

## **What's the score?**

### **Stronger action needed on ethical governance**

The latest Audit Commission self-assessment survey reveals that, although councils are generally managing the ethical agenda well, there are a number of areas that require stronger action.

#### **Key findings**

- Most councils actively encourage high standards.
- Members generally demonstrate high standards of behaviour.
- Leaders and chief executives are proving themselves positive role models in many councils.
- Roles, responsibilities, relationships and ethical frameworks are not always clearly understood.
- Standards committees make a difference, but they don't always explain widely what they do, the issues they are addressing and the progress they are making.
- Members and officers often hold divergent views on ethical governance issues.
- Communication, training, guidance and information are critical areas and often need more of a focus.

#### **Survey background**

The self-assessment survey was created by the Audit Commission in conjunction with the Standards Board for England and the Improvement and Development Agency (IDeA). It is one element of the four-part Ethical Governance Diagnostic toolkit which also includes a full diagnostic, a light-touch health check (provided by the IDeA) and workshops.

#### **The survey aims to:**

- help councils assess and then drive up their ethical governance arrangements and procedures
- help councils better understand the key ethical governance issues they are now facing
- highlight areas to focus on in future

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## **Widespread response**

Up to the end of July 2007, the survey questionnaire was completed by 3,998 individual council members and senior officers from 44 councils across the country. In all, over 170 councils have used at least one part of the toolkit.

Although the survey findings are encouraging, they also pinpoint areas where further work and clarity is needed. In particular the findings suggest that some members and officers could be helped to develop a better understanding of ethical governance. For example, one in five senior officers replied 'don't know' when asked if their council has a standards committee.

There are also differences between members' and officers' perceptions. To take just one example, members are far more likely than officers to think that communication between them and officers is open.

## **Findings overview**

### **High standards and good behaviour**

The findings show there is a firm foundation on which to build, but there is clearly room to improve.

- Most members and officers (84% and 76% respectively) say their council's efforts to drive up ethical standards are encouraging appropriate behaviour.
- Around nine in ten members report that members 'always or usually':
  - show respect to and treat fairly all people who use council services (90%)
  - show respect to and treat all officers fairly and do not discriminate unlawfully (89%)
  - use public funds, council property and facilities responsibly (90%)
- Around eight in ten members and seven in ten officers consider the leader of the council a positive role model for ethical behaviour (78% and 73% respectively). Similar proportions say the same of their chief executive.

### **Roles, responsibilities and relationships**

The survey shows that greater communication about the ethical framework and a wider understanding of each other's roles would strengthen working relationships between officers and members.

- The vast majority of members (92%) believe that they understand their role and responsibilities under the ethical framework. However, fewer than three-quarters of officers (72%) say they understand their role in this area.
- One in five officers (21%) think the guidelines members have on their personal conduct are not clear, whereas almost all members (91%) are positive about the guidance they receive.
- While nearly all (96%) members are aware of the members' Code of Conduct, only just over three-quarters (79%) of senior officers are similarly aware.
- Officers and members differ in their perceptions of the degree of open communication and trust between them. Over three-quarters of members (78%) believe member/officer communication is open. That compares to just two-thirds of officers (64%).
- Members are also far more positive (70%) than officers (51%) about the levels of trust that exist between members and officers.
- More appropriate training, guidance and information could provide a solution. For example, less than seven in ten members (69%) and four in ten senior officers (39%) think members receive appropriate training on issues of conduct.
- Officers would also benefit from further clarity about their own ethical responsibilities. For example, over a third (36%) of the officers surveyed were not absolutely sure what to do if they became aware of conduct by a member that could result in failure to comply with the council's member Code of Conduct.

## **Communication, clarity and culture**

There is much work to be done in raising awareness of standards committees. Significant opportunities exist for improvement, particularly in explaining their role. The survey plainly illustrates that standards committees should raise their profile by communicating their work and their progress.

- While the majority (85%) of members are sure their organisation has a standards committee, only half of the senior officers surveyed (52%) are sure there is one in their organisation.
- Members are more likely to think their standards committee operates effectively (77%), than officers (47%). More members (68%) think their standards committee makes a positive difference to the ethical environment in the council than officers (45%).
- A large proportion (45%) of senior officers do not know if their standards committee operates effectively or whether it makes a positive difference to the ethical environment in their council.

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Other findings in the important area of communications include:

- more than eight in ten members (80%) say the importance of high ethical standards is communicated to them. Yet more than one-third of officers (35%) don't know if this is so
- well over half (57%) of members say the importance of high ethical standards is communicated to local communities, but nearly a third (29%) of officers do not know if this is so
- more than half of officers (53%) say they 'don't know' whether or not the public can easily access the register of members' interests
- nearly one third of members (29%) don't know if their council has a whistle blowing policy compared to just over a tenth (11%) of officers
- less than two-thirds (60%) of members have received training, guidance or information on equalities or human rights legislation

Yet encouragingly:

- the majority of members and officers (78% and 83% respectively) agree that their council's complaints system is clear

## **Moving forward**

The survey has highlighted key areas that councils actively need to address to improve ethical behaviour and meet fully the ethical agenda.

Councils that have used the toolkit have found that it helps to expose the ethical governance issues they are facing and that it provides clarity about what to do next.

Individual councils can use these results as a starting point for reflection, dialogue and action.

Among the most crucial questions for individuals in local government are:

- what do these survey results mean for our council?
- how do we compare with the overall picture?
- what are our strengths and weaknesses?
- what training and improvements can we make?
- how do we ensure effective communication about the importance of the ethical agenda?

Councils have the tools for success and must now ensure they use them.

## Further information

For further information on the Ethical Governance Toolkit, please contact:

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## Anything to declare: Understanding interests

### Relevant provisions of the revised Code of Conduct for the session scenarios

#### Introduction and interpretation

##### Paragraph 1

- (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State **(a)**.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code:
  - “meeting” means any meeting of:
    - (a) the authority;
    - (b) the executive of the authority;
    - (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;
  - “member” includes a co-opted member and an appointed member.
- (5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

#### Scope

##### Paragraph 2

- (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:
  - (d) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - (e) act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly.

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- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted. Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (4) Where you act as a representative of your authority:
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

## **Personal interests**

### **Paragraph 8**

- (1) You have a personal interest in any business of your authority where either:
  - (a) it relates to or is likely to affect:
    - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
    - (ii) any body:
      - (aa) exercising functions of a public nature;
      - (bb) directed to charitable purposes; or
      - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or management;
    - (iii) any employment or business carried on by you;
    - (iv) any person or body who employs or has appointed you;

- (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
  - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
  - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
  - (ix) any land in your authority's area in which you have a beneficial interest;
  - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of:
- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
  - (ii) (in the case of the Greater London Authority) other council tax payers, rate payers or inhabitants of the Assembly constituency affected by the decision; or
  - (iii) (in all other cases) other council tax payers, rate payers or inhabitants of your authority's area.

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(2) In sub-paragraph (1)(b), a relevant person is:

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

## **Disclosure of personal interests**

### **Paragraph 9**

- (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

- (7) In this paragraph, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000[16].

