

**CASE REVIEW - STANDARDS BOARD FOR ENGLAND****Report By: County Secretary and Solicitor****Wards Affected**

County Wide

**Purpose**

1. To inform the Standards Committee of the outcome of recent hearings at the Adjudication Panel for England (APE) and local Standards Committees.

**Background**

2. The Standards Board for England (SBE) have recently published a review of cases heard during 2003/04 at the APE and other Standards Committees using local determination powers. A full copy of the review will be available at the Committee. Summarised extracts are set out below from the Review. Appendix A summarises the position.

**Adjudication Panel for England**

3. The Adjudication Panel for England can apply stronger penalties against members than standards committees; ethical standards officers refer cases to The Adjudication Panel for England when they believe the misconduct is serious enough to warrant these sanctions. The Adjudication Panel for England's case tribunals can disqualify a member for up to five years, and suspend or partially suspend a member for up to a year.
4. It has been hearing cases for over a year. The first tribunal took place on 16 January 2003; by the end of April 2004 it had held 160 tribunals. In the vast majority of cases – about 97% - The Adjudication Panel for England determined that there had been a failure to comply with the Code of Conduct and punished the member for their misconduct.
5. In 94 cases (59%), the member was disqualified for one year. Most of these cases concerned members who failed to register their financial and other interests.
6. More serious sanctions were applied against members in 23 cases (14%). Of these, four members were disqualified for 18 months, nine were disqualified for two years, four were disqualified for three years, one was disqualified for four years and two for five years.
7. Members were suspended in 31 cases (19%) for periods ranging from five days to one year. Two members were reprimanded.
8. Tribunals decided not to take any action in four of the cases (2.5%) because of mitigating factors.

**Disqualification**

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9. In deciding which penalty to impose, tribunals have taken into account both the seriousness of the misconduct and whether the member has shown any regret for their behaviour. For example, tribunals have tended to disqualify members for one year for deliberately refusing to register their interests. However, one member who failed to register her interests genuinely believed that she had no interests to register, and the tribunal in this instance decided not to take any action.
10. Members who are disqualified are barred from being or becoming a member of any relevant authority. This means they cannot stand for office with another relevant authority within the time-span of the disqualification. The effect of a disqualification on a member's ability to stand again for office can depend on the date of the hearing and the timetable for elections. The Adjudication Panel has taken these factors into account when disqualifying members.
11. In one case, a member of a town and district council who was disqualified by The Adjudication Panel for England in September 2003, appealed to the High Court against the ban with the argument that the electoral cycle meant that he would not be able to stand for three years. The High Court ruled that The Adjudication Panel for England had been aware of the implications of a one-year ban, and had not acted reasonably.
12. In another example, in late May 2003, The Adjudication Panel for England disqualified a parish councillor until April 2004 to enable him to stand in the next elections should he reconsider his position and agree to abide by the Code of Conduct.

### **Suspension**

13. The Adjudication Panel for England has suspended members in cases where the conduct was not serious enough to completely bar the member from serving on their authority. For example, a parish councillor took part in a meeting in which he had a prejudicial interest. This type of conduct would normally warrant a disqualification for a significant period. However, the tribunal considered that he had not been motivated by personal gain, and was possibly under pressure because of the unpleasant situation in his parish at the time. Because of these mitigating factors, the tribunal decided to suspend the member for three months.
14. Partial suspensions have generally been imposed where a member's misconduct is confined to a particular area of their work. On one occasion, a borough councillor was suspended from sitting on any of his council's planning committees for a year – the maximum allowed under the law – after he argued and voted against a development in a lane where he lived. The tribunal believed that this was one isolated incident in a long period of public service, and so thought that a full disqualification or suspension was inappropriate.

