

the **Case Review**
number four

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Preface to the series

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

Each edition uses case examples drawn from this experience to pose questions, spark debate and draw conclusions. These examples focus on new, problematic or interesting developments in the interpretation of the Code of Conduct. The ethical standards officers, and legal and policy advisers, are consulted extensively when writing each *Case Review*.

The Case Review also aims to reflect on, and inform about, new developments in the interpretation and working of the Code of Conduct.

Although these publications are not statutory guidance, the Standards Board for England regards them as practical advice kits on the interpretation of the Code of Conduct, offering useful guidance to members, monitoring officers and others.

Case examples

Our general policy with the *Case Review* is to remove the names and individuals from the accounts of cases used, in order to avoid subjecting those involved in cases to unnecessary further publicity.

We have referred to the type of authority and the region of England in which it is located. This is to give some indication of the geographical spread of cases, and how different authorities from different parts of the country are reacting to the shift to greater local responsibility for the Code of Conduct.

We have provided references to some of the significant cases covered in the chapters to help those who wish to look at them in greater depth.

SBE numbers refer to case summaries available from our website:

www.standardsboard.co.uk

APE numbers relate to the Adjudication Panel for England's decisions, available from:

www.adjudicationpanel.co.uk

We do not publish full summaries of cases investigated by local authorities, but we list the basic details of the outcome on our site.

Summaries of cases where there was no evidence of a breach of the Code of Conduct are removed from our website after six months. Summaries of other cases remain on our site for two years, or two years after the end of a sanction, if one is imposed. This is in line with our policy of not subjecting those who have breached the Code of Conduct to disproportionate publicity.

Disclaimer

The views expressed in this publication are those of the Standards Board for England and should not be treated as formal legal advice. Further guidance on the interpretation of the Code of Conduct can be obtained from the Standards Board's website and our other publications.

Introduction: Sir Anthony Holland, Chair

This issue of the *Case Review* reflects the current transition in the standards framework.

The Standards Board for England is evolving into a strategic regulator. We are preparing for the devolved decisions framework and legislative changes outlined in the government paper, *Standards of Conduct in English Local Government: The Future*.

The chapters in this year's *Case Review* reflect the changes that are taking place. The focus is on the way in which local issues have been dealt with at the local level, and on the Standards Board's role in supporting and regulating the overall framework. Therefore, in contrast to previous editions, we include a large number of examples of local cases in this volume.

Chapter 1 looks at trends in local investigations. Over 600 cases have been referred to monitoring officers for local investigation, and standards committees have heard 249 of those cases. Local investigations have become a pivotal part of the ethical standards regime, and most complaints have been dealt with efficiently and effectively. However, there are concerns about the time it is taking to complete some investigations.

In Chapter 2, we look at examples where locally determined cases were successfully challenged as a result of appeals to the Adjudication Panel for England, which exists as a safeguard against unfair decisions. The Adjudication Panel has received a significant number of requests for appeals, but, where permission for appeal has been granted, it has upheld most of the standards committees' decisions.

In Chapter 3, we provide details of another way of resolving disputes at a local level – directions issued by ethical standards officers to monitoring officers. Ethical standards officers have issued a number of directions to help tackle underlying problems affecting authorities. For instance, an ethical standards officer directed a monitoring officer to facilitate mediation between councillors who had been engaged in a longstanding personal conflict.

You will find that this issue of the *Case Review* contains more case studies and less detailed analysis of particular paragraphs of the Code of Conduct. This is because the Code is also in transition. We put forward proposals for a revised Code of Conduct to the government in September 2005, and expect the Department for Communities and Local Government to put a revised Code to Parliament very soon.

We will analyse the new Code in depth in future issues of the *Case Review*.

However, we focus here on one of the proposals for the new Code of Conduct – a new provision to prohibit bullying. In Chapter 4 we give details of important cases that reinforce the need for a new provision.

In the final chapter (Chapter 5) on ‘significant others’, we have included a number of cases that emphasise the importance of leadership at the local level in establishing good governance. Three of the cases involve the conduct of council leaders, and another case involved the chair of a parish council. The chapter also looks at lessons from the Islington cases, and includes details of a case which sheds light on the human rights implications of rules on personal and prejudicial interests.

We look forward to working closely with local government in future to build on the positive steps that have already been taken in moving towards a new system of ethical governance. As part of this work, we will be providing guidance on the new Code of Conduct, and more publications like the *Case Review*, which share experiences of handling cases.

18 September 2006

A handwritten signature in black ink, appearing to read 'Anthony Mella', with a long horizontal line underneath it.

Chapter 1. Local investigations

Local investigations have been underway for some time, and have, on the whole, proven successful. The Standards Board for England's ethical standards officers now aim to refer complaints to monitoring officers for investigation, wherever appropriate. This chapter gives a brief indication of general trends that have emerged in local investigations to date, and provides some examples of the types of cases investigated.

Going local

The devolution of responsibility for handling complaints to the local level has gone hand-in-hand with the changing role of the Standards Board for England, which now focuses less on conducting its own investigations and more on supporting and advising local authorities, as a strategic regulator.

The Standards Board's ethical standards officers have been referring allegations to monitoring officers to investigate since November 2004, when the government introduced legislation¹ making this possible.

43% of all cases were referred back for local investigation between 4 November 2004 and 31 August 2006. 57% of cases were referred for local investigation between 1 April and 31 August 2006.

There are government proposals for local authorities to assume responsibility for receiving and assessing allegations at the initial stage, and decide whether or not they should be investigated. This should increase the local ownership of the standards process still further, and allow local knowledge and sensitivities to be brought to bear on complaints from the outset.

We analysed a sample of local investigations and found that there had been a positive start to the local investigation of complaints, with most of the complaints being dealt with effectively.

However, we have been concerned about the time it is taking to complete some investigations.

As of 1 September 2006, 37% of ongoing local investigations were over six months old, and 9% were over 12 months old.

We have now developed a process to monitor the progress of local investigations. We will be in touch with monitoring officers about the anticipated length of their investigations and will be proactive in pursuing those monitoring officers whose cases have not been completed within six months.

1. The *Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004* (SI2004/2617)

When we refer, and when we don't

The Standards Board for England still has responsibility for deciding which cases should be investigated locally, and which should be handled by its own investigators.

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.

The implementation of this principle means that most allegations are referred for local investigation. However, there are exceptions when local authorities are unable to deal with cases, for a variety of reasons.

The Standards Board has decided only to retain cases automatically where the complaint is so serious that, if proven, it would warrant the penalties only available to the Adjudication Panel for England – suspension for more than three months, and up to a year, or disqualification for up to five years. Ethical standards officers then have the option of referring the cases to the Adjudication Panel – an option not available to monitoring officers in their investigations.

We have also retained some cases where there was the possibility of a conflict of interest at the local level – for example, where the case involves the monitoring officer.

However, we do consider whether there are ways of dealing with the issue of monitoring officers with possible conflicts of interest. For example, it may be possible in some cases to delegate the task of investigating the complaint to another officer, outsource it to an external investigator, or for an authority to come to a mutual arrangement with another authority to investigate one another's cases.

Some cases have been retained because the subject member was part of the executive or shadow executive of the authority. For example, there could be concerns that the investigation would not be seen as impartial.

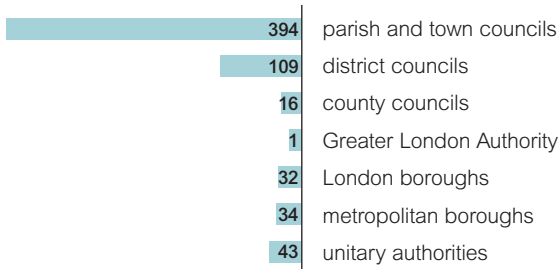
We now assess complaints against members of the executive on a case-by-case basis, rather than automatically retaining such cases.

We 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.

Cases

1468 cases were referred for investigation between 4 November 2004 and 31 August 2006. 629 (or 43%) of these cases were referred for local investigation, with the remainder investigated by ethical standards officers. Standards committees have heard 249 of the 629 cases referred for local investigation.

Figure 1: number of allegations for local investigation cases by type of authority (4 November 2004 - 31 August 2006)



63% of the allegations involved members of parish and town councils. This is significantly higher than the proportion of allegations involving town and parish councils investigated by ethical standards officers, which for the same period is around 40%.

17% of the allegations involved members of district councils. The remaining 20% of allegations concerned other types of authorities.

Outcomes

Standards committees have found that there was a breach of the Code of Conduct in 124 cases, and no breach in 125 cases. In other words, there was an almost 50/50 split in findings on whether or not there had been a breach of the Code.

