

A G E N D A

Standards Committee

Date: **Friday, 15th October, 2004**

Time: **2.00 p.m.**

Place:

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

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**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Standards Committee

To: Robert Rogers (Independent Member)(Chairman)
 Councillors John Edwards and Peter Harling
 David Stevens (Independent Member)
 Richard Gething (Parish Council Representative)
 John Hardwick (Parish Council Representative)

	Pages
<p>1. APOLOGIES FOR ABSENCE</p> <p>To receive apologies for absence.</p>	
<p>2. DECLARATIONS OF INTEREST</p> <p>To receive any declarations of interest by Members in respect of items on the Agenda.</p>	
<p>3. MINUTES</p> <p>To approve and sign the minutes of the meeting held on 2nd July, 2004.</p>	1 - 6
<p>4. PROTOCOL ON THE USE OF COUNCIL RESOURCES</p> <p>To consider a suggested protocol to guide members in their use of council resources.</p> <p>Wards: County-wide</p>	7 - 16
<p>5. PLANNING CODE OF CONDUCT REVISIONS</p> <p>To review the Planning Code of Conduct in the light of recent case law and advice from the Standards Board for England.</p> <p>Wards: County-wide</p>	17 - 18
<p>6. APPLICATIONS FOR DISPENSATIONS RECEIVED FROM TOWN AND PARISH COUNCILLORS</p> <p>To consider any applications for dispensation received from Town and Parish Councils.</p> <p>Wards: County-wide</p>	19 - 20

7. THIRD ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

To note issues arising from the Third Annual assembly of Standards Committees held in September, 2004.

Wards: County-wide

8. INQUIRY INTO THE ROLE AND EFFECTIVENESS OF THE STANDARDS BOARD FOR ENGLAND

To note that the ODPM Housing, Planning , Local Government and the Regions Committee has resolved to carry out an inquiry into the role and effectiveness of the SBE and has invited written evidence by 29th October, 2004.

Wards: County-wide

9. CASE REVIEWS - STANDARDS BOARD FOR ENGLAND

21 - 32

To inform the Standards Committee of the outcome of recent hearings at the Adjudication Panel for England (APE) and local Standards Committees.

Wards: County-wide

10. COMMITTEE DATES FOR 2004/05

To note the following dates schedule for the remainder of the municipal year. Additional dates may be necessary to deal with any cases that are referred to the Committee by the Standards Board for England for investigation:-

3 December 2004
18 February 2005

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the next item will not be, or is likely not to be, open to the public and press at the time it is considered.

RECOMMENDATION:

That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below.

11. DETERMINATIONS BY THE STANDARDS BOARD FOR ENGLAND 2004

33 - 36

To update the Committee about determinations by the Standards Board for England in 2004 concerning the County.

This item discloses information relating to the financial or business affairs of a particular person (other than the Authority).

COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

MINUTES of the meeting of Standards Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Friday, 2nd July, 2004 at 3.00 p.m.

Present: Robert Rogers (Independent Member)(Chairman)
 Councillors John Edwards and Peter Harling
 David Stevens (Independent Member)
 Richard Gething (Parish Council Representative)
 John Hardwick (Parish Council Representative)

1. APOLOGIES FOR ABSENCE

The Chairman warmly welcomed Mr John Hardwick (Parish Council Representative) to the meeting.

No apologies were received.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made.

3. MINUTES

RESOLVED: That the minutes of the meeting held on 13 February 2004 be approved as a correct record and signed by the Chairman.

4. PROTOCOL ON THE USE OF COUNCIL RESOURCES

The County Secretary and Solicitor presented a draft protocol on the use of Council resources. She referred to the Model Code of Conduct's provision that members, when using council resources, must act in accordance with the Council's requirements and ensure that, except in certain specified circumstances, such resources were not used for political purposes. The Standards Board for England had strongly recommended that local authorities should have such protocols. The key principle was that public resources should not be used to further private interests or be improperly used for political purposes. The Council had considered a draft protocol on 25th April 2003 and had asked the Standards Committee to examine further the use of Council

computer equipment. A revised draft had been prepared, based on the policy which had been developed for employees and other users of the Council's network.

The Committee considered the main aims of the protocol and in particular the following issues regarding use of the internet and e-mail:

- to inform councillors of the Council's policy on internet and e-mail usage to minimise the Council's exposure to technical and legal risk;

- to explain to councillors what can and cannot be done;
- to offset out the legal risks taken whilst using the Council's internet facilities; and
- to ensure compliance with provisions of Section 2 of the Local Government Act 1986 which prohibits local authorities from publishing political material.

The likely difficulties facing Members were explored, particularly the types of internet use and distinctions between Council and personal use. It was felt that it might be unreasonable for Members to be prevented from using the facilities for limited political use. Technology had moved on significantly since the 1986 Act and there had been a huge increase in the use of PCs in everyday life. The Act was not precise as to the extent to which political use should be prohibited. The Chairman suggested that in view of the questions that Members still had about the issues, the advice of the Standards Board for England should be sought before final proposals were put to the Council. The Committee concurred with this view.

RESOLVED: (Unanimously) That the views of the Standards Board for England be sought on the proposed protocol with a view to a final draft being prepared at the next meeting on 15 October for submission to Council on 12 November, 2004.

5. PLANNING CODE OF CONDUCT - REVISIONS

The County Secretary and Solicitor presented a report about a review of the Planning Code of Conduct following recent case law. She said that that in March Council had considered the implications of a Court of Appeal case for Members who have a prejudicial interest in a matter which is being determined by a Planning Committee. The case had involved a County Councillor living near the site of a quarry for which planning permission had been sought. He was not a member of the Council's Planning Committee; wanted to attend the meeting and speak against the application; but could not because he had a prejudicial interest. He had contended that he could attend as a member of the public, but the Court took the view that a member of an authority attending a Council meeting could not, simply by declaring he attended in his private capacity, divest himself of his official capacity as a Councillor. He was still to be regarded as conducting the business of his office and only by resigning could he shed that role.

The House of Lords had since confirmed that judgement; and it also appeared from the law on the use of agents that a Councillor cannot do by an agent something which he or she cannot do in person. This implied that an agent could not speak or attend a meeting on behalf of the Councillor in circumstances where the Councillor has an interest. The Chairman suggested that further clarification should be sought from the Standards Board for England about this and related issues. The Committee agreed with this course of action with a view to putting an amendment to the Planning Code of Conduct to the Council on 12 November 2004.

