

A G E N D A

Standards Committee

Date: **Friday, 13th April, 2007**

Time: **2.00 p.m.**

Place: **The Council Chamber, Brockington,
35 Hafod Road, Hereford**

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 (none) (Chairman)

Councillors J.W. Edwards and J. Stone

David Stevens (Independent Member)

Richard Gething (Parish and Town Council Representative)

John Hardwick (Parish and Town Council Representative)

	Pages
1. APOLOGIES FOR ABSENCE To receive apologies for absence.	
2. DECLARATIONS OF INTEREST To receive any declarations of interest by members in respect of items on the agenda.	
3. MINUTES To approve and sign the minutes of the meeting held on 12 February 2007.	5 - 10
4. APPLICATIONS FOR DISPENSATIONS RECEIVED FROM TOWN AND PARISH COUNCILS To consider any applications for dispensations received from town or parish councils. (Note: No requests were received by the time the agenda was printed). Wards: County Wide	
5. CODE OF CORPORATE GOVERNANCE To consider the attached revisions to the Code of Corporate Governance, and make amendments. Wards: County Wide	11 - 22
6. STANDARDS BOARD FOR ENGLAND BULLETIN 32 To consider the latest bulletin from the Standards Board for England. Wards: County Wide	23 - 30
7. ANNUAL ASSEMBLY OF STANDARDS COMMITTEES To consider attendance at the Annual Assembly of Standards Committees, at the International Convention Centre in Birmingham on 15 and 16 October 2007. Wards: County Wide	

8. JOINT COMMITTEE ON HUMAN RIGHTS - LEGISLATIVE SCRUTINY: FOURTH PROGRESS REPORT 31 - 38

To note the enclosed extract from the report of the Joint Committee on Human Rights, in respect of the Local Government and Public Involvement in Health Bill.

Wards: County Wide

9. STANDARDS COMMITTEE ON THE COUNCIL WEBSITE

To note progress made with the ethics and standards web pages.

Wards: County Wide

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following 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

10. REFERRALS TO THE STANDARDS COMMITTEE FROM THE STANDARDS BOARD FOR ENGLAND

To receive an oral progress report on SBE Complaint Nos. 17223.07 to 17229.07.

Wards: County Wide

This item discloses information which is subject to an obligation of confidentiality.

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- Inspect agenda and public reports at least three clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. A list of the background papers to a report is given at the end of each report. A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

**MINUTES of the meeting of Standards Committee held at :
Committee Room 1, Shire Hall, Hereford on Monday, 12th
February, 2007 at 10.30 a.m.**

Present: Robert Rogers(Independent Member) (Chairman)

**Councillors John Edwards and John Stone
David Stevens (Independent Member)
Richard Gething (Parish and Town Council Representative)
John Hardwick (Parish and Town Council Representative)**

110. APOLOGIES FOR ABSENCE

There were no apologies for absence.

111. DECLARATIONS OF INTEREST

The following declarations of interest were made:

Member	Item	Interest
Councillor John Edwards	Agenda Item 9 – (REFERRAL TO THE STANDARDS COMMITTEE FROM THE STANDARDS BOARD FOR ENGLAND) (SBE Complaint Nos. 15104.06 and 17223.07 to 17229.07)	Declared a prejudicial interest and left the meeting for the duration of this item.
Mr Richard Gething	Agenda Item 9 – (REFERRAL TO THE STANDARDS COMMITTEE FROM THE STANDARDS BOARD FOR ENGLAND) (SBE Complaint Nos. 17223.07 to 17229.07)	Declared a personal interest and remained in the meeting for the duration of this item.
Mr John Hardwick	Agenda Item 9 – (REFERRAL TO THE STANDARDS COMMITTEE FROM THE STANDARDS BOARD FOR ENGLAND) (SBE Complaint No. 15104.06)	Declared a prejudicial interest and left the meeting for the duration of this item.
Councillor John Stone	Agenda Item 8 (DETERMINATIONS BY THE STANDARDS BOARD FOR ENGLAND) ; and Agenda Item 9 – (REFERRAL TO THE STANDARDS COMMITTEE FROM THE STANDARDS BOARD FOR ENGLAND) (SBE Complaint No. 15104.06 and 17223.07 to 17229.07)	Declared a prejudicial interest and left the meeting for the duration of this item.

112. STANDARDS COMMITTEE ON THE COUNCIL'S WEBSITE

The Chairman circulated a draft of the proposed website content for the Standards Committee to be placed on the Council's website. He asked members to forward any comments to the Democratic Services Officer, who would be compiling and maintaining the content.

113. MINUTES

During consideration of the minutes, the Chairman reported that he had taken the opportunity, when presenting the Standards Committee report to Council on 09 February 2007, to refer to the likely heightened political sensitivity in the run-up to the elections in May 2007. He had reminded members to be punctilious about the requirements of the Code of Conduct, and to think carefully before using the complaints mechanism.

RESOLVED: (unanimously) that the minutes of the meeting held on 12 January 2006 be approved as a correct record and signed by the Chairman.

114. CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF CONDUCT

Members considered the consultation issued by the Department of Communities and Local Government, on the proposed revised Model Code of Conduct for Local Authority Members. They made the following general comments:

- There was no mention of an increase in powers for Standards Committee in relation to the sanctions that they could impose at hearings. Members felt that these powers should be strengthened in order to make the Code of Conduct more robust. They made particular reference to the length of suspension that could be imposed on a member who was the subject of a hearing. They were of the opinion that three months was inadequate in many cases, especially if a parish or town council only met every two months. The Committee reiterated that a maximum of twelve months was a more realistic sanction.
- The proposed Code did not go far enough in terms of clarifying the meanings of Personal and Prejudicial interests. The Committee also expressed concern that DEFRA's Local Access Forums used the terms "direct" and "indirect" when referring to interests, which put one Government Department out-of-step with the others. This created the potential for confusion amongst councillors who were also members of the forums and had to use two different terminologies.

In addition, the Committee made the following additional points about the Commentary on the Detailed Amendments Proposed:

- **Bullying:** Guidance on bullying should be clear and straightforward. Members felt that the new Code provided the correct tone, in that it would retain the phrase "a member must treat others with respect", and would add to it that members must not bully any person. In line with the proposals, the Committee felt that a specific definition of bullying should not be included in the Code because it would be too complex and might be difficult to apply.
- **Disclosure of Confidential Information:** There needed to be a distinction between attributable disclosure and leaks. The latter would not be in the spirit of the Code and should not be protected.

- **Behaviour Outside Official Duties:** The proposals reflected the judgement of Collins J on the Mayor of London's recent High Court Appeal. The Committee felt that the definitions were too narrow. In particular, to discount all behaviour in instances when a member had not been convicted by a court, was not conducive to good behaviour, and went against the spirit of the Code.
- **Publicity Code:** Members expressed an opinion that guidance on publicity should be included explicitly in the Code, as opposed simply to making reference to the Government's Code of Recommended Practice on Local Authority Publicity.
- **Reporting Breaches of the Code and Proscribing Intimidation:** The Head of Legal and Democratic Services emphasised that the proposals would increase pressure on the Monitoring Officer's role because the likely outcome was that the number of complaints received would increase.
- **Definition of Personal Interests:** The Head of Legal and Democratic Services made the point that the proposals did not take account of bias, which he felt was a significant omission. Members agreed that the public perception of an interest could sometimes carry great significance, and the Code should reflect this.
- **Public Service Interests:** The Committee noted that the proposals would not address all of the difficulties which might arise when granting dispensations, although they would probably reduce the number of problems experienced.

RESOLVED: (unanimously) that the Chairman write to the Department of Communities and Local Government (and copy the letter to the Herefordshire Association of Local Councils), conveying the Standards Committee's views on the proposed amendments to the Model Code of Conduct for Local Authority Members, by the closing date of 09 March 2007.