Sanctions

Standards committees have the power to impose a range of penalties. They can:

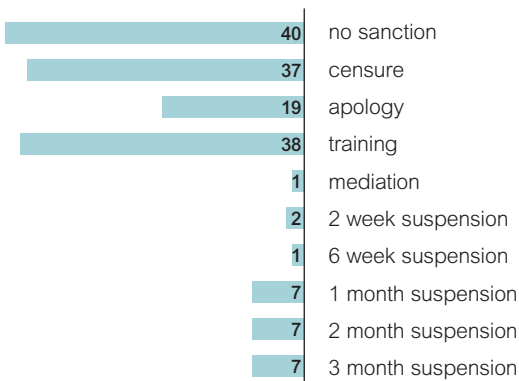
- suspend the member for up to three months
- partially suspend the member for up to three months
- restrict a member's access to the premises and resources of their authority for up to three months
- censure members

Standards committees are also able to require members to:

- take training on the Code of Conduct
- take part in conciliation
- apologise for their behaviour

Standards committees can make these last three sanctions a condition of avoiding a partial or total suspension. As we shall see in some of the examples below, many standards committees have used these conditions to try to address the behaviour of members or resolve the underlying problem that gave rise to the allegation. The use of conditional suspensions can help draw a line under an issue and encourage good conduct in future.

Figure 2: standards committee sanctions in locally investigated cases (4 November 2004 - 31 August 2006)



In the 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.

Standards committees suspended members in 24 instances, meaning that suspensions made up about a fifth of the sanctions imposed on members following local investigations.

In a number of cases, the member concerned had been given a sanction of more than one description – for example, a member was suspended for 2 months and required to undertake training. Therefore, the total number of sanctions exceeds the number of cases where there was a finding of a breach of the Code.

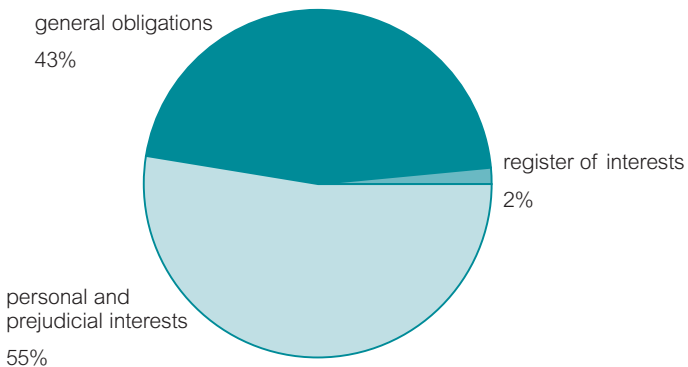
Alleged breaches of the Code of Conduct

The total number of allegations against members in cases investigated locally actually totals 1357, because some cases involved multiple allegations.

The Code of Conduct falls into three parts:

- general obligations
- personal and prejudicial interests
- the register of members' interests

Figure 3: alleged breaches of the Code in local investigation cases (4 November 2004 - 31 August 2006)



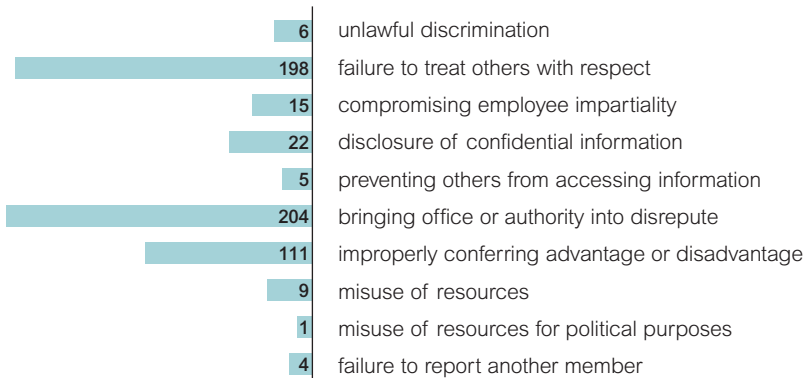
575 allegations concerned ‘general obligations’ and 751 concerned personal and prejudicial interests. Only 31 allegations involved the register of interests.

We provide a more detailed breakdown of the types of complaints investigated locally below, together with some examples of completed cases, to illustrate the way in which particular complaints have been dealt with.

General obligations

The first part of the Code of Conduct on ‘general obligations’ covers a range of behaviour, from failing to treat others with respect to misusing the authority’s resources.

Figure 4: number of allegations for ‘general obligations’



Approximately a third of the total number of allegations involved complaints that members had failed to treat others with respect.

A similar proportion concerned behaviour that allegedly brought the member’s office or authority into disrepute.

About a fifth of the allegations were about the improper use of a member’s office to secure an advantage or a disadvantage.

The remaining cases involved other alleged breaches of the Code of Conduct, such as disclosure of confidential information (4%), compromising of employee impartiality (3%) and the misuse of resources (2%).

Disrespect

198 complaints that members had failed to treat others with respect were referred for local investigation.

In one case (SBE9589.05), a member of a London borough publicly attacked a council officer at a local area partnership meeting.

The councillor said in a public meeting that the officer might not have acted properly in carrying out her duties and that her role of distributing planning contributions should be transferred to councillors. It was alleged that the councillor failed to treat the officer with respect and brought his office or authority into disrepute.

The standards committee found that the councillor's comments were not serious enough to bring his office or authority into disrepute. However, the standards committee found that the councillor's remarks were intemperate and unreasonable. The committee considered that the councillor should have used more temperate language, particularly given that the officer was not present at the meeting. The committee decided that the councillor had failed to treat the officer with respect.

However, the standards committee decided not to take any action on this occasion, as the breach of the Code of Conduct had been of a minor nature.

In another case (SBE9092.04), a member of a town council in the East of England questioned the integrity of the clerk at a council meeting, and accused the clerk of deliberately writing incorrect minutes. The councillor also accused the clerk of financial impropriety at another meeting.

The councillor was entitled to question the minutes and consider the council's financial affairs, but the manner in which she treated the clerk at council meetings was improper.

The councillor did not dispute that she had been disrespectful to the clerk, and the standards committee decided that she had failed to comply with the Code of Conduct by failing to treat the clerk with respect.

The standards committee considered that the appropriate sanction for this kind of behaviour would be a three-month suspension. However, the committee took into account the fact that the councillor had apologised to the clerk, as well as other mitigating circumstances. The committee decided that, in the circumstances, the councillor should be suspended for six weeks. It also recommended that the councillor attend training on the Code of Conduct.

Disrepute

204 cases referred for local investigation involved allegations that a member had brought his or her office or authority into disrepute, but these were often linked to other allegations – for example, that the member had failed to treat others with respect.

In one case (SBE9803.05), a member of a district council in the East Midlands was alleged to have improperly secured an advantage or disadvantage for another person and brought his office and authority into disrepute by asking housing officers improper questions about a housing application. However, the standards committee only upheld the part of the complaint relating to disrepute.

The standards committee decided that the member had brought his office and authority into disrepute, but found that there was insufficient evidence that he had improperly secured an advantage or disadvantage for anyone.

The councillor had inappropriately made enquiries about a housing application in response to concerns from a third party, a constituent, and had shared some of the resulting information with the constituent, without the prior consent of the applicant. The constituent had delivered leaflets for the councillor's political party, and had visited the councillor on a number of occasions in connection with that work. However, there was no evidence that the councillor had immediate concerns other than the correct application of housing allocation policy.

The standards committee decided to censure the member for acting in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

In another case (SBE9575.05), the mayor of a principal authority referred to protestors gathered outside the civic centre as “a***holes”.

The standards committee found that the councillor had made a comment which could reasonably be regarded as bringing her offices as a councillor and as the mayor, as well as the council, into disrepute, particularly in that the comment offended members of the public. However, the standards committee found that the councillor had not failed to treat others with respect, as she had not directed the comment at individual members of the public.

The standards committee decided to censure the councillor. The committee decided on this penalty in view of the councillor's enormous contribution

to the community, both as a councillor and as the mayor of the authority, and because she had apologised for any offence caused.

Improperly securing an advantage or disadvantage

111 cases referred for local investigation concerned members who allegedly used their positions as members improperly to confer or secure an advantage.

One case (SBE9659.05) concerned the behaviour of a town councillor in the East Midlands, who misused his position as a member whilst in a pub, after he was told he was barred. He falsely claimed to be a member of the district council after he was told he would not be served in the pub.

The standards committee found that the member referred to his position as a councillor in an intimidating way when he was refused service, and so improperly used his position to secure an advantage for himself. The committee also found that the councillor brought his office and authority into disrepute by engaging in “severe, aggressive and unprovoked” verbal attacks on the staff in the pub.