RESOLVED: (Unanimously) That clarification be sought from Standards Board for England with a view to finalising the proposed revisions at the next meeting of the Committee and submitting them to the Council on 12 November 2004.

6. APPLICATIONS FOR DISPENSATIONS RECEIVED FROM TOWN AND PARISH COUNCILLORS

The Committee Manager (Statutory and Planning) reported that no applications had been received since the last meeting.

7. DETERMINATIONS BY THE STANDARDS BOARD FOR ENGLAND

The Committee considered a report on Investigations by the Standards Board for England in the respect of complaints of alleged misconduct against certain Parish Councillors.

The meeting ended at 4.10 p.m.

CHAIRMAN

Document is Restricted

PROTOCOL ON THE USE OF COUNCIL RESOURCES BY MEMBERS

Report By: County Secretary and Solicitor

Wards Affected

County Wide

Purpose

1. To consider and approve a protocol on the use of Council resources by members.

Background

2. The National Statutory Code of Conduct for Councillors provides that a councillor when using council resources must act in accordance with the Council's requirements and ensure such resources are not used for political purposes (except in certain specified circumstances).
3. The Standards Board for England have strongly recommended that local authorities should adopt protocols to guide members in this area but to date have not issued any model text or detailed guidance.
4. The two key concerns and constraints relate to:
 - the prohibition on using council resources for political purposes; and
 - the use of ICT facilities and in particular access to the world wide web and the use of the Council's e-mail address.
5. The Committee suggested a draft protocol which the Council considered on 25 April 2003. At that meeting the Committee were asked to revise those aspects of the Code relating to the use of Council computer equipment and the Council's e-mail address.
6. A new protocol (Draft One) was prepared based on the policy used for employees and other users of the Council's network.

Draft Protocol

7. The latest draft, is appended to this Report. It includes revisions following consideration by the Constitutional Review Working Group on 2 July 2004. Its purpose is to deal with the following:
 - To inform councillors of the Council's policy on internet and e-mail usage to minimise the Council's exposure to technical and legal risk.

- Explain to councillors what can and cannot be done in simple clear terms. It is considered that a short direct document will be more valuable than a lengthier technical document.
- Set out the legal risks taken whilst using the Council's internet facilities.
- Ensure compliance with the Code of Conduct and section 2 of the Local Government Act 1986 which prohibits local authorities from publishing political material (designed in whole or in part to promote support for a political party or policy associated with a political party).
- Provide for councillors to confine their use of the Council's Internet Service Provider (ISP) and e-mail address to council business only.
- Allow personal use of council provided equipment as long as councillors use separate ISP and e-mail facilities.

The Constitutional Review Working Group

8. The Protocol was considered by the Constitutional Review Working Group at its meeting on 30 June 2004.
9. At that meeting, it was noted that members are currently expected to sign up to the protocol used by employees but there was a recognition that this was a lengthy and complicated document which did not address all the issues likely to be experienced by members. It was also noted that the IT Department have monitoring procedures in place to alert them to potential inappropriate use of computers. Areas discussed in detail included use of Council owned computers by family members and inappropriate use of the herefordshire.gov.uk e-mail address.
10. At that meeting, it was agreed that section 5 of the protocol be revised to include a requirement for the County Secretary and Solicitor to authorise the use of a Council computer by a members family or other persons.
11. The Constitutional Review Working Group also asked that section 7 of the protocol be reviewed to better reflect the requirements of the Local Government Act 1986 relating to what constitutes political purposes. Advice has been taken from the Standards Board for England in relation to this matter. They comment:

Paragraph 5(b)(ii) of the Code complements section 2 of the Local Government Act 1986, which prevents the publication of material "designed to affect public support for a political party". It also supplements the government's Code of Recommended Practice on Local Authority Publicity (issued under section 4 of the Local Government Act 1986). Importantly the Code goes considerably further than either section 2 of the Local Government Act 1986 or the Code of Recommended Practice. The use of resources for political purposes covers not only the publication of campaigning material but also any other activity that is intended to promote purely party political interests. The context in which a member acts will obviously be important in relation to this part of the Code. When elections are pending members will need to be particularly scrupulous about the use of authority resources.

12. The Constitutional Review Working Group also asked that the Protocol be considered by the Members Development Working Group. That Group are meeting on 13 October and the views will be presented to the Standards Committee meeting

Case Law

13. Some members of other authorities have failed to comply with the Code of Conduct by misusing their authority's resources. The Adjudication Panel for England disqualified one member for one year for this breach of the Code of Conduct, and suspended another for three months.
14. One borough councillor used a council computer for private purposes, and allowed his family to do so as well, mainly for e-mail and internet access. The tribunal took the member's attempt to use his public office for private benefit seriously. It stated: "Where a member has used his position as a councillor for some personal gain, the case tribunal would usually be thinking in terms of a disqualification". However, it considered that the personal gain in this instance was not that significant: the council already provided free internet access in its libraries. The tribunal therefore decided that the appropriate punishment was a two-month suspension.
15. By contrast, another borough councillor not only misused a council computer, he refused even to return it when asked to do so by the IT department. In this case, The Adjudication Panel for England's tribunal considered that this conduct brought the former member's office and authority into disrepute. The tribunal took into account the fact that the councillor was no longer a member, and disqualified him for a year.

Conclusion

16. Against this background of cases, it is recommended that members are advised in the protocol that:
 - (a) Other persons can only be authorised to use Council resources on the express written approval of the County Secretary and Solicitor.
 - (b) Use of Council facilities to communicate with political groups needs to be conducted carefully to ensure no inadvertent breach of the prohibition of activity intended to "promote purely party political interests". Members can seek advice from the County Secretary and Solicitor as necessary on an individual basis.

RECOMMENDATION

THAT **the Commttee consider the Revised Protocol at Appendix A and recommend this adoption to the Council**

PROTOCOL ON THE USE OF COUNCIL RESOURCES BY MEMBERS**1. Introduction**

- 1.1 The Herefordshire Council Member Code of Conduct provides that, when using Council resources, a member must observe the Council's requirements and ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate the functions of the Council or of any office which you have been elected or appointed to.
- 1.2 A breach of this Protocol is a breach of the Code and so carries penalties up to and including disqualification from office.
- 1.3 Any illegal activity will be reported to the appropriate authorities.
- 1.4 If you are in any doubt about the application of this Protocol, it is your responsibility to seek clarification from the County Secretary and Solicitor. Written authorisation for the use of resources may be necessary in some circumstances.
- 1.5 You must sign a copy of this Protocol in order to be given access to the Council's internet and e-mail facilities.
- 1.6 Additional guidelines will be issued to cover elections.