115. CODE OF CORPORATE GOVERNANCE

The Head of Legal and Democratic Services reported on the progress made with amendments to the Code of Corporate Governance. He said that two versions had been circulated with amendments from different departments, and these needed to be incorporated into one document. The Audit Manager was in the process of reviewing the Code, and an updated version would be put to the Audit and Corporate Governance Committee and the Standards Committee, after the May 2007 elections.

Members considered a proposed foreword to the Council's Code of Corporate Governance, and agreed that the Chairman and the Head of Legal and Democratic Services would revise it and make any necessary amendments.

RESOLVED (unanimously) that

- (i) The Head of Legal and Democratic Services and the Audit Manager combine all amendments to the Code of Corporate Governance, and circulate it by email to Standards Committee members, for comments and amendments to form part of the review. The amended version to be considered by the Standards Committee at its meeting on 06 July 2007, and by the Audit and Corporate Governance Committee after the May 2007 elections; and**
- (ii) The Chairman and the Head of Legal and Democratic Services to make any necessary revisions to the foreword to the Code of Corporate Governance, and copy the revised version to the Audit and Corporate Governance Committee.**

116. COMMUNICATIONS PROTOCOLS

The Committee reviewed the Council's draft Communications Protocols. The purpose of the protocols was to assist the public in knowing who to contact on standards and ethics issues, and to provide guidance for Council members and officers in dealing with the media.

RESOLVED: (unanimously) that the Chairman revise the Council's draft Communications Protocols as necessary for inclusion as Council Policy, and the final document be laminated and included in the Standards Committee hearing guidance pack.

117. INDUCTION REVIEW GROUP

Members considered the work undertaken by the Council's Induction Review Group in respect of the induction programme for members following the May 2007 elections. They felt that the programme offered an excellent introduction to Herefordshire Council, and congratulated the Group on its thorough work. They suggested some additional wording about the Standards Committee, and asked for the Annual Report 2006 to be included in the literature given to new councillors.

The Committee agreed that the Chairman would participate in the induction programme, in relation to ethics and standards.

RESOLVED: (unanimously) that additional wording about the Standards Committee, and the Standards Committee Annual Report 2006, be included in the members' induction pack, and that the Chairman give a short address on ethics and standards as part of the induction programme on 11 May 2007.

118. DETERMINATIONS BY THE STANDARDS BOARD FOR ENGLAND

The Committee considered a report on the current investigations by the Standards Board for England, in respect of complaints of alleged misconduct against certain councillors during 2006-2007.

RESOLVED: (unanimously) that the report be noted.

119. REFERRALS TO THE STANDARDS COMMITTEE FROM THE STANDARDS BOARD FOR ENGLAND

(Note: To assist the efficient transaction of business, the Committee decided to consider SBE Complaint No.s 17223.07 - 177229.07 first. Councillors J Edwards and J Stone were present for the initial general discussion about procedure in relation to these complaints, and then both declared prejudicial interests in these complaints and in complaint No. 15104.06, and left the meeting for its remainder. In relation to SBE Complaint No. 15104.06, Mr J Hardwick declared a prejudicial interest, and left the meeting for its remainder.)

The Committee considered a report on SBE Complaints Nos. 17223.07 to 177229.07. The Head of Legal and Democratic Services provided information on how the complaints had arisen, and asked members to consider the practicalities of any subsequent investigations or hearings, and whether they would be conducted locally, or referred back to the Standards Board for England (SBE).

In response to a question, he said that the SBE's advice was that hearings and investigations would be conducted in the usual manner in the run-up to the elections, without any need to make any exceptional or delayed arrangements.

Having considered the various prejudicial interests which might affect some of its members, and the timing in relation to the May 2007 elections, and the SBE's advice, members agreed that the Standards Committee was able to conduct any hearings which might arise from the complaints.

The Committee also considered whether the investigation could be conducted locally. They agreed that there was no barrier to this. The Head of Legal and Democratic Services said that he would ask the Legal Practice Manager, Mr Kevin O'Keefe, to conduct the investigations. This would enable the Head of Legal and Democratic Services to give advice at any hearing.

In addition, the Head of Legal and Democratic Services apprised members of the current situation in respect of SBE Complaint No. 15104.06, and he circulated a chronology of the investigation to date. He had kept the SBE informed of progress, and the final investigation report would be completed shortly.

RESOLVED: (unanimously) that

- (i) in respect of SBE Complaint No.s 17223.07 to 17229.07, the Head of Legal and Democratic Services request the Legal Practice Manager to conduct any necessary investigations (subject to receipt of an official letter for referral from the Standards Board for England), and that the Standards Committee consider any final investigation report and conduct any hearing;**
- (ii) in respect of SBE Complaint No. 15104.06, an additional meeting of the Standards Committee be held on 09 March 2007 to consider the final investigation report, and whether or not to hold a hearing; and**
- (iii) in respect of all the above complaints, the Head of Legal and Democratic Services inform the Standards Board for England in writing of progress.**

The meeting ended at 12.52 p.m.

CHAIRMAN

CODE OF CORPORATE GOVERNANCE

Report By: Democratic Services Officer

Wards Affected

County-Wide

Purpose

1. To consider the attached revisions to the Draft Code of Corporate Governance, and make amendments.

Background

2. The Audit and Corporate Governance Committee considered the Council's Draft Code of Corporate Governance at its meeting on 22 September 2006, and agreed to ask the Standards Committee for its amendments and comments before approval by Council.
3. The Standards Committee Considered the Code on 20 October 2006, and suggested amendments to Paragraph 42, such as expanding the information to include more details about the Council's ethical framework, and the roles of the Monitoring Officer and the Standards Committee. They felt that the document should also make specific reference to the various codes that the Standards Committee had developed, and continued to monitor, such as the Code of Conduct, and protocols relating to the use of Council resources, and to planning matters.
4. Since 20 October 2007, the Code has been circulated to the Head of Communications and the Audit Manger for amendments, and they have suggested various revisions.
5. The Standards Committee also considered a foreword to the Code at its meeting on 12 February 2007, and the Chairman undertook to revise this.
6. Attached to this report are the revised foreword, and the most up-to-date version of the Code of Corporate Governance as a standard document. The same document, but with all of the tracked changes showing, will be circulated separately because it is in colour and requires a different printing method to the agenda.
7. The Code requires further work before it can be finalised and adopted.

RECOMMENDATION

THAT the Standards Committee reviews the attached Code of Corporate Governance and all of the recent revisions, and makes its final amendments before adoption by Council.

Code of Corporate Governance

FOREWORD

Herefordshire Council must meet high ethical and other standards in everything it does; it must comply with legal requirements; and it must use public money and other resources economically, efficiently and effectively, accounting fully for its actions.

In order to discharge these responsibilities, Members and senior Officers must ensure the proper governance of the Council's affairs and the stewardship of its resources.

The Council has therefore adopted a Code of Corporate Governance, which observes the requirements of the framework *Corporate Governance in Local Government: a keystone for Community Governance*, approved by the Chartered Institute of Public Finance and Accountancy and the Society of Local Authority Chief Executives.

The Council's Director of Resources is responsible for the effective application of the Code in matters of financial probity, performance and risk.

The Council's Head of Legal and Democratic Services, and Monitoring Officer, is responsible for the effective application of the Code in respect of legal obligations and ethical standards.

Each will make an annual report on the effectiveness of the Code to the Audit and Corporate Governance Committee, and to the Standards Committee, respectively.

As part of its efforts further to improve standards of governance, the Council will itself carry out an annual review of the effectiveness of the Code.

HEREFORDSHIRE COUNCIL CODE OF CORPORATE GOVERNANCE

Introduction

1. Herefordshire Council's Code of Corporate Governance closely follows guidance published jointly by CIPFA/SOLACE and endorsed by the Local Government Association and the Audit Commission. It has been developed in response to the recommendation that Local Authorities draw up their own 'Code of Corporate Governance', a document that describes the system by which the Council directs and controls its functions and relates to its communities. Three key principles underpin Corporate Governance:

Openness and Inclusivity

2. Openness is required to ensure that stakeholders can have confidence in the decision-making and management processes of the Council and in the approach of its members and staff. Openness also requires an inclusive approach, which seeks to ensure that all stakeholders and potential stakeholders have the opportunity to engage effectively with the decision-making processes and actions of Herefordshire Council.