## **Prejudicial interest generally**

### **Paragraph 10**

- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority, you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business:
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8;
  - (c) relates to the functions of your authority in respect of:
    - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full-time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
    - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
    - (iv) an allowance, payment or indemnity given to members;
    - (v) any ceremonial honour given to members; and
    - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

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## **Prejudicial interests arising in relation to overview and scrutiny committees**

### **Paragraph 11**

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where:

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

## **Effect of prejudicial interests on participation**

### **Paragraph 12**

(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority:

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held:
  - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
  - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

- (b) you must not exercise executive functions in relation to that business; and
- (c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

## **Part 3 Registration of members' interests**

### **Paragraph 13**

(1) Subject to paragraph 14, you must, within 28 days of:

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

## **Local filter: In detail**

### **Summary of local filter pilot cases**

#### **Case A: Hilton Borough Council, Councillor Peter Citrine**

##### **Summary**

It was alleged that Councillor Peter Citrine published a political leaflet on behalf of the local Liberal Democrats suggesting that people should boycott the shops in the high street belonging to Councillor Leo Hall, the Conservative council leader. This was in response to the council's decision to introduce car-parking charges in the town centre, which the Liberal Democrats were campaigning against. The complainant is an employee of Councillor Hall. She works in a pet shop and alleges that Councillor Citrine is jeopardising her livelihood by effectively encouraging people to patronise another pet shop 200 yards away.

#### **Case B: Borough of Selchester, Councillor Julia Harty**

##### **Summary**

It is alleged that Councillor Harty lied at council meetings about her decision to require LEA appointed school governors to pay the £36 cost of their own Criminal Records Bureau (CRB) checks, a process which she had approved while cabinet member for education. The complainant, who is the opposition chief whip, said that Labour councillors received complaints during August 2006 that new governors would have to have a CRB check at their own expense, and there were letters in the press criticising the policy. It is alleged that at this stage Councillor Harty suggested a bursary scheme for those who could not afford to pay. A newspaper article quoted the council as saying that the fee may be waived by those not able to pay. It is alleged that at a scrutiny committee on 12 September 2006, Councillor Harty, replying to a question, said that it had always been the policy to reimburse governors their CRB expenses, which is not what she had in fact agreed.

The opposition put down a motion in council on 20 September 2006 on the matter, and it is reported that Councillor Harty again claimed that it was always the policy to reimburse governors for CRB expenses.

#### **Case C: Marnham District Council, Councillor Davies**

##### **Summary**

The complainant is the leader of the council. It is alleged that Councillor Davies has sent a number of disparaging emails to the council's IT staff, criticising their work and mocking their capabilities and copied them to third parties; that he has sent unfair and derogatory emails about the chief executive, the council's solicitor and the complainant, copying them in to third

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parties, as well as inappropriate emails to other councillors; that he became involved in support of a local IT company in a dispute with the council, and was confrontational when officers reminded him about possible conflicts of interest; and that he was hectoring and overbearing towards technical officers in the presence of the chief executive and two other members at a meeting held on 23 April 2005. The chief executive asked the junior officers to leave after 20 minutes on account of Councillor Davies' behaviour, and because they were upset at the untimely death of a close colleague the previous Saturday. It is reported that when Councillor Davies was told of this, he retorted, "I suppose you're going to blame him!" It is alleged that Councillor Davies has been warned about his conduct, including formal warnings, but that it has continued.

## **Case D: Coketown District Council, Councillors Yeo, Bailey and Malecka**

### **Summary**

The complainants refer to the proposed development of a council-owned allotment site at Coketown, for 217 dwellings and associated infrastructure, considered by the planning committee on 21 September 2006. It is reported that Councillor Yeo, the executive member for land and property, had been involved in discussion with the developers, and council decisions over the sale of the site, the proceeds of which would be used by the council to pay for a new leisure centre at elsewhere in the borough. Having declared a personal interest in the matter at the planning committee, it is alleged that he failed to declare a prejudicial interest and withdraw from the meeting.

It is alleged that Councillor Bailey, the chairman, did not ensure that the meeting was conducted impartially due to confusion of members' and officers' roles, and that the planning officer, as an employee of the council, was not able to give the committee the impartial advice they needed.

It is also alleged that Councillor Bailey refused to allow a local member to speak until the very last moment, and then cut him short before hastily moving to the vote.

It is alleged that by allowing the planning officer to warn members that refusal of the application could lead to an expensive appeal, and that Councillor Bailey thereby allowed undue influence to be put on the committee.

It is alleged that when the chairman and the planning officer were asked by another member if the terms of the development brief had been complied with, the member was given an affirmative answer. The complainants dispute this and say there were breaches of the development brief.

It is alleged that when Councillor Malecka asked the chairman and the planning officer if the terms of the development brief had been complied with, the member was given an affirmative answer. The complainants dispute this and say there were breaches of the development brief.

The complainants also object to aspects of the proposed development, the granting of planning permission, and the way the meeting was minuted.

### **Case E: Hook Parish Council, Councillor Dr Jon Rouse**

#### **Summary**

It was alleged that Councillor Rouse, the chairman of the parish council, accompanied by the vice-chairman, visited a member of the public at home and made allegations that a group of seven parish councillors, including the complainant, would be pressing for an injunction to prevent the member of the public, a parishioner, speaking at meetings. The parishioner then wrote to each of the seven councillors repeating this allegation and another allegation that he had orchestrated a public protest against the siting of a youth shelter. He enclosed a stamped envelope for them to reply and let him know whether the allegations were true or false, and that if they did not reply he would assume that the claim was true. In this case, he asked them to go ahead and seek the injunction.

The complainant was one of two councillors who replied direct to the parishioner, to say that she was not aware of the actions he referred to being taken, or of a group of seven working in co-operation on the council, and that the allegations were false. The clerk also wrote to the member of the public to say that six of the councillors (one was away) had asked him to reply to say that the allegations were false. The parishioner was not satisfied, wrote to the councillors again to say that the two who had replied personally had not asked the clerk to write on their behalf, and that he would regard the remaining five as having taken the actions originally alleged unless he heard from them by a given deadline.

It is alleged that on 18 April 2005 during public questions, a member of the public made a statement concerning a pre-arranged visit to his house by two senior councillors. The complainant wrote to Councillor Rouse on 20 April asking him:

- if he knew the identity of the two councillors who allegedly paid the visit
- to name the two councillors allegedly involved and to ask them to explain why they used her name without her knowledge
- to clear her of any complicity in the alleged actions

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- if he was unable to clear her good name, then to assure her that the exercise was designed simply as character assassination

The complainant states that she received no response to the letter, and that she put down questions in council on 16 May 2005. She wrote to Councillor Rouse again on 20 May 2005 to convey her disappointment with his handling of her questions. The minutes of the meeting state:

“The Chairman said he had received letters from two councillors concerning alleged actions of councillors at an informal meeting. As these letters did not relate, to discuss them with individuals outside the meeting.”

On 23 May, Councillor Rouse wrote to the complainant to say he regarded the matter as closed. The complainant reports that the member of the public has now told her that Councillor Rouse was one of the two councillors who visited him.

## **Case F: London Borough of Walford, Councillor Pat Rix**

### **Summary**

The complainant alleges that Councillor Rix has subjected her to less favourable treatment on the grounds of religion and race, bullying, victimisation and racial harassment.

