

Sixth Annual Assembly of Standards Committees 15-16 October 2007, ICC, Birmingham

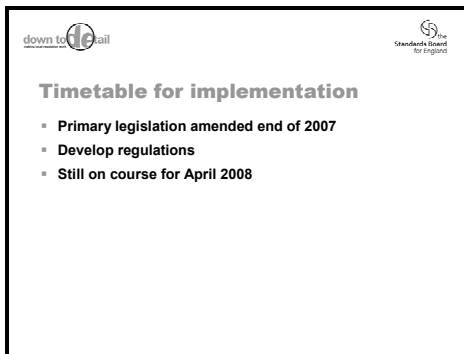
Local filter: Countdown to 2008

Patricia Hughes, Deputy Chair The Standards Board for England

Welcome to our Sixth Annual Assembly of Standards Committees. As I said last year, we really do appreciate your continuing support for these events. They give us a valued opportunity to hear your concerns, as well as to share with you views and ideas.

This Assembly, with the road shows, is probably the best way we can keep our finger on the pulse of how our work is affecting the bodies we regulate and their Standards Committees and Monitoring officers in particular. And there have been Assemblies where my pulse at least was racing – the one, for instance, where the local investigations and dispositions regulations were billed as the main theme, but they were published only in the nick of time for distribution on the first morning of the event.

Well, as we all know, all the authorities affected by that change took it in their stride, and as David has just told you, our evidence is that, taken as a whole, they are managing local investigations well. So now we all move on again, taking in a substantially amended Code as we go, to the completion of the local framework for handling complaints of breach of Code, - the local filter – and it's that that I'm going to talk about this morning.



We've called this session 'Countdown to 2008' because of the legislative timetable. As we have just heard from the minister, the Local Government & Public Involvement in Health Bill is completing its final Parliamentary stages and will be in place by April 2008. It will provide for a local standards framework in place of the centralised regime covered by the original Local Government Act 2000.

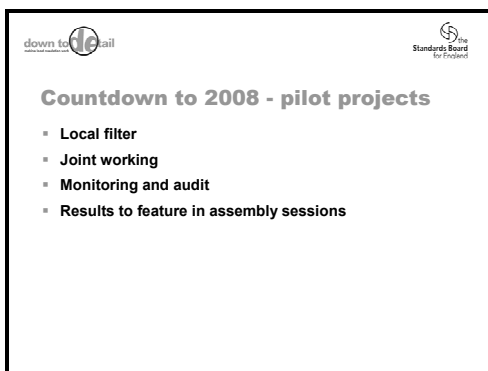
However, as you will of course know, there is a lot of planning and preparation to be done both by the Board and by authorities in advance of this date. As always, I know that we will learn this week that some of you are already well on the road, whilst others are awaiting guidance or seeking to overcome

concerns. We certainly want to hear from you wherever you are on the spectrum.

But, in planning and preparation, there is also the key role of the Department for Communities and Local Government, because the timely publication of the new Regulations is critical to our readiness to move to the new system. We are dependent on these Regulations for the important detail which we need to have ourselves, so that we can be in a position to offer you authoritative guidance.

Of course we have a pretty good idea of what they will contain, and we are preparing advice and guidance based on that, but, if the change is to be smooth and effective, it's vital to have certainty both for us in helping you, and for you in preparing your standards committees and your councillors for their new roles and responsibilities. We know Government is working hard to have the Regulations in place as soon as possible and we welcome the minister's comments earlier today. Until we have the Regulations, however, you will understand that what we say at this Assembly has to be to some extent, and in some areas, provisional.

With that proviso, and acknowledging that parts of the process are being managed locally already, I'm going to talk now about further preparation for a locally owned system. I'll consider the new roles and responsibilities, discuss issues arising when there is a complaint, and finally touch on how individual authorities will report performance and how the Board will monitor it.



In that context I'm first going to tell you about three pilot projects which the Board has undertaken with authorities this year. We have done this for a number of reasons. The first is that over the years as a matter of principle, we have always tried to work in partnership with authorities about issues which will affect them and we saw that as all the more important with a change as big as this.

