

Swindon Borough Council

Standards Committee

Monday, 29 January 2007

Committee Room 1, Civic Offices, Swindon
(Anticipated meeting room)

At 5.00 p.m.

Councillors

Melanie Duff
Peter Stoddart (Deputy)
(Conservative)

Maurice Fanning
(Labour)

Martin Wiltshire
(Liberal Democrat)

Independent Members

Mr Keith Carby (Chair)
Mr Trevor Davies (Vice-Chair)
Mr Paul Morris

Parish Representative

Mr Mike Compton
Mr Richard Hailstone (Deputy)

(Copy to all other Members of the Council – For Information)

Committee Officer: Sarah Lawrence (Telephone 01793 463603)
email: slawrence@swindon.gov.uk

Swindon Borough Council can be contacted at the Civic Offices, Euclid Street, Swindon, SN1 2JH (Telephone 01793 463000)

AGENDA

PART 1 (PUBLIC ITEMS)

1. Apologies for Absence

2. Declarations of Interest

Members are requested at the start of the meeting to declare any known interests in any matter to be considered, and are reminded that any such interest should also be declared at the start of an item or during any discussion of the matter concerned.

3. Minutes (Pages 1 - 4)

4. Public Question Time

(See explanatory note below. Please phone the Committee Clerk whose name and number appears at the top of this agenda if you need further guidance.)

5. Exempt Items - Exclusion of Press and Public

Certain items are expected to include the consideration of exempt information and the Standards Committee is, therefore, recommended to resolve "That, in accordance with Section 100A(4) of the Local Government Act 1972, the public be excluded during the discussion of the matters referred to in the items listed below, on the grounds that they

involve the likely disclosure of exempt information, as defined in the respective paragraph of Part 1 of Schedule 12A of the Act, and the public interest in maintaining the exemption outweighs the public interest in disclosing the information".

<u>Item No.</u>	<u>Paragraph No.</u>
8	1 and 2

6. Anti-Fraud and Corruption and Whistleblowing Policies (DLDS-R), (HIA-R)
(Pages 5 - 26)

7. Ethical Framework Update (DLDS-R) (Pages 27 - 74)

PART 2 (TO BE CONSIDERED WITHOUT THE PRESS AND PUBLIC PRESENT)

8. Ethical Framework Compliance Update (DLDS-R) (Pages 75 - 78)

19 January 2007 (being date of agenda despatch)

Key:

GDR Group Director, Resources
DLDS- R Director of Law and Democratic Services

Public Question Time - Swindon Borough Council is committed to increasing its accountability to the public and to promoting active citizenship. Up to 15 minutes will be allowed at the start of all Council meetings for questions to the Chair from members of the public about the work of the Committee (except for confidential matters and specific planning applications). Questions must be relevant, clear and concise. Because of time constraints Public Question Time is not an opportunity to make speeches or statements. Prior notice of a question to the Director of Law and Democratic Services is desirable - particularly if detailed background information is needed.

Access Arrangements - The venue is wheelchair accessible and an infrared receiver hearing system is provided. If you would wish to attend the meeting but have any special requirement to enable you to do so please contact the Committee Officer, whose name appears at the top of this agenda, as soon as possible prior to the date of the meeting.

If you would like to receive any of the pages contained in this agenda in a larger print size please contact the Committee Officer whose name appears on the first page of this agenda.

Standards Committee - Terms of Reference

The Standards Committee has the following roles and functions in accordance with Article 9 of the Council's Constitution:

- (a) promoting and maintaining high standards of conduct by councillors and co-opted members including church and parent governor representatives;
- (b) assisting the councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) recommend training on any aspects of conduct and behaviour for Councillors and officers where it considers it would be of benefit;

- (f) approving other codes of conduct and behaviour which apply to Councillors, employees, contractors and any other parties or organisations associated with Council activity (for employees approval will be subject to agreement through recognised negotiating machinery where appropriate).
- (g) receiving from the Council's Monitoring Officer details of all allegations of any breach of the Code of Conduct;
- (h) determining any matters which may be referred to it by the Monitoring Officer or the Standards Board for England;
- (i) supporting the Council's Monitoring Officer in discharging his/her role;
- (j) granting dispensations to councillors and co-opted members, including church and parent governor representatives, from requests relating to interests set out in the Members Code of Conduct;
- (k) To also exercise (a) to (j) above in relation to the parish councils wholly or mainly in its area and the members of those parish councils;
- (l) ensure the Council's complaints procedure operates effectively in relation to standards of conduct and behaviour of staff and in particular
 - receive annual reports on its operation
 - receive regular monitoring reports on complaints in relation to standards of conduct and behaviour that have resulted in a final warning to a member of staff
 - adjudicate upon all complaints which remain unresolved
 - require Service Managers to report upon any areas of activity which may have been the subject of criticism in respect of standards of conduct and behaviour
 - approve and publish an annual report upon the operation of the system;
- (m) report to the Council when it considers:-
 - standards of conduct and behaviour in a particular area need reviewing, and
 - the level of commitment necessary to resolve these difficulties should be greater;
- (n) approve and monitor the Council's anti-fraud strategy and whistle-blowing procedures and ensure they operate effectively;
- (o) recommend to the Council the payment of compensation or the taking of any other action relating to standards of conduct and behaviour where this is considered appropriate;
- (p) report to the Council on the result of any investigation into the standards of conduct and behaviour of a Member;
- (q) approve procedures associated with the appointment of an independent remuneration panel for Councillors' Allowances.

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STANDARDS COMMITTEE

MONDAY, 23 OCTOBER 2006

PRESENT:- Mr Trevor Davies (Vice-Chair, in the Chair), Mr Mike Compton, Councillor Maurice Fanning and Councillor Peter Stoddart (Deputy).

Apologies for absence were received from Mr Keith Carby, Mr Paul Morris and Councillor Melanie Duff.

9. Declarations of Interest

The Vice-Chair reminded Members of the need to declare any known interests in any matters to be considered at the meeting. No declarations were made.

10. Minutes

Resolved – That the minutes of the meeting held on 24th July 2006, be confirmed and signed as a correct record.

11. Public Question Time

No public questions were received during the meeting.

12. Exempt Items - Exclusion of Press and Public

Resolved - That, in accordance with Section 100A(4) of the Local Government Act 1972, the public be excluded during the discussion of the matters referred in Agenda Item 7 on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Schedule 12A to the Act, and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information concerned (Minute 14 refers.)

13. Ethical Framework Update

The Committee received a report from the Director of Law and Democratic Services (Monitoring Officer) providing an update of various matters relating to the Ethical Framework in respect of:

- i) Council Comprehensive Performance Assessment (CPA) / Joint Area Review (JAR) Assessment – The Committee were informed of the Council Comprehensive Performance Assessment (CPA) / Joint Area Review (JAR) judgement for the Council issued on 10th October 2006, and in particular the assessment that appropriate mechanisms were in place and effective in ensuring that ethical standards are maintained.
- ii) Annual Standards Board Conference - The Monitoring Officer reported back on the Conference held on 16th and 17th October, and highlighted the new presumption from the Standards Board in favour of local referrals of code of conduct allegations, and that the revised National Code of Conduct for Councillors had been delayed but was expected shortly.
- iii) Adjudication Panel Decisions - The Committee took note of the adjudication

- panel decisions and the seriousness placed on overstepping the mark in robust exchanges at Committee. The Committee asked that the Monitoring Officer in conjunction with the Chair continue with the current pro-active practice of contacting Borough Council Members involved in such exchanges, with a view to improving standards of conduct at the Council.
- iv) Promotion of Ethical Standards and Training – The Committee noted the ethical training undertaken by Councillors since May 2006 and that planned for Parish Councillors in November. The Monitoring Officer advised that further training would take place for Members once the new Code of Conduct was in place.
 - v) Standards Board Bulletin - The Committee received the Standards Board Bulletin for July 2006 (Issue 30).
 - vi) Independent Standards Committee Members Forum – The next meeting of the forum would be held on 27th October 2006. The Vice-Chair would be attending and would report back to the next meeting.
 - vii) Revision of Media Guidelines for Members - The Committee received for consideration proposed revised media guidelines for Members from the Head of Communications, which would form part of the revised Communications Strategy. The Committee agreed that the revised guidelines should go forward for consultation with all Members.
 - viii) Corporate Governance in Local Government – A Framework - The consultation by CIPFA / SOLACE on Corporate Governance and the response agreed by the Corporate Governance Working Group was noted. It was understood that a further revised paper would be issued in November or December, and it was agreed it was important that Members were fully engaged and understood the wider implications of good governance for the whole operation of the Council, not just ethical standards.
 - ix) Review of Procedure for Local Investigation of Referred Complaints – The Monitoring Officer advised that the procedure for local investigations of complaints referred by the Standards Board for England had been reviewed in the light of the recent investigation and hearing, but recommended that they be revisited after the completion of the current investigation relating to a Parish Councillor.
 - x) Update Anti-Fraud Strategy and Whistleblowing Policy - It was noted that the Head of Audit was currently reviewing the Anti-Fraud Strategy and Whistleblowing Policy and would report to the next meeting.
 - xi) Independent Remuneration Panel – The Vice-Chair, together with a former Member of the Panel, had conducted interviews on 19th October 2006 for the three vacancies on the Independent Remuneration Panel. The Vice-Chair advised the Committee of the recommendations from the interviews and asked that the Committee endorse the recommended appointments.

Resolved – 1) That the Ethical Framework Update be noted;
 2) That the Monitoring Officer in conjunction with the Chair continue the current pro-active practice of contacting Borough Council Members involved in overly robust exchanges at Committee, with a view to improving standards of conduct at the Council.
 3) That the Monitoring Officer in conjunction with the Head of Communications consult with Members on the revised Media Guidance for Members attached at Annex ‘1’ and report back with the final Guidance for approval to the Standards Committee;
 4) That the Monitoring Officer revisit the Procedures for Investigation and

Determination of Complaints following the completion of the current investigation relating to a Parish Councillor; and

5) That the Committee confirms the following three appointments to the Independent Remuneration Panel:

- Nigel Stone (appointment following public advertisement)
- Claire McDougall (representative of the Business Community)
- Professor Andy Stables (Education Sector)

14. Ethical Framework Compliance Update

The Committee considered a report of the Director of Law and Democratic Services (Monitoring Officer) concerning the outcome of various ethical framework compliance matters. It was noted that an investigating officer had been appointed in respect of the complaint concerning a Parish Councillor that has been referred to the Monitoring Officer for local investigation and determination.

Resolved – That the report in respect of ethical framework compliance issues be noted.

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Anti-Fraud and Corruption and Whistleblowing Policies

Standards Committee

Date: 29 January 2007

Author: Director of Law and Democratic Services (Monitoring Officer);
Head of Internal Audit

Wards Affected: All

Purpose

- To receive the updated Anti-Fraud and Corruption Policy and Whistleblowing Policy and to agree that it should be issued for consultation.

Recommendation

- It is recommended that relevant stakeholders be consulted on the updated Anti-Fraud and Corruption and Whistleblowing policies and that the policies be brought back to the next meeting of the Standards Committee in March 2007.

1. Reasons

- 1.1 To ensure that the Council's Policies on Anti-Fraud and Corruption and Whistleblowing are up-to-date and reflect best practice.

2. Detail

- 2.1 The Council controls millions of pounds of public money and takes very seriously the high expectations of the public and the degree of scrutiny to which the affairs of the Council are subject.
- 2.2 In carrying out its functions and responsibilities the Council wishes to promote a culture of openness and fairness and expects that elected members and employees at all levels will adopt the highest standards of propriety and accountability. Proper accountability, achieved through probity, internal control and honest administration is therefore essential.
- 2.3 The Anti-Fraud and Corruption Strategy sets out measures designed to frustrate any attempted fraudulent or corrupt acts and the steps to be taken if such action occurs.
- 2.4 The Council's Whistleblowing Policy supports the Anti-Fraud and Corruption Strategy, and makes it clear that concerns can be raised without the fear of reprisals. It is intended to encourage and enable employees, Members and Governors to raise serious concerns within the Council, irrespective of seniority, rank or status, rather than overlooking a problem or reporting the matter externally.

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial: 463012 or Email staylor@swindon.gov.uk or Nick Hobbs on Direct Dial: 463940 or Email nhobbs@swindon.gov.uk

Anti-Fraud and Corruption and Whistleblowing Policies

Standards Committee

Date: 29 January 2007

- 2.5 Both the Anti-Fraud and Corruption Policy (Appendix 1) and the Whistleblowing Policy (Appendix 2) have been updated to ensure that they reflect changes in legislation and reflect best practice.
- 2.6 Consultation with relevant stakeholders i.e. staff, Unions, External Audit and any other interested parties will be carried out should the Standards Committee agree that the policies be issued for consultation, and both policies will then be brought back to Standards Committee for approval.

Alternative Options

- None

Risk Management

Financial and Procurement Implications

- There are no direct financial or procurement implications. The cost of carrying out any investigations is currently borne by the Director of Law and Democratic Services or the Head of Internal Audit's budget as appropriate.

Legal / Human Rights Implications

- The policies and procedures have been written to take account of the Public Interest Disclosure Act 1998 and takes account of other relevant legislation such as the Regulation of Investigatory Powers Act 2000, the Local Government Act 1972 and the Accounts and Audit Regulations 2003.

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

- The outcome of complaints links with the theme 'Council for the Future' and the wish to improve the Council's performance and ensure that the Council's corporate governance system are considered to be accountable, effective and transparent (Objective 1).

Consultees

- The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.
- Director of Human Resources
- Head of Internal Audit

Background Papers and Appendices

- Appendix 1: Anti-Fraud and Corruption Strategy
- Appendix 2: Whistleblowing Policy

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial: 463012 or Email staylor@swindon.gov.uk or Nick Hobbs on Direct Dial: 463940 or Email nhobbs@swindon.gov.uk

SWINDON BOROUGH COUNCIL

ANTI-FRAUD AND CORRUPTION

STRATEGY

POLICY STATEMENT

Reviewed: JANUARY 2007



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1. Introduction – why we need an anti-fraud and corruption strategy

- 1.1 Swindon Borough Council controls millions of pounds of public money and takes very seriously the high expectations of the public and the degree of scrutiny to which the affairs of the Council are subject.
- 1.2 In carrying out its functions and responsibilities the Council wishes to promote a culture of openness and fairness and expects that elected members and employees at all levels will adopt the highest standards of propriety and accountability. Proper accountability, achieved through probity, internal control and honest administration is therefore essential.
- 1.3 Although the Council has a good reputation for integrity and honesty things may go wrong and, in case they do, we must have procedures for combating fraudulent or improper attempts to obtain assets or services.
- 1.4 The Council needs to maintain constant vigilance in order to safeguard the resources to which we are entrusted and protect our reputation. We must raise awareness, deter and identify fraud and, at the same time, provide mechanisms for employees to raise legitimate concerns when they feel justified. Hence the need for this strategy.
- 1.5 The principle outlined in this strategy apply to Members and all employees of the Council including school based staff and they demonstrate, to the community of Swindon, our commitment to the prevention, detection and investigation of all forms of fraud and corruption wherever it is found.
- 1.6 The Council also expects the same level of commitment from all outside individuals and organisations, including partners and contractors and claimants ensuring that they act towards the Council with honesty and integrity.
- 1.7 This strategy document sets out measures designed to frustrate any attempted fraudulent or corrupt acts and the steps to be taken if such action occurs.