2. Council Resources

2.1 These include:

- Use of Council premises
- Information technology such as computers and software, including home use
- Telephone and fax
- Photocopiers
- Stationery
- Postage
- Council transport
- Secretarial and clerical support
- Access to Council documents and information
- Allowances and expenses

3. Permitted use

- 3.1 You may use Council resources only on Council business. If you represent the Council on outside bodies you may use Council resources to assist you in this role.

4. Prohibited use

4.1 You may not use Council resources:

- For the publication of material which, in whole or in part, appears designed to affect public support for a political party

- For mass mailings, even if these are related to Council business. If you feel the circumstances are exceptional, you should consult the County Secretary and Solicitor.

5. Internet and e-mail policy

- 5.1 You are responsible for any breach of security or confidentiality resulting from your use of the Council's internet connection.
- 5.2 You must remember that the internet is not secure, and you must therefore protect information confidential to the Council.
- 5.3 You may use a Council-installed computer in your home for personal purposes such as creating personal documents. Subject to paragraph 7, you may use your council installed computer for surfing the net and personal e-mail correspondence.
- 5.4 You may not share your Council user name or Council password without the written agreement of the County Secretary and Solicitor. You may not use the Council's internet facilities to disable or overload any computer system or network, or to circumvent any system designed to protect the privacy or security of another user.
- 5.5 You must log off from the Council system and internet if you leave your Council computer unattended, and you must not allow it to be used by an unauthorised person. Your family members may be authorised by you to use the Council's computer but you must make sure they follow the standards set out in this protocol.
- 5.6 You must not download a programme or script from the internet, or use non-standard software in any circumstances, without the approval of IT Services. Any licence conditions must be observed
- 5.7 You must not transfer files or programmes from unauthorised external sources via attachments
- 5.8 You must not knowingly send, or attempt to receive, e-mail known to contain a virus. Do not open e-mail attachments unless you are confident of their origin.
- 5.9 You must not send, receive or copy copyright, sensitive or personal material about living individuals via the internet unless it is encrypted to ensure no breach of the Data Protection Act.
- 5.10 You must not attach a scanned signature to an e-mail; there is a risk that such signatures can be accessed by others and attached to documents purportedly in the name of the Council.
- 5.11 You must not use the Council's facilities to post or send on the internet confidential information about the Council, or any of its partner agencies or associates; to engage in on-line gambling; to participate in chain letters; or to post or send defamatory or false information.

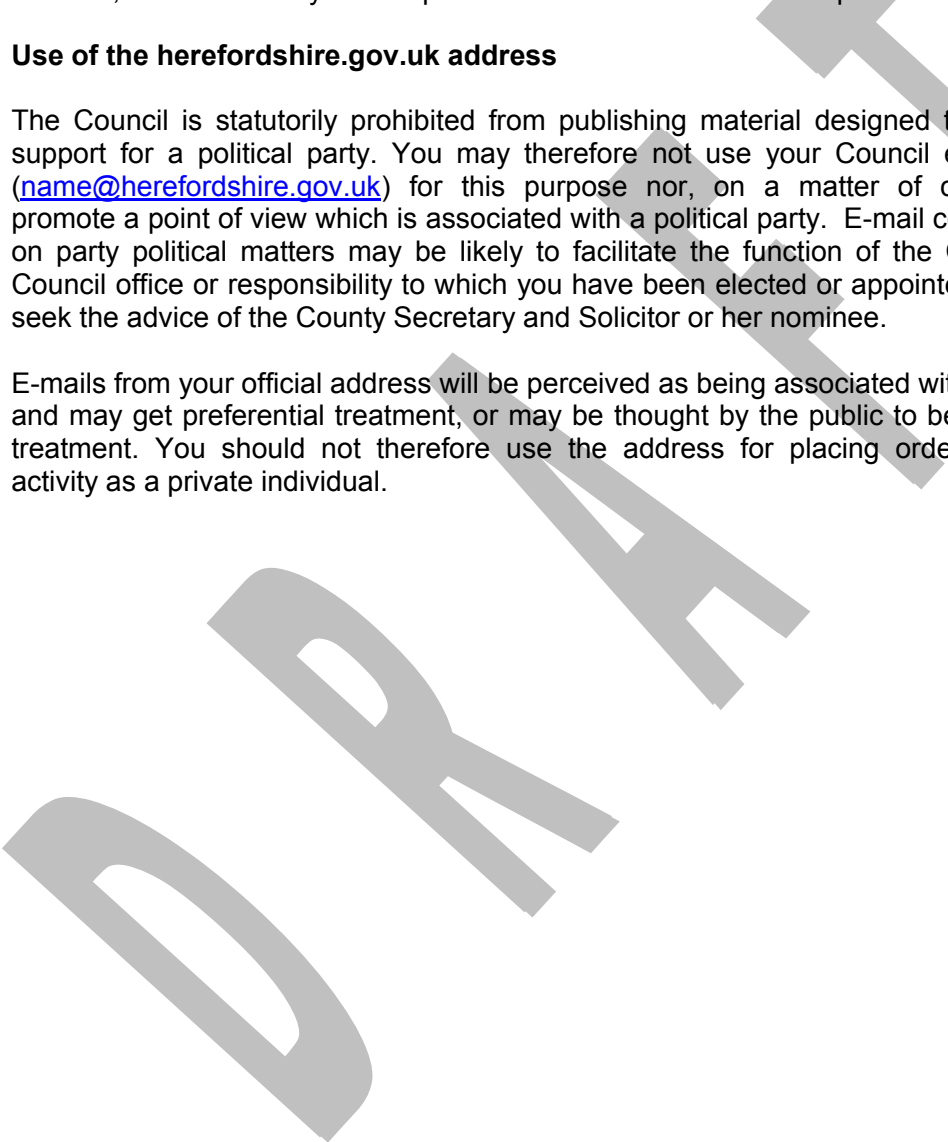
- 5.12 PCs must not be connected to the internet via any other route unless by agreement with the Head of ICT. If you install an ISP on your Council-provided PC you must follow the requirements of this Protocol.
- 5.13 If you want to send an e-mail to "all users", you must contact Members' Services who will seek the agreement of the County Secretary and Solicitor.