It is reported that Councillor Rix was on the interview panel which appointed her, but did not want her for the job and preferred a white woman who did not perform as well as the complainant. It is alleged that Councillor Rix called her a liar when she advised her that a community film had a racist remark in it which would offend and embarrass the complainant. It is reported that Councillor Rix has micromanaged her and set her unrealistic targets to make her look like a failure, that she has been publicly humiliated at meetings and verbally abused. She reports that her position as a manager has been undermined, that she has had a meeting with her staff and managers and been excluded from the meetings.

It is reported that Councillor Rix was unhappy when managers asked the complainant to work on assignments including a petition by the Punjabi Sikh community for a community centre. It is alleged that Councillor Rix tried to stop her being involved in this work, told her that she did not want Pakistanis or Muslims asking for a community centre and made derogatory comments about the various ethnic groups within the Muslim community. The complainant found these remarks offensive as a Pakistani Muslim herself.

The complainant says that her managers failed to manage the situation or to protect her, and that she was unfairly and wrongly dismissed. It is alleged that Councillor Rix has referred to the protocol for officer and member relations as “bollocks” and failed to respond to a questionnaire sent to her under the Race Relations Act.



## **Case G: Scawthorpe Borough Council, Councillor Lee Kreuz**

### **Summary**

The complainant is the clerk to Nith parish council. He refers to a meeting of the council on 19 September 2006 where members discussed financial irregularities arising from the alleged misconduct of the council's groundsmen. It is reported that Councillor Kreuz, the local member of the borough council, attended the open part of the meeting but left with the public before the closed part where this matter was discussed.

It is alleged that a member of the parish council gave Councillor Kreuz a confidential note, which he then showed to the groundsmen two days later. It is also alleged that he told them that they had been the main topic of discussion at the meeting, giving them the impression that he had been present, the matter had been discussed in public, and that the clerk had accused them of stealing money.

It is reported that the note had the top of the page folded over, which one member of staff believed was to conceal a fax number. It is also alleged that he doctored a note headed "To all Parish Council Staff", cutting off the heading to make it look as if it only applied to the staff at the park.

The complainant adds that it is common knowledge that Councillor Kreuz intends to stand for the parish council.

## **Case H: Wessex Council, Councillor Douglas**

### **Summary**

The East Wessex Community Area Forum covers three wards of the borough: Whapton, Box and Friary. The complainant is a Progressive councillor for Whapton and he and two other Progressives won the ward from Labour in 2004. The council is Labour-run: Councillor Douglas is deputy leader and also chairman of the area forum, which has the power to spend the Housing Investment Programme (HIP) monies allocated to it. Part of the allocation is budgeted to replace old wooden doors on council houses with PVCu doors.

The Progressive councillors for Whapton asked repeatedly for HIP funding for their ward, to be told each time that it had already been committed for new doors in Councillor Douglas's ward (Box), and the vice-chairman's ward (Friary) with nothing for Whapton, even though there was a street there where doors were in urgent need of replacement (June Avenue). The complainant discovered that the chairman and vice-chairman of the forum have private business meetings in advance of the public forum and that Councillor Douglas had allegedly arranged matters so that all the spend on the new doors went to his ward.

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It is alleged that at such a business meeting on 24 June 2005, Councillor Douglas and the vice-chairman privately approved the allocation of £14,404 to June Avenue. One of the defeated Whapton Labour councillors, who, the complainant says, plans to stand again in 2006, a friend of Councillor Douglas, then organised a petition along June Avenue asking the council to consider installing new doors. This was presented to the council by a resident on 29 June 2005 and then received by Councillor Douglas at a press call in advance of the formal meeting of the forum. The complainant believes that Labour has orchestrated the petition in the knowledge that the money had already been agreed and that Councillor Douglas has used and abused his position as chairman of the forum, deputy leader, and as a member of the standards committee to manipulate the allocation of funding to his political advantage. The former Whapton councillor subsequently wrote to the newspaper to take credit for the decision and to criticise the Progressive councillors in Whapton Ward.

## **Case I: Great Norton Parish Council, Councillor Jameson**

### **Summary**

The complainant refers to a meeting of the parish council on 16 November 2006. It is alleged that when the chairman asked if there was any other business, Councillor Jameson said, "I've got some!", swung round in his chair, directly facing the complainant, and launched into a loud and aggressive verbal attack. It is alleged that he accused the complainant of calling the chairman "undemocratic" at a previous meeting and demanded that she apologise. The complainant subsequently explained in writing that she was accusing the council of being undemocratic, not the chairman, and has apologised to him for the misunderstanding. She also wrote to the chairman of the parish council to complain about Councillor Jameson's alleged treatment of her at the meeting.

It is reported that the next meeting of the parish council, advertised for 21 December 2006 at the village hall, was brought forward to 20 December 2006 at the Lions Club, which precluded the public, including the complainant, from attending. It is alleged that the meeting went into confidential session to discuss the complaint against Councillor Jameson, but that he failed to declare a prejudicial interest in the matter and remained in the meeting that considered a matter affecting him.

The chairman then wrote to the complainant to say that the parish council had found that, "as the alleged incident took place after the parish council meeting had closed, they found that Councillor Jameson was not in breach of any form of misconduct. It was unanimously agreed that no action be taken regarding Councillor Jameson and the matter to be considered closed." They also agreed to ban the public from speaking at future meetings.

## **Case J: Nettington Town Council, Councillor Gold**

### **Summary**

The complainant refers to the town hall at Nettington, which belongs to the town council, and where it is reported that the county registration service rents offices and Town Councillor Gold is employed as a registrar. It is reported that at the council meeting on 24 May 2004, Councillor Gold declared an interest in an agenda item regarding the town hall. It is further reported that in 2005, it was agreed in principle to hand the town hall over to a charitable trust, make a grant to the trust, seek legal advice; and that Councillor Gold be one of three councillors to be on a joint working group with the trust.

Following legal advice, on 27 February 2006 the council “reaffirmed” earlier resolutions concerning the trust, with Councillor Gold voting in favour. It is also reported that after she became town mayor in May 2006, she put herself forward as the council representative on the trust. The complainant refers to a meeting between councillors and the trust which took place on 3 July 2006: she says she has asked for the minutes but been told that it was an informal meeting, which was not the impression created beforehand.

The complainant has also provided a report of the “Nettington Town Hall Joint Working Group”, which includes Councillor Gold. It states that she had had final sight of the draft briefing for the solicitor who would be drawing up the draft lease for the town hall, which refers to the “need to agree continuing office space for the town clerk and use of the council chamber for meetings at a favourable rent and for the Registrar at the rent negotiated with the county council...” The complainant has also provided a covering memo from the town clerk that states that that the brief will be discussed with Councillor Gold and other members.

It is thereby alleged that Councillor Gold has a conflict of interest between the town council and her employer, which rents her place of work from the council in the building whose future is under consideration, and that having previously acknowledged this, has subsequently become more closely involved in the issue without declaring an interest.

## Hearings: The essentials

### Legislative framework

Primary legislation – *Local Government Act 2000 (Part III)*

Please note that two new sections (sections 54A and 82A) were introduced by the *Local Government Act 2003*. Both of these sections have significant implications for standards committee hearings.

Section 54A gives standards committees powers to appoint sub-committees to discharge their functions (including the function of conducting hearings).

Section 82A gives monitoring officers power to nominate another person to carry out their functions. For example, they could appoint another person to advise the standards committee if there is a conflict of interest preventing them from doing so.

