

CODE OF CONDUCT 2007

Personal interests

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 well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward, as the case may be, affected by the decision;

(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

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(d).

Prejudicial interest generally

- 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; or
 - (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.

Prejudicial interests arising in relation to overview and scrutiny committees

- 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

- 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.

STANDARDS COMMITTEE

HELD: 17 JULY 2007

Start: 4.30pm

Finish: 5.30pm

PRESENT

Independent Members: J Cailes (Chairman)
P Hanmer (Vice Chairman)
R Chester
P Hayman

Councillors Dereli
Grant

Parish Councillors M Hammond
D Kitson

Officers: Council Secretary & Solicitor
Assistant Member Services Manager

1. APOLOGIES

An apology for absence was received on behalf of Councillor Mrs Atherley.

The Chairman welcomed Dr Peter Hayman to the meeting as the newly appointed Independent Member.

2. URGENT BUSINESS, IF ANY, INTRODUCED BY THE CHAIRMAN

There were no items of urgent business.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. MINUTES

RESOLVED That the minutes of the meeting of the Committee held on 26 April 2007 be received as a correct record and signed by the Chairman.

5. MEMBERSHIP OF THE COMMITTEE

RESOLVED That Roger Merry be thanked for his services to the Committee and it be noted that an advert has been placed for a new Independent Member to replace him.

6. UPDATE ON ADOPTION OF THE CODE OF CONDUCT

The Council Secretary and Solicitor circulated an updated version of which Parish Councils had adopted the revised Code of Conduct.

RESOLVED That the updated schedule, circulated at the meeting, as to when Parish Councils adopted the revised Code of Conduct be noted.

7. STANDARDS BOARD ROADSHOW - 6 JUNE

The Vice-Chairman P Hanmer, raised an issue mentioned at the roadshow in relation to the local filter of complaints and advised that the Standards Board were piloting this process in a number of authorities.

The Council Secretary and Solicitor advised that further guidance would be issued shortly in relation to predetermination and bias regarding planning issues. She further advised that with regard to public speaking and the rules relating to personal and prejudicial interests further guidance would be helpful.

RESOLVED That the issues raised at the Standards Board Roadshow held on 6 June 2007 be noted.

8. LANCASHIRE STANDARDS CONFERENCE - 9 JULY

The Chairman, J Cailes expressed his gratitude for the number of delegates from West Lancashire that attended the Lancashire Standards Conference on 9 July 2007 in Chorley.

The Council Secretary and Solicitor advised that the case studies and the model answers from the conference would be circulated in the Autumn. She further advised that it was likely that the Standards Board in their revised strategic role would be issuing performance targets for Councils to achieve.

The Committee discussed the issue of Independent Members serving on other authorities Standards Committees in Lancashire, including the issue of joint Standards Committees.

RESOLVED A That the feedback received from the Lancashire Standards Conference held on 9 July 2007 be noted.

B That the case studies and model answers received at the conference from the Standards Board, be discussed at the next meeting of the committee.

C That Independent Members on West Lancashire's Standards Committee did not wish to serve on other authorities Standards Committees.

D That Members of the Standards Committee did not wish the Council Secretary and Solicitor to pursue the idea of Joint Standards Committees.

E That the Committee welcome any future joint training events.

9. CURRENT POSITION - VISITS BY INDIVIDUAL MEMBERS TO DISTRICT AND PARISH COUNCIL MEETINGS

The Council Secretary and Solicitor circulated the schedule for individual Members of the Committee undertaking visits to District and Parish Council Meetings.

RESOLVED That Members advise the Assistant Member Services Manager on their availability to attend the meetings indicated on the schedule.

10. CODE OF CONDUCT - MEMBERS' TRAINING - MONITORING

Consideration was given to the report of the Council Secretary and Solicitor as contained in pages 21 to 27 of the Book of Reports which sought views on how Members should be further trained in the requirements of the Code of Conduct and evaluated the effectiveness of the training undertaken to date.

- RESOLVED A That the training undertaken and the evaluation of it be noted.
- B That the next Seminar/Workshop on the Code of Conduct be held in the autumn with greater time being devoted to case studies in Workshop format.

11. NORTH WEST INDEPENDENT MEMBERS FORUM

The Council Secretary and Solicitor referred to the North West Independent Members Forum and previous correspondence circulated and sought views with regard to membership.

RESOLVED That the Council Secretary and Solicitor continue to monitor developments and report back to the Standards Committee as appropriate.

12. STANDARDS COMMITTEE - PROACTIVE WORK PROGRAMME 2007/8

Consideration was given to the report of the Council Secretary and Solicitor as contained on pages 29 to 33 of the Book of Reports, which set out the proposed Work Programme for the Standards Committee 2007/8.

RESOLVED That the Work Programme as detailed in Appendix 1 to the report be agreed, incorporating the proactive initiatives set out therein.

THE CHAIRMAN



AGENDA ITEM: 6

STANDARDS COMMITTEE:

1 NOVEMBER 2007

Report of: Council Secretary and Solicitor

Contact for further information: Mrs Jacky Denning (Extn 5384)

SUBJECT: VISITS TO DISTRICT PARISH COUNCIL MEETINGS

District wide interest

1.0 PURPOSE OF THE REPORT

1.1 To receive an update on visits being undertaken by Members of the Standards Committee to District and Parish Council meetings.

2.0 RECOMMENDATIONS

2.1 That the current position in relation to visits to District and Parish Council meetings as set out in paragraph 4 of the report, be noted and Members give informal feedback in their visits to date.

2.2 That names be provided for the following visits on:

- 12 November to Bickerstaffe Parish Council with John Cailes
- 14 November to Halsall Parish Council with Cllr Una Atherley

2.3 That members of the committee notify the Assistant Member Services Manager of any future visits they are able to attend as soon as possible.

3.0 BACKGROUND

3.1 The Standards Committee, at its meeting held on 1 November 2006, approved a Work Programme for the year with a view to being proactive in their work and agreed to undertake a series of visits to District and Parish Council meetings.

3.2 It was agreed that Members of the Committee would attend up to four meetings as observers, preferably in pairs, with the intent that this would

increase their understanding of the way Councils are operating in West Lancashire and of conduct at meetings and also raise the profile of the Standards Committee. Member would then informally feedback into a general discussion on their visits on an annual basis.

4.0 CURRENT POSITION

- 4.1 A schedule of meetings has been drawn up, as set out in the Appendix to the report, although co-ordinating visits has been challenging.
- 4.2 As set out in the schedule, visits to the following Parishes still need to be arranged: Aughton, Hesketh with Beconsall, Lathom, Lathom South, Newburgh, Parbold, Rufford, Scarisbrick, Simonswood, Tarleton and Up Holland.
- 4.3 As the Committee have agreed that visits should be undertaken in pairs names are urgently required for meetings being held on:
- 12 November to Bickerstaffe Parish Council with John Cailles
 - 14 November to Halsall Parish Council with Cllr Una Atherley
- 4.4 Dates of meetings are still awaited from Bispham and Wrightington Parish Councils.

5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 5.1 There are no significant sustainability/community strategy implications arising from this report.

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 6.1 The co-ordination of visits will be resourced from existing budgets.

7.0 RISK ASSESSMENT

- 7.1 A proactive Standards Committee will ensure high ethical standards are promoted within the Council.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

Appendices

Schedule of visits to meetings of district and parish council meetings, by Standards Committee Members.

