



## Code revision

We reported on Communities and Local Government's consultation on proposals for a revised code for members and the introduction of a national code for officers in **issue 41** of the *Bulletin*.

Many of you have been in touch to find out when you can expect the new code for members. The department for Communities and Local Government is responsible for dealing with the revisions and current advice is that a revised code will be ready in late autumn 2009.

We do not anticipate many changes to the Code this time around. The main change will be to allow the Code to cover members in their non-official capacity, where that conduct would be a criminal offence.

We have been informed that further consultation on the introduction of a code for officers is likely to take place in 2010.

## Imposing sanctions: Written apologies

Regulation 19 of the **Standards Committee (England) Regulations 2008** lists the 11 sanctions available to a standards committee. Standards committees must be careful that any sanctions they choose are included in this list. For example, a verbal apology is not listed and would not therefore be a valid sanction. Asking a member to submit a written apology in a form specified by the committee is valid.

The written apology sanction is a difficult sanction to enforce if a member chooses not to comply with it. Standards committees should consider this when deciding on which sanction to impose.

If a standards committee decides that a written apology is appropriate it should:

- specify the form in which the apology should be written
- set a time-limit for the apology to be written.

If a member fails to issue the written apology, the member may face a further complaint of potentially bringing their office or authority into disrepute by failing to comply with the sanction. However, it could be argued that it would be a better use of council resources to ensure the original sanction allows for the

possibility that the apology is not given.

The regulations allow for the suspension of a member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee. In this way a standards committee can ensure that if a member does not apologise, they will remain suspended for a period of up to six months or until they do.

Care should be taken when deciding on the period of suspension that would apply if no apology is given. It should properly reflect the seriousness of the breach of the code of conduct. Imposing a six month suspension period to encourage an apology to be given would be a misuse of the power.

Standards committees should carefully consider the appropriateness of imposing a written apology when a member has shown no remorse for their conduct and no evidence at the hearing to indicate they are able to acknowledge their behaviour and its impact on others. Any apology issued in such circumstances is unlikely to be seen as being genuine.

For more information on sanctions please see our [\*\*Standards Committee Determinations guidance\*\*](#).

## Intimidation and the Code

On July 23 2009, the President of the Adjudication Panel for England made a significant decision in the case of Councillor Buchanan, an ex-councillor of Somerset County Council.

This is an important judgment as it is the first occasion in which the Adjudication Panel had to deal with a potential breach of paragraph 3(2)(c) of the Code of Conduct. Paragraph 3(2)(c) concerns the intimidation of, or an attempt to intimidate, a complainant in a Code of Conduct investigation.

### The Facts

In April 2007, the Chief Executive of Somerset County Council made a number of complaints about Councillor Buchanan's behaviour to Standards for England. Later on that year, Councillor Buchanan made a formal complaint to the council about the Chief Executive's conduct which the council decided not to investigate.

Following a further complaint from the Chief Executive about Councillor Buchanan, the council's Liberal Democrat group asked Councillor Buchanan if he would suspend himself from the group pending the outcome of all ongoing investigations, but he declined. Councillor Buchanan was notified that his membership of the Liberal Democrat group had been formally revoked on 5 December 2007.

On that same day, Councillor Buchanan wrote a letter to the Association of Local Authority Chief Executives, (ALACE) stating formal complaints about the Chief Executive and listed five headings of inappropriate and unacceptable types of behaviour that the Chief Executive had allegedly committed. And five days later, he sent a letter in identical terms to the Society of Local Authority Chief Executives (SOLACE).

On 15 December 2007 Councillor Buchanan further wrote a formal complaint to the council's monitoring officer in almost identical terms.

The Chief Executive then complained about Councillor Buchanan's motivation and intent in making the serious allegations about him in the letters. This was because Councillor Buchanan knew that Chief Executive was the complainant in an ongoing investigation.

Against these facts the Tribunal had to decide whether:

- Councillor Buchanan had brought his office or authority into disrepute
- had used his position to improperly disadvantage the Chief Executive

- had intimidated or attempted to intimidate the Chief Executive.

The respondent's case was that he had either witnessed or been told about the Chief Executive's alleged behaviour and had previously raised his concerns about the behaviour with various senior officers of the council.