6. The internet and e-mail: legal issues

- 6.1 Illegal use, including the posting or sending of information that may tend to disparage or harass others on the basis of gender, race, age, disability, religion, sexual orientation or national origin; or accessing, displaying or disseminating pornography or obscene material, is self-evidently unacceptable and will be referred to the police.

7. Use of the herefordshire.gov.uk address

- 7.1 The Council is statutorily prohibited from publishing material designed to affect public support for a political party. You may therefore not use your Council e-mail address (name@herefordshire.gov.uk) for this purpose nor, on a matter of controversy, to promote a point of view which is associated with a political party. E-mail correspondence on party political matters may be likely to facilitate the function of the Council or any Council office or responsibility to which you have been elected or appointed. If in doubt, seek the advice of the County Secretary and Solicitor or her nominee.
- 7.2 E-mails from your official address will be perceived as being associated with the Council and may get preferential treatment, or may be thought by the public to be seeking such treatment. You should not therefore use the address for placing orders and similar activity as a private individual.



ADDITIONAL GUIDANCE**1. Internet access**

1.1 This is through:

- Council computers at Brockington
- A dial-up connection from a Council-installed computer at home
- Via an internet service provider (ISP) on a Council-installed computer at home

1.2 You will be given a unique user ID and password to access the internet via the Council link.

1.3 You should read and observe guidelines for the use of the internet (so-called "netiquette") which can be found on the internet at www.fau.edu/netiquette/net/.

1.4 Remember that the immediacy of e-mail can lead to misinterpretation and misunderstanding. Say nothing via e-mail that you would not be prepared to say in a letter; remember that e-mails are admissible in legal proceedings and could also form the basis of a complaint under the Code of Conduct. Be especially careful in forwarding e-mails; they may contain material which the sender would not wish to share with others. Return wrongly delivered messages to the sender.

1.5 You should delete messages from your in-box and "sent messages" at least weekly (or store them in a separate folder) to avoid overloading your mailbox.

1.6 It is helpful if you use the "out of office" function if you are not going to pick up messages for more than a day.

1.7 If you are sending complex graphics or large Power Point presentations via e-mail, you should compress them before sending. Advice is available from IT Services.

2. Virus Controls

2.1 Council computers are installed with anti-virus and security software. Guidance on anti-virus software is available from the IT Support Unit.

2.2 You must not attempt to disable virus software.

2.3 If you are concerned about any incoming e-mail, consult the IT Services Helpdesk immediately on extension 0160.

3. External connections

3.1 Any individual external connection must be authorised by IT Services, who will assess risks and specify limitations on use.

3.2 The "firewall" between the Council internal network and the internet provides primary security. If you have an individual external connection, the machine used for external access must never be connected to the internal Council network.

4. Monitoring

- 4.1 The Council's system records internet activity, including user name, date, time and site visited. The Council also reserves the right to inspect all files stored on their network and personal computers at any time, without notice.
- 4.2 If you accidentally connect to a site containing sexually explicit or offensive material, disconnect immediately. Inform the IT Services Helpdesk on extension 0160; they will arrange to block the site, and will record details of the incident for your protection.

DRAFT

PLANNING CODE OF CONDUCT - REVISIONS

Report By: County Secretary and Solicitor

Wards Affected

County-wide

Purpose

1. To review the Planning Code of Conduct.

Planning Code of Conduct – Appendix 13

2. The Committee reviewed this matter at its last meeting on 2nd July, 2004. The Standards Board for England has not produced any formal advice on the matter but informally support the approach. The matter has been considered by the Council's Constitutional Review Working Group who are recommending the changes as part of the current overall review of the Constitution. The Court of Appeal case (Richardson and Orme -v- North Yorkshire County Council) (recently upheld by the House of Lords) requires the Council to reconsider certain sections of the Planning Code of Conduct as currently drawn. In particular, the section dealing with **Applications in which a member of the Council has an interest**. The House of Lords has since confirmed the Judgement that Councillors are quire properly excluded from meetings where they have a prejudicial interest under agency laws. Whilst what ever a person has power to do himself he may do by means of an agent, the converse position similarly holds good that what a person cannot do himself he cannot do by means of an agent. Paragraph 39 which allows councillors to appoint an agent who can speak on their behalf in relation to individual applications therefore needs to be redrafted as follows.

“39. **You must take no part in the determination of the application. You must declare a prejudicial interest and leave the meeting and not seek to influence any decision made.** ~~You may, however, appoint an agent who can speak subject to Standing Order 5.11 (Public Speaking at Meetings of Planning Committee and Area Planning Sub-Committees) on your behalf.~~”

3. There are also some consequential tidying up amendments required to paragraphs 25, 26, 36 and 37 of the Planning Code of Conduct as follows:

“Material Submitted to Committee

25. If you receive material from or on behalf of an applicant or third party in connection with an application before a Committee you should establish from the Planning Officers whether the material has been received by them. If it has not, you should make it available as soon as possible to the Planning Service.
26. Relevant documents in connection with an application should all be dealt with in the officer's report to Committee. Any additional information received after

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

the preparation of that report up to on the day before the Committee meeting will also be brought to the attention of the Committee if they raise new and relevant material planning matters. Papers received after that time will normally be discounted, since time will not be available to check their accuracy or to give consideration to their implications.

Non Members of Planning Committee Attending Meetings

36. You may attend meetings of the Council's Planning Committees even if you are not a member unless you have a prejudicial interest. **You may speak but not vote on items under the procedures laid down in the Constitution.** When you attend any Planning Committee, you should not sit in the public gallery, but in the place reserved in the Committee room for Members of the Council who are not Members of the Planning Committee. When you speak at the meeting, either the Chairman of the Committee in calling upon the you to speak or you in speaking should make it clear upon what basis you are taking part in the meeting, and that you have no right to vote on the application concerned. The rules on declaring interests set out at paragraphs 27-30 of this Code apply at all times.