APPENDIX

VISITS UNDERTAKEN / TO BE UNDERTAKEN BY MEMBERS OF THE COMMITTEE

MEMBER	FIRST VISIT	SECOND VISIT	THIRD VISIT	FOURTH VISIT
JOHN CAILES	COUNCIL – 13/12/06	Bickerstaffe 12/11/07	North Meols 4/12/07	
PAUL HANMER	COUNCIL – 13/12/06	Hilldale 1/11/07	Downholland 13/11/07	
ROY CHESTER	O & S – 12/04/07	Dalton 19/11/07	Great Altcar 18/1/07	
ROGER MERRY	PLANNING – 15/02/07	-----	-----	-----
BRIAN MOLYNEUX	RETIRED	-----	-----	-----
PETER HAYMAN	Burscough 8/10/07			
PARISH CLLR HAMMOND	PLANNING – 15/02/07	Hilldale 1/11/07		
PARISH CLLR KITSON	O & S – 12/04/07	Dalton 19/11/07	Great Altcar 18/1/07	
CLLR MRS ATHERLEY	Down Holland 13/11/07	Halsall 14/11/07		
CLLR DERELI	North Meols 4/12/07			
CLLR GRANT				
CLLR NOLAN				

DATES OF PARISH COUNCIL MEETINGS 2007/2008

PARISH COUNCIL	OCT 07	NOV	DEC	JAN 08	FEB	MAR	
Aughton 7.30pm Aughton Village hall Annexe	8	12	10	14	11	10	
Bispham Parish Meeting (meets once a year) (Contact Jan 2008 for meeting date in April 2008)							
Bickerstaffe Four Lane Ends Mission, Skelmersdale Road Bickerstaffe		12		14		10	John Cailes & ?
Burscough 7.30pm Lathom & Burscough District Older People's Club, Lord Street	8	12	10	14	11	10	Peter Hayman
Dalton 7.30pm St Michaels's School, Higher Lane Dalton (The next meeting date is fixed at the previous meeting)	8	19					Roy Chester & David Kitson
Down Holland	9	13	11	15	12	11	Paul Hanmer & Una Atherley
Great Altcar 8.00pm - The Leverhulme Hall, Lord Sefton Way, Great Altcar		16		18		28	Roy Chester & David Kitson
Halsall 7.30pm	10 St Aidens Hall	14 Halsall	12 St Aidens Hall	9 Halsall	13 St Aidens Hall	12 Halsall	Una Atherley & ??
Hesketh with Becconsall 7.30pm Village Hall, Station Road, Hesketh Bank	1	5	3	7	4	3	

PARISH COUNCIL	OCT	NOV	DEC	JAN 08	FEB	MAR	
Hilldale 7..30pm Hilldale Viillage Hall, Chorley Road, Hilldale		1		10		6	Paul Hanmer & Mike Hammond
Lathom	22	26		28	24	31	
Lathom South 7.30pm July & Aug 07 Scout Hut, Hall Lane Lathom Sept-Mar 08 Skelmersdale Cricket Club,		6	4		5	4	
Newburgh 7.30pm Back Lane, Newburgh (2008 dates set in Nov 07)	24	28					
North Meols 7.15pm Community and Development & Contact Centre, Hoole Lane Banks.	2	6	4	8	5	4	John Cailles & Cynthia Dereli
Parbold 7.30pm Parbold Village Hall	5	2	7	4	1	7	
Rufford 7.15pm – Planning Applications 7.30pm - Meeting Rufford Village Hall, Flash Lane, Rufford	8	19		21		17	
Scarisbrick 8.00pm Village Hall, Smithy Lane	1	5	3	7	4	3	
Simonswood 8.00pm North Mersey Business Centre, Kirkby	4	1	6	3	7	6	

PARISH COUNCIL	OCT	NOV	DEC	JAN 08	FEB	MAR	
Tarleton 7.30pm Sport & Resource Centre, Carr Lane, Tarleton	16	20	18	22	19	18	
Up Holland 7.30pm Community Meeting Room, Up Holland Library, Hall Green, Up Holland.		13		8		11	
Wrightington 7.30pm							



AGENDA ITEM: 7

**STANDARDS COMMITTEE:
1 NOVEMBER 2007**

**COUNCIL:
12 DECEMBER 2007**

Report of: Council Secretary and Solicitor

Contact for further information: Mrs Jacky Denning (Extn 5384)

SUBJECT: STANDARDS COMMITTEE – APPOINTMENT OF INDEPENDENT MEMBER

1.0 PURPOSE OF REPORT

1.1 To consider the appointment of an Independent Member to the Standards Committee for 2007/08.

2.0 RECOMMENDATIONS

2.1 That the Committee continues to comprise 11 members namely 5 independent members, 2 Parish Councillor representatives, 2 Conservative and 2 Labour members.

2.2 That Mr Roy Patterson be appointed as an Independent Member of the Standards Committee, to serve for a term of 3 years 5 months, expiring on the date of the Annual Meeting of the Council in May 2011.

3.0 BACKGROUND

3.1 The Council appointed its Standards Committee with independent members in 1999, in advance of the statutory requirement arising from the Local Government Act 2000.

3.2 The Relevant Authorities (Standards Committee) Regulations 2001 set out the rules governing the size and membership of the Standards Committee and how it should run its business.

3.3 At least two of the Standards Committee members must be Councillors; at least 25% must be 'independent representatives', (there is no limit on the number you can have); and at least one member must be a parish council

representative. The parish council representative must not also be a member of West Lancashire District Council.

- 3.4 The current Committee comprises 11 members namely 5 independent members, 2 parish representatives, 2 Conservative and 2 Labour Councillors. This size of Committee leaves us well placed to meet the demands and challenges of the 'local filter' from April 2008.

4.0 TERMS OF REFERENCE

- 4.1 The Role and Functions of the Standards Committee is detailed in "Section 3.9 of the Constitution, Article 9 – The Standards Committee".

5.0 INDEPENDENT REPRESENTATIVES

- 5.1 This Council decides how long an independent representative should sit on the Committee. The Standards Board advice is that this should be long enough for them to gain an understanding of the committee, the Council and its workings, but not so long that they lose their independence.

- 5.2 A vacancy arose for an Independent Member in June 2007 and in accordance with the usual procedure the position was advertised and a press release was also distributed.

- 5.3 Four applications were received in response to the advertisement for an independent member of the standards committee and the press release and short listing was undertaken by the Council Secretary and Solicitor, the Member Services Manager and the Assistant Member Services Manager which was carried out based on the following qualities:

- Familiarity with ethical dilemmas
- Experience with Committee work
- Questioning skills
- Assertive
- Independence of any political party and local government
- Independence of West Lancashire District Council

- 5.4 Using the criteria in paragraph 5.3 above, Mr Roy Patterson was short-listed for interview, this interview took place on Wednesday 10 October 2007 and he was found to be an excellent candidate for the position in view of his previous experience as a magistrate, his knowledge of quasi judicial committees and also because of his independence from the Council, it is on this basis that I recommend him for appointment.

6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 6.1 Promotion of high ethical standards at a local level assists in demonstrating that the Council is an ethical organisation.

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

7.1 Allowances are paid to the following members of the Standards Committee in recognition of their respective roles and are covered in existing budgets as follows:

Role	Allowance per annum
Independent Member	£200
Parish Council Representative	£200
Chairman	£400 (+£200)
Vice Chairman	£200 (+£200)

7.2 Should Mr Patterson be appointed, any allowance will be paid on a pro-rata basis following the date of his appointment.

