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Welcome to the ninth issue of the *Town and Parish Standard*.

In this issue, we look at the proposed changes to the Code of Conduct. We also look at issues of disrepute following the recent case involving the Mayor Of London, report on an announcement regarding our capacity building bid to support the work of town and parish councils and to encourage high standards, and discuss what constitutes disrespectful conduct.

We have already welcomed the emphasis placed in the White Paper *Strong and Prosperous Communities* on the links between high standards of conduct and strong, accountable, responsive leadership. We now welcome the introduction of legislation to put these proposals into effect.

In particular, we are encouraged by the prominent role given to parishes. Proposals in the White Paper include:

- The existing parish structure will be developed to enable it to deliver better services and to represent the community's interest more effectively.
- The process of creating parishes will be devolved to district and unitary councils, and the presumption will be in favour of communities that have specifically requested them. Significantly, for the first time, councils in London will be given the same right to establish parishes as elsewhere, subject to community cohesion considerations.
- The power of well-being (that which promotes or improves the economic, social and environmental well-being of an area) will be extended to all parish and town councils that satisfy criteria based on the Quality Parish Councils Scheme. For example, this could allow parish and town councils to manage or have ownership of assets which have been devolved to them by the district or unitary council.
- A growing role for voluntary agreements, such as the local charters developed jointly between the district or unitary authority and the parish or town council to provide a basis for the discussion of service provision.
- Parishes will be allowed to call themselves by other names. Three alternatives that have been suggested are 'community', 'village' and 'neighbourhood'.

If you have any questions regarding the content of this newsletter, would like to find out more about the work of the Standards Board and the Code of Conduct, or simply would like to tell us what you think of the *Town and Parish Standard*, please contact us — you can find our details at the end of this newsletter.

Consultation begins on the revised Code of Conduct

The government is now consulting on changes to the Code of Conduct. The revised version includes almost all of the recommendations made by the Standards Board following its extensive consultation with local government.

Below is a summary of these proposed changes:

- Bullying is specifically referred to. Its definition will be clarified by our published guidance.
- The 'whistle-blowing' duty to report breaches by fellow members has been abolished.
- Members with a prejudicial interest in a matter may, if the meeting agrees, attend the meeting to make representations, answer questions, or give evidence, and then withdraw from the room where the meeting is being held.
- Members will be able to disclose confidential information if the disclosure is judged to be in the public interest. There will be guidance from the Standards Board on the public interest test.
- Certain behaviour outside of official duties will continue to be regulated, but will be limited to unlawful activities.
- The intimidation of anyone involved in a case, including the complainant, witnesses and officers of the authority, is prohibited.

A copy of the consultation paper and of the revised Code is available from the DCLG's website at: www.communities.gov.uk/consultations

The Standards Board encourages all parishes to respond to the consultation: please note that the deadline for responses is **9 March 2007**.

The government has not given any details on the timing and implementation of the revised Code following consultation. However, it is hoped that it will be tabled in Parliament later in March, and that authorities will have six months from May 2007 to adopt it.

We hope that authorities will be in a position to adopt the revised Code at their annual meeting or as soon as possible afterwards. To achieve this, clerks should consider the timetable that will need to be followed within their authority, both for adoption of the Code and training for members.

The Standards Board, therefore, encourages parish clerks to work with their monitoring officers to make sure that appropriate training is available as early as possible. This should minimise any confusion arising from the use of two different Codes of Conduct, and facilitate the early adoption of the revised Code.

When do rules on disrepute apply?

The only parts of a council's Code of Conduct which apply when a member is not acting in their official capacity are: not to bring their office or authority into disrepute, and not to misuse their position to confer an advantage or disadvantage on themselves or any other person. Acting outside of a member's official capacity is known as acting "in any other circumstances".

The recent High Court decision in the case of *Livingstone v. Adjudication Panel for England* changes the definition of when these parts of the Code apply. Their applicability is now more restrictive.

The High Court decided that the interpretation of the words "or in any other circumstances" in the Code is now limited to situations where a member is performing their functions or purporting to use their status as a councillor. This is because under section 52 of the *Local Government Act 2000* a member has to sign an undertaking: that in performing **their functions** they will observe their authority's Code of Conduct.

The case involved comments the Mayor made while leaving a party. These likened a Jewish reporter to a Nazi prison camp guard. The court said the Mayor was not acting in his official capacity when he left the party, and although the comments may have tarnished his reputation, they did not tarnish the reputation of his office or his authority.

