

## **Fifth Annual Assembly of Standards Committees 16-17 October 2006, ICC, Birmingham**

### **Bridging the gap: towards strategic regulation Patricia Hughes, Deputy Chair The Standards Board for England**

Welcome to our Fifth Annual Assembly of Standards Committees. First, may I thank you for your continuing support for these events. They give us a valued opportunity to share views, which in turn helps us to make changes and provide you with better help. We did say at the very beginning that we would try not to be an ivory tower regulator and this assembly is an important way in which we keep that promise.

As I'm sure you are all aware, the Standards Board is now in exciting times as we seek to rise to the challenges the minister has set out for us. But before I talk to you about the changes, what they will mean to both the Standards Board and local authorities, and how we shall set about bridging the gap, I would like to bring you up-to-date on our work since we last met.

Bridging the  gap

#### **Standards Board case handling**

In 2005/06:

- 3,836 complaints received
- 687 complaints referred for investigation
- 57 standards committee hearings
- 77 cases were presented by the Standards Board to the Adjudication Panel for a hearing

68% of cases are now dealt with at a local level

One thing which has not changed since we started operating in 2001 has been the volume of complaints, which remains remarkably stable from year to year. I guess that the reasons for that pattern are open to interpretation: my view is that it demonstrates a continuing need for people – mainly members of the public and councillors – to have somewhere to turn when they perceive a failing of some kind. And where, if the complaint is relevant and serious, there is the opportunity for redress.

In the 2005/06 financial year we handled over 3,800 allegations. Of these we referred 687 for investigation – that is 22% of those we received. This, I think, shows that our threshold for referring cases is high – and, in fact, we raised it still higher in 2005/06. It does mean that we do in effect reject 'trivia' – quite rightly – but we also lay ourselves open to much criticism from disappointed complainants. But then, nobody ever became a regulator to be loved.

Our policy is that allegations referred for investigation should be handled locally unless there is a particular reason why not – for example seriousness of the allegation, or local conflicts of interest. 68% of allegations referred for investigation are now dealt with at a local level.

It is also worth noting that 57 standards committee hearings were held in 2005/06. The range of standards committee sanctions went from suspension for three months in 19 cases, through to censure in 18 instances, and in the current year we have seen greater use of other sanctions such as imposition of additional training. All of this strikes me as a healthy indicator of local decision-making at work.

During the year, 77 cases were presented by the Standards Board to the Adjudication Panel for England and a finding secured in 69 of those cases. Sanctions were imposed on 64 members. This is, of course, only a tiny proportion of those complaints received – and that is exactly what we would expect and how it should be. But in those very few cases the complaints were about serious matters that were doing much harm to individuals affected, to local communities, and to the reputation of local government, so these outcomes are significant.

While I'm on statistics, I should say that ethical standards officers who, as I've already said, now deal only with the most complex and serious cases, now meet – or exceed – their target of completing 90% of cases in six months. Decisions on whether or not to refer an allegation for investigation now routinely better the target of ten days, averaging eight working days.

So that is a measure of the nature of the workload and we see no reason why it should change. That perhaps is an important context for our discussions over the next few days about how you will handle the system when it becomes locally based.

Bridging the  gap

## **Local investigations and hearings**

- Overall going well
- Some difficulties
- More guidance and support planned

And what has been our experience of locally handled cases so far? Well our view is that most of the cases we have seen handled locally have been done smoothly, efficiently and with common sense outcomes. We would of course find your views on this particularly valuable.

However, a few cases have had their problems and I'm sure you'll hear more about those in the next few days. This is of course inevitable under any new system, as we ourselves well know.

Some of those problems relate to delay in dealing with the case. There have been some concerns about the level of member cooperation. This seems to have been particularly so where cases have been delegated below monitoring officer level, which may need some consideration in our discussions. And I know that the president of the Adjudication Panel for England has expressed some concerns about procedures in some cases he has seen on appeal. The Adjudication Panel comment was that "the standards committees were having difficulties in getting to grips with procedure issues and with how to produce a reasoned decision. 38% of appeals cite procedural irregularities as grounds of appeal".