Decisions Contrary to Officer Recommendations or to Development Plan Policies

37. From time to time, there will be occasions when you or the Committee of which you are a member disagree with the professional advice on an application given by the Head of Planning Services. In such cases the reasons for differing from the professional advice received should be specified in the resolution of the Committee, along with the reasons for refusing an application recommended for approval or the conditions to be imposed on any approval in a case recommended by officers for refusal. The same provisions apply to decisions taken contrary to Development Plan policies. These cases will be referred to the Head of Planning Services for consideration as to whether the decision on the application in question should be referred to the main Planning Committee for determination in accordance with the Council's Constitution."

RECOMMENDATION

THAT the Standards Committee agree to recommend to Council the revisions proposed to the Planning Code of Conduct.

BACKGROUND PAPERS

- None identified.

DISPENSATIONS TO TOWN AND PARISH COUNCILS

Report By: County Secretary and Solicitor

Ward Affected

Old Gore

Purpose

1. To consider applications for dispensations received from Bartestree with Lugwardine Group Parish Council and from Dinedor Parish Council.

Financial Implications

2. None

Background

3. Under the Code of Conduct, town and parish councillors are prohibited from participating in matters in which they have a prejudicial interest. In the normal course of events this would not prejudice the proper working of their councils. There are instances, however, where the number of Councillors who would be prohibited from participating will impede the transaction of business.
4. The Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 gives Standards Committees the power to grant dispensations in circumstances where the number of councillors that are prohibited from participating in the business of the council exceeds 50% of those that are entitled or required to so participate.
5. In each case, the councillor requesting the dispensation must request it in writing, setting out why the dispensation is desirable.
6. The Standards Committee must then decide whether, in all the circumstances, it is appropriate to grant the dispensation.
7. The Regulations set out a number of exceptions where, even though the criterion above is met, a dispensation may not be granted for town or parish councils. This is where the business of the council for which the dispensation is granted is more than 4 years after the date on which the dispensation is granted.
8. A request has been received from Bartestree with Lugwardine Group Parish Council for the following Councillors to be granted dispensation because they serve as Trustees for Bartestree Village Hall, a registered charity:- R. Lawley; R. Rolfe; T. Rowberry; R. Salmond; N. Shore; K. Watkins; J. Williams; R. Williams; M. Wilson and A.Wood. The Parish Council currently comprises 11 Councillors and the request therefore fulfils the criteria outlined above for a dispensation to be granted.

9. Dinedor Parish Council has submitted a request for Councillors P. Greenow and E. A Owen to be granted dispensation because they serve as Trustees on Dinedor Village Hall Management Committee, a registered charity. The Parish Council currently comprises only 4 Councillors and the request does not fulfil the criteria for a dispensation to be granted.

RECOMMENDATION

- THAT (a) that the Bartestree with Lugwardine Group Parish Councillors listed above be granted a dispensation in respect of Bartestree Village Hall; and**
- (b) that the request for a dispensation from Dinedor Parish Council be refused**

BACKGROUND PAPERS

- Letter from Bartestree with Lugwardine Group Parish Council dated 28th July, 2004 and letter from Dinedor Parish Council dated 30th August, 2004.

CASE REVIEW - STANDARDS BOARD FOR ENGLAND**Report By: County Secretary and Solicitor****Wards Affected**

County Wide

Purpose

1. To inform the Standards Committee of the outcome of recent hearings at the Adjudication Panel for England (APE) and local Standards Committees.

Background

2. The Standards Board for England (SBE) have recently published a review of cases heard during 2003/04 at the APE and other Standards Committees using local determination powers. A full copy of the review will be available at the Committee. Summarised extracts are set out below from the Review. Appendix A summarises the position.

Adjudication Panel for England

3. The Adjudication Panel for England can apply stronger penalties against members than standards committees; ethical standards officers refer cases to The Adjudication Panel for England when they believe the misconduct is serious enough to warrant these sanctions. The Adjudication Panel for England's case tribunals can disqualify a member for up to five years, and suspend or partially suspend a member for up to a year.
4. It has been hearing cases for over a year. The first tribunal took place on 16 January 2003; by the end of April 2004 it had held 160 tribunals. In the vast majority of cases – about 97% - The Adjudication Panel for England determined that there had been a failure to comply with the Code of Conduct and punished the member for their misconduct.
5. In 94 cases (59%), the member was disqualified for one year. Most of these cases concerned members who failed to register their financial and other interests.
6. More serious sanctions were applied against members in 23 cases (14%). Of these, four members were disqualified for 18 months, nine were disqualified for two years, four were disqualified for three years, one was disqualified for four years and two for five years.
7. Members were suspended in 31 cases (19%) for periods ranging from five days to one year. Two members were reprimanded.
8. Tribunals decided not to take any action in four of the cases (2.5%) because of mitigating factors.

Disqualification

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

9. In deciding which penalty to impose, tribunals have taken into account both the seriousness of the misconduct and whether the member has shown any regret for their behaviour. For example, tribunals have tended to disqualify members for one year for deliberately refusing to register their interests. However, one member who failed to register her interests genuinely believed that she had no interests to register, and the tribunal in this instance decided not to take any action.
10. Members who are disqualified are barred from being or becoming a member of any relevant authority. This means they cannot stand for office with another relevant authority within the time-span of the disqualification. The effect of a disqualification on a member's ability to stand again for office can depend on the date of the hearing and the timetable for elections. The Adjudication Panel has taken these factors into account when disqualifying members.
11. In one case, a member of a town and district council who was disqualified by The Adjudication Panel for England in September 2003, appealed to the High Court against the ban with the argument that the electoral cycle meant that he would not be able to stand for three years. The High Court ruled that The Adjudication Panel for England had been aware of the implications of a one-year ban, and had not acted reasonably.
12. In another example, in late May 2003, The Adjudication Panel for England disqualified a parish councillor until April 2004 to enable him to stand in the next elections should he reconsider his position and agree to abide by the Code of Conduct.

Suspension

13. The Adjudication Panel for England has suspended members in cases where the conduct was not serious enough to completely bar the member from serving on their authority. For example, a parish councillor took part in a meeting in which he had a prejudicial interest. This type of conduct would normally warrant a disqualification for a significant period. However, the tribunal considered that he had not been motivated by personal gain, and was possibly under pressure because of the unpleasant situation in his parish at the time. Because of these mitigating factors, the tribunal decided to suspend the member for three months.
14. Partial suspensions have generally been imposed where a member's misconduct is confined to a particular area of their work. On one occasion, a borough councillor was suspended from sitting on any of his council's planning committees for a year – the maximum allowed under the law – after he argued and voted against a development in a lane where he lived. The tribunal believed that this was one isolated incident in a long period of public service, and so thought that a full disqualification or suspension was inappropriate.

