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Welcome to the latest edition of our *bulletin*, with news and guidance from the Standards Board for England.

In the past, we sent separate newsletters to monitoring officers and standards committee chairs. However, feedback has suggested to us that the two newsletters should be combined into one, and so this is the first joint edition of the *bulletin* which is being sent to everyone who has requested it.

We will welcome all views on the new format, so do let us know what you think of it.

David Prince, Chief Executive

The Code isn't a gag

There has been some confusion about the Code in the recent months. Some members appear to be unsure about the rules on declaring interests, particularly over whether they should remain in the room when matters in which they have an interest are being discussed. So the aim of this article is to clarify that issue.

The nub of the issue revolves around whether the subject under discussion is prejudicial. Not all matters in which a councillor may have a personal interest are necessarily prejudicial, although they should always be declared. If you decide that the matter is not prejudicial, you may stay in the meeting and speak and vote on it. It is only when the matter is prejudicial that you will need to leave the room while it is under discussion.

So how do you decide whether a matter in which you have a personal interest is also prejudicial?

A common scenario

A frequently asked question is about whether a personal and prejudicial interest arises if the matter being considered relates to the area in which the member lives or the ward that they represent.

The answer is as follows:

In some cases, members will have a personal interest because the matter may have some impact upon the residents of that area of the ward to a greater extent than others living in the area of the authority. However, the interest will only be prejudicial if it also has a significant impact upon themselves, or their friends or relatives or any of the other categories set out in paragraph 8(1)(a) to (d) of the Code, so that a reasonable member of the public would consider that their judgment of the public interest was prejudiced.

For instance, if a planning application is being considered for a piece of land in a member's ward that is situated directly opposite that member's property, there is likely to be a prejudicial interest.

But there will be many situations when you have a personal interest that is not prejudicial. So at those times, you will be able to fully participate and vote in the meetings, so long as you are seen to keep an open mind about the matter under discussion.

In our proposals to the Office of the Deputy Prime Minister for changes to the Code, we highlighted this area as one that needed particular reform. We feel that the situation needs greater clarity and that members should be ensured that they are able to advocate on behalf of those they represent.

We wish to see the Code make it crystal clear that, in the normal course of events, a member who merely has an interest shared with the community or an organisation they represent should be able to take part in a meeting. It would only be where a decision is being made and they would get a clear advantage from that decision that they should be excluded from taking part.

However, if you have already made up your mind about a particular decision before hearing all the arguments surrounding it, although this may not necessarily be a prejudicial interest, you may be advised not to take part in the decision-making process.

Business interests

Another issue that brings members into non-compliance with the Code is when he or she has a conflict of interest with regard to their business dealings, and does not declare it.

We advise members to exercise great care in such situations, particularly those working in the law or accounting.

While it is possible to put a barrier in place to separate their role as a member and their involvement in a firm or business that has dealings with the council, issues can arise when a member's firm or business obtains income or profit from work involving the council.

So members need to guard against ethical as well as financial conflicts of interest — and they also need to be seen to do this, so that their constituents can feel reassured on the subject.

This means that if you own a company and a major part of its work is council-related, you may want to rethink whether you can play a meaningful role in work of the authority.

It is important to take particular care in attending meetings, or in fulfilling your role as a member, that you do not use information and access to officers to further your own business interests.

For instance, you should give out your authority's business card, rather than your professional business one, when involved in authority business. In addition, you should not advertise the fact that you are a member when on your firm's business.

For further guidance on declaring interests, follow this link:



[www.standardsboard.co.uk/TheCodeofConduct/
FrequentlyaskedquestionsabouttheCode/
Declaringinterests/](http://www.standardsboard.co.uk/TheCodeofConduct/FrequentlyaskedquestionsabouttheCode/Declaringinterests/)

New — *The Case Alert* to be launched next month

Members and officers looking for best practice guidance on hearings will welcome next month's launch of *The Case Alert*.

The Case Alert will provide a regular in-depth analysis of significant cases and can be emailed directly to you.

These regular bulletins will keep you informed of noteworthy decisions by standards committees, the Adjudication Panel for England and the High Court, particularly where they shed new light on our understanding of the Code of Conduct.

The reports of cases in *The Case Alert* will be more detailed than the short case summaries on our website, and will build on the work in the annual *Case Review* in highlighting lessons from significant cases.