2. What are Fraud and Corruption?

- 2.1 **Fraud** – the Fraud Act 2006 establishes a new general offence of fraud that can be committed in three ways – by false representation, by failing to disclose information and by abuse of position. It also establishes a number of specific offences to assist in the fight against fraud – these include an offence of possessing articles for use in fraud and an offence of making or supplying articles for use in fraud.
 - ***Fraud by false representation:*** a person is in breach of this section if this is done dishonestly and there is intent, by making the representation, to make a gain for himself or another; or to cause or expose the risk of loss to another.

- ***Fraud by failing to disclose information:*** a person is in breach of this section if he dishonestly fails to disclose to another person information which he is under a legal duty to disclose; and intends by failing to do so, make a gain for himself or another; or to cause or expose the risk of loss to another.
- ***Fraud by abuse of position:*** a person is in breach of this section if he occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person; dishonestly abuses that position with the intention to make a gain for himself or another; or to cause or expose the risk of loss to another.

2.2 **Corruption** – is the offering, giving, soliciting or acceptance of an inducement or reward that may influence the actions taken by the audited body, its members or officers.

3. Culture

- 3.1 The culture of the Council is one of openness and the Council is committed to sound corporate governance, and supports the general principles as set out in The Relevant Authorities (General Principles) Order 2001 i.e.
- Selflessness
 - Honesty and Integrity
 - Objectivity
 - Accountability
 - Openness
 - Personal Judgement
 - Respect for others
 - Duty to Uphold the Law
 - Stewardship
 - Leadership
- 3.2 The prevention and detection of fraud and corruption and the protection of the public purse are responsibilities of everyone. The Council's elected members and employees play an important part in creating and maintaining this culture. They are positively encouraged to raise concerns regarding fraud and corruption, in the knowledge that such concerns will, wherever possible, be treated in confidence.
- 3.3 By establishing a Standards Committee the Council has reinforced this culture. The Standards Committee report to the Council:
- When it considers standards of conduct and behaviour in a particular area need reviewing; and
 - When it feels the level of commitment necessary to resolve these difficulties should be greater
- 3.4 Concerns must be raised when members or employees reasonably believe that one or more of the following has occurred, is in the process of occurring, or is likely to occur:
- A criminal offence
 - A failure to comply with statutory or legal obligation

- Improper unauthorised use of public or other funds
 - A miscarriage of justice
 - Maladministration, misconduct or malpractice
 - Endangering of an individuals health and safety
 - Damage to the environment
 - Deliberate concealment of any of the above
- 3.5 The Council will ensure that any allegations received in any way including by anonymous letters or telephone calls will be taken seriously and investigated in an appropriate manner.
- 3.6 The Council will deal firmly with those who defraud the Council, or are corrupt, or where there has been financial malpractice. There is a need to ensure that any investigation process is not misused and, therefore, any abuse (such as employees raising malicious allegations) may be dealt with as a disciplinary manner.
- 3.7 When fraud and corruption has occurred due to a breakdown in the Council's systems or procedures, senior managers will ensure that appropriate improvements in systems of control are implemented in order to prevent a re-occurrence.

4. Key Principles

- 4.1 Leading by example, our Council will:
- Introduce appropriate measures to minimise the risk of fraud
 - Adopt formal procedures to investigate fraud when it is suspected
 - Operate a procedure for employees to voice genuine concerns and protect those who do so
 - Deter employees from making malicious or unfounded allegations
 - Have no hesitation referring cases of suspected financial irregularity to the attention of the Police
 - Liaise on fraud issues with all organisations with whom we are in partnership
 - Work closely with the Police and other appropriate external agencies to combat fraud

5. Measures to minimise the risk of fraud

- 5.1 In order to maintain high standards, procedures and controls have been established, providing an environment that will minimise the opportunity for fraud. Key documents that support the Council's commitment against fraud are published on the intranet. Important anti fraud procedures include:

- Financial Regulations
- Codes of Conduct for Members and Employees
- Disciplinary Procedures
- Council's Complaints Procedure
- Whistleblowing Procedure
- Managers' Guide: responding to fraud
- Membership of National Anti-Fraud Initiatives, including the Housing Benefit Matching Service
- Money Laundering Guidance
- Standing Orders Relating to Contracts
- Information Technology Security Policy
- The Royal Mail's service to return re-directed benefit mail
- A Prosecution Policy (Benefits)
- The Security Manual in relation to Housing Benefit claims
- Scheme for the Financing of Schools
- Departmental Guidance and Procedure Notes

- 5.2 These documents and procedures help us to conduct the Council's business in a manner beyond reproach. They establish the rules to which we must adhere and are supported as necessary, by detailed procedure manuals that have been prepared for the key functions of the Council.
- 5.3 Staff and members are expected to comply with any statutory obligations about disclosure, conflicts of interest, pecuniary interests, gifts and hospitality received and offered but refused.
- 5.4 The Council operates rigorous recruitment processes that include the verification of references and the completion of CRB checks for staff who have contact with children or vulnerable adults, prior to them taking up appointment.
- 5.5 It is the responsibility of Directors and Managers (Headteachers and Governors in schools) to operate internal systems to ensure these standards are applied and bring these systems to the attention of their employees. Procedures are operated throughout the Council to ensure:
- An adequate separation in duties (more than one employee involved in key tasks)
 - Proper authorisation procedures (transactions must be approved)
 - Independent monitoring and checking of data and documentation (checks and balances)
- 5.6 The Council has a rigorous internal and external audit process that monitors compliance with internal regulations and undertakes a rolling programme of checks to detect, deter and prevent fraud and corruption. However, it is for managers to determine the extent of internal control in their systems and they are responsible for providing an environment that ensures that resources are properly applied, value for money is secured, fraud and other losses prevented, and the Council's Financial Regulations are complied with.

6. The role of Elected Members

- 6.1 As elected representatives, all members of the Council have a duty to the Citizens of Swindon, to protect the Council from all forms of abuse. This is reflected through the adoption of this Anti-Fraud and Corruption Policy Statement and compliance with the Council's Code of Conduct for Members, the Council's Financial Regulations and Standing Orders and relevant legislation.
- 6.2 Elected members undertake to observe the Council's Code of Conduct when they take office. These conduct and ethical matters are specifically brought to the attention of members during induction and include the declaration and registration of interests. The Director of Law and Democratic Services (the Council's Monitoring Officer) advises members on the ethical framework and of new legislative or procedural requirements.
- 6.3 The Standards Committee approves and monitors the anti-fraud strategy and whistleblowing procedure for the Council and ensures that it operates effectively.
- 6.4 The Director of Law and Democratic Services and the Head of Internal Audit will consult with the Chair of Standards Committee on all investigations that are being carried out under the Anti-Fraud Strategy and Whistleblowing procedures. The Chair of Standards Committee will be kept informed on the progress of all investigations.

7. The role of employees

- 7.1 The work of employees' is governed by the Council's Standing Orders and Financial Regulations and other Codes of Conduct (i.e. Health and Safety and IT Security). They are also governed by the Council's Code of Conduct for Employees. The Code of Conduct includes guidelines on Gifts and Hospitality and conflicts of interest. These matters will be included in induction training and procedure manuals.
- 7.2 Employees are expected to always be aware of the possibility that fraud, corruption and theft may exist in the workplace and be able to share their concerns with management. If for any reason they feel unable to speak to their manager they must refer the matter to one of those named below:
 - Heads of Service, Directors, Group Directors, the Chief Executive, the Council's Monitoring Officer or members of the Standards Committee, who will report such concerns to the Head of Internal Audit.
 - Directly to the Head of Internal Audit
 - External Auditor, who depending upon the nature of the concern will liaise with the Head of Internal Audit

- 7.3 Concerns can also be raised anonymously (letter or telephone) or via other routes such as the Council's Whistleblowing Policy (see Appendix 1).
- 7.4 The Council has to comply with legislation relating to money laundering. Guidance has been prepared regarding this and is available on the Council's intranet site.

8. The role of Managers

- 8.1 Managers at all levels are responsible for the communication and implementation of this strategy in their work area. They are also responsible for ensuring that their employees are aware of:
- Standing Orders
 - Financial Regulations
 - Anti-Fraud and Corruption Strategy
 - Whistleblowing Procedure
 - Scheme of Delegation
 - Codes of Conduct
 - Complaints and Disciplinary Procedures
 - Service specific procedure manuals
- 8.2 Probity issues should be afforded a very high profile in employee induction and training processes and all new members of staff should be made aware of the Anti-Fraud and Corruption Strategy via their induction.
- 8.3 Managers should ensure that audit recommendations are implemented promptly.
- 8.4 Information provided to Managers by Internal Audit regarding frauds committed elsewhere via the Fraud Bulletins should be carefully considered. Managers should consider whether their procedures are sufficiently secure to prevent a similar occurrence within our Council?
- 8.5 Frauds are most commonly discovered through the diligence of employees, service users and the public. They will expect their concerns to be treated in confidence and taken seriously. The Council encourages the reporting of suspicions and will protect those who do so (even if the suspicions are unfounded but made with good intent).
- 8.6 Further guidance on how to react as a Manager if you suspect a fraud, or suspicions are brought to your attention will be issued shortly and will form an appendix to this strategy. (*Fraud Response Plan to go to Directors team for comment first*).

9. Conflicts of Interest

- 9.1 Both elected members and employees must ensure that they avoid situations where they avoid situations where there is potential for a conflict of interest.

Such situations can arise with externalisation of services, internal tendering, planning issues etc. Effective role separation will ensure decisions made are seen to be based upon impartial advice and avoid questions about improper disclosure of confidential information.

10. The role of Internal Audit

- 10.1 The role of the Internal Audit is to deliver an opinion to the Audit Committee, the Chief Executive, Leader of the Council and the Section 151 Officer, on the Council's risk management, control and governance arrangements.
- 10.2 In relation to fraud this responsibility includes examination of the adequacy of arrangements for managing the risk of fraud and ensuring that the Council actively promotes an anti-fraud culture, and that all employees are aware of the Council's anti-fraud policy and of their responsibilities in relation to combating fraud.
- 10.3 In addition, Internal Audit assists in deterring fraud by examining and evaluating the effectiveness of control, commensurate with the risk, throughout the Council's operations. This includes ensuring that management has reviewed its risk exposure, identified and mitigated against the possibility of fraud as a business risk. As part of this Internal Audit will undertake an annual programme of proactive fraud testing.
- 10.4 Internal Audit will investigate all employee cases of suspected financial irregularity, fraud or corruption, except Benefits Fraud investigations (see point 11 below) in accordance with agreed procedures and relevant legislation i.e. Regulation of Investigatory Powers Act 2000 (RIPA).
- 10.5 Internal Audit is responsible for following up any allegation of fraud or corruption received and does so through clearly defined procedures and standards:
 - Dealing with the matter promptly
 - Recording all evidence received, ensuring that it is sound and adequately supported
 - Consulting with the Police as appropriate
 - Notifying relevant officers i.e. Director/Group Director, Monitoring Officer, Section 151 Officer and Chief Executive where appropriate
 - Assisting the relevant Director and Director of Human Resources in implementing any disciplinary procedures where appropriate
 - Ensuring that appropriate action is taken to minimize the risk of similar frauds occurring in the future

11. The role of the Benefit Investigation Team

- 11.1 The Benefits Investigation team is responsible for all Benefit Fraud investigations. The team report to the Director of Revenues and Benefits. In cases where employees of the Council may be suspected of an irregularity, the Benefits Investigation team will work with Internal Audit, Human Resources and appropriate senior management to ensure that correct procedures are followed and that this policy is adhered to.

12. The role of External Audit

- 12.1 External Audit has an essential role to play in relation to the stewardship of public money. The role is delivered through the carrying out of specific reviews that are designed to test (amongst other things) the adequacy of the Council's financial systems, and arrangements for preventing and detecting fraud and corruption.
- 12.2 It is not the external auditor's function to prevent fraud and irregularities, but the integrity of public funds is at all times a matter of general concern. The external auditor has a responsibility to review the Council's arrangements for preventing and detecting fraud and irregularities, and arrangements designed to limit the opportunity for corrupt practices.

13. How the Council aims to deter Fraud

13.1 Housing and Council Tax Benefit Administration

- The Benefits Service operates within the Government's policies and guidelines and the National Performance Standards Framework, which aims to improve the quality and accuracy of benefit determinations and both prevent and reduce the incident of fraud.
- To support this policy the Council has a Benefit Fraud Prosecution Policy. The policy encompasses all those in receipt of Benefits, be they the public, elected members, contractors or employees. It is designed to clarify the Council's action in specific cases and to deter others from committing offences against the Authority.

13.2 Prosecution

- In cases of fraud and corruption, where there is evidence to suggest that a criminal offence has been committed, it is the responsibility of the Head of Internal Audit to submit the case to the Police for investigation and prosecution as appropriate.

13.3 Disciplinary Action

- Theft, fraud and corruption are serious offences against the Council and will be regarded as gross misconduct. Employees will face disciplinary action if there is evidence that they have been involved in these activities, including Benefit Fraud. Disciplinary action will be taken in addition to, or instead of, criminal proceedings depending on the circumstances of each case and the advice of the Police, but will be a consistent manner.

13.4 Publicity

- The Council's Communications team will optimise the publicity opportunities associated with anti-fraud and corruption activity within the Council. They will also try and ensure that the results of any action taken, including prosecutions, are reported to the press.
- In all cases where financial loss has occurred the Council will seek to recover any loss and consider making the public aware of this through the media.
- All anti-fraud and corruption activities, including the review of this policy; the issue of Fraud Bulletins and Warnings, will be publicised to make employees and the public aware of the Council's commitment to taking action on fraud and corruption, when it occurs.
- Regular reports by the Monitoring Officer and Head of Internal Audit will be made to Standards Committee with respect to countering fraud and corruption activities and their successes.