8.0 RISK ASSESSMENT

8.1 There are no significant management risks arising from this report.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

Appendices

None



AGENDA ITEM: 9

**STANDARDS COMMITTEE:
1 November 2007**

Report of: Council Secretary and Solicitor

Contact for further information: Mrs G L Rowe (Ext 5004)

SUBJECT: ANNUAL STANDARDS BOARD CONFERENCE

District wide interest

1.0 PURPOSE OF THE REPORT

- 1.1 To receive a report on the Standards Board Conference held on Monday, 15 and Tuesday, 16 October 2007 in Birmingham.

2.0 RECOMMENDATIONS

- 2.1 That the contents of the report be noted, particularly the current position in relation to 'local filter'.

3.0 CURRENT POSITION

- 3.1 The Standards Board Conference was held in Birmingham on Monday 15 and Tuesday 16 October 2007. A copy of the programme is attached at Appendix 1.
- 3.2 Members will find at Appendices 2 and 3 copies of the keynote speeches by David Prince and Patricia Hughes of the Standards Board. Copies of these speeches have been provided to Members of the Cabinet, Operational Management Board, the Lawyers and Member Services Officers.

3.3 Members may also find of interest the key findings of the Audit Commission self assessment survey of ethical governance attached at Appendix 4.

4.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

4.1 There are no substantial sustainability/community strategy implications arising from this report.

5.0 FINANCIAL AND RESOURCE IMPLICATIONS

5.1 There are no financial and resource implications arising from this report, although it is important to note that the introduction of the local filter will have significant resource implications.

6.0 RISK ASSESSMENT

6.1 Regular attendance at the Conference means that officers and Members keep up to date with ethical issues for the Council and also this year will be better placed to address the current imminent legislative changes.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

Appendices

Appendix 1 – Programme

Appendix 2 – ‘Evolving Standards’ – David Prince

Appendix 3 – ‘Local Filter – Countdown to 2008’ – Patricia Hughes

Appendix 4 – Stronger action needed on ethical governance

Day 1 Monday 15 October 2007

08.30 – 10.15

Registration

Light breakfast available



9.15 – 10.00

Getting up to speed

David Prince, Chief Executive, the Standards Board for England

An introduction to the Code of Conduct and the Standards Board, for those delegates new to the Code or the conference. Attendance optional.



Opening plenary

Hall 1

10.15 – 10.25

Welcome

Sir Anthony Holland, Chair, the Standards Board for England

10.25 – 10.40

Defining the detail

Phil Woolas MP, Minister for Local Government and Community Cohesion

The Minister highlights how meeting the dual challenge of the local filter and the revised Code of Conduct depends on getting the details right – and sets out the government's focus for the future.

10.40 – 10.55

Evolving standards

David Prince, Chief Executive, the Standards Board for England

Drawing on local authorities' experience of putting the revised Code into practice, we provide a timely update on how implementation is progressing. The session also brings delegates up-to-date on the development of the Standards Board and our future support for authorities.

10.55 – 11.15

Local filter: Countdown to 2008

Patricia Hughes, Deputy Chair, the Standards Board for England

What key challenges, changes and implications will the local filter bring?

We look at how the new legislation will impact on authorities and shape their future responsibilities, as well as setting out the timetable for implementation of the local filter.

11.15 – 11.30

Question time

An opportunity to pose questions to the morning's speakers.

11.30 – 12.00

Refreshments

Tea and coffee available



12.00 – 13.15

The Local filter: In detail

Various halls



A step-by-step guide to the local filter, essential for anyone working with the Code of Conduct. Using a case example, this session takes delegates through every stage of the local filter process, from handling the initial complaint to evaluating the outcome.

Delegates will have the opportunity to discuss solutions and draw on expert advice at every stage of the session.

Up to eight workshops, each with a maximum of 100 delegates.

Delegates will choose between:

- A monitoring officer focused session
- A standards committee focused session
- A mixed attendance session

13.15 – 14.30

Lunch



Hall 3

14.30 – 15.45

Breakout sessions

Breakout sessions on day one of the conference aim to prepare delegates for the changes expected in April 2008. They look in depth at the process and practice of managing the local filter and focus on helping delegates to develop the skills and knowledge they need to deliver a high standard of effective local governance.

Please note that these sessions run again at 16.15, with the exception of *Investigations: The essentials* and *Investigations: Tackling complex cases*.

Delegates can choose to attend one of the following session options.



Safeguarding local standards

An informative session mapping out the monitoring and auditing role of the Standards Board and how it fits in with other regulatory bodies such as the Audit Commission. Delegates learn what local filter data they will have to supply from 2008 and how we intend to collect it. The session also explores ways in which the Standards Board can support delegates in ensuring local arrangements are working effectively – and when we will intervene to support authorities who face difficulties.

Useful for all delegates.

Referrals: Lessons learnt

Drawing on over five years' experience, the Standards Board referrals team use practical case examples to explain the essential technical components and key skills involved in effectively managing referrals. **Useful for all delegates.**



Investigations: The essentials

Delegates work through a range of practical scenarios, based on the requirements of the new local filter system, to build the key technical skills required at each stage of the investigations process. This is an opportunity to share experiences and discuss best practice. **Particularly useful for monitoring officers new to the investigations process or those wanting a refresher.**





Investigations: Tackling complex cases

Not every case is straightforward. In this practical workshop delegates work in groups to review a case complicated by a number of issues. This session helps delegates to anticipate and respond effectively to potentially serious impacts on the decision-making process. **Particularly useful for experienced monitoring officers who want to develop their skills in this area.**



Managing the filter: Resources, challenges and solutions

The local filter brings benefits, not least increased local ownership of the ethical agenda. But it also brings challenges. This session shares the results of the Standards Board pilot looking at joint arrangements for standards committees, and explores ways of dealing with some of the pressures on local resources. Delegates discuss solutions and share best practice on this important issue. **Useful for all delegates.**



Cracking the revised Code

An overview of the revised Code of Conduct, using practical case examples to bring delegates up-to-date with all the major changes and how they work in practice. **Useful for all delegates.**



Talking it over: Why mediation works

Speakers explain how they have used mediation to successfully resolve a range of cases, demonstrating the key benefits of this valuable alternative to investigation and helping delegates to identify opportunities to apply this approach in their own work.



Standards committee member open house Q&A

An open house for standards committee members to ask questions on any topic to representatives from the Standards Board for England. **Useful for standards committee members.**

15.45 – 16.15

Refreshments

Tea and coffee available



16.15 – 17.30

Breakout sessions

Please note that in this part of the conference the sessions *Investigations: The essentials* and *Investigations: Tackling complex cases* have been replaced by two new sessions, *Hearings: The essentials* and *Spotlight on sanctions*.

Delegates can choose to attend one of the following session options.