The Case Alert should be especially useful to monitoring officers and standards committees, but will also be of interest to anybody involved in working with the Code of Conduct.

So if you are interested in receiving *The Case Alert*, please send a message to:
casealert@standardsboard.co.uk

Reports following local investigations

As we move towards becoming a more strategic regulator, matters regarding local investigations are bound to be raised for guidance. So in this article, we provide some guidance on the final reports that follow local investigations.

Providing final reports to ethical standards officers

We would like you to send us final reports following local investigations, as they will help us in our new strategic role.

From those reports, we will be able to look into the processes used when conducting a local investigation, as well as the quality of the hearings held by standards committees. On top of that, we will be able to build a knowledge base from which we hope to be able to pick out examples of good practice to feed back to all authorities.

So, for those reasons, we are asking standing committees to send copies of these final reports to the ethical standards officer who referred the matter for investigation.

Disclosing final reports

In addition, we have had several queries from monitoring officers about the disclosure of final reports following local investigations. So here we will expand a little further on our local investigations guidance on this area.

As you will be aware, final reports produced following a local investigation are not confidential, and are not afforded the protection under section 63 of the *Local Government Act 2000* that is given to ethical standards officers' reports.

The Code of Conduct says that the final report must be sent to the subject member. In addition, whether or not there is a breach of the Code, it must also be sent to the standards committee.

On top of that, our local investigations guidance also provides that the final report should also be sent to the:

- person who made the allegation
- clerk of any relevant town or parish council
- ethical standards officer who referred the matter for investigation

Our guidance also states that final reports should be made available for public inspection at the authority unless they contain confidential or exempt

information as defined by Part VA of the *Local Government Act 1972* (as amended).

So you should consider whether any part of the final report and appendices (if any) contains confidential or exempt information. If so, that exempt information should not be disclosed to the public for inspection.

If the report has a finding of no breach of the Code, the final report must be considered by the standards committee and should be made available with the public agenda for the standards committee at least five clear days in advance of the meeting.

But if the report has a finding of a breach of the Code, the presumption is that standards committee hearings will be held in public unless exempt information will be discussed under Schedule 12A (as amended) of the *Local Government Act 1972*.

“ exempt information should not be disclosed to the public ”

Generally, the final report and appendices (if any) should be made available with the hearing's agenda at least five clear days before the hearing, in accordance with normal committee rules for disclosure of agenda reports. However, if a request is made in advance of the hearing for it to be held in private, the final report and appendices, and any other papers provided during the pre-hearing process, should not be published or distributed to members of the public or press before the hearing.

The notice of the hearing and an agenda (without accompanying reports or papers) should be the only documents made available to the public. The agenda should state that a request for the hearing to be held in private is to be decided as a preliminary issue.

The standards committee should then determine on the day of the hearing whether the whole or any part of the proceedings will be held in public or private. And if it is decided that the hearing is to be held in public, copies of the investigator's report and appendices should then be distributed to members of the public who may be present.

Cases of note

Councillor Dane disqualified

At a recent Adjudication Panel for England tribunal hearing, a councillor was disqualified for three years.

In the view of the case tribunal, Councillor Dane had conducted a relentless campaign of destructive criticism against the clerk and council members, which was carried out in bad faith and had serious consequences to the health and welfare of others. This campaign was conducted through a series of letters, internet postings, face-to-face encounters and newsletters.

The case tribunal also considered that Councillor Dane had made repeated and false claims regarding the existence of bullying and misconduct by fellow members.

After considering all the evidence and submissions, the case tribunal decided that Councillor Dane failed to treat others with respect and brought his office into disrepute.

As Councillor Dane's actions were considered to be serious, deliberate and sustained, and he did not show remorse or consideration for those he had affected, and had dishonestly denied responsibility for some of his actions, the case tribunal decided to disqualify him for three years.

You can read the case summary and the link to the full tribunal's decision by going to Case Summaries at www.standardsboard.co.uk/

Adjudication Panel reconsiders Adami case

At a case tribunal hearing on 24 June 2004, the Adjudication Panel for England considered the case of Councillor David Adami.