### **Sanctions Available**

15. Ethical standards officers refer cases to the local standards committee for determination when there appears to have been a breach of the Code of Conduct that is not sufficiently serious to warrant the penalties available to The Adjudication Panel for England (a disqualification or suspension greater than three months).
16. Standards committees have more limited powers to punish members, and if the person is no longer a member of the authority they can only censure them for their conduct. For example, a standards committee considered a case in which a member

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had made derogatory comments about a colleague and threatened them with physical violence at a meeting. The Adjudication Panel for England had already disqualified the member for three years for similar behaviour in a separate case (the ethical standards officer had deferred the case to the standards committee before The Adjudication Panel for England's hearing). The standards committee decided to censure him for his conduct, but it would have imposed a heavier penalty if he had been a serving member at the time of the hearing.

17. For serving members, standards committees can restrict their access to the resources of the authority. They can also suspend them or partially suspend them for up to three months.
18. Standards committees have the additional option of asking members to apologise in writing for their conduct, and to take part in training or conciliation in order to avoid partial or total suspension, as in the following example.
19. In December 2003, a standards committee decided that two town councillors had breached the Code of Conduct by taking part in a meeting in which they had prejudicial interests. The committee decided to suspend the members for one month from 1 January 2004 unless they apologised in writing to the town council for their conduct and provided a written commitment to undertake training on the Code of Conduct.
20. In another instance, a standards committee suspended a borough councillor for town months disclosing confidential information and bringing his office or authority into disrepute. However, it decided to defer the suspension for six months to allow the member to undertake training on the Code of Conduct. Its main concern was to improve the councillor's effectiveness as a member, rather than to punish him.

## Types of Misconduct

### Register of Interests

21. The majority of cases heard by The Adjudication Panel for England in 2003 concerned members of parish councils who had failed to register their interests following the introduction of the Code of Conduct. Of 160 tribunals, 116 (72.5%) concerned allegations that members had not registered their interests within the 28-day deadline. Most of the cases were heard between March and August 2003. There were eight other cases where members failed to register interests, but these also involved breaches of other parts of the Code of conduct and are covered separately below.
22. The general penalty for members who failed to register their interests has been a one-year disqualification. About three-quarters of the members (88) were disqualified for a year for failing to register their interests.
23. Members are obliged to register their interests under the Local Government Act 2000, and The Adjudication Panel for England regards it as a serious matter for members to wilfully ignore their legal obligations. According to the panel's 2003 annual report:

*Members of the Adjudication Panel for England have not been without sympathy for parish councillors who had such a requirement imposed on them midway through their terms of office. That was, however, the express*

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*effect of the legislation, and those councillors who chose not to comply with that legislation inevitably placed themselves in breach of the relevant Code of Conduct.*

24. The first tribunal considered that the member committed a serious breach of the Code of Conduct by refusing to register his financial and other interests. The decision in this case set the precedent for most of the later hearings:

*The case tribunal considered [the councillor's] refusal to register his interests to be a serious breach of the Code of Conduct. He had, by his refusal, challenged the authority of Parliament and the ethical framework of governance introduced by the Act. However, the tribunal could envisage far more serious breaches and ... decided that [the councillor] should be disqualified for one year.*

25. Members who apologised and completed their register of interests before the actual hearing were treated fairly leniently. In 20 cases (just over 17% of register of interests cases), members were suspended or disqualified for less than a year. For example, 11 members who belatedly registered their interests were suspended for only one week. The tribunals stated that eight of these members were unlikely to breach the Code of Conduct in this way again.
26. Conversely, members who failed to show any contrition or intention to rectify their omissions have been disqualified for more than a year. In one case, a parish councillor was disqualified for two years because he failed to register his interests, then stood for re-election and accepted the position of chair of the parish council when he knew he was in breach of the Code of Conduct. The tribunal noted that he "showed no remorse and gave no indication of any intention now or in the future of complying with the legislation". These factors compounded the seriousness of his conduct and resulted in the longest period of disqualification for this breach of the Code of Conduct.
27. Similarly, another parish councillor was disqualified for 18 months for persisting in refusing to register his interests following re-election to the council.
28. Of the remaining register of interests cases heard by The Adjudication Panel for England, two members were reprimanded, no action was taken against three members, and one member was found not to have breached the Code of Conduct. However, these were exceptional cases, representing only 5% of the register of interests cases.