Safeguarding local standards

An informative session mapping out the monitoring and auditing role of the Standards Board and how it fits in with other regulatory bodies such as the Audit Commission. Delegates learn what local filter data they will have to supply from 2008 and how we intend to collect it. The session also explores ways in which the Standards Board can support delegates in ensuring local arrangements are working effectively – and when we will intervene to support authorities who face difficulties. **Useful for all delegates.**



Referrals: Lessons learnt

Drawing on over five years' experience, the Standards Board referrals team use practical case examples to explain the essential technical components and key skills involved in effectively managing referrals. **Useful for all delegates.**



Hearings: The essentials

Delegates work through a range of practical scenarios, based on the requirements of the new local filter system, to build the key technical skills required at each stage of the hearings process. Delegates have the opportunity to share experiences and discuss best practice. **Particularly useful for standards committee members new to the investigations process or those wanting a refresher.**



Spotlight on sanctions

A practical workshop focusing on assessing the findings of a problematic case and agreeing a proportionate sanction. Delegates take an in depth look at the alternative sanction options and their implications and how they have been applied in recent cases. **Particularly useful for experienced standards committee members who want to develop their skills in this area.**



Managing the filter: Resources, challenges and solutions

The local filter brings benefits, not least increased local ownership of the ethical agenda. But it also brings challenges. This session shares the results of the Standards Board pilot looking at joint arrangements for standards committees, and explores ways of dealing with some of the pressures on local resources. Delegates discuss solutions and share best practice on this important issue. **Useful for all delegates.**



Cracking the revised Code

An overview of the revised Code of Conduct, using practical case examples to bring delegates up-to-date with all the major changes and how they work in practice. **Useful for all delegates.**



Talking it over: Why mediation works

Speakers explain how they have used mediation to successfully resolve a range of cases, demonstrating the key benefits of this valuable alternative to investigation and helping delegates to identify opportunities to apply this approach in their own work.



Monitoring officers open house Q&A

An open house for monitoring officers to ask questions on any topic to representatives from the Standards Board for England. **Useful for monitoring officers.**

17.30

Close of day one

17.45 – 18.45



Various optional fringe events including:



Association of Council Secretaries and Solicitors (ACSeS)



The Association of Independent Members of Standards Committees in England (AIMSce)



Improvement and Development Agency (IDeA)



Local Government Information Unit (LGIU)



Society of Local Authority Chief Executives and Senior Managers (SOLACE)

19.30 – 20.00

Drinks reception



20.00 – late

Conference dinner

Dress code is smart or smart-casual.

Cash bar available.

Live music.



Day 2 Tuesday 16 October 2007

08.00 – 09.00

Refreshments

Tea and coffee available. Delegates attending for today only should register at the Enquiries desk.



09.00 – 10.15

Breakout sessions

Breakout sessions on day two of the conference address vital issues linked to managing the wider impact of the local filter and the revised Code. Training and hands-on workshops help delegates to focus on raising their authorities' standards to an even higher level, improving communications with their stakeholders and confidently delivering effective local regulation.

Please note that these sessions run again at 13.15, with the exception of *Anything to declare? Understanding interests*.

Delegates can choose to attend one of the following session options.



Key case review

A detailed review of key cases which have had a significant impact on procedure and application of the Code. Delegates gain an insight into how the lessons learned from the cases can be applied to their work. **Useful for all delegates.**



State of independence

This session helps independent chairs and members build the key skills they need to respond effectively to the challenges of the local filter, including chairing successful meetings, dealing with complaints, problem solving and effective communication skills. **Particularly useful for independent members of standards committees.**



Positive about towns and parishes

Delegates hear a series of short presentations identifying positive ways to improve engagement with town and parish councils. The session focuses on key issues including how to maximize the role of town and parish representatives, the most effective techniques for training and building a useful and productive dialogue with town and parish councils and the benefits of working with County Associations. **Particularly useful for officers and members working closely with town and parish councils.**



Engaging leaders

The local filter system positions local authorities as the foundation of the ethical framework, making an engaged leadership more vital than ever. Speakers share their experiences, suggesting practical measures to help delegates ensure that their own council leader and chief executive are fully prepared to take the lead and meet the challenges of greater local ownership. **Useful for all delegates.**



Anything to declare? Understanding interests

A practical session giving delegates the opportunity to build a sound knowledge of the detailed changes to the Code relating to interests. Delegates are presented with a series of short scenarios and are asked to debate the likely conclusion. **Useful for all delegates.**



Message received? Managing communications

As the local filter comes into play, local authorities will be the first point of call for local media enquiries on complaints, investigations and case outcomes. This session uses practical examples to reveal the detail of how and why we deal with press interest in cases, before giving delegates the opportunity to discuss the implications of possible differing approaches. **Useful for all delegates.**



Practical mediation skills

A useful companion session to 'Talking it over'. Mediation can be a valuable tool in resolving disputes and reducing the potential of a complaint leading to a full investigation. This practical training session focuses on key mediation skills, equipping delegates with the competencies to mediate in disputes between individuals. **Useful for all delegates.**



Standards committee member open house Q&A

An open house for standards committee members to ask questions on any topic to representatives from the Standards Board for England. **Useful for standards committee members.**

10.15 – 10.45

Refreshments

Tea and coffee available



10.45 – 12.00



What's the score?

What is the current state of the regulatory framework? Is it fit for purpose and robust enough to deal with greater local ownership? Key opinion formers discuss and draw conclusions from the results of recent studies including Audit Commission research into ethics and standards committees. **All delegates attend this session.**



Hall 1

12.00 – 13.15

Lunch



Hall 3

13.15 – 14.30



Breakout sessions

Please note that in this part of the conference the session *Anything to declare? Understanding interests* has been replaced by a new session, *Striking a balance: Disclosure and public interest*.

Delegates can choose to attend one of the following session options.



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Striking a balance: Disclosure and public interest

A practical session giving delegates the opportunity to build a sound knowledge of the key changes to the Code relating to public disclosure. Delegates hear a series of short scenarios and debate whether they constitute disclosure in good faith, or are examples of disclosure in the interests of political gain. **Useful for all delegates.**



Message received? Managing communications

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An open house for monitoring officers to ask questions on any topic to representatives from the Standards Board for England. **Useful for monitoring officers.**

14.30 – 14.45

Comfort break

Closing plenary

Hall 1

14.45 – 15.00

All clear

Sir Anthony Holland, Chair, the Standards Board for England
A review of the conference.

15.00 – 15.30

The next step

David Prince, Chief Executive, the Standards Board for England
The conference has provided delegates with a wealth of knowledge and the confidence to make local regulation work. What happens next?

15.30

Networking

Refreshments available



16.00

Close of conference

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

Evolving standards

**David Prince, Chief Executive
The Standards Board for England**



I would like to thank the minister for his comments and to welcome you to our Sixth Annual Assembly of Standards Committees. The demand for seats at these conferences has increased year on year and this year's event sold out several months ago. So, as I said, thank you for being here, and congratulations on booking early.

This morning I am going to look back on the progress and achievements we have made together over the last 12 months. I will also look forward to your changing role, as you prepare to receive and filter complaints, and also to our role in overseeing the effectiveness of the local system.

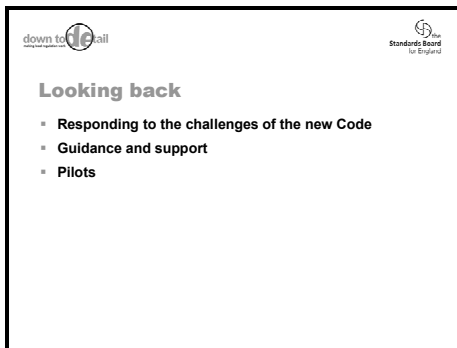
The changes to the ethical framework started to gather pace last year. And I can report good progress on all fronts in preparation for the changes we will be facing together.

Last year over half of all cases that needed to be investigated were handled locally by your authorities. And research we carried out during the year gives a generally positive picture of how you responded.