Sanctions Available

15. Ethical standards officers refer cases to the local standards committee for determination when there appears to have been a breach of the Code of Conduct that is not sufficiently serious to warrant the penalties available to The Adjudication Panel for England (a disqualification or suspension greater than three months).
16. Standards committees have more limited powers to punish members, and if the person is no longer a member of the authority they can only censure them for their conduct. For example, a standards committee considered a case in which a member

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had made derogatory comments about a colleague and threatened them with physical violence at a meeting. The Adjudication Panel for England had already disqualified the member for three years for similar behaviour in a separate case (the ethical standards officer had deferred the case to the standards committee before The Adjudication Panel for England's hearing). The standards committee decided to censure him for his conduct, but it would have imposed a heavier penalty if he had been a serving member at the time of the hearing.

17. For serving members, standards committees can restrict their access to the resources of the authority. They can also suspend them or partially suspend them for up to three months.
18. Standards committees have the additional option of asking members to apologise in writing for their conduct, and to take part in training or conciliation in order to avoid partial or total suspension, as in the following example.
19. In December 2003, a standards committee decided that two town councillors had breached the Code of Conduct by taking part in a meeting in which they had prejudicial interests. The committee decided to suspend the members for one month from 1 January 2004 unless they apologised in writing to the town council for their conduct and provided a written commitment to undertake training on the Code of Conduct.
20. In another instance, a standards committee suspended a borough councillor for town months disclosing confidential information and bringing his office or authority into disrepute. However, it decided to defer the suspension for six months to allow the member to undertake training on the Code of Conduct. Its main concern was to improve the councillor's effectiveness as a member, rather than to punish him.

Types of Misconduct

Register of Interests

21. The majority of cases heard by The Adjudication Panel for England in 2003 concerned members of parish councils who had failed to register their interests following the introduction of the Code of Conduct. Of 160 tribunals, 116 (72.5%) concerned allegations that members had not registered their interests within the 28-day deadline. Most of the cases were heard between March and August 2003. There were eight other cases where members failed to register interests, but these also involved breaches of other parts of the Code of conduct and are covered separately below.
22. The general penalty for members who failed to register their interests has been a one-year disqualification. About three-quarters of the members (88) were disqualified for a year for failing to register their interests.
23. Members are obliged to register their interests under the Local Government Act 2000, and The Adjudication Panel for England regards it as a serious matter for members to wilfully ignore their legal obligations. According to the panel's 2003 annual report:

Members of the Adjudication Panel for England have not been without sympathy for parish councillors who had such a requirement imposed on them midway through their terms of office. That was, however, the express

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effect of the legislation, and those councillors who chose not to comply with that legislation inevitably placed themselves in breach of the relevant Code of Conduct.

24. The first tribunal considered that the member committed a serious breach of the Code of Conduct by refusing to register his financial and other interests. The decision in this case set the precedent for most of the later hearings:

The case tribunal considered [the councillor's] refusal to register his interests to be a serious breach of the Code of Conduct. He had, by his refusal, challenged the authority of Parliament and the ethical framework of governance introduced by the Act. However, the tribunal could envisage far more serious breaches and ... decided that [the councillor] should be disqualified for one year.

25. Members who apologised and completed their register of interests before the actual hearing were treated fairly leniently. In 20 cases (just over 17% of register of interests cases), members were suspended or disqualified for less than a year. For example, 11 members who belatedly registered their interests were suspended for only one week. The tribunals stated that eight of these members were unlikely to breach the Code of Conduct in this way again.
26. Conversely, members who failed to show any contrition or intention to rectify their omissions have been disqualified for more than a year. In one case, a parish councillor was disqualified for two years because he failed to register his interests, then stood for re-election and accepted the position of chair of the parish council when he knew he was in breach of the Code of Conduct. The tribunal noted that he "showed no remorse and gave no indication of any intention now or in the future of complying with the legislation". These factors compounded the seriousness of his conduct and resulted in the longest period of disqualification for this breach of the Code of Conduct.
27. Similarly, another parish councillor was disqualified for 18 months for persisting in refusing to register his interests following re-election to the council.
28. Of the remaining register of interests cases heard by The Adjudication Panel for England, two members were reprimanded, no action was taken against three members, and one member was found not to have breached the Code of Conduct. However, these were exceptional cases, representing only 5% of the register of interests cases.

Disrepute

29. Some of the most severe penalties have been imposed on members who have acted in a way that brought their offices or authorities into disrepute. Members who breach this part of the Code of Conduct can generally expect to face a harsh penalty, particularly where they have broken the law.
30. One of the General Principles underpinning the Code of Conduct is that members must "uphold the law". Under the Local Government Act 1972, a member who is given a sentence of three months or more in prison for a conviction (whether or not the sentence is suspended) is automatically disqualified from being a member. However, there have been a number of cases where members have broken the law, but have received lighter sentences or cautions, and so have been able to carry on

serving as members. Their conduct, nevertheless, fell within the remit of the Code of Conduct, insofar as it reflected badly on their offices or authorities.

31. The Adjudication Panel for England disqualified two former members for the maximum period of five years in 2003. Significantly, both were found to have brought their offices or authorities into disrepute by committing sexual offences when they were members.
32. One of the former members, convicted of sexual offences against a 16 year-old, received a three year community rehabilitation order, and was put on the sex offenders' register for five years. The Adjudication Panel for England believed that a considerable period of disqualification was warranted to protect the public in case he ran again for public office.
33. The second member received a police caution for downloading child pornography onto a council computer. The tribunal believed that this had made him "unfit to be a councillor" and disqualified him for the maximum period to discourage him or others from acting in the same way.
34. These decisions were consistent with the seriousness with which The Adjudication Panel for England regards members who have broken the law in other ways. Four councillors were disqualified for more than a year for misconduct that included illegal activity. In one of these cases, The Adjudication Panel for England found that a city councillor brought his office and authority into disrepute by being convicted of a public order offence of using threatening, insulting or abusive words or behaviour with intent to cause a person to fear immediate unlawful violence. The tribunal also found that he had sexually harassed a council officer and a conference delegate, and failed to treat them with respect. The tribunal took into account the member's personal problems and other mitigating factors, and decided to disqualify him for four years.
35. Another example concerned a member of a parish council and district council who accepted a police caution for harassing a member of the public. The Adjudication Panel for England's tribunal was particularly concerned about this conduct, and the fact that the member did not express any regret or intention to act differently in the future. It decided to disqualify him for 18 months.

