- 24 Chapter 4 concentrates on bullying which is seen as a serious problem affecting some local authorities. Members have sometimes abused their position by attacking or threatening officers or colleagues. The Board has investigated a number of cases involving bullying, some of which have resulted in members being disqualified from office. Such cases have been dealt with under other parts of the Code of Conduct such as disrespect, but the Board has asked for the revised Code of Conduct expressly to include bullying as a failure to comply with the Code, in order to send a clear message that such behaviour is unacceptable.
- 25 Bullying behaviour is likely to warrant the more severe sanctions available to the Panel which can suspend members for up to a year or disqualify them for up to five years.
- 27 Although Members should be able to exercise their right to challenge officers about their advice or performance, it is important that members raise issues

**Item No. 6**

about poor performance in an appropriate way and in the proper forum such as in a private meeting with a senior manager and not in a public meeting or through comments in the press.

- 28 It is only possible to investigate bullying complaints if there is clear evidence that bullying may have occurred. It is helpful if a complainant alleging bullying can provide a detailed record of the incidents and information on the context in which the incidents occurred.
- 29 The test for whether conduct is regarded as bullying is likely to be whether a neutral third party, a 'reasonable member of the public', would regard conduct as bullying if they had all of the relevant facts.
- 30 Many examples of bullying cases are given in the Chapter which concludes that most of the cases have involved the mistreatment of council officers over a period of time and through a number of incidents.
- 31 The Adjudication Panel has clearly indicated that bullying is a serious issue, and has disqualified a number of councillors for such behaviour and the Board believes that there is a need for a specific provision in the Code to address such behaviour.

**Significant others**

- 32 Chapter 5 which is the last Chapter looks at a number of cases which have concerned the relationship between council leaders and chief executives, unauthorised expenditure, questioning the advice of officers and conflicts of interests at meetings and provides an interesting read.
- 33 Lessons from the cases have shown that there is a presumption that documents will be made available in advance to those being interviewed as part of an investigation. The cases also highlight the importance placed on local authorities to conduct themselves and their decision-making processes in an open, fair and transparent manner. These cases also clarify the role of the ethical standards officer. Ethical standards officers should not be seen as prosecutors seeking to establish guilt. Their role is to discover facts and help the independent tribunal to arrive at the right decision.

**Financial Implications**

- 34 The Case Review number four gives advice on the experiences of the Board in conducting investigations, giving advice and developing policy and if followed should result in fewer breaches of the Code of Conduct resulting in fewer costly investigations.

**Legal Implications**

- 35 The Case Review's guidance will aid the future interpretation of cases and implementation of policy.

**Conclusions**

- 36 The Case Review number four provides guidance on the way in which local issues have been dealt with at the local level, and on the Board's role in supporting and regulating the overall framework.

**Sources of Information:** The Board's Case Review number four

**Contact Officer(s):** Christine Nuttall – ext. 7245

**Corporate Resources Director**  
**Dr. Pav Ramewal**

**RISK ASSESSMENT STATEMENT**

Training and development is essential in order to achieve high standards of conduct in public life. To ignore the guidance on offer from the Board could have a disruptive impact on the workings of an authority