But these are the types of teething problems you might expect, and from which we will all learn during the conference, and in advice and guidance afterwards. I guess that issues of more pressing concern are the additional implications of local referral and in particular the volume of allegations that will be received. The evidence we've collected over the years on that is interesting.

Bridging the  gap

### **Local allegations in 2005**

- District councils averaged five allegations each
- County, unitary and metropolitan borough councils averaged six allegations each
- 15% of district councils had no allegations
- 34% of county, unitary and metropolitan borough councils had no allegations
- 551 parish and town councils averaged three allegations each

For example, it shows that in 2005, district councils were the subject of an average of five allegations each, although 15% of you didn't have any complaints.

For counties and unitaries, the average was nearer six allegations, although a third of you again didn't receive any.

And an average figure is of course misleading – we all know there is no such thing as 'an average authority' and I'm afraid the figures are skewed by a small handful of authorities subject to a rather larger number of complaints than the average.

Finally, of the eight and a half thousand parishes, we have received no complaints in respect of seven thousand during the whole of the period that the Code has been in force. Of the 1,500 about which we have received complaints, there are only a few which have generated large volumes of complaints. Indeed, during 2005, there were complaints about only 551 parishes with an average of around three per parish complained about.

Of course that may be scant consolation for those of you with a large number of parishes, but again our evidence shows that it is only when you are getting above 40 parishes that the average number of cases starts to rise. Below that number you may have an additional ten cases a year to deal with on top of your own. Above that number it starts to get nearer 20 additional cases. And please bear in mind that we are simply talking about allegations here – of which around three quarters are currently not referred for investigation by our Referrals Unit – not the numbers of investigations.

As to how to deal with large volumes of complaints, more later. Overall, however, we believe the situation looks more manageable for most authorities than it at first seemed. However for those of you with a large number of parishes and also for those very few of you where your own council will give rise to scores of complaints, there will be resource implications which we all need to address.

Bridging the  gap

### **Challenges ahead**

- Local filter – making it work
- Balance between local discretion and consistency
- Revised Code of Conduct

So how do we use the time between the current system and one which is locally based – where referrals are made locally and most cases are investigated and decided upon locally? We are hopeful that legislation providing for the local filter will be in place by summer 2007 and the system in operation by 2008.

Well, at the Standards Board we are already adjusting the focus of our work away from the volume of cases we investigate and towards the provision of a stronger framework of support. An example is the training DVD – *Going Local - investigations and hearings* – which was released in January 2006 (and which, if you don't mind us blowing our own trumpet, I should say won a prestigious international award for training materials!). I understand that copies have been made available to all local authorities.

We have strengthened our support and guidance functions to help you with the transition to the new system and more immediately with the implementation of the revised Code. We will continue to monitor the national picture to help us assess the impact of the system on standards and, we hope, to identify good practice. We are ensuring that we are best placed to help the small number of councils which have real local difficulties. Again, we look forward to hearing from you about how you see our role in that.

Looking further forward, we are working closely with the minister's department to make sure the system is designed as effectively and flexibly as possible. This of course raises a number of issues for us as the Standards Board and for you. The first is the issue of striking an appropriate balance between the importance of the exercise of local discretion in decision-making on the local filter on the one hand, and the need for a degree of consistency and fairness on the other, so that there is not substantially unequal treatment of members from one authority to another.

We do believe that local discretion should be paramount, but we also think that the two principles can be reconciled to some extent by means of the guidance which we will issue. We will give guidance on matters such as thresholds for referral, which will be based on the experience we have gained from the thousands of complaints made to us over the years. To illustrate: we apply a higher threshold to complaints of rudeness by a member to another member, than to a member of the public, and we may well consider advising a similar approach in local referral. Your view on this approach will be welcomed since this may well be a crucial issue.

We have concluded over time that there are certain categories of complaint where some form of action other than investigation would be warranted. An example is where a very large number of complaints about one council suggest that there is something fundamentally amiss about the way it works rather than about the conduct of a number of individual councillors. In such cases, ethical standards officers have chosen to issue directions to the monitoring officer, about which incidentally you can read in the latest edition of our *Case Review* – which I promise makes engrossing reading. We think that the same discretion should be available locally and we are asking the minister to include that flexibility in the legislation.