Integrity

3. Integrity comprises both straightforward dealing and completeness. It is based upon honesty, selflessness, objectivity and high standards of propriety and probity in the stewardship of public funds and management of the Council's affairs. It depends on an effective internal control framework and on the personal standards and professionalism of the Members and staff within Herefordshire Council.

Accountability

4. Accountability is the process whereby Herefordshire Council and the Members and staff are responsible for their decisions and actions, including their stewardship of public funds and all aspects of performance, and submit themselves to appropriate external scrutiny.
5. The CIPFA/SOLACE guidance identifies five areas to be covered in a Code:
 - Community Focus;
 - Service Delivery Arrangements;
 - Structures and Processes;
 - Risk Management and Internal Control; and
 - Standards of Conduct.
6. The Council's Code sets out how the the principles of Corporate Governance will be reflected in each of the five areas. The Code then identifies the measures, which are already in place within the Council, to comply with the requirements set out in the guidance.

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Community Focus

7. Through carrying out our responsibilities and in our influence of the wider community, the Council will:
- work for and with all of its diverse communities;
 - demonstrate leadership in its local communities where appropriate;
 - promote the wellbeing of the county through effective arrangements for accountability to stakeholders for the Council's performance and its effectiveness in the delivery of services and in its sustainable use of resources;
 - demonstrate integrity in the Council's dealings by building effective relationships and partnerships with other public agencies and the private/voluntary sectors;
 - demonstrate openness in all their dealings ; and
 - demonstrate inclusiveness by communicating and engaging with all sections of the community to encourage active participation

The Council will:

8. Publish on a timely basis an Annual Report presenting an objective, understandable report of the Council's activities and achievements, financial position and performance. The Annual Report will include statements that;
- explain the Council's responsibility for the financial statements;
 - confirm that the Council complies with relevant standards and codes of Corporate Governance; and
 - explain the effectiveness of the Council's system for managing risk and internal control.
9. Publish on a timely basis a Performance Plan presenting an objective, balanced and understandable account and assessment of the Council's current performance in service delivery, and how it plans to maintain and improve service quality. This plan will be made widely available including access through the council's website.
10. Regularly review arrangements for how its financial and operational reporting processes are independently scrutinised, including the internal and external audit review of this code and performance management.
11. Regularly review arrangements designed to encourage individuals and groups from all sections of the community to engage with, contribute to and participate in the work of the Council, and will put monitoring those arrangements to ensure that they continue to work in practice. The Council has a Community Strategy, "A Sustainable Future for the County". Consultations are coordinated through the

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Strategy and bring together the shared priorities of local communities, organisations, groups and networks. Feedback from service users will be sought. The Council's website also provides public access to information about the Council. The Council's Performance Plan is also available on the Council's website.

12. Make an explicit commitment to openness in all of its dealings, subject only to the need to preserve confidentiality in those specific circumstances where it is proper and appropriate to do so, and by their actions and communications deliver an account against that commitment. This is set out in the Council's publication scheme under the Freedom of Information Act, available on the Council's website. The Council has a Corporate Complaints Procedure. Complaints, concerns and compliments are reported to the Corporate Management Board.
13. Establish that there are clear channels of communication with all sections of the community and other stakeholders and will monitor those channels to ensure they operate effectively. Members' contact details are made widely available and there is the facility for emailing complaints/compliments and access to services online.
14. Ensure that the vision for the local community, and our strategic plans, priorities and targets, are developed through robust mechanisms and in consultation with the local community and other key stakeholders, and that they are clearly written and communicated. Periodic Review of Community Strategy. Robust service planning and monitoring mechanisms are in place, focused on Key Performance Indicators, BVPI's and the Council's service Performance Plan.

Service Delivery Arrangements

The Council will:

15. Set standards and performance targets for how services are delivered and sustained, with reference to equality policies. These are detailed in the Performance Plan of the Council and monitored through IPG reports to Cabinet/SMC. The Council is committed to Corporate Equality Policy and has completed the third year of the Impact Equality Assessments. External audit of the Performance Plan ensures compliance with best practice. Targets are set with regard to diversity and performance monitored. The Council has an equality and diversity policy in place. A diversity group has been appointed and Equality Impact assessments completed.
16. Put in place and regularly review systems for providing information for performance management purposes. Performance management and information systems (including performance against KPI and BVPI's and local indicators) are in place, validated by internal and external audit. Timely management information is available to Directorates/Heads of Service with reports published on the intranet.

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17. Monitor and report performance against agreed standards and targets and develop comprehensive and understandable performance plans. The Performance Plan. Regular reports on performance against targets to Directorates/Cabinet/Portfolio holders/SMC

18. Put in place and regularly review arrangements whereby resources are allocated according to priorities. The Medium Term Financial Management Strategy (MTFMS) sets priorities and establishes how resources are allocated according to the Performance/Business Plan. This includes consultation with budget holders and CMB. CMB meets regularly to discuss performance against targets and reallocate resources where possible in response to identified needs. The process is scrutinised by SMC and the Audit and Corporate Governance Committee and approved by the Council.

19. Secure Value for Money in the use of its resources. As above Performance/Service Plans. Voluntary and private sector/partnership.

20. Foster effective relationships and partnerships with other public sector agencies and the private and voluntary sectors and consider outsourcing options (where it is efficient and effective to do so) in delivering services to meet the needs of the local community, and put in place processes to ensure that they operate effectively. Herefordshire Partnership, LAA, PACTS.

21. Respond positively to the findings and recommendations of external auditors and statutory inspectors and put in place arrangements for the implement agreed actions effectively. Audit recommendations reported to CMB and action plan developed to address any such recommendations. Audit findings reported to Audit and Corporate Governance/Standards Committees as appropriate and Cabinet.

Structures and Processes

22. The Council has established effective political and managerial structures and processes to govern how it makes decisions and exercises authority. The Council will maintain arrangements to:
 - define roles and responsibilities of Members and officers to ensure accountability;
 - ensure that there is proper scrutiny and review of all aspects of performance and effectiveness;
 - ensure that structures and processes are clear, communicated and understood in order to demonstrate openness and inclusivity; andThis will be regularly reviewed to reflect changing requirements and best practice

The Council will:

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23. Put in place and regularly review documented protocols governing relationships between Members and officers. The Constitution, code of conduct and Council Policies. The above are reviewed and monitored by the Standards Committee and the Council.
24. Ensure that the relative roles and responsibilities of Members and senior officers are clearly defined. Ensured by the Council's Scheme of Delegation set out in the Constitution and Code of conduct referred to above.
25. Ensure that Members meet formally and regularly to set the strategic direction of the Council and monitor service delivery. The Council does so by meeting regularly in an annual cycle and Cabinet/Strategic Monitoring Committee. This structure supports the close involvement of Members in establishing the strategic direction of the Council and monitoring its progress.
- .
26. Develop and maintain information on delegated or reserved powers, which should include a formal schedule of those matters which the council should decide specifically and collectively. I. The Council's scheme of Delegation is in place.
27. Put in place and regularly review its documented and management processes for policy development, implementation and review and decision-making, monitoring, control and reporting. In addition to formal procedural and financial regulations to govern the conduct of the Council's business. The S151 officer ensures that standing orders for the conduct of business and financial regulations are adhered to. The Monitoring Officer ensures compliance with statutory duties, code of conduct, with assistance from the Standards Committee as appropriate. Council policies regularly reviewed by SMT/Heads of service.
28. Put in place and regularly review arrangements for ensuring that Members are properly trained for their roles and have access to all relevant information, advice and resources to enable them to carry out their roles effectively. A package of support for Members, led by Corporate and Customer Services, includes: -
- A programme of induction and training following election in May 2007;
 - Diversity Training;
 - Member visits to departments;
 - Training programme to be developed monitored by Standards Committee/SMC/Audit; and
 - Access to regular information from the Communications Service, intranet and website.
29. Ensure that the role of the executive members are formally defined in writing to include responsibility for providing effective strategic leadership to the Council and

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for ensuring that the Council successfully fulfills its overall responsibilities for the activities of the organisation as a whole. Set out in the Constitution of the Council.

30. Ensure that the roles and responsibilities of all Members of the Council, together with the terms of their remuneration and its review, are defined clearly in writing. Terms of remuneration are set out in Members Allowances scheme (to be reviewed by October, 2006).
31. Ensure that the Chief Executive is made responsible to the Council for all aspects of operational management. The Council has a designated Chief Executive as head of the paid service with appropriate job description and authority under the Scheme of delegation.
32. Appoint a Chief Finance Officer, under Section 151 of the Local Government Act 1972, who will be responsible to the Council for ensuring that appropriate advice is given to on all financial matters; for keeping proper financial records and accounts; and for maintaining an effective system of internal financial control. The function of the Chief Finance Officer is set out in the Council's Constitution. The Council has a designated s151 Officer and is responsible for ensuring that effective financial monitoring, control and reporting systems are in place and are supported by financial regulations and internal audit. Regular financial reports to Audit and Corporate Governance Committee/Cabinet/Council.
33. Appoint a Monitoring Officer who will be responsible to the Council for ensuring that agreed procedures are followed, and that all applicable statutes, regulations and other relevant statements of good practice are complied with. The function of the Monitoring Officer is set out in the Council's Constitution. The Council has a designated Monitoring Officer. Standards Committee is responsible for reviewing the operation of the Monitoring Officer role and to ensure high standards of compliance are maintained.
34. Ensure that the roles and responsibilities of all senior officers, together with the terms of their remuneration and its review, are defined clearly in writing. Job descriptions are in place for all senior officers and a scheme of SRDs for reviewing performance. Remuneration is set by the appropriate pay and conditions and maintained through national pay negotiations and reviewed by the Cabinet/Council.
35. Adopt clear protocols and codes of conduct to ensure that the implications for supporting community political leadership for the whole Council are acknowledged and resolved. The Council has a code of Conduct for members.

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Risk Management and Internal Control

The Council will:

36. Develop and maintain robust systems for identifying and evaluating all significant risks which involve the full participation of all those associated with planning and delivering services. The Council has a risk management strategy, which was adopted (date to be inserted). A Corporate Risk Register has been developed with the Council's Senior Management Team. Directorates maintain individual registers, which are regularly reviewed.
37. Put in place and regularly review its risk management systems, including systems of internal control and an Internal Audit function. These arrangements will ensure compliance with all applicable statutes, regulations and relevant statements of best practice, and ensure that public funds are properly safeguarded and are used economically, efficiently and effectively and in accordance with the statutory and other authorities that govern their use. The Council has a Statement on Internal Control, an internal audit function and systems are assessed through audit process.
38. Ensure that services are delivered by trained and experienced people. Job descriptions recognise skills needed to deliver and staff review and development (SRD) sets out performance and development for individuals on annually and are reviewed after 6 months to identify training needs. Investors In People is currently being sought.
39. Ensure effective arrangements for an objective review of risk management and internal control, including Internal Audit. Carried out by regular reports to the Audit and Corporate Governance Committee.
40. Maintain an objective and professional relationship with our external auditors and other statutory inspectors. The Council has regular meetings with auditors to decide how systems and audits are communicated.
41. Publish on a timely basis, within the Annual Report, an objective, balanced and understandable statement and assessment of the Council's risk management and internal control mechanisms and their effectiveness in practice.

Standards of Conduct

The Council will:

42. Develop and adopt formal codes of conduct defining the standards of personal behaviour and systems will be put in place to ensure that individual Members, officers and agents of the Council adhere to that code.

The Council has a Code of Conduct governing Member/Officer relations in place. These codes are monitored and reviewed by the Monitoring Officer together with the

**HEREFORDSHIRE COUNCIL
CODE OF CORPORATE GOVERNANCE**

Standards Committee. The Council has a Whistleblowing Policy currently under review by the Monitoring Officer.

43. Regularly review arrangements and put processes in place to ensure that Members and employees of the Council are not influenced by prejudice, bias or conflicts of interest in dealing with different stakeholders. The Monitoring Officer maintains and reviews a Register of Members/Officers Interests and Hospitality. Procurement procedures are in place.
44. Regularly review arrangements to ensure that our procedures and operations conform to ethical standards and will monitor their continuing compliance in practice. The Council has key policies – such as the Code of Conduct, Whistleblowing and Recruitment – which are reported to Cabinet/Council. The Standards Committee oversees compliance and good practice. Complaints, grievance and appeals procedures are in place.
45. Regularly review arrangements for Whistleblowing to which staff and all those contracting with the Council have access. The Council has such a policy in place and it is published on the intranet, in a leaflet and communicated throughout the council.

Review

46. This policy will be subject to annual review.

August 2006

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Welcome to the February issue of the *bulletin*.

This is a timely edition of the *bulletin* — as we go to print we are in the middle of the government's consultation period on the wording of the revised Code of Conduct, and the *Local Government and Public Involvement in Health Bill* is going through the committee stage in the House of Commons. You will find articles on both of these issues in the pages that follow.

If the revised Code is to be introduced in time for the local elections in May, there is much work to do. We know that monitoring officers and members are keen to receive new guidance at the earliest opportunity, and work is well underway to make sure that it is ready to be released as soon as the new Code is published.

The *Local Government and Public Involvement in Health Bill* includes all the necessary provisions for a more locally-based conduct regime, with more responsibilities for standards committees and the Standards Board acting as a light touch regulator. It is anticipated that these arrangements will be introduced in April 2008. If they are to operate effectively from the outset, it is important that we start to work with authorities as soon as possible to develop examples of good practice. These can then be shared across all standards committees.

You will find an invitation in this issue of the *bulletin* for authorities that are interested in being involved in pilot work on the operation of the local filter, joint working or performance monitoring. The Standards Board is looking forward to working with a range of standards committees to develop robust arrangements, and to help ensure that the new devolved system of dealing with allegations has the confidence of members, officers and the public.

David Prince, Chief Executive

Consultation on the Code of Conduct

The Department for Communities and Local Government (DCLG) has started its consultation process on amendments to the Model Code of Conduct. The consultation paper can be found in the consultation section of DCLG's website at www.communities.gov.uk/.

The closing date for responses is 9 March 2007, so authorities wishing to submit views will need to act quickly.

The Standards Board for England welcomes the proposed changes and the support they will give to members in their community advocacy role. We will

continue to work with government and stakeholders as the consultation process continues and will be encouraging early implementation of the revised Code.

“It is important that the opportunity to have a clear, workable Code of Conduct — one that helps maintain high standards of conduct and supports democratic debate — is not lost.”

The revised Code implements almost all of the headline recommendations the Standards Board made to ministers following an extensive consultation with local government.

These are summarised as follows:

- The definition of personal interest has been changed to provide a more locally-based focus, to ensure that interests shared with a substantial number of other residents do not need to be declared.
- A new category of 'public service interest' has been introduced. This will make requirements less onerous for dual-hatted members and those members appointed or nominated by the authority to outside bodies.
- The unlawful discrimination provision is to be replaced by a duty that members should not do anything that would seriously prejudice their authority's statutory duties in regard to equality. This will allow action to be taken on some discrimination issues that have previously been outside the scope of the Code.
- Bullying is specifically referred to in the Code and its definition will be clarified by our published guidance.
- The 'whistleblowing' duty to report breaches by other members has been removed.
- Members will be able to disclose confidential information in the public interest (with Standards Board guidance on a public interest test).
- Certain behaviour outside of official duties will be regulated but it will be limited to unlawful activities (although implementation of this part of the Code will have to wait until the *Local Government and Public Involvement in Health Bill* is enacted).

- Prohibiting the intimidation of any person involved in an investigation, including the complainant, witnesses and officers of the authority.

The consultation paper also proposes changes to the rules relating to participation in meetings by members who have a prejudicial interest. With the consent of a meeting, those members will be allowed to make representations and answer questions on the matter before withdrawing from the room. This will particularly benefit members that may, for example, wish to make representations to a planning committee on their own planning application.

It is proposed that the current four model Codes will be combined into one consolidated Code. Certain provisions, such as those relating to overview and scrutiny, will not apply to authorities that do not operate executive arrangements.

The consultation paper is silent on the timing and implementation of the revised Code of Conduct following consultation, although the Standards Board understands that the revised Code is intended to be tabled in Parliament later in March, and that authorities will then have six months from May 2007 to adopt it.

The Standards Board for England would hope that authorities are in a position to adopt the revised Code of Conduct at their annual meeting in May. In order to achieve this, monitoring officers will need to consider the timetable that will need to be followed within their authority both for the adoption of the Code of Conduct and for training for members.

We would also encourage monitoring officers to work with their parish clerks to ensure adoption of the revised Code of Conduct by parish and town councils at an early opportunity. This should help to minimise any confusion that may arise by having two different Codes of Conduct applying within their area.

The Standards Board for England will be responding to the consultation paper and we would encourage other authorities to do so as well.

It is important that the opportunity to have a clear, workable Code of Conduct — one that helps maintain high standards of conduct and supports democratic debate — is not lost.

The Local Government and Public Involvement in Health Bill

The *Local Government and Public Involvement in Health Bill* fulfils the government's commitment to put a framework in place which allows local standards committees to deal with all aspects of the receipt and determination of allegations that a member has breached the Code of Conduct.

The Bill allows the Standards Board for England to undertake the strategic regulator role that we have always considered should be our primary function. It also responds to the Collins' judgement, making clear the government's view that some aspects of members' conduct that is undertaken in a private capacity should be capable of Code of Conduct regulation.

A brief summary of the main provisions in the Bill relating to standards is provided below.

- Standards committees will be responsible for the receipt of allegations and determining whether they should be investigated. If they are to be investigated, it needs to be decided whether it will be undertaken by the monitoring officer or the Standards Board.
- Standards committees must be chaired by an independent member.
- There will be a duty on standards committees to provide periodic information to the Standards Board about the allegations the standards committee has received and how it has dealt with them.
- The Code of Conduct will cover unlawful actions undertaken at any time.
- The Secretary of State will make regulations for the circumstances in which the Standards Board can suspend a standards committee from deciding whether allegations should be investigated.
- Standards committees will be allowed to undertake joint working for some or all of their responsibilities.
- There will be a general power to allow the creation of sub-committees to deal with any of the functions of a standards committee
- The provisions regarding confidentiality of reports are to be relaxed to allow information to be shared with standards committees.

- A standards committee will be able to refer a report to the Adjudication Panel for England if it considers that the sanctions available to it are insufficient. The sanctions available to the Adjudication Panel for England are also to be widened to include lower level sanctions. This will allow it to deal with any reports that are referred to it.

Once the Bill receives royal assent, the Secretary of State will need to make a range of regulations. This will include the use of the Standards Board's power to suspend standards committees, the operation of joint working arrangements, and the composition of sub-committees.

The Standards Board will produce statutory guidance on a range of issues such as how the assessment of investigations should be undertaken. This will include criteria for referring an allegation for investigation and guidance on joint working arrangements.

Directions

Ethical standards officers have been able to issue directions to help resolve local problems since November 2004, when the regulations for local determinations were amended. Since April 2006, 36 directions have been issued.

Directions can be a more useful way of tackling complaints in cases where problems within a council may be the cause of a councillor's alleged misconduct. In such cases, an ethical standards officer may decide that a direction may be more appropriate than an investigation. At the moment, only an ethical standards officer has power to issue a direction

Once a case has been referred for investigation, the ethical standards officer will try to identify any patterns of conduct or underlying issues that would be more appropriately dealt with by a direction rather than an investigation as soon as possible. If a monitoring officer has already dealt with previous complaints about the council, they will have an insight into whether an investigation will resolve the issues or make them worse.

Examples of where a direction may be more appropriate than an investigation include:

- Multiple allegations concerning members of a parish council (including those not referred for investigation). The concern here is that allegations would continue to be made unless some constructive steps were taken to deal with the cause of the problem.
- Past investigations were ineffective in addressing persistent problems.
- Personal conflict/communication problems between members — tit for tat behaviour.
- An allegation that appears to demonstrate a general lack of understanding of council procedures, or of the requirements of the Code.

The ethical standards officer can direct the monitoring officer to undertake a variety of actions depending on the particular circumstances facing the council, for example:

- Review procedures within the authority to make them more robust.
- Arrange mentoring, guidance or training.
- Arrange mediation between councillors using a facilitator.

Issuing a direction can present its own difficulties, especially at the time when the parties are informed of the proposals. Ethical standards officers often receive an initially negative response to a proposed direction, as the parties involved are often reluctant to consider a direction as a way of resolving disputes. The complainant may want the complaint investigated and the subject member may want to be vindicated.

We will give as much support as possible to a monitoring officer in carrying out a direction. Where it is a parish issue, it is often helpful to obtain the assistance of the local County Association of Local Councils, and to explore what assistance may be available from the standards committee.

If an allegation is already being investigated locally and there are subsequent allegations which indicate a direction may be more appropriate, or if the monitoring officer raises concerns about the impact of an investigation on the council and considers a direction more appropriate, the monitoring officer may ask to refer the case back to the ethical standards officer. This is so that a direction may be considered. Monitoring officers must inform the ethical standards officer about the action they have taken in response to the direction.

The ethical standards officer may, if unhappy with the report, require the monitoring officer to publish a statement giving details of the direction and reasons for failing to implement it. For example, it may be necessary to publicise the fact that a member is reluctant to take part in a process that has been devised to improve the functioning of the council. If the monitoring officer indicates that the aims of the direction have been met, and the ethical standards officer is satisfied that the members have complied with the direction, the matter will be closed.

You can find examples of when directions have been used in the *Case Review* number four, available from our website at www.standardsboard.co.uk

The revised Code of Conduct — acceptance of office

The planned implementation of the revised Code of Conduct later this year has raised the issue of whether members who sign a declaration of acceptance of office when they are elected will have to sign another declaration of acceptance of office when the revised Code is adopted by their authority.

The Standards Board does not believe that this is necessary: Section 52(2) of the *Local Government Act 2000* says that the declaration may include an undertaking by the member to observe the authority's Code of Conduct "for the time being under section 51".

The *Local Elections (Declaration of Acceptance of Office) Order 2001* [SI2001/3941] provides the form of declaration that members must sign when they are elected. This says that:

"I undertake to observe the code as to the conduct which is expected of members of [insert name of authority]."

Both of these provisions appear to refer to being bound by whichever Code is in force at the authority.

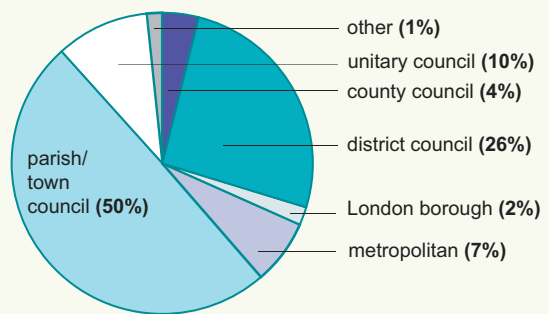
Taken together we consider these provisions to mean that the member is bound by whichever Code currently applies at the authority and, therefore, there is no need to sign another declaration when the revised Code is adopted.

Referral and investigation statistics

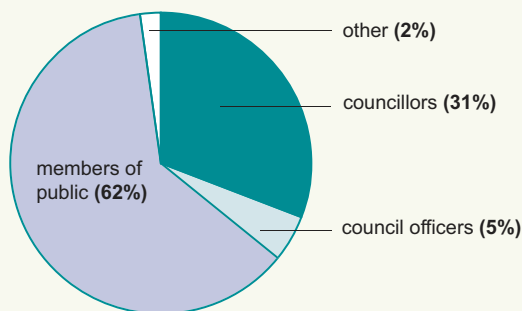
The Standards Board for England received 2,498 allegations between 1 April and 31 December 2006, compared to 2,949 during the same period in 2005.

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

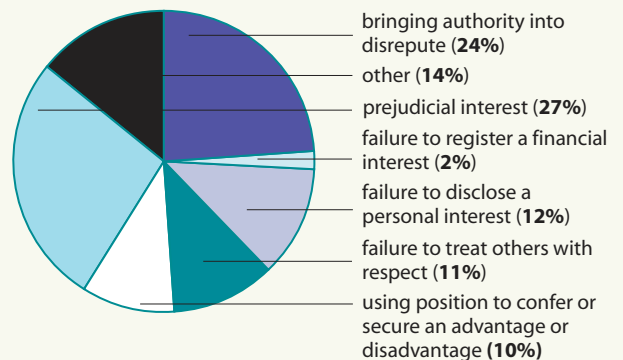
Authority of subject member in allegations referred for investigation



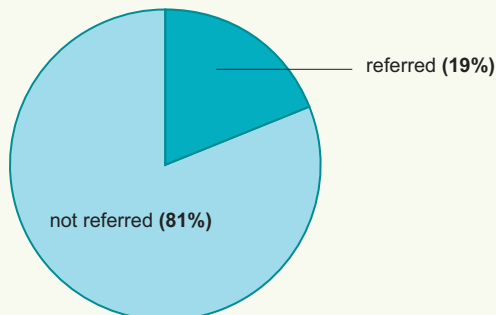
Source of allegations received



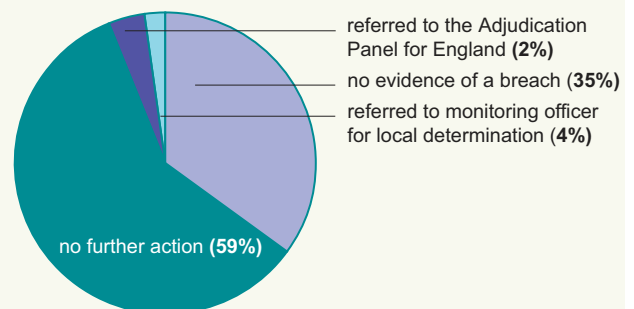
Nature of allegations referred for investigation



Allegations referred for investigation



Final findings



Annual Assembly 2007

***Down to Detail* — making local regulation work is the sixth Annual Assembly of Standards Committees, to be held on 15-16 October 2007 at the International Convention Centre in Birmingham.**

With the move to a local filter system for complaints fast approaching, the conference will set out how to put this into action and achieve greater consistency and effectiveness in local regulation.

Down to Detail will also explore the vital issues raised by the revised Code of Conduct, and will feature practical workshops and plenaries focusing on understanding the key changes.

Conference topics include:

- a step-by-step guide to the local filter process, including new reporting requirements
- managing referrals, investigations, hearings and sanctions
- joint working
- mediation
- an introductory overview of the revised Code
- confident communications
- engaging leaders

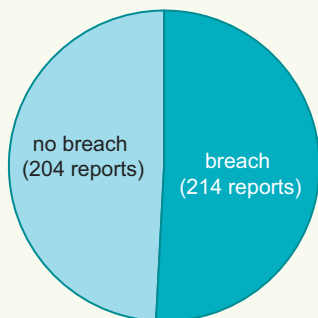
The Annual Assembly is the leading conference on issues concerning standards committees. Booking details will be sent to all authorities in March.

Local investigation statistics

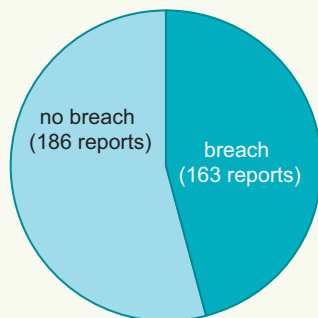
Of all cases referred since November 2004 for local investigation we have received a total of 418 reports — please see below for a statistical breakdown of these cases.

(NB: for the period 1 April — 31 December 2006, ethical standards officers referred 252 cases for local investigation - equivalent to 52% of all cases referred for investigation.)

Monitoring officers' recommendations following local investigations



Standards Committee hearings



Standards committee determinations



Guidance programme for 2007

In *bulletin 31* we discussed the Standards Board's commitment to producing guidance and training materials to help monitoring officers and standards committees implement the revised Code of Conduct. We are now working on the specific details of our Code guidance programme for 2007.

This will include a new DVD to help local authorities train members. The DVD will explain the revisions to the Code using dramatised scenarios to illustrate particular paragraphs, and we expect to be able to release it soon after the revised Code comes into force.

We are also planning to publish guidance in written form similar to our current range. This will

include a general guide to the revised Code and a detailed guide to the declaration of interest paragraphs. We expect to publish these two publications, along with a simple guide, on our website as soon as the Code comes into force.

The guidance will be available in booklet form soon afterwards and every authority covered by the Code will receive copies.

This year we will also publish a fifth *Case Review*, which will be similar to our *Code Q&A Case Review Volume 1*. This is a paragraph-by-paragraph consideration of the code illustrated by past cases. As such, it will contain specific guidance on the new bullying paragraph expected to be included in the revised Code.

On the road with the Standards Board

We will be hosting a series of 11 roadshows across the country in June 2007. The focus will be on the revised Code of Conduct and preparing for the proposed introduction of the local filter system for complaints in 2008.

The roadshows will offer an opportunity to discuss any issues that have arisen since the implementation of the revised Code and any concerns about local preparation for dealing with complaints.

As in previous years, the roadshows will take the format of presentations and discussions, and delegates will be encouraged to participate in question and answer sessions. Board members and the chief executive will also be on hand to answer any queries.

Invitations have already been sent out to local authorities as well as the parks, police, transport and fire authorities that are also covered by the Code. The roadshows will be mainly aimed at monitoring officers and members from local standards committees.

Previous roadshows have offered the Standards Board an excellent opportunity to engage with delegates, answer queries, and offer guidance and support. They also offer delegates the chance to network informally with colleagues from the local area.

Dates and venues of the roadshows are:

- Liverpool – 6 June
- Leeds – 7 June
- Newcastle – 12 June
- Nottingham – 13 June
- Birmingham – 14 June
- Truro – 19 June
- Exeter – 20 June
- Winchester – 21 June
- Swindon – 26 June
- Norwich – 27 June
- London – 28 June

For more information please contact our event managers, Benedict Business Resources, on 01483 205432.

After Livingstone — bringing your office or authority into disrepute

The only sections of the Code of Conduct which apply to a member when not acting in an official capacity are the requirement not to bring the office or authority into disrepute and the requirement not to misuse their position to confer an advantage or disadvantage on yourself or any other person. These also apply "in any other circumstances".

The recent High Court decision in the case of *Livingstone v Adjudication Panel for England* changes the interpretation of what these words mean, making them more restrictive.

The court said that the circumstances are limited to situations when a member is performing his or her functions or purporting to use their status as a councillor.

There appear to be three main principles that need to be present for the behaviour under consideration to amount to a breach of the Code.

- A member must have used or sought to use their status as a member of the council. This is a "using one's position" test.
- The use of the status must be of a type that is capable of amounting to a failure to comply with the Code (for example: behaviour that amounts to treating others with disrespect; bullying; use of confidential information; and so on). This is a breach of Code test.
- The disrepute must attach to the office or the authority and damage it, as opposed to simply damaging the member's reputation. This is a damage to reputation test.

A case tribunal or standards committee will need to be persuaded that the misconduct can damage the reputation of the member's office or authority, not just the reputation of the individual concerned.

Certain kinds of conduct (for example drink driving or petty theft) may damage the reputation of an individual but will rarely be capable of damaging the reputation of the office of councillor or the reputation of the authority.

Establishing when disrepute attaches to the office or council is not easy because the High Court gave no indication of what tests to apply.

Here are some of the possible factors:

- Prejudicing the public interest for private gain (for example a councillor uses their position to obtain confidential information which they then use to secure a personal profit).
- Using or trying to use position or status as a member of the council (for example a councillor is in dispute with a neighbour about their planning application and threatens to speak to contacts who control the planning committee).
- Defying important and well established rules of the authority for private gain.
- Engaging in conduct which directly and

significantly undermines the authority's reputation as a good employer or responsible service provider (for example sexual offences against children committed in a village hall run by the council of which the offender is a member).

What is clear is that each case will need to be dealt with on its merits. The government wants to extend the scope of these provisions and has made proposals to do so in the new *Local Government and Public Involvement in Health Bill*, which is discussed on page 3.

Seeking volunteers

The White Paper *Strong and Prosperous Communities* outlines a future ethical framework where local government takes greater responsibility for their ethical environments and the Standards Board has a role as a light touch, strategic regulator.

We are keen to work with local government to develop the various aspects of our respective new roles.

As such we are looking for volunteers to work with us as pilot sites on the following topics:

- Joint arrangements for standards committees.
- Operating the local filter.
- Developing the Standards Board's monitoring and auditing role (identifying what data to collect, how to collect it and types of intervention).

We are asking volunteers to test and comment on the instruments and approaches we have developed. It is likely to involve the monitoring officer, standards committee members, and possibly other officers such as the chief executive. We will endeavour to ensure that your involvement is not too resource intensive.

The work will initially take place between May and September 2007. If you would like to be involved, then please e-mail gary.hickey@standardsboard.co.uk. Please also state which of the pilots you would like to be involved in — you can choose more than one.

If we have a large number of volunteers it is possible that we will not be able to include all those authorities that wish to take part. However, we will respond to everyone that puts themselves forward. If you have any queries then please contact Gary on 0207 378 5087.

Contacts and more information

Please feel free to let us know any ideas and suggestions you may have for future issues of the *Bulletin*, along with any questions or feedback. Please send comments to:

- bulletin@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



House of Lords
House of Commons
Joint Committee on
Human Rights

Legislative Scrutiny: Fourth Progress Report

Eleventh Report of Session 2006-07

*Report, together with formal minutes and
appendices*

*Ordered by The House of Lords to be printed 26 March 2007
Ordered by The House of Commons to be printed 26 March
2007*

**HL Paper 83
HC 424**

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Bills and other documents drawn to the special attention of both Houses

1 Local Government and Public Involvement in Health Bill

Date introduced to first House	12 December 2006
Date introduced to second House	
Current Bill Number	HC Bill 77
Previous Reports	None

Background

1.1 This is a Government Bill introduced into the House of Commons on 12 December 2006. The Rt Hon Ruth Kelly MP, Secretary of State for Communities and Local Government, has made a statement of compatibility under s. 19(1)(a) of the Human Rights Act 1998. The Explanatory Notes accompanying the Bill set out the Government's view of the Bill's compatibility with the Convention rights at paragraph 467. The Bill completed its Committee stage on 8 March 2007.

The effect of the Bill

1.2 The main purpose of the Bill is to give effect to the Government's proposals for reform of the local government system in England, set out in the local government white paper *Strong and Prosperous Communities*,¹ and of the current arrangements for patient and public involvement in the provision of health and social care services.

1.3 Most of the Bill does not, in our view, raise any significant human rights issues. Part 10 of the Bill, however, which gives effect to the Government's proposals for reform of the regime relating to ethical standards of conduct for local government, contains one provision which in our view does raise a significant human rights issue.

The scope of the code of conduct for local councillors

1.4 The Local Government Act 2000 introduced a new ethical framework for local government, including a statutory code of conduct for local councillors policed by the Standards Board for England.² The Act imposes a duty on councillors to give a written undertaking to observe the code of conduct "in performing his functions".³ The current model code of conduct provides that a councillor must not in his or her official capacity "or any other circumstance" conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute.⁴

¹ Cm 6939.

² Sections 49-52 Local Government Act 2000.

³ Section 52 Local Government Act 2000.

⁴ Para. 4 of the Model Code of Conduct for Local Authority Members.

1.5 The Bill provides for the extension of codes of conduct for local authority members to apply to conduct other than in the performance of their official functions as members.⁵ It amends the relevant provisions of the Local Government Act 2000 to provide that the principles which govern the conduct of members and the provisions of the code of conduct which they are required to follow include principles and provisions which are to “apply at all times” to a member or co-opted member.⁶ The Bill would also remove the words “in performing his functions” from the provision of the Local Government Act 2000 which imposes the duty to comply with the code of conduct.⁷

1.6 On the face of it this would mean that local authority members are subject to regulation of their conduct, including by sanctions such as suspension or disqualification from being a member, outside their performance of their functions as a member and therefore, by necessary implication, in their private life.

1.7 The Explanatory Notes to the Bill state that “it is possible” that this provision may engage Articles 8 and 10 of the Convention, but assert that the clause “is considered to be capable of being exercised compatibly with the rights set out in the Convention.”⁸ The Notes say nothing more about the reasons for introducing the provision, other than that it is being introduced “following comments made by the court in a recent case (*Ken Livingstone v the Standards Board for England*)”.⁹

1.8 In our view there is no doubt that the Bill’s proposed extension of the scope of the conduct of local authority members that may be covered by codes of conduct engages members’ right to respect for their private life in Article 8 ECHR and their right to freedom of expression in Article 10 ECHR. The effect of the changes will be that sanctions can be applied to a member in respect of actions taken or statements made in their private life. The provision therefore has the potential to give rise to breaches of Articles 8 and 10 ECHR in practice. For the reasons we have frequently given in previous reports, we do not consider adequate the statement in the Explanatory Notes that the power is capable of being exercised compatibly with Convention rights. Such reliance on sections 3 and 6 of the Human Rights Act would render parliamentary scrutiny for human rights compatibility virtually meaningless. Where a statutory power engages Convention rights and is so wide that it gives rise to a risk of being exercised incompatibly with those rights, we want to know more about the Government’s reasons for its confidence that the power will not be so exercised in practice. Our Chair therefore wrote to the Minister on 23 January 2007 asking for the Government’s reasons for introducing the change, and for a more detailed explanation of why in the Government’s view the interference with the Article 8 and 10 rights of local authority members is justified.¹⁰ We asked for a response by 5 February 2007.

1.9 We regret to report that, more than six weeks after the date by which we requested a response, and despite several reminders, we still have not received a response from the Minister to our short inquiry. We cannot recall a previous occasion on which a letter

⁵ Clause 141.

⁶ Clause 141(1)-(3), inserting new provisions into ss. 49-51 of the Local Government Act 2000.

⁷ Clause 141(4), amending s. 52 of the Local Government Act 2000.

⁸ EN paras 330 and 467.

⁹ EN para. 467.

¹⁰ Appendix 1.

from us has effectively been ignored by a Minister. The proper performance of our function of scrutinising bills before Parliament for human rights compatibility depends on Government departments responding to our inquiries as fully and promptly as possible to enable us to report to Parliament in good time. We now have no alternative but to report on this Bill without the benefit of the Minister's response to our questions. We draw this matter to the attention of each House.

1.10 In the absence of a response from the Minister, we have sought to find the answers to our questions from other sources. In January 2005 the Committee on Standards in Public Life considered the question in its Tenth Report in which it made a number of recommendations about the ethical framework for local government.¹¹ The Committee pointed out that in England and Wales the code of conduct applies mainly to members acting in their official capacity but also appeared to concern conduct in private life, and that this raised difficult and contentious issues. It recommended that the phrase "in any other circumstances" should be removed from the model code of conduct for local authority members so as to make a clear distinction between private and official conduct, and that private conduct that is wholly unrelated to an individual's official capacity should fall outside the ethical framework.

1.11 The Government rejected this recommendation. In December 2005 it published a discussion paper, *Standards of conduct in English local government: the future*, in which it said:

"We believe that councillors should set an example of leadership to their communities, and that they should be expected to act lawfully even when they are not acting in their role as members. We do not agree therefore that the code should be amended so as only to refer to actions by members in their official capacity and not their private lives. Following its review of the code, the Standards Board has, however, recommended that the current rule should be amended to provide that **certain behaviour outside official duties should continue to be regulated, but that this should be restricted only to matters that would be regarded as unlawful**. We accept this proposal, since it would balance the need for members to continue to set an example to their communities, and the need to exclude from proscription actions of which certain people might merely disapprove."¹²

1.12 In the recent case involving the Mayor of London,¹³ who accused a journalist who he knew to be Jewish of being "like a concentration camp guard" as he left an official reception, the Adjudication Panel for England had found that the Mayor had failed to comply with the Code of Conduct of the Greater London Authority, even though he was not at the time fulfilling his official duties, and should be suspended for four weeks. The High Court, however, allowed the Mayor's appeal on the basis that the code of conduct did not apply because the Mayor had not been acting in his official capacity as Mayor when he made the relevant remarks to an Evening Standard journalist, and the code did not extend to regulating the Mayor's private conduct.

¹¹ Committee on Standards in Public Life, *Tenth Report, Getting the balance right: implementing standards in public life*

¹² *Standards of conduct in English local government: the future*, ODPM, 15 December 2005, at p. 28.

¹³ *Ken Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin) (19 October 2006).

1.13 The High Court held that the words “in performing his functions” covered activities that were apparently within the performance of a member’s functions, and applied to a member who misused his position as a member even when not acting in his official capacity. However, it did not cover conduct in the member’s private life: the High Court held that if it is thought appropriate to subject members to a code which extends to conduct in their private life, Parliament should spell out what is covered.¹⁴ Since the remarks to the journalist were not made in the performance of the Mayor’s functions, the Code of Conduct did not apply and the Adjudication Panel had therefore been wrong in deciding that he had failed to comply with it.

1.14 In reaching this conclusion, the High Court held that the restraints on freedom of expression imposed by the code of conduct to uphold proper standards in public life were in principle capable of justification under Article 10(2) ECHR, but those restraints should not extend beyond what is necessary in order to maintain those standards. In the Court’s view, to interpret the code as extending to the conduct in question was not necessary in a democratic society. Collins J. made clear that in his view the link between the conduct in question and his membership of the authority was necessary: “it is important that the flamboyant, the eccentric, the positively committed – one who is labelled in the somewhat old fashioned terminology, a character – should not be subjected to a Code of Conduct which covers his behaviour when not performing his functions as a member of a relevant authority.” The judge accepted that the result of this construction of the Act and the Code is that unlawful conduct is not necessarily covered by the Code: “Thus a councillor who shoplifts or is guilty of drunken driving will not if my construction is followed be caught by the Code if the offending had nothing to do with his position as a councillor.”¹⁵

1.15 In its *Consultation on Amendments to the Model Code of Conduct for Local Authority Members*, issued in January 2007, the Department for Communities and Local Government says that it is in response to this case that the Government has decided to amend the Local Government Act 2000 in the current Bill “so that behaviour in a private capacity might be included within the remit of a code of conduct.”¹⁶ It says that the case casts some doubt on the ability of the code of conduct to proscribe behaviour of members in their private capacity, and is based on a narrower interpretation than that previously applied by the Government. Until this decision, the Consultation Paper says, the Government had assumed that it was possible to take a wider view of what private conduct could be relevant, including actions not necessarily to do with the member’s position as a councillor, but which may affect the member’s reputation and electors’ confidence in him or her. The Consultation Paper says that if the provisions in the Bill are enacted, “Ministers are currently minded to provide that only private behaviour for which the member has been convicted by a court should be proscribed by the code of conduct, ... and not behaviour falling short of a criminal offence.” This is reflected in the draft model code of conduct which is appended to the Consultation Paper, which expressly provides that the conduct which could reasonably be regarded as bringing a member’s office or authority into disrepute “may include a criminal offence”.¹⁷

¹⁴ [2006] EWHC 2533 (Admin) at paras 29-30.

¹⁵ *ibid.* at para. 30.

¹⁶ DCLG Consultation, January 2007, at p. 9.

¹⁷ Para. 4(2) of the draft model code of conduct.

1.16 In proceedings before the Public Bill Committee, the Minister confirmed that the Government's policy objective in seeking to amend the Local Government Act 2000 is only to encompass within the code of conduct instances where members acting outside their official duties receive a criminal conviction.¹⁸ He said "We are trying to say that the code of conduct should not cover a councillor's private life, with the caveat that if a criminal conviction was involved, that should be taken on board by the standards committee." In the Government's view, conduct in a member's private capacity that has resulted in a criminal conviction should be covered by the code of conduct, and the purpose of the provisions in the Bill is to ensure that the necessary enabling powers are provided to enable the code to achieve this. However, the minister was unequivocal that "I am not proposing that the model code should cover any aspect of a member's conduct outside his or her role on the council other than that resulting in a criminal conviction."

1.17 **We welcome the Government's clarification that its policy objective is confined to enabling the model code of conduct to cover criminal convictions.** However, although this reduces the likelihood of the provisions in question leading to breaches of the Article 8 and 10 rights of members, it does not remove the risk of incompatibility to our satisfaction. Two problems remain.

1.18 First, the Government's limited intention is not reflected on the face of the Bill itself. As the Bill stands, it provides for a power which on its face is capable of being exercised so as to make the code of conduct apply to any private conduct of a member, which would be highly likely to give rise to breaches of members' rights to privacy and freedom of expression under Articles 8 and 10 ECHR. The Government's current intention may be only to use that power to provide that private behaviour resulting in a criminal conviction will be covered by the code, which is less likely to result in such breaches, but there is nothing in the Bill to confine the power in this way.

1.19 Indeed this has been acknowledged by the Minister in the course of the Public Bill Committee proceedings, when he said that he was conscious that after reading the explanatory notes and the clause Members of Parliament "will have the impression ... that we are trying to do the opposite of what we are really trying to do."¹⁹ According to the Minister's explanation to the Public Bill Committee, "the law has to be widened and clarified so that the code can be narrowed". We do not understand the Minister's puzzling explanation. The effect of the provision in the Bill is to widen the scope of the code of conduct from that which currently stands following the decision of the High Court in the *Livingstone* case. **We see no reason why the Bill should not expressly state on its face the exact extent to which the code shall apply to private conduct by members, for example by providing that the only private conduct to which the code applies is conduct which has resulted in a criminal conviction. There is no reason, legal or otherwise, why such a limitation should only be contained in the code. On the contrary, in our view, there are very good reasons why such a limitation should be on the face of the Bill, to make it less likely in practice that the power will be exercised incompatibly with Articles 8 and 10.**

1.20 The second problem which remains is that the Government appears to intend that any criminal conviction, however minor, should be capable of counting as conduct which

¹⁸ House of Commons Public Bill Committee, 1 March 2007, col. 420.

¹⁹ House of Commons Public Bill Committee, 1 March 2007, col. 419.

could reasonably be regarded as bringing a member's office into disrepute. This would mean, for example, that a speeding ticket or other regulatory offence of a minor nature would be within the scope of the code of conduct. **We agree with the view of the Committee on Standards in Public Life that only private conduct resulting in a criminal conviction which is relevant to the member's official duties should be within the scope of the code of conduct.**

1.21 In the light of the above, we recommend that in order to minimise the risk of incompatibility with members' rights to privacy and freedom of expression under Articles 8 and 10 ECHR, the Bill should be amended to provide on its face that private conduct shall be within the scope of the code of conduct only where it results in a criminal conviction which is relevant to the member's official duties.