The standards committee decided to suspend the councillor for three months, or until such time as he apologised in writing for his abusive comments.

Misusing resources

Nine cases involved this type of complaint, of which the following is an example.

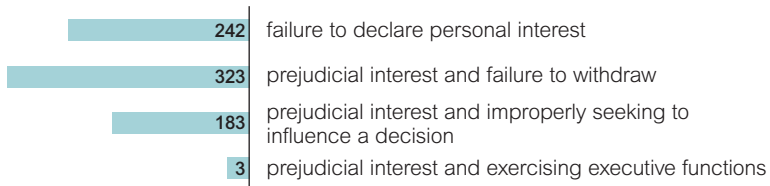
In case SBE13027.05, a member of a unitary authority in the South West sent an email to staff commenting on mayoral candidates, and asking for their vote. The councillor sent the email from her home, using a council-supplied laptop computer and the council’s internal address book.

The standards committee decided that the councillor had failed to act in accordance with the council’s requirements for the use of its resources, and had misused the resources for party political purposes.

The member was suspended for two weeks, but with the condition that the suspension would end if she sent a written apology to the chair of the council and undertook training on the Code of Conduct.

Personal and prejudicial interests

55% of the allegations referred for local investigation concerned the failure to declare personal or prejudicial interests in meetings.

Figure 5: number of personal and prejudicial interests cases

Most of the cases about the declaration of interests concerned members who had allegedly failed to declare a personal interest and failed to withdraw from meetings when matters in which they had a prejudicial interest were discussed.

In one case (SBE9286.04), a member of a unitary authority in the South East failed to declare a personal and prejudicial interest in two local organisations at a cabinet meeting when council support for the organisations was being discussed.

The councillor was a member of the management committee of one of the organisations, a race equality council, and was an executive committee member of the other organisation, a welfare organisation for members of the local community.

The standards sub-committee censured the councillor, required him to apologise to the council, and required him to undergo training on the Code of Conduct. The sub-committee also recommended that the standards committee review training for members in the light of lessons learned from the case.

In cases SBE9713.05 and SBE9772.05, a member of a town council in the South East was found to have failed to declare personal and prejudicial interests in a revised planning application at two council meetings.

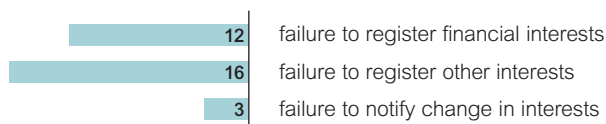
The councillor had declared a personal interest in an earlier meeting at which the initial application was discussed, on the basis that he lived near the application site. The standards committee's hearing panel therefore considered that it was naïve of the councillor to think he did not have to declare an interest at later meetings about the revised application.

The hearing panel noted that the councillor had recently attended training on the Code of Conduct, and so it did not think further training was necessary. The standards committee suspended the councillor for one month.

Register of interests

Only about 2% of allegations referred for local investigation involved the failure to register financial and other interests.

Figure 6: number of allegations involving the register of interests



In one case (SBE9959.05), a member of a town council in the East Midlands failed to register her membership of a community association in her register of interests. The community association was known locally for its role in trying to influence public opinion and policy, particularly in relation to the venue of a particular trade fair.

The member said that she had declared her membership of the association in the town council's register of interests before the new Code of Conduct was introduced, and assumed that her earlier declaration would be carried over to the new register of interests form.

The standards committee concluded that the councillor had failed to register one of her non-financial interests by not checking or completing the register of interests form she was sent.

The standards committee found a failure to comply with the Code of Conduct and recommended training for the councillor.

Cases referred back to ethical standards officers

The regulations allow a monitoring officer investigating a complaint to ask if they can refer the matter back to the ethical standards officer. This can be done at any point before the investigation is completed. The monitoring officer can only ask for the case to be taken back once.

Monitoring officers have formally asked for ethical standards officers to take back a number of investigations. Ethical standards officers have granted 22 of these requests, owing to the following circumstances:

- A member under investigation made strong representations that the local monitoring officer and the monitoring officer of the neighbouring authority could be seen as biased.
- The chair of the standards committee was a witness to the relevant events.
- The chair of the standards committee was involved in the matter, which was a high-profile issue in the local area, and the council had already responded to a related complaint to the Local Government Ombudsman.
- The ethical standards officer and the monitoring officer agreed that it would be more appropriate to issue a direction.
- There were concerns about whether the council would be perceived as impartial in investigating the proposed split of a town council into two parish councils, with the two factions on the issue each complaining about the other faction.

Two requests to return the investigation to the ethical standards officer were refused:

- In one case, the monitoring officer said it would be difficult to arrange an interview with the member being investigated, who was on sick leave at the time.
- In the other case, the monitoring officer said he was reluctant to allocate resources to investigate a complaint he did not think was that serious.

Conclusion

Local investigations have become an integral part of the system of promoting high ethical standards. They are likely to become increasingly important as the majority of complaints are referred back to the local level, and also if, as is anticipated, local authorities are eventually given the power to filter allegations at the initial stage, and decide whether or not they should be investigated.

We have put in place a series of measures to monitor local investigations and deal with any issues that cause concern, particularly delays in completing investigations. This will involve helping monitoring officers to ensure investigations are efficient, effective and to a high standard.

We are also available to provide general support and guidance to local authorities whenever there are any problems, and we are keen to help facilitate the exchange of information about investigations between local authorities.

Chapter 2. Appeals from local decisions

Members can appeal against standards committees' decisions to the Adjudication Panel for England. Most of the appeals tribunals that have been held to date have upheld the standards committees' decisions, and rejected the appeals. This chapter looks at those cases where the appeal was allowed.

Ethical standards officers have been referring completed investigations to standards committees since June 2003, and have been referring allegations to monitoring officers for investigation since November 2004.

Standards committees have, to date, determined 344 cases. These include cases investigated by ethical standards officers as well as the cases investigated by monitoring officers which we discussed in the previous chapter.

There have been 36 requests for appeals to be heard. This represents 19% of the total number of standards committee cases. Permission to appeal has been granted in 20 of these 36 cases.

Appeals process

The subject member has the right to seek permission to appeal against the standards committee's finding to the president of the Adjudication Panel for England.

Members are entitled to request permission to appeal by lodging the request with the president or deputy president within 21 days of receiving the standards committee's notification of finding.

It is up to the president or the deputy president of the Adjudication Panel to grant permission to appeal against the decision.

The president or deputy president will, when reaching a decision, consider whether the application contains any reasonable ground of appeal. The president or deputy president will also have regard to whether there is a reasonable prospect of the appeal being successful (either in whole or in part). Permission cannot be given for an appeal that is made after the 21-day time limit has expired.

If permission is granted, an appeals tribunal is convened to determine the matter. The tribunal will consist of at least three members appointed by the president or deputy president of the Adjudication Panel. At least one of the members of the panel will be a legal member and will chair the tribunal.

The member can agree to the appeal being conducted by way of written representations. The appeal will only proceed on this basis if the president is in agreement.

In the case of a decision to proceed by way of written representations, a copy of the appeal and any accompanying documents submitted by the appellant will be sent to the ethical standards officer and the relevant

standards committee, who are asked to provide representations in response to the appeal. The appellant will be sent a copy of those representations and allowed further time in which to comment.

The appeals tribunal determines the matter after considering the written representations. However, the tribunal may decide to refer the matter to a full oral hearing if it considers that it is not appropriate to make a determination on the basis of the available written evidence.

In cases of oral hearings, the appellant is notified of the decision and is asked to complete a form relating to any accessibility requirements, special needs and whether they propose to bring witnesses to the hearing. The ethical standards officer and the standards committee are also notified and asked to provide representations and name any witnesses.

The appellant, ethical standards officer and standards committee are invited to attend the oral hearing, but can nominate representatives to attend on their behalf. If any of the parties are unable to attend the hearing, the tribunal can decide whether to hold the appeal in their absence or adjourn the hearing.

The oral hearing is open to the public unless the chair of the tribunal has agreed to a request for it to be held in private. The tribunal can also decide on the day of the hearing whether the public should be excluded from parts of the hearing.

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 sanction imposed by the standards committee. An appeal may consider all three of these aspects of a case (the facts, the finding and the sanction), the finding and the sanction, or just the sanction.

Appeals tribunals can accordingly form a view on disputed facts, decide on whether or not a member has breached the Code, and decide on an appropriate sanction if the Code has been breached.

Tribunals can only impose sanctions which are available to standards committees. The tribunals can either approve the sanction originally imposed by the standards committee, require that a different sanction is imposed, or dismiss the standards committee's sanction.