Standards committees continue to hold hearings into breaches of the Code of Conduct and make determinations. This function is now embedded into the local framework and, generally speaking, standards committees manage this process effectively and impartially. It is important that standards committees provide independent ratification of whether or not there has been a failure to comply with the Code. We also believe that local hearings, like local investigations, are important to ensure the local ownership of standards by all members.

We believe it is right that members should have their cases determined by their peers sitting alongside independent members. We believe this balance is important to ensure public confidence in the fairness and independence of the

system. This is why the government is increasing the contribution made by independent members serving on standards committees: and is requiring the chair to be an independent member where that is not already the case.



Authorities who chose to adopt it have now been working with the new Code for over six months. It was the result of very extensive consultation and, I believe, has been well received. It is certainly more enabling, more appropriate to members' roles as community advocates.

It is now much rarer for a member to find themselves with a prejudicial interest, for example.

There is still an unresolved issue about how the Code impacts on members when they are not acting as members. Our most recent understanding is that legislation currently before parliament will restrict its impact to behaviour which has resulted in a criminal conviction. And even then, it is possible that not all criminal convictions will be covered. As soon as we know, we will let you know.

We have received notification that over 3400 authorities have formally adopted the new Code so far. The provisions of the new Code actually applied to all authorities a fortnight ago, but you do need to formally adopt it and you do need to let us know.

59 authorities have, so far, chosen to amend their codes. While we recommend that, as a rule, authorities should not amend the model code because it has potential to create confusion for members of the public, all the amendments that we have received have properly reflected local choice and emphasis.

In May, the new Code came into force and we made our guidance available on our website the very same day. We have since distributed over 100,000 printed copies and continue to receive requests for more.

In June we talked to almost 1,100 members and monitoring officers in a dozen cities across the length and breadth of the country. Our roadshows told local government about the changes to the Code of Conduct and introduced the proposed changes to the system for dealing with allegations. Most importantly, it gave us the opportunity to listen to your concerns, hopes and anxieties. We have striven to respond to those in tailoring our guidance.

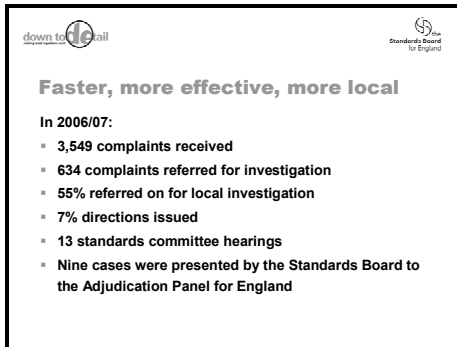
We also talked about the perennially controversial issue of bias and predetermination and issued our Occasional Paper, which members visiting our stand at the Party Conferences said was helpful to them.

36 authorities helped us to launch three pilot projects , designed to help us to help you prepare for your new role in receiving and filtering complaints and to prepare us for our new role both in support, but also taking the overview to guarantee consistent high standards and public confidence. Patricia will shortly tell you more.

In September we produced and distributed 'The Code Uncovered', a DVD on the new Code of Conduct, to every monitoring officer. It was designed as a training aid for members and the feedback I have received so far has been very positive.

We have continued to work with many other local government organisations in providing information and advice about the changes to the Code of Conduct. I want to mention the IDeA, particularly around the development of the ethical governance toolkit, LGA, ACSes, NALC, LGIU, SOLACE, The Audit Commission and the Ombudsman. Increasingly, we are working with the local government sections of the main political parties, both in addressing their concerns but also in talking about the need for members to put their own houses in order, particularly around the issue of vexatious complaints. I believe good progress has been made.

And, in the meantime, we've moved home. We are now based in Manchester. In fact, the move went remarkably smoothly, for which great credit goes to my colleagues, and hopefully, no one in the audience suffered any reduction in service while we were in transit or settling in.



The slide features the logos for 'down to the nail' and 'Standards Board for England' at the top. The main heading is 'Faster, more effective, more local'. Below this, it lists statistics for the period 'In 2006/07:'.

Year	Complaints received	Complaints referred for investigation	Referred on for local investigation	Directions issued	Standards committee hearings	Cases presented to the Adjudication Panel for England
2006/07	3,549	634	55%	7%	13	9

I would like to bring you up-to-date on our work since last year's assembly.

In terms of cases, the overall number of complaints is very slightly down but year on year remains stable. Clearly the public continues to be concerned about high standards and to want redress when they feel they have experienced otherwise.

Referrals are down on last year. We strive continuously to filter out trivial, vexatious complaints and have concentrated our resources on the most

serious allegations, which have the potential to damage public confidence in the actions of local government. Our advice to you is do the same.

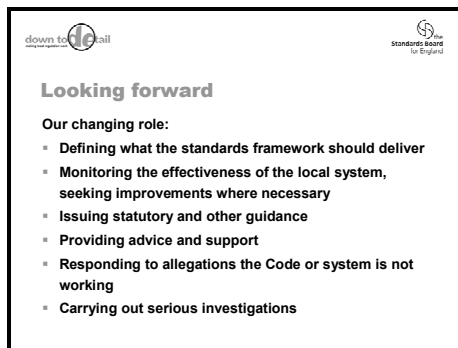
We have remained committed to referring complaints locally for investigation unless there is a public reason not to. And these figures reflect this.

44 directions were issued, an increase on the previous year. That is when the ESO works closely with the monitoring officer to find an active solution to deep seated problems, rather than completing an investigation. We believe that they have great potential to find pragmatic solutions to personality clashes and behavioural problems which lie at the heart of many complaints.

As you can see, there has been a decrease in standards committee hearings and in cases passed to the Adjudication Panel for England. We believe this is due to conduct improving and greater awareness of the Code, not least because of local hearings and investigations.

There is evidence to back that up in research carried out for us by BMG. 93% of those who responded supported the requirement for the Code and nearly half of those who responded thought conduct had improved. That was up from 27% who thought the same thing two years ago.

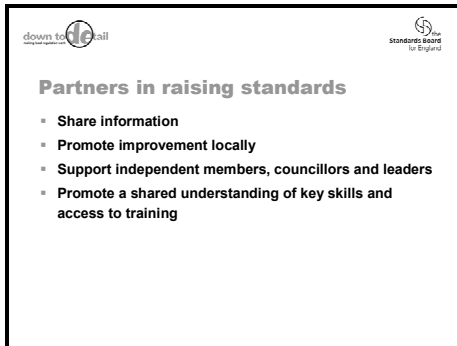
And we have achieved our aim of completing 90% of cases within six months. The challenge now, is to see if we can improve that still further while supporting you in ensuring that investigations are both timely and fair.



The slide features two logos at the top: 'down to the nail' on the left and 'Standards Board for England' on the right. The main heading is 'Looking forward'. Below it, the text reads 'Our changing role:' followed by a bulleted list of five items.

- Defining what the standards framework should deliver
- Monitoring the effectiveness of the local system, seeking improvements where necessary
- Issuing statutory and other guidance
- Providing advice and support
- Responding to allegations the Code or system is not working
- Carrying out serious investigations

As your role continues to change, so does ours. This is what we will be focusing on. As you can see, it is a mixture of making sure the system works, supporting you in making it work, and only getting involved in cases when we really need to.



We will continue to work with the national bodies I mentioned earlier to share information and promote improvement locally.

Many are represented at the conference and will be working with us to deliver sessions or hold Fringe meetings this evening.