14. Detection and Investigation

- 14.1 Internal Audit plays an important role in the detection of fraud and corruption. Included in their annual plan are reviews of system financial controls and specific fraud and corruption tests, spot checks etc.
- 14.2 In addition to Internal Audit, there are numerous systems controls in place to deter fraud and corruption but it is often the vigilance of employees and members of the public that aids detection.
- 14.3 All suspected irregularities should be reported to the Head of Internal Audit. This is essential to the strategy and:
- Ensures the consistent treatment of information regarding fraud and corruption; and
 - Facilitates a proper and thorough investigation by an experienced audit team.
- 14.4 This process will apply to allegations relating to all the following areas:
- Fraud/corruption by elected members
 - Internal fraud

- Other fraud by Council employees acting in a personal capacity
- Fraud by contractors employees
- External fraud (the public)

In practice cases may be referred directly to the External Auditor or Police by complainants. The Council may also consider passing on such allegations to the External Auditor or the Police if considered appropriate.

- 14.5 Depending on the allegation, the Head of Internal Audit will normally work closely with the appropriate senior manager concerned to ensure that all allegations are thoroughly investigated and reported upon. A Fraud Response Plan has been developed by Internal Audit to assist in this process (*copy to go to Directors team for comment first*).
- 14.6 Any decision to refer a matter to the Police will be taken by the Head of Internal Audit in consultation with the Director of Finance, Chief Executive, Monitoring Officer and relevant Group Director/Director.

15. Awareness and Training

- 15.1 The Council recognises that the continuing success of this strategy and its general credibility will depend in part on the effectiveness of training and awareness on the part of elected members and employees. To facilitate this, positive and appropriate provision will be made through induction training and specialist training for certain elected members and employees. In addition, Internal Audit will circulate Fraud Bulletins and warnings to all members and staff by Internal Audit who will also develop a Fraud Awareness guide for Managers.

16. Monitoring

- 16.1 The Standards Committee will monitor the Anti-Fraud and Corruption Strategy and Whistleblowing procedure for the Council and ensure that it operates effectively. The Head of Internal Audit and the Monitoring Officer in consultation with the Chair of Standards Committee will ensure that any corrective actions identified from investigations are brought to the attention of the Committee.

17. Conclusion

- 17.1 The Council has in place a network of systems and procedures to assist it in dealing with fraud and corruption when it occurs. It is determined that these arrangements will keep pace with any future developments in both prevention and detection techniques, regarding fraudulent or corrupt activity.

SWINDON BOROUGH COUNCIL

WHISTLEBLOWING POLICY

Reviewed: JANUARY 2007

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DISCLOSURE (“WHISTLEBLOWING”) POLICY

1. Introduction

- 1.1 Employees, Members and School Governors are often the first to realise that there may be something seriously wrong within the Council. However, they may not express concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.2 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, we encourage employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that certain cases will have to proceed on a confidential basis. This policy document makes it clear that staff can do so without fear of reprisals. This Disclosure Policy is intended to encourage and enable staff to raise serious concerns within the Council rather than overlooking a problem or blowing the whistle outside.
- 1.3 This Disclosure Policy has been devised in accordance with the provisions of the Public Interest Disclosure Act 1998 and seeks to bring into the open concerns of the staff and public relating to issues concerning dishonesty involving the Council.
- 1.4 This policy supports the Council's Anti Fraud and Corruption Policy, and makes it clear that concerns can be raised without fear of reprisals. It is intended to encourage and enable employees, Members and Governors to raise serious concerns within the Council, irrespective of seniority, rank or status, rather than overlooking a problem or reporting the matter externally.

2. Aims and Scope of the Policy

- 2.1 This policy aims to:
 - Provide avenues for staff to raise concerns and receive feedback on any action taken;
 - Allow staff to take the matter further if they are dissatisfied with the Council's response; and
 - Reassure staff that they will be protected from reprisals or victimisation for whistleblowing in good faith.

2.2 There are existing procedures in place to enable staff to lodge a grievance relating to their own employment. This Disclosure Policy is intended to cover concerns that fall outside the scope of that procedure.

2.3 That concern may be about something that:

- Is unlawful, or
- Is contrary to the Council's Standing Orders or policies, or
- Falls below established standards or practice; or
- Amounts to improper conduct

For example (this list is not exhaustive):

- Malpractice or ill treatment of a client/customer by a senior member of staff
- Repeated ill treatment of a client/customer, despite a complaint being made
- A criminal offence has been committed, is being committed or is likely to be committed
- Suspected fraud
- Disregard for legislation, particularly in relation to health and safety at work
- Breach of standing Financial Regulations
- Showing undue favour over a contractual matter or to a job applicant
- A breach of any code of conduct or protocol
- Information on any of the above has been, is being, or is likely to be concealed.
- Abuse of clients/pupils

2.4 The overriding concern should be that it would be in the public interest for the malpractice to be corrected and, if appropriate, sanctions applied.

3. Safeguards

Harassment or Victimisation

3.1 The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment or victimisation and will take action to protect staff when they raise a concern in good faith. The Council will treat any harassment or victimisation as a serious disciplinary offence to be dealt with under the Disciplinary Procedure.

3.2 This does not mean that if staff are already the subject of disciplinary or redundancy procedures, that those procedures will be halted as a result of their whistleblowing.

Confidentiality

- 3.3 The Council will do its best to protect a staff member's identity when they raise a concern and do not want their name to be disclosed. It must be appreciated that the investigation process may reveal the source of the information and a statement by staff may be required as part of the evidence.

Anonymous Allegations

- 3.4 This policy encourages staff to put their name to their allegation. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council.
- 3.5 In exercising the discretion, the factors to be taken into account would include the:
- seriousness of the issues raised;
 - credibility of the concern; and
 - likelihood of confirming the allegation from attributable sources.

Untrue Allegations

- 3.6 If staff make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against them. If, however, staff make malicious or vexatious allegations, disciplinary action may be taken against them.

4.	How to raise a concern
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- 4.1 Employees who raise concerns that fall within the scope of other Council procedures will not be dealt with in this procedure, but will be advised on the appropriate procedure to use. Such employees will still receive protection as detailed in this policy.
- 4.2 As a first step, staff should normally raise concerns with their immediate manager or supervisor. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the malpractice. If in doubt, contact with the Chief Executive, or the Director of Law and Democratic Services (the Council's Monitoring Officer), or the Head of Internal Audit.
- 4.3 Alternatively, staff can leave a message on the 24-hour Whistleblowing answer phone and fax service (telephone number 01793 464603) that shall be operated in accordance with the attached protocol. This service is strictly confidential and callers will not be asked to give their name if they do not want to.

- 4.4 Concerns are better raised in writing. Staff are invited to set out the background and history of their concern, giving names, dates and places where possible, and the reason why they are particularly concerned about the situation. If staff do not feel able to put their concern in writing, they can telephone or meet the appropriate officer. The earlier staff express the concern, the easier it is to take action.
- 4.5 Although staff are not expected to prove the truth of an allegation, they will need to demonstrate to the person contacted that there are sufficient grounds for the concern.
- 4.6 Advice and guidance on matters of concern may be pursued and can be obtained from:
- Chief Executive
 - Group Directors / Directors
 - Director of Law and Democratic Services (Monitoring Officer)
 - Head of Internal Audit
 - Any of those listed in paragraph 7.1
- 4.7 Staff may invite a trade union representative or work colleague to raise a matter on their behalf.

5. How the Council will respond

- 5.1 The action taken by the Council will depend on the nature of the concern and may:
- Be resolved by agreed action without the need for investigation
 - Be investigated internally
 - Be referred to the Police;
 - Be referred to the external auditor;
 - Form the subject of an independent inquiry
- 5.2 In order to protect individuals and the Council, initial enquiries will be forwarded to the Monitoring Officer who will consult with the Head of Internal Audit and the Chair of Standards Committee and decide whether an investigation is appropriate and, if so, what form it should take. The Monitoring Officer can decide to take no further action if a complaint appears to be trivial or vexatious. All such decisions will be reported to the next meeting of Standards Committee. Concerns or allegations that fall within the scope of specific procedures, for example discrimination issues, will normally be referred for consideration under those procedures.

- 5.3 Some concerns may be resolved by agreed action without the need for investigation and staff will be involved in those discussions. The Monitoring Officer shall report periodically thereon to the Standards Committee.
- 5.4 If an investigation is required, the Monitoring Officer will consult with the Head of Internal Audit and the Chair of Standards Committee and designate an appropriate officer to investigate the concern. Following this that officer will, within ten working days, write to the member of staff:
- Acknowledging that an investigation will be carried out
 - Indicating how he/she proposes to deal with the matter
 - Giving an estimate of how long it will take to provide a final response
 - Telling them whether any initial enquiries have been made
 - Telling them whether further investigations will take place, and if not, why not
 - Advising them that any investigation will be carried out in the strictest confidence; and
 - Keeping them informed of the progress of the investigation.
- 5.5 The amount of contact between the officers considering the issues and the staff member will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from staff.
- 5.6 When any meeting is arranged, staff have the right, if they so wish, to be accompanied by a union representative or work colleague who is not involved in the area of work to which the concern relates.
- 5.7 The Council will take steps to minimise any difficulties that staff may experience as a result of raising a concern. For instance, if they are required to give evidence in criminal or disciplinary proceedings, the Council will advise them about the procedure.
- 5.8 The Monitoring Officer will report on the outcome of any investigation to the Standards Committee who will monitor the implementation of the recommendation of the investigation.

6. How the matter can be taken further

- 6.1 This policy is intended to provide staff with an avenue to raise concerns **within** the Council. The Council hopes staff will be satisfied. If they are not, and feel that it is right to take the matter outside the Council, the following are possible contact points:
- Local Council member (if staff member lives in the area of the Council)
 - Chair or any member of the Standards Committee

- The External Auditor
- Relevant professional bodies or regulatory organisations
- Solicitor
- The Police
- An independent person or organisation nominated for the purpose by the Council
- Public Concern at Work. If staff do take this matter outside the Council, they need to ensure that they do not disclose confidential information or that disclosure would be privileged. Staff should check with the contact point about that.

7. The Monitoring Officer

- 7.1 The Monitoring Officer has overall responsibility for the maintenance and operation of this policy, and he will liaise as necessary with the Head of Internal Audit and Chair of Standards Committee.
- 7.2 The Monitoring Officer maintains a record of concerns raised and the outcomes (but in a form which does not endanger staff confidentiality) and will report as necessary to the Standards Committee.

8. The Law

- 8.1 This policy and procedure has been written to take account of the Public Interest Disclosure Act 1998, which protects workers making disclosures about certain matters of concern, where those disclosures are made in accordance with the Act's provisions.
- 8.2 The Act is incorporated into the Employments Rights Act 1996, which also already protects employees who take action over, or raise concerns about health and safety at work. For the avoidance of doubt, financial issues are covered by Section 151 Local Government Act 1972, Section 114 of the Local Government Finance Act 1988, The Local Government and Housing Act 1989, and Accounts and Audit Regulations 2003.

Ethical Framework Update

Standards Committee

Date: 29 January 2007

Author: Director of Law and Democratic Services (Monitoring Officer)

Wards Affected: All

Purpose

- To provide an update on various matters related to the Ethical Framework.

Recommendation

- That the Ethical Framework update be noted.
- That the Director of Law and Democratic Services be authorised to carry out the public advertisement and appointment process for Lay Member vacancies on the Standards Committee and to recommend appointments to Council.
- That the Director of Law and Democratic Services undertake a further desktop audit of ethical standards against criteria in the IDeA toolkit and report back to the next meeting.

1. Reasons

- 1.1 To keep the Standards Committee informed of issues of probity in the Council.

2. Detail

Lay Memberships

- 2.1 Mr Trevor Davies was appointed as a lay member for a 3-year term of office from May 2004, and therefore his seat on the Committee is due for re-advertisement in April 2007. The position advertised would be a 4 year term appointment to run up to April 2011.
- 2.2 The Relevant Authorities (Standards Committees) Regulations 2001 stipulate that a lay person cannot be a member of the Standards Committee unless:
 - The appointment is approved by a majority of the Members of the Council.
 - The position is advertised in a local newspaper.
 - The person has submitted an application to the Council.
 - The person has not within the period of five years immediately preceding the date of appointment been a Member or Officer of the Council.
 - The person is not a relative or close friend of a Member of the Council.

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial on 01793 463012 or Email staylor@swindon.gov.uk.

Ethical Framework Update

Standards Committee

Date: 29 January 2007

- 2.3 There is no prohibition on independent members standing again for a further term, if they so wish.
- 2.4 The Committee is asked to authorise the Director of Law and Democratic Services to carry out the appropriate public advertisement and appointment process for this and any future vacancies on the Standards Committee and to recommend appointments to Council in accordance with the current procedure.

Implications of the Livingstone Case.

- 2.5 Following the High Court decision in the Livingstone case a more restrictive view needs to be taken of when the Code of Conduct can apply to the actions of a Member. The Standards Board for England has issued Guidance to set out the position, as the Board currently understands it. A copy of the Guidance is attached at Appendix '1'.

Local Government and Public Involvement in Health Bill.

- 2.6 Summarised below are the current proposals in the Local Government and Public Involvement in Health Bill, which relate to ethical standards and politically restricted posts. The Bill follows on from the Local Government White Paper 'Strong and Prosperous Communities', which was issued in October 2006:
- The Code of Conduct requirements will not be limited to Members acting in their official capacity (cf *Ken Livingstone v Adjudication Panel for England*). Members will have to sign a new declaration. The change will be retrospective but not retroactive.
 - Complaints of breaches of the Code of Conduct will be made to local Standards Committees instead of the Standards Board for England unless the Standards Board intervenes. The Standards Committee can refer it to the Monitoring Officer or the Standards Board for England or decide to take no action. The complainant will have the right to require the Standards Committee to review its decision.
 - The Standards Board for England's general powers will be broadened. It will be able to require authorities to send them periodic returns about complaints and casework and about the functions of the Standards Committee and Monitoring Officer.
 - Standards Committees will have to be chaired by an independent member.
 - Regulations may provide for the creation of joint Standards Committees.

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial on 01793 463012 or Email staylor@swindon.gov.uk.

Ethical Framework Update

Standards Committee

Date: 29 January 2007

- There are a number of technical amendments to the ethical framework legislation.
- Standards Committees will decide appeals about the inclusion of a post on the list of politically restricted posts.

Revised Members' Code of Conduct

- 2.7 The proposed revised Code of Conduct was due to be issued for consultation by the Secretary of State in November 2006. Following discussions on 13th December 2006 with stakeholders, including the Standards Board for England and the Association of Council Secretaries and Solicitors (ACSeS), it was understood that the revised Code would be issued for consultation on or about 12th January 2007. It has not yet been issued although it is expected imminently.
- 2.8 When the proposed Revised Code is issued, it is anticipated that there will be a truncated consultation period of 6 weeks and subject to parliamentary time being made available, the intention is for the Revised Code to be in place by the end of March 2007, in time for its adoption by local authorities and its introduction following the May 2007 Council Elections. The timescale to enable this to happen and provide the necessary training will be challenging and an extraordinary meeting of the Standards Committee may need to be convened to consider this matter further.