The primary legislation provides a broad framework. The specific details for conducting standards committee hearings are to be found in secondary legislation, this being *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003* (SI 2003/1483) and the *Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004* (SI 2004/2617).

Although the 2004 regulations were mainly concerned with making provision for local investigations, they also introduced significant changes to the rules for local hearings. The range of sanctions was extended and the powers to request further investigation or referral back to the ethical standards officer were introduced for the first time. References in this document to the local determination regulations are to the 2003 regulations as amended in 2004.

The *Relevant Authorities (Standards Committee) Regulations 2001* (SI 2001/2812) contain provisions that apply to all standards committee meetings, including local hearings.

The Standards Board for England's guidance on standards committee determinations was issued in July 2003. It provides guidance on how to conduct the whole process from receipt of the ethical standards officer's report onwards. It also provides a model procedure for the conduct of standards committee hearings. This guidance is available on the Standards Board for England's website at [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

It is essential that you are aware of which Code applies at the time of the alleged breach. Remember that some cases may be dealt with under the 2001 code whilst others may be dealt with under the revised Code of Conduct. Always check that you have a copy of the Code for the authority in question at the hearing.

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*NB: the guidance needs to be read alongside the 2004 regulations. As explained on the previous page, these regulations introduced some significant changes to the rules.*

## **Common law principles**

Like all public bodies, each standards committee has an obligation to ensure that its proceedings are procedurally fair. Each member has an important role to play in achieving this.

The two basic principles contained within the concept of 'procedural fairness' at common law are the right to a fair hearing and the absence of bias. You may have heard these referred to as the 'rights of natural justice'. These common law obligations run in parallel with the statutory requirements. Thus, in relation to a 'fair hearing', the member's right to present evidence and make representations at the hearing go some way to ensuring a 'fair hearing'.

Similarly the important fact that all members of the standards committee (including independent members) are themselves subject to the Code of Conduct and, in particular, the rules about personal and prejudicial interests, will help to avoid any bias.

Members should note that it is not only the Code of Conduct which may prevent them from participating in a particular hearing. There may be other grounds on which there is a conflict of interest or a real possibility of bias, both of which would mean that the member would have to withdraw from participation. Members should take advice from their monitoring officer (or appointed legal adviser) at an early stage if they have any concerns about participation.

The standards committee must do everything it reasonably can to ensure that the subject member receives a fair hearing. This means that where members are taking procedural decisions these must be taken in the light of that over-arching obligation. This could be relevant before a hearing, as well as at a hearing. Examples of procedural decisions include a request by the subject member to call various witnesses to give evidence or a request to introduce additional evidence at a late stage.

## **Time limits**

Members should be aware of the three month time limit for holding hearings. Regulation 6(2)(b) of the local determination regulations requires standards committees to hold any hearing within three months of the date on which the ethical standards officer's report is received. For local investigations, where the investigator considers that there is a breach or the standards committee decides that there is a case to answer (although the investigator concluded no breach), the time limit is three months from the final report.

This is a challenging deadline for the monitoring officer to meet and standards committee members should also bear it in mind when making procedural decisions in order to assist in meeting the deadline. The first step for the monitoring officer will be to send a copy of the report (including any exhibits) to the subject member. A provisional date for the hearing should be set as soon as possible, in consultation with the subject member and relevant members of the standards committee.

The importance of adhering to the three month time limit was highlighted in the case of *R (on the application of Dawkins) v Standards Committee of Bolsover District Council* [2004] EWHC 2998. In that case, the judge held that unforeseeable circumstances, such as the sudden illness of the subject member, might prevent the three month deadline being met. However, the standards committee had to make ‘a genuine and determined effort’ to meet the deadline. The judge in that case observed:

*“The deadline is not simply a target which the standards committee should try to get as close to as is reasonable. The test is not whether one can sympathise with hindsight, nor is it whether it is understandable, to an extent, that the deadline was not treated with the importance which the statute gives it. The test is whether there was substantial compliance with it”.*

In the absence of a genuine and determined effort to meet the deadline, a standards committee determination made after the deadline had expired would be unlawful. That was the outcome in the *Dawkins* case.

## **The hearing – who must be present?**

There must be **three members** for a standards committee or sub-committee to be quorate, at least one of whom must be an ‘independent’ member. An exception applies where an independent member is prevented from participating because of a prejudicial interest. Having said this, the Standards Board for England’s view is that it would be most unwise to rely on this exception in relation to a standards committee hearing. Regulation 6 of the standards committee regulations 2001 sets this quorum.

Where a hearing concerns a member of a parish council, section 55(6) of the *Local Government Act 2000* requires that a parish council member must be present at any meeting of the standards committee. Although section 55(7) of that Act is not drafted in identical terms, it is clearly best practice for a parish council member to be present at any meeting of a sub-committee dealing with parish council members.

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## **Standards Board for England guidance**

Regulation 6(2)(a) of the local determinations regulations requires standards committees to ‘have regard’ to guidance issued by the Standards Board for England. As previously mentioned, this guidance is available on the Standards Board for England’s website ([www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)). Standards committee members should be aware of this guidance. If the committee choose not to follow it, they should have good reasons for departing from it so that they can justify their decision if there is a subsequent challenge. The guidance makes the following key recommendations:

- sets out a pre-hearing process designed to identify any disputed facts
- suggests that matters should be heard by a panel of three or five members
- suggests that one of the independent members should chair the hearing

## **Rights of the member**

The regulations require the subject member to be “given an opportunity to present evidence in support of his case” and to be “given the opportunity to make representations at the hearing”. These are very important rights that help to ensure that the member is given a fair hearing. It is essential that the member be given an opportunity to put his case and to present evidence that is relevant to the matters before the standards committee. Regulations 6(2)(d) and (e) of the local determination regulations refer.

One of the aims of the pre-hearing process is to prevent the standards committee being taken by surprise by unexpected disputes of fact on the day of the hearing. Paragraph 15 of the model hearing procedures set out in the Standards Board for England’s *Standards committee determinations* guidance suggests how such disputes should be dealt with if they arise on the day of the hearing. The committee can refuse to allow the member to raise the matter. This may be the appropriate course where the committee is not satisfied with the reasons given by the member for failing to raise the issue before the hearing and further considers that it would not be possible to deal with the matter without an adjournment. However, in an appropriate case, the committee can adjourn the proceedings to allow further evidence to be obtained.



## Findings of the committee

The committee must come to clear conclusions as to:

- a. the disputed facts
- b. whether there has been any breach of the Code of Conduct, and if so
- c. whether any sanction should be imposed

The Standards Board for England's model procedure suggests that the committee should withdraw to consider their conclusions separately in relation to each of these three issues. It has been suggested that this is an overly cumbersome approach and that disputed facts and breach of the Code of Conduct could properly be dealt with together. We disagree. We believe it is helpful, especially where the facts are complicated, for standards committees to distinguish between determining any facts in dispute and the question of whether or not there has been a breach of the Code of Conduct. In our view, the three-stage process helps committees to do this.

## Sanction

This stage is only reached if the committee find that there has been a failure to comply with the Code. The committee need to consider the full range of sanctions available, tailoring any sanction to the facts of the case before them. They must remember that there is no obligation to impose any sanction at all.