Second - we wanted as our main focus this year to ensure that both local government and the Board itself are as well equipped as possible to make the new framework a success from the start and thirdly we believed that this could best be done by serious practical engagement with authorities on important issues.

The first pilot sought, among other things, to investigate the prospects for achieving consistency of local decision-making; we gave 38 authorities a range of real anonymised allegations and asked them all, as part of a training exercise, simply to consider what, if any, action they would take when facing that allegation.

We could then see across a range of authorities whether there was a level of consistency and also whether those involved felt equipped to be making judgements based on their current levels of understanding of the Code. 36 of the 38 authorities completed the exercise and, in briefest summary, the average referral rate for standards committees was just under six out of the ten cases, compared with the Standards Board's referral rate of three. So it may be that standards committees may adopt a lower referral threshold than we do.

However, I would like to qualify that by adding that on average one of the referred complaints was deemed to require alternative measures to an investigation, such as training. Moreover, the pilot exercise did not allow for those involved to seek clarification from the complainant on any matters relating to the complaint prior to making the referral decision. We have found that on certain occasions being able to contact the complainant or monitoring officer to clarify certain points in the complaint as part of the initial assessment stage has enabled us to make more proportionate decisions about whether a complaint merits investigation. Indeed, standards committees will be able to use this mechanism to help them determine whether informal action is a more appropriate course than a full-blown investigation. We think that both the ability to seek clarification and the power to order alternative dispositions will reduce the number of investigations to a figure nearer our own.

The second pilot related to how to make joint arrangements work. This pilot involved working with a small number of authorities to see what would be the advantages and disadvantages of working jointly, including resource issues, conflict management and consideration of the composition of a joint committee. The pilot identified four different types of joint-working structures for authorities to choose from if they want to follow this path; one structure for informal joint working, one for the local filter only, one for the local filter and hearings and finally, one structure for full powers. From feedback we received from the authorities, and from a consultation event we held with monitoring officers of those authorities involved, the preference was for the joint working structure to handle the local filter function only.

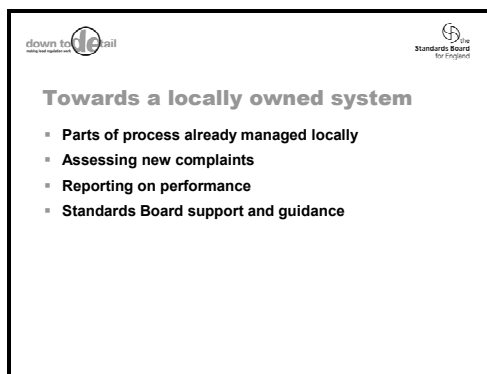
The third pilot is still going on since it relies on the information gleaned from the other pilots. It is concerned with the type of information the Board will be requiring in order to monitor performance and the means of collecting it. For example, we will be testing with pilot authorities a web based system that will allow them to file their quarterly returns using our website. Once we have finalised a system we will publish guidance setting out the requirements that authorities will need to meet and how they meet them.

Finally, in the course of all the pilots we asked monitoring officers for recommendations on 'making the local filter work' in their own authority. The

results demonstrate that almost half of the monitoring officers would increase the frequency of standards committee meetings and 40% would consider increasing the size of their standards committee, with 33% identifying a need to have more independent members.

60% felt there would be a need to increase resources in order to carry out the new responsibilities.

We have found this a stimulating way of working and some of the results have been fascinating. You will be able to check out that claim at the sessions on the pilots during the next two days. We have also greatly appreciated the contributions of the participants and will be using the findings to inform our guidance.



So now let's look at some key issues on the filtering process which you need to be thinking about at the moment, some of which have come to light during the pilots.

As you all know by now, from implementation, the Board will no longer receive complaints centrally nor take the decision whether to refer them for investigation either to its ESOs or to the authority concerned. Local standards committees will receive and assess new allegations, decide whether they appear to reveal a breach of the Code and if so, whether they merit investigation, informal procedure or no action. This is of course the 'local filter'.