We are also concerned about potential conflicts of interest that may arise when the system operates under the new local framework. For example, will a conflict arise if those taking the decision to refer a case, later hear the case? We believe that this can be avoided if the decisions on referrals and investigations are taken by small sub-committees, rather than the whole standards committee. We are also pressing the minister to ensure that the framework allows for joint working between standards committees and other options such as county-wide panels to deal with parish matters. What do you think?

Finally, as I have said, we are concerned about the resource implications for some districts if they are asked to filter parish cases, particularly if there is no joint working. Whilst we are fully convinced of the need for parishes to be within the system of regulation, our statistics do show that local filtering may place some strain on smaller districts with a large number of parishes. The strain of actually handling such cases currently referred by the Standards Board is already apparent among a handful of districts – and a similar strain is possible when future local referrals come in to force. Bear in mind that our research shows that this will be a problem only for a few authorities, but we do recognise that it could nevertheless be a considerable task for some of you. Again, possible solutions will be looked at over the next few days and your contribution will be essential.

Turning now to the other big gap we will all be bridging – the move from the current to the revised Code of Conduct. We are grateful to have heard from the minister that the Department for Communities and Local Government will now be consulting on the proposed revisions and I urge you all to consider it carefully with your colleagues. The proposed changes are far reaching and this is a unique opportunity for us all to get it right.

We expect the new Code to be in place in time for the start of the new municipal year in May and that raises some important issues for us all in the room. We all know the present code needs changing and we therefore think it is important to have the new Code adopted by authorities as early as possible. That means working towards having it adopted at your May council meetings (and urging the same on your parishes).

In order for that to happen you all need to work between now and then to look at the proposed version, make sure you understand it and work to get your members understanding it and ready to sign up. We realise this means a lot of work between now and then but we think it would cause problems if some authorities have signed up and some haven't – particularly for members on more than one authority who may end up having different rules applying on any given day during the 6-month adoption window.

Again, we would be grateful to hear from you in the next few days what practical problems this could pose, how you think they could be overcome and what support and advice you will need from us to smooth the transition between codes.

Last year, we reported back on the consultation we had run and I'm delighted the minister took all the points on board. Our starting aim was to be a light touch and liberalising wherever possible – and we believe that the draft fulfils that aim. You will hear more about the proposals over the next few days so I won't go into detail here.

However, there is one issue I want to raise now, namely the proposed changes to the rules in respect of declarations of interest. The issue of interests has caused the greatest concern and has undoubtedly proved far from easy to advise on, either for the Standards Board or for monitoring officers. We hope that the proposed changes go a long way to overcoming the difficulties. However I want to say at this point, even before the changes are made, that the purpose behind the current Code was to reinforce the presumption in favour of councillors, as democratically elected representatives, being able to talk about and vote on an issue unless there is a paramount public interest against it – in effect that they are patently operating in their own interest rather than the public good.

You will have seen the newspaper headlines about councillors being gagged – not being able to talk about phone masts because they own a mobile and so forth. A lot of this is of course nonsense but I'm afraid some of it does arise from some overly cautious monitoring officer advice which is clearly at odds with the purpose of the Code and tends to bring the whole framework into disrepute, and which in turn does local government a disservice. Maybe this will be an issue you will want to consider further in the context of our discussion on Code revision.

## **The Standards Board for England**

- Increasingly strategic
- Investigating the vital few
- Ensuring public confidence in the system

So those are some of the challenges you will face over the coming year. What of the Standards Board in all this? Well, I leave you with how we see our role in the future.

As we move away from investigating a high volume of cases, we can become increasingly strategic in outlook, making sure the system is running well, issuing formal and informal guidance, and giving individual advice and support. We will retain a small team to deal with those cases which, for whatever reason, cannot be handled locally.

Then there is a gap of another kind which we will be seeking to bridge by next year which is the move of the organisation to Manchester. We've already got a bridgehead in place and we're looking forward to the move being complete by next summer.

And finally, we will continue to promote the importance of high standards of conduct in local government and to assist those who also work to promote them. That is why we place so much importance on events such as this where you play a large role in setting the agenda and we try as hard as we can to meet your needs.

So I hope very much you find the rest of the conference stimulating and enjoyable.