It was alleged that between April 2002 and January 2003, Councillor David Adami bullied and threatened council staff, was rude and demeaning to a senior officer, made unfounded allegations about officers, tried to reopen closed issues and was generally malicious in his behaviour.

It was also alleged that Councillor Adami tried to reopen a planning representation period so that he could lodge an objection, inappropriately sent

a letter to a barrister who was advising the council, unreasonably pursued matters with officers and made complaints when he felt these matters had not been addressed.

The Adjudication Panel decided that Councillor Adami had committed serious breaches of the Code of Conduct and disqualified him for four years.

Councillor Adami then appealed to the High Court and his appeal was upheld. The ethical standards officer appealed the High Court's decision, and on 21 November 2005 the Court of Appeal made an order. The order included the following:

"...the matter [the Tribunal's original decision] be remitted to the same Tribunal for reconsideration and formulation of adequate reasons for its decision on the Tribunal's findings of fact on the unchallenged evidence, that the Respondent had breached the Appellant's code of conduct, and as to the appropriate sanction in the light of these findings and reasons."

Case sent back to Panel

So on 30 January 2006, the same case tribunal considered and formulated adequate reasons for its decision that Councillor Adami had breached the code and the sanction.

It started from the point where the hearing ended and took into account only that evidence which was available to them at the close of the hearing.

After its reconsideration, the tribunal decided that Councillor Adami had committed serious breaches of the code that justified a substantial period of disqualification. Taking into account all relevant factors, including that Councillor Adami had already served approximately a one-year period of disqualification, the tribunal decided to disqualify him for a further period of two years from 30 January 2006.

You can read all the details of the case tribunal's revised decision on the Adjudication Panel for England's website, which can be reached by going to: www.adjudicationpanel.co.uk/

Islington

Those of you who read the local government trade press will have been aware of concerns expressed about our case against councillors from the London Borough of Islington that concluded in January.

The Adjudication Panel for England made a number of criticisms of the way that we carried out the investigation, and the Board has considered what lessons we can learn from the case.

The Board has now apologised to the parties concerned, in particular the Islington chief executive Helen Bailey, who was caught up in the investigation. It has also now expressed a clear view that officers caught up in cases should be told as much as possible about ongoing investigations. The Board has also expressed its regrets in particular for the effects of the delays during the investigation on Islington councillors who were investigated.

Changes introduced

However, this case was received in the Standards Board for England's early days. Since then, the Board has introduced a number of changes. These include:

- introducing a management framework to instil high standards in the investigations of the statutorily independent ethical standards officers
- a more focused approach to resourcing complex cases
- recruiting more staff with local government experience
- ensuring that evidence and documentation is generally available to witnesses and those being investigated in advance of interviews

The Board also committed to further change, specifically:

- seeking changes in legislation to enable wider disclosure of information concerning cases
- seeking changes to legislation to enable the Board to have an oversight of cases including a code of practice and quality control framework
- compliance checks, overseen by the chief executive, in regard to investigation planning, timeliness, interviews and presentation

- using differing employment models to bring in recent senior local government experience

The Board is clear that ethical standards officers should not be seen as prosecutors and that their role is to help the independent tribunal to arrive at the right decision. This means putting before it all relevant information, whether that information supports or undermines an allegation.

Parish representatives entitled to full standards committee role

Parish councillors should not be marginalised or under-used as they have a vital role to play on standards committees.

They can often produce another perspective on local matters and bring an independent breath of fresh air into debates.

So we've come up with a number of recommendations to ensure that parish representatives on standards committees are treated fairly, and they are as follows:

Parish pump pointers

- Parish councillors should have the same status and voting rights as other councillors and independent members.
- They should be entitled to any allowances and expenses that are available to other members of the committee.
- At least two parish representatives should be appointed to each committee. Having more than one helps guard against problems in the event that a member is unable to take part in a hearing due to a conflict of interest.
- Authorities should consider involving their county association in the nomination and selection process to ensure that the representatives have the support of the parish sector across the county, and are seen to have the backing of their representative body.
- Standards committees should also consider having parish representatives on hearing panels regardless of whether the hearing involves a town or parish councillor. As parish representatives, in many cases, are independent of the principal authority, they can bring a specific and objective perspective to the case that may be helpful.

What did you think of our new training DVD?

All monitoring officers will have now received their copy of our DVD: *Going Local: investigations and hearings*.