First you will need to consider the ways in which you will let members of the public and others know how to make allegations and what the process entails. We detected a certain ambivalence among some local authorities about publicising the Standards Board's role. How widely will you publicise the new local service when it becomes your role? Will you use, for example, a full page spread in your council newspaper or maybe a discreet notice in your reception? How will you present the necessary information on your website? I guess to some extent this may depend on your views about potential increase in take up with a wholly local system and more particularly your readiness for it. However you really do need to ensure that people know about the service. It's important and that's likely to be reflected, I understand,

in the Audit Commission's CAA lines of enquiry. But there's more about that in a later session.

I'm sure you'll be considering what your point of reception for complaints will be and how to ensure that it is well known throughout the council. This is relevant in the context of the time taken to decide whether or not to refer a complaint for investigation. Also relevant is the fact that the decision itself will need to be made by the standards committee, or a sub-committee of the standards committee, and you will need to plan for that. Long experience tells me that it can be very hard to get the right committee members in place at short notice. I'm sure that I've said before that the Board's staff has a target of 10 days for reaching and notifying the referral decision and that they consistently meet or better it. You will need to decide on a target which is reasonable and achievable. What limits are placed on your discretion to do that will, we believe, be clarified in the Regulations.

Also relevant on this point is the fact that you will have different notification duties from those currently within the Board's discretion. It is expected – and the regulations should clarify this - that you will be required to notify the person who made the allegation and the councillor it was about, both at the time you receive the allegation and at the time you have decided what to do about it. This requirement arises from strong views by members complained against that others knew of the complaint before they did which could be regarded as contrary to natural justice. The Board has taken the view to date that for practical reasons it is acceptable to contact the complained against member for the first time when the referral decision has been made because of the volume of complaints, the short turn around time and the risk that anxious members would submit defence material at referral stage. This has always been a finally balanced issue but it certainly looks as though in future members will need to be informed of the complaint from the outset and so you'll need to be giving consideration as to how best to handle that in terms of confidentiality, sensitivity and avoiding delay.

As to the decision itself, the Board regards there as being four matters to consider:

First: Is the complaint within the jurisdiction of the Code? For example, is the person complained against a member? Jurisdiction points are rare these days and easy to decide.

Second: Does the complaint disclose a prima facie breach of the Code?

This is often, though by no means, always, easy to decide. It is becoming increasingly important, for example, to take account of the small but significant body of law which has grown up since the standards regime started. It may be that a standards committee might be inclined to regard a complaint as disclosing a breach by applying their own ethical standards to the matter, while application of precedent would indicate otherwise. Some of the cases that the members of the board have found most difficult are those where deeply offensive comments have been made by councillors but were made in a private capacity so the Code cannot be applied because of a recent

judgement that, under primary legislation, the Code only covers conduct that can be linked to a member's functions or office. Moreover, there are quite often fine judgments to be made in deciding whether a breach has taken place which in effect entail the balancing of rights: the right to freedom of speech as against the right to respect, being a classic instance.

Third: Is there insufficient evidence on which to reach a decision?

If there is insufficient evidence, we do not refer, but we do make clear in our notification letter the reason for that and leave it open to the complainant to give us more information if any is available.

Fourth: If there is a prima facie breach, does the allegation merit investigation or not?

This is by common consent the hardest decision to make and the one where there is the greatest likelihood of differing opinions. It is also an issue on which we have received consistent feedback from you, both in this year's road show and in course of the first pilot study. The feedback was to the effect that guidance on establishing criteria to help in reaching the decision would be very welcome. The Board itself already has criteria it uses at the national level to make this judgement. To use an example I've given before, the Board is more likely to investigate disrespect shown by a member to a member of the public or to a junior officer than to another member. This is because of the relative powerlessness of the former two to find redress by other means. We have needed to set a high threshold for referral, and indeed unhappy complainants have berated us because of that, but then we are still receiving hundreds of cases a month. Your situations will of course be different, as you've heard from David, but then so will be your resources. The real tests for you will be whether the matter complained of merits the resources of time and money that will be incurred and whether there are other appropriate means by which the complaint may be remedied. We will be issuing specific guidance on establishing criteria. It will be for each authority to take account of the guidance and, having done so, to adopt it or to set its own criteria in accordance with local circumstances.