Standards Board Publications

- 2.9 The Standards Board has issued a range of publications highlighting key issues of note for Standards Committees and Parish Councils.
- 2.10 Attached at Appendix '2' are Standards Board Case Alerts 2 and 3. Alert 2 looks at the case of a former mayor disqualified for inappropriate conduct towards a clerk and the distinction between legitimate criticism of council officers and disrespectful behaviour. Alert 3 analyses the implications of the High Court judgement concerning the Mayor Livingstone case for freedom of speech and members' private conduct. This should be read in conjunction with the Guidance previously referred to in paragraph 2.5 of this report.
- 2.11 Attached at Appendix '3' are the Standards Board Bulletin for November 2006 (Issue 31) and The Town and Parish Standard for November 2006 (Issue 8).
- 2.12 The Case Review (Number Four) publication is circulated to Members of the Committee with this agenda. This is an annual publication from the Standards Board giving key legal advice and developing policy in relation to the Code of Conduct, arising out of investigations conducted. It is also

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial on 01793 463012 or Email staylor@swindon.gov.uk.

Ethical Framework Update

Standards Committee

Date: 29 January 2007

available on the Standards Board website should members of the Council wish to access it. A paper copy of the publication is available from the Monitoring Officer should any member require this.

- 2.13 The Monitoring Officer will highlight key areas of interest at the meeting.

Berkshire, Oxfordshire and Wiltshire Independent Standards Committee Members' Forum

- 2.14 The latest meeting of the Forum was held on Friday 27th October 2006 at Wiltshire County Council, County Hall, Trowbridge. The Vice-Chair attended the meeting and is happy to answer any questions on it.

- 2.15 Attached at Appendix '4' are a copy of the minutes of the meeting, notes from the Vice-Chair, Mr Trevor Davies, and a copy of the presentation given by Mr Stephen Callender, Policy Adviser from the Standards Board.

Work Programme 2006/07 Update

Revision of Media Guidelines for Members

- 2.16 At the last meeting, the Committee agreed for consultation the revised Media Guidelines for Members, which form part of the Constitution and of the Communications Strategy.
- 2.17 The Head of Communications is currently consulting with Members on the revised Media Guidance for Members and will report back with the Guidelines for final approval to the next Standards Committee.
- Ethical Audit*
- 2.18 The Ethical Audit Working Group carried out a desktop audit of the authority on 19th January 2005 against the criteria set out in a Ethical Audit Toolkit prepared by the IDeA (Improvement and Development Agency). A copy is attached at Appendix '5'.
- 2.19 This was reviewed by the Committee in June 2005 who confirmed that this demonstrated compliance with all the elements required for the ethical framework and all the necessary processes and procedures were in place. Key actions were agreed in relation to a small number of areas including Ethical Training for Officers, Training for Parish Councils, Members Training, and these have been carried out.
- 2.20 It is recommended that the Monitoring Officer refresh and update the desktop audit and report back to the next meeting of the Committee so that a gap analysis can be carried out and the Committee determine appropriate next steps.

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial on 01793 463012 or Email staylor@swindon.gov.uk.

Ethical Framework Update

Standards Committee

Date: 29 January 2007

Alternative Options

- None

Risk Management

Financial and Procurement Implications

- None

Legal / Human Rights Implications

- The Relevant Authorities (Standards Committees) Regulations 2001 set out the requirements for the membership of Standards Committees, including the appointment of lay members.

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

- Monitoring of issues of probity in the Council underpins the Council's plans and policies and to the delivery of the 2010 objectives.

Consultees

- The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.
- Chief Executive
- Group Director, Resources
- Head of Communications

Background Papers and Appendices

- Appendix 1 – Standards Board Guidance – Implications of the Livingstone Case
- Appendix 2 - Standards Board Case Alerts 2 and 3
- Appendix 3 – Standards Board Bulletin for November 2006 (Issue 31) and The Town and Parish Standard for November 2006 (Issue 8).
- Appendix 4 – Berkshire, Oxfordshire and Wiltshire Independent Standards Committee Members' Forum – Minutes of meeting, notes from the Vice-Chair (Mr Trevor Davies) and a copy of the presentation given by Mr Stephen Callender, Policy Adviser from the Standards Board.
- Appendix 5 - Ethical Audit Desktop Audit dated 19th January 2005

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial on 01793 463012 or Email staylor@swindon.gov.uk.

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THE IMPLICATIONS OF THE DECISION OF COLLINS J IN THE LIVINGSTONE CASE

Following the High Court decision in the Livingstone case a more restrictive view needs to be taken of when the Code of Conduct can apply to the actions of a member.

There are two provisions of the code that apply not just when a member is acting "*in his official capacity*" but also "*in any other circumstances*." These are paragraphs 4 (bringing your office or authority into disrepute) and 5(a) (improperly using your position to secure or confer an advantage or disadvantage).

However, the interpretation of the words "*or in any other circumstances*" already limited by the Adjudication Panel for England in earlier cases has now been replaced by a much stricter interpretation arising from the decision of Collins J.

He found that "*any other circumstances*" is limited to situations where the member is "performing his functions." He added that the words "*performing his functions*" extend to actions beyond those carried out in a member's "official capacity."

Collins J went on to state that if Parliament wished to regulate the activities of members in their private life it needed to do so explicitly. He expressed the view that unlawful conduct was not necessarily covered and that a councillor convicted of shoplifting or drunken driving was not caught by the code if the offending had nothing to do with their position as a councillor.

He also found that as a consequence of the Human Rights Act the code could not interfere with members who express themselves forcibly using language that is inappropriate, intemperate or offensive so long as it is in their private life.

In relation to establishing disrepute Collins J stated that there was a "*real distinction between the man and the office*" and expressed the view that private capacity conduct will rarely be capable of bringing a member's office or authority into disrepute even if considered inappropriate, outrageous or unlawful. He found that while Ken Livingstone's comments may have tarnished his own reputation they did not tarnish the reputation of his office or authority. Collins J also cited conviction for theft and sexual misconduct as examples where the reputation of the office was not necessarily brought into disrepute.

Since the judgment the Board has been working with Government, the Adjudication Panel for England and ACSeS to clarify the scope of the Code, how cases should be handled at the present time, and whether the position should be rectified by future legislation.

In the light of the judgment, the Government has included proposals in the current Local Government and Public Involvement in Health Bill to make clear that the Code of Conduct is not limited to actions taken only in an official capacity and to delete the words "in performing his functions" from section 52. However, until that legislation, if enacted, comes into force we need to apply the law as declared by Mr Justice Collins.

The Standards Board for England is therefore issuing this guidance to set out the position, as the Board currently understands it. However readers should be mindful that while some aspects of the decision are very clear others are not. Therefore each case is likely to turn on its own facts.

The following principles emerge from the decision about cases where a member is not acting in an official capacity: -

1. For the code to apply, it will need to be established that, if the member was not acting in an official capacity, he or she had nonetheless used or sought to use his or her “status” as a member of the council. An example may be where a councillor, in dispute with a neighbour about their planning application, threatens to speak to colleagues on the planning committee. This relates to the wording in section 52 of the Local Government Act 2000, i.e. the “performing his functions” test (commonly known as the “using one’s position” test).
2. The second principle is that the use of the status must be of a type that is capable of amounting to a failure to comply with the code. An example would be where a councillor attended a private pre-meeting to discuss a report, which included a proposal to purchase some land for the council to redevelop new council offices, and then, immediately after the meeting, the member contacted the owner and anonymously agreed to buy the property for the price quoted to the council.
3. The third principle relates to establishing disrepute to his or her office or the authority. Under this test a case tribunal or standards committee will need to be persuaded that the misconduct is such as to damage the reputation of the member’s “office or authority” as opposed simply to damaging the reputation of the individual concerned.

It should be noted that the parameters of this test are far from clear because Collins J gave no indication of how it could be met in practice. What is clear from the Collins decision and from subsequent discussions with the President of the Adjudication Panel is that the bar will be set quite high. Therefore the test will not be easy to meet.

However the Standards Board believes that some of the considerations that might tip the balance in favour of disrepute to the office of member or to the authority in particular cases are: -

- a. situations where the member has put his or her private interests over and above the public interest, and therefore reduced the standing of his office, that is flouting public interest for private gain, for example by using their position to secure a personal profit
- b. similarly situations where a member defies important and well established rules of the authority for private gain; also
- c. where a member engages in conduct which directly and significantly undermines the authority’s reputation as a good employer or responsible service provider

It must be reiterated that these examples are not exhaustive and each case should be treated on its particular facts. In future, therefore, any case involving an allegation that a breach of paragraph 4 of the Code of Conduct has taken place when the member was not acting in an official capacity will need to be carefully scrutinised. In doing so, it will be necessary to establish whether or not the action complained of was carried out as a member or by reference to the capacity of member. Careful thought will also need to go into establishing how the action complained of does more than just bring the individual into disrepute.

Further advice on particular cases may be obtained from the Standards Board's Legal Department. Please ring 020 7378 5091 and your call will be allocated to a lawyer.

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Home > Case studies > The Case Alert > Case alerts > Case alert 2

The Case Alert 2, December 2006

Former Mayor disqualified for improper conduct toward clerk

Councillor Anthony Prior, the former Mayor of Chard Town Council and a member of South Somerset District Council, was disqualified for nine months, following a hearing of the Adjudication Panel for England on 21 June 2006.

The panel's tribunal found that Councillor Prior had breached the Code of Conduct by inappropriately asking the town clerk, for whom he had line management responsibilities, to go on holiday with him and offering her £500 as a present if she declined. The tribunal found that that by this conduct Councillor Prior brought his office into disrepute.

Councillor Prior later issued the clerk with a written warning when he found out she had sent a copy of a grievance letter to the Standards Board for England. Councillor Prior also issued a press release in which he made an unjustified public attack on the clerk and published her home phone number. The tribunal found that this behaviour was disrespectful to the clerk, and brought Councillor Prior's office into disrepute.

Not all of the complaints about Councillor Prior were upheld at the hearing. The tribunal found that on a number of occasions Councillor Prior's conduct was motivated by genuine concerns over the clerk's performance or the efficient running of the council.

The decision in the case helps to clarify the distinction between legitimate criticism of council officers and inappropriate conduct. Members should, of course, be able to exercise their right to challenge officers, and the Code of Conduct was not meant to constrain members from doing this. The decision indicates that members retain that right to challenge or criticise officers even where, as in this case, the relationship between the individuals is for any reason strained or has broken down.

However, members should always deal with performance issues in accordance with the authority's procedures, in an appropriate way and in the proper forum. It is inappropriate to discipline an employee in retaliation for a grievance, and to publicly criticise them in a press release.

Holiday invitation

Councillor Prior asked the clerk about the holiday in March 2005, after a meeting to discuss council business. He said he would like to take her on holiday, and said he would pay and buy her anything she needed. When the clerk did not respond to the proposal, Councillor Prior handed her an envelope with a cheque for £500 if she declined the holiday, which she did not accept.

The Adjudication Panel decided that Councillor Prior brought his office into disrepute by making this proposal. The tribunal considered that it was inappropriate for an elected member to extend such an invitation to a council employee when there was such a power imbalance in their working relationship, and when there was not the slightest encouragement from the employee. This was particularly the case in this instance, where the councillor held two senior posts in the council and was the employee's line manager.

The tribunal noted, however, that this was a highly personal conduct that did not reflect badly on the council as a whole. The only relevance for the council was that the proposal had been made during a meeting between a member and an employee to discuss council business. The tribunal therefore found that the councillor had not brought his authority into disrepute.

The tribunal also considered that this proposal would not, by itself, have justified disqualifying the councillor, especially as Councillor Prior and the clerk agreed to put the incident behind them and not to take any further action at the time.

Criticism of the clerk

There were a number of other allegations about Councillor Prior's behaviour toward the clerk which were not upheld at the hearing. These allegations concerned individual incidents between the holiday proposal and the written warning, as well as Councillor Prior's overall pattern of behaviour during this period.

In relation to these other allegations, the tribunal found that there was insufficient evidence that Councillor Prior had been improperly motivated in his behaviour towards the clerk. The tribunal found that Councillor Prior had genuine concerns about the clerk's performance, and that a number of comments he made about the clerk's work were not disrespectful.

The tribunal also found that Councillor Prior's conduct toward the clerk between the holiday invitation and the written warning was motivated by concern about the efficient running of the council, and so did not bring his office or authority into disrepute. The tribunal did not consider that the individual incidents constituted an improper pattern of behaviour.

Warning letter in response to grievance

The tribunal regarded Councillor Prior's warning letter to the clerk as inappropriate and disrespectful. Councillor Prior gave the clerk the written warning after she confirmed she had sent a copy of a grievance letter to the Standards Board. This followed an earlier meeting arranged by Councillor Prior to discuss concerns about her conduct.

The tribunal found that the decision to issue the written warning was a direct response to the clerk's grievance to the Standards Board, and this was not relevant to how he should have addressed performance issues. As the tribunal noted:

"[The clerk's] action of sending her grievance to the Standards Board had no bearing on the merits of any concerns the Respondent had about [her] performance as Town Clerk and yet it was the reason the Respondent issued the warning letter..."

The tribunal decided that Councillor Prior failed to treat the clerk with respect, and so failed to comply with the Code of Conduct, "as he was influenced in his decision to issue a written warning ... by the fact that she had sent a copy of the grievance to the Standards Board".

The press release

Councillor Prior also acted inappropriately when he issued a press release in December 2005. The press release related to his resignation as the Mayor of the town council, but made a number of comments about the clerk.

The press release inferred that the clerk concealed two letters from him, which had "proved expensive". He inferred that the clerk's actions were improper and led to financial losses for the council. He also implied that the clerk was misleading the council over her sickness. The press release also contained the clerk's ex-directory home phone number.

The tribunal found that these were unjustified attacks on the clerk, and regarded it as serious matter that Councillor Prior had publicly criticised the clerk's professional performance and impugned her integrity. The tribunal accordingly regarded the press release as a failure to treat the clerk with respect.

The tribunal also decided that Councillor Prior failed to comply with the Code of Conduct by disclosing confidential information. The clerk's home phone number was given in the press release without her permission, when she was off work sick and despite the fact that Councillor Prior was involved in a public conflict with her at the time.

The tribunal's decision

The tribunal took account of Councillor Prior's long record of public service, deep commitment to work as elected member, and the expressions of public support he had received, as well as the fact that his actions were not dishonest, his motivation after the holiday invitation was the efficient running of the town council, and he was open in dealing with the Standards Board.