The DVD was issued at the start of the year, and is a training aid that offers advice on how to carry out investigations and organise hearings. We are pleased that many positive comments have been made about the programme. However, we are always keen to hear more from you.

For instance, did you find that the learning summaries were helpful? And did they prompt useful discussions on best practice?

Please email your comments to:
rebecca.jones@standardsboard.co.uk

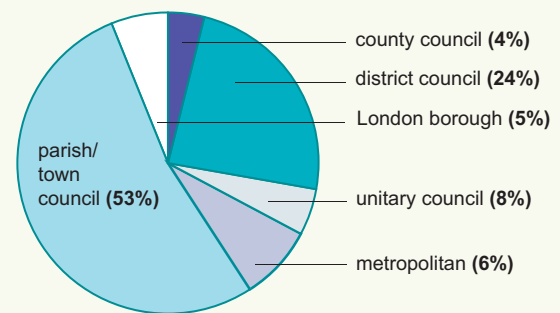
Additional copies of the DVD are available for £38.00 each. To place an order please contact the Communications office on 020 7378 5028, or email Rebecca Jones at the above address.

Referral and investigation statistics

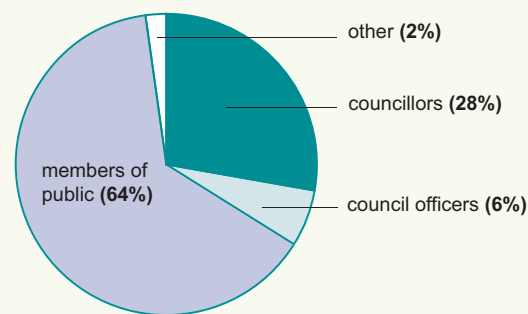
The Standards Board for England received 290 allegations in January and 281 in February, giving a running total of 3,520 for the current financial year.

The following charts show referral and investigation statistics for that period.

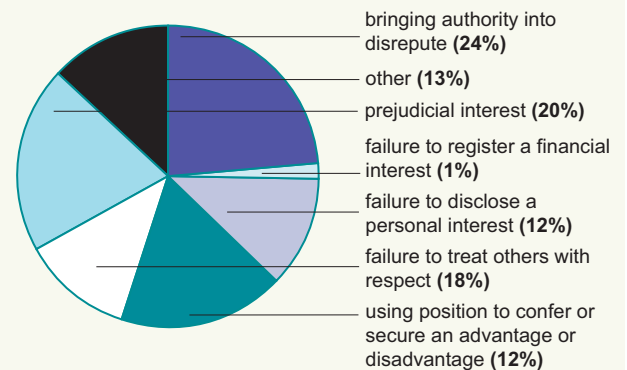
Authority of subject member in allegations referred for investigation



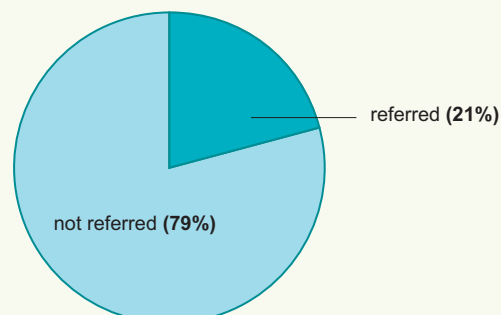
Source of allegations received



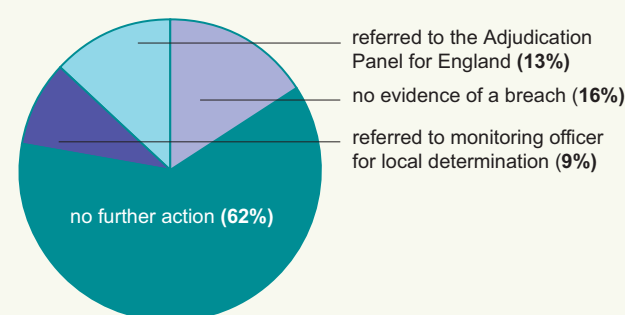
Nature of allegations referred for investigation