Failures to Treat Others with Respect

36. Under paragraph 2(b) of the Code of Conduct, members have to "treat others with respect" when they are acting in an official capacity.
37. Nine members failed to treat others with respect. One member was disqualified for four years for failing to treat others with respect and bringing his office or authority into disrepute, the third most severe penalty imposed to date. Three members were disqualified for three years, one member was disqualified for 18 months, two members were disqualified for a year and one member was suspended for six months. No action was taken in one case.
38. The Adjudication Panel for England has expressed some concerns about the implications of this part of the Code of Conduct for free speech. However, while it is acceptable for councillors to criticise one another, there is a line between robust debate and excessive disparagement. There comes a point where members can breach the Code of Conduct by persistently disparaging people publicly, and in a

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serious manner. This was recognised in several cases heard by The Adjudication Panel for England.

39. In one case, a town councillor was disqualified for one year for making malicious and offensive allegations about other councillors and a clerk.

Personal and Prejudicial Interests at Meetings

40. About a tenth of The Adjudication Panel for England's cases involved members' failures to disclose the existence and nature of their interests at meetings and withdraw from the room when matters in which they have prejudicial interests were discussed. In several cases, members also improperly used their positions as members to secure advantages for themselves or others.
41. The Adjudication Panel for England considered 19 cases where councillors had taken part in council meetings in which they had prejudicial interests, or had improperly used their positions to secure an advantage for themselves or others. Eight of the councillors in these cases were disqualified for more than one year, three for one year, one for three months, and one for two months. Two members were suspended for two months and one member was suspended for three months. One member was suspended for a year from taking part in planning committee meetings.
42. The Adjudication Panel for England has generally taken a very serious view of members who have abused their positions in this way. As one tribunal noted: "It is a fundamental principle that those holding public office should not use their office for their own personal ends or those of their family".
43. One parish councillor was disqualified for three years for taking part in a meeting in which he had a prejudicial interest. The councillor took part in a council meeting about a playing field, despite the fact that he was the chairman of a football club that wanted to use the field. He also tried improperly to secure an advantage for the club, using his position as a member. The Adjudication Panel for England stated that his behaviour fell far short of acceptable conduct.
44. A town councillor was disqualified for two years for his failure to withdraw from council meetings concerning the dismissal of a council employee, who was his niece.
45. It is particularly important that the public has faith in the integrity of the planning process. Members who appear to act in relation to planning decisions for personal reasons can devalue the process in the eyes of the public.
46. In one case, a parish councillor failed to withdraw from a meeting discussing a planning application concerning his own land. He also had business dealings with the applicants and was involved in preparing the application. The tribunal could find no mitigating circumstances for this misconduct and decided to disqualify him for two years.
47. Four other members were disqualified for two years following their failure to withdraw from meetings in which they had prejudicial interests.
48. Another member was disqualified for 18 months. The councillor failed to withdraw from a council meeting during the consideration of his son's licensing application for an entertainment venue. He also tried to use his position as a councillor improperly to win the support of other councillors for the application. A significant factor in the tribunal's decision was the councillor's failure to show any contrition.

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49. Tribunals have decided to suspend in five cases where they felt that disqualification was inappropriate. For example, a district councillor took part in meetings in which he had a prejudicial interest. However, the tribunal considered that he had not been motivated by personal gain and was unlikely to act in a similar way again, so decided to suspend him for three months.

Misuse of Authorities' Resources

50. Some members have failed to comply with the Code of Conduct by trying to use their office for personal gain by misusing their authority's resources. This relates to paragraph 5(b) of the Code of Conduct, which states that members "must act in accordance with the authority's requirements" when using the authority's resources. The Adjudication Panel for England disqualified one member for one year for this breach of the Code of Conduct, and suspended another for three months.
51. One borough councillor used a council computer for private purposes, and allowed his family to do so as well, mainly for e-mail and internet access. The tribunal took the member's attempt to use his public office for private benefit seriously. It stated: "Where a member has used his position as a councillor for some personal gain, the case tribunal would usually be thinking in terms of a disqualification". However, it considered that the personal gain in this instance was not that significant: the council already provided free internet access in its libraries. The tribunal therefore decided that the appropriate punishment was a two-month suspension.
52. By contrast, another borough councillor not only misused a council computer, he refused even to return it when asked to do so by the IT department. In this case, The Adjudication Panel for England's tribunal considered that this conduct brought the former member's office and authority into disrepute. The tribunal took into account the fact that the councillor was no longer a member, and disqualified him for a year.

Disclosure of Confidential Information

53. The Adjudication Panel for England considered three cases concerning alleged disclosure of confidential information. The tribunals believed that the disclosure of confidential information was a serious breach of the Code of Conduct that could merit disqualification. However, the members in two cases were suspended because of the particular circumstances of the disclosures, and in the third case the tribunal found that the councillor had not breached the Code of Conduct.
54. In one of the cases, a member of a unitary authority disclosed information to the press about a senior council employee's salary. The tribunal noted that this information was not at the more sensitive end of the scale of information exempt from public disclosure, and therefore decided to suspend him for one month.

Standards Committees

55. The first local standards committee hearing took place on 1 September 2003; 39 hearings had been held by the end of April 2004. No cases have yet been referred to the Herefordshire Council Standards Committee.
56. Standards committees, like The Adjudication Panel for England, determined that there had been a breach of the Code of Conduct in most of the cases referred to it, and decided to impose sanctions. They determined that members had failed to comply with the Code of Conduct in 37 cases (about 95% of the total).