### **Disrepute**

29. Some of the most severe penalties have been imposed on members who have acted in a way that brought their offices or authorities into disrepute. Members who breach this part of the Code of Conduct can generally expect to face a harsh penalty, particularly where they have broken the law.
30. One of the General Principles underpinning the Code of Conduct is that members must "uphold the law". Under the Local Government Act 1972, a member who is given a sentence of three months or more in prison for a conviction (whether or not the sentence is suspended) is automatically disqualified from being a member. However, there have been a number of cases where members have broken the law, but have received lighter sentences or cautions, and so have been able to carry on

serving as members. Their conduct, nevertheless, fell within the remit of the Code of Conduct, insofar as it reflected badly on their offices or authorities.

31. The Adjudication Panel for England disqualified two former members for the maximum period of five years in 2003. Significantly, both were found to have brought their offices or authorities into disrepute by committing sexual offences when they were members.
32. One of the former members, convicted of sexual offences against a 16 year-old, received a three year community rehabilitation order, and was put on the sex offenders' register for five years. The Adjudication Panel for England believed that a considerable period of disqualification was warranted to protect the public in case he ran again for public office.
33. The second member received a police caution for downloading child pornography onto a council computer. The tribunal believed that this had made him "unfit to be a councillor" and disqualified him for the maximum period to discourage him or others from acting in the same way.
34. These decisions were consistent with the seriousness with which The Adjudication Panel for England regards members who have broken the law in other ways. Four councillors were disqualified for more than a year for misconduct that included illegal activity. In one of these cases, The Adjudication Panel for England found that a city councillor brought his office and authority into disrepute by being convicted of a public order offence of using threatening, insulting or abusive words or behaviour with intent to cause a person to fear immediate unlawful violence. The tribunal also found that he had sexually harassed a council officer and a conference delegate, and failed to treat them with respect. The tribunal took into account the member's personal problems and other mitigating factors, and decided to disqualify him for four years.
35. Another example concerned a member of a parish council and district council who accepted a police caution for harassing a member of the public. The Adjudication Panel for England's tribunal was particularly concerned about this conduct, and the fact that the member did not express any regret or intention to act differently in the future. It decided to disqualify him for 18 months.

#### **Failures to Treat Others with Respect**

36. Under paragraph 2(b) of the Code of Conduct, members have to "treat others with respect" when they are acting in an official capacity.
37. Nine members failed to treat others with respect. One member was disqualified for four years for failing to treat others with respect and bringing his office or authority into disrepute, the third most severe penalty imposed to date. Three members were disqualified for three years, one member was disqualified for 18 months, two members were disqualified for a year and one member was suspended for six months. No action was taken in one case.
38. The Adjudication Panel for England has expressed some concerns about the implications of this part of the Code of Conduct for free speech. However, while it is acceptable for councillors to criticise one another, there is a line between robust debate and excessive disparagement. There comes a point where members can breach the Code of Conduct by persistently disparaging people publicly, and in a

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serious manner. This was recognised in several cases heard by The Adjudication Panel for England.

39. In one case, a town councillor was disqualified for one year for making malicious and offensive allegations about other councillors and a clerk.

