

**MODEL CODE OF CONDUCT: STANDARDS BOARD NOTIFICATIONS
(Report by the Director of Central Services and Monitoring Officer)**

1. INTRODUCTION

1.1 In accordance with the procedure adopted by the Standards Board for England for the investigation of allegations, the Monitoring Officer has been notified of the Board's decisions in respect of –

- ◆ an allegation made by a District Councillor against a colleague District Councillor (Case 1);
- ◆ an allegation made by a Parish Clerk against a Councillor serving on Bluntisham Parish Council (Case 2); and
- ◆ an allegation made by a Parish Councillor against colleague Parish Councillors on Oldhurst Parish Council (Case 3).

2. DETAILS OF CASE 1

2.1 At the meeting of the Committee in September 2004 (Minute No 15 refers), the Monitoring Officer reported an allegation that a District Councillor had breached Clause 3 (a) of the Code of Conduct by disclosing information given to him in confidence or information which was of a confidential nature without the consent of the person authorised to give it. At that time, the Standards Board for England had considered the allegation and decided that it should not be investigated. In accordance with Section 112 of the Local Government Act 2003, the complainant in this case requested a review of the decision not to refer the matter for investigation. The allegation was subsequently investigated by an Ethical Standards Officer.

2.2 In a report by the Ethical Standards Officer dated 7th January 2005, the Board concluded that although the District Councillor had allowed information taken from a draft report to be made public, the information was not given to him in confidence nor did he believe it to be of a confidential nature. The Board were of the view that the District Councillor did not fail to comply with Clause 3(a) of the Code and therefore found that there was no evidence of any failure to comply with the District Council's Code of Conduct.

3. DETAILS OF CASE 2

3.1 It has been alleged that a Member of Bluntisham Parish Council has acted without that Council's authority by instructing Contractors, building a new village hall, to undertake additional works at extra cost to the Council without having obtained the Council's approval. The allegation has been referred to an Ethical Standards Officer to investigate and it has subsequently been decided that the matter should be investigated centrally by the Standards Board and not locally by the Monitoring Officer.

- 3.2 The Committee will be advised of the outcome of the case on the conclusion of the investigation by an Ethical Standards Officer.

4. DETAILS OF CASE 3

- 4.1 Case 3 involves an allegation as to the failure of two Parish Councillors to withdraw from a meeting of Oldhurst Parish Council during discussion of a matter on which they had a prejudicial interest. The allegation had been referred to an Ethical Standards Officer who has subsequently passed the matter to the Monitoring Officer for investigation locally. A report on the outcome of the investigation will be submitted to the Standards Committee in due course.

5. CONDUCTING LOCAL INVESTIGATIONS

- 5.1 Members will be aware that the Regulations governing local investigations came into force on 4th November 2004 and that cases are now being referred to Monitoring Officers for investigation. As this process evolves, experience of the responsibilities, in terms of the methodology and practice required under the Regulations to meet the expectations of the Standards Board, will develop. However, it is useful to note the following advice from the Board in respect of “unfair procedures” and “late hearings”.
- 5.2 Members who are dissatisfied with the outcome of a Standards Committee hearing into their conduct can appeal to The Adjudication Panel for England. The subject Member must first request permission to appeal the decision from the President of the Panel setting out which aspects of the hearing the Member wishes to appeal – the decision as to whether the subject Member has breached the Code of Conduct, the sanction, or both. The President will consider whether permission to appeal should be granted.
- 5.3 In some of the appeals that have been permitted to date, it has been noticeable that the subject Member has alleged that Members of the Standards Committee hearing the matter were biased or partial. In some cases, the subject Member has alleged that the Standards Committee procedures were unfair, preventing that Member from receiving a fair hearing.
- 5.4 It is therefore important that Standards Committee Members hearing cases against Councillors should consider not only whether they have a personal or prejudicial interest as set out in the Code of Conduct, but also whether their connection to, relationship with or knowledge of the subject Member could be considered to be biased or give a reasonable Member of the public the impression that the decision could be partial. Standards Committees should also ensure that, as fair as possible, the procedures of the Committee hearing a matter concerning the conduct of a Councillor are fair.
- 5.5 The decision of a Standards Committee on a matter referred for local determination was overturned in January in a judicial review claim, on the grounds that the Standards Committee had taken too long to hear the case.

- 5.6 Mr Justice Hughes gave judgement in *Dawkins v Bolsover District Council* on 10th December 2004. The court quashed the decision of the District Council's Standards Committee because the delay of over 7 months between receipt of the Ethical Standards Officer's report by the Monitoring Officer and the Standards Committee hearing represented a substantial failure to comply with Regulation 6 (2) (b) of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, which set a 3 month deadline for hearings.
- 5.7 The court accepted submissions from Bolsover District Council and the Standards Board for England that there was no automatic loss of jurisdiction once a three-month period expired. Unforeseen circumstances might arise that would make it genuinely impractical to hold the hearing within 3 months. In such circumstances there would be no loss of jurisdiction. Nevertheless, the Standards Committee was under a statutory obligation to meet the 3 month deadline. However, it should not be regarded as a target to aim for. An authority has to plan on the basis that the 3 month deadline must be met. In this case, the evidence showed that Bolsover District Council had failed to put the necessary arrangements in place. The Standards Committee hearing was therefore unlawful.

6. LOCAL INVESTIGATION REGULATIONS

- 6.1 At its last meeting, the Committee requested the Director of Central Services and Monitoring Officer to ask the Council's insurers to consider whether it was appropriate to indemnify against the risk of any potential claim for defamation against an Investigating Officer in the event of the reference by the Board of a case of misconduct by a Councillor which is required to be dealt with locally.
- 6.2 The Council's insurers Zurich Municipal have replied as follows:

"As it is a regulatory duty to carry out these investigations, I am able to confirm that in the event of an action by a Councillor against the Monitoring Officer, or persons appointed to undertake investigations and prepare reports, for defamation arising out of and in the course of the business of the Council, our policy wording would operate, subject of course, to the normal terms and conditions.

We would naturally expect that the Officer concerned would make every effort to ensure that nothing defamatory is recorded in the first instance. And when information must be released, ensure that everything which is required to be deleted or allowed to be deleted is done so if there is any conceivable chance of it being seen as defamatory."

7. CONCLUSION

7.1 The Committee is invited to note

- ◆ that the Standards Board for England has agreed to take no further action in relation to an allegation against a District Councillor but to refer for full investigation two cases involving Members of Bluntisham and Oldhurst Parish Councils; and
- ◆ information on the conduct of local investigations and a response received from Zurich Municipal on the question of an indemnity for the Monitoring Officer or Investigating Officer in the event of a claim arising from a local investigation.

BACKGROUND PAPERS

Letters received from the Standards Board for England dated 25th January and 4th February 2005.

Bulletin No 22 – Standards Board for England.

Contact Officer: Christine Deller
Democratic Services Manager
01480 388007