For the Code to apply where a member is not acting in an official capacity, it must be established that the member used or sought to use his or her "status" as a member of the council.

When trying to establish "disrepute to office or authority", a case tribunal or standards committee will need to be persuaded that the misconduct can damage the reputation of the member's office or authority, not just the reputation of the individual concerned. Certain kinds of conduct, for example drink-driving or petty theft, may damage the reputation of an individual but will rarely be capable of damaging the reputation of the office of councillor, or the reputation of the authority.

Trying to establish when disrepute attaches to a member's office or council is not easy because the High Court gave no indication of what tests to apply.

Some of the factors that might be relevant include:

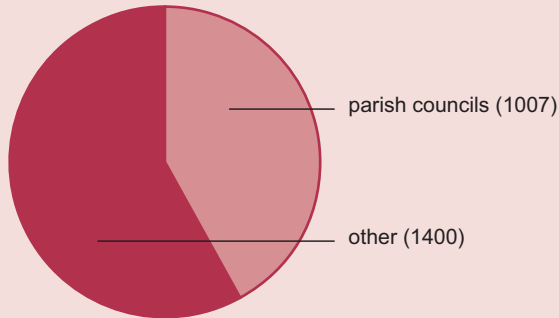
- Prejudicing the public interest for private gain (for example a councillor uses their position to secure a personal profit).
- Using, or trying to use, position or status as a

Parish and town council referral and investigation statistics

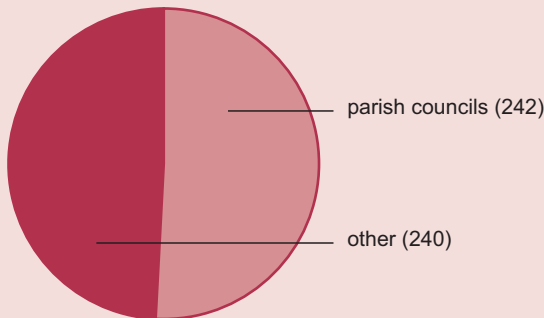
The following charts compare the parish experience with that of other local authorities, for the period 1 April 2006 to 31 December 2006.

Key parish councils other

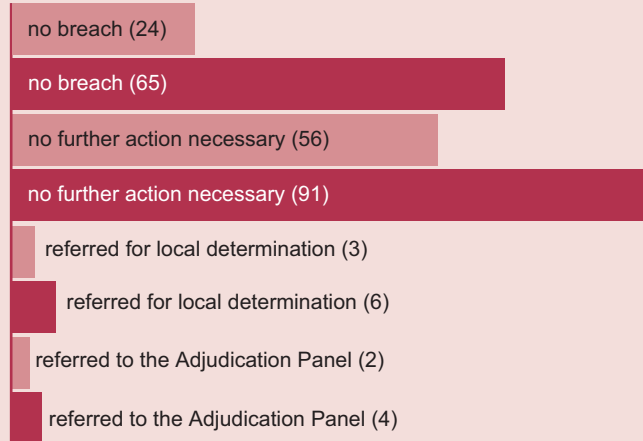
Number of allegations received (total: 2407)



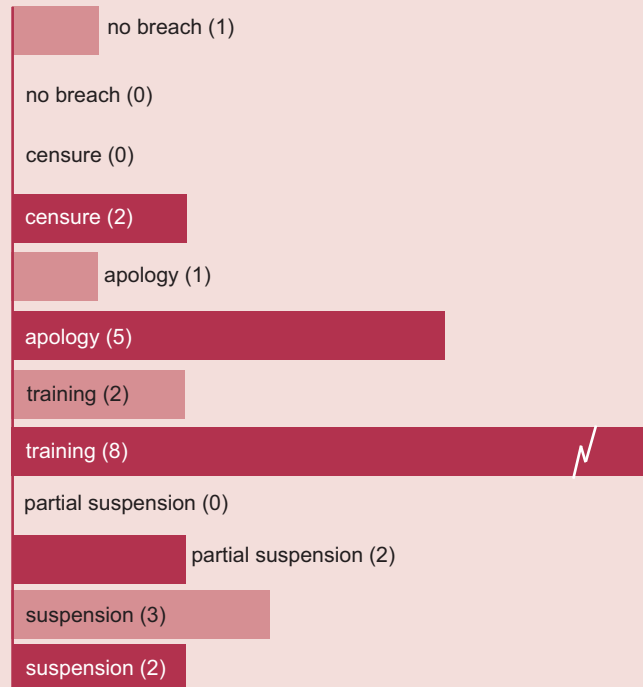
Number of allegations referred for investigation (total: 482)



Ethical standards officers' final findings



Standards committee determinations in cases that have been heard



In some of these cases, the member concerned had been given a sanction of more than one description. None of these hearings resulted in a finding of no sanction.

member of the council (for example a councillor who is in dispute with a neighbour about their planning application threatens to speak to contacts who control the planning committee).