The committee should consider any aggravating and mitigating factors that apply. If the member is present they can set out mitigating factors even if they have not previously identified these. Guidance as to identifying mitigating/aggravating factors is set out on pages 10 and 11 of the *Standards committee determinations* guidance. Examples of factors that might be relevant include the member's knowledge of the Code of Conduct at the time of the incident, the consequences of the misconduct, whether the member accepts that they have breached the Code of Conduct, whether an apology has been offered and whether there is likely to be any repeat of the misconduct. Bullying of officers or trying to gain an improper advantage are identified in the guidance as particularly serious breaches.

As already noted, the range of sanctions available was extended in 2004 (note that the list on pages 9 and 10 of the *Standards committee determinations* guidance is not up to date). It is also important to remember that the standards committee can combine sanctions. So a member can be required to apologise **and** undertake training, or be suspended **and** be required to undertake conciliation.

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## **Giving reasons**

Regulation 8 of the local determinations regulations requires the standard committee to give reasons for its decision. This is an important requirement and failure to give reasons could give grounds for appeal.

In *R v Brent London Borough Council, ex p Baruwa* (1997) 29 HLR 915 at 929, Lord Justice Schiemann observed:

*“It is trite law that where, as here, an authority is required to give reasons for its decision it is required to give reasons which are proper, adequate, and intelligible and enable the person affected to know why they have won or lost. That said, the law gives decision makers a certain latitude in how they express themselves and will recognise that not all those taking decisions find it easy in the time available to express themselves with judicial exactitude”.*

The reasons should explain why the committee reached the conclusions it did. The reasons should deal with any representations made by the parties, particularly those made by the subject member. It would be most unwise for the committee to say simply that it ‘accepted the reasoning in the ethical standards officer’s report’ without further elaboration or explanation. Reasons should cover each of the stages of the decision – facts, reasoning as to whether or not there has been a breach of the code and, if there is a breach, decision on sanction.

## **Other outcomes**

The 2004 amendments to the local determination regulations gave standards committees two additional powers in relation to hearings. Regulation 6(9) allows the committee to adjourn the hearing and require the monitoring officer to seek further information or undertake further investigation. This is a valuable tool for standards committees who consider that, for whatever reason, they do not have sufficient information to deal with the matter fairly. However, the power needs to be used with caution since any adjournment will inevitably lead to delays in resolving the matter.

Regulations 6(10) of the local determination regulations gives standards committees the power to request a referral back to the ethical standards officer. It is expected that this power might be exercised if the standards committee considered that a matter merited more severe sanctions than those available to the committee. It is important to remember that the decision whether to accept such a request remains with the ethical standards officer. The committee cannot force the ethical standards officer to take a case back. As with the power to request further investigation, committees should treat requests for referral back with caution since they will inevitably lead to delays.

In the interests of fairness it is advised that, if the standards committee is minded to exercise one of these powers, they should give both the subject member and the ethical standards officer's representative the opportunity to make representations before reaching any final decision.

### **Things to avoid**

It is essential that the standards committee should not allow itself to be a mere 'rubber stamp' for the ethical standards officer's report. They should not uncritically accept the findings of fact or the reasoning put forward by the ethical standards officer or investigator. The committee must consider carefully any evidence or representations put forward by the subject member. This includes representations made during the investigation, representations made prior to the hearing and representations made at the hearing. The committee's reasons should demonstrate that the member has been given a fair opportunity to put his or her case across.

However, this must be balanced against the need to prevent the standards committee's time being wasted on irrelevant matters or witnesses. Some members find it difficult to focus on the issues set out in the report and will be tempted to bring in a variety of matters that are only of tangential relevance to the hearing or sometimes of no relevant at all. A firm-but-fair approach is needed here. The committee's primary task is to decide whether or not the member breached the Code of Conduct. It is unlikely to be a good use of the committee's time to hear oral evidence that is either undisputed or not relevant to the alleged breach of the Code of Conduct.

'Character evidence' is likely to be relevant only to the third stage of the process, in relation to any appropriate sanction. Such evidence is usually undisputed and may be most conveniently dealt with on paper, through written testimonials.

It is important to remember that regulation 6(6) of the local determination regulations provides that the committee 'may place a limit on the number of witnesses a member may call if it is of the view that the number the member proposes to call is unreasonable'.

The *Standards committee determinations* guidance also includes the following crucial sentence (on page 8):

*"...the standards committee may choose not to hear from certain witnesses if it believes that they will simply be repeating evidence of earlier witnesses or if a witness will not be providing evidence that will assist the standards committee to reach its decision".*

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The over-arching principle is that the standards committee has the right to govern its own procedures as long as it acts fairly. The standards committee (and, in particular, the chair) must strive to ensure that it does not lose control of the hearing.

### **At the end of a hearing**

As soon as is reasonably practical after the hearing, the standards committee must give its full written decision to the relevant people. We recommend that the standards committee give its full written decision to those people within two weeks.

### **Conflicts of interest**

Monitoring officers have four main roles in relation to the Code of Conduct:

- to provide advice to the standards committee
- to advise members who are the subject of an allegation and the person making the allegation
- to deal with cases of alleged misconduct referred to them by an ethical standards officer (this is a statutory role that can be delegated)
- to advise members about conduct issues before any alleged misconduct takes place

An investigation could potentially create a conflict of interest between these roles. For example, if you were asked to investigate an allegation against a member that you had advised on the same issue, it is likely that a conflict of interest would arise. In these situations, you should delegate the investigation to somebody else.

### **Advising standards committees**

In previous guidance, we recommended that monitoring officers should act as main advisers to standards committees on cases referred by an ethical standards officer for local determination unless they have an interest in the matter that would prevent them from performing the role independently. It is vital that standards committees have access to appropriate advice on cases that have been referred for local investigation, as well as those referred only for determination.

The Standards Board for England believes that you should not conduct an investigation and advise the standards committee on the same case. You therefore need to consider whether it is more important to investigate the matter and delegate the role of advising the standards committee or delegate the investigative role.

## **Personal conflicts**

Take care to avoid any personal conflicts of interest. If you find that you have a direct or indirect interest in a local investigation – for example, you have a direct financial interest in the subject of the allegation or a family member or friend is involved – you must not participate. Instead, you should notify the standards committee, the member concerned, the complainant and the ethical standards officer, explaining:

- that you will not take part in the investigation
- the nature of your interest
- who will carry out the investigation in your place

## **Delegation of investigations**

Under section 113 of the *Local Government Act 2003*, monitoring officers can delegate investigations to their deputy or to any other person they wish to conduct a local investigation. As with monitoring officers, deputies and nominated people do not have to be legally qualified but are obliged to follow guidance issued for monitoring officers. Under section 5(1)(b) of the *Local Government and Housing Act 1989*, local authorities must provide you with sufficient resources to perform your duties. Deputies have the right to the same support as monitoring officers.

In many authorities, monitoring officers will be able to appoint a member of staff to carry out their investigation. Smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities to make sure that an experienced officer is available to carry out an investigation, should the need arise. Authorities may also decide to hire suitable people from outside the organisation to carry out investigations. To ensure that there is no confusion concerning the role and authority of the person delegated to conduct the investigation, monitoring officers should use a formally instituted procedure to record that they have delegated their investigative role to another person. You must inform an ethical standards officer if you delegate an investigation, in case they need to provide the investigator with more information.