Appeal decisions

As indicated above, the president of the Adjudication Panel for England has granted permission to appeal in 20 cases to date. Two appeals were withdrawn following the successful judicial review of the council's original decision, rendering the appeals to the Adjudication Panel redundant.

Four of the 18 appeals tribunals have involved cases investigated by the local authority, with the remainder concerning cases investigated by ethical standards officers.

14 of the appeals tribunals upheld the decisions and sanctions of the standards committees, and dismissed the appeals.

The Adjudication Panel found in favour of the appellant in four cases. In three cases, the appeals tribunals upheld the appeals, and the standards committees' decisions and sanctions ceased to have any effect. In the other case, the appeals tribunal upheld the standards committee's decision that the member had breached the Code of Conduct, but decided to reduce the sanction imposed on the member.

Three of the four cases were investigated by ethical standards officers, before being referred to the monitoring officers of the local authorities for determination by the authorities' standards committees. Only one of the cases was investigated by the monitoring officer.

Alleged disrespect

SBE11722.05 (APE0334)

This case was significant in that it was the first successful appeal against a decision in a case investigated at the local level.

The standards committee found that a member of a district council in the West Midlands failed to treat another councillor with respect. It was alleged that the member "started to get abusive and threatened to 'make her suffer', 'give her a hard time' and that he would 'make her ill'". The committee required the member to apologise to the councillor, attend training, and meet with the councillor to resolve the difficulties in their relationship.

The appeals tribunal considered written and oral submissions and set aside the standards committee's decision.

The appellant stated on oath that he said "he'll make you ill" about the conduct of the councillor's husband. The appellant said he was genuinely

concerned that the behaviour of the councillor's husband would make her ill, and had not intended to be insulting or abusive to either the councillor or her husband.

The appeals tribunal found that the appellant did not say he would give the councillor a hard time or make her suffer. However, the tribunal found that the appellant had said "he will make you ill", referring to the councillor's husband.

The tribunal took into account the appellant's knowledge of the councillor's medical history, as well as the fact that the appellant and the councillor had known one another for many years. In addition, the tribunal noted that the councillor said she was used to the appellant's abrasiveness.

The tribunal believed that the appellant's remark fell below the high threshold for disrespectful comments in a political context. 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. The tribunal judged that the comment in this case fell short of disrespect to the councillor or her husband, who was also a councillor.

The tribunal accordingly dismissed the standards committee's finding and the decision immediately ceased to apply.

The tribunal informally recommended that the standards committee consider how its future hearings are recorded, to avoid disputes about what was said.

Alleged disrepute and failure to declare interest

SBE5448.03 (Part 2) (APE0303)

In this case, which was investigated by an ethical standards officer, it was alleged that a member of a town council in the South West tried to persuade a member of the public to withdraw a complaint against her. It was also alleged that the member failed to declare a personal interest when the council discussed a potential skateboard park near three of her properties.

The standards committee decided that the councillor had approached the member of the public and tried to persuade them to withdraw their complaint, as alleged. The standards committee also decided that the councillor had a personal and prejudicial interest in the proposed skateboard park.

The committee decided that the member had brought her office and authority into disrepute, failed to declare a personal interest, and failed to withdraw from a meeting in which she had a prejudicial interest. The member was censured and required to attend training on the Code of Conduct within three months of the hearing.

The appeals tribunal regarded the decisions of the standards committee as flawed, and it determined that the member had not breached the Code of Conduct.

In particular, 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."

The tribunal decided that a reasonable person aware of all the material facts in the case would not consider that the councillor had a personal and prejudicial interest in the matter.

The tribunal accordingly allowed the appeal and the standards committee's decision immediately ceased to have effect.

Alleged disrepute

SBE8729.04 (APE0328)

It was alleged that the mayor of a town council in the South East authorised the town clerk to write a letter to the planning authority containing the council's views on a preferred bidder for the redevelopment of a car park. It was alleged that the council had not actually discussed or voted on this matter, and that the views in the letter were not those of the council.

The ethical standards officer referred this matter to the standards committee.

The standards committee found that the mayor had brought his office and the council into disrepute by approving the letter, which was sent without due process. The standards committee suspended the member for one month, with the condition that the suspension would end if he took training on corporate governance.

The Adjudication Panel's appeals tribunal found that there was nothing improper about the mayor's authorisation of the letter, which was only meant to set out the initial views of individual councillors, and not to represent the formal views of the town council as a whole.

The tribunal therefore dismissed the standards committee's finding that the mayor had failed to comply with the Code of Conduct, and the decision immediately ceased to have effect.

Alleged disrespect and disrepute

SBE6407.04 and SBE6568.04 (APE0320)

In this case, investigated by an ethical standards officer, it was alleged that a member of a parish council in the South West had bullied and harassed the parish clerk on a number of occasions. The councillor had also allegedly bullied the chair of the council and disrupted council meetings.

At one meeting, the member allegedly refused to allow a council meeting to proceed, refused to listen to other members, and threatened to report councillors to the Standards Board for England. The member also allegedly stood in the doorway of the parish council office to intimidate the council clerk.

The standards committee decided that the allegations against the councillor were proven, and determined that the councillor failed to treat the clerk with respect on two occasions, and brought her office and authority into disrepute on another occasion.

The standards committee decided that there had been a fundamental breakdown in the relationship between the councillor and other members of the council. It therefore decided to suspend the councillor for three months. The standards committee also decided to restrict the councillor's access to the council's premises and resources for three months, with immediate effect.

The appeals tribunal regarded the alleged breaches of the Code of Conduct as isolated incidents, rather than behaviour which represented a

pattern of misconduct. Taken in isolation, most of the incidents did not seem significant enough to amount to failures to comply with the Code of Conduct. The tribunal only regarded one incident as disrespectful to the clerk, this being when the member blocked the clerk's access to a doorway.

Bearing all this in mind, the tribunal reached the view that the standards committee's three-month suspension was excessive, particularly in view of the fact that a three-month suspension was the maximum sentence that a standards committee could impose.

The tribunal decided that the most appropriate sanction for a one-off incident in which the councillor was disrespectful to the clerk was a censure. It accordingly required the standards committee to censure the member.

Conclusion

About a fifth of standards committee decisions have resulted in requests for appeals. Permission to appeal has been granted in response to about half of the requests. When permission to appeal has been granted, the appeals tribunals have generally upheld the standards committee's decision, and dismissed the appeal. However, a few cases have resulted in successful appeals, with tribunals finding fault with the reasoning of the decision or the severity of the sanction.

The Adjudication Panel has also expressed concerns about procedural issues. Most of the appeals to date have been against the first decisions taken by the standards committees concerned, indicating that there may be teething problems in some authorities. 38% of appeals received to date cited alleged procedural irregularities by the standards committee as the ground of appeal. David Laverick, the President of the Adjudication Panel, has expressed concern that some standards committees "seem to be having difficulty in coming to grips with both procedural issues and how to produce a reasoned decision".

Chapter 3. Directions

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 officers 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.

Ethical standards officers have to consider whether they should complete an investigation into a complaint referred to them, or whether it would be more appropriate to refer it for a local investigation. Alternatively, ethical standards officers can decide that some form of action other than a full investigation is needed to address a problem at a local level.

This can be achieved by using their power to issue directions to monitoring officers. Ethical standards officers have been able to issue directions to help resolve local problems since November 2004, when the regulations for local determinations were amended.

The regulation in question is regulation 5 of the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003* (SI2003/1483) as amended by the *Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004* (SI2004/2617).

This regulation gives ethical standards officers the power to direct monitoring officers to take “any other steps ... in connection with an allegation of a breach of the Code of Conduct”.

In other words, ethical standards officers can direct monitoring officers to take action other than investigation to resolve local issues. This may, for example, happen in situations where the ethical standards officer believes a case has broad relevance for the governance of an authority, and is not just about the misconduct of a particular member.

An allegation may initially seem to be about a particular councillor’s behaviour, but on closer examination may reveal a general lack of understanding of council procedures or personal conflict between members, or between members and officers.

This may become evident where there are a large number of complaints about the councillor and other members of the council. It may be appropriate to use directions if some of these past complaints have already been investigated with little effect on the underlying problem within the authority. It may also be appropriate to issue directions in instances where more complaints continue to come in during the course of an investigation.

For example, an ethical standards officer could direct a monitoring officer to:

- 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

In each case, the ethical standards officer works with the monitoring officer to decide whether or not it is appropriate to issue a direction. The ethical standards officer may, for instance, liaise with the monitoring officer on whether or not an investigation is appropriate, any training needs in the authority and whether there are any personal or factional disputes behind the allegations.

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 direction will result in the right outcome.