Allegations referred for investigation



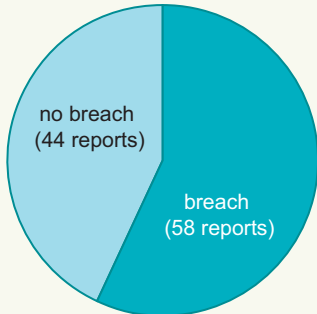
Final findings



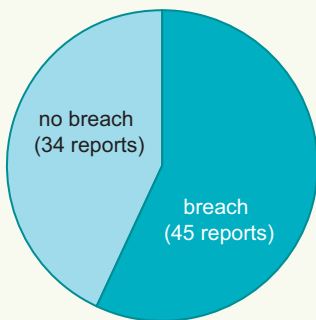
Local investigation statistics

Ethical standards officers referred 352 cases for local investigation between 1 April 2005 and 28 February 2006 — equivalent to 44% of all cases referred for investigation. Of those 352 cases, we have received 102 reports. The following charts illustrate the outcomes of those cases.

Monitoring officers recommendations following local investigations

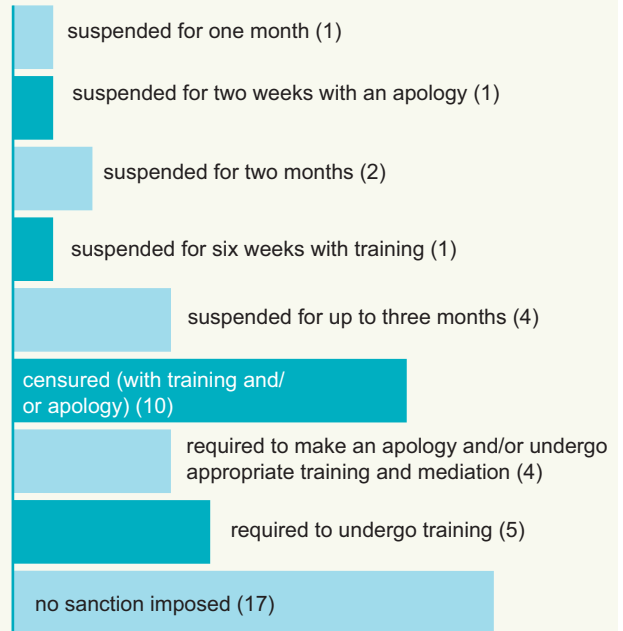


Of those 102 reports, 79 standards committees have met



- >> six instances where the standards committee disagreed with the monitoring officer
- >> four instances where the decision changed to NO at standards committee
- >> two instances where the decision changed to YES at standards committee

Standards committee determinations



- >> There have also been four appeals that went to the Adjudications Panel from local investigations.

Monitoring officers affecting local referrals

Ethical standards officers are finding that they are unable to consider referring some complaints for local investigation. This has occurred when the monitoring officer submitting the complaint has expressed his or her view as to whether the subject of the complaint had failed to comply with the Code of Conduct.

We consider that if monitoring officers express such a view when submitting a complaint, they risk being regarded as having compromised their discretion on the matter. The matter then can only be referred back for local investigation when the authority concerned has a reciprocal arrangement with another one on conducting investigations, a practice recommended in our guidance.

But this does not mean that we do not want to hear from the monitoring officer submitting the complaint.

For instance, we believe it is reasonable and indeed, helpful, for monitoring officers to set out in an allegation any advice that either they or the officers of their department have provided in respect of the behaviour that is the subject of the allegation.

However, if this has not happened, we also feel that it is better practice that no opinion should be expressed. The same advice relates to chairs of standards committees, although no examples of this have yet been noted.

Are you ready to bridge the gap?

Are you confident in your authority's ability to deliver on the ethical agenda? Are you feeling challenged by the changes that lie ahead with the revised Code of Conduct and a more locally focused system?

This year's Fifth Annual Assembly of Standards Committees, *Bridging the gap*, is taking place on 16 and 17 October in Birmingham, and will identify the gaps in resources, knowledge and experience required to deliver effective regulation of ethical standards at a local level.

Working together in a wide variety of sessions, we will then look at how we can bridge those gaps and move forward.

Attracting over 800 delegates, the conference is a rare and valuable opportunity to meet and network with standards committee members,

monitoring officers, council leaders and chief executives from across the country. Fringe events run by other organisations in the local government family also provide a chance to keep up-to-date with developments across the sector.