#### **Personal and Prejudicial Interests at Meetings**

40. About a tenth of The Adjudication Panel for England's cases involved members' failures to disclose the existence and nature of their interests at meetings and withdraw from the room when matters in which they have prejudicial interests were discussed. In several cases, members also improperly used their positions as members to secure advantages for themselves or others.
41. The Adjudication Panel for England considered 19 cases where councillors had taken part in council meetings in which they had prejudicial interests, or had improperly used their positions to secure an advantage for themselves or others. Eight of the councillors in these cases were disqualified for more than one year, three for one year, one for three months, and one for two months. Two members were suspended for two months and one member was suspended for three months. One member was suspended for a year from taking part in planning committee meetings.
42. The Adjudication Panel for England has generally taken a very serious view of members who have abused their positions in this way. As one tribunal noted: "It is a fundamental principle that those holding public office should not use their office for their own personal ends or those of their family".
43. One parish councillor was disqualified for three years for taking part in a meeting in which he had a prejudicial interest. The councillor took part in a council meeting about a playing field, despite the fact that he was the chairman of a football club that wanted to use the field. He also tried improperly to secure an advantage for the club, using his position as a member. The Adjudication Panel for England stated that his behaviour fell far short of acceptable conduct.
44. A town councillor was disqualified for two years for his failure to withdraw from council meetings concerning the dismissal of a council employee, who was his niece.
45. It is particularly important that the public has faith in the integrity of the planning process. Members who appear to act in relation to planning decisions for personal reasons can devalue the process in the eyes of the public.
46. In one case, a parish councillor failed to withdraw from a meeting discussing a planning application concerning his own land. He also had business dealings with the applicants and was involved in preparing the application. The tribunal could find no mitigating circumstances for this misconduct and decided to disqualify him for two years.
47. Four other members were disqualified for two years following their failure to withdraw from meetings in which they had prejudicial interests.
48. Another member was disqualified for 18 months. The councillor failed to withdraw from a council meeting during the consideration of his son's licensing application for an entertainment venue. He also tried to use his position as a councillor improperly to win the support of other councillors for the application. A significant factor in the tribunal's decision was the councillor's failure to show any contrition.

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49. Tribunals have decided to suspend in five cases where they felt that disqualification was inappropriate. For example, a district councillor took part in meetings in which he had a prejudicial interest. However, the tribunal considered that he had not been motivated by personal gain and was unlikely to act in a similar way again, so decided to suspend him for three months.

#### **Misuse of Authorities' Resources**

50. Some members have failed to comply with the Code of Conduct by trying to use their office for personal gain by misusing their authority's resources. This relates to paragraph 5(b) of the Code of Conduct, which states that members "must act in accordance with the authority's requirements" when using the authority's resources. The Adjudication Panel for England disqualified one member for one year for this breach of the Code of Conduct, and suspended another for three months.
51. One borough councillor used a council computer for private purposes, and allowed his family to do so as well, mainly for e-mail and internet access. The tribunal took the member's attempt to use his public office for private benefit seriously. It stated: "Where a member has used his position as a councillor for some personal gain, the case tribunal would usually be thinking in terms of a disqualification". However, it considered that the personal gain in this instance was not that significant: the council already provided free internet access in its libraries. The tribunal therefore decided that the appropriate punishment was a two-month suspension.
52. By contrast, another borough councillor not only misused a council computer, he refused even to return it when asked to do so by the IT department. In this case, The Adjudication Panel for England's tribunal considered that this conduct brought the former member's office and authority into disrepute. The tribunal took into account the fact that the councillor was no longer a member, and disqualified him for a year.

#### **Disclosure of Confidential Information**

53. The Adjudication Panel for England considered three cases concerning alleged disclosure of confidential information. The tribunals believed that the disclosure of confidential information was a serious breach of the Code of Conduct that could merit disqualification. However, the members in two cases were suspended because of the particular circumstances of the disclosures, and in the third case the tribunal found that the councillor had not breached the Code of Conduct.
54. In one of the cases, a member of a unitary authority disclosed information to the press about a senior council employee's salary. The tribunal noted that this information was not at the more sensitive end of the scale of information exempt from public disclosure, and therefore decided to suspend him for one month.

#### **Standards Committees**

55. The first local standards committee hearing took place on 1 September 2003; 39 hearings had been held by the end of April 2004. No cases have yet been referred to the Herefordshire Council Standards Committee.
56. Standards committees, like The Adjudication Panel for England, determined that there had been a breach of the Code of Conduct in most of the cases referred to it, and decided to impose sanctions. They determined that members had failed to comply with the Code of Conduct in 37 cases (about 95% of the total).