### The Adjudication Panel's findings

The Tribunal's findings were that Councillor Buchanan had not voiced the concerns he was now alleging and that:

- although he may have formed a belief about the seriousness of the alleged behaviour, there was no evidence to suggest that it was reasonable for him to have done so
- whatever he had seen, he did not at the time regard the alleged incidents as seriously as he was asserting at the time he wrote the letters
- he had knowingly exaggerated the facts about the Chief Executive's style and performance in order to strengthen his allegations of serious misconduct.

Counsel for the ethical standards officer (ESO) had helpfully referred the Adjudication Panel to the Shorter Oxford Dictionary definition of the word 'intimidate' as meaning terrify, overawe, cow. The dictionary suggested the word was now used especially in order to mean to force to or to deter from some act by threats of violence.

Counsel for the ESO also referred the Tribunal to R v Patresca [2004] EWCA Crim 2437, which concerned an offence under Section 51 of the Criminal Justice and Public Order Act 1994. This proves that a person commits an offence if he or she does an act:

(a) which intimidates and is intended to intimidate another person (the victim)

(b) knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness

(c) intending thereby to cause the investigation or the course of justice to be obstructed perverted or interfered with.

The Court of Appeal noted that the Criminal Justice and Public Order Act provided that "an intimidatory act which consists of threats may threaten financial as well as physical harm".

In the course of the judgment, May LJ confirmed that 'intimidate' and 'intimidation' are ordinary English words and endorsed the dictionary definition referred to above and stated:

"In our judgement, a person does an act which intimidates another person within section 51 (1) (a) of the 1944 Act if he puts the victim in fear. He also does it if he seeks to deter the victim from some relevant action by threat or violence. A threat unaccompanied by violence may be sufficient and the threat need not necessarily be a threat of violence. The act must be intended to intimidate. The person doing the act has to know that the victim is a ...witness or potential witness..., He has to do the act intending thereby for the cause of justice to be obstructed, perverted or interfered with. A person may intimidate another person without the victim being intimidated...An act may amount to intimidation even though the victim is sufficiently steadfast not to be intimidated.

"In our judgement pressure to change evidence alone is insufficient, Pressure alone might be unexceptional and entirely proper at least if applied in an honest belief, for instance that what was sought was evidence which would be truthful. Alternatively pressure might be improper but lack any element of intimidation, for example a bribe. For a person to intimidate another person the pressure must put the victim in some fear, or if not there must nevertheless be an element of threat or violence such that the pressure is improper pressure."

Against this background, the Case Tribunal had no doubt that in writing the letters to ALACE and SOLACE and later to the council, Councillor Buchanan was motivated by a desire to cause harm to the

Chief Executive whom he saw as responsible for the collapse of his political career.

The Case Tribunal was also in no doubt that in writing those letters, the respondent intended to cause the Chief Executive a disadvantage both in terms of his future employment with the council or more widely. Because those letters were submitted essentially as an act of revenge, the respondent did use his position improperly and had thus failed to follow the provisions of paragraph 6(a) of the council's Code of Conduct.

The Tribunal also found that even though there was no evidence that the Chief Executive was intimidated, that did not of itself mean that the allegation of a breach of paragraph 3 (c) failed. There would still be such a breach if the respondent had attempted such intimidation.

The Case Tribunal believed that for the claim to succeed it would have to accept that the letters were intended to intimidate the Chief Executive into:

- altering any evidence he was called upon to give against the Councillor; **or**
- not making further complaints about the Councillor.

On the facts of this particular case the Case Tribunal concluded that neither were Councillor Buchanan's intention. The evidence here was that the respondent was seeking revenge for the Chief Executive's past actions rather than seeking to intimidate him. Therefore there was no breach of paragraph 3(c) of the council's Code.

The Case Tribunal's view was that the respondent, in allowing his actions to be motivated by his desire for revenge, had shown himself to be unfit to be a councillor and local authorities should be protected from his membership.

Although the respondent had by then ceased to be a councillor, he was disqualified was two years.

You can read the Adjudication Panel's decision in this case on its [website](#).

## New organisational design for SfE

During the summer, Standards for England has been making progress with an internal restructure which coincides with three new senior officers taking up their posts.

Our three new directors are Director of Risk Vivienne Horton, Director of Regulation Tim Leslie, and Director of Standards Steve Barrow.

The restructuring allows us to align our resources more closely with our role as a strategic regulator and to deliver the tasks we have set ourselves in our corporate plan. Our day-to-day Regulation activities – investigations, guidance, liaison and monitoring – fall within our new Regulation directorate.