## **Further help**

The Standards Board for England has published a DVD which includes advice on conducting a standards committee hearing. The DVD was distributed to all principal authorities at the beginning of 2006. The Standards Board for England website contains the guidance as referred to above, as well as links to the regulations mentioned above.

## Bullying

**Relevant Code paragraphs:** 3(2)(b) and 3(2)(c)

**Summary:** This document provides key information and answers frequently asked questions about bullying under the 2007 revised Code of Conduct for members.

**Date published:** 1 October 2007

### Key facts

- You must not bully anyone including other councillors, council officers or members of the public.
- Bullying can be described as offensive, intimidating, malicious, insulting or humiliating behaviour, towards someone weaker than you or someone you have, or believe to have, influence over.
- Bullying may happen once or be part of a pattern of behaviour.
- Bullying attempts to undermine an individual or group of individuals and it can have a damaging effect on a person's confidence, capability and health.
- You must not intimidate anyone who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a Code of Conduct investigation.
- Bullying can be contrasted with the legitimate challenges a member can make when questioning policy or scrutinising performance (as long as it is done appropriately and is not offensive or disrespectful).

## **Frequently asked questions**

### **Q1 Why is bullying such a serious issue?**

Bullying can have a significant effect on victims and the authority's ability to provide services by affecting the morale of staff and the authority as a whole. This is because bullying can create a working environment with an atmosphere of mistrust, insecurity and fear.

In some cases, bullied officers require long periods of leave because of ill health or stress which can damage the running of an authority. This is particularly the case in parish and town councils, where there may only be a small team of employees. Quite often, officers feel unable to return to their role or even to carry out work of a similar nature.

### **Q2 Is bullying only bullying when it is done face-to-face?**

Bullying is any insulting or offensive behaviour towards an individual or group of individuals.


This includes using physical force or making abusive personal remarks about or to the victim not only face-to-face, but by email, letter, through the press, at council meetings or by other means.

### **Q3 How can it be proved that bullying has occurred?**

It is possible to investigate complaints of bullying if there is clear evidence that it may have occurred, for example if the complainant has kept a detailed record of the incidents and the context in which they took place.

Clear evidence is required so objective assessments can be made more easily as to whether these may be a breach of the Code of Conduct. This is because it is more difficult to judge bullying from general remarks, such as 'the councillor is always undermining me through her comments'.

To test whether bullying is taking place, ask yourself whether a neutral third party with all the facts would regard the conduct as bullying. In some circumstances, the claims are cases of oversensitivity to criticism, or a breakdown in a relationship between officers and members without an indication of any bullying.



#### **Q4 Is it possible to take part in a vigorous political debate without breaching the Code of Conduct?**

Disrespectful, intimidating or demeaning behaviour which is not carried out from a position of power or authority may not be bullying. But it may still be a breach of the Code of Conduct, e.g. by failing to treat others with respect.

For example, if a member uses inappropriate language or is disrespectful to another member during a debate, it may not be classed as bullying because a platform is present for the other member to defend themselves.

On the other hand, a member making abusive and disrespectful comments about an officer during a debate may be seen as bullying because the officer is not able to defend themselves.

#### **Additional information**

- *The Code of Conduct: Guide for members May 2007* offers more guidance on the Code and can be downloaded from our website - [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).
- A full range of factsheets and frequently asked questions is available from the Code of Conduct section of our website.
- View our occasional paper on bias and predetermination, available online.
- Call our enquiries line on **0845 078 8181**.
- Email us at [enquiries@standardsboard.gov.uk](mailto:enquiries@standardsboard.gov.uk).

## Disclosing confidential information

**Relevant Code paragraphs:** 4(a)

**Summary:** This fact sheet provides a summary of key points and frequently asked questions about disclosing confidential information under the 2007 revised Code of Conduct for members.

**Date published:** 1 October 2007

### Key facts

- Confidential information can only be disclosed when at least **one** of the following circumstances applies:
  - 1) You have to disclose the information by law.
  - 2) An authorised person says that you can disclose it.
  - 3) You need professional advice from a third party, for example your lawyer, and that person agrees not to pass the information to anyone else.
  - 4) The disclosure is in the public interest. This is only justified in limited circumstances (see below).
- Disclosure of confidential information, or information which you believe to be confidential for any other reason, is likely to be a breach of the Code.
- Disclosure of confidential information in the public interest can only be justified when **all** of the following requirements are met:
  - a) The disclosure must be reasonable.
  - b) The disclosure must be in the public interest.
  - c) The disclosure must be made in good faith.
  - d) The disclosure must be made in compliance with any reasonable requirements of your authority.



## Frequently asked questions


### Q1 When is a public interest disclosure “reasonable”?

This depends on the facts of the case and is a matter of judgement. However, you will need to consider issues such as:

- Whether you believe that the information disclosed, and any allegation contained in it, is true. If you do not believe it is true, then the disclosure is unlikely to be reasonable.
- Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- The identity of the person to whom you make the disclosure. It may be reasonable to disclose information to the police but not to the world at large through the media.
- The extent of information disclosed. The inclusion of unnecessary detail is unlikely to be reasonable.
- The seriousness of the matter. The more serious it is, the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, then the disclosure may be less likely to be reasonable than if the matter is continuing or is likely to reoccur.
- Whether the disclosure involves your authority failing in a duty of confidence to another person.

### Q2 When is a disclosure “in the public interest”?

For a disclosure to be in the public interest it needs to involve at least one of the following matters, or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- A criminal offence is committed.
  - Your authority or some other person fails to comply with any legal obligation to which they are subject.
  - A miscarriage of justice occurs.
  - The health or safety of any individual is in danger.
  - The environment is likely to be damaged.
  - Information showing any of the above is deliberately concealed.
- 

### **Q3 When is a public interest disclosure “made in good faith”?**

To make a disclosure in good faith you must not act with an ulterior motive, for example to achieve political advantage.

### **Q4 How do I comply with the “reasonable requirements of my authority”?**

Before considering releasing confidential information you must ensure that you comply with your authority’s policies or protocols on matters such as whistle-blowing or member-officer relationships and confidential information, in addition to considering requirements (a)-(c) in the key facts above.

If your authority does not make any requirements to cover the possibility of a member considering a release of information, then the test for disclosing confidential information is a three-stage one – namely it must satisfy the requirements (a)-(c) as above.

However, the Standards Board recommends that authorities ensure they have policies on matters such as whistle-blowing in place and that they take steps to ensure that all members are familiar with the provisions.

Appropriate and robust authority protocols can assist in ensuring the protection of confidential information where appropriate, and in promoting and upholding high ethical standards more generally.

### **Q5 When is a public interest disclosure not capable of being justified?**

When a disclosure amounts to a criminal offence or when information is protected by legal professional privilege, it is extremely unlikely its release could be justified in the public interest.



## Additional information

- *The Code of Conduct: Guide for members May 2007* offers more guidance on the Code and can be downloaded from our website - [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).
- A full range of factsheets and frequently asked questions is available from the Code of Conduct section of our website.
- View our occasional paper on bias and predetermination, available online.
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## The ethical framework for local government

**Summary:** This document provides key information and answers to frequently asked questions about the ethical framework for local government and the role of the Standards Board for England.