Bookings are already rolling in and places are filling up fast. So register now to make sure that you won't miss out on the most important event of the year for those who work with the Code of Conduct.

For more information and to reserve your place, call our event managers, Benedict Business Resources, on **01483 205 432** and they will send you an information pack. Or you can visit the conference website by following this link: www.annualassembly.co.uk

Standards committees and access to information

There have recently been some amendments to Schedule 12A (access to information provisions) of the *Local Government Act 1972*. The amendments, which came into force on 1 March 2006, are contained in the *Local Government (Access to Information) (Variation) Order 2006* and the *Relevant Authorities (Standards Committee) (Amendment) Regulations 2006*.

Parts 1 to 3 of the schedule to the order (which apply to authorities in England) replace the existing Schedule 12A.

It is intended that descriptions of information listed in Part 1 of Schedule 12A will be clearer and simpler, and some of the qualifications in part 2 of the schedule are replaced by a public interest test.

Authorities should note that there are significant differences between the categories of exempt information for England and those categories that apply to Wales.

The additional categories of exempt information introduced by the 2003 regulations are largely unaffected, although some of the amendments have been renumbered.

At-a-glance changes

The relevant paragraphs from the 2003 regulations are set out below, with the updated paragraph numbering shown in bold.

"Removed by the 2006 regulations. See paragraphs 1 and 2 in particular of the amended Part 1 to Schedule 12A.

17. **7A.** *Information which is subject to any obligation of confidentiality*
18. **7B.** *Information which relates in any way to matters concerning national security.*
19. **7C.** *The deliberations of a Standards Committee or a sub-committee of a Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act."*

The main alteration is that the new regulations no longer contain a specific provision of 'Information relating to the personal circumstances of any person' (paragraph 16 of the 2003 regulations refer) as this is essentially covered by the provisions contained in paragraphs 1 and 2 of part 1 of the updated provisions.

For ease of reference, paragraph 1 refers to 'Information relating to any individual', while paragraph 2 refers to 'Information likely to reveal the identity of an individual'.

Change in guidance?

We have reviewed the guidance in light of the changes and consider that the substance does not need to be altered.

However, the wording of Schedule 12A currently set out in the Appendix 3 of the guidance should be read in accordance with the amendments.

We believe that it is in the public interest for hearings to be held in public, to ensure fairness and openness, and we recommend that they are wherever possible.

Standards committees will have a continuing obligation to consider the requirements of Articles 6 and 8 of *The European Convention on Human Rights* when holding local determination hearings.

Welcoming new members of the Board

We are delighted that Elizabeth Hall, Judy Simons and Paul Gott have joined the Board of the Standards Board for England, and here is a little about each of them.

Judy Simons

Judy Simons' background is in education and as Professor of English and Pro Vice Chancellor at De Montfort, she has responsibility for Quality and Standards. She chairs the University Human Research Ethics Committee, and is a board member of the Higher Education Academy and Chair of Council. In addition, she is also on the Strategic Committee for Leadership, Governance and Management at the Higher Education Funding Council for England.

Judy has chaired a number of national academic bodies, including the Council of University Deans of Arts and Humanities. She has also published

widely on literary studies and is a Fellow of the Royal Society of Arts and a Fellow of the English Association.

Elizabeth Hall

Elizabeth Hall comes from the world of financial regulation. For the past ten years, she has worked for the UK's financial services watchdog, the Financial Services Authority, where she has specialised in consumer protection, complaints and financial capability.

Elizabeth is a member of the Queen Mary University of London Research Ethics Committee and of the London Borough of Tower Hamlets Schools Forum and last year, she was appointed to London Travelwatch, the body that represents the views of London's transport users.

In addition, Elizabeth has several lay responsibilities in the Church of England, including chair of the Tower Hamlets Synod and an examining chaplain for the Stepney area.

Paul Gott

Paul Gott comes from a legal background where he practices as a barrister in commercial and employment law. A member of Fountain Court Chambers, he was appointed as junior counsel to the Crown in 1999 and appointed to the Treasury Counsel 'A' Panel in 2005.

His main areas of specialisation are strike action and discrimination as well as equal pay, on which he regularly advises government departments and private clients. He also works specifically in the areas of civil fraud, banking and accountants' negligence.