In the new Risk directorate, Vivienne leads on our approach to assessing and managing standards risks. Within the new Standards directorate we are developing our knowledge base, our approach to strategic regulation and, of course, our own standards.

## Corporate Plan and Annual Report published

Our Annual Report for 2008-09 was laid before Parliament in July. It contained a summary of our work and all of the required corporate reporting of financial arrangements.

We think you'll be more interested in our Annual Review of 2008-09 which we expect to publish in the autumn. That's a little later in the year than we've published our annual review in the past, but we wanted this year to be able to include a significant digest of the information supplied to us by authorities in our annual returns.

The document will be in two parts – a review of our work at Standards for England, and a review of the first year of the local framework based on the information you've supplied us. We'll be highlighting plenty of examples of what we consider to be notable practice, and setting out some of the issues we wish to tackle as regulator, based on what you've said.

Copies will be distributed to all authorities and we'll publish online too.

In the early part of this year, we've been operating to a draft corporate plan pending sign off by the responsible minister in our sponsor department, Communities and Local Government. The plan was signed off earlier in the summer and we have now published our corporate plan under the title of The Changing Role of the Standards Board for England.

Copies have been sent to monitoring officers and it is also available to download [here](#).

## Review of online monitoring system - an update

The majority of monitoring officers believe that our Quarterly Returns and Annual Returns are working effectively, according to our research.

During the summer, our research team conducted the final part of its review of Standards for England's online monitoring system. This forms part of a programme of work to assess how well the system is working, and was the final part of a review project that started in June 2008.

For this part of the research, the team distributed surveys to a random sample of monitoring officers and officers who are nominated to make an online submission. Some 50 surveys were sent to assess satisfaction levels with the quarterly return, and another 50 for the annual return (this was the first time this return had been used by stakeholders). We had a good response to our survey with about half the questionnaires being returned. We would like to thank all those who participated in the survey.

The survey's results show that the majority of monitoring officers/nominated staff surveyed continue to agree that the quarterly return is working effectively, with respondents encountering minimal or no difficulty in submitting their return. There were plenty of suggestions from respondents on how to further develop the form now that the quarterly return has been operational for over a year.

The annual return survey also showed that stakeholders are pleased with how the annual return form worked during its first run. There were lots of suggestions from respondents on how the form can be enhanced in the future, with certain sections of the form being considered more relevant than others. These suggestions have been passed on to our annual return development team, and will be incorporated into the design of next year's form.

If you have any questions about this review or future reviews of the system, please contact Tom Bandenburg, Research Assistant: 0161 817 5427 or email: [tom.bandenburg@standardsforengland.gov.uk](mailto:tom.bandenburg@standardsforengland.gov.uk).

## That's a wrap!

Editing is now underway for our new training DVD on Local Assessment following a successful shoot last month. Viewers will follow the work of Jack Ridley and his fellow assessment sub-committee members as they look at a variety of complaints about councillors covered by their standards committee.

The film is designed to help standards committees and officers who are involved in the assessment of complaints that a member may have breached the Code of Conduct. It will take viewers through the main stages of local assessment, exploring important or contentious issues along the way.

Learning points are interspersed with the drama. Standard DVD extras including scene selection and subtitles will also be available.

Copies of the DVD will be sent to all monitoring officers in October, and we look forward to hearing your thoughts.

## Annual Assembly 2009: Bringing standards into focus

There are just a handful of places left for the 2009 Annual Assembly, 'Bringing standards into focus', at the ICC, Birmingham, on 12-13 October 2009.

This year, we've responded to your call for more sessions focused on good practice, and the programme is full of opportunities for you to share the lessons you've learnt about the local standards framework. A great range of speakers are now on board, including standards committee members and officers from authorities across the country, as well as all those shortlisted for the 2009 LGC Standards and Ethics award. Full details of the programme, including confirmed speakers, is available [here](#).

Solicitors attending the Assembly can earn 10.25 bonus credits towards their continuing professional development, as the event is certified to count towards SRA's CPD scheme.

Breakout sessions are filling up fast and if you have secured your place at the conference you are urged to choose your sessions and return your preference form as soon as possible to avoid disappointment.

## Changes at the Adjudication Panel for England

In Bulletin [issue 42](#) we wrote about the Adjudication Panel for England's integration into the new unified tribunals' structure.