**Date published:** 1 October 2007

### Key facts

- The current ethical framework for local government first emerged from the Committee on Standards in Public Life's third report in 1997.
- The report responded to concerns over a series of high-profile political scandals during the 1990s and that public confidence in councillors was being undermined.
- It formed part of the broader drive by government to modernise local government and make it more accountable to local communities.
- The key elements of the ethical framework are the Code of Conduct for elected and co-opted members of local authorities, local authority standards committees and the Standards Board for England.
- The Standards Board for England was formally established in March 2001, by an Act of Parliament in Part III of the *Local Government Act 2000*.
- The Standards Board for England is independent of government, although it reports to the minister of state for local government.

## Frequently asked questions

### Q1 What does Part III of the *Local Government Act 2000* govern?

- Every local authority is required to adopt the Code of Conduct and most elected, co-opted, appointed and independent members are covered by it.
- Each principal authority is required to have a standards committee, comprising members of the authority and at least one independent representative.
- Standards committees have specific and general functions, including promoting standards of ethical conduct of members and carrying out local determinations of allegations of breaches of the Code of Conduct.
- Establishment of the Standards Board for England as an independent body to promote high ethical standards in local government and to investigate allegations that members may have breached the Code of Conduct.

### Q2 What is the difference between the Standards Board for England and the Adjudication Panel for England?

The Standards Board's main roles are to ensure that standards of ethical conduct are maintained across authorities and to deal with complaints of misconduct against individual members.

This differs from the Adjudication Panel for England, which is an independent judicial tribunal set up to deliver judgement on matters concerning the Code of Conduct of local authority members. The Adjudication Panel considers cases referred to it by ethical standards officers of the Standards Board for England and also considers appeal cases.

### Q3 What are the general principles of standards in public life?

The ten general principles of public life come from the Nolan Committee's First Report on Standards in Public Life. They define the standards that members should uphold, and serve as a reminder of the purpose of the Code of Conduct.

The principles, as set out in the Relevant Authorities (General Principles) Order 2001, are:

- |                         |                          |
|-------------------------|--------------------------|
| ■ selflessness          | ■ personal judgement     |
| ■ honesty and integrity | ■ respect for others     |
| ■ objectivity           | ■ duty to uphold the law |
| ■ accountability        | ■ stewardship            |
| ■ openness              | ■ leadership             |

## Additional information

- *The Code of Conduct: Guide for members May 2007* offers more guidance on the Code and can be downloaded from our website - [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).
- A full range of factsheets and frequently asked questions is available from the Code of Conduct section of our website.
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## Gifts and hospitality

**Relevant Code paragraphs:** 8 and 13

**Summary:** This document provides key information and answers frequently asked questions about registering gifts and hospitality under the 2007 revised Code of Conduct for members.

**Date published:** 1 October 2007

### Key facts

- You must register any gifts or hospitality worth £25 or over that you receive in connection with your official duties as a member. You must also register the source (for example, the person, firm, body or company) of the gift or hospitality.
- You must register the gift or hospitality and its source within 28 days of receiving it.
- You automatically have a personal interest in a matter if it relates to or is likely to affect the source of the gift or hospitality that is registered.
- You must declare the existence and nature of the gift or hospitality, the source who gave it to you, how the business under consideration relates to that source, and then decide whether that interest is also a prejudicial interest.
- Once three years have passed since you registered the gift or hospitality, your obligation to disclose that interest to any relevant meeting ceases.

## Frequently asked questions

### **Q1 Is the gift or hospitality connected to my official duties as a member?**

You should ask yourself, “would I have been given this if I was not on the council”? If you are in doubt as to the motive behind a gift or hospitality, we recommend that you register it or speak to your monitoring officer (or your parish or town clerk where appropriate). What matters is to show who you have received a gift or hospitality from, and to make that known when business related to them is discussed at a council meeting at which you are present.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept.

However, you should always register a gift or hospitality if it could be seen as something given to you because of your position or if your authority requires you to do so. It may also be good practice to register declined gifts.

### **Q2 What if I do not know the value of a gift or hospitality?**

The general rule is, if in doubt as to the value of a gift or hospitality, you should register it as a matter of good practice and in accordance with the principles of openness and accountability in public life.

You should also register an accumulation of small gifts you receive from the same source over a short period that add up to £25 or more.

### **Q3 What about official gifts or hospitality given to the civic mayor or chair of a council?**

There are no special rules for those who serve as mayor or chair of an authority. Gifts that are clearly made to the authority do not need to be registered. Gifts made directly to a mayor or chair’s charity appeal also do not need to be registered.

On the other hand such gifts ought to be recorded for audit, and perhaps insurance purposes on the council’s asset inventory. Although the mayor or chair may attend many social functions they are not exempt from the requirement to register hospitality.

All hospitality over £25 must be registered under the Code.

### **Q4 What does “hospitality” mean?**

Hospitality can be defined as any food, drink, accommodation or entertainment provided free of charge or heavily discounted.





**Q5 Does the revised Code require me to register the interests of people that give me gifts or hospitality?**

No. The Standards Board believes the revised Code requires you to register any gifts or hospitality worth £25 or over that you received in connection with your official duties, and the source of the gift or hospitality.

**Q6 Do I have to transfer my gifts and hospitality register from before 2007 onto the new, publicly available, general register of interests?**

If you were a member prior to the revised Code being introduced in 2007, you are likely to have a register of gifts and hospitality which was separate to the publicly available registers of members' interests under the 2001 Code.

You do not need to copy or transfer your register of gifts and hospitality onto your general register of interests under the revised Code. This is because we believe the new Code cannot be applied retrospectively.

As a result, gifts and hospitality received prior to the revised Code coming into effect in your authority (on 1 October 2007 or on the date your authority adopts it - whichever is earlier), will also not give rise to a personal interest under the revised Code.

## **Additional information**

- *The Code of Conduct: Guide for members May 2007* offers more guidance on the Code and can be downloaded from our website - **[www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)**.
- A full range of factsheets and frequently asked questions is available from the Code of Conduct section of our website.
- View our occasional paper on bias and predetermination, available online.
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- Email us at **[enquiries@standardsboard.gov.uk](mailto:enquiries@standardsboard.gov.uk)**.

## Personal and prejudicial interests

**Relevant Code paragraphs:** 8 – 13

**Summary:** This document provides key information and answers to frequently asked questions about the ethical framework for local government and the role of the Standards Board for England.

**Date published:** 1 October 2007

### Key facts

#### Personal interests

There are two types of personal interest.

You have a personal interest in any business of your authority where it relates to or is likely to affect:

- 1) An interest that you must register.
- 2) An interest that is not on your register but where the well-being or financial position of you, members of your family, or people with whom you have a close association, is likely to be affected by the business of your authority more than it would affect the majority of:
  - inhabitants of the ward or electoral divisions affected by the decision (in the case of authorities with wards or electoral divisions)
  - inhabitants of the assembly constituency affected by the decision (in the case of the Greater London Authority)
  - inhabitants of the authority's area (in all other cases)

**Note:**

- 1) You must declare that you have a personal interest and the nature of that interest, as soon as it becomes apparent to you in all meetings before the matter is discussed.
- 2) There are two exemptions to the rule on declaring a personal interest, which is a key change under the revised Code.