Monitoring officers and ethical standards officers need to have a good understanding of what is happening in an area before they consider issuing directions. If they have already dealt with previous complaints about the authority, they will have an insight into whether an investigation will resolve the issues or make things worse. They may consider a direction particularly necessary if they are faced with the prospect of an endless number of investigations involving the authority.

Other parties involved in complaints 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.

Not all monitoring officers have mediation training and experience. Mediation training is useful even if the monitoring officer is not involved in facilitating the mediation process, particularly in setting up the process and understanding what can be achieved through mediation.

Monitoring officers are required to report back to the ethical standards officer on the details of their actions or their proposals for dealing with the direction. The ethical standards officer may, if they are unhappy with the report or the proposals, require the monitoring officer to publish a statement giving details of the direction and reasons for failing to implement the direction. It may, for example, be necessary to publicise the fact that a member is reluctant to take part in a process that has been

devised to improve the functioning of the authority. Ethical standards officers are unable to do anything more than this, but if there are further allegations of misconduct concerning a member who has been subject to a direction then they may view the new allegations more seriously.

However, the point of issuing directions is to help local authorities to resolve their own problems. This has often involved introducing new procedures, organising training for members or arranging a process of mediation, all of which can take some time to take effect. As a result, it may be too early to tell whether all of the directions have been entirely successful in tackling local problems.

Directions issued

Ethical standards officers have issued directions on five occasions, in relation to 17 different cases (some of the directions covered a number of different allegations and incidents).

Parish council in the South West

This case involved two complaints about a parish councillor in the South West of England, who had allegedly behaved in a threatening or aggressive way to two other councillors.

The Standards Board for England had received 66 allegations about members of the parish council over several years, many of them involving the councillors in this case. As a result, the ethical standards officer concluded that the latest complaints were part of a longstanding problem in the council, involving personal conflicts and communication difficulties between members. Past investigations were ineffective in addressing these underlying issues.

The ethical standards officer accordingly directed the monitoring officer to facilitate mediation between the members of the council. The ethical standards officer also directed the monitoring officer to arrange for training and guidance on conflict resolution and council procedures for all members of the council.

Parish council in the East of England

There were multiple allegations about a parish council in the East of England, where members seemed to show a lack of understanding about

the principles of the Code of Conduct, leading to poor working relations and disagreements between councillors.

The initial allegations were investigated locally and heard by the local standards committee, which made a number of recommendations that included training for all councillors.

When similar allegations were received, the ethical standards officer directed the monitoring officer to organise training and guidance, to enable the parish councillors to adopt best practice when conducting their meetings.

The monitoring officer reported back to the ethical standards officer stating that all councillors had undertaken the training successfully and that the assistance of the county association of local councils and the clerk of the parish council in the training arrangements had been invaluable.

Parish councillors in the South West

There were a considerable number of complaints relating to members of a parish council in the South West. Some of the allegations were referred to the local authority for investigation.

After the allegations were received, councillors and local residents made a large number of further allegations. The ethical standards officer referred some of the allegations for investigation by the monitoring officer. Other allegations were not referred for investigation, as they were identical to allegations that had already been investigated, or did not meet the threshold for investigation.

The ethical standards officer was understandably concerned that a number of individuals would continue to make allegations against members of the council unless some constructive steps were taken to deal with the cause of the problem.

It was clear that there were longstanding problems within the council as a whole. In particular, there was a conflict between two factions of councillors. This conflict was behind the series of complaints and counter-complaints, and prevented the council from carrying out its business effectively.

The ethical standards officer considered that formally investigating the multiple allegations about different councillors would have been unfair and ultimately unhelpful. It was more important to improve the overall way in which the council functioned.

The chief executive of the principal authority had already tried to arrange mediation between the different councillors.

The ethical standards officer directed the monitoring officer to build on this work by offering more mediation to the councillors concerned. The ethical standards officer also directed the monitoring officer to arrange for members of the council to receive training and guidance on conflict resolution and council procedures.

The direction was intended to formalise the existing mediation process, and to allow the parish council to conduct its business in the proper manner.

After the direction was issued, one faction on the council resigned en masse. Although there was no longer any need for the mediation between the different factions, the monitoring officer agreed to continue with the training for the other councillors.

Parish council in East Midlands

There were a number of allegations against members of a parish council in the East Midlands.

The allegations related to failing to treat others with respect, preventing access to information and bringing the office or authority into disrepute.

The Standards Board for England had already dealt with a significant number of cases relating to the members of the same council, and two other cases concerning the council had been referred to the principal authority for local investigation.

The ethical standards officer considered that the ongoing complaints showed that there were possible problems with basic administrative and local governance procedures, as well as longstanding personal conflicts and communication problems within the council. The ethical standards officer therefore concluded that she had to address these underlying problems, which had not been resolved by previous investigations.

The ethical standards officer directed the monitoring officer to facilitate a process of mentoring, training and mediation for all members of the council and the clerk. The ethical standards officer also directed the monitoring officer to arrange training and guidance on conflict resolution, standing orders and other council procedures.

The mentoring and training were intended to improve the council's understanding of administrative and local government procedures, help staff to manage conflict, and enable the council to adopt best practice in conducting council meetings.

Town council in North East

It was alleged that the chair of a town council in the North East was rude and hostile to a councillor during council meetings over several years. The chair allegedly ignored the councillor's requests to speak at meetings, interrupted her, talked over her and told her to "shut up".

The complainant had asked for advice on resolving the matter amicably, there were concerns over the way the council was functioning, and there was a view that the council had not been following its standing orders and rules. It was also significant that the alleged incidents had occurred over a period of a few years.

The ethical standards officer decided that, in these circumstances, the best approach was to issue a direction to address the root causes of the problems in the council.

The ethical standards officer directed the monitoring officer to facilitate a process of mediation, training and guidance for all members of the town council. The process was to focus on improving their understanding of council procedures, the correct conduct in meetings and chairmanship skills.

The ethical standards officers also directed the monitoring officer to facilitate mediation between councillors.

The training, guidance and mediation were intended to prevent the council from wasting time on personal conflicts, and to ensure that council business was conducted in the proper manner.

Conclusion

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.

Ethical standards officers have carefully liaised with monitoring officers in the cases, and have only issued directions where the ground was considered fruitful, and with the support of the monitoring officer concerned.

Chapter 4. Bullying

Bullying is a serious problem affecting some local authorities. Members have sometimes abused their position by attacking or threatening officers or colleagues. The Standards Board for England has investigated a number of cases involving bullying, some of which have resulted in members being disqualified from office. We have dealt with such cases under other parts of the Code of Conduct, such as disrespect, but we have 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.

While the Standards Board for England believes that investigations should be conducted locally, wherever possible, sometimes it is necessary to retain cases for investigation by ethical standards officers. This applies where the allegation is so serious that it could warrant the member's disqualification or there is a possible conflict of interest at the local level.

Bullying behaviour is likely to warrant the more severe sanctions available to the Adjudication Panel for England, which can suspend members for up to a year or disqualify them for up to five years.

It may be inappropriate to refer allegations of bullying for local investigation if they involve members of a principal authority. This is because such allegations may involve council officers such as monitoring officers as complainants or witnesses, and may also involve members in senior positions.

Bullying and legitimate criticism

Bullying has been alleged against members in response to entirely proper criticisms of the performance of officers. Members should, of course, be able to exercise their right to challenge officers about their advice or performance, and clearly the Code of Conduct was not meant to constrain members from doing this.

However, it is important that members raise issues 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. And, of course, members should use appropriate language. The authority's member/officer protocol may refer to the proper manner in which to criticise officers.

The Standards Board for England has received a number of complaints from clerks who alleged bullying by members. Some of these complaints were entirely justified, but others, on closer examination, raised more complex issues. Sometimes, the clerks were oversensitive to criticism, or else there had been a mutual breakdown in their relationship with members. On other occasions, the council lacked formal employment procedures or members were inexperienced in dealing with employment matters. We have also found that a number of complaints about alleged bullying have actually concerned legitimate performance issues.

Ethical standards officers now also have the power to direct monitoring officers to take action to tackle some member related issues within authorities. Some of these cases may also be more appropriate for investigation and determination by local authorities, which may recommend mediation or other measures to address problems between members and officers.

Proving bullying has occurred

In 2003 the Standards Board for England adopted a lower threshold for referring complaints about bullying for investigation, both in response to concerns from stakeholders about bullying and to demonstrate how seriously we view the issue.

However, it is only possible to investigate such 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. It is also useful if they can provide information on the context in which the incidents occurred. This is because it can be difficult to prove breaches of the Code of Conduct based on general complaints such as “the councillor is always undermining me through her comments”, or “the member has repeatedly intimidated and denigrated me”, without specific examples that can be objectively assessed.