- Defying important and well-established rules of the authority for private gain.
- Engaging in conduct which directly and significantly undermines the authority's reputation as a good employer or responsible service provider (for example sexual offences against children committed in a village hall run by the council).

What is clear is that each case will need to be dealt with on its own merits.

The *Local Government and Public Involvement in Health Bill* seeks to remove the restriction applied by the Livingstone case, and the revised Code will include those criminal offences committed before someone has become a member, but for which they are convicted after election.

If you would like further clarification, please call our enquiries line on 0845 078 8181, or email enquiries@standardsboard.co.uk

New Board member works with parishes

Shirley Flint, one of the Standards Board's newest board members, will be helping us to move forward with our work on parishes. Shirley is an independent councillor at North Kesteven District Council and is chair of its standards committee, as well as being a member of Skellingthorpe Parish Council. She is committed to working with the Standards Board's Policy and Guidance team to consolidate our work in this area.

DCLG agrees to fund capacity building bid

The Department for Communities and Local Government (DCLG) has agreed to fund the capacity building bid discussed in the last issue of this newsletter. The DCLG welcomed the proposals in the bid and felt that they are consistent with the policy direction the government is taking in the parish sector. They encouraged the Standards Board, together with our partners on the bid NALC (National Association of Local Councils) and SLCC (Society of Local Council Clerks), to look into the ways in which the bid's programmes would support the emergence of new parishes.

The Standards Board will meet with its partners to discuss this further before finalising the bid before the end of the financial year. We look forward to updating you with news on its progress in the next issue of the *Town and Parish Standard*.

The issue of disrespect in the Code of Conduct

Paragraph 2(b) of the Code of Conduct, which requires members to "treat others with respect", is very broad and as such has been misunderstood by some members and officers.

Lively debate, robust criticism and political discussion within local authorities, all of which are considered vital to the role of councillors and the functioning of a healthy democracy, are not intended to be caught by the Code of Conduct.

One of the key factors in determining whether an alleged comment is disrespectful is whether it is intended to articulate an idea or argument, or whether it is aimed at attacking a person and their personal characteristics. A comment such as "you're talking drivell", while intemperate, is unlikely to be considered unacceptable, whereas calling someone a "stupid cow" is more likely to constitute disrespect.

Another key factor is who is the target of the criticism. Members have access to the media as well

as speaking rights at council meetings, and so have platforms from which they can counter such criticism. Also, members can expect to encounter robust criticism or strongly held views as part and parcel of the cut and thrust of political life. Accordingly, the level at which criticism of another member would become disrespectful conduct is relatively high.

However, people who are not members may not have platforms from which they can respond to criticism. Members of the public do not often have the right to reply at council meetings or the same access to the press, and officers such as clerks are often restricted in what they can and cannot say as impartial employees of the authority. There is a greater danger that robust criticism of these individuals could stray into the area of disrespectful conduct covered by the Code.

Local politics often deals with controversial issues, emotions can run very high, and people can be highly sensitive to criticism. Individuals may feel like they have not been treated with respect, even if the 'perpetrator' believes their actions were justified.

While the Standards Board does not condone behaviour that deliberately upsets or offends, we recognise that sometimes this does happen in the normal course of a member's duties. We may not refer an allegation for investigation if we consider it insufficiently serious to justify the expense of a publicly funded investigation.

An allegation is more likely to be referred if, for example, a member criticises a member of the public in a public meeting where they have no right to reply, or if they use insulting and derogatory language that is aimed at the individual in question rather than their ideas or argument.

Contacts and more information

We would like your ideas and suggestions for future newsletters, along with any questions or feedback. Please send comments to:

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- The Standards Board for England
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More information

Find out more about the Standards Board and the Code of Conduct from our website:

www.standardsboard.co.uk