57. Standards committee hearings decided to censure the member in 17 cases (44%), and to suspend the member in another 17. The range of the suspensions varied from one week to three months, but almost half of them were for one month. Some of these suspensions were dependent on whether the members acted on conditions stipulated by the standards committees. Standards committees decided not to apply any sanction in only two cases (5%), because mitigating factors.
58. A standards committee also considered a case involving criminal conduct. The councillor brought the district council and his office into disrepute by being convicted of drink-driving. The standards committee's decision stated that "the offences of which he was convicted were serious, that driving with excess alcohol is a disreputable and anti-social offence which cannot be condoned and, in a public arena, inevitably brings disrepute to any office held". However, the standards committee decided, because of the long period of time that had elapsed between the conviction and the hearing, to only censure him for his conduct.
59. Standards committees have also held hearings about members' failures to treat others with respect. The cases have involved less serious and more isolated incidents of disrespectful behaviour, where members have verbally abused others at meetings.
60. For example, a standards committee suspended a town councillor for three months for verbally abusing another councillor at a council meeting, but offered him the chance to apologise and take training on the Code of Conduct to avoid the suspension.
61. Another standards committee censured a borough councillor for verbally abusing a member of the public at a public meeting.
62. Two-thirds of the first 39 cases heard by standards committees concerned members with personal and prejudicial interests in meetings. In half of these, the standards committees censured the members. The standards committees decided to suspend members for one month in seven cases, although in most instances this was dependent on whether they undertook training on the Code of Conduct.
63. Only two members were suspended for the maximum period of three months. A parish councillor was suspended for three months for trying to influence a decision on an application for a development opposite his home. The other three-month suspension was the subject of an appeal at the time of writing.
64. No action was taken against one member, who had not understood his obligations under the Code of Conduct. In another case, a standards committee decided not to impose a sanction on a member who neighbour and friend had objected to a planning application. The standards committee took into account the fact that the councillor was unaware at the time of the council meeting that his neighbour was an objector to the application, even though he should have ascertained whether he had a prejudicial interest before taking part in the meeting.
65. Five members have appealed to the President of The Adjudication Panel for England against standards committee decisions in these cases. At the time of writing, The Adjudication Panel for England had held appeal tribunals for three of these cases. A district councillor appealed against an eight week suspension and two parish councillors appealed against censures. The Adjudication Panel for England's appeal tribunals upheld the standards committee's decisions in all three cases.



## Conclusion

66. In the vast majority of cases, The Adjudication Panel for England tribunals and standards committee hearings have determined that there has been a failure to comply with the Code of Conduct and have decided to impose a sanction.
67. The Adjudication Panel for England disqualified members in about three-quarters of its cases. The most common period of disqualification was one year, although this was largely because of the high proportion of register of interest cases heard in 2003, particularly in the first eight months of the year. The cases, which mostly resulted in one year disqualifications, arose following the introduction of the Code of Conduct in 2002, and so this pattern is unlikely to recur. Later cases involving failures to register interests have been few and far between, and have concerned failures to register particular interests, rather than a blanket refusal to register any interests.
68. The Adjudication Panel for England decided to impose longer periods of disqualification in 14% of its cases, mostly for other breaches of the Code of Conduct such as failures to treat others with respect, disrepute, or failures to withdraw from meetings in which the member had a prejudicial interest. Significantly, 20 of the 44 non-register of interest cases resulted in disqualifications of more than a year (members were disqualified for one year in just six of these cases). The maximum penalty, disqualification for five years, was imposed on two members during this period after they brought their offices or authorities into disrepute.
69. Standards committees in most cases either censured or suspended members. Two-thirds of standards committee cases concerned members who failed to disclose personal interests or failed to withdraw from meetings in which they had prejudicial interests. Two members were suspended for the maximum period of three months for these breaches of the Code of Conduct.
70. Despite generalisations about appropriate sanctions for particularly types of misconduct, it is worth noting that tribunals have considered each case on its merits. Mitigating and aggravating factors can lessen or increase the sanction. Members who have shown contrition for their behaviour and a willingness to comply with their obligations in future have generally been treated more leniently than those who have been apologetic and recalcitrant.

## RECOMMENDATION

**THAT**                    **the Committee consider the findings of the Case Review presented by the Standards Board for England and how best to publicise its findings to the Council.**