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. The Adjudication Panel has used a similar approach in determining whether or not members have failed to treat others with respect.

Abuse of power

The Shorter Oxford English Dictionary defines bullying as to:

“...persecute, intimidate, oppress (physically or morally) by threats of superior force”.

Members are in a position of power and authority, so there is clearly a risk that they could abuse their position to “persecute, intimidate, [or] oppress” others, using “threats of superior force”.

Conduct which is disrespectful, intimidating or demeaning but which is not undertaken from a position of power or authority may not be regarded as bullying conduct, but may still breach the Code of Conduct – for example by failing to “treat others with respect”.

An example might be the use of inappropriate language in debates between councillors. Councillors have a platform from which they can defend themselves, and are expected to take part in vigorous political debates. Sometimes councillors go too far, and use disrespectful language in debates. However, it is unlikely that this will be regarded as ‘bullying’.

In case SBE255.02 (APE0104), a member of a town council in the South West of England publicly accused other councillors and the clerk of abusing their power and mismanaging finances.

The Adjudication Panel for England found that the accusations made against the councillors did not constitute disrespectful behaviour, even if some of the remarks were offensive, as they were part of a political debate between members. However, the panel’s tribunal found that the same accusations against the clerk were malicious and disrespectful, as the clerk was unable to defend himself. The member was disqualified for 18 months.

Some members have tried to bully their peers through the use of physical force or other intimidating conduct, and there have been a few cases where members have abused executive power. However, most of the significant bullying cases heard by the Adjudication Panel for England have involved councillors who have bullied council officers.

The effect of bullying on authorities

Bullying can have a significant effect on its victims and on the authority’s ability to provide services.

It can affect staff morale, as well as undermine morale in the authority as a whole and the culture of the organisation. It can erode trust within the authority and create a fearful and insecure working environment.

Ultimately this may affect how well members and officers are able to perform in their duties.

Officers who are bullied are often away from their posts, sometimes for long periods of sickness or stress-related leave. Long-term absences may have a particularly harmful impact on parish and town councils, where the clerk is sometimes the sole employee, or one of a small team. Employing

temporary staff to cover for long-term absences can be costly, as can claims for constructive dismissal. Quite often, victims of bullying who have taken long-term leave feel unable to return to their role, or even to similar work.

In one case dealt with by the Adjudication Panel for England – SBE8157.04 and SBE8287.04 (APE0319), a member of a town council in the East of England conducted a relentless campaign of destructive criticism against the clerk, councillors and the council. This campaign included making unsubstantiated and inappropriate complaints about the clerk in website postings, newsletters and numerous letters. The councillor's behaviour placed a significant drain on both council resources and members' time, caused staff great stress and ill health, and disrupted the normal running of the council.

The tribunal decided to disqualify the councillor for three years. In reaching this decision, the tribunal noted the “serious consequences of the misconduct in terms of the health and welfare of a number of individuals, the good governance, use of resources and effectiveness of the council and the reputation of the council”.

Bullying and the current Code

The current Code of Conduct does not contain a specific provision on bullying, but incidents of bullying have been dealt with under other paragraphs of the Code, notably:

- **Paragraph 2(b)**

A member must “treat others with respect”.

- **Paragraph 2(c)**

A member must “not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority”.

- **Paragraph 4**

“A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.”

- **Paragraph 5(a)**

A member “must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage”.

In other words, members who have bullied others have been investigated for being disrespectful to others, compromising the impartiality of officers, bringing their office or authority into disrepute, or misusing their position to confer a disadvantage on others.

A number of cases heard by the Adjudication Panel for England’s case tribunals have concerned members who have breached these paragraphs of the Code through bullying others. In some cases, members breached several paragraphs of the Code.

Threatening behaviour to staff

SBE545.02 (APE0166)

In one case involving a member of a district council in the South West of England, a councillor bullied and threatened council staff, was rude and demeaning to a senior officer, and made unfounded allegations about officers. He also tried to reopen a planning representation period so that he could lodge an objection; inappropriately sent a letter to a barrister who was advising the council; unreasonably pursued matters with officers; and made complaints when he felt these matters had not been addressed.

The member failed to treat others with respect, brought his office and authority into disrepute, and also breached a separate, and additional, provision of the local Code of Conduct by making “vexatious or malicious complaints” against others.

The tribunal decided that the member had committed serious breaches of the Code of Conduct, and disqualified him for four years. Following an appeal, and one year of the disqualification, the tribunal reconsidered the case and disqualified the member for two years.

Verbal abuse of an employee and a member of the public

SBE68.02, SBE401.02, SBE82.02, SBE83.02 and SBE134.02 (APE0105, APE0106 and AP0107)

A member of a metropolitan authority in the North West verbally abused a woman who worked as a cleaner in the council's offices after a minor traffic accident, and told her he was going to report her to her employer. The tribunal was left in no doubt that a reasonable person with knowledge of the circumstances would consider that the councillor had bullied and threatened the cleaner.

The member also falsely stated that a council officer had been intimidated into delaying the clean-up of an estate. In addition, the member tried to bully the monitoring officer, who was looking into the allegations about the estate.

The case tribunal found that the member had been disrespectful to others and had brought his office and authority into disrepute. The tribunal also found that the member had tried to compromise the council officer's impartiality, by falsely claiming that he had yielded to improper pressure.

The tribunal was greatly concerned about the member's aggressive and bullying conduct to those around him, and disqualified him for three years.

Bullying of council employees at meetings

SBE1460.03 (APE0239)

A member of a district council in the East Midlands bullied and intimidated council employees at two meetings. He was abusive and aggressive, shouted at one employee and publicly threatened to sack another. He also improperly put pressure on staff involved in discussions with their trade union, and in so doing compromised their impartiality.

The tribunal found that the councillor's disrespectful behaviour had caused others unnecessary fear and ill health. The tribunal also found that the councillor had abused his position over a sustained period of time. He was disqualified for three years.

Abusive, insulting and threatening remarks about a clerk

SBE332.02, SBE371.02 and SBE539.02 - Part One (APE0144)

A member of a town council in the East Midlands made abusive, insulting and threatening comments about the clerk in letters and at council meetings, as part of a sustained attack on the clerk. The councillor tried to discredit the clerk in public and undermine her position. The councillor also used explicitly sexist language in relation to the clerk. The clerk was apprehensive about dealing with the councillor as a result of the councillor's behaviour.

The case tribunal found that the councillor had failed to treat the clerk with respect and had brought his office and authority into disrepute. The councillor had also misused his position as a member to confer a disadvantage on the clerk, by calling for her resignation. The councillor was disqualified for three years.

Abusive and improper emails to councillors and officers

In case SBE11168.05 (APE0348), a member of a district council in the South East sent disparaging emails and letters to junior and senior council staff, hectoring IT staff, and was sarcastic about the death of a junior officer.

The tribunal took this misconduct particularly seriously because it persisted over a long period of time, despite the fact that he was asked to stop sending the emails on a number of occasions. The tribunal decided to disqualify the councillor for a year.

In a separate but similar case – SBE5674.03 (APE0256) – a member of a district council in the East Midlands sent a series of emails containing abusive and improper language to councillors and council officers over more than a year.

The tribunal found that the emails failed to treat others with respect and brought the council into disrepute. The member also breached the council's bullying and harassment policy and council guidance on the proper way to address officers, and sent the emails in breach of the council's IT policy. The tribunal noted that there was evidence that the member continued to bully officers by email after the council took email facilities away from him, using alternative email facilities.

The member was disqualified for two years, to reinforce the seriousness of his behaviour.

Sexual harassment of a council officer

SBE1295.02 and SBE2306.03A (APE0152)

A member of a city council in the West Midlands persistently harassed or behaved in a threatening or aggressive way towards two women, one of whom was a council officer. The councillor behaved in an improper way to the officer over the course of a four-day conference, when he was representing the council.

The Adjudication Panel found that the councillor brought his office and authority into disrepute by persistently sexually harassing or behaving in an aggressive or threatening way toward the two women. He was disqualified for four years for this and other misconduct.

Aggravating and mitigating factors

Members who have shown no recognition of their inappropriate behaviour have rightly faced more serious sanctions than those who have shown regret and a willingness to mend their ways.

For example, in case SBE8151.04 and SBE8185.04 (APE0281), a member of a district council in the South West sent an aggressive and threatening letter about a colleague to members of a rival political group. The councillor abused and threatened the same colleague over the phone two days afterwards, and physically assaulted him the following week.