With regard to the other appropriate remedies, as already mentioned, we expect that standards committees will have the power at the referral stage to direct the monitoring officer to take action other than an investigation, such as mediation or training. In the event that mediation failed to deal with the matter or the member did not participate or co-operate with training, the monitoring officer would be able to refer the complaint back to the standards committee for reconsideration and a possible referral for investigation.

There is one other decision that will need to be made on complaints referred for investigation. This is whether the investigation should be done locally or referred to the Board for investigation by an ESO. We will issue guidance on all the local filter issues I have touched on today, including this one. In summary I can say that ESOs would expect to accept very serious cases which, if made out, would attract disqualification, very complex cases involving many members and/or many documents, cases where there was

substantial local conflict of interest and cases which, if investigated locally, would lead to severe disruption of business. As things stand at present we have no way of being certain about the number of cases that will come our way but evidence from the pilots suggests around 10% of cases referred for investigation by standards committees may reach us. Of course this has to be an estimate at the moment but it does mean that we will need to retain a core of experienced investigators.

Finally on the local filter, you will also need to have a review mechanism for complainants to use if they wish to appeal against a decision not to investigate.

The other significant change that I said I'd mention is the reporting requirements. As part of our new role, the Standards Board will oversee the performance of the new framework in order to assess its effectiveness and present to local government a record of its progress. The basic information we will require will relate to case handling and will be generally quantitative. For example, we will want to know how many allegations you have handled and how many were referred for investigation. We anticipate that this will be based on a quarterly reporting process which will be supported by an annual return that will also include qualitative information about your standards committee, such as what training was undertaken or mediation carried out. This will enable us in effect to carry out an ethical health check. We will, through monitoring and possibly through referrals from other regulators, become aware of those authorities which are having problems or failing in their obligations so that we can offer help. Ultimately there is the sanction of suspension of the local filter power but we expect that to happen extremely rarely. The annual report will need to be approved by the full council and will be made available on the Standards Board and the council's websites for public inspection. We are conscious though that we don't want to overburden authorities with reporting requirements so we will be working with the Audit Commission and other bodies to reduce the level of reporting required from each authority and hence not adding significantly to the burden of regulation on authorities.

On the contrary, we see our key strategic role as one of guidance on, and support for, the locally based system. We intend to make guidance on all aspects of the framework available to principal local authorities in the New Year but some areas will of course be dependent on the regulations being available. This guidance will include supporting materials such as flow charts to help authorities navigate the system and model templates of letters, notices, forms and so on for use by standards committees. Guidance will also include that on joint committees and their working arrangements – focusing on developing the four structures I touched on earlier, local filter procedures, standards committee and sub-committee powers and the suspension of filtering powers. We will also re-issue our popular guidance publications on local investigations and hearings taking account of the changes.

down to the tail

Standards Board for England

Challenges ahead

- Local filter - making it work
- Getting prepared locally
- Ensuring public confidence in the system

We hope very much that the sessions over the next two days help crystallise your thinking on the new system and address your concerns. There are a few final practical pointers to make. I'm sure you're all considering resource implications based in part on David's analysis of the impact of the change on your authority. You may well be considering the implications of joint working – not just joint committees – in order to keep costs down.

You should also consider potential conflicts of interest that may arise within the system. 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 as was the conclusion from the pilots.

This will in turn impact on the number of independent members the standards committee will need in order to operate the system effectively. If the government legislates as expected, standards committees will also need to have independent chairs from 2008, and the balance of independent members of calibre and substance with experienced elected members acting in a non-partisan way will be essential for public confidence. With this in mind, part of the guidance we will be issuing on the framework will focus on helping authorities recruit independent members.

Overall, there is developing a wide consensus that standards of conduct have improved since the standards regime was introduced. Most encouragingly, we see strong evidence that local authorities – from chief executives and political leaders to standards committees and monitoring officers – are gaining confidence in their role as champions of high standards. We believe that the change to the local filter will hasten and strengthen that trend.

As far as the board is concerned as we evolve into a strategic regulator, we will be better able to provide the independent advice and guidance, monitoring and oversight that are essential if the public and local government are to feel confident about the quality and effectiveness of the framework. We are looking forward to our new role.

Patricia Hughes
Deputy Chair
The Standards Board for England