The Adjudication Panel's work is due to transfer into the new General Regulatory Chamber (GRC) within the First-tier Tribunal in January 2010, subject to Parliamentary approval. The GRC is a new chamber that will bring together individual tribunals that hear appeals on regulatory issues.

From January 2010, proceedings which would previously have been before the Panel's tribunals, and decisions previously made by the President of the Adjudication Panel, will be undertaken in the GRC of the First-tier Tribunal. Appeals from the GRC will be to the Administrative Appeals Chamber of the Upper Tribunal.

These changes are part of a programme of tribunal reform that began with the establishment of the First-tier and Upper Tribunals in November last year. This put in place a new flexible structure where services can be built that are increasingly responsive to the needs of users.

The independent status of the judicial office holders who consider the references and appeals that come to the Adjudication Panel is not affected by the transfer into the unified structure. Tribunal users will continue to receive a specialist service following the changes, as members of the Adjudication Panel will move into the new First-tier Tribunal. They will continue to deal with the references and appeals on matters arising from the operation of the Code.

You can find out more about the merger [here](#).

All postal correspondence, including standards committee referrals and subject member appeals should now be sent to the Adjudication Panel's new address:

Adjudication Panel for England  
Tribunal Service  
York House  
31-36 York Place  
Leeds  
West Yorkshire  
LS1 2ED

## Forthcoming events

Standards for England has a packed event calendar for the next few months.

You can visit us on our stands at the following events:

### **NALC Annual Conference**

4-5 September  
Royal College of Physicians, London  
Stand 4 in the Dorchester Library

### **Liberal Democrat party conference**

19 -23 September 2009  
Bournemouth ICC  
Stand 36 in the Solent Hall

### **Labour party conference**

27 September - 1 October 2009  
Brighton Centre  
Stand 92 in the Hewison Hall

### **Conservative party conference**

5 -8 October 2009  
Manchester Central  
Stand 106

### **Solace Annual Conference**

20 - 22 October  
Brighton Centre

### **Society of Local Council Clerks National Conference**

23-25 October  
De Vere Hotel, Daventry  
Stand 34

### **AcSeS Annual Conference**

18-19 November



The Armouries, Leeds

## SfE continues to support LGC award

We are pleased to announce our continued support for the **Standards and Ethics** category at the **2010 LGC Awards**, following the success of last year's award.

The quality of last year's entries showed that many local authorities are strongly committed to promoting high standards of member conduct, and see the vital connection between standards, public trust and success. Good practice ideas from last year's winners are available on our [website](#).

This year, we want to know more about how authority standards committees, members and officers are working together to champion ethical standards and make a positive difference to public trust.

Entries should demonstrate how high standards of conduct are central to the authority's culture and governance. You can enter online at [www.lgcawards.co.uk](http://www.lgcawards.co.uk), where you can also find further information on the LGC Awards. The closing date for entries is **13 November 2009**.

If you would like further information on the award, you can also contact Clare Sydney, Standards for England Communications and Events Manager, on 0161 817 5332.

## NALC's Local Council Awards 2009

NALC's Local Council Awards 2009 NALC has re-launched its Local Council Awards. NALC is looking for good practice from councils regardless of size or location. This year's NALC Local Council Awards will be in the categories of:

- Council of the Year sponsored by AON
- Clerk of the Year sponsored by AON
- Councillor of the Year sponsored by the Commission for Rural Communities (CRC)
- Council Worker of the Year sponsored by The Co-operative Bank
- Much Improved Council of the Year sponsored by Standards for England

The closing date for applications is 30 November 2009.

For further information about the awards criteria and application details please visit the NALC website or the website of [NALC's](#) flagship publication, [LCR](#).

## Updating authority websites

If your authority's website contains contact information for us, please make sure that it is up-to-date.

You are welcome to use our logo as a link to our website. If you would like to do so, please contact Trish Ritchie on 0161 817 5406 or [trish.ritchie@standardsforengland.gov.uk](mailto:trish.ritchie@standardsforengland.gov.uk) who will send one to you.

Here are our current contact details

Address:



Standards for England  
Fourth Floor  
Griffin House  
40 Lever Street  
Manchester  
M1 1BB

Website: [www.standardsforengland.gov.uk](http://www.standardsforengland.gov.uk)

Email: [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

Enquiries line: 0845 078 8181

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