We will continue to develop our relationship with the Audit Commission on issues such as proportionate regulation and information sharing.

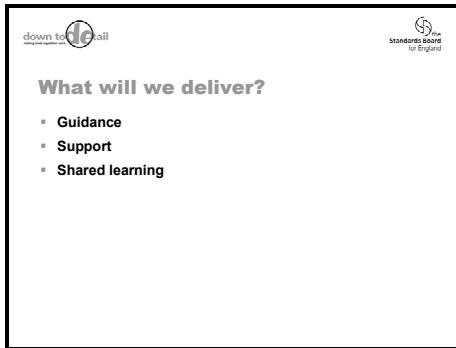
We will also work with the Audit Commission to ensure that standards issues are incorporated into the comprehensive area assessments and contributing to the Commission's work on the preparation of risk judgements for councils.

We are working with the Improvement and Development Agency, the National Association of Local Councils, and the Local Government Association in supporting councillors in their roles.

We will continue to work with representative bodies for independent members and standards committees as appropriate. The Board also has formal relationships with its counterparts in Scotland and Wales.

We will work with the Association of Council Secretaries and Solicitors and the Society of Local Council Clerks in order to support monitoring officers and clerks, and will continue to work closely with those organisations representing the leadership of authorities such as the Society of Local Authority Chief Executives - in order to embed the importance of standards and conduct issues to the corporate governance of their authorities.

The Board will continue to work with a range of academic institutions, in developing our research. And we will work with training providers, in order to promote a shared understanding of and access to the key skills and knowledge required by councillors and others to operate the local standards system effectively.



So, what can you expect from us over the next twelve months?

We will do everything we can to ensure that standards committees and monitoring officers are confident in their roles and that the system is operated effectively at local level. We will provide guidance and information on how to manage cases locally, via delivery of strategic framework guidance and performance monitoring. We will also provide support to authorities that are failing to operate the local system effectively. We will identify, share and communicate information on trends in case handling performance and outcomes of cases.

As I said, we've all got a lot to do. It's been a busy year, its going to be a busy year for all of us. But I do believe that the building blocks for the future are in place, the Code is in good shape and that its local ownership and operation has to be right.

Thank you for listening to me. I look forward to hearing from you over the next couple of days.

David Prince
Chief Executive
The Standards Board for England

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

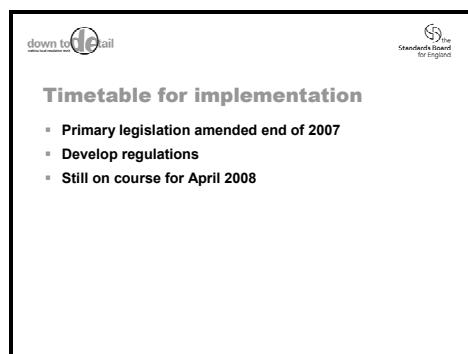
Local filter: Countdown to 2008

Patricia Hughes, Deputy Chair The Standards Board for England

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

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

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



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

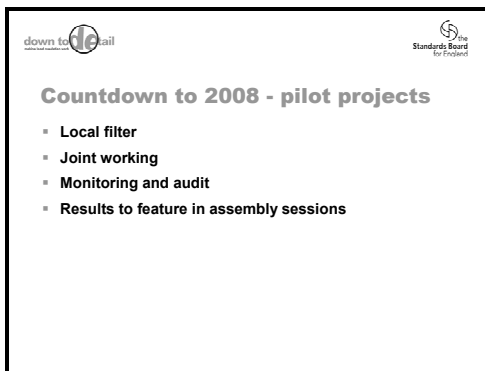
However, as you will of course know, there is a lot of planning and preparation to be done both by the Board and by authorities in advance of this date. As always, I know that we will learn this week that some of you are already well on the road, whilst others are awaiting guidance or seeking to overcome

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

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

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

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



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

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

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

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

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

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

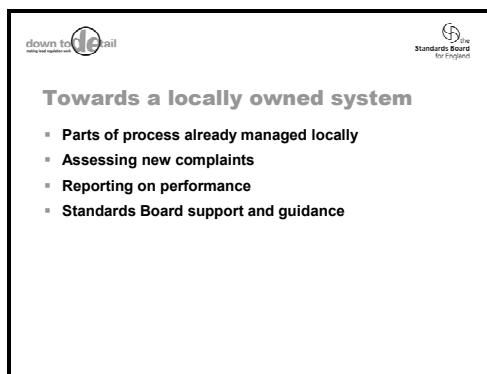
The third pilot is still going on since it relies on the information gleaned from the other pilots. It is concerned with the type of information the Board will be requiring in order to monitor performance and the means of collecting it. For example, we will be testing with pilot authorities a web based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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

down to the tail

Standards Board for England

Challenges ahead

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

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

You should also consider potential conflicts of interest that may arise within the system. For example, will a conflict arise if those taking the decision to refer a case, later hear the case? We believe that this can be avoided if the decisions on referrals and investigations are taken by small sub-committees, rather than the whole standards committee as was the conclusion from the pilots.

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

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

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

Patricia Hughes
Deputy Chair
The Standards Board for England

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

continues overleaf

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.

continues overleaf

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:

Alison Kelly
Strategy Advisor, Governance and Accountability

Audit Commission

1st floor, Millbank Tower, London SW1P 4HQ

E: a-kelly@audit-commission.gov.uk

M: 07759 723 943

T: 0844 798 2211



Vanessa Walker
Principal Consultant

IDeA

Layden House, Turnmill Street, London EC1M 5LG,

E: vanessa.walker@idea.gov.uk

T: 020 7296 6811



Dr Gary Hickey
Research and Practice Manager

The Standards Board for England

Fourth Floor, Griffin House, 40 Lever Street, Manchester, M1 1BB

E: gary.hickey@standardsboard.gov.uk

T: 0161 817 5416





AGENDA ITEM: 10

**STANDARDS COMMITTEE:
1 November 2007**

Report of: Council Secretary and Solicitor

Contact for further information: Mrs G L Rowe (Ext 5004)

**SUBJECT: OCCASIONAL PAPER – PREDISPOSITION, PREDETERMINATION
OR BIAS, AND THE CODE OF CONDUCT**

District wide interest

1.0 PURPOSE OF THE REPORT

1.1 To advise members of the receipt of an Occasional Paper and Counsel's advice from the Standards Board for England.

2.0 RECOMMENDATIONS

2.1 That the contents of the Occasional Paper, Counsel's advice and the factsheet be noted and these documents be brought to the attention of all members.

3.0 BACKGROUND AND CURRENT POSITION

3.1 Pre-determination and bias have proved to be difficult and controversial issues. The Standards Board has therefore published a paper to help clarify the issues. A copy of the paper and Counsel's advice are attached as Appendix 1. On a related issue the Board have prepared a factsheet on lobby groups and declarations of interest under the Code of Conduct. A copy of the factsheet is attached as Appendix 2.

4.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

4.1 There are no significant sustainability or community strategy implications.

5.0 FINANCIAL AND RESOURCE IMPLICATIONS

5.1 There are no significant financial or resource implications arising from the report.

6.0 RISK ASSESSMENT

6.1 It is important that members understand the issues relating to pre-determination and bias to ensure proper decision making and reduce the risk of legal challenge

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

Appendix

Appendix 1 – Occasional Paper – Predisposition, Predetermination or Bias, and the Code

Appendix 2 – Lobby Groups and Declarations of Interest under the Code of Conduct.