Exemptions apply where an interest arises solely from membership of, position of control or management on:

- Any other body to which you were appointed or nominated by the authority.
- Any other body exercising functions of a public nature for example, if you have been appointed as a school governor.

In these exceptional circumstances you only need to declare your interest if and when you speak on a matter, provided that you do not have a prejudicial interest (see below).

**Prejudicial interests**

Your personal interest will also be a prejudicial interest if it meets all of the following conditions:

- a) The matter does not fall within one of the exempt categories of decisions under paragraph 10(2)(c), for example, setting the council tax.
- b) The matter affects your interests financially or a licensing or regulatory matter, for example an application for a grant funding to a body on your register of interests, or a planning or licensing application made by you or a body on your register of interests.
- c) A member of the public, who knows the relevant facts, would reasonably think your personal interest so significant that it is likely to prejudice your judgement of the public interest.

**Note:** in order for your interest to be prejudicial, it must be a financial or regulatory matter.

## What to do if you have a prejudicial interest

If you have a prejudicial interest in a matter being discussed at a meeting:

- You must declare that you have a prejudicial interest and the nature of that interest as soon as the interest becomes apparent.
- You should leave the room unless members of the public are allowed to make representations, give evidence or answer questions about the matter. If this is the case, you can also attend the meeting for that purpose.
- You must leave the room immediately once you have finished speaking, or when the meeting decides that you have finished (if that is earlier).

## Frequently asked questions

### Q1 Is paragraph 12(2) mandatory for my authority?

Paragraph 12(2) is mandatory for most authorities. However, paragraph 12(2) is not mandatory for the following authorities:

- parish and town councils
- English and Welsh police authorities
- the Greater London Authority
- national park authorities
- fire and rescue authorities

If your authority wishes paragraph 12 (2) to apply, it will need to pass a resolution adopting the Model Code of Conduct including paragraph 12(2).

If your authority is a parish or town council and you wish to adopt paragraph 12(2), you can do so by adopting the Standards Board's *Model Code of Conduct for parish and town councils 2007*, which is available on our website on our website -

[www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

If paragraph 12(2) is included in your authority's Code, the Standards Board recommends that standing orders or procedural rules should be put in place for clarity. These should clearly set out the circumstances in which members of the public can attend the authority's meetings to make representations, give evidence or answer questions.

If your authority does not provide members of the public with any right to speak, paragraph 12(2) will have no effect at your authority. This means that members with a prejudicial interest would have to continue to leave the meeting room after declaring the nature and extent of their interest.

## Q2 What rights are available to members with a prejudicial interest?

Paragraph 12(2) gives members with a prejudicial interest in a matter the same rights as members of the public to speak at a meeting on the matter. Members must then leave before the main discussion and voting takes place.

### Additional information

- *The Code of Conduct: Guide for members May 2007* offers more guidance on the Code and can be downloaded from our website - [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).
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## Lobby groups and declarations of interest under the Code of Conduct

**Relevant Code paragraphs:** 8 – 12

**Summary:** This document provides key information and answers frequently asked questions about lobby groups and declarations of interest under the 2007 revised Code of Conduct for members.

**Date published:** 1 October 2007

### Key facts

#### The revised Code of Conduct

- The Code of Conduct was revised in 2007. It is now less restrictive than the 2001 Code for members who participate in campaigns or are members of lobby groups. Some members, who found they were prevented by the 2001 Code from voting on a matter important to them or their lobby group, will not have a prejudicial interest under the revised Code of Conduct.

#### Register of interests

- Membership of lobby or campaign groups should be included on your register of interests, as these are bodies “whose principal purposes include the influence of public opinion or policy” under paragraph 8(1)(ii)(cc).
- Even if your lobby group does not keep a formal membership list, the Code of Conduct still applies to you. If you are acting as a member of the group – perhaps attending meetings or participating in group activities – you should still register your membership of the group and declare interests, where appropriate.

## Personal interests

- The Code of Conduct requires you to declare a personal interest in any matter relating to an interest you must include in your register of interests.
- You are required to declare a personal interest if you are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at your authority.
- You should declare the existence and nature of your interest at the meeting so that members of the public are informed about interests that may relate to your decisions. You can continue to participate unless the interest is also prejudicial (see the section on prejudicial interests below).
- You may not have a personal interest in a related discussion or decision of your authority if you merely campaigned on an issue as an individual and not as member of a relevant lobby group - for example, if you tackled an issue as part of your election campaign.

However, you should still consider the general test for personal and prejudicial interests and whether there is any other reason why you should not participate in the decision, including the possibility of bias.

You may want to discuss your circumstances with your monitoring officer. For information on bias and predetermination, see our occasional paper, which is available from our website - [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

## Prejudicial interests

Under the Code of Conduct, you only have to withdraw from a meeting where your personal interest is also prejudicial.

### Exceptions

You cannot have a prejudicial interest in a matter if:

- a) The matter falls within one of the exempt categories of decisions under paragraph 10(2)(c), for example, any ceremonial honour given to members. A full list of exempt categories can be found in the Standards Board's Code of Conduct guidance, which is available on our website - [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)
- b) The matter does not affect your financial interests or does not relate to a licensing or regulatory matter brought by you or a person or body in which you have a personal interest.

For example, you will not have a prejudicial interest in a developer's planning proposal which you and your lobby group have campaigned against, if you, any person, or any body you have a personal interest in is not financially affected by the proposal.

The planning proposal might indirectly affect your lobby or campaign group since it relates to things it campaigns for or has expressed public opinions about. However, in this context, it will not be relevant for the purposes of the Code.

Nevertheless, you may have a prejudicial interest where the matter is an application for a grant for funding for a body on your register of interests, or a planning or licensing application made by you, a person or a body on your register of interests.

If your personal interest in a matter falls outside the exempt categories mentioned in a) above, and does affect your financial or regulatory interests, you will then have to consider the following **general test for prejudicial interests**:

**Would a member of the public, who knows the relevant facts, reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest?**

If the answer is 'yes' then you would have a prejudicial interest.

## Frequently asked questions

### **Q1 How has the Code of Conduct changed for members of lobby or campaign groups?**

Under the original Code of Conduct 2001, members of lobby groups were required to consider whether the indirect impact of a decision on their group would give rise to a prejudicial interest under the general test (see above). As a result, members declared personal and prejudicial interests in matters which they or their group had campaigned on or had expressed public opinions about.

Under the revised Code, members will not be prevented under the Code of Conduct from voting on a matter if their only interest is that they hold views on the matter, for example based on their experiences or political outlook.

### **Q2 Do I have a personal and prejudicial interest if I am a member of a group that campaigned against a planning application submitted by a developer?**

No. You will only have a personal interest which you should declare the existence and nature of at the meeting considering the application. This is so that members of the public are informed about interests that may relate to your decisions.



However, you should still consider the general test for personal and prejudicial interests and whether there is any other reason why you should not participate in the decision, including bias. You may want to discuss your circumstances with your monitoring officer.

**Q3 What should I do if my membership of a pro-development campaign does not give rise to a prejudicial interest, but I have other interests that may be relevant?**

You still need to consider whether you have any personal interests that may also be prejudicial interests. For example, a prejudicial interest is likely to exist where a particular development financially affects your sister, as her property is two doors away from the development site. Please see our specific factsheet entitled *Personal and Prejudicial Interests*.

### **Additional information**

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