The tribunal considered that issuing the warning letter to the clerk as a deliberate reaction to the grievance being sent to the Standards Board was a serious matter and strongly indicated that disqualification was appropriate. In addition, the tribunal noted that Councillor Prior saw the issuing of the warning letter as a technical failing rather than as a fundamentally flawed action.

The tribunal unanimously decided to disqualify Councillor Prior for nine months to adequately recognise the seriousness of his actions on the three separate occasions when he breached the Code, and to allow him to stand in the May 2007 elections.

A [summary](#) of this case is available on our site.

The [full decision](#) is available on the Adjudication Panel for England's website.

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Case Alert 3, January 2007

Implications of the judgment in the Mayor Livingstone case

The High Court judgment in the case concerning Mr Ken Livingstone, the Mayor of London, has significant implications for the interpretation of the Code of Conduct.

In particular, the judgment suggests that a member can only breach the Code of Conduct if they are performing their functions as a member, and that the Code of Conduct only applies to private conduct in limited cases. The Code covers members who misbehave when performing their duties, or who misuse their status while acting in a private capacity.

The judgment also established that the Code of Conduct cannot interfere with a member's right to freedom of speech in their private life.

The incident

Mr Livingstone had allegedly made offensive comments to a journalist on the evening of 8 February 2005, likening him to a concentration camp guard. Mr Livingstone was leaving a reception at City Hall when he was confronted by the reporter. During their exchange, Mr Livingstone asked the reporter whether he was "a German war criminal". The reporter pointed out that he was Jewish, and was offended by the remark, to which Mr Livingstone said: "Well you might be, but you're just like a concentration camp guard. You're just doing it 'cause you're paid to, aren't you?"

The Ethical Standards Officer investigating the case would ordinarily have referred this matter to the Greater London Authority's Standards Committee, but believed this was not appropriate because the London Assembly had already taken a view on Mr Livingstone's conduct. The Ethical Standards Officer therefore referred the matter to the Adjudication Panel for England.

The Adjudication Panel's case tribunal decided that Mr Livingstone had failed to comply with the Code of Conduct by bringing his office as Mayor into disrepute. The tribunal decided to suspend Mr Livingstone for four weeks from 1 March 2006.

Mr Livingstone appealed to the High Court against the decision, and the suspension was stayed pending the appeal.

Private capacity and disrepute

Mr Justice Collins, the judge presiding in the case, decided that Mr Livingstone had not been acting in his official capacity when he spoke to the reporter or performing his functions as Mayor. As a result, the requirement under paragraph 2(b) of the Code of Conduct, to "treat others with respect" while carrying out official duties, did not apply.

This still left the question of whether Mr Livingstone's conduct was covered by the duty to avoid behaviour which

could bring his office or authority into disrepute. This duty, under paragraph 4 of the Code of Conduct, applies when a member is acting in an official capacity, or in “any other circumstance”:

A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

Mr Justice Collins found that the “any other circumstance” is limited to situations where a member is *performing his functions* as a member of the authority. This is in accordance with the commitment a member makes on assuming office, to:

...give to the authority a written undertaking that in performing his functions he will observe the authority's code of conduct...

(Section 52(1)(a) of the *Local Government Act 2000*)

In this case, Mr Justice Collins found that Mr Livingstone was off-duty and not performing his functions as Mayor, and so paragraph 4 of the Code of Conduct did not apply to his behaviour.

This judgment means there are large areas of members' private lives, when they are not 'performing their functions' as members, which are not covered by the Code of Conduct. Even unlawful conduct, such as convictions for shoplifting, drink-driving, or sexual offences, would not be covered by the Code, if the offences have nothing to do with the person's position as a member (although members who are convicted of a criminal offence and sentenced to more than three months' imprisonment are automatically disqualified from public office for five years).

Mr Justice Collins also found that the Adjudication Panel had applied the wrong test in relation to the issue of disrepute. His view was that damage to the reputation of the member as a person did not necessarily affect the reputation of his or her office or authority. He stated that there was a “real distinction between the man and the office”. There was a distinction between “misuse of office”, which can bring disrepute on the office, and “personal misconduct”, which is unlikely to do so. So, a politician may tarnish their own personal reputation by making offensive or insulting comments, but not necessarily that of their office.

Mr Justice Collins expressed the view that private capacity conduct will rarely be capable of bringing a member's office or authority into disrepute. The Code of Conduct will only cover a member's private behaviour where there is a direct link between the conduct and the office – for example, where a member uses their status as a member in a private dispute.

Freedom of speech

The right to freedom of expression, under Article 10 of the *European Convention on Human Rights*, is not an absolute one, but is:

...subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others...

An earlier High Court judgment had already stressed the need for a high level of protection to be given to political views (*Sanders v Kingston* [2005] EWHC 1145) but made it clear that because of the Code of Conduct members acting in their official capacity were not free to abuse people.

However, Mr Justice Collins found that when a member is not acting in an official capacity or performing their functions as a member the right to freedom of speech includes the right to abuse people:

Anyone is entitled to say what he likes of another provided he does not act unlawfully and so commits an

offence under, for example, the Public Order Act ... Surprising as it may perhaps appear to some, the right of freedom of speech does extend to abuse.

Mr Justice Collins judged that it was disproportionate to apply the Code of Conduct to Mr Livingstone's remarks, as such a restraint on freedom of expression was not shown to be "necessary in a democratic society", even if the remarks were not political views.

The Code of Conduct cannot therefore interfere with a member's right to express inappropriate, intemperate or offensive views in their private life. This is in spite of what anyone might think of the views in question, and whether they are political opinions or personal abuse.

While Mr Justice Collins found that the statements were made in a private capacity and not covered by the Code, he nonetheless saw fit to criticise Mr Livingstone's comments to the journalist as "unnecessarily offensive", "intemperate", and "inappropriate", and suggested that he could have resolved the matter by making an apology.

The High Court's decision

The High Court allowed the appeal, set aside the finding that Mr Livingstone had failed to comply with the Code of Conduct, and quashed the suspension.

A [summary](#) of the case is available on our site

A copy of the [High Court's decision](#) is available via the Adjudication Panel for England's website.

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Welcome to the November issue of the *Bulletin*.

The Standards Board welcomes the emphasis placed in the White Paper *Strong and Prosperous Communities* on the links between high standards of conduct and strong, accountable, responsive leadership. With the introduction of legislation to implement a more locally based conduct regime with more powers for standards committees, our role will become one of a light touch regulator, ensuring the effectiveness of the new local framework. We fully support this devolutionary reform whilst recognising the challenges this provides for monitoring officers and standards committees. The Standards Board will work with all stakeholders as we develop and implement the legislation. We also look forward to the publication by the Department for Communities and Local Government (DCLG) of the revised Code of Conduct for consultation, and to a local government bill at the earliest opportunity.

There is much work to do in preparing for the introduction of the revised Code in time for the May 2007 elections, and we are committed to producing guidance and training materials to assist monitoring officers and standards committees in its implementation. We are also preparing for a series of eleven roadshows across the country in June 2007 to support you with the implementation of the revised Code, identify any early emerging issues, and prepare for the introduction of the local filter system for complaints in 2008. If you have ideas or suggestions for the content of these roadshow events, please email eilidh.murray@standardsboard.co.uk

Topics covered in this month's edition of the *Bulletin* include a monitoring officer's first hand perspective on preparing for a local investigation, a summary of key findings from the research project *A snapshot of standards committees*, how the eight monitoring officers of Suffolk share good practice, and a look into some specific issues such as prejudicial interests.

David Prince, Chief Executive

Case Review number four

A round-up of some of the most significant cases, decisions and trends so far. Available at www.standardsboard.co.uk or in hard copy for £15.00 by calling 0845 078 8181

Preparing for a local investigation — a monitoring officer's perspective

With well over half of investigations now being dealt with locally, we thought it would be useful to share the experience of a monitoring officer who has arranged for investigations to be conducted both in-house and by external providers. Michael Blamire-Brown, monitoring officer from Solihull Metropolitan Borough Council, explains his approach.

In undertaking local investigations the keyword is preparation! Don't wait until that letter arrives from the Standards Board asking you to undertake a local investigation.

Appointing an investigating officer

One issue which will hold up an investigation is the appointment of the investigating officer. I believe that as far as possible the monitoring officer should always use the power of delegation to appoint an investigator rather than take on an investigation personally. This keeps the monitoring officer free to keep an overview, and of course to advise the standards committee.

So where can you find an investigating officer? Here you have a choice. You can of course go to a professional firm specialising in investigations, particularly one which already has expertise in Code of Conduct issues. There are also experienced individuals offering their services in this area.

It is advisable to know about all the options, but thought should also be given to using an in-house investigator. From my experience to date, my recommended approach would be to build up in-house expertise, so that when an investigator is appointed, a sensible choice can be made between in-house talent and external providers. A look around your organisation may well reveal individuals with experience of investigations.

I have found that internal auditors will certainly have this experience and a good sense of ethical issues, as well as being seen as an independent investigator within the authority. Officers who have experience of disciplinary investigations should also be considered, and you may well find some officers with police experience. Trading standards officers and planning enforcement officers may be possibilities. So, surprising though this may be, by canvassing within your authority, you may very well find potential investigators who are both well qualified and also keen to practice their investigative skills.

Training your investigator

Having found your investigators the next task is to train them up for the job. You need to ensure your investigator can start within a reasonable timescale — the complainant and the member who is the subject of the complaint will expect something to happen quickly. Don't disappoint them. I have found that notifying the member of the local referral and the name of the investigator in the initial letter, followed by early contact by the investigator, is effective. If there is going to be a short delay before the investigation starts you must let them know and explain it.

If instructing an investigator externally, my approach (with benefit of hindsight) is to be very clear about fees. Get estimates, ask about fixed fees rather than hourly rates, and find out the time and cost of the various stages of investigation. I ask internal investigators to record the time taken so that we have some idea about costs.

Starting the investigation

Using standard documentation as a base will help get the investigation underway. I have all my precedent documents in electronic format so that they can easily be printed, emailed or supplied on a CD-ROM, and I have a very detailed instructions letter containing all the information about the complaint and contact details. I then hold a meeting with the investigator to go through this. It is important to make sure the investigator is comfortable with his task and is committed to the investigation, giving it priority within his own workload. Always give a target date for completion and require the investigator to report progress on achieving the agreed date.

So, having commissioned the investigation, can the monitoring officer sit back and wait for the report? Unlikely! The monitoring officer now needs to be prepared to go into a communicating role. Any investigation is going to bring questions from both members, officers and maybe the public. It is important to ensure that everyone, including the standards committee, understands the process and

what is happening. However, at the same time you must be careful not to give out confidential information or to prejudice the standards committee's consideration. The monitoring officer should also check that the member under investigation is supported and understands what will probably be an unfamiliar and stressful process.

The investigator may need some support but the monitoring officer needs to be careful not to get too involved in case he compromises his role as adviser to the standards committee. As I develop in-house skills in investigations, I am going to try and implement some peer group mentoring so that the investigator does have somewhere to turn for support.

The monitoring officer at this stage is planning ahead and looking at when the standards committee can meet, and what further training it needs. Don't wait until the investigator has reported before starting to make arrangements for a hearing.

Part of the preparation process is thinking through to the end product, the investigators report. It is important to give some guidance to the investigator on its format, as its quality of presentation may speak volumes about how you have commissioned the investigation.

Michael Blamire-Brown

Monitoring Officer, Solihull Metropolitan Borough Council

Standards committees: a national snapshot

The shift towards local ownership of the ethical agenda has focused greater attention on standards committees and monitoring officers. In the light of this, the Standards Board, in partnership with the Association of Council Secretaries and Solicitors (ACSeS), commissioned BMG Research to investigate their roles and activities. This research, entitled "*A study into the implementation, operation and role of standards committees*" was originally reported in the July 2006 *Bulletin*, and has now been completed and will be published shortly. This article summarises some of the key findings from this report. When published it will be available on our website at www.standardsboard.co.uk

The primary aim of this research was to provide information on the needs and levels of activity of standards committees and monitoring officers. It incorporated several strands, focusing on a number of key areas which included profile, training, the roles of monitoring officers, and experiences of recruiting independent members.

The full research findings have been invaluable in enhancing our understanding of the changing role of standards committees and monitoring officers, and providing insights into the way they operate. This is important as we prepare for further devolution of powers to local standards committees. The research found that, on the whole, monitoring officers report a positive working relationship with their standards committee (97%), feel supported by their chief executive (89%) and perceive providing advice to members as one of the positive aspects of their role (89%). Other findings indicate that monitoring officers feel their future workload will be impacted upon by the anticipated legislative changes, with 90% of respondents anticipating an increase in workload and only 45% stating that they feel prepared for the increase.

When interpreting the findings, it was useful to draw on previous research. Professor Gerry Stoker and his team from the University of Manchester have previously identified three types of standards committee: the lapdog, the watchdog and the guide dog. A lapdog committee is ineffective due to resource problems; the watchdog focuses on member conduct, operation of the Code of Conduct, and preparing members for hearings. The guide dog committee fulfils the statutory role yet sees itself as supportive as well as regulatory.

From the BMG Research it seems that many standards committees undertake activities which could be regarded as watchdog activities: monitoring the effectiveness of the Code of Conduct (98%), training/arranging seminars on the code of Conduct (97%), hearings (87%) and providing advice to members on the Code/ethics (81%). Given that these functions are statutory requirements, this finding shows there may be some uncertainty and/or a lack of understanding over the exact nature of their role and their responsibilities.

Encouragingly, there are some standards committees taking on activities which might be

regarded as those of a guide dog: 29% of respondents indicated that their standards committees had been involved in an overview of the whistle blowing Code, and 11% had been involved in responding to Ombudsmen investigations. These standards committees are not just concerned with the mechanics of the Code but on embedding an ethical culture within the organisation.

We would like to thank those of you who took part in this research. The Standards Board is now in the process of carrying out a new project, which will examine satisfaction with the advice and guidance we provide, and identify future needs. You may receive a questionnaire asking for your help with this research — if you do, please fill it in and return it to us. Thank you.

Summary reports of past and future research are available on our website at:

www.standardsboard.co.uk/research

Change to referrals criteria

The Standards Board for England has recently added to the criteria which are used to decide what complaints are referred for investigation. We now take into account the time that has passed since the conduct allegedly occurred. This is in addition to our general criteria — that a matter should be investigated when we believe it is:

- serious enough, if proven, to justify the range of sanctions available to the Adjudication Panel for England or local standards committees
- part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority, and there is no other avenue left to deal with it, short of investigation

The Standards Board decided to make this change because many complaints about matters that occurred a long time ago were seemingly resulting from political considerations or personal disputes. We wished to address this situation, whilst still retaining the ability to investigate serious complaints. This approach is consistent with that of many other regulatory bodies, which take into account the time that has passed when considering new complaints.