Predisposition, Predetermination or Bias, and the Code

Both predetermination and bias have proved to be difficult and controversial issues for many members and monitoring officers. Although they are judge-made, common law issues, and not part of the Code of Conduct, the Standards Board for England has agreed to publish this occasional paper to help clarify the issues.

Based on advice from leading treasury counsel Philip Sales QC, which can be found on our website, this paper aims to clarify the issues involved and includes examples of where members are predisposed, and so can take part in a debate and vote, and where they are predetermined and their participation in a decision would risk it being ruled as invalid.

Sir Anthony Holland
Chair, the Standards Board
for England

What is predisposition?

It is not a problem for councillors to be predisposed. Predisposition is where a councillor holds a view in favour of or against an issue, for example an application for planning permission, but they have an open mind to the merits of the argument before they make the final decision at the council meeting.

This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly. They may even have been elected specifically because of their views on this particular issue.

What is predetermination or bias?

Predetermination or bias can lead to problems. It is where a councillor is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and makes a decision on the issue without taking them into account.

Councillors must not even appear to have already decided how they will vote at the meeting, so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.

Rarely will membership of an organisation, such as a national charity, amount to predetermination or bias on its own unless it has a particular vested interest in the outcome of a specific decision that a councillor is involved in making.

Making the decision

There is an important difference between those councillors who are involved in making a decision and those councillors who are seeking to influence it. This is because councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.

When considering whether there is an appearance of predetermination or bias, councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

However, when applying this test, they should remember that it is legitimate for a councillor to be predisposed towards a particular outcome on the basis of their support of a general policy. This is as long as they are prepared to be open-minded and consider the arguments and points made about the specific issue under consideration.

How can predetermination or bias arise?

The following are some of the potential situations in which predetermination or bias could arise.

Connection with someone affected by a decision

This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.

example

a) A district councillor also belongs to a parish council that has complained about the conduct of an officer of the district council. As a result of the complaint the officer has been disciplined. The officer has appealed to a member panel and the councillor seeks to sit on the panel hearing the appeal. The councillor should not participate.

Contrast this with:

b) The complaint about the officer described above is made by the local office of a national charity of which the councillor is an **ordinary** member and has no involvement with the local office. The councillor should be able to participate in this situation **because the matter is not concerned with the promotion of the interests of the charity.**

Improper involvement of someone with an interest in the outcome

This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.

example

A local authority receives an application to modify the Definitive Map of public rights of way. A panel of members is given delegated authority to make the statutory Order. They have a private meeting with local representatives of a footpath organisation and other interest groups before deciding whether the Order should be made. However, they do not give the same opportunity to people with opposing interests.

Prior involvement

This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

example

A councillor of a local highway authority who is also a member of a parish council that has been consulted about a road closure could take part in the discussion at both councils. The important thing is that the councillor must be prepared to reconsider the matter at county level in the light of the information and evidence presented there.

Commenting before a decision is made

Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. However, if the councillor has made comments which suggest that they have already made up their mind, they may not take part in the decision. If the councillor is merely seeking to lobby the meeting at which the decision is taking place, they are not prevented by the principles of predetermination or bias from doing so. There is no particular reason why the fact that councillors can do this, in the same way as the public, should lead to successful legal challenges.

example 1

A council appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: "speaking for myself I am inclined to go along with the barrister's recommendation". He later participates in the council's decision to accept the barrister's recommendation. At the meeting the supporters of the application are given an opportunity to argue that the recommendation should not be accepted.

This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the recommendation of the barrister's report, and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

example 2

A developer has entered into negotiations to acquire some surplus local authority land for an incinerator. Planning permission for the incinerator has already been granted. Following local elections there is a change in the composition and political control of the council. After pressure from new members who have campaigned against the incinerator and a full debate, the council's executive decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses.

The council's decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

Conclusion

Councillors are entitled to have and express their own views, as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.

For more information on the issue of predetermination or bias, councillors should talk to their monitoring officers or their political group.

The Standards Board for England
Fourth Floor
Griffin House
40 Lever Street
Manchester M1 1BB

Enquiries line: 0845 078 8181
Minicom: 0161 817 5449
enquiries@standardsboard.gov.uk

www.standardsboard.gov.uk



the
Standards Board
for England

Confidence in local democracy

IN THE MATTER OF PART III OF THE LOCAL GOVERNMENT ACT 2000

AND LOCAL AUTHORITIES (MODEL CODE OF CONDUCT)(ENGLAND) ORDER 2001

AND THE DRAFT LOCAL AUTHORITIES (MODEL CODE OF CONDUCT)(ENGLAND) ORDER 2007

ADVICE

1. I am instructed to advise the Standards Board for England concerning guidance it proposes to issue for monitoring officers and councillors regarding the dividing line between (permissible) policy pre-disposition on the part of councillors in relation to matters which they decide upon and (impermissible) pre-determination of such matters by them. I am also instructed to consider draft guidance in layman's terms on this topic, and to amend it as I think appropriate. A copy of the draft guidance as amended and approved by me is attached as an Annex to this Advice.
2. The basic legal position is that a councillor may not be party to decisions in relation to which he either is actually biased (in the sense that he has a closed mind, and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him) or gives an appearance of being biased, as judged by a reasonable observer. The test in relation to appearance of bias is that laid down by the House of Lords in *Porter v Magill* [2002] 2 AC 357, at para. [103] per Lord Hope: "the question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".

3. However, in the current context, in relation to both actual bias and appearance of bias, the question arises: what is to be taken as the relevant dividing line between permissible policy pre-disposition in relation to a particular matter and impermissible pre-determination of a matter? It is only if a councilor actually is, or gives the appearance of being, on the wrong side of that dividing line, that it would be unlawful for him to participate in a decision.
4. In addressing that question, two points should be made at the outset. First, the common law test of bias and appearance of bias falls to be adjusted according to the particular context in which it is to be applied. The test will apply very strictly in relation to courts and tribunals, which are judicial institutions, independent of the parties which appear before them. It will apply less strictly, and only after necessary adjustment for the different context, in relation to administrative decisions and decisions by local government, which are taken by bodies which are in place to promote their own policies and objectives, often in opposition to the interests of particular persons who may be detrimentally affected by their decisions.
5. *Porter v Magill* illustrates this point. The decision of the district auditor which was in issue was taken by an official who combined the roles of investigator, prosecutor and judge in a way which would be regarded as impermissible under Article 6(1) of the ECHR in the case of a court (see paras. [89]-[92]); the common law test for appearance of bias was adjusted to bring it into line with that under Article 6(1) (see paras. [95]-[103]); but when applied to the district auditor, it was held that he had not acted in such a way as to give an appearance of bias (see paras. [104]-[105]). In my view, this judgment indicates that the basic test of appearance of bias falls to be applied with adjustments in a specific case to take account of the particular context in which that case arises. An approach which may be impermissible on the part of a court will not necessarily be impermissible when adopted by an administrative body or by local government.