57. Standards committee hearings decided to censure the member in 17 cases (44%), and to suspend the member in another 17. The range of the suspensions varied from one week to three months, but almost half of them were for one month. Some of these suspensions were dependent on whether the members acted on conditions stipulated by the standards committees. Standards committees decided not to apply any sanction in only two cases (5%), because mitigating factors.
58. A standards committee also considered a case involving criminal conduct. The councillor brought the district council and his office into disrepute by being convicted of drink-driving. The standards committee's decision stated that "the offences of which he was convicted were serious, that driving with excess alcohol is a disreputable and anti-social offence which cannot be condoned and, in a public arena, inevitably brings disrepute to any office held". However, the standards committee decided, because of the long period of time that had elapsed between the conviction and the hearing, to only censure him for his conduct.
59. Standards committees have also held hearings about members' failures to treat others with respect. The cases have involved less serious and more isolated incidents of disrespectful behaviour, where members have verbally abused others at meetings.
60. For example, a standards committee suspended a town councillor for three months for verbally abusing another councillor at a council meeting, but offered him the chance to apologise and take training on the Code of Conduct to avoid the suspension.
61. Another standards committee censured a borough councillor for verbally abusing a member of the public at a public meeting.
62. Two-thirds of the first 39 cases heard by standards committees concerned members with personal and prejudicial interests in meetings. In half of these, the standards committees censured the members. The standards committees decided to suspend members for one month in seven cases, although in most instances this was dependent on whether they undertook training on the Code of Conduct.
63. Only two members were suspended for the maximum period of three months. A parish councillor was suspended for three months for trying to influence a decision on an application for a development opposite his home. The other three-month suspension was the subject of an appeal at the time of writing.
64. No action was taken against one member, who had not understood his obligations under the Code of Conduct. In another case, a standards committee decided not to impose a sanction on a member who neighbour and friend had objected to a planning application. The standards committee took into account the fact that the councillor was unaware at the time of the council meeting that his neighbour was an objector to the application, even though he should have ascertained whether he had a prejudicial interest before taking part in the meeting.
65. Five members have appealed to the President of The Adjudication Panel for England against standards committee decisions in these cases. At the time of writing, The Adjudication Panel for England had held appeal tribunals for three of these cases. A district councillor appealed against an eight week suspension and two parish councillors appealed against censures. The Adjudication Panel for England's appeal tribunals upheld the standards committee's decisions in all three cases.

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Conclusion

66. In the vast majority of cases, The Adjudication Panel for England tribunals and standards committee hearings have determined that there has been a failure to comply with the Code of Conduct and have decided to impose a sanction.
67. The Adjudication Panel for England disqualified members in about three-quarters of its cases. The most common period of disqualification was one year, although this was largely because of the high proportion of register of interest cases heard in 2003, particularly in the first eight months of the year. The cases, which mostly resulted in one year disqualifications, arose following the introduction of the Code of Conduct in 2002, and so this pattern is unlikely to recur. Later cases involving failures to register interests have been few and far between, and have concerned failures to register particular interests, rather than a blanket refusal to register any interests.
68. The Adjudication Panel for England decided to impose longer periods of disqualification in 14% of its cases, mostly for other breaches of the Code of Conduct such as failures to treat others with respect, disrepute, or failures to withdraw from meetings in which the member had a prejudicial interest. Significantly, 20 of the 44 non-register of interest cases resulted in disqualifications of more than a year (members were disqualified for one year in just six of these cases). The maximum penalty, disqualification for five years, was imposed on two members during this period after they brought their offices or authorities into disrepute.
69. Standards committees in most cases either censured or suspended members. Two-thirds of standards committee cases concerned members who failed to disclose personal interests or failed to withdraw from meetings in which they had prejudicial interests. Two members were suspended for the maximum period of three months for these breaches of the Code of Conduct.
70. Despite generalisations about appropriate sanctions for particularly types of misconduct, it is worth noting that tribunals have considered each case on its merits. Mitigating and aggravating factors can lessen or increase the sanction. Members who have shown contrition for their behaviour and a willingness to comply with their obligations in future have generally been treated more leniently than those who have been apologetic and recalcitrant.

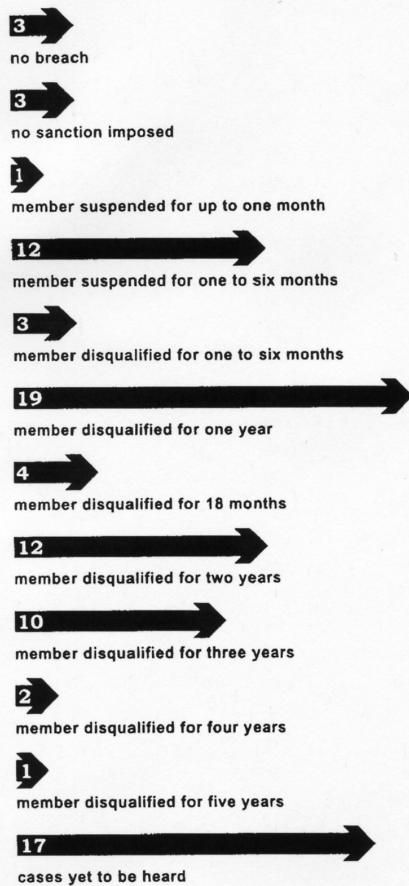
RECOMMENDATION

THAT the Committee consider the findings of the Case Review presented by the Standards Board for England and how best to publicise its findings to the Council.

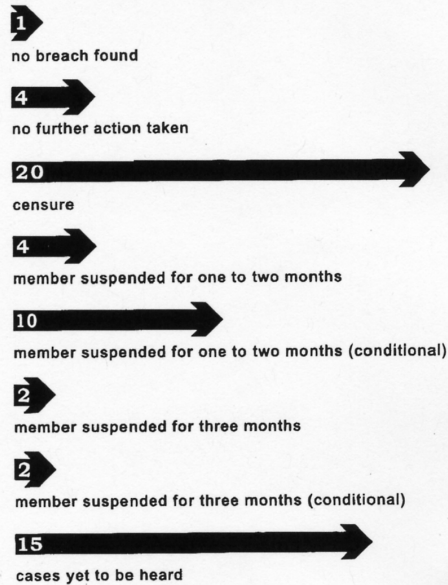
taking action

Over 160 members were subject to sanctions as a result of hearings conducted by The Adjudication Panel for England and standards committees this year. Some sanctions related to cases that we referred to The Adjudication Panel for England in the previous financial year. This year we referred 87 cases to The Adjudication Panel for England, and 58 to local standards committees. The charts below show the decisions for these cases.

THE ADJUDICATION PANEL FOR ENGLAND'S DECISIONS IN CASES REFERRED IN THE 2003/04 FINANCIAL YEAR



STANDARDS COMMITTEES' DECISIONS IN CASES REFERRED IN THE 2003/04 FINANCIAL YEAR



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