This change does not prevent us from investigating serious matters that have only just come to light.

We recognise that serious misconduct can be uncovered through an audit, review or change in administration and we would not wish to limit our ability to look into these matters. As always, we continue to assess each case on its merits, with serious cases being referred for investigation regardless of the length of time that has passed.

Sharing good practice

The eight local authority monitoring officers in Suffolk meet regularly with their association of local councils, carry out investigations for each other, and arrange for their standards committees to meet each other.

This group believes it is important for standards committees to know the national picture, not least because any decisions they take may be subject to appeal to a case tribunal. Last year, having considered how they could work more effectively in keeping their committees up-to-date with the national standards picture, they agreed to take it in turns to produce a bi-monthly standards update. This was to cover issues such as changes to the Code, important case tribunal decisions and even high court cases on the law of bias.

A standard template, without any branding, was created so that it could be used by all monitoring officers. Producing an issue does not take long — it is about a morning's work (which can be claimed as CPD) — and the result is circulated around all authorities in Suffolk. Each monitoring officer only has to produce an update every one and a half years which means the task is manageable.

Different councils use the update in different ways. Some circulate it to their councillors, some just to the standards committee. Others use it as source material for training officers and councillors or report it to their committee so it can be used as a basis for an updating session. It also helps monitoring officers ensure that the advice they give to councillors reflects the latest thinking of the Adjudication Panel. Councils can also consider whether their own practice should be changed as a result of case tribunal decisions.

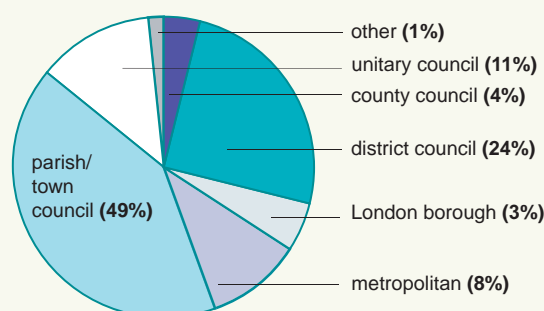
Thank you to Paul Turner of Ipswich Borough Council for providing the information for this article. If you would like a sample issue of the update, please contact him at paul.turner@ipswich.gov.uk

Referral and investigation statistics

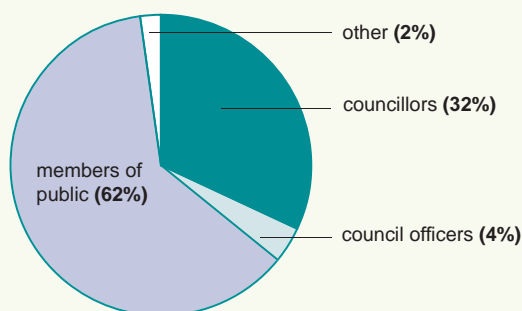
The Standards Board for England received 1996 allegations between 1 April and 31 October 2006, compared to 2427 during the same period in 2005.

The following charts show referral and investigation statistics during the above dates in 2006.

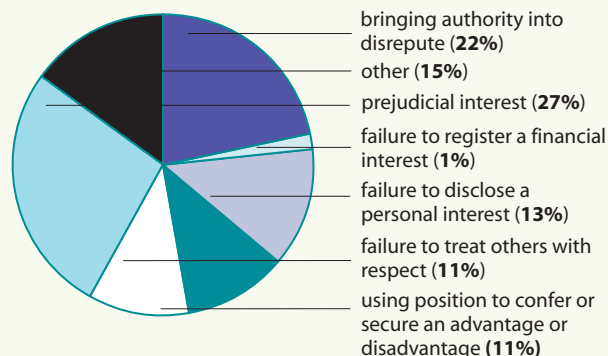
Authority of subject member in allegations referred for investigation



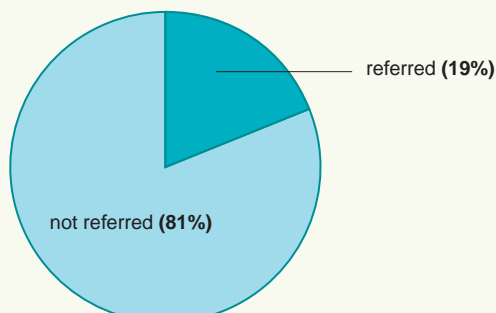
Source of allegations received



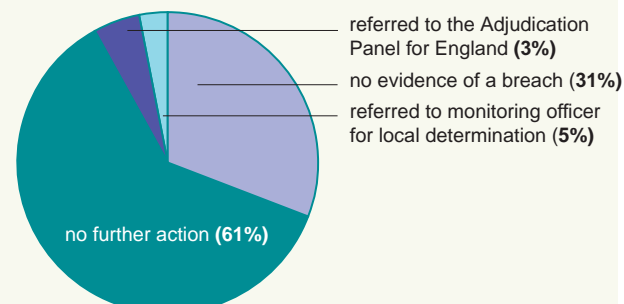
Nature of allegations referred for investigation



Allegations referred for investigation



Final findings



Registering land interests

Under the Code of Conduct, members have to register a range of financial and other interests including any land in the area of the authority in which they have a beneficial interest. The address or other description (sufficient to identify the location) of the land must be provided.

When the information to be recorded relates to a house or flat, this does not present any difficulty in providing an address. However, the registration of other land interests such as farm land, or other land with no address, is not as easy. In these circumstances members should be advised to include enough information with

the notice so that all landholdings can be identified. This could be done by providing map grid references or by attaching a copy of a map identifying the land holding(s), which can then be included with the member's register of interests.

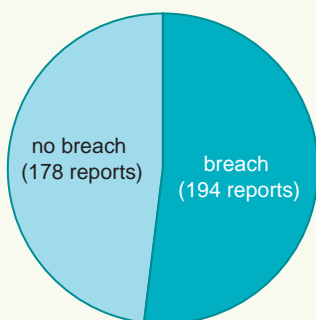
The requirements of the Code are precise. If a person wishes to inspect the register of interests to establish whether a member has a conflict of interest in a matter, they cannot do so if the information in the register is vague or general. Therefore, failure to record information in enough detail can be a breach of the Code.

Local investigation statistics

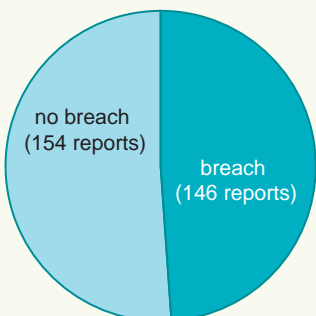
Of all cases referred since November 2004 for local investigation we have received a total of 372 reports — please see below for a statistical breakdown of these cases.

(NB: for the period 1 April — 31 October 2006, ethical standards officers referred 217 cases for local investigation — equivalent to 57% of all cases referred for investigation. Since 1 April 2006 there have been 11 appeals to the Adjudication Panel for England following standards committee hearings)

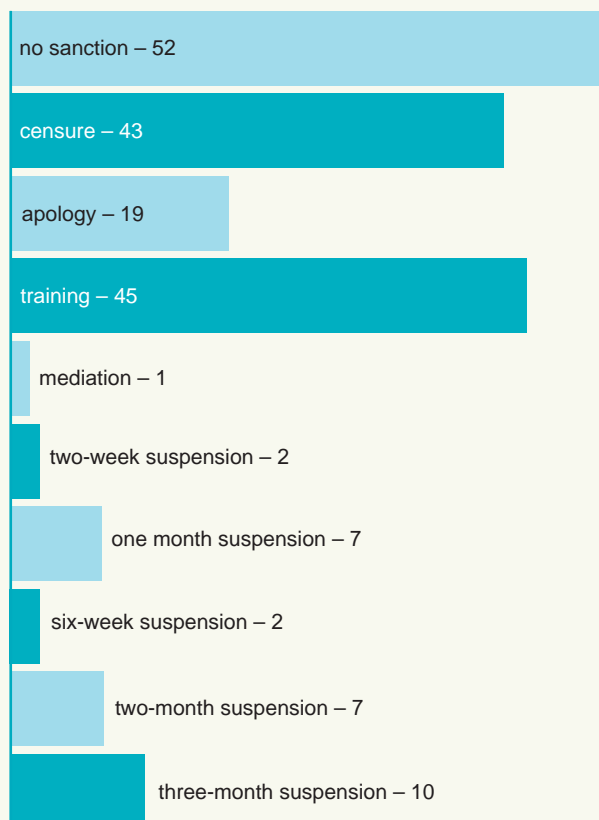
Monitoring officers' recommendations following local investigations



Standards Committee hearings



Standards committee determinations



Prejudicial interests — meetings of other authorities

There have recently been a number of enquiries submitted to the Standards Board about whether members with a prejudicial interest can attend a meeting of another authority of which they are not a member.

The Richardson judgement (which can be found in *Case Review number two*) makes it clear that attending a meeting of another authority is allowed under the Code of Conduct as long as it is in a purely private capacity. The member would not be able to attend a meeting of another authority in an official capacity, for example, to represent the

views of their own council, as they would be required to declare the interest and withdraw from the room.

So, for example, a parish councillor with a prejudicial interest in a planning application would be required to declare an interest and withdraw from the room during consideration of the matter by the parish council. However, they would be able to attend the district council planning committee, as long as this was in a purely private capacity, but would not be able to act as spokesperson for the parish council's views.

Prejudicial interests and discussions about unitary status

Some councils are thinking about local government structures for their areas in the light of the government's recent White Paper, and debates will take place in two-tier areas about unitary status. Members who belong to both a district council and a county council (dual-hatted members) will need to think about whether they have a prejudicial interest in such debates.

Dual-hatted members will have a personal interest in discussions about the future of each of their authorities. This is because they need to register their membership of other public bodies. But will this interest be prejudicial? The Code of Conduct says, "a member may regard himself as not having a prejudicial interest in a matter if that matter relates to ... another relevant authority of which he is a member."

Ultimately it will be a matter for the courts to decide if members have a prejudicial interest in such debates. The Standards Board takes the view that a member would not have a prejudicial interest. We do not believe that a member of the public, with knowledge of the relevant facts, would think a member's judgement of the public interest in such a debate would be prejudiced because they belonged to another authority. Members will therefore not need to declare a prejudicial interest in debates about unitary status.

For example, a councillor who has voted in favour of unitary status for their district council will also be able to take part in their county council's debates about unitary status. The member would, however, still need to declare a personal interest. Similarly a county councillor who has voted for unitary status for the county will be able to take part and vote about the same issue at the district level.

What about councillors who may be affected by the loss of significant allowances as a result of unitary proposals? The Standards Board takes the view that this issue can be covered by the exemption in paragraph 10(2) that relates to "any functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989" so that affected individuals can declare an interest and then take part in any debate.

The relationship between the Code of Conduct and the Licensing Act 2003

The Standards Board has received a number of enquiries about how the provisions of the Code of Conduct impact on members who may be involved in licensing committee activities. The following guidance is given to address the most frequently asked questions.

Are councillors who want to attend local authority licensing hearings/meetings exempt from the effects of the Code because of provisions in the Licensing Act 2003 (Hearings) Regulations 2005?

Paragraph 14 of the hearing regulations says that a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified. However, this provision does not override the provisions of your local Code. The Code of Conduct prevents a member with a prejudicial interest from attending any meeting of a committee, sub-committee etc of the council. The meaning of committee is not defined further. There is no reason to believe that it excludes a licensing committee established under the Licensing Act 2003.

Therefore, a member with a prejudicial interest in a licensing application cannot attend the meeting where that application is being discussed. It follows that they cannot act as an effective representative of an applicant or any other interested party. They should ask another councillor to take on this role.

If a member has a prejudicial interest, is he or she nevertheless entitled to attend such a hearing/meeting in a personal capacity as opposed to a representative capacity?

No. The Court of Appeal decision in *R (on the application of Richardson and another) v North Yorkshire County Council and others* [2004] 2 All ER 31 is binding. All members with prejudicial interests are excluded from hearings or meetings of a licensing committee in whatever capacity they purport to be attending.

There is no breach of an excluded member's right to a fair trial under Article 6 of the European Convention on Human Rights. This is because they can still submit written representations, and the committee has a wide discretion to conduct hearings to ensure that no unfairness arises on the facts of a given case.

The Collins judgement

The Standards Board for England has asked the government to clarify rules about the behaviour of 'off-duty' local authority councillors. A recent interpretation of the Code of Conduct means that councillors will generally not be bound by the Code when they are acting in an unofficial capacity.

This follows the decision of Mr Justice Collins during the High Court appeal by Ken Livingstone against a decision of the Adjudication Panel for England. The Panel suspended Mr Livingstone for a month for bringing his office into disrepute during an altercation with an Evening Standard journalist, but this was overturned by Mr Justice Collins.

He said in his judgement "If it is thought appropriate to subject a member of a local authority to a code which extends to his private life, Parliament should spell out what is to be covered". The judge commented on section 52 of the Local Government Act 2000, which imposes a duty on councillors to give an undertaking to observe the Code of Conduct 'in performing his functions'. He took the view that this duty limits the scope of the Code, so that conduct in a member's private capacity can only come within the scope of the Code where it is established that there was a direct link with the member's office. An example of when it could apply would be if a member uses his office for personal gain.

Examples of cases where he did not think that the Code was able to apply included where a member shoplifts, or is guilty of drunken driving. If the offending conduct had nothing specifically to do with the member's position as councillor, such actions will no longer be caught by the Code

This is a narrower interpretation than has previously been applied to the Code of Conduct. For the time being, the Code will need to be interpreted under the terms indicated by this High Court judgement, so that a member's conduct in their private capacity will only fall within the terms of the Code where there is a direct link between the conduct and the member's office.

A member who is convicted of a criminal offence and sentenced to more than three months imprisonment (whether suspended or not) is automatically disqualified from public office for five years. However, after the Collins judgement, it is possible for an individual to be imprisoned for two months for offences such as defrauding the council of housing benefit, or downloading child porn, and to remain as a councillor until removed by the electorate.

The Standards Board has considered the implications of the judgement and is preparing guidance on its interpretation.

in this issue...

- 1 **The new Code of Conduct: key changes**
- 3 **Developing good local governance**
The bid for programmes to support town and parish councils.
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- 4 **Moving forward with town and parish councils**
Standards Board initiatives.

plus...

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Welcome to the eighth issue of the *Town and Parish Standard*.

You may have met Standards Board for England staff recently when we attended this year's National Association of Local Councils (NALC) conference. The conference provided a good opportunity for us to engage openly with a number of you to hear what we are doing well, what we could do better, and how we can help you further in the future. There was considerable discussion around the new Code of Conduct and how distinct this would be from the present one. Overall, many of you welcomed our proposals for the revised Code and felt that it would help clarify a number of areas, most notably around declaring interests.

