

 the Standards Board for England  
Confidence in local democracy

# Roadshow 2007

Welcome and update

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## Local ownership and responsibility

- managing the change of system
- supporting the locally based framework
- strategic regulation

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## Local Government Bill


- Committee stages complete in June
- Royal Assent in July or October

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## Local Government Bill


Raft of detailed regulations, including:

- joint committees
- suspension of filtering powers
- standards committee sub-committees
- withdrawal of cases from the Adjudication Panel for England by an Ethical Standards Officer
- Adjudication Panel allowed similar sanctions to a standards committee

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## The Standards Board

- defining what the standards regime should deliver
- issuing statutory and other guidance
- providing advice and support

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## The Standards Board

- developing a framework for training requirements
- monitoring local performance
- carrying out investigations that can't be done locally

## Annual Assembly

*Down to detail – making local regulation work*

- identifying challenges to all of the new system
- in-depth sessions for each key stage of the process
- details from the pilots

## Moving forward

- Evidence of improvement.
- Increasing public confidence.
- Major changes for all of us.
- How we can work together?

## Any questions?

## The Revised Code of Conduct

## Timetable

- Transition period - 3 May to 1 October 2007.
- Mandatory parts automatically apply on 1 October 2007.
- Allegations are assessed against the Code of Conduct in place at the time of the alleged misconduct.

## General obligations – what's the same?

- Treating others with respect – paragraph 3(1).
- Compromising the impartiality of officers of the authority – paragraph 3(2)(d).
- Preventing access to information – paragraph 4(b).
- Using your position improperly – paragraph 6(a).

### General obligations – what’s changed?

- Complying with equality (anti-discrimination) laws.
- Bullying and intimidation.
- Disclosing confidential information.
- Disrepute and scope of the Code.
- Using the authority’s resources.
- Considering advice provided to you and providing reasons.

### Complying with equality laws (anti-discrimination)

Previous Code obligation:

- to promote equality by not discriminating unlawfully

New Code obligation:

- to not do anything which may cause your authority to breach any of the “equality enactments”

### Complying with equality laws

It covers:

- equal pay
- sex discrimination
- race discrimination
- disability discrimination
- sexual orientation – employment related discrimination
- religion or belief – employment related discrimination
- age – employment related discrimination

### Bullying and intimidation

Working definition:

*“offensive, intimidating, malicious, insulting or humiliating behaviour, based on abuse or misuse of power or authority, which attempts to undermine an individual or a group”*

Bullying – guidance to clarify.

### Bullying and intimidation

Intimidation – applies to those involved in a standards case:

- complainant
- witness
- investigator
- anyone concerned with the administration of the case

### Confidential information

Members must not disclose confidential information, except where:

- you have consent or required by law (no change)
- the disclosure is made to a third party to obtain professional advice
- the disclosure is reasonable and in the public interest and made in good faith and does not breach any reasonable requirements of the authority

## Confidential information

Four stages to public interest disclosure:

- ask why this is confidential
- raise concerns through appropriate channels and seek advice
- consider circumstances - relevant whistleblowing and freedom of information protocols
- decide how much of the information needs to be disclosed

## Disrepute and scope of the Code

- Code applies when acting in your official capacity.
- Disrepute and misusing your position provisions apply when performing the functions of being a councillor (which may be wider than “official capacity”).
- There is no change to this at present.

## Disrepute and scope of the Code

After the new Bill is introduced:

- The Code applies to conduct in a private capacity which results in a criminal conviction – only if it involves disrepute, misusing your position or intimidation.
- The Code could potentially be amended to apply to any conduct in a private capacity, but government says it is only interested in conduct which results in a criminal conviction.

## Using the authority's resources

- Resources cannot be used for political purposes “including party political purposes”.
- New Code deletes the following :  
*“unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed”*

## Advice of chief finance officer and monitoring officer

Previously:

- had to have regard to their advice when given under limited statutory duties

Now:

- have to have regard to advice given under any statutory duties and give reasons for decisions

For monitoring officers:

- advice regarding maintaining the register of interest (not general Code advice)

## Personal interests

Two sorts of personal interest:

- registered
- *where the well-being or financial position of “relevant persons” is likely to be affected by the business of your authority more than it would affect the majority of people living in the ward affected by the decision*

## Personal interests

If no ward:

- London – Greater London Authority – the constituency affected by the decision.
- Elsewhere – the authority's area (as it was under the old Code).