6. Secondly, it is of the essence of local democratic politics that councillors or parties may seek election by declaring to the electorate what their policies will be if they are elected. It would defeat the object of the exercise if, once elected, they were then to be treated as being barred from participating in those very decisions which they may have been elected to take. Also, the importance and validity of councillors being able to formulate policies and then being permitted to participate in decisions to implement those policies is not confined to what happens at election time. The identification of a particular need or problem which requires to be met as a matter of policy, the formulation of proposals for measures to meet that need or problem and the taking of decisions to implement those measures, is again a normal part of the democratic process and represents one of the major functions of government at any level.
7. The fact that a councillor may have made it clear that he has a policy predisposition to favour a particular outcome in relation to a decision to which he is party does not in itself mean that it is unlawful for him to participate in making that decision. Something more would be required before the conclusion could be drawn that there was unlawful bias or an unlawful appearance of bias on the part of a councillor in relation to a particular decision: an indication that the councillor was not prepared fairly to consider whether the policy he wished to promote should be adjusted, or potentially not applied, in the light of any detailed arguments and representations concerning the particular facts of the case falling for decision.
8. The basic principle is set out in Wade and Forsyth, *Administrative Law* (9th ed.) at pp. 472-473 (in terms which, in my view, are equally applicable to local government decisions by councillors):

“It is self-evident that ministerial or departmental policy cannot be regarded as disqualifying bias. One of the commonest administrative mechanisms is to give a minister power to make or confirm an order

after hearing objections to it. The procedure for the hearing of objections is subject to the rules of natural justice in so far as they require a fair hearing and fair procedure generally. But the minister's decision cannot be impugned on the ground that he has advocated the scheme or that he is known to support it as a matter of policy. ... The key to all these decisions is the fact that if Parliament gives the deciding power to a political body, no one can complain that it acts politically. The principles of natural justice still apply, but they must be adapted to the circumstances [reference to *R v Amber Valley DC, ex p. Jackson* [1985] 1 WLR 298]" (emphasis added)

9. See to the same effect Supperstone, Goudie and Walker, *Judicial Review* (3rd ed.) at paras. 11.15.1 to 11.15.16, especially the following:

“In many administrative situations the possibility of bias is built into the system. Proposers of a scheme may have strong and carefully thought-out views on the subject, and yet may have guidelines to help them in their day-to-day application of legislation. In such situations the concept of a fair trial may be impossible and, indeed, undesirable to achieve. It has been pointed out (1932 (Cmd 4060)) that the more indifferent to the aim in view the less efficient is a Minister or civil servant likely to be. After all, it is his job to get things done. So while the obvious prejudgment of an issue is not allowed, a challenge to a decision on the grounds of departmental bias is unlikely to succeed. It is a Minister's job to have a policy and to support it in public” (para. 11.15.4).

10. Again, reference may also be made to De Smith, Woolf and Jowell, *Judicial Review of Administrative Action* (5th ed.), at para. 12-048:

“The normal standards of impartiality applied in an adjudicative setting cannot meaningfully be applied to a body entitled to initiate a proposal and then to decide whether to proceed with it in the face of objections. What standards should be imposed on the Secretary of State for the Environment when he has to decide whether or not to confirm a compulsory purchase order or clearance order made by a local authority ...? It would be inappropriate for the courts to insist on his maintaining the lofty detachment required by a judicial officer determining a *lis inter partes*. The Secretary of State's decisions can seldom be wrenched entirely from their context and viewed in isolation from his governmental responsibilities.”

11. The passage cited above from Wade and Forsyth (as it appeared in the 8th edition) was cited with approval by Lord Slynn in *R (Alconbury) v Secretary of State for the Environment* [2003] 2 AC 295 at para. [48]; see also per Lord Nolan at para. [64]; Lord Hoffmann at para. [123]; and Lord Clyde at paras. [142] to [143]; see also the Scottish case of *London and Clydeside Estates Ltd v Secretary of State for Scotland* [1987] SLT 459.

12. The point is further explained in *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172, in which Cooke J. stated:

“Realistically, it was clear that the government had decided that the project was to go ahead – but it was a fallacy to think that because the Government was highly likely to advise in favour of the Order, that they were disqualified from making a determination”.

13. This approach has been reiterated many times in the local government context. So, for example, the approach in the *Amber Valley* case (above) has been followed in *R v Sevenoaks DC, ex p. Terry* [1985] 3 All ER 226, *R v St Edmundsbury BC, ex p. Investors in Industry Commercial Properties Ltd* [1985] 1 WLR 1157 and *R v Carlisle CC, ex p Cumbrian Co-operative Society Ltd* [1985] 2 EGLR 193. See also, for a recent decision, *R (Island Farm Development Ltd) v Bridgend County Borough Council* [2006] EWHC 2189, in which it was alleged that a decision by a committee of the council not to proceed with a proposed sale of land necessary for a development was vitiated by apparent bias where the relevant councillors had previously expressed their strong objection to the development. Collins J. held there was no bias:

“In principle, councillors must in making decisions consider all relevant matters and approach their task with no preconceptions. But they are entitled to have regard to and apply policies in which they believe, particularly if those policies have been part of their manifestos. The present regime believed that the development ... was wrong and they had made it clear that that was their approach. In those circumstances, they were entitled to consider whether the development could be lawfully prevented ... in the context of a case such as this I do

not believe that bias can exist because of a desire to ensure if possible that the development did not take place.”

14. See also the decision of the Court of Appeal in *National Assembly for Wales v Condrón* [2006] EWCA Civ 1573, in which it was held that there was no apparent bias, notwithstanding that the committee chairperson told an objector his conclusion on a planning decision before the relevant committee meeting, because the evidence was that in fact the question was fully considered at the meeting. At paras. [48] to [51], the Court of Appeal observed that evidence that the meeting fully explored relevant issues before reaching its conclusion was of “substantial weight” in determining that there was no apparent bias.
15. This does not mean that a decision by local government councillors cannot be held to be vitiated by actual bias or an appearance of bias. For example, in *Anderton v Auckland City Council* [1978] 1 NZLR 657 the New Zealand Court of Appeal held that, even though Parliament had made the council judge in its own cause by vesting in it the right to hear and determine objections to its own scheme, nonetheless the council had gone beyond the boundary of what was permissible by having become excessively closely associated with the development company’s attempts to secure planning permission for its project that on the facts it had completely surrendered its powers of independent judgment and had determined in advance to allow the application.
16. In my view, the test of lawfulness in this context is whether the councillors in question have genuinely addressed themselves to the relevant issue to be determined by them (weighing relevant considerations, ignoring irrelevant considerations in the usual way), taking into account their policy on that issue and giving weight (it may be, considerable weight) to it, but being prepared fairly to consider also whether the policy they wish to promote should be adjusted, or not applied, in the light of any detailed arguments

and representations concerning the particular facts of the case falling for decision.

17. Finally, I should address a distinct issue raised in the context of the draft guidance. To what extent is it legitimate for a councillor who is not himself a party to a decision to be taken (eg he does not sit on the relevant decision-making committee), but whose ward is affected by the decision, to make representations to the decision-makers seeking to persuade them to act in a particular way? In my opinion, there is nothing illegitimate in a councillor taking such steps to represent the interests of the constituents in his ward. One part of his functions is to represent the interests of his ward in relation to decision-making by the local authority of which he is a member, and this is a legitimate and appropriate way in which he may seek to do that.
18. If those instructing me have any comments or suggested amendments in relation to the draft guidance annexed to this Advice, I would be happy to discuss them. My clients have day to day involvement with these matters, and will have a better understanding than me of the form of guidance which is most likely to be found to be useful by monitoring officers and councillors.

PHILIP SALES QC

11 KBW
11 King's Bench Walk
Temple
London EC4Y 7EQ

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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

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
- 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

- *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.
- 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.