We were also present at all of the recent party conferences and again were able to have interesting discussions about our work with those of you we met. You may be aware that a group of Conservative MPs, called the Cornerstone Group, recently published a paper on the workings of the Standards Board entitled *A Question of Standards: Prescott's Town Hall Madness*. The paper contained a number of misinterpretations regarding the workings of the standards framework, monitoring officers, and the Standards Board, and we have responded to the paper on our website — to read this response, please visit www.standardsboard.co.uk/pressoffice and click on 'current press releases'.

This issue of the *Town and Parish Standard* should help to clarify some of the key changes in the Code of Conduct that we anticipate coming into effect next year. It looks at what types of complaints we have declined to refer for investigation and discusses what we are doing to support the work of parish and town councils across England. Don't forget you can contact us at any point to find out more about our work and about the Code — see the end of this newsletter for contact details.

The new Code of Conduct: key changes

As this edition of the *Town and Parish Standard* goes to print, the Department for Communities and Local Government is preparing to release a revised Model Code of Conduct for public consultation. As reported previously in this newsletter, the government agreed to implement all of our recommendations for the new Code, and we have been working with them towards its introduction in time for the elections in May 2007.

The headline recommendation to ministers last year was to make the Code of Conduct clearer, simpler and more positive. Although we don't yet have the exact wording of the new Code, we would like to take this opportunity to explain the key changes that we anticipate coming into effect, and to help town and parish councils participate in the public consultation.

Public service interests

Our major concern has always been that the interests regime, whether in reality or perception, was over-restrictive and prevented councillors from

properly representing their communities. To help address this issue, a new category of public service interest is proposed. Under the proposals, members who serve on another public body (known as dual-hatted members) would normally simply need to register this interest on the member's register of interests. Only if they want to speak in connection with the matter would they need to declare an interest. This proposal aims to cut down the number of declarations that need to be made at the start of meetings.

Also, members would not have to declare a prejudicial interest unless there is a genuine conflict of interests between the parish council and outside body, and the matter under discussion relates directly to the public body on which the member serves, for example, a grant application or regulatory decision which has an immediate effect on the body.

"Our major concern has always been that the interests regime, whether in reality or perception, was over-restrictive and prevented councillors from properly representing their communities. To help address this issue, a new category of public service interest is proposed."

Under the existing Code, members with prejudicial interests arising from their service on another public body must leave the meeting when the relevant item begins to be discussed.

Under the revised Code, even where it is a prejudicial interest, dual-hatted members would be allowed to address the meeting and answer questions before withdrawing prior to the main discussion.

In addition to those members who have a public service interest, members of charitable bodies and lobby groups would also benefit from the same rules and would only be prevented from voting when a matter directly affects the organisation they represent.

Disclosure of confidential information

We have proposed that, under the revised Code, 'confidential' information can, in certain circumstances, be disclosed in the public interest.

We are preparing guidance to be published when the revised Code comes into force, which will explain the public interest disclosure provisions more fully.

This will help in determining whether a disclosure is in the public interest (including how to determine the reasonableness of a disclosure of confidential information) and when it is not, for example if it is related to specific details of ongoing contract negotiations.

Bullying

Bullying, although rare, is a serious issue for local authorities. It is extremely unpleasant for the people on the receiving end, and it can also have a corrosive effect on the organisation and ultimately affect the authority's performance — especially as there may not appear to be a straightforward way to resolve the situation.

As a result of general concern in local government about instances of bullying, and the need to prevent and deal with it, a specific reference to bullying will be featured in the revised Code.

We will be producing guidance after the new Code comes into force which will set out what conduct might constitute bullying, how to prevent bullying, and how to provide evidence of bullying.

Disrepute

The Standards Board recognises the view expressed by some that only misconduct which relates to official duties should be regarded as capable of bringing the authority into disrepute.

However, in line with the majority of views received during consultation, we believe that the Code of Conduct should continue to cover certain behaviour outside of official duties, but that this should be limited to unlawful conduct.

The Standards Board therefore proposes that the provision relating to disrepute in the original Code is clarified, so that only unlawful activities such as criminal or cautionable offences committed outside of a member's official duties are subject to the Code. Civil matters or merely objectionable conduct in private will not be covered.

Next steps

We anticipate that the government will announce a timeframe shortly for the introduction of the revised Code. We are keen to see the changes implemented as soon as possible, but have also stressed the importance of getting the details right.

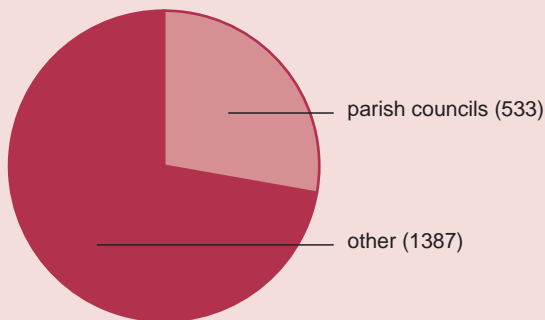
When the new Code comes into force, the Standards Board will produce guidance to help you navigate it, including a new DVD to examine the Code in greater detail, as well as the specific guidance mentioned above.

Parish and town council referral and investigation statistics

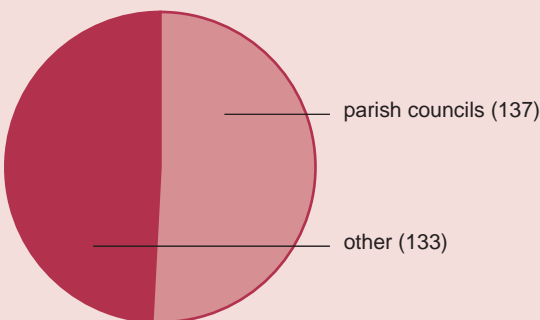
The following charts compare the parish experience with that of other local authorities, for the period 1 April 2006 to 31 August 2006.

Key ■ parish councils ■ other

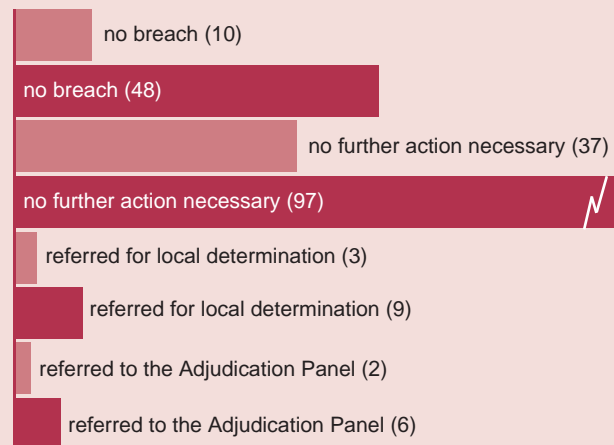
Number of allegations received (total: 1920)



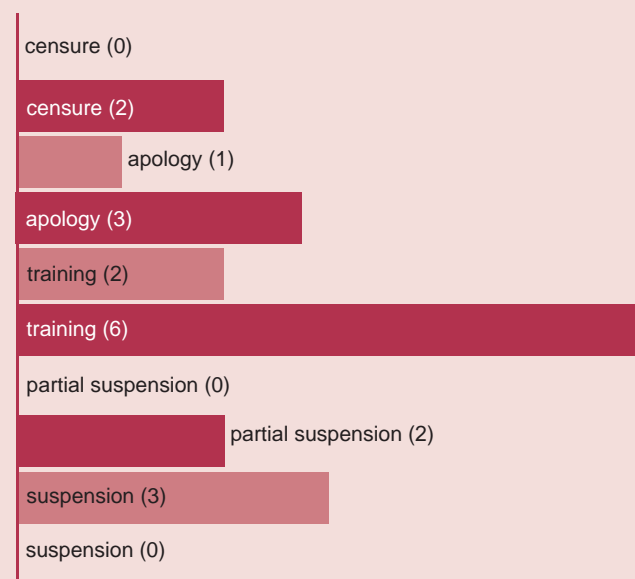
Number of allegations referred for investigation (total: 270)



Ethical standards officers' final findings



Standards committee determinations in cases that have been heard



In some of these cases, the member concerned had been given a sanction of more than one description. None of these hearings resulted in a finding of no breach or no sanction.

Developing good local governance

The Standards Board, the NALC, the Society for Local Council Clerks (SLCC) and the Improvement and Development Agency (IDeA), are submitting a joint bid to the Department for Communities and Local Government (DCLG) for funding for three projects aimed at supporting the work of parish and town councils and encouraging high standards.

The first is a peer-mentoring programme, which will match existing trained councillor mentors with other parish and town councils to share knowledge around good practice.

Secondly, an ethical governance toolkit will be developed to give good practice advice on how to make parish councils work more openly and effectively, and to help parish councillors in their day-to-day roles. The third programme will develop a model compact to encourage greater partnership working between county associations of local councils and the standards committees of principal local authorities in their areas.

Look out for the next edition of this newsletter for an update on this bid and details of how you could get involved if it is successful.

The referrals process — what types of complaints don't we refer?

The Standards Board is obliged to consider every complaint made to us in writing and decide whether to refer it for formal investigation. One purpose of the referral process is to filter out those that do not merit investigation.

With plans for authorities to receive and filter complaints from 2008, we thought it would be useful to look at some types of complaint that we have recently declined to refer for investigation.

Complaints about the council or council officers

We frequently receive complaints that councillors have breached the Code of Conduct when in actual fact the substance of the complaint is about dissatisfaction with a decision taken by the authority as a whole. This can be seen in a recent complaint about play parks.

The complainant related his various concerns over a parish council's actions in respect of the play parks and stated that that his complaint was against the chair of the parish council because, as chair, "he is responsible for all decisions and actions taken by the council". We did not refer this matter for investigation, as we do not have jurisdiction to investigate the merits of decisions taken by an authority and cannot hold individual councillors responsible for collective decisions.

Complaints about correspondence

Another common complaint that we generally do not investigate concerns members failing to provide a substantive response to correspondence. For example, a member of a London borough was alleged to have failed to give a meaningful response to the complainant's many emails, and to have decided to deal with future correspondence from the complainant under the council's vexatious correspondence procedure.

In deciding not to investigate this, we noted that councillors are entitled to invoke their authority's vexatious correspondence procedure if they feel it is appropriate, and it is not for the Standards Board to comment on the appropriateness of this decision. We also noted that the Code does not require members to respond to every item of correspondence.

Complaints about pre-Code incidents

We often get complaints about actions that occurred before the Code of Conduct was adopted or before the individual in question was elected. One case of this nature concerned recent publicity in the local

press over a district councillor's conviction, 20 years ago, for the theft of a small sum of money. The complainant alleged that by being a convicted thief the councillor in question had brought his authority into disrepute. We noted that the Standards Board does not have jurisdiction over matters that occurred before the adoption of the Code of Conduct.

Moving forward with town and parish councils

In addition to the capacity-building bid discussed above, other Standards Board initiatives are taking place specifically in relation to individual parishes.

Where we have concerns about the number of allegations we have received about a particular parish, we will assess whether there may be ways, other than simply investigation of individual members, of solving the problems. If so, we will get in touch with key local people such as the county secretary, standards committee chair, Society for Local Council Clerks representative and monitoring officer to see if we can develop an action plan.

The action plan may involve specific training programmes, mediation services or other activities. It has already helped to develop local solutions in a number of areas to address deep-seated problems and we hope to be able to expand our capacity to support local solutions in the coming years.

Contacts and more information

We would like your ideas and suggestions for future newsletters, along with any questions or feedback. Please send comments to:

- tpstandard@standardsboard.co.uk
- The Standards Board for England
First floor, Cottons Centre
Cottons Lane
London SE1 2QG

More information

You can get more information on the Standards Board for England and the Code of Conduct, including case summaries, frequently asked questions and guidance for members, from our website at:

www.standardsboard.co.uk

INDEPENDENT MEMBERS' FORUM

Berkshire, Oxfordshire and Wiltshire Standards Committees

NOTES of a MEETING of the INDEPENDENT MEMBERS' FORUM held at COUNTY HALL, TROWBRIDGE on FRIDAY 27 OCTOBER 2006.

PRESENT:

Rosemary Lansdowne	Monitoring Officer	Royal Berkshire Fire Authority
John Quinton	Independent Member	Royal Berkshire Fire Authority
Paul Lipscomb	Independent Member	Slough Borough Council
James Rees	Independent Member	West Berkshire Council
David Comben	Independent Member	Wokingham District Council
Peter Cleasby	Independent Member	Thames Valley Police Authority
Ken Giles	Independent Member	Cherwell District Council
John Lay	Independent Member	Oxford City Council
Malcolm Butler	Independent Member	South Oxfordshire District Council
Bob Philpott	Independent Member	North Wiltshire District Council
Rod Job	Independent Member	Salisbury District Council
Trevor Davies	Independent Member	Swindon Borough Council
Kurt Paulus	Independent Member	West Wiltshire District Council
Tony Frost	Independent Member	West Wiltshire District Council
Peter McGuigan	Independent Member	Wiltshire County Council
Catherine O'Sullivan	Independent Member	Wiltshire County Council
Keith Shipman	Independent Member	Wiltshire County Council
Ian Gibbons	Monitoring Officer	Wiltshire County Council
Marie Todd	Democratic Services Officer	Wiltshire County Council
Digby Barker	Independent Member	Wiltshire and Swindon Fire Authority
Ron Flux	Business Manager	Wiltshire Police Authority
Bruce Claxton	Independent Member	AIMSce
Stephen Callender	Policy Officer	The Standards Board for England

1. **Welcome**

Peter McGuigan, Independent Chairman of the Wiltshire County Council Standards Committee, welcomed participants to the meeting.

2. **Apologies for Absence**

Apologies for absence were received from:

Angela Lee	Independent Member	Reading Borough Council
Michael Field	Independent Member	Slough Borough Council
Steven Quayle	Monitoring Officer	Slough Borough Council
June Cook	Officer	Slough Borough Council
David Hollings	Monitoring Officer	West Berkshire Council
Charles Elly	Independent Member	Royal Borough of Windsor and Maidenhead
Roger Sparrow	Independent Member	Royal Borough of Windsor and Maidenhead
Anita Grosz	Independent Member	Wokingham District Council
Sue Nelson-Wehrmeyer	Monitoring Officer	Wokingham District Council
Christopher Turner	Independent Member	Oxford City Council
Diana Woodhouse	Independent Member	Oxford City Council
Jeremy Thomas	Monitoring Officer	Oxford City Council
Peter Clark	Monitoring Officer	Oxfordshire County Council
Robert Elmore	Independent Member	Oxfordshire County Council
Margaret Reed	Monitoring Officer	South Oxfordshire
Tim Sadler	Monitoring Officer	Vale of the White Horse District Council
John Gunn	Independent Member	Vale of the White Horse District Council
Caroline Redzikowska	Monitoring Officer	West Oxfordshire District Council
Gordon Halliday	Independent Member	West Oxfordshire District Council
Stuart Harrison	Independent Member	West Oxfordshire District Council
Margaret Thompson	Independent Member	West Oxfordshire District Council
Alan St George Savill	Independent Member	Kennet District Council
Philip Hamilton	Officer	Kennet District Council
James Carine	Independent Member	North Wiltshire District Council and Wiltshire Fire Authority
Jane Clarkson	Officer	Salisbury District Council
Paul Morris	Independent Member	Swindon Borough Council
Keith Strickland	Monitoring Officer	Wiltshire and Swindon Fire Authority

John Adams
Anthony Hadfield
David Jones

Independent Member
Independent Member
Independent Member

Paul Thomas

Solicitor

Wiltshire Police Authority
Wiltshire Police Authority
Thames Valley Police
Authority
Thames Valley Police
Authority

3. Notes of the Previous Meeting

The Forum received the notes of the previous meeting held on 21 April 2006.