## Personal interests

Effects of having a personal interest:

- need to declare the existence and nature of it as soon as possible unless an exemption applies
- where a public body exemption applies, you only need to make a declaration if you intend to speak on the issue

## Personal interests

Other differences in the revised Code:

- sensitive information – you must disclose that you have an interest but do not need to disclose the sensitive information
- gifts and hospitality – did not previously amount to a personal interest

## Prejudicial interests

- Prejudicial interests are personal interests which a member of the public, who knows the relevant facts, would reasonably think are so significant that they would be likely to prejudice your judgment of the public interest.

## Prejudicial interests

Four questions to ask:

- Is there a personal interest?
- If so, does it fall within one of the exempt categories of decisions?
- If not, does it relate to the financial position of the interest or relate to deciding a regulatory matter?
- If so, what is the result of applying the general test?

## Prejudicial interests

Prejudicial interest at a meeting, you can:

- attend the meeting, but only to make representations, answer questions or give evidence, if the public can do so for the same purpose (this does not give you the same rights to stay afterwards that the public might have)
- seek a dispensation from your standards committee to participate fully

## Prejudicial interests

You can:

- make written representations in your private capacity
- use a professional representative to act on your behalf
- get another member to represent the views of your constituents

## Prejudicial interests

You must not:

- stay in the room when the business is being discussed (after speaking if you have been allowed to)
- exercise executive functions in relation to that business
- seek to improperly influence a decision about that business

Any questions?

## Bias and Predetermination

## Bias and predetermination

- Not a Code issue.
- Common law natural justice.

## Bias and predetermination

*"...it is planning case law, not the code, that deals with predetermination."*

Phil Woolas, Hansard 22 May 2007

## Bias and predetermination

- Predisposition – no problem.
- Predetermination – problem.

## Bias and predetermination

*“The code of conduct does not prevent a member from having a predisposition towards a particular outcome for a planning proposal. However, where, for example, a councillor is strongly identified in favour of or against a particular planning proposal, that might amount to predetermination, were that member to participate in the decision on that application.”*

Phil Woolas, Hansard 22 May 2007

## Predisposition and predetermination

*“A member who is considering an issue at a council meeting is entitled to have formed a preliminary view about how they will vote on the matter before they attend the meeting. They are entitled to express that view publicly. Indeed they may have been elected specifically because of their views on the issue.”*

Philip Sales, QC, May 2007

## Predisposition and predetermination

*“What they must not do is finally make up their mind before the council meeting, so as not to be prepared to listen to the arguments and representations under consideration at the meeting. Also, they must not give the impression that this is their position.”*

Philip Sales, QC, May 2007

## How is bias avoided?

Also consider:

- membership of an organisation is not enough, unless it has a vested interest
- members who are seeking to influence decision makers different from decision makers

*“We believe that it is the application of case law in much too restrictive a manner by monitoring officers that has led to a culture in which councillors have been unable to speak out.”*

Phil Woolas, Hansard 22 May 2007

*"It is clearly right that local councillors should be able to speak up for their constituents, but it is also right that people before a planning committee should have a fair hearing. I believe that we can square that circle."*

Phil Woolas, Hansard 22 May 2007

**Any questions?**

**Break**

## Roadshow 2007

Challenges for 2008

### Challenges for 2008

- a locally based system
- making the new elements work
- piloting the new elements
- our approach to guidance and support

### What can you expect?

- There has been at least one complaint about a member of each district council over five years.
- A quarter of all other principal authorities had no complaints made about their own members in five years.
- A principal authority can expect an average of six complaints about its own members each year.
- There have been no complaints about members of 80% of all parish councils over five years.
- A district council with 100+ parishes can expect around 18 allegations about them each year.



### Receiving allegations – things to consider

- handling allegations - receipt and notifications
- decision to be taken by the standards committee
- criteria to use
- appeal mechanisms

### Reporting on performance

- basic information required
- what other information the Standards Board will use
- when the Standards Board will require the information
- how the Standards Board will require the information

### Intervention

- subject to regulations
- identifying triggers
- self assessment
- intervention - what it will look like

### Guidance and advice

Covering each stage of the process:

- guidance on the legislation
- materials for local adaptation

New loose leaf format.

Ready by January 2008 – depending on the Regulations.

### Issues to consider

- How many complaints?
- How will your standards committee filter?
- How long will you take?
- Consistency?
- Joint arrangements?

### Tell us what works

- suggestions for guidance and support
- sharing good practice

**Open house Q&A**

**Close**