The tribunal found that the member's behaviour was so extreme and threatening that it brought the council into disrepute. However, it noted that the member had apologised for his behaviour and said he had learned from the experience. The councillor was suspended for a year, to allow him to reflect on the incidents and seek to moderate his behaviour.

In another case (SBE6563.04), an ethical standards officer concluded that a member of a unitary authority in the North East had aggressively bullied a council officer as part of a pattern of behaviour, and had also been disrespectful to other officers.

This kind of case would normally have been referred to the Adjudication Panel, but the ethical standards officer noted one of the officers who had been bullied said that the councillor had behaved in a professional and courteous manner towards him and his team over the year since the incidents had taken place. In these circumstances, the ethical standards officer found that no action needed to be taken.

Conclusion

Bullying is not defined by the current Code, but members who have bullied others have been investigated for breaches of other parts of the Code. Most of these cases have involved the mistreatment of council officers over a period of time and through a number of incidents.

The Adjudication Panel has clearly indicated that bullying is a serious issue, and has disqualified a number of councillors for behaviour that has amounted to bullying.

The Standards Board for England believes that a specific provision on bullying is needed to address the relatively rare but serious occasions when it occurs.

Councillors have a right to challenge and question advice and decisions, but in certain cases the line between appropriate behaviour and intimidation has been crossed. Such behaviour has no place in the modern workplace.

Chapter 5. Significant others

Cases in this chapter concern the relationship between council leaders and chief executives; unauthorised expenditure; questioning the advice of officers; and conflicts of interests at meetings.

This chapter looks at other interesting cases over the last year.

The cases in this chapter cover:

- the abuse of position
- responsible leadership
- the appointment of a chief executive
- unauthorised expenditure
- criticising officers
- a conflict of interests

Abuse of position

There is general agreement about the importance of good corporate governance. The case SBE7151.04 (APE0299) highlights the consequences when a leader fails to work with senior officers to provide good governance.

The former leader of a county council had been investigated by the police, following a complaint by the chief executive, and imprisoned on charges of misconduct in public office. The new leader was a ‘long-standing friend’ of the former leader, and subsequent relations between officers and members were poor.

It was alleged that the leader actively tried to remove the chief executive from office through a pattern of undermining, demeaning and demoralising behaviour. This included actively seeking the chief executive’s resignation, refusing to help the chief executive when he was concerned about “malicious falsehoods” he believed were being promoted by the former leader, and failing to take action against false media claims about the chief executive. Such behaviour went against the recommendations of the monitoring officer, council protocol and the requests of the chief executive.

The case was referred to the Adjudication Panel for England.

The case tribunal

The case tribunal found that the leader expressed a “dominating loyalty” to the previous leader to the detriment of the council, and failed to act selflessly or to show leadership. Personal friendships were placed above the leader’s public obligations, with no consideration of the council’s or chief executive’s well-being and reputation. The leader failed to treat the chief executive with respect and offered no evidence or credible explanation to justify his conduct.

The tribunal considered that throughout the period of attempted negotiation and reconciliation, the leader was only interested in ending the relationship with the chief executive and not improving it. On the other hand, the tribunal was satisfied that the chief executive had made considerable efforts to make the negotiation process work.

The council was branded “weak” in a critical Audit Commission report and the leader resigned from his position the day after the report was published.

Sanction

The Adjudication Panel’s case tribunal found that a grave misuse of power had taken place. The tribunal was particularly concerned that the conduct in question had been carried out by a leader towards a chief executive, and also that repeated breaches of the Code had occurred. The tribunal decided that the leader had brought his office into disrepute through his actions, and he was disqualified for 15 months from being or becoming a councillor.

Lessons from the case

This case emphasises the importance of good working relations between senior officers and members and how integral this relationship is to the smooth running of an authority.

It highlights the need to focus on the interests of the public, and not on personal loyalties. It also shows how inappropriate behaviour can have a detrimental effect on an authority’s overall performance. Leaders are instrumental in setting the right tone of mutual respect and trust throughout a council and need to instil in members and officers a commitment to high ethical standards.

Responsible leadership

The need for leaders to act as an example for others and take ownership of their responsibility to the Code of Conduct is highlighted by the case SBE11213.05.

The leader of a city council referred himself to the Standards Board for England for investigation. He asked the Standards Board to look into allegations that he had sent improper emails to a senior officer in the council’s media department about the possible early retirement of the chief executive of the council.

The ethical standards officer considered that the leader's emails condoned and actively encouraged attempts by the senior officer to generate press coverage that would increase pressure on the chief executive to take early retirement. The emails sought to undermine the chief executive's position. The emails also contravened the council's appointments and disciplinary panel's decision to retain the chief executive's services. The leader had chaired this panel and recommended that efforts should be made to retain the chief executive's services, but had then gone on to work behind the scenes to secure his departure. The ethical standards officer considered that the leader had encouraged the officer to act in a way that was contrary to his duties to the council.

The ethical standards officer considered that the leader had breached the Code of Conduct by acting in a manner that was likely to compromise the impartiality of the senior officer. The ethical standards officer also considered that the leader had brought his office or authority into disrepute.

Taking responsibility

The leader accepted that he had breached the Code of Conduct and acted in a misguided and unacceptable way. He issued a statement which said he was extremely sorry for his actions, and that he now realised that the views expressed in the email exchanges were misguided and totally unacceptable. He added that he believed only the highest standards of behaviour are acceptable from elected members, particularly council leaders.

The leader said that he would be standing down as leader and would not stand for leadership for the remainder of this term of office, in a direct response to the conclusions of the investigation. This amounted to a self-imposed removal from the office of leader for a period of over 18 months. The ethical standards officer regarded this as a significant recognition of the extremely serious nature of the misconduct.

The ethical standards officer took all the factors into account and considered that it was not in the wider public interest to refer the matter to the Adjudication Panel for England. The ethical standards officer therefore found that no further action needed to be taken in relation to the matter.

Lessons from the case

The reputation of a council is closely associated with the conduct of its leaders. Leaders are therefore expected to set the highest standards of ethical conduct for their authority.

Appointment of a chief executive

The cases SBE805.02, SBE806.02, SBE3774.03, SBE3775.03 and SBE3776.03 (APE0211, APE0212, APE0213, APE0214 and APE0215) concerned allegations that five members of Islington council acted improperly during the appointment of a new council chief executive in 2002. A case involving a sixth member of the council was dealt with separately.

The matter was referred to the Adjudication Panel for England's tribunal, which found that the members had acted in good faith and did not have any improper motives when they appointed the successful candidate. The tribunal decided that the members had not breached the Code of Conduct.

The investigation

The tribunal concluded that the investigation was warranted, but expressed reservations about aspects of the investigation and the length of time it took to complete.

The Adjudication Panel's comments were the basis of detailed consideration by the Standards Board for England. The Board noted that the ethical standards officer acted in good faith and that extensive legal advice had been sought and followed. However, it agreed that the investigation should have been completed more quickly, and that aspects of it could, and should, have been handled differently. It regretted, and apologised for, the prolonged uncertainty that was caused, to all involved.

One of the consequences of the long and complex investigation and hearing has been the financial cost to the members involved. While the Adjudication Panel has chosen not to seek the powers necessary to award costs, the Standards Board for England has called for a system of indemnity for local authorities, allowing them to take out insurance cover against any financial costs incurred by members who are found not to have breached the Code. This is now in place in the form of the *Local Authorities (Indemnities for Members and Officers) Order 2004* (SI2004/3082).

Lessons from the cases

There are a number of lessons from these cases. During the progress of the investigation, which was one of the first undertaken by the Standards Board for England, the organisation put in place a number of changes. These included a change in the focus of its resources for complex cases, and a presumption that documents will be made available in advance to those being interviewed as part of an investigation, unless there is a specific reason not to. In these cases the tribunal made it clear that they require cogent evidence and facts, based on an investigation that follows procedures. 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.

Further issues that arose include the tribunal's refusal to adjudicate on employment related issues concerning the Code's provisions in regard to unlawful discrimination in the absence of an employment tribunal decision. The cases also illustrated the complexity of employment and discrimination issues and the need to take into account the impact of officer advice to members.

Unauthorised expenditure

In case SBE2870.03 (APE0285), the actions of a parish council chair were called to account when authority procedures were abused and decisions made behind closed doors.

The member authorised a series of building and landscaping works in the local area, without the prior consent or knowledge of the parish council, leaving the council in serious debt. This included one payment of over £40,000.

The tribunal found no evidence in the minutes of any of the council meetings to show that any of the work had been discussed or approved by the council before it was undertaken and paid for.

In a bid to repay the overspending, the member applied to the public works loan board on behalf of the council. The loan was requested specifically

for the refurbishment of the parish hall, and was approved on that basis. However, as the member was aware, this work had already been completed and full payment had been made before the loan application was submitted. The council was not made aware of the specific terms of the loan and the member knowingly misled the council in this regard.

A public interest report, conducted by the council's appointed auditor, concluded that:

“The loan was not used for capital purposes, but for revenue purposes. This makes the loan unlawful as the council did not have the power to borrow money for the purposes they spent it on.”

The *Relevant Authorities (General Principles) Order 2001* (SI2001/1401), which underpins the Code of Conduct, states that:

“Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.”

The member's actions in obtaining the loan through deceit clearly went against this principle, and against the public's trust in the honesty and integrity of its elected representatives.

Case tribunal

The case tribunal found that the member prevented others from inspecting the council accounts to save herself from being called to account for her own mismanagement of the council's finances and the discovery of her overspending. By doing so she ignored the law and deliberately frustrated the rights of the other members.

As a result of the unauthorised expenditure, the council was forced to take out a further loan to meet its financial obligations.

Sanction

The tribunal took into account the serious nature of the member's numerous failures to comply with the Code of Conduct, which included preventing others from accessing information to which they were legally entitled, bringing her office into disrepute, and improperly securing an advantage for herself.

The member showed no remorse for her unlawful behaviour, or recognition that it was damaging to the public's confidence in local democracy. The tribunal found that such behaviour fell below the standards the public have a right to expect from elected representatives and should not be tolerated.

The member had publicly stated her desire to stand again for election and, taking this into account, the tribunal decided that the member should be disqualified from being or becoming a councillor for four years.

Lessons from the case

This case shows the consequences when members overstep the limits of their authority. The case tribunal considered that the essence of a democratic body such as a council is that its members are given the opportunity to be involved in making decisions that affect the local community. To abuse this trust damages an important part of the democratic process.

The case also highlights the need to establish the correct relationship between members and officers in respect of decision-making, particularly in relation to financial matters. It clarifies the fact that members cannot disregard council procedures by using the excuse that they are acting in the best interests of the community.

Criticising officers

It is important that members feel able to express genuine concerns and opinions about the conduct of council officers if they feel it is in the interests of the public, but it is not acceptable for members to openly criticise an officer on a personal basis. In cases SBE13632.05, SBE13633.05, SBE13634.05, SBE13635.05 and SBE13636.05, five members of the same authority were alleged to have improperly criticised the authority's monitoring officer.

The five members, who included the leader of the council, expressed serious reservations about the legality of a new independent political group that was formed within the council, and publicly questioned the advice of the monitoring officer on the issue. The members issued a notice of motion outlining their concerns, which stated that:

“The council is concerned that ... in their treatment of and in their dealings with [the independent political group] the chief executive and the

monitoring officer may have placed the council in the position of failing to comply with the spirit of and/or the letter of the law in respect of the Local Government and Housing Act 1989.”

The monitoring officer felt that this notice made her position very difficult, if not untenable.

The notice was widely circulated to the local media. This was interpreted by some members as inappropriate, amounting to bullying, harassment, and criticism of senior officers. It was alleged that the members had failed to treat others with respect and brought their office or authority into disrepute by failing to follow the correct internal complaint procedures.

The members stated that their actions were motivated by a concern that the public might view the council as being led by officers, which would damage the reputation of the council. They stated that they disagreed with the advice from the monitoring officer and wanted the doubts surrounding the legality of the independent group to be debated formally in public. The notice was made in good faith and although the members were challenging the monitoring officer’s advice, they did not have any concerns about her competence, integrity or conduct.

Findings

The ethical standards officer found no evidence to suggest that the members had been rude or impolite when questioning the monitoring officer about her advice. The members submitted the notice because they wished to encourage public debate on concerns they held in good faith on a matter of significant public interest. The ethical standards officer therefore found that the members did not fail to treat the monitoring officer with respect and did not bring their office or authority into disrepute.

Lessons from the cases

These cases underline the importance of drawing a distinction between the requirement for members to treat others with respect, and the need for members to have freedom to disagree with the views and opinions of others, including officers.

The Code does not operate to prevent the expression of fairly held opinions, restrict freedom to disagree with the views of others, or prohibit fair criticism. It does, however, operate to ensure that such conduct is carried out in a way that maintains the integrity of the council.

A conflict of interests

The issue of personal and prejudicial interests continues to cause confusion for some members. The decision in the case SBE10372.05 (APE0321) clarifies councillors' duties when they have conflicts of interest. It also highlights some of the implications of human rights legislation.

The planning application

The councillor, a member of a district council, was found to have taken part in the consideration of his own company's planning application for flats and shop storage at a council development control committee meeting. The member was the managing director of the company, as well as a company shareholder and employee, but he did not declare an interest at the meeting, or withdraw from the room when the application was discussed. The member did not believe that his well-being or financial position would be affected by the planning application.

Official capacity

The minutes of the meeting record that:

“The Legal Practice Manager stated that Mr... intended to speak on this matter as a member of the public and not as a district councillor. He advised Mr... and the committee that he could not prevent him speaking but that to do so would be in breach of the Local Government Code of Conduct and the council's own code.”

The case tribunal referred to a Court of Appeal judgment — *R. (on the application of Richardson) v North Yorkshire CC [2003] EWCA Civ 1860*. This judgment stated that members could not avoid the rules on interests by claiming to be present at meetings in a private capacity. (See chapter 3 of *The Case Review number 2* for further details of this judgment.)

Personal and prejudicial interests

The member claimed that he had not sought to take advantage of his position, but that the application was for affordable housing for the company's employees, which he regarded as “social housing”. However, the test of whether a member has a prejudicial interest is an objective, not a personal, one.

The Code states that a member has a personal interest if it relates to one of their interests in the register of interests, or if it could be regarded as

affecting their financial position or well-being (or that of a friend or family member) to a greater extent than others in the area of the authority. A member also has a prejudicial interest if their personal interest is one that a member of the public would reasonably regard as so significant as to influence their judgment of the public interest.

The case tribunal found that the member had both a personal and prejudicial interest. He was the managing director of the company, as well as a shareholder and employee, and a decision on the application would affect his personal and financial well-being more than others in the area of the authority. The tribunal also found that a member of the public would be in no doubt that he had a prejudicial interest. He therefore should have withdrawn from the meeting when the application was considered.

Human rights

The member argued that it was unfair in terms of his human rights that he had been denied the right to speak on the application as a result of his holding office.

Article 6 of the *European Convention on Human Rights* states that:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

The tribunal found that the civil rights being referred to were those of the company, which had the right to a fair and public hearing. They were free to send anyone to the meeting to make representations except the member, who was prevented from doing so because of his position within the council. The tribunal regarded this as a lawful restriction:

“The restriction on the company, as to who could represent them ... was a proportionate restriction in pursuit of a legitimate aim, to prevent bias and ensure fairness in the planning decision-making process.”

There was also a question of whether this restriction infringed the member's right to freedom of expression.

Article 10(1) of the *European Convention on Human Rights* states that:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority...”

However, Article 10(2) states that:

“The exercise of these freedoms ... may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others...”

The tribunal decided that this was not an infringement of the member’s human rights, as the restriction was in accordance with the law and “necessary in a democratic society for the protection of the rights of others”.

The tribunal took into account the High Court judgment *Sanders v Kingston [2005] EWHC 1145*. This judgment found that interference with freedom of expression was lawful and justified by the need to protect the rights of others in a democracy, in accordance with Article 10(2). The judge concluded that the member was not expressing political opinions, which have a higher level of protection (see *The Case Review number 3*, pages 46-49 for more details).

The case tribunal’s decision

The case tribunal decided that the member had failed to comply with the Code of Conduct by failing to declare a personal interest, failing to withdraw from a meeting when a matter in which he had a prejudicial interest was considered, and improperly seeking to influence a decision on the matter. The tribunal also decided that the member had brought his office or authority into disrepute, particularly by choosing to ignore the advice of council officers before and during the meeting.

The tribunal suspended the member for one year in view of the seriousness of the breach.

However, the tribunal noted that the relevant officers did not appear to have clearly spelt out to the member the specific paragraphs of the Code and the reasons why they applied, or to have referred the member to previous High Court rulings.

Lessons from the case

This case supports the importance of applying the correct test for personal and prejudicial interests. Members must consider whether a member of the public, with all the relevant facts, would reasonably regard the interest as significant enough to prejudice the member’s judgment of the public

interest. The principle behind this is the need for decisions to be made with impartiality and independence, so that the public can have confidence in the decisions of the authority.

Members must also remember that when they agree to take office, they are agreeing to comply with the Code of Conduct, which might, at times, affect the exercise of their rights as private citizens.