4. Presentation by Bruce Claxton (AIMSce)

Mr Claxton gave a presentation regarding the Independent Standards Committee Members Association which had recently been set up. Mr Claxton's address given at the inaugural meeting of the Association had been circulated with the Agenda. The presentation covered the following issues:

- The role of independent members.
- The need for an Association. Mr Claxton explained that in some parts of the country the area forums did not meet and some members were not able to attend their local meetings.
- The benefits of membership. The Association aimed to empower independent members to enable them to fulfil their role and function. Members would be able to exchange views, comments and make recommendations. They would receive a regular newsletter and would have access to the Association's website.
- The costs of membership. This would be £15 joining fee, £10 membership fee and £5 for half yearly membership.
- Meetings. There would be three meetings per year and electronic communication as necessary.
- The nature and philosophy of the organisation.
- Recruitment methods.
- Corporate plan for the year.

Questions Members then asked the following questions:

- (a) What is the legal status of the organisation?

Mr Claxton explained that the organisation currently had charitable status but that further work would be taking place to clarify this issue.

- (b) Could becoming a member of the Association rob members of their independence?

Mr Claxton replied that the LGA and other bodies had welcomed the creation of such an Association. There was no intention to make the Area Forums redundant or to jeopardise members' independence.

- (c) The Association appeared to be a pressure group so it must have an agenda. Why are the minutes and reports not available to the public on the website?

Mr Claxton explained that if minutes were available to everyone on the website then they would be receiving a free benefit that members had contributed towards.

The Chairman thanked Mr Claxton for attending the meeting and for his informative presentation.

5. **Presentation by Stephen Callender, Policy Officer for the Standards Board**

Mr Callender gave a presentation covering the following matters:

- Standards Board Case Handling. It was noted that 68% of cases were now being dealt with at a local level.
- Changes to the Framework. Members noted the implications of the Local Government White Paper which also indicated a further move towards a local framework. There were proposals within the Paper to increase the number of Parish and Town Councils which could lead to an increased workload for Standards Committees. It was therefore important to allow flexibility for joint working between different Authorities if necessary. There could also be a role for Sub-Committees of Standards Committees to deal with complaints.
- The new role of the Standards Board. This would be geared to providing guidance, advising on good practice and improving the effectiveness of Standards Committees.
- Clear guidance would be required to ensure consistency in dealing with complaints.
- The New Code of Conduct. The new Members' Code of Conduct was expected to be issued for consultation in the very near future. The consultation would last until the end of December and would be brought into effect in time for the local elections in May 2007. Rules on interests would be simplified and would empower members as community advocates. There would also be a new category of public service interest and a specific provision on bullying.

Members then asked questions and made comments on the following issues:

- It would be helpful if the new Code of Conduct could state that the public service interest also applies to Police and Fire Authorities.
- It should be made clear that the Code also applies to Co-opted members.
- Members should be encouraged to declare interests even if they intend to vote and speak – the guidance should make this clear.
- To ensure consistency of decisions regarding complaints referred locally it would be helpful to receive guidance on mitigating or aggravating circumstances.
- Mr Callender stated that the Board may require an annual return from Local Authorities for monitoring purposes. He confirmed that the Standards Board would only be monitoring the complaints process and not other aspects of the work of Standards Committees.
- It was confirmed that authorities could combine to hold complaints hearings but that no size would be prescribed. It was noted that this could be problematic in certain areas due to political arrangements.
- Mr Callender confirmed that a Standards Committee could decide that there is no case to answer when considering a complaint.
- It was important for the Standards Board to take into account the fact that all Standards Committees were different and had varied terms of reference.

The Chairman thanked Mr Callender for his presentation which had been very helpful.

6. **Open Forum** Members raised the following matters:

(a) Resources

Members queried whether more resources would be allocated to Standards Committees in view of their increasing workload. Mr Callender confirmed that the Standards Board had raised this issue with the Government Department.

(b) Status of Independent Members

A question was asked as to whether independent members should be considered as members of their Local Authority and what their status actually was. It was confirmed that independent members were co-opted under the relevant Act for a statutory purpose. The legislation permitted independent members to be members of the Standards Committee and to carry out their role relating to this position. They were also able to remain in meetings when Part II items were considered.

(c) Appeal Against Decision of Adjudication Panel

Some members expressed concern about the recent case involving the Mayor of London who had successfully appealed against the decision of an Adjudication Panel for England. It had been found that the Panel had failed to recognise the real distinction between the man and the office. This was at variance to current guidance. Mr Callender confirmed that the Standards Board would shortly be issuing further advice as a result of this case.

(d) Keeping Informed

Members asked how they should keep up to speed on current issues, particularly with regard to complaints hearings. It was suggested that they should try to attend any Adjudication hearings being held in their areas. This would provide a valuable training opportunity.

Members agreed that it would be very helpful if Monitoring Officers circulated details to each other regarding hearings being held in their areas. They could then forward details to independent members to enable them to attend if they wished. It was also suggested that members could attend a Magistrates Court hearing which would be run along similar lines to give them an idea of how such hearings should be carried out.

7. Date and Venue of Next Meeting

AGREED: To hold the next meeting at West Berkshire Council in Newbury in April 2007 on a date to be confirmed.

(Duration of Meeting 11am to 1pm)

The Officer who has produced these notes is Marie Todd of Democratic Services, Wiltshire County Council, Direct Line 01225 713011, e-mail marietodd@wiltshire.gov.uk

NOTES OF THE INDEPENDENT MEMBERS REGIONAL FORUM MEETING
HELD ON FRIDAY 27TH OCTOBER 2006 AT WILTSHIRE COUNTY HALL

The meeting commenced at 11.00 hours on Friday 27th October 2006 in a large meeting room at Wiltshire County Hall Trowbridge following coffee at 10.30 hours.

The meeting was attended by approximately 28 people with representatives from most of the Council, Fire and Police Standards committees in Wiltshire and Independent Members and Monitoring Officers from a number of authorities in Oxfordshire and Berkshire.

The meeting was chaired by Peter McGuigan the Chair of Wiltshire County Councils Standards Committee and Stephen Callender Policy Advisor for Standards from the Standards Board for England was present.

Apologies for absence were not read out but will be attached to the minutes.

The notes of the meeting held on 21st April 2006 at Bracknell Forest Council Officers were accepted as accurate and no matters arising were raised. (Copy of minutes were attached to the Swindon Standards Committee agenda held on 24th July 2006)

Bruce Caxton, Chair of the newly formed Independent Members Association and Chair of the Isle of Wight Standards Committee gave a presentation covering the following issues.

The membership of the Independent Members Association currently stands at 50 approx. and 3 members pump-primed the 9K start-up costs

The members receive a regular newsletter and access to committee meeting minutes which are also on the web but minutes and newsletter not available to non-members as would be a free service.

The Association is registered as a charity and sees itself as a pressure group with an agenda to lobby the Standards Board and relevant government departments e.g. White Paper consultation, Revised Code of Conduct issues.

Bruce advised that the Standards Board does not have a list of independent members details or numbers and make up to Standards Committees in England and they are to be asked if it is advisable to hold this information. (There may be Data Protection issues to prevent this happening).

Stephen Callender, Policy Advisor from the Standards Board for England gave a presentation which covered the following issues.

Details of Standards Board case handling – numbers attached. Additional point was that 38% of Adjudication Panel hearings highlighted shortfalls in local procedures.

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Presentation to Independent Members' Forum – 27th October 2006

Steve Callender
Policy Adviser

Confidence in local democracy



Standards Board case handling

- Number of complaints received in 2005/06: 3,836
- Number referred for investigation in 2005/06: 687
- 57 standards committee hearings
- 77 cases were presented by the Standards Board to the Adjudication Panel

68% are now dealt with at a local level

Confidence in local democracy

Changes to framework

- White Paper – response to Graham Committee
- New Code of Conduct

Confidence in local democracy

What this means for the Board

- Champion and promote high standards of conduct
- Investigate cases of national significance
- Help authorities ensure high standards of conduct
- Transition to the local filter
- Power to withdraw local filter
- Improve effectiveness of standards committees
- Ensure MOs are resourced and capable
- New Code, supported by training and guidance

Confidence in local democracy

Issues to consider

- Balance of local discretion and consistency
- Investigation only option?
- Impact on standards committees
- Combining committees?
- Independent members – skills and recruitment

Confidence in local democracy

The New Code of Conduct

- The Code should be simpler, more enabling and owned by members
- Include the general principles as a preamble to the Code
- Rules on interests should be simpler and empower members as community advocates
- New category of public service interest
- Greater clarity on confidentiality
- Remove the duty to report breaches
- Include a specific provision on bullying

Confidence in local democracy

Interests – New Proposals

- Simpler and more enabling
- Empowering community advocates
- Reduce number of personal interests to be declared.
- Amend the definition of personal interests - members needn't declare an interest where it is merely something they share with their ward
- 'Public service interests' to be treated differently
- Greater local discretion to grant dispensations to members with prejudicial interests for community advocacy.

Confidence in local democracy

Looking ahead

- Implementation of the new Code
- Provision of guidance and training materials
- Re-orientation to strategic regulatory role
- Introduction of the local filter
- Building the capacity and effectiveness of MOs and standards committees

Confidence in local democracy

Ethical Audit Desktop Analysis
Matrix of Key Information held by Swindon Borough Council

Annex 1

	Key Information	Held	Comment:	Possible area of Review
1	(New/Draft) Constitutions/ Current Decision Making Framework (ie the committees and sub-committees)	Yes	Constitution last updated June 2004. Considered fit for purpose, up-to-date and well-communicated by 2004 CGI report, although not well-developed in relation to scrutiny functions.	
2	Procedural Standing Orders (Old And New)	Yes	Updated in Constitution – June 2004	
3	Contracts Standing Orders	Yes	Updated in Constitution – June 2004, adapting CIPFA model.	
4	Employees' Code Of Conduct	No	Existing terms and conditions of employment are in place but a Comprehensive Employee's Code has not been adopted. The Statutory Code has been awaited for some time. A consultation paper 'A Model Code of Conduct for Local Government Employees' was issued in September 2004 by the ODPM to which the Standards Committee responded. The Council adopted an Anti-Fraud and Corruption Strategy in November 2001, and investigations are reported to the Standards Committee.	The Statutory Code has not yet been issued.
5	Members' Code Of Conduct (Current And New Draft Plus Local Variations) plus Local Guidance	Yes	Adopted by the Council in May 2002 and based on the model code from the Secretary of State. The Standards Board is about to consult on a review of the Code and this will be referred to the Standards Committee. No local guidance has been issued but members are kept updated by the Monitoring Officer as to how the Code is being interpreted by the Standards Board and the Adjudication Panel.	Graham Committee has commented on the Code and the Standards Board is about to start a consultation on it. All Councillors have been asked for their views on the operation of the code.
6	Confidential Reporting Procedure	Yes	The Whistleblowing Policy was approved in November 2001. A number of complaints have been received and investigations undertaken which are reported to Standards Committee. Employees are reminded about the procedure via staff communications, including in the Core Brief.	Currently under review by Standards Committee.
7	Terms Of Reference of the Standards Committee	Yes	The Standards Committee has an extended terms of reference, beyond the minimum required by statute, in particular in relation to its monitoring of Anti-Fraud and Corruption Strategy and Whistleblowing Complaints.	
8	Scheme(s) Of Delegation	Yes	Last updated June 2004, in particular to include new delegation of decision-making to Cabinet Members. Internal Audit will shortly be reviewing this process to check its operation after 6 months in place.	
9	Members' Register Of Interests	Yes	Held on file and on the Council's website. Regular reminders are issued. Members can in addition make voluntary declarations in addition to the statutory requirements and these are held on file.	

10	Recorded Declaration Of Interests	Yes	Interests are recorded at meetings and are recorded on the website.	
11	Members' Induction Process	Yes	New councillors provided with induction process. Members are required to carry out training in respect of Planning and Licensing prior to taking part in these regulatory committees.	Review of induction and need for CPD and annual MOTs, and the need for compulsory training.
12	Officers' Induction Process	Yes	Central induction process is in place. Departmental induction processes are in place so far as is known. It could be useful to consider how ethical training and accountability issues are being addressed in that training.	Head of HR could be requested to attend Standards Ctee to explain new procedures.
13	Members' Continuing Development	Yes	A range of development / training opportunities are offered and a record of attendance kept	See (11) – Could be reviewed.
14	Members' Training	Yes	A range of Training is in place and a record of attendance kept. IDeA have funded a Member Development Officer on a short term basis to develop Member Training. The 'infrequent attendance of members at training events' has been criticised in the recent CGI report.	See (11) and (13) – Could be reviewed. A standard reporting back procedure could be introduced for all Members to benefit from training and CPD.
15	Officers' Continuing Development	Yes	A system of annual appraisals are in place, and a new competencies based appraisal is being rolled out across the Council, and has commenced with Chief Officers and 1 st -3 rd Tier Officers.	See (12) above.
16	Officers' Training	Yes	A range of Officer training is available, and training needs are identified as part of the standard and competency appraisal systems.	See (12) above.
17	Other Council Specific Additional Codes And Protocols		<u>Monitoring Officer Protocol</u> - Adopted in December 2001 - may need adjustment following the introduction of powers for Monitoring Officers to investigate complaints under the Code of Conduct. <u>Guidance to Councillors on Dealing with the Media</u> - adopted February 2002. <u>Protocol on Member / Officer Relations</u> - introduced September 2002. The Association of Secretaries and Solicitors (ACSeS) have produced a model code, some of which is based on this Council's protocol, which will be considered as part of the current review. <u>Members' Planning Code of Good Practice</u> - adopted February 2004.	All currently under review by Standards Committee and all Councillors have been asked for their views.

19th January 2005